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By email: StationsandDepots@orr.gov.uk

21 November 2024

Dear Office of Rail and Road

Application by Evolyn for Directions Under Section 17 of the Railways Act 1993

- 1 Eurostar refers to Office of Rail and Road's (**ORR**) letter dated 8 November 2024 in relation to Evolyn's Application to ORR for a Depot Access Contract relating to Temple Mills International Depot (**TMI**) under section 17 of the Railways Act 1993 (the **Act**) and Eurostar's letter dated 25 September 2024 containing Eurostar's initial written representations in respect of Evolyn's original application form
- 2 Eurostar sets out in this letter its further initial written representations solely in respect of the new material contained in Evolyn's updated application form. Eurostar stands by and maintains its position in relation to Evolyn's original application form, as set out in its letter of 25 September, which remains apposite in its entirety notwithstanding the small amount of additional material that Evolyn has since provided in its updated application form.

Overview

- 3 Even after being given the opportunity to provide further information, clarifications or representations, Evolyn's application remains:
 - (a) strikingly lacking in detail;
 - (b) entirely unsupported by evidence;
 - (c) significantly premature and reflective of an under-developed service proposition; and
 - (d) not a valid s17 application.
- 4 Eurostar's primary position remains that ORR should not take forward its consultation process but should remit the initial decision about the depot access contract sought by Evolyn back to the process for considering access to TMI in Eurostar's Service Facility Description for TMI (the **Access Process**) for further constructive engagement between the parties.
- 5 Considerable progress can be made through the Access Process, which is wholly rooted in the terms and requirements of the Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016. It is apparent to Eurostar (as discussed below) from Evolyn's updated application form that, in fact, Evolyn agrees with that.
- 6 Eurostar considers that ORR should not make a direction pursuant to s17 and still is not in a position in practice or under the Act to do so, including for the reasons set out in this letter and Eurostar's previous correspondence.

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7 However, in any event, if ORR is minded, contrary to Eurostar's representations, to continue its consultation process(es), it should not do so in its conventional form for standard depot access applications. Instead, it would be appropriate for ORR first to set out clearly for consultation proposed specific criteria and procedures for approval of depot access agreements that relate to high-speed passenger rail services necessitating bi-national and international approvals and consents.

Evolyn's proposed depot access agreement

8 Evolyn still has not provided a copy of the contract it proposes be directed or any details of terms and conditions it says should be contained in that agreement. Accordingly, Eurostar still cannot comment on any of Evolyn's proposals.

9 Without prejudice to that point, in response to question 2.3, Evolyn has stated:

"Evolyn understands that our response does not apply because there is not any contract or draft made yet, and there is no established model for international services. However, in the absence of this, we anticipate terms based on the standard of the ORR's model with amendments as necessary for the specifics of Temple Mills International and international services."

10 In high-level terms, that is the same as Eurostar's position. See for example, paragraph 6.8 of Eurostar's Service Facility Description for TMI and paragraph 25(d) of Eurostar's letter of 25 September. There has been and is no disagreement of general principle. As Eurostar has said previously, it is disappointing, therefore, that Evolyn has sought to circumvent the Access Process, which is the appropriate process to facilitate discussions between Eurostar and Evolyn about the terms of any depot access agreement.

11 ORR is not in an informed position to assess what "*amendments*" to ORR's model depot access agreement might be necessary. ORR has previously indicated that it "*is not aware of the contents of the leasing arrangements governing Eurostar's operation of TMI*" (ORR's letter dated 17 October 2024 relating to interested persons in respect of Evolyn's application) so cannot consider the material differences between Eurostar's lease from the Secretary of State for Transport and Network Rail's standard form of depot lease. Further, ORR has not set out any principles or guidance on its approach to considering depot access terms for cross-border passenger services. Any decision on appropriate terms will need to consider (as Evolyn acknowledges) the output of much greater exploration between the parties about TMI-specific matters. That exploration can, would and should happen within the Access Process.

12 In response to question 2.4, Evolyn has stated:

"A 10-year contract duration is sought and the anticipated date for the commencement date is 1/04/2026 at the moment. We will of course be able to be more precise when we know what access will be available and what physical amendments will need to be made inside the depot to accommodate our rolling stock."

13 Any assumptions underpinning that view have not been shared with or tested by Eurostar. No assumptions have been specified in the application form. Eurostar cannot, therefore, comment substantially at this stage. However, it notes that the indicative timing seems optimistic given the very early stages of Evolyn's proposal (see for example, paragraph 15 of Eurostar's letter of 25 September).

14 Evolyn's response also appears to imply a further acknowledgement of the prematurity of its application. Evolyn indicates that it cannot provide details because those details will rely on the output of further exploration between it, Eurostar and other stakeholder interested persons and interested parties relevant to the operation of a cross-border passenger rail service. Eurostar made that point in previous correspondence (see for example, paragraphs 13 and 16 of Eurostar's letter of 25 September and paragraphs 6 and 7 of Eurostar's letter dated 18 September 2024). However, Evolyn has not progressed that exploration, at least in relation to TMI, since before and apparently because of its precipitous purported application under s17 of the Act. Eurostar has been waiting since May for Evolyn's comments on its draft terms of reference for the independent technical compatibility verification exercise (see paragraph 14 of Eurostar's letter of 25 September).

- 15 Further, as set out in paragraphs 18-20 of Eurostar's letter of 25 September, in the continued absence of a draft depot access agreement or detailed specification of the terms Evolyn proposes should be directed and the more general absence of mandatory and logical particulars, it remains the case that Evolyn's application is not a valid s17 application. Accordingly, s17 still has not been engaged and ORR should not take the purported application forward and its powers to do so have also still not been engaged.

Access rights, capacity and alleged benefits

- 16 In response to question 3.1, Evolyn asserts that the following benefits will accrue in connection with it obtaining access to TMI and operating an international rail passenger service:

"For Evolyn to be able to start operations through the Channel Tunnel, the access to TMI must be ensured in advance because this international depot is key for the required maintenance services. The benefits of Evolyn entering the market and using TMI as the main depot are: job creation in the area; more passenger services between London and mainland Europe, increasing the total number of frequencies and giving passengers more choices due to competition; more direct revenue from a new operator to HS1 to contribute to operations, maintenance and renewal charges; promoting greener, more sustainable choices for customers wanting to travel to mainland Europe."

- 17 Evolyn has provided no evidence whatsoever. Evolyn's position appears entirely presumptive.

- 18 Eurostar is a great advocate of international passenger rail services. However, Evolyn might very well be incorrect that all or, indeed, any of these benefits will accrue in connection with Evolyn's proposed services (see for example, paragraph 25(a) of Eurostar's letter of 25 September). Eurostar cannot comment further on Evolyn's bare assertions.

- 19 However, ORR cannot take them into account for the purposes of exercising its duties under s4 of the Act because they are wholly unsubstantiated. Question 6.2 of the application form states:

"Please indicate here any further justification or relevant information in support of the application, including a list and explanation of any other material being submitted (and supply copies with the application)."

Evolyn's response in its updated application form states simply: *"No further information"*. Evolyn did not respond at all to this question in its original application form. Evolyn has now had two opportunities to identify and evidence the benefits that it considers to be likely to arise in connection with its services. It has not done so. ORR should feel confident in concluding and, indeed must conclude (not least because the onus is on Evolyn to provide evidence to support its position), that the benefits alleged by Evolyn are untested, uncorroborated and conjectural.

- 20 In response to question 3.2, Evolyn has stated:

"Evolyn has been working with the manufacturer on the maintenance requirements for the Evolyn trains and the existing facilities and services provided in TMI. In addition, Evolyn and Eurostar are working on the technical compatibility analysis since January 2024."

- 21 It is implicit in this statement that Evolyn has not, in fact, satisfied itself that the facilities and services it requires can be supplied at TMI. However, Eurostar also infers that Evolyn recognises that the Access Process is the appropriate process for exploring whether the facilities and services Evolyn currently believes it requires can be supplied at TMI. Eurostar agrees with that proposition. However, if Eurostar's inference is correct, it is unclear what purpose Evolyn seeks actually to pursue through its application. The application has apparently caused Evolyn to halt further engagement with the Access Process (including, as set out above, its engagement in relation to the technical compatibility analysis).

Charges

- 22 In response to question 4, Evolyn has stated:
- “Not applicable yet, as this application is focused on the access to TMI, later on we will initiate commercial discussions and charges.”*
- 23 Not only does this response provide no information to which Eurostar can respond substantively, it reflects an entirely incorrect approach proposed by Evolyn. Charges are an inherent and important part of the access discussions. They are not something that can just be discussed later. It is sensible and obvious in relation to any deliberation about granting access to TMI to consider whether the applicant is willing to pay the costs of maintaining its rolling stock at TMI (see for example, paragraph 10 of Eurostar’s letter of 25 September). If that is deferred, it has material potential unreasonably to prejudice the depot facility operator in particular (i.e., Eurostar in this case) and it might only transpire later, after much exerted time and cost by ORR and Eurostar (amongst others), that Evolyn is not willing to or cannot pay the appropriate costs.
- 24 The charges for each relevant service have not yet been considered between Eurostar and Evolyn, but discussions about those charges are part of the Access Process (see for example, Section 4 of Eurostar’s Service Facility Description for TMI).
- 25 Evolyn’s position on this point is a further clear indication that Evolyn simply does not to understand the process in which it is or seeks to be involved.

Enhancement

- 26 Eurostar does not understand why Evolyn has stated that matters relating to enhancement are *“not applicable to international open access”*. There does not seem to be a basis for that position and Evolyn has not set one out.
- 27 Indeed, Evolyn’s position in section 5 appears inconsistent with its response to question 2.4 (quoted in full above), in which it anticipates (at least the possibility) that *“physical amendments will need to be made inside the depot to accommodate our rolling stock”*.
- 28 Specifically in respect of Evolyn’s response to question 5.2, Eurostar would summarily reject as being obviously incorrect any proposition by Evolyn that Eurostar should meet the costs of any *“physical amendments”* that Evolyn seeks to be made to TMI (should it be granted any access to TMI).

Associated applications and access

- 29 In response to question 6.1, Evolyn has stated:
- “No other application has been made in parallel to the ORR...”*
- 30 While Evolyn may not have been aware as of 24 October 2024 that VTE Holdings Limited (**VTE**) had also submitted an application form seeking access to TMI, it will now know that statement is factually incorrect.
- 31 For the reasons set out in paragraph 7 of Eurostar’s letters dated 5 and 13 November 2024 (and repeated here), logically, consideration of Evolyn’s and VTE’s applications should be coordinated and/or the applications should be dealt with in parallel.
- 32 Given the competitive sensitivity of information required to be considered, Eurostar acknowledges that dealing with them on a consolidated or joint basis would be challenging (Eurostar would take and has been taking appropriate precautions within the Access Process to protect commercially sensitive information).
- 33 However, if ORR decides to proceed with its consultation in respect of Evolyn’s and VTE’s applications, competitive sensitivity does not mean that ORR cannot deal with them in a coordinated manner so as to ensure process efficiency and to ensure that competing applications over similar rights take account

of each other. To do otherwise appears likely to be procedurally unfair and generative of unreasonable duplication of time and cost burdens as well as potentially clashing or impossible outcomes.

- 34 The applications are similar in nature, appear to seek similar rights (insofar as Eurostar can tell from the limited detail contained in the application documents) and are likely to require consideration of many of the same matters. Eurostar was able to make most of the same points in its initial written representations, *mutatis mutandis*, in respect of both applications. Each application is likely to impact upon and inform the other in manifold ways. Consideration of that nature can be facilitated through the Access Process.
- 35 If, contrary to Eurostar's submissions, ORR considers it should deal with the two applications in the first instance, ORR must set out its proposed process for coordinating its review and allow interested persons and interested parties the opportunity to comment on it.
- 36 In response to question 6.3, Evolyn has stated:
- "On 6/12/2023 Evolyn made an application to Eurostar for access to the facilities at St Pancras International station and Evolyn is still awaiting a response. On 27/07/2023 Evolyn sent to Eurostar the initial formal request for access to TMI copying and informing the ORR of this application."*
- 37 Eurostar explained to Evolyn on 18 October 2023 that HS1 Ltd is the station facility owner for St Pancras International, not Eurostar. That correct position is, of course, also set out in ORR's Guidance for international rail operators starting rail operations into Great Britain (see paragraphs 1.25 and 6.51(a)) and on HS1 Ltd's website. While Eurostar would be an interested person in relation to Evolyn seeking access to St Pancras International and Eurostar has discussed Evolyn's interest in access to St Pancras International with HS1 Ltd, the process for seeking access is the process led by HS1 Ltd in its capacity as station facility owner, not Eurostar. This is a further indication that Evolyn does not understand the process in which it is engaged. It is disappointing that Evolyn has apparently not responded to the feedback Eurostar provided to it over a year ago.
- 38 We note, additionally, that there are no references in the application to Evolyn having sought access to French infrastructure or the Channel Tunnel. Eurostar repeats its written representations at paragraphs 13 and 16 of its letter of 25 September and paragraphs 6 and 7 of its letter of 18 September.

Matters to be excluded from Publication

- 39 Eurostar does not consider there to be any part of this letter that should not be published on the basis that such publication would or might seriously and prejudicially affect the interests of a person or body.
- 40 Eurostar is content for ORR to provide a copy of this letter to Evolyn and VTE. Eurostar notes that Evolyn has indicated in its response to question 6.4 of its application form that it does not consider any confidentiality exclusions to be "*applicable*" to its application form.

Eurostar hopes that its further initial representations assist ORR. Eurostar will continue to seek constructive engagement with Evolyn and VTE but does not consider that ORR should continue its consideration of either application. Eurostar would be grateful for ORR's written confirmation that access matters should primarily be considered within the scope of the Access Process, including because it will inform how Eurostar is to continue its engagement with Evolyn and VTE in relation to the access they seek to TMI.

Yours faithfully,



On behalf of Eurostar International Limited