

Dispute Party: MTR Corporation (Crossrail) Limited

Respondent's Notice to Heathrow Express

Operating Company Limited's notice of appeal to

ORR in the Timetable Dispute, HAL/TTP003

Respondent Submission

19 November 2021

To:

- (1) Office of Rail and Road (the **ORR**);
- (2) Heathrow Expressing Operating Company Limited (**HEOC**) as the Appellant; and
- (3) Heathrow Airport Limited (**HAL**), Network Rail Infrastructure Limited (**NR**) and First Greater Western Limited as Interested Parties.

1 Response to Appellant's Notice of Appeal

- 1.1 This Response is issued in relation to HEOC's Notice of Appeal dated 5 November 2021 included in Appendix 1 (the **Appeal**), concerning the determination of the Timetabling Panel (**TTP**) of the Access Disputes Committee dated 27 October 2021 in respect of TTP/003, as set out in Appendix 2 (the **Determination**).
- 1.2 This Response and the attached Appendices constitute MTR's notice in accordance with Condition M5.1.1 of Part M of the HAL Network Code included in Appendix 3 (the **Network Code**) that MTR opposes the Appeal, together with MTR's supporting evidence.
- 1.3 Unless otherwise stated or defined herein, defined terms used in this Response have the meaning given to them in the Determination and references to paragraphs are references to paragraphs in this Response.
- 1.4 The facts are as stated in Section F of the Determination.
- 1.5 MTR has responded to each of HEOC's grounds of appeal in paragraphs 4 and 5 of this Response.

2 Right to Appeal and Request to Expedite

- 2.1 MTR has already questioned in its letter to ORR dated 12 November 2021 (see Appendix 4) whether ORR has sufficient vires to hear the Appeal and whether HEOC is a Dispute Party under the HAL Network Code. MTR had expected ORR to take this decision prior to any Response being submitted. Submission of this Response is therefore without prejudice to MTR's contention that ORR does not have vires to take jurisdiction in respect of the Appeal and that HEOC is not a Dispute Party. It is also without prejudice to MTR's view that failing to grant an extension of time to consider any such decision is unreasonable and inconsistent with the approach taken to a similar request from HEOC. MTR reserves all of its rights in respect of these decisions, including those not yet taken.
- 2.2 MTR has responded to the Appellant's proposed expedited process in its letter to ORR dated 12 November 2021 (see Appendix 4). In addition, MTR notes the lack of progress made in executing the TTP's decision as set out in the Determination. MTR has written to HAL to express its concerns in this respect (see Appendix 5). Notwithstanding MTR seeking to progress the Determination, MTR remains concerned that the expected date of any ORR determination being 17 December 2021 and the date for conclusion of any timetable changes being 3 January 2022, means that it is very likely to be impracticable for third parties to accommodate any changes as against the Determination solution in time (taking into account the festive window).

3 HEOC's Grounds of Appeal

MTR has sought to identify the grounds on which HEOC is making its appeal. It appears that these include the following:

- (a) the solution would result in a substantial reduction in HEOC's services and operations;
- (b) the solution would have a highly adverse effect on passengers who rely on the HEOC service for a consistent, time sensitive, frequent (4 trains per hour) service;
- (c) the solution, despite reducing HEOC operations and service frequency, adversely affects HEOC financially, as it does not allow cost savings in meeting the costs of delivering services and operational costs;
- (d) the ADC fails to take into account the much greater proportionate impact on HEOC, which is distinct from the impact on TFL/MTR, which [is] far smaller in comparison given the relative size of operations and service patterns; and
- (e) the solution effectively required by the ADC could result in thousands of HEOC passengers missing time sensitive commitments, namely flights, with substantial associated costs for passengers and knock-on negative consequences at Heathrow Airport.

