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Via Email Only

Dear John,

I write in response to your email dated 25 May 2016 regarding Transport for London's (TfL) appeal under Regulation 29 and complaint under Regulation 30 (together '**the complaints**') of the *Railways Infrastructure (Access and Management) Regulations 2005* ('**the Regulations**'). Please note that this response does not deal with the question of long term costs and the ORR's recent determination on the issue as this will be dealt with separately in future correspondence.

In the first instance I would like to state that in our view the complaints are wholly without merit and vexatious showing no evidence of unfair treatment or discrimination. Heathrow Airport Limited (HAL) has met with the Crossrail Sponsors (including TfL) on more than twenty occasions in the past year discussing all aspects of the Heathrow Spur access documentation ('**the documents**'). These discussions included the provision of various draft documents prior to the wider 2015 consultation and a full set of responses to all TfL's comments on 30 November 2015 (copy enclosed at **Annex A**) and these responses remain accurate in respect of the complaints. HAL has offered on a number of occasions to meet further with the Crossrail Sponsors regarding these matters. On each occasion these meetings were declined unless HAL agreed to the terms proposed by the Crossrail Sponsors.

On 27 April 2016, the Department for Transport (DfT) wrote to HAL's Chief Executive Officer (copy enclosed at **Annex B**) stating that TfL would be making the complaints "...on behalf of the Crossrail Sponsors..." as they held the view that the documents were not in compliance with the Regulations and "...not fit for purpose..." but did not suggest any unfair treatment or discrimination.

HAL does not share the DfT's views on compliance with the Regulations or fitness for purpose but does note that they did not suggest that there were any issues of unfair treatment or discrimination in respect of the documents. Throughout its dealings with the Crossrail Sponsors, consultation respondents and infrastructure users HAL has made every effort to ensure fair and equal treatment in respect of access to our rail infrastructure and if there is any criticism to be laid it might be that the Crossrail Sponsors have received information on a more timely basis than other consultation respondents and has had more opportunity to influence the formation of the documents.

HAL has prepared a revised set of documents (see **Annex C**) which were to be consulted upon once the question of long term costs had been resolved. In light of the complaints and the ORR's advice not to release the revised documentation until the complaints have been determined the proposed consultation on the revised documents has been suspended. In the meantime to assist the ORR in considering the complaints the basis upon which access charges will be calculated is set out below.

Track Access Charging Framework

While the ORR is responsible for the applicable charging framework as prescribed by the Regulations, HAL is responsible for designing and calculating track access charges within this framework.

The track access charges will be determined so as to be consistent with a position in which, under normal business conditions and over a reasonable time period, HAL's income from such charges shall enable the recovery of all efficiently incurred costs. In designing its charges HAL has adhered to the Regulations and to the most recent EU legislation on track access charges, the EU Directive 2012/34/EU and the Commission Implementing Regulation 2015/909.

HAL will levy a range of track access charges on franchised passenger and open access railway undertakings using its infrastructure. In order to aid transparency and ensure HAL meets its obligations in respect of non-discriminatory access and cost reflectiveness considerations, the track access charge will include the following elements: (i) a form of variable charge, which will include the operating, maintenance and renewal costs that vary with traffic; and (ii) a separate fixed charge, which is likely to include (subject to any future determination or review of long term cost recovery) infrastructure costs that are fixed or vary only in the medium to long term (i.e. all efficiently incurred costs not recovered through the variable charge).

HAL is proposing to recover all efficiently invested costs; these costs include operational expenditure and capital investment needed to operate the network.

