



**Dispute Party – MTR Corporation (Crossrail) Limited**

**Timetable Dispute: HAL/TTP002**

**MTREL response to Directions Note**

## **1 Introduction**

This document constitute MTR's response to HAL's Statement of Case as requested by the Hearing Chair in the directions note of 9 November 2020. It also responds to the Hearing Chair's further request of 9 November 2020 in relation to points of law. MTR has taken these directions into account and produced this response on the basis that, in its view, passengers are best served by a service offering which maximises choice and flexibility as provided by the timetable that operates today.

## **2 MTREL response to HALs Statement of Case**

**Note: References in brackets are to MTR's original submission**

### **Paragraph 3.3(a) (Referring to Section 4.1 Paragraph 2)**

The letter from HAL to MTREL dated 21 October 2020 did not refer to our Firm Access Rights to Terminal 5 and instead requested that MTR operate to Terminal 4 for both the December 2020 and May 2021 timetables.

### **Paragraph 3.3(a) (Referring to Section 4.1 Paragraph 3) and Paragraphs 4.2(b), 4.2(d) & 4.2(e)**

MTR has previously had no visibility of whether and how the Decision Criteria were applied in reaching the decision not to honour MTR's contractual Firm Rights. HAL did not reference the Decision Criteria in their letter of 21 October 2020. In any event, we question how HAL have applied the Decision Criteria and whether they have done so in a manner which is fair and reasonable.

### **Paragraph 3.3(a) (Referring to Section 4.1 Paragraph 4)**

The HAL letter of the 21 October 2020 suggests that HAL has allocated capacity for both the December 2020 timetable and the May 2021 timetable before properly considering or responding to the MTR request for additional Access Rights to Terminal 5, noting the request in the Network Rail letter of the 16 October 2020 asking for MTR to submit a revised bid by 23 October 2020.

### **Paragraph 3.3(b) (Referring to Section 4.2 Paragraph 2)**

Terminal 4 is closed for the purpose of passenger operations. We acknowledge that it remains open for Empty Coaching Stock movements, but any passenger services

would need to terminate at Terminals 1-3 (CTA). This will require an amendment to the timetable and appropriate arrangements made for detraining passengers.

**Paragraph 3.3(b) (Referring to Section 4.2 Paragraph 4) and Paragraph 4.2(g)**

In their letter of 23 April 2020 HAL requested that the TfL service is transferred from Terminal 4 to Terminal 5. At this point in time MTR was operating four trains per hour between Terminals 1-3 (CTA) and Terminal 4 (two of which originated at London Paddington) and was planning to introduce a 4tph service to/from London in the near future. The HAL letter acknowledged that MTR had Firm Rights for 2tph to Terminal 5. MTR suggest that it was reasonable to assume that the full 4tph service to Terminal 4 could be diverted to Terminal 5, and that it was reasonable to seek two additional Firm Rights to Terminal 5 from December 2020, once that it became clear that Terminal 4 was not going to reopen until at least June 2021. In any event HAL has failed to honour MTR's existing Firm Rights contained in its track access agreement and has failed to properly take into account that not only does MTR have Firm Rights to these services but also is currently operating these services through exercise of those Firm Rights, at HAL's initial request.

MTR submitted an Access Request on 4 September 2020 (to comply with Network Rail recovery plan timescales for bidding any changes related to the December 2020 timetable as a result of Covid-19) requesting diversion of 4tph to Terminal 5 instead of Terminal 4.

**Paragraph 3.3(c) (Referring to Section 4.2 Paragraph 7)**

MTR confirm that the date should be June 2021 and not June 2020 as stated in the MTR submission.

**Paragraph 4.2(c)**

As noted above, in their letter of 23 April 2020 HAL requested that the TfL service is transferred from Terminal 4 to Terminal 5. MTR submitted its Access Request on 4 September 2020 (to comply with Network Rail recovery plan timescales for bidding any changes related to the December 2020 timetable as a result of Covid-19) requesting diversion of 4tph to Terminal 5 instead of Terminal 4. Again, MTR feel it is important to recognise that not only does MTR have Firm Rights to these services but that it is also currently operating these services through the exercise of those Firm Rights, at HAL's initial request.

### **Paragraphs 4.3 and 4.4**

MTR acknowledges that the delayed Crossrail Project has had an impact on the availability of infrastructure but submits that this impact should not detract from the proper consideration of the Decision Criteria highlighted above. MTR rejects the assertion that it has referred to irrelevant criteria and, on the contrary, believes that HAL has failed to consider the need for operators to use their assets efficiently or for the spread of services to reflect demand. This includes consideration of a mixed service offering for passengers with an appropriate split of services provided by both MTR and HEOC. MTR observes that if HEOC maintains that it needs to operate four trains an hour, two of these services could terminate at CTA (and proceed to Terminal 4 to turn round), allowing two MTR services to continue to operate alongside two HEOC services each hour to Terminal 5. MTR also believes that HAL's decision failed to achieve the Objective in Part 4.6.1 of the Network Code as it does not ensure that capacity is shared in a non-discriminatory, efficient and economical manner in the overall interest of current and prospective users and providers of railway services. MTR believes this should be taken into account by the panel in making its final decision.

### **3 Determination in respect of the May 2021 Timetable**

Whilst MTR submits that resolution of the May 2021 timetable position at this stage would enable all parties to plan effectively and reduce the amount of change required after the timetable offer on 15 January 2021, MTR is happy for the panel to focus on the December 2020 timetable issues at this time and to revisit the May 2021 timetable at a later stage, once there is greater certainty regarding the reopening of Heathrow Terminal 4.

### **4 Response to Hearing Chair's position on points of law**

MTR notes that the Hearing Chair has highlighted two points of law to be resolved by the panel. In response MTR confirms that, without prejudice to its rights to subsequently pursue such matters:

- (a) (as noted in paragraph 3 above), MTR is happy for the panel to only consider the December 2020 timetable claim at this stage; and
- (b) MTR does not intend to pursue its arguments in respect of a potential contravention of competition law at this time.



## 5 May 2021 Timetable Production Schedule

Activity	Original Date	Original D-Date	Revised Date (Recovery Plan)	New D-Date
Priority Date	7 August 2020	D-40	23 October 2020 (MTR bid submitted early on 9 October 2020)	D-27
Timetable Offer	13 November 2020	D-26	15 January 2021	D-17
Offer Response	27 November 2020	D-22	29 January 2021	D-15
Timetable Commencement Date	16 May 2021		16 May 2021	

## 6 Signature

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

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Signed

[SIGNATURE REDACTED]

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Print Name

Jonathan James

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Position

Head of Contract Management  
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