4 Summary of MTR's Response

As set out in more detail in paragraph 5 below, MTR:

- (a) believes that, regardless of the Single Platform Arrangement (as referred to in the Appeal), a timetable solution is available that accommodates MTR and HEOC services at Terminal 5 (6tph in total utilising two platforms), with no requirement to reduce the HEOC service frequency. MTR also believes that there is spare capacity for HEOC to divert to Terminal 4 (ECS to and from Heathrow CTA) if it decides to do so;
- (b) believes the Determination is good for passengers overall as it will enable both HEOC and MTR to provide direct services to Terminal 5, seven days a week and offer a wider range of fares and passenger choice;
- (c) believes that the Determination allows for both HEOC's and MTR's commercial interests to be balanced in a way which seeks to achieve the Objective by sharing capacity in an efficient and economic manner and which honours the parties' contractual rights. MTR also understands that one potential timetable solution is to remove an 8-car HEOC set from the cycle (four trainsets instead of five trainsets) which may reduce wear and tear to the rolling stock fleet;
- (d) believes that HEOC has failed to explain why the Determination decision has a greater proportionate impact on HEOC compared to MTR and that timetable solutions exist which prevent any such impact; and

- (e) believes that there are timetable solutions which allow HEOC to operate a four trains per hour service to Terminal 5, with no impact on HEOC journey times. All timetable solutions which result in MTR's Firm Rights being honoured provide additional options for passengers wishing to travel to Heathrow airport, with no reduction in services per hour.

5 MTR's Detailed Response

- 5.1 In arguing the main grounds of appeal highlighted above, HEOC cites a number of other issues in support of its Appeal. MTR has taken each of those in the order presented in HEOC's Appeal and responded below.

5.2 Paddington Platform Concession

- 5.2.1 HEOC refers at length to the "Single Platform Arrangement" and argues the issues in dispute arose from HEOC conceding a platform at Paddington to the benefit of MTR and others in order to support the wider industry. HEOC argues it derived no benefit from the Single Platform Arrangement and since March 2021 is paying considerable costs to ensure its safe operation.
- 5.2.2 It is notable that HEOC declined to discuss or acknowledge any commercial agreement with the Department for Transport (DfT), which MTR understands underpins the Single Platform Arrangement, when asked about this during the TTP Hearing. None of the cited documents were raised during the hearing and without sight of them it is difficult for MTR to comment on them or the parties' respective commercial interests (and no doubt ORR will struggle to come to an informed decision in the absence of the relevant documentation). HEOC was given the opportunity to discuss any relevant agreements at the TTP Hearing but declined to do so and, more generally, HEOC did not ask to be joined to the proceedings as a Dispute Party.
- 5.2.3 HEOC argues that MTR benefitted from the Single Platform Arrangement as it was able to mitigate the delay to the opening of the Crossrail Central Operating Section (CCOS), which required MTR services to continue operating from high-level platforms at Paddington. HEOC argues that had HEOC not given up the platform, there would not have been capacity at Paddington for MTR to continue to operate at the high level. This statement overlooks the fact that the Single Platform Arrangement was designed to accommodate the DfT's objective of enabling Great Western Railway to deliver an enhanced service specification. MTR would also note that the DfT is a joint industry partner in the Crossrail project.
- 5.2.4 HEOC is currently operating from one platform at Paddington. HEOC suggests that ORR could instruct NR to return both platforms at Paddington to HEOC, thereby ending the Single Platform Arrangement. No rationale for this proposal is provided and at no point did HEOC refer to this during the TTP hearing. As noted above, HEOC deliberately avoided commenting on the Single Platform Arrangement with DfT during that hearing. MTR does not consider any such decision to be within the scope of this Appeal or relevant to achievement of the Objective. In any event, several solutions are available that resolve the issue by amending the timetable on HAL infrastructure, without any impact on Network Rail infrastructure. HEOC can still run its full service but with shorter turnaround times which are still compliant with or exceed the Timetable Planning Rules.

