

Responses to consultation on application for consent to obtain recovery of costs incurred in operation of the Heathrow Rail Infrastructure – 16 July 2018

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Department for Transport

Response to consultation on application for consent to obtain recovery of costs incurred in operation of the Heathrow Rail Infrastructure

15th January 2018

Thank you for the opportunity to respond to the above consultation.

The Department for Transport sets the strategic direction for the rail industry in England and Wales – funding investment in infrastructure through Network Rail, awarding and managing rail franchises, and regulating rail fares. It also sets national aviation policy, working with airlines, airports, the Civil Aviation Authority and the UK's air traffic service.

We note that Heathrow Airport Limited proposes to apply the proposed mark-up in accordance with the Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016 (“the Access and Management Regulations”).

We look to the ORR to take a view on whether the scale of the mark-up is consistent with the requirements of the Access and Management Regulations, in particular that:

- the mark-up is based on efficient, transparent and non-discriminatory principles, whilst guaranteeing optimum competitiveness; and
- the mark-up does not have the effect of excluding the use of infrastructure by market segments which can pay at least the cost that is directly incurred as a result of operating the railway service, plus a rate of return which the market can bear.

Any mark-up should not be set at such a level as to make operation of services uneconomic or to distort the market, particularly given the aspiration to increase the number of train services to Heathrow in the future.

We also look to the ORR to ensure that the mark-up is reasonable and efficient and consistent with what has been applied elsewhere on the network. The Department's view is that any recovery of costs in relation to the Heathrow Spur, or any other part of the rail network, should take account of the Department's policy positions as set out in public documents including the 2017 Rail Strategy and the 2013 Aviation Policy Framework (which refers, in particular to the government's policy on airport operators funding towards improvements in surface access to airports).

We acknowledge Heathrow Airport Ltd's suggestion that if utilisation of the Heathrow infrastructure changes (for example as a result of the construction of a western or southern rail link) then the mark-up should be open to review.

The Department's view is that for all operators requiring access to the Heathrow spur, the access terms, including the charging framework, should

be fair, open and transparent, and in accordance with the Access and Management Regulations and is pleased that Heathrow Airport Ltd seems to have accepted this principle.

Sheona Mackenzie
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By e mail only

15 January 2018

Dear Sheona,

Heathrow Rail Infrastructure – Consultation on full recovery of costs

Thank you for consulting on Heathrow Airport Ltd (HAL)'s request to ORR for permission to levy a mark up as part of its track access charges for 10 years from January 2019.

Introduction

Heathrow Southern Railway (HSR) is a private company established to promote the construction of new rail infrastructure linking Heathrow Terminal 5 with the south western rail network. It is envisaged that HSR would own the infrastructure it builds, which would connect end on with HAL infrastructure at Heathrow Terminal 5 station.

The business case for construction of the new HSR infrastructure is based on:

- Trains running from Paddington, via HAL infrastructure and HAL's Terminal 123 and Terminal 5 stations, to Woking and beyond
- Trains running from Waterloo, via Staines, into HAL's T5 station, where they would terminate.

The charges which HAL levies for use of its infrastructure thus bear on the business case for HSR. This creates our interest in the consultation.

We note that in 2017 there was an ORR ruling, upheld in a subsequent challenge by HAL in the High Court, which forbids HAL from levying charges for the purposes of recovering historic investment.

HAL have engaged with HSR and have provided some supporting narrative in support of their application.

Consultation Reply

In response to ORR's three consultation questions:

- 1) *Do you agree with HAL's proposed approach to satisfying the 2016 Regulations requirements with respect to levying a mark-up?*

We agree that it is reasonable, and in line with the 2016 Regulations, for a small scale infrastructure operator such as HAL to levy a mark up to track access charges to enable the full recovery of costs incurred by track infrastructure to be recovered from users, but this is on the proviso that the mark-up is based on efficient and transparent principles.

In considering HAL's request, we have reviewed the HAL 2016 Price List and the HAL 2019 Price List, to assess and compare the level of charge between the two Price Lists, and to review whether the level of income the charges generate for HAL seem reasonable in relation to the scale and nature of the operation. We have done this as a check to see whether the proposed charge is efficient and transparent, whether there is any risk of historic investment being recovered through charges, and to check whether there is any risk of track or ineligible costs being recovered through station charges.

