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By email: StationsandDepots@orr.gov.uk

1 April 2025

Dear Office of Rail and Road

Application by Gemini TOC Ltd (Gemini) for Directions Under Section 17 of the Railways Act 1993

- 1 Eurostar refers to Office of Rail and Road's (**ORR**) letter dated 11 March 2025 in relation to Gemini'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 24 March 2025 identifying interested persons in relation to Gemini's application
- 2 This letter sets out Eurostar's initial written representations in respect of Gemini's application.

Overview of Eurostar's written representations

- 3 Eurostar considers that the appropriate primary process for considering access to TMI is set out in its Service Facility Description for TMI (the **Access Process**) in compliance with the Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016 (the **Regulations**). It would not be appropriate for that process to be bypassed in favour of Gemini's premature request for access to be considered under s17 of the Act.
- 4 Due to the nature of Gemini's application, ORR should not and, indeed, is in no position in practice or under the Act to make a direction pursuant to s17. Gemini's application is presumptive and lacking in essential detail. Eurostar submits that there is simply not the information available to ORR for it to exercise any power or discretion it has and, in any event, that it has no such power or discretion in respect of Gemini because Gemini has not submitted a valid s17 application. Gemini's premature application was in itself triggered by and a response to the prior premature s17 applications of Evolyn dated 23 August 2024 and VTE Holdings Ltd (**VTE**) dated 23 October 2024 also in respect of access to TMI and, for completeness, Eurostar notes that there are now three competing s17 applications in respect of TMI (plus one further party that is interested in accessing TMI but, to Eurostar's knowledge, has not submitted a s17 application).
- 5 Eurostar considers, moreover, that ORR's existing standard process for considering access applications is not designed or suited to considering an access application that relates ultimately to a cross-border, high-speed passenger rail service. To consider such applications, ORR would need to set out clearly 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. Such requirements are plainly not comparable to other depot access scenarios on the mainline network.
- 6 Eurostar considers that ORR should not take forward its consultation process or at least not in its conventional form for standard depot access applications. Instead, it would be appropriate for ORR to remit the initial decision about the depot access contract sought by Gemini back to the bilateral process of engagement set out in the Access Process (a copy of which is enclosed), which is already on foot (albeit at a very early stage given the timing of Gemini's initial approach to Eurostar and its s17 application) and had, in Eurostar's and Gemini's views, been facilitating constructive engagement on many issues.

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- 7 Eurostar expands on those points in the next section of these written representations.
- 8 Notwithstanding those points and in significant part because of the impediments that the limited detail in Gemini's application impose, Eurostar reserves its right to be consulted further and to make further submissions if further application particulars are provided by Gemini and/or once ORR confirms the specific process that will apply for this s17 application, alongside Evolyn's and VTE's applications, given its unconventional nature and the complexity (addressed by Eurostar in previous correspondence, most recently its letter dated 13 March 2025) of handling multiple competing applications.

Written representations on Gemini's application and the appropriate process for considering access to TMI

