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By email only

19 November 2021

Heathrow Airport Limited
Heathrow Express Operating Company Limited
MTR Corporation (Crossrail) Limited

Dear Sirs,

Appeals under Part M of the HAL Network Code by Heathrow Airport Limited (HAL) and Heathrow Express Operating Company Limited (HEOC) in respect of Timetabling Panel Determination HAL/TTP003

ORR has reviewed the documents and representations submitted to us by the parties in relation to the above matter. These submissions relate mainly to the importance of the hearing the appeal and the implications that the Timetabling Panel's determination has for the wider industry.

Background

In ORR's decision on an appeal by Transport for London regarding the terms of access to the track and stations comprised in the Heathrow Rail infrastructure published in 2018, ORR noted at paragraph 95: *"...if a matter were in due course to arise in relation to the Heathrow Rail Infrastructure on which it was considered appropriate to see ORR's view or decision...we would consider that matter on its merits at the time and in the context it was referred to us. Naturally, that consideration would include whether we had a power or duty to consider the matter in question (taking into account any submissions with respect to our vires made the party or parties seeking our view)", as well as whether we should exercise our discretion to exercise any such power in all the circumstances pertaining at that time.*"

ORR considers that the parties' submissions have not directly addressed the question of whether ORR has the legal power to act as an appeal body for this dispute. Rather, the representations thus far relate primarily to whether ORR should exercise its discretion to consider the appeal on the assumption that it has the legal power do so.



Representations Sought

ORR therefore invites the parties to provide their written representations on the following:

- (i) ORR's legal power to act as an appeal body in this dispute and under which statutory provision(s)
- (ii) Which party/parties have a right to appeal to ORR and under which statutory and/or contractual provisions, including:
 - a. The inter-relationship between a party's right to appeal under the contractual provisions of the HAL Network Code and any statutory right to appeal
 - b. The inter-relationship between Parts D and M of the HAL Network Code with respect to a party's right to appeal

Please provide your representations as soon as possible and **by 5pm 26 November 2021 at the latest**.

ORR will not be in a position to make a decision on whether to use its discretion to hear this appeal until it has first reached a conclusion on its legal power to act, taking into account the parties' representations.

However, in the event that ORR decides that it does have the power to hear the appeal, we do see some merit in hearing the appeal based on the representations received, and ORR anticipates informing the parties of its decision on whether to hear the appeal shortly thereafter. This will, however, occur, beyond the timeframe set out under Part M4.1.1

This letter has been copied to the interested parties. In the interests of transparency, when making any representations we request all parties ensure that they copy representations to all other parties to the appeal, including interested parties.

Yours faithfully

A handwritten signature in black ink that reads 'Martin Jones'.

Martin Jones