The attached spreadsheet uses the proposed 2019 HAL Price List and the service pattern which will be running at the start of 2019 (which will include Crossrail services with a frequency of 4 tph to Terminal 4 and 2 tph to Terminal 5) to assess HAL's total income levels for each piece of infrastructure and category of charge. From the spreadsheet analysis, we have three key findings to draw to ORR's attention:

- A) Track Charges Comparison. HAL can expect to recover from Track Charges (VUC and FTAC combined) some £8.8m pa. HAL infrastructure is 8.6km long, which pro-rates to £1.02m per km of route per annum; this excludes EC4T. The only other non Network Rail infrastructure owner to operate in a regulated environment is HS1. To consider whether HAL's 2019 track charges are efficient we have carried out a comparison to HS1's CP2 charges. The ORR website displays the February 2014 ORR determination of the Periodic Review of HS1 Ltd; page 81 shows the ORR's determination of the efficient OM&R costs which go on to be recovered through charges – this equates to £338.1m over the 5 year period, excluding EC4T, which averages £67.6m pa. HS1 comprises 108km of route. $\text{£67.6m}/108\text{km} = \text{£0.63m}$ per route km, per annum. In this comparison, HAL's costs of £1.02m per route km seem considerably higher than HS1's £0.63m per route km. It is accepted that almost all of HAL's infrastructure is in tunnel, and there are some tight curves; but HS1 also has considerable sections of tunnel and is maintained for much higher linespeeds than HAL, so it is surprising that HAL's cost rate is higher than HS1's. In the light of this comparison, we would ask ORR to be certain that the Track Charges proposed by HAL are efficient and transparent, and cover only the costs of HAL infrastructure operations, maintenance and renewal, and do not seek to recover the cost of past investment.
- B) Terminal 5 station charges. We note that there has been a considerable increase in QX charges between the 2016 Price List (£13.33 per train movement); and the 2019 Price List (£44.63 per train movement). HAL's earnings from QX with the 2016 Price List and train service are £718k, compared to the 2019 Price List and train service where HAL's earnings will be £3.6m. The 50% increase in train service (4tph to 6tph) does not correlate to a 5 fold increase in earnings through QX charges. We have queried this with HAL who report that the charge increase is caused by recovering the investment and operating costs of a gateline; plus the increase in train frequency; and some unspecified recategorization of charges from

fixed (the SLTC category) to Variable (the QX category). We do not have access to the Heathrow Cost Model, so would ask ORR to consider whether the steep increase in QX charges between the 2016 Price List and the 2019 Price List is transparent, whether the T5 QX charge is carrying any element of track related cost which should be recovered through track charges with specific ORR consent, and whether there is any element of investment recovery.

- C) Total HAL Income from Station Charges. We note that with the 2019 Price List and train service, HAL can expect to earn £17.3m pa from Station Charges, this being the aggregate for the three stations from both categories of charge summed together. £17.3m pa equates to roundly £0.5m per station per *month*. We recognise that the three stations are underground, have to meet stringent security requirements, contain a large number of lifts and escalators, and that within the costs is an allowance for the about-to-be-installed gatelines. But we cannot see that this would justify a cost base of nearly £5.8m per station per year. We would ask ORR to consider whether the charges being recovered for stations are transparent and efficient, and whether they in fact contain any element of non railway cost, such as the costs of lifts, escalators and walkways which should more properly be allocated to the airport terminals through the CAA regulated RAB.

2. Do you think HAL has correctly identified and characterised the appropriate market segments in its analysis?

We note HAL's decision to split the market into two segments: the Crossrail element under the heading of Public Service Contract (PSC); and the Heathrow Express element under the heading Other Passenger Services (OPS). This appears logical on current definitions.

The HAL analysis underpinning the application states that both segments can bear the mark up because in the case of Crossrail services, TfL can "absorb" the cost within its budget; and in the case of Heathrow Express services, the business passengers who are the primary users of the service are said by HAL to "exhibit a high willingness to pay" due to the speed and frequency of the service. We note that today the Heathrow Express Return fare of £37 for a 15 mile journey from Paddington to Heathrow is one of the most expensive rail fares in Europe. It is questionable, whether, once Crossrail introduce 6 tph from Paddington to Heathrow T123 at the end of this year, with a considerably lower (although yet to be confirmed) fare, Heathrow Express passengers will remain "willing" to pay such high fares, given that from 2019 they will have a much cheaper and more frequent alternative. For this reason we doubt the sustainability of the view that the HEx market can bear a fare rise which would result from the addition of a mark up to track access charges.