- 9 Eurostar has set out in detail the process for considering access to TMI in its Service Facility Description for TMI (i.e., the Access Process). The Access Process is wholly rooted in the terms and requirements of the Regulations.
- 10 The Access Process is designed to reflect, in particular, certain sensible and obvious considerations for access to TMI, namely:
- (a) Does the applicant have rolling stock capable of accessing TMI?
 - (b) Can that rolling stock be maintained at TMI?
 - (c) Is there sufficient spare capacity to maintain that rolling stock at TMI?
 - (d) Is the applicant willing to pay the costs of maintaining the rolling stock at TMI?
- 11 That (or equivalent) analysis will be an essential consideration in any process relating to access to TMI and must be completed in any event for proper consideration of access factors. Eurostar does not know whether any (or all) of these considerations will be barriers to permitting Gemini access to TMI, not least because there were fewer than four weeks between Gemini first formally approaching Eurostar in relation to access and Gemini submitting its s17 application. There has not been a failure to agree by reason of the fact that the process is not well advanced and, in fact, has barely been allowed to begin. Eurostar has not yet had an opportunity to work through each of these considerations with Gemini.
- 12 Gemini acknowledges in its application form that "*Eurostar International Limited have engaged positively with us and have shared with us their preliminary assessment of the available depot capacity, consistent with the process set out in the "Temple Mills International Depot Service Facility" document available on the HS1 website.*"
- 13 The Access Process will identify, assess, consider and test the particulars of Gemini's application. It is the primary process to be used by any entity seeking access to TMI and is substantially and materially incomplete. Both parties apparently recognise that the Access Process would facilitate constructive engagement to gather evidence and explore what is or might be possible. Eurostar understands that Gemini has only submitted a s17 application because Evolyn and VTE have submitted s17 applications. That is regrettable.
- 14 Eurostar has explained to Gemini that Evolyn's and VTE's applications mean that ORR might direct an outcome that could be incompatible with Gemini's interest in accessing TMI, which could in turn render work done bilaterally redundant with associated time and cost risk for Eurostar, Gemini and others. **As ORR is aware, Trenitalia France has also approached Eurostar in relation to accessing TMI but, to Eurostar's knowledge, has not submitted a s17 application.** Eurostar has written to ORR about this previously, most recently in its letter dated 13 March 2025. Eurostar has, nevertheless, continued some engagement with Gemini and conducted a tour of TMI on 27 March 2025.
- 15 At this stage:
- (a) The independent consideration of capacity at TMI that ORR has instructed IPEX to conduct has not been completed (Eurostar will submit any evidence in respect of the report by 28 April 2025 as requested by ORR). That analysis will, of course, not be determinative in respect of the

sufficiency of capacity for the maintenance services Gemini seeks but will be a relevant consideration. Eurostar notes ORR's intention to publish certain conclusions in respect of capacity after 28 April 2025 (Eurostar necessarily reserves its rights and position until it has had an opportunity to review ORR's conclusions).

- (b) Gemini has not demonstrated that its proposed rolling stock is technically compatible with the infrastructure at TMI. Eurostar understands from media reporting that Gemini has not yet decided whether it will procure rolling stock from Alstom, Siemens, Hitachi or Talgo. That means it is likely the rolling stock that Gemini will propose, in due course, to procure will be materially different from rolling stock that has previously been serviced at TMI. Any rolling stock that Gemini procures will also need to be homologated within each of the regulatory jurisdictions through which Gemini's proposed services will run.
- (c) Gemini does not have access to HS1 and any rolling stock cannot physically access TMI unless that is in place.
- (d) It has not been assessed how, if possible, each requested service might feasibly be delivered. It should be noted that technical compatibility with TMI's rail infrastructure (which, as above, has not yet been decided upon in any material sense) does not guarantee that each requested service can feasibly be delivered at TMI.
- (e) The elements required to deliver relevant services (including initial training and ongoing competency training, management, specific safety and other requirements associated with each service etc.) have not been assessed or determined.
- (f) The price of each relevant service has not yet been considered.
- (g) Service considerations and actions required within TMI and by Gemini have not been identified or assessed (e.g., signage, information for the reprogramming of specific machinery, training, ensuring ongoing competences etc.).
- (h) It has not been properly considered whether there are economically acceptable alternatives to access to TMI. ORR must not assume (as Evolyn and VTE appear to have done) that there are no economically acceptable alternatives. Eurostar understands that Gemini recognises this as Gemini's recent press release of 24 March 2025 stated:

"Gemini has applied to the Office of Rail and Road for access to Eurostar's Temple Mills International maintenance depot. Gemini is also in discussion with key stakeholders around other train maintenance facilities." (emphasis added)

Noting from publicly available statements that Gemini's initial proposed service offering appears to run between London, Paris and Brussels, this would at least include consideration of other depots, including Ashford Depot, Le Landy and Forest Depot. In particular, Eurostar is not aware that Ashford Depot has published access arrangements, whether any parties have requested or applied for such access or whether ORR has undertaken (or is undertaking) a capacity assessment at that depot (all of which would be matters within ORR's jurisdiction and competence).