5.3 Operational and passenger impact

- 5.3.1 HEOC asserts that "*the cumulative impact of the Single Platform Arrangement and the Determination will have a material and damaging impact on both HEOC and the service which it is able to provide to its customers*". HEOC fails to provide any evidence to support this assertion, instead simply suggesting that "*The HEX service is designed to meet the needs of airport passengers which are quite distinct from those of domestic rail / commuter passengers.*"
- 5.3.2 HEOC's comments fail to recognise that the MTR services will also be serving the needs of airport passengers, offering them greater choice in terms of service options and price, potentially increasing both airport customer numbers and modal shift. Passengers would benefit from an all-day MTR service to Terminal 5, and existing MTR passengers would no longer need to change at Heathrow CTA to reach Terminal 5 during the daytime, saving around 10 minutes on every journey. The Determination enables MTR to provide two extra trains per hour to Terminal 5, offering direct services to Terminal 5 from a number of stations (such as Ealing Broadway), reducing connection times for MTR passengers travelling to Terminal 5 (who currently have a wait of over 10-minutes at Heathrow CTA for a connecting service and may be getting connecting flights) and reducing the number of changes required by passengers travelling from locations such as Reading to Terminal 5 (one change at Hayes & Harlington, rather than two changes at Hayes & Harlington and Heathrow CTA – unless they decide to travel via Paddington).
- 5.3.3 HEOC also cites a lack of resilience at Terminal 5. As noted previously, MTR understands that HEOC can operate a 4tph service utilising a single platform at Terminal 5. The turnaround times required to support this meet or exceed the turnaround times specified in the Timetable Planning Rules. MTR is happy to work with HEOC, HAL and, if required, Network Rail to develop robust contingency plans. One suggestion is to locate a HEOC standby train at Terminal 4.
- 5.3.4 HEOC argues that the effect of delays on airport passenger and staff will include missing flights, which have a disproportionate impact on their lives. However, airport passengers will benefit from 6tph to Terminal 5 instead of 4tph to Terminal 5 with the introduction of the MTR services. In addition MTR passengers will no longer have to change at Heathrow CTA to reach Terminal 5 on every train (with a connection time of over 10-minutes) thus reducing the risk of missed flights or terminal connections. As noted above, there is capacity at Terminal 4 for a hot spare to mitigate performance risk.
- 5.3.5 HEOC includes several graphs in its Appeal to try and demonstrate the performance impact of the PMO Solution and subsequent impact on passengers. Neither HEOC nor HAL presented any data to the TTP related to this issue. The performance graphs that were shared, along with related discussion, indicated that both HEOC and MTR services operate reliably all week long with a typical PPM of around 95%. Network Rail, as an Interested Party, did not raise any specific concerns to the TTP. As noted below, performance has significantly improved since MTR took over this part of the network from Heathrow Connect.
- 5.3.6 HEOC goes on to argue that this data demonstrates the PMO Solution will negatively impact the speed and reliability of the HEOC service, and eventually the passenger experience. HEOC also argues that a reduction in service frequency to two trains per hour would decrease choice for airport passengers, the large majority of whom,

HEOC claims, use Heathrow Express (HEX) as the quickest way to and from central London, and would increase the crowding on such services. Again, MTR understands that a 4tph HEOC service can easily be maintained by either reducing the HEOC turnaround times at Terminal 5 or diverting 2tph per hour to Terminal 4 (ECS between Heathrow CTA and Terminal 4). Heathrow passengers would also benefit from having a 2tph MTR service all day to Terminal 5, offering a wider range of fares and providing connections from other stations. HEOC did not provide any data to the TTP that would suggest that HEOC customers would suffer delays, cancellations, longer journey times or loss of connectivity.

5.3.7 In the case of PRM passengers, HEOC argues that HEX is the "*preferred choice for travel to and from the airport*". No evidence is presented to support this claim. All MTR operated stations between Paddington and Heathrow are staffed from first to last train and are now step free, funded by the Crossrail project to improve accessibility for customers who want to use travel where it is currently restrictive. A number of these stations are also provided with PRM toilets. All MTR services have wheelchair spaces and provide a turn-up-and-go (with no pre-booking) service for PRM customers. The provision of direct MTR services to Terminal 5 will reduce the need for PRM passengers to change trains.

5.3.8 HEOC cites data from 2017 to argue that when it ran both HEOC and Heathrow Connect services the "*dominant share of passenger numbers went to HEOC*". This data was not presented to the TTP and, in any event, is nearly five years out of date. MTR provides a much more reliable and high-quality service (utilising brand new Class 345 rolling stock) compared to the Heathrow Connect service that operated in 2017. The introduction of MTR services to Heathrow Terminal 5 on weekdays will increase choice in terms of the service provided, connections available (i.e. at Ealing Broadway) and fares, as well as increasing the frequency from 4tph to 6tph.