3. If we were to allow HAL to levy a mark-up, do you think it would be reasonable for this permission to cover the period to 2029?

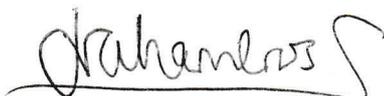
HAL's 28 November 2017 application to ORR doesn't actually offer any reasoned justification for why the mark up should be applied for a ten year period, except for the coincidence that Crossrail are seeking a 10 year access agreement.

Elsewhere in the rail industry, there is a practice of charges being reviewed by ORR every five years, and so we think five years would form a reasonable basis for a time period to permit the mark up to be applied, after which it should be reviewed by ORR within a review of the overall efficiency of HAL's costs and charges.

We think it would be appropriate for there to be a re-opener of any mark-up decision in the event that Heathrow Express ceased to be owned by HAL. This could occur at the optional break point in Heathrow Express's Track Access Agreement with Network Rail, which we understand to occur in 2023. A re-assessment of the what-the-market-can-bear test would be particularly relevant if what today are Heathrow Express services became operated within the franchised passenger rail system, because this would invite a system of fares regulation, and the level of HAL access charges would come to bear on the public finances.

I would be happy to discuss our response further with ORR.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Graham Cross', with a long horizontal flourish extending to the right.

Graham Cross
Executive Director
Heathrow Southern Railway Ltd

Copied to:

HSR Colleagues
ORR's Rob Plaskitt and John Larkinson

HSR's Analysis of HAL Prices and Income based on 2019 Prices List and Expected 2019 Service Pattern

Location	Charge category	2019 HAL Price List for Class 332 HEX	2019 HAL Price List for Class 345 Crossrail	HEX TRAINS per hour	CROSSRAIL TRAINS per hour	Number of directions	Number of hours operated each day	Number of days per year	HEX Bill in 2019 price list	Crossrail bill in 2019 price list	Total HAL Income from 2019 price list and services	of which:	Track Related	Station Related		
Track: Spur to CTA	VUC	10.18	9.27	4	6	2	18.5	364	£548,417	£749,090	£1,297,507		£1,297,507			
	FTAC	25.19	25.19	4	6	2	18.5	364	£1,357,036	£2,035,554	£3,392,589		£3,392,589			
Track: CTA to T4	VUC	14.97	13.56	0	4	2	18.5	364	£0	£730,504	£730,504		£730,504			
	FTAC	19.82	19.82	0	4	2	18.5	364	£0	£1,067,743	£1,067,743		£1,067,743			
Track: CTA to T5	VUC	12.28	11.15	4	2	2	18.5	364	£661,548	£300,336	£961,885		£961,885			
	FTAC	17.47	17.47	4	2	2	18.5	364	£941,144	£470,572	£1,411,716		£1,411,716			
CTA Station	QX	13.35	13.35	4	6	2	18.5	364	£719,191	£1,078,787	£1,797,978			£1,797,978		
	SLTC	27.07	27.07	4	6	2	18.5	364	£1,458,315	£2,187,473	£3,645,788			£3,645,788		
T4 Station	QX	18.93	18.93	0	4	2	18.5	364	£0	£1,019,797	£1,019,797			£1,019,797		
	STLC	34.57	34.57	0	4	2	18.5	364	£0	£1,862,355	£1,862,355			£1,862,355		
T5 Station	QX	44.63	44.63	4	2	2	18.5	364	£2,404,307	£1,202,154	£3,606,461			£3,606,461		
	SLTC	65.92	65.92	4	2	2	18.5	364	£3,551,242	£1,775,621	£5,326,863			£5,326,863		
TOTAL £											£11,641,200	£14,479,986	£26,121,186		£8,861,944	£17,259,242
											in 2018 prices			33.93%	66.07%	

FTAC Total
£5,872,048

Total CTA in 2019
for 6 tph
£5,443,766

Total T5 in 2019
for 6 tph
£8,933,324

Stations Price Change Check:

		2016 Price	HEX	Crossrail						
T5 Station	QX	13.33	4	0	2	18.5	364	£718,114	£0	£718,114
	2016 SLTC	93.78	4	0	2	18.5	364	£5,052,116	£0	£5,052,116
										£5,770,230