Regarding the above, as ORR is aware, multiple potential operators have now approached Eurostar in relation to access to TMI. Without limitation, that is an additional factor for consideration in respect of coordinating capacity and different and potentially inconsistent or incompatible practical and technical requirements (see in particular the matters discussed in sub-paragraphs, (a), (b), (d), (e) and (g)), not least given that it is possible that more than one additional operator will obtain access to TMI.

- 16 Gemini states it does not *"believe any significant changes to the depot infrastructure are necessary to grant the requested access as Temple Mills International Depot is a modern facility, purpose built for maintaining high-speed train sets."* This indicates that some changes will be required and Gemini has not stated (and Eurostar does not know) what they will be or explained its basis for asserting that they will be insignificant. No assumptions underpinning Gemini's views have been shared with or tested by

Eurostar (including any associated costs to be borne by Gemini whether by way of charges or otherwise).

- 17 For the avoidance of doubt, the Access Process is not subject to any unreasonable delay; little time has passed since Gemini first approached Eurostar. An initial, in-house capacity analysis – which was explicitly not the independent analysis that would be used to determine whether there was sufficient capacity to accommodate Gemini's stated requirements – has been shared with Gemini for comment (this was the same internal capacity analysis provided to Evolyn and VTE). Eurostar notes that ORR has published IPEX's report on capacity at TMI.
- 18 While Eurostar understands that Gemini is keen to progress matters, Gemini has not identified grounds of urgency underlying its application. No such urgency is evident. Gemini does not currently operate any rail services and lacks the key regulatory components to do so until clear regulatory timeframes are in place. Gemini's application states that it does not currently have a valid train operating licence or a safety certificate (it acknowledges that these must be "*obtained before the company needs to access the depot*") or appropriately homologated rolling stock (indeed, any rolling stock) or any of the access that it requires to operate its proposed services. As acknowledged in ORR's Guidance for international rail operators starting rail operations into Great Britain, these intertwined issues are pre-requisites to operating an international passenger service (see e.g., paragraph 1.3). Gemini's application states that it has felt obliged to apply only because two other potential operators have submitted s17 applications (and their applications were premature and concerningly lacking in detail). That is unfortunate.
- 19 The further circumvention of the appropriate primary process for considering access is symptomatic of the difficulties that ORR's approach to considering access is generating. Eurostar notes that Gemini's application was catalysed by the earlier applications submitted by Evolyn and VTE and VTE's application, in turn, was brought about by Evolyn's application. Evolyn's application was itself framed as being for "*the primary purpose of obtain[ing] information*" and was sufficiently problematic with regard to the relevant statutory provisions that ORR considered it necessary to write to Evolyn and seek confirmation as to whether Evolyn actually wished to progress with its application (Eurostar refers to ORR's letter to Evolyn dated 31 January 2025).
- 20 Any depot access contract for TMI will be wholly otiose unless Gemini obtains all related accesses, consents, approvals and certifications for its international passenger service and high-speed rolling stock. As stated in Eurostar's letter to ORR of 24 March, obtaining those will involve a wide group of interested persons and interested parties. The position of those interested persons and interested parties in respect to Gemini's proposals could be relevant considerations in determining whether a depot access contract should be granted. However, any conditions that may ultimately be attached to related access, consents, approvals and certifications will also likely have a material impact on any services Gemini ultimately operates and, consequently, on any maintenance services that will be required. It therefore is not clear whether the depot access currently sought will be the same as that which Gemini ultimately requires.
- 21 Eurostar is neither suggesting that there is a specific order in which the different aspects underlying Gemini's service offering must be progressed or confirmed nor that there are no mechanisms for mitigating the adverse impacts highlighted in this letter. However, it is highly relevant to emphasise how interwoven the different aspects are. Prioritising one (i.e., depot access) ahead of others is likely to lead to sub-optimal or even unworkable or pointless outcomes.
- 22 Eurostar is concerned that ORR appears seriously to be countenancing displacing the Access Process to take forward Gemini's, VTE's and Evolyn's applications. That is particularly the case because the three applications are significantly deficient in particulars and the standard s17 application process (as set out by ORR) does not appear to be designed to deal adequately with a single application of the nature of accessing TMI over HS1 and for the purpose of international high speed rail passenger services (see further submissions on this below), let alone three concurrent and competing s17 applications **with further interest from another potential operator** (see further submissions on this below).
- 23 Indeed, as set out in paragraphs 24 and 25 below, Eurostar observes that it is very possible that Gemini's application (like VTE's and Evolyn's) is not a valid application under s17 of the Act at all, in

which case none of Gemini, VTE nor Evolyn has submitted a valid application and ORR has no power or discretion under s17 of the Act to make any direction. ORR should therefore decline to take the purported applications forward, including because s17 has not been engaged.