Operational expenditure includes:

| Opex element | Description |
|--------------------------------|--|
| Staff costs | Infrastructure Manager overhead staff |
| Maintenance costs | Contracted soft and hard maintenance works |
| Station management costs | Contracted station management works |
| Station cleaning | Contracted station cleaning works |
| Non-traction electricity costs | Station electricity costs |

Capital expenditure costs include a variety of elements:

| Capex element | Description |
|--------------------------------------|---|
| Historic investment ¹ | Includes the original investment done in the network. The spur, the tunnels and different stations. |
| Replacement and renewals (2014-2018) | Includes the investment done in the network throughout the current regulatory period. |

Ensuring cost reflectiveness

HAL has developed a costs reflective track access charges framework. In order to do so HAL has reviewed the Network Rail and HS1 approach, it has also closely followed the Commission Implementing Regulation 2015/909. Outlined below are the steps that HAL has taken to calculate track access charges:

1. Classified all efficiently incurred costs according to its nature:
 - Directly incurred costs, those costs that vary with usage
 - Fixed costs, those costs that do not vary with the number of trains or passengers
2. Disaggregated the costs according to where within HAL's network they occur, this is:
 - Section of track: Till Central Terminal Area (CTA), from CTA to T5 and from CTA to T4
 - Station: CTA, T4 and T5
3. Identified costs driver for each type of costs. Attributing directly incurred costs to their short run drivers and fixed costs to their long-run drivers, which in turn helped to allocate costs appropriately among users of the Network. The costs drivers include:
 - Train movements
 - Number of passengers on the train
 - Length of the track
 - Train weight
4. Estimated the value of each costs driver. Once the cost-drivers were identified, the value for each driver over the charging period was determined.
5. Costs were then allocated to either their specific driver or to the common driver estimated in step 3.
6. Setting charges. Having completed previous steps, the costs have been mapped into the appropriate charge.

¹ Currently under review

In addition to the detailed information provided in our consultation responses we have also included a list of responses to TfL's 29 April 2016 letter of complaint to the ORR (see **Annex D**) which sets out our views on a number of the points contained therein.

Throughout our engagement with the Crossrail Sponsors we have sought to accommodate the requests for hundreds of changes to the documents but in many cases these requests were simply made on the basis that the documents did not exactly replicate those of Network Rail. It is clearly inappropriate for a 9 kilometre spur railway to replicate the national access terms given the administrative burden, unsuitability and cost involved in such replication. The Regulations do not require the terms of separately held but linked railway infrastructure to mirror each other nor do they require the infrastructure managers to allow every request for amendment to access terms by one of many users to be implemented. It is surprising that an organisation such as TfL has obviously spent a significant amount of time working on their ideal terms (offering their own terms as part of the complaints) but failing to understand the principles the Regulations seek to implement and the inappropriateness of their proposals to small infrastructure operations such as HAL.

One consideration in our drafting of the documents, which takes account of specific Heathrow conditions, was to ensure that rail users calling at any of the stations at Heathrow were treated equally in respect of charges as we have a separate concurrent obligation to airlines to ensure that they do not suffer discrimination. If separate and differing charges for station access were applied to rail users then it is likely that some Heathrow Terminals would not be served by rail users thus creating a difference in service provision and placing some airlines at a competitive disadvantage (its air passengers lacking a fast train surface access option) relative to airline competitors operating from Terminals that are served by those rail services.

In conclusion we do not believe that the TfL drafted access terms properly reflect the operation of a small railway spur such as Heathrow nor do they reflect the individual circumstances a fast railway connection to the UK's only Hub Airport necessarily demand. TfL are attempting to use the complaint process as a means of extracting more favourable terms for themselves and their concessionaires (terms which ignore our wider obligations to all railway undertakings and airport users) while at the same time making unsupported accusations of unfair treatment and discrimination in order obtain the requisite standing.

Finally, we believe that we have gone above and beyond what any other infrastructure manager would do in the same circumstances and we continue to work constructively with MTR Corporation (Crossrail) Limited to ensure that their scheduled commencement of operations to Heathrow will be achieved in a timely and mutually beneficial way.

Yours sincerely

Head of Legal for Regulation, Operations and Corporate
Heathrow Airport Limited

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