HAL income from T5 Station Charges using 2016 Price and service pattern of 4 tph

		2016 Price	HEX	Connect						
CTA Station	QX	3.88	4	2	2	18.5	364	£209,023	£104,512	£313,535
	2016 SLTC	26.44	4	2	2	18.5	364	£1,424,376	£712,188	£2,136,564
										£2,450,099

HAL income from T123 Station Charges using 2016 Price and service pattern of 6 tph

Graham Cross
08/01/2018



Sheona Mackenzie
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12 January 2018

Dear Sheona

Consultation on application for consent to obtain recovery of costs incurred in operation of the Heathrow rail infrastructure

Thank you for the invitation to comment on the application for consent to obtain recovery of costs incurred in operation of the Heathrow rail infrastructure dated 1 December 2017.

MTR Crossrail supports in principle the proposal by Heathrow Airport Limited (HAL) to levy a mark-up for ten years, however we have a number of comments as follows:

- MTR Crossrail note that the proposed mark-up results in the same per train movement charge, irrespective of the class of rolling stock. Therefore, we remain to be convinced that the proposed mark-up respects the "productivity increases" arising from the reduced impact that the lighter Class 345 rolling stock will have on the infrastructure (respecting "productivity increases" being a requirement of The Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016 (the Regulations)). We therefore propose that any mark-up is calculated as a percentage uplift of the directly incurred charge rather than being the same amount for any class of rolling stock used.
- We note that the Regulations enable a mark-up to be levied, subject to ORR approval, on the basis of efficient, transparent and non-discriminatory principles, whilst guaranteeing optimum competitiveness, in particular in respect of rail market segments. However, we would like reassurance that this will be reviewed if there is a significant change to the pattern of rail services to Heathrow (for example, as a result of the Western Rail Link).
- We note that there remains an overlap with the CAA Control Period, which ends on 31 December 2019 (and may be extended for a further two years). We would like reassurance that any 'mark-up' is aligned with the CAA control period funding settlement to avoid any 'double counting'. We therefore suggest that the introduction of a mark-up is deferred until the start of the next CAA Control Period, to make sure that HAL is not reimbursed twice (through the CAA settlement and from the mark-up).

We look forward to hearing from you regarding these points.

Yours faithfully

Jonathan James
Access Manager
MTR Crossrail

Sheona Mackenzie
Senior Economist
Office of Rail and Road

21 December 2017

Dear Sheona

Consultation on application for consent to obtain recovery of costs incurred in operation of the Heathrow rail infrastructure

This letter sets out Network Rail's response to ORR's consultation on Heathrow Airport Limited's (HAL's) application for consent to obtain recovery of costs in operating its rail infrastructure. We welcome the opportunity to comment on this issue.

Some of the issues in ORR's consultation are detailed and are specific to HAL. However, there are a few topics that may have wider implications for the GB railway. We are responding on these wider issues only. Our response draws upon our responses to two other ORR consultations, namely:

- Our response to ORR's March 2016 consultation on the charging framework for the Heathrow Spur¹; and
- Our response to ORR's September 2017 consultation on charges to recover Network Rail's fixed costs in CP6².

Our high-level view is that if operators are able to afford to do so, it is reasonable to expect them to make a contribution towards the fixed costs of rail infrastructure that they use. Absent such an approach, someone else would need to fund these costs (e.g. users of Heathrow Airport who do not arrive by rail), which seem inconsistent with the 'user pays' principle.

Consistency

We note that ORR has yet to conclude on its recent consultation on charges to recover Network Rail's fixed costs in CP6. In concluding on that consultation we would encourage ORR to be mindful of seeking to adopt a consistent approach with HAL's application, where appropriate. A consistent charging approach, where possible, should lead to charges that:

- are easier for train operators to understand;
- translate into charges to end-users; and
- can be responded to by train operators.

Our response to ORR's March 2016 consultation on the charging framework for the Heathrow Spur expands on these three points.

¹ Available here: http://orr.gov.uk/_data/assets/pdf_file/0018/21249/charging-framework-consultation-network-rail.pdf

² Available here: <https://cdn.networkrail.co.uk/wp-content/uploads/2017/01/Network-Rails-response-to-ORRs-fixed-charges-consultation-December-2017.pdf>

We also consider that relevant legislation should be applied consistently to all infrastructure managers, across the entire railway network, although we recognise that in some circumstances, a consistent application of the legislation is not always possible or appropriate.