5.4 Safety impact

5.4.1 HEOC asserts that a two trains per hour service will create a safety risk due to passengers running for trains. HEOC also argues the PMO Solution increases the requirement for passengers to have to change at Heathrow CTA (due to poor service performance) which will increase customer confusion and so Platform Train Interface risk increases. This is not correct. MTR understands that a 4tph HEOC service can easily be maintained by either reducing the HEOC turnaround times at Terminal 5 or diverting 2tph per hour to Terminal 4 (ECS between Heathrow CTA and Terminal 4). The PMO Solution also removes the need for MTR passengers to change at Heathrow CTA before 20.00 SX, so in actual fact reduces the PTI risk. The service provision will also be standard, seven days a week, enabling simpler messaging for passengers. MTR does not believe that passenger choice should be restricted simply because HEOC does not believe that passengers are capable of boarding the correct train or that any uncertainty can be mitigated through appropriate communication and signage, which HAL invested significant amounts in to support the introduction of TfL Rail and Elizabeth line services in 2017.

5.5 Financial impact

5.5.1 HEOC asserts that the Determination and the proposed timetable change will have a substantial financial impact on HEOC in terms of cost, revenue and profit. No evidence is provided to support this assertion and none was presented to the TTP. The TTP considered the commercial interests of both MTR and HEOC when

substituting its decision. MTR believes that the Determination allows for both HEOC's and MTR's commercial interests to be balanced in a way which seeks to achieve the Objective by sharing capacity in an efficient and economic manner and which honours the parties' contractual rights. MTR also believes that it is important for the interests of taxpayers who have invested significantly in the Crossrail project to be recognised as part of MTR's broader commercial interests.

5.6 Brand and reputational impact

5.6.1 HEOC asserts that the Determination represents a threat to the HEOC brand with up to 2 years of less reliable and less frequent services. MTR does not recognise the reference to two years, as the determination is being implemented in January 2022 and is currently expected to remain in place until Crossrail Stage 5B, which is expected to commence in autumn 2022. No evidence was presented to the TTP that demonstrated that the HEOC brand would suffer as a result of a less reliable or less frequent service. The TTP considered the commercial interests of both MTR and HEOC when substituting its decision.

5.7 Colleague impact

5.7.1 HEOC has cited the discounts it offers HAL staff for travel on HEOC services. MTR is unclear on what basis HEOC considers this is relevant to this Appeal but notes that HAL previously withdrew subsidised travel for its workers on TfL services. MTR also believes that the majority of airport workers do not live in Central London and are therefore more likely to use MTR services to travel to and from the airport.

5.8 Network Capacity impact

5.8.1 MTR notes HEOC's observation that if the Determination is upheld it may need to consider all alternative options to maintain four trains per hour to Terminal 5, including reverting to the network arrangements prior to the introduction of HEOC having a single platform at Paddington. As noted above, MTR does not consider such an issue to be within the scope of this Appeal. Any changes to the timetable at Paddington would need to be agreed by NR. MTR assumes that HEOC is progressing with the outcome of the Determination in a timely fashion to implement the TTP's directions by 3 January 2022.

6 Network Rail's submission to the ORR

6.1 MTR notes the letter issued to the ORR by NR on 5 November 2021. MTR's objections to the contents of that letter are set out in its response to NR on 11 November 2021 (included at Appendix 6).

7 Directions sought from the ORR

7.1 MTR requests that the ORR upholds the decision of the TTP in the Determination and directs all Parties to continue with the implementation of that decision.

8 Signature

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

Signed



Print Name

Jonathan James

Position

Head of Contract Management

APPENDICES

Appendix 1 – HEOC appeal to ORR dated 5 November 2021

Appendix 2 – HAL/TTP003 Determination of 27 October 2021

Appendix 3 – HAL Network Code

Appendix 4 - MTR letter to ORR dated 12 November 2021

Appendix 5 – MTR letter to HAL dated 16 November 2021

Appendix 6 – MTR letter to Network Rail dated 11 November 2021