- 24 Many of Gemini's responses in its application form are materially lacking in detail. Gemini has provided no evidence in support of any part of its application (a "*business plan*" that has been referred to but not produced cannot rationally be considered evidence). ORR will note from previous s17 depot applications made to it that proceeded to ORR decision (as available on or through ORR's website), that Gemini's application (like Evolyn's and VTE's) is striking for its lack of detail.
- 25 Contrary to the mandatory conditions set out in paragraph 2(1) of Schedule 4 to the Act (as reflected at paragraph 3.52 of ORR's Criteria and procedures for the approval of depot access agreements), Gemini's application does not:
- (a) contain proper particulars of the rights or terms of access Gemini is seeking;
 - (b) contain a copy of the agreement Gemini is seeking (see paragraph 3.68 of ORR's Criteria and procedures for the approval of depot access agreements) or specify the terms Gemini proposes should be contained in the access agreement it is seeking; or
 - (c) include all representations Gemini wishes to make regarding the rights or terms of access it proposes should be contained in the access agreement it is seeking.
- 26 Eurostar acknowledges ORR's position on equivalent points as set out in ORR's letter dated 27 February 2025 in relation to Evolyn's and VTE's s17 applications. Eurostar responded in its letter of 13 March.
- 27 ORR must exercise its powers and any discretion in the manner it reasonably considers to be best calculated to further its general duties under s4 of the Act. Given the lack of information and evidence Gemini has provided, or that is otherwise available, about its proposed services, it is simply too unclear at this stage for ORR to reach a conclusion that directing Eurostar to enter a depot access contract with Gemini would be the best way to further the delivery of those general duties. Eurostar understands from ORR's letter of 27 February that ORR is likely to agree.
- 28 The paucity of information in Gemini's application is a material impediment to any of ORR, Eurostar, any interested person or any interested party properly engaging with or responding to it. This is undoubtedly symptomatic of its prematurity and its reactionary nature in the face of Evolyn's and VTE's applications (which are at least equally as problematic).
- 29 Eurostar recognises, of course, that ORR has statutory powers to seek information if its s17 powers are engaged, but the onus in such circumstances is (and properly should be) on Gemini to provide all the information required (i) to substantiate benefits it asserts to be likely to arise in connection with the services and other matters identified in its application forms; and (ii) for all relevant parties to consider and respond to the application. ORR recognises that in the certification it requires from applicants, which is an attestation that the information provided is not just true but also "*complete*".
- 30 The following are non-exhaustive examples of the substantive issues that ORR is simply not able to consider at this stage because Gemini has provided no particulars or evidence to allow ORR to make informed decisions against its s4 duties:
- (a) Gemini's application states that its access to TMI is part of its "*plans to offer international services between the UK and mainland Europe using high-speed rail infrastructure including the Channel Tunnel*", which it asserts "*will bring benefits for customers through greater choice and to the owners of the rail infrastructure through greater asset utilisation*". Gemini has provided no supporting detail or evidence. It is quite possible that Gemini's services would be primarily abstractive from the services that Eurostar already operates (not least because of the material capacity constraints elsewhere in the relevant network(s)) so it cannot be assumed that it would result in greater choice or asset utilisation. It is also quite possible that Gemini's services would have a deleterious impact, amongst other things, on service provision and cost. Similarly,

it also cannot be assumed that ORR imposing access to privately operated infrastructure on non-negotiated terms is likely to promote private investment into railway infrastructure in the future.