Third-party investors

Network Rail is seeking to further encourage third-party investment in the railway. Therefore, we would encourage ORR to consider the wider implications of its decision on HAL's application on potential investors in the railway and any precedent that its decision could create. We consider that ideally HAL should be allowed to recover its historic investment costs and, as a minimum, train operators should (subject to being able to afford it) contribute to HAL's future fixed costs. We are mindful that if HAL is unable to recover its future fixed costs from the users of its infrastructure this could be unsettling to potential future investors in rail infrastructure. We expand on this point in our response to ORR's March 2016 consultation on the charging framework for the Heathrow Spur.

Difficulty in calculating a mark-up

We consider that it is vital that there is robust evidence to support a potential mark-up for users of HAL's infrastructure. If charges are levied inappropriately this could result in traffic being priced off the railway. We expand on this point, in the context of potential mark-ups to recover Network Rail's fixed costs in CP6, in our response to ORR's September 2017 consultation on this topic. Consistent with this, we note that HAL is seeking approval to levy mark-ups for usage of its infrastructure for a period of 10 years. We are concerned that concluding on users' affordability for 10 years could be challenging to do accurately.

Market segmentation and billing

We recognise the challenges associated with segmenting the passenger services market and the potential for this segmentation to become quite complex. This was highlighted in the recent CEPA report that ORR commissioned in this area. We consider it is important that practical considerations (e.g. billing) are also taken into account when segmenting the passenger services in order to ensure that any charging proposal can be implemented in practice. Consistent with this, if ORR agrees to allow HAL to levy a mark-up as part of its track access charges, we consider that it should be mindful of the ease of billing such a charge, so as to reduce the complexity of the regime for HAL's users and to minimise complexity more generally. We raise a similar point with regards to ORR's September 2017 consultation on charges to recover Network Rail's fixed costs in CP6.

Yours sincerely,

Peter Swattridge



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12 January 2018

Dear Sheona,

Consultation on application for consent to obtain recovery of costs incurred in operation of the Heathrow rail infrastructure dated 1 December 2017 (the "Consultation") – Transport for London ("TfL") response

- 1 Thank you for the opportunity to respond to the Consultation and set out our thoughts on the proposal from Heathrow Airport Limited ("**HAL**") to levy a mark-up (the "**Mark-Up**") in order to obtain full recovery of its costs incurred in operating the Heathrow rail infrastructure. As noted by the Office of Rail and Road (the "**ORR**") any such mark-up would be levied in accordance with the exception to the general charging principle in paragraph 2 of Schedule 3 of The Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016 (the "**2016 Regulations**").
- 2 As the ORR will be aware, we have separately made applications to the ORR pursuant to regulations 32 and 34 of the 2016 Regulations (the "**Applications**"). The Applications are in the process of being determined by the ORR. This response is being provided without prejudice to the Applications.
- 3 Whilst HAL has previously shared with us in outline its proposals in relation to the amount of the Mark-Up, to date we have not commented on those proposals, or the detail which now forms part of the Consultation. We welcome the opportunity to do so now in this response – and also welcome the helpful consultation material which has been provided, as well as the process which has been followed.

Do you agree with HAL's proposed approach to satisfying the 2016 Regulations requirements with respect to its levying a mark-up?

- 4 In general, we agree with HAL's proposed approach to satisfying the 2016 Regulations. However, we would make the following observations, which should be taken into account in finalising HAL's proposal and in the context of the ORR's approval of the charging framework for the Heathrow rail infrastructure:
 - 4.1 HAL's proposal (and in particular the market segments it has identified) has been made in light of the services which currently use the Heathrow rail

infrastructure. Whilst we do not disagree with this approach we make the following comments:

- 4.1.1 If in future other services use the Heathrow rail infrastructure, the "market can bear" analysis may be affected (and in any event would need to be updated in light of the new services). We would therefore expect it to be revisited. This might apply, for example, if Western or Southern rail access enables different services to use the current Heathrow rail infrastructure in future.
- 4.1.2 Whilst we recognise the Elizabeth Line services on the Heathrow rail infrastructure are provided pursuant to a "public services contract" (PSC) we believe the definition of the market segment in which the Elizabeth Line services operates needs to be more granular than "PSC services".

These points are discussed further in paragraph 5 below.

- 4.2 Nothing we have seen in the Consultation sets out how "productivity increases" will be respected (a requirement of paragraph 2(4) of Schedule 3 of the 2016 Regulations). In particular the Elizabeth Line services will use lighter trains, having a reduced impact on the infrastructure and incurring a lower "directly incurred" charge. However, under HAL's proposals, whereby the non-eligible costs to be recovered by the Mark-Up are apportioned by the number of movements, both of the proposed market segments pay an identical per movement charge. There is thus no recognition of (or respect for) the Elizabeth Line services' "productivity increases" in the Mark-Up. One way this could be addressed is by calculating the Mark-Up as a % uplift on the "directly incurred" charge.
- 4.3 The non-eligible costs to be recovered by the Mark-Up are currently funded by the operating surplus of the Heathrow Express services and this was recognised by the Civil Aviation Authority (CAA) in the Q6 price control determination to 31st December 2018. In October 2016 the CAA issued a formal notice to modify the licence issued to HAL (pursuant to the Civil Aviation Act 2012) to extend the Q6 price control by one year to 31st December 2019. This extension was effected by a roll forward of the assumptions made in the original determination in 2014. The recovery of non-eligible costs from Elizabeth Line services will represent new money into the aviation single till and thus a windfall to HAL. We believe therefore that there may be a case for deferring implementation of the Mark-Up until the end of the extended Q6 price control period¹. We note that in December 2017 the CAA consulted on proposals to further extend the Q6 price control by one or two years to align with the current position in relation to capacity expansion plans at Heathrow airport. Dependent on the approach to this extension to be adopted by the CAA there may be a case for further deferral of implementation of the Mark-Up.

¹ In connection with this, we note that paragraph 5 of Schedule 3 of the 2016 Regulations requires an infrastructure manager to make public any intended modifications to the essential elements of the charging system referred to in paragraph 2 of Schedule 3 (i.e. a mark-up) at least three months in advance of the deadline for the publication of the network statement. We consider the introduction of the Mark-Up (if the ORR is minded to accept HAL's application) would be captured by this requirement (and therefore should have been made public at least three months prior to the deadline for publishing the HAL 2019 Network Statement). Indeed, whether HAL actually intends to introduce this essential element of its charging system will not be clear until the outcome of the Consultation (and the ORR's conclusions thereon): deferral of the implementation of the Mark-Up would therefore be consistent with this legal requirement.

- 4.4 HAL's structure of charges for access to its rail infrastructure no longer includes a recovery of the historic capital cost of the Heathrow rail Infrastructure via an Investment Recovery Charge. The overall level of access charges payable by the operator of the Elizabeth Line services including the recovery of non-eligible costs through the Mark-Up is thus more in line with the charges historically advised by HAL that informed TfL's planning. From the prices in the Price List accompanying the 2019 Network Statement we calculate that the Elizabeth Line service will attract an FTAC of £2.49m when it operates a 4 trains per hour (tph) service to T4 rising to £3.66m when the service is extended to operate a 2 tph service to T5. We believe that the proposed Elizabeth Line services can bear the Mark-Up at this level of charge. This is subject to due consideration of the points in paras 4.2 and 4.3 above and such amendment(s) to the Mark-Up in relation thereto as the ORR may determine.

Do you think HAL has correctly identified and characterised the appropriate market segments in its analysis?

- 5 As noted in paragraph 4.1.2 above the Mark-Up (and the analysis which has been undertaken) is specific to the Heathrow rail infrastructure as it currently exists and its current proposed utilisation. We believe the market segment in which Elizabeth Line services operate should be defined as "Elizabeth Line services provided by TfL through a Concession Agreement" rather than "PSC services". We believe that the Elizabeth Line services are sufficiently different from any other potential PSC services to merit separate segmentation. This is to reflect that:

- TfL has statutory duties under the Greater London Authority Act 1999 which amongst other things will inform the setting and structure of fares (including those on the Heathrow rail infrastructure);
- Elizabeth Line services to Heathrow Airport will originate from Abbey Wood and Shenfield. They will thus traverse the networks of Network Rail Infrastructure Limited (the NR network) and Rail for London (Infrastructure) Limited (the Crossrail Central Operating Section (the CCOS)) in addition to the Heathrow infrastructure. The revenue from Elizabeth Line services needs to contribute to the financing of the construction of the CCOS and the improvements to the NR network to facilitate such services²;
- TfL operates other transport modes in Greater London and also, in the case of the Piccadilly line, to Heathrow Airport. Services to the Heathrow rail infrastructure and on to the airport will thus abstract airport and non-airport passengers from other TfL modes – principally London Underground;
- As announced as part of the Spending Review 2015 from 2018/19 TfL will no longer receive a grant from central Government towards its operating costs. This equates to a reduction in annual income of £0.7bn and thus TfL is unable to fund any mark-up that is not recovered through fares; and

² Including the cost of substantial works at Stockley to facilitate an increase in the number of services able to traverse from the NR network to the Heathrow rail infrastructure

- For some or all of the geographic markets served, the mix of journey purposes and the range of alternative travel options may differ for Elizabeth Line services as compared to other potential PSC services.

We have balanced these factors in reaching the conclusion in paragraph 4.4 above but they would need to be reconsidered in the evaluation of any mark-up for the Elizabeth Line services market segment in the event of a change in the utilisation of the Heathrow rail infrastructure (including any increase in Elizabeth Line services from the current proposed 6tph).

If we were to allow HAL to levy a mark-up, do you think it would be reasonable for this permission to cover the period to 2029?

- 6 As the ORR will be aware, as part of the Applications we have requested access to the Heathrow rail infrastructure for Elizabeth Line services for a period of 10 years from May 2018. We therefore largely agree with HAL's proposal that the permission covers 10 years, as this will provide certainty of charging for the period of the initial access agreement. We wonder from a practical perspective whether the permission might helpfully be tied in to the 10-year duration of the initial Crossrail access agreement (i.e. until May 2028) although we would have no strong objection to the permission continuing until 31 December 2028. As noted elsewhere in this response, and HAL acknowledge in paragraph 8.11 of their application, the Mark-Up should be subject to review in certain circumstances. These circumstances should be as set out in TfL's proposed amendments to the Crossrail Track Access Contract for the Heathrow rail infrastructure submitted to ORR as part of the Applications.

Other comments on the application

- 7 On the basis of the per movement charges specified in the Price List accompanying the 2019 Network Statement and the number of movements previously advised by HAL as used in their derivation³, we have calculated the directly incurred costs (DICs) to be £3.0m pa (as opposed to £2.7m pa in paragraph 8.2 of the Mark-Up application) and the non-eligible costs to be £6.0m pa (as opposed to £5.8m pa in paragraph 8.2 of the Mark-Up application), although the figure of £5.8m is consistent with the rail costs spreadsheet provided to us by HAL.
- 8 Under footnote 90 in the Mark-Up application HAL indicate that they will "need to review the charges for the 2020 Network Statement to reflect changes to the level of DICs and non-eligible costs given the expanded Elizabeth Line services (the move to 6tph from December 2020)". We had understood that the per movement charges in the Price List accompanying the 2019 Network Statement already reflect a 6 tph Elizabeth Line service which, in any event, is planned to be in place from December 2019.

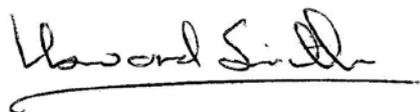
Conclusion

- 9 We are looking forward to the commencement of Elizabeth Line services to Heathrow Airport which, as you will be aware, are scheduled to commence in just a few months' time (on 20 May 2018). We trust that this response demonstrates our commitment to both HAL and the ORR. With time moving swiftly on, it is essential that the charges for accessing Heathrow Airport are finalised expeditiously, so that we are able to complete the access agreements in time for services to commence. We therefore request that determining HAL's application is prioritised and I have

³ Heathrow Express 54,288 to T5; Elizabeth Line 55,376 to T4, 27,688 to T5

asked my team to stand ready to assist the ORR to bring this to a prompt conclusion. Of course, if you have any questions in the meantime, please feel free to contact my team for further clarification.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Howard Smith", with a horizontal line underneath it.

Howard Smith
Crossrail Operations Director
for and on behalf of
Transport for London

cc: Chris Joyce, HAL
Rob Plaskitt, ORR
John Trippier, ORR
James Cornelius, HAL