
Subject: *HS1 Passenger Access Terms: Conclusions Document*

Date: *17 May 2012*

1. Structure of this document

This conclusions document sets out:

- an overview of the proposed changes to the HS1 Passenger Access Terms (“**HS1 PAT**”) in 2011;
- a summary of the key comments from the train operators and the Office of Rail Regulation (“**ORR**”) alongside HS1 Limited’s (“**HS1 Ltd**”) responses to each comment; and
- the final version of the HS1 PAT (Edition Date: May 2012)

The document is divided into the following sections:

- Section 2 – Overview of the process
- Section 3 – Responses to the proposed changes
- Section 4 – Train Operator’s Comments and HS1 Ltd’s Consideration
- Section 5 – ORR Comments and HS1 Ltd’s Response
- Annex A – Final HS1 Passenger Access Terms (Edition Date: May 2012)

2. Overview

In August 2011, HS1 Ltd engaged with the passenger operators on its proposed changes to the HS1 PAT. The aim of the proposed amendments to the HS1 PAT are: i) to clarify provisions contained in the existing HS1 PAT; ii) to comply with HS1’s entitlement under the Concession Agreement; and iii) to introduce provisions to reflect the arrangement for the Domestic Underpinning.

Following extensive discussions with the London & South Eastern Railway Limited (“**LSER**”) and Eurostar (U.K.) Limited (“**EIL**”), the following acceptances were received from each train operator:

- LSER – 1 March 2012; and
- EIL – 14 February 2012.

On 22 March 2012, the ORR issued a response to HS1 Ltd on the version of the proposed HS1 PAT accepted by the train operators. The ORR had no specific comments in relation to the proposed HS1 PAT however provided comments on consequential changes to Section 7 of the HS1 PAT required as a result of the HS1 Freight Access Terms published in April 2011. The ORR’s comments are captured in Section 4 of this paper.

Taking into account the ORR’s comments, HS1 Ltd decided to re-consult both LSER and EIL on the additional changes to the HS1 PAT as a consequence of the HS1 Freight Access Terms. Following discussions with the train operators, HS1 Ltd received acceptances to the additional changes on the following dates:

- LSER – 20 April 2012; and
- EIL – 10 May 2012.

3. Responses

Responses and comments to the proposed changes were received, from:

- Office of Rail Regulation (ORR) – 22 March 2012;
- London & South Eastern Railway Limited (LSER) – 19 July 2011 & 20 April 2012 ; and

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- Eurostar International Limited – 10 November 2011 & 11 May 2012

HS1 Ltd has fully considered all comments and therefore have made suitable changes before reaching the version of the final HS1 PAT (Edition Date: May 2012) contained in Annex A of this conclusions document.

4. Train Operator's Comments and HS1 Ltd Consideration

The comments received from the train operators are summarised below and followed by HS1 Ltd's consideration on each comment.

Section 7 – Track Access Charges

4.1 Consultees Responses – Dispute Resolution

A train operator wanted clarity on whether they currently pay for the Dispute Resolution services and requested information on what the costs cover.

HS1's Consideration

We clarified that HS1 Ltd pay an annual service fee to the Access Dispute Committee as a retainer fee to provide and maintain dispute resolution services as and when required. In the event of an access dispute, the cost of resolving it will be equally divided between the parties to the dispute. This process is explicitly captured in the HS1 Access Dispute Resolution Rules dated December 2010.

4.2 Consultees Responses - OMRCC_{SGV}

A train operator wanted clarity on the reason for adding an explicit reference to the OMRCC_{SGV} in the proposed HS1 PAT and why the proposed changes were factored into the proposed HS1 PAT and not within the periodic review exercise?

HS1's Consideration

The OMRCC is a pass through cost. As the OMRCC is a known cost at the beginning of the year, the intention is to notify the train operator at the outset. This provision is particularly useful for the train operators as the OMRCC amount will be known before the start of the financial year.

4.3 Consultees Responses - APA_t

A train operator requested explanation on the purpose of the change in definition of APA_t in the proposed HS1 PAT.

HS1's Consideration

The definition has been revised to provide clarity. The purpose of APA_t has not been amended. The reference to the OMRCC has been omitted from the wash up provision as the amount will be known at the start of the financial year and therefore there should be no adjustment to the OMRCC amount at the end of the financial year.

4.4 *Consultees Responses – Wash Up Provision*

A train operator requested that the proposed additional wording relating to the wash up provision in the HS1 PAT (contained on Section 7, Part 2, and clause 10.2 (b)) be removed.

HS1's Consideration

Section 7, Part 2 and Clause 10(b) provides information on making payments following the wash up in the financial year. Under the proposed HS1 PAT, the wording “following receipt of an invoice from the Train Operator” was included to reflect what happens in practice. We believe that it is reasonable for HS1 Ltd to be expected to make a payment to a TOC only after receiving an invoice.

4.5 *Consultees Responses – Performance Regime Allocation*

A train operator suggested that the proposed exclusion of test trains from the performance regime should be abandoned. It is their interpretation that the commercial advantage is all with HS1 and therefore the risk must be with HS1 Ltd as well. The regime must incentivise testing to be done off-peak and ideally when no other services are booked to operate.

HS1's Consideration

We explained that the commercial benefit is not all with HS1. For test services, a train operator will not pay the full track access charges as no Investment Recovery Charge will be levied and they will only pay the variable element of the Operating, Maintenance and Renewal Costs (as detailed in the HS1 Network Statement - March 2012). The exclusion of test trains from the performance regime is to make it clear that neither HS1 Ltd nor a train operator has any responsibility or liability for delays and cancellation experienced by a testing train. Therefore it is important that all parties are not overly penalised for operating test trains on the HS1 network.

Section 8 – Performance Regime

4.6 *Consultees Responses – HS1 Excluded Delays*

A train operator requested that HS1 Ltd tighten the proposed change to the definition of ‘HS1 Excluded Incidents’. They suggested that HS1 Ltd should be allocated responsibility for delays and cancellations to a train presented late onto HS1 from the Channel Tunnel Boundary or the NR Boundary (vice versa) caused directly by the infrastructure manager.

HS1's Consideration

By way of background, the original drafting contained in Section 8 of the proposed HS1 PAT was taken from Network Rail as it was acknowledged that Network Rail's systems and processes (particularly the Delay Attribution Guide) would be used to record delays and cancellations on the HS1 network.

Taking into account the train operator's request, we have included the following wording to the definition of ‘HS1 Excluded Incidents’ in the final version of the HS1 PAT:

“except where the Minutes Delay and/or Cancelled Trains are a direct result of an incident for which HS1 Ltd is allocated responsibility in accordance with paragraph 4.2;”

The additional words ensure that HS1 Ltd take responsibility for a train presented late onto HS1 from the Channel Tunnel Boundary or the NR Boundary (vice versa) that has resulted in a train delayed or cancelled.

5. ORR's Comments & HS1 Ltd's Response

In February 2012, HS1 Ltd issued to the ORR the proposed HS1 PAT. On 22 March 2012, the ORR issued to HS1 Ltd a list of comments for HS1 Ltd to consider. The ORR's comments are listed below alongside HS1 Ltd's response to each comment.

5.1 ORR Comments – Periodic Review Provision

The proposed definition of "Review Provisions" in Part 3 of Section 7 did not allow a review of the Capacity Reservation Charge (paragraph 6 of Part 2 of Section 7). The ORR considered that this should be included.

HS1's Consideration

We have noted the ORR's comment and have added the Capacity Reservation Charge to the Review Provisions in the HS1 PAT.

5.2 ORR Comments - Periodic Review Provision

In addition the ORR considered that the clarificatory wording at the end of the definition should apply, in line with the FAT:

"and the relevant figures set out in Schedule 4 to the Contract to the extent that such figures are affected by the review of any of the above provisions, together with any necessary consequential changes, including to paragraph 1 of Part 1 of Section 7, paragraph 1 of Part 2 of Section 7 and Part 4 of Section 7."

HS1's Consideration

HS1 Ltd has considered the ORR's suggestion. To maintain consistency with the HS1 Freight Access Terms (Edition Date: April 2011) we have decided to include the clarificatory wording in Part 3, Section 7 of the HS1 PAT.

5.3 ORR Comments- Confidentiality Provision

The ORR asked whether HS1 was content for the wording at the end of Section 9 clause 1.2 (Entitlement to divulge) to be different from that contained in the FAT?

HS1's Consideration

HS1 Ltd believes that the confidentiality provisions should be consistent in both the HS1 PAT and the HS1 Freight Access Terms. Therefore we have amended the HS1 PAT to reflect the provisions in the HS1 Freight Access Terms.

Annex A – HS1 Passenger Access Terms

A copy of the final HS1 Passenger Access Terms (Edition Date: May 2012) is available to download from www.highspeed1.com, in particular: <http://highspeed1.co.uk/regulatory/track-passenger>