

Office of Rail and Road
25 Cabot Square
London E14 4QZ

By email: StationsandDepots@orr.gov.uk

17 December 2024

Dear Office of Rail and Road

Application by VTE Holdings Limited (VTE) for Directions Under Section 17 of the Railways Act 1993

- 1 Eurostar refers to Office of Rail and Road's (**ORR**) letter dated 5 December 2024 in relation to VTE'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 13 November 2024 containing Eurostar's initial written representations in respect of VTE'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 VTE's updated application form, which ORR provided to Eurostar enclosed with its letter of 5 December. Eurostar stands by and maintains its position in relation to VTE's original application form, as set out in its letter of 13 November, which, except insofar as expressly stated in this letter, remains apposite in its entirety notwithstanding the small amount of additional material that VTE has since provided in its updated application form.
- 3 Eurostar has written separately today in relation to certain points in ORR's covering letter of 5 December and does not, therefore, otherwise address those points in this letter.

Overview

- 4 Even after being given the opportunity to provide further information, clarifications or representations, VTE'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.
- 5 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 VTE 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.
- 6 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.
- 7 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.

Eurostar International Ltd
6th Floor Kings Place
90 York Way
London N1 9AG

eurostar.com

- 8 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.

Capacity at TMI

- 9 VTE's updated application form includes several comments relating to VTE's purported belief that "*sufficient capacity exists*" at TMI to deliver the services in respect of which it seeks access (see VTE's responses to questions 2.1, 2.2 and 3.2). Eurostar has stated previously (see for example, paragraph 16(a) of Eurostar's letter of 13 November) that VTE has not explained the basis for that belief in its application form or otherwise in its communications with Eurostar. It has not referred to any evidence or assumptions on which it has based its belief. Its application form refers to "*other independent studies into available capacity at Temple Mills Depot*" but it does not identify those studies. However, Eurostar is aware of only one such study, about which it became aware through VTE. That is a study by Arup instructed by HS1 Limited. That study was conducted without engagement with or reference to Eurostar and without a visit to TMI. It cannot, therefore, have been based on comprehensive, up-to-date and accurate information or appropriately informed assumptions. It was also, as far as Eurostar is aware, conducted during or shortly after the Covid-19 pandemic, which severely impacted services (so is significantly based on a period of less than usual operation). VTE's position in reliance on that report cannot be robust and otherwise appears to be largely conjectural.
- 10 However, Eurostar recognises that ORR is in the process of procuring its own capacity analysis. Eurostar has written to ORR about that separately today. Eurostar does not, therefore, further address VTE's points about the availability of capacity at TMI in this letter. That should not be taken as acceptance that VTE's view is correct. It reflects the issue being considered under a separate process.
- 11 Eurostar nonetheless notes that VTE's updated application form does not refer to any work it has done to explore and/or establish whether there are any economically acceptable alternatives to accessing TMI. It is not clear to Eurostar whether ORR has asked VTE to provide information on that issue. It is self-evidently a key piece of information. Eurostar has written separately today in relation to this point.

VTE's proposed depot access agreement

- 12 VTE 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 VTE's proposals.
- 13 Without prejudice to that point, in response to question 2.3, VTE has stated:
- "VTE Holdings Limited does not anticipate and significant departures from the model agreement save for the infrastructure manager being High Speed 1 and subject to holding further discussions with Eurostar. Some key areas for further discussions for example are: 1) Our intention to have our chosen OEM train manufacturer maintain our trains under a full Train Services Agreement to ensure the train performs as expected; 2) We intend to negotiate a strong performance regime given the critical nature of access on/off the depot and movements within the depot; and 3) to ensure that the published charges to access the depot are reasonable and applied on a fair and consistent basis to all beneficiaries at the depot."*
- 14 Eurostar also anticipates any depot access agreement being based on ORR's model depot access terms (see for example, paragraph 6.8 of Eurostar's Service Facility Description for TMI and paragraph 28(d) of Eurostar's letter of 13 November). There has been and is no disagreement of general principle. As Eurostar has said previously, it is disappointing, therefore, that VTE has sought to circumvent the Access Process, which is the appropriate process to facilitate discussions between Eurostar and VTE about the terms of any depot access agreement.
- 15 The further specifics VTE has provided are extremely high level. That alone means Eurostar cannot properly engage with them. Further, they are objectives rather than proposals. VTE expressly

acknowledges that these are matters that need to be discussed between it and Eurostar. Those discussions should be conducted within the Access Process.

- 16 Eurostar considers that there are likely to be additional matters that need to be considered in this context, as set out in Eurostar's Service Facility Description for TMI.
- 17 ORR is not in an informed position to assess what "departures" from 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 the output of much greater exploration between the parties about TMI-specific matters. That exploration can, would and should happen within the Access Process.
- 18 In response to question 2.4, VTE has stated:
- "VTE Holdings Limited seeks a Quarter 3 2027 commencement date. The contract length sought is to be coterminous with the track access contract for which we are seeking a 10 year tenure from the start of operations. This longer contract is sought on the basis that there will be a considerable initial investment to procure the rolling stock and for potential changes to the depot, which will be better understood once further engagement with Eurostar has occurred."*
- 19 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, the indicative timing is ambitious given the very early stages of VTE's proposal (see for example, paragraph 16 of Eurostar's letter of 13 November – Eurostar also notes that VTE indicated at the meeting of the All Party Parliamentary Rail Group on 19 November 2024 that it had not made a decision as to from which manufacturer it would procure rolling stock).
- 20 Eurostar has no information about the track access contract VTE's application form says it is seeking. Clearly it would be appropriate for there to be a degree of coordination between the processes for obtaining access to the relevant track infrastructure and to the relevant service facilities. Eurostar considers the Access Process to be the most appropriate forum for that exercise at this stage, including because ORR does not have powers under s17 to direct access in relation to HS1, which is required physically to access TMI by rail for the suggested purposes.
- 21 Further, as set out in paragraphs 21-23 of Eurostar's letter of 13 November, in the continued absence of a draft depot access agreement or detailed specification of the terms VTE proposes should be directed and the more general absence of mandatory and logical particulars, it remains the case that VTE'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.

Adequacy of facilities and services

- 22 In response to question 3.2, VTE has stated:
- "Sufficient detail has not been provided by Eurostar to make this assessment at this time. We are aware of other independent studies into available capacity at Temple Mills Depot that would suggest more than enough capacity is available in the depot to accommodate our requirements, and this view is supported by our own Train Service Agreement offer from our OEM (and past experience of the group operating trains in the UK) demonstrating what a modern and efficient maintenance operation is capable of delivering. VTE Holdings Limited would expect these modern arrangements are already in place at such a significant and unique depot. VTE Holdings Limited is also aware that the current plans to accommodate heavier maintenance "R" exams at this light maintenance depot would point to significant spare capacity being available that is in excess of the services described in Paragraph 2 of the Temple Mills International Depot Service Facility Description published on HS1's website."*

- 23 In respect of the first sentence, Eurostar objects to any implication that it has withheld information that VTE has requested. VTE has not identified the specific information that it needs but does not yet have, but the most likely explanation for VTE not having it is that VTE has not requested it yet or has only done so recently. VTE approached Eurostar about access to TMI for the first time only in May 2024. Eurostar has also taken VTE **and a rolling-stock manufacturer** for a tour of TMI (so it was a surprise to hear from reports of the meeting of the All Party Parliamentary Rail Group on 19 November 2024 that VTE has not made a decision as to from which manufacturer it will procure rolling stock).
- 24 Eurostar's position in respect of VTE's comments about the availability of capacity are set out above and in Eurostar's separate letter of today's date.
- 25 Eurostar wishes to note once again that VTE is seeking access to TMI for services that are not light maintenance services (for example, "overhaul hours" and the use of wheel lathes – see VTE's responses to questions 2.1 and 2.2). Any access relating to the purpose of receiving heavy (or other than light) maintenance services must be excluded from ORR's considerations.
- 26 Eurostar repeats, *mutatis mutandis*, the points made above and elsewhere in correspondence in relation to the work (if any) VTE has done to seek to establish whether there are any economically acceptable alternatives to accessing TMI.

Charges

- 27 In response to question 4, VTE has stated:
- "As set out above, a full review of charges for accessing and using the depot to ensure any charges are fair and equitable is required before any charges are determined"*
- Eurostar understands the reference to "above" to be to VTE's response at 2.3, which states:
- "the published charges to access the depot are reasonable and applied on a fair and consistent basis to all beneficiaries at the depot."*
- 28 VTE's application form does not provide information with which Eurostar can engage in any detail. Eurostar of course does not object to the principle of fair pricing. Any prices should and would within the Access Process be calculated on a fair basis. There is no dispute of principle.
- 29 Further, there is no dispute of principle that a full review of charges is required. That is exactly the process provided for in Eurostar's Service Facility Description for TMI (see for example, paragraphs 4.23 to 4.30). Once again, it is disappointing, therefore, that VTE has sought to circumvent the Access Process, which is the appropriate process to facilitate discussions between Eurostar and VTE about charges.
- 30 If, which is not clear but arguably is implied, VTE is suggesting that Eurostar should pay a portion of VTE's costs of any services it requires and any changes or enhancements that might be required for TMI to be able to deliver those services, Eurostar would summarily reject that proposition as being obviously incorrect.

Enhancement

- 31 In response to question 5.2, VTE has stated:
- "Further discussions are required with Eurostar to agree the framework are required before this can be confirmed"*
- 32 In a similar vein to Eurostar's representations made above and elsewhere, there is little comment that Eurostar can make, save to say that is exactly what would have occurred under the Access Process. Instead, Eurostar's rights are reserved.

Supporting information

33 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).”

34 VTE’s response in its updated application form states simply: “None”. VTE did not respond at all to this question in its original application form and has not, insofar as Eurostar is aware, provided any evidence to support any part of its application form. VTE has now had two opportunities to identify and evidence the benefits that it considers to be likely to arise in connection with its services and other matters identified in its application form. It has not done so. ORR should feel confident in concluding and, indeed must conclude (not least because the onus is on VTE to provide evidence to support its position), that any benefits alleged by VTE are untested, uncorroborated and conjectural.

Other matters

35 Eurostar does not respond to VTE’s response to question 6.3 as there is nothing for it to say at this stage. VTE’s response is a mere holding position. Instead, Eurostar’s rights are reserved

Matters to be excluded from Publication

36 Eurostar has highlighted green information VTE apparently considers to be confidential.

37 Eurostar does not for its own part 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. Eurostar is content for ORR to provide a copy of this letter to VTE and Evolyn.

Eurostar hopes that its further initial representations assist ORR. Eurostar will continue to seek constructive engagement with VTE and Evolyn 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 (save for ORR’s ongoing work on its capacity analysis study) be considered within the scope of the Access Process, including because it will inform how Eurostar is to continue its engagement with VTE and Evolyn in relation to the access they seek to TMI. As stated above, Eurostar has also addressed this point separately.

Yours faithfully,



On behalf of Eurostar International Limited