- (b) As set out above, work will be required to test whether Gemini's proposed rolling stock (once it identifies rolling stock that it intends to procure) is technically compatible with the infrastructure at TMI. As set out above, it is likely that the rolling stock Gemini procures will be materially different from any rolling stock that has previously been maintained at TMI. Work will need to be progressed and, ultimately, to be conducted independently in accordance with the Access Process. In any event, full technical compatibility does not guarantee that each requested service may feasibly be delivered by TMI. Service delivery might be infeasible, as one example, where a train set's technology for receiving the service and TMI's technology for delivering the service are incompatible.
- (c) Further, it is not at this stage certain what rolling stock will be procured. Gemini will need to ensure that the rolling stock it procures can access TMI and is (or is capable of being) homologated under multiple different regulatory regimes (the Channel Tunnel has very particular safety-related requirements as ORR knows). That might well necessitate a change of approach from Gemini in due course even after it has decided in principle on rolling stock.
- (d) Because, in breach of the requirements of the Act, Gemini has not provided a copy of the contract it proposes be directed or any substantive details of its terms and conditions Eurostar cannot comment directly on any proposals. However, as set out in Eurostar's Service Facility Description for TMI, Eurostar anticipates that any depot access agreement it enters will be based on elements of the ORR model depot access agreement, with additional provisions covering TMI specific matters, such as security requirements, agreed specification of services etc. (Eurostar notes that Gemini appears to agree that this is the correct approach). Nevertheless, TMI's unique conditions could necessitate potentially material changes to ORR's model access provisions. In this regard, it should also be borne in mind that Eurostar's lease is from the Secretary of State for Transport and is materially different from the Network Rail standard form of depot lease. As explained in Eurostar's letter of 13 March, Eurostar is progressing the development of its template depot access contract suite.

31 It would be irrational for ORR to take forward Gemini's application. The application is not sufficiently advanced for ORR to decide that it has met the quality threshold even to be considered.

32 For completeness:

- (a) ORR has no jurisdiction to direct a depot access contract at TMI for any maintenance services that are not light maintenance services. Any access in relation to the purpose of receiving heavy (or other than light) maintenance services must be excluded from ORR's considerations. Eurostar understands from ORR's letter of 27 February that this is uncontroversial.
- (b) Nothing said above is intended to suggest that ORR should not retain its usual appellate role under the Regulations in relation to grievances about matters that are within its jurisdiction and competence, should Gemini ultimately be unsatisfied with the Access Process.

Written representations on a s17 process for high-speed, international passenger services

33 As stated above, Eurostar's primary position is that the process for considering access to TMI should be dealt with in accordance with the Access Process and the Regulations. The Access Process should be permitted to continue and ORR should decline to proceed further with any parallel s17 process.

34 In any event, as stated above, Eurostar submits that the current s17 process is not adequate to deal with the unique and unprecedented situation of an access application to a depot such as TMI and which would be underpinned by unconventional proposed services over HS1 and international operation. Eurostar considers that it would be illogical to consider depot access to TMI in isolation from the related need for access to the necessary stations and relevant infrastructure in the United Kingdom, France, Belgium and the Channel Tunnel to deliver the service and operations seemingly proposed by Gemini.

These are pre-conditions for Gemini's depot access as recognised in ORR's Guidance for international rail operators starting rail operations into Great Britain. TMI cannot physically be accessed by rail without also having access to HS1. TMI is a privately operated facility that is inherently and solely a component in the operation of a cross-border service. The current s17 processes of ORR are, Eurostar submits, designed only for access to depots on the conventional mainline rail network and associated rolling stock.

- 35 While ORR could take account of written representations from the wide group of interested persons and interested parties engaged by that holistic process specifically in relation to access to TMI, it cannot take a central coordinating role in respect of the broader access required for Gemini's proposed international passenger service. The operation of an international passenger service requires a holistic consideration of technically complicated and systemically complex legal, regulatory, security, political and practical issues. Only some of these aspects are within ORR's jurisdiction. ORR has no jurisdiction or regulatory competence, either solely or at all, in respect of French or Belgian railway infrastructure. Pursuant to the Channel Tunnel Rail Link Act 1996, ORR has no powers to make access directions in relation to St Pancras International Station or HS1 under s17 of the Act – all of which is necessary for any requirement to access TMI to exist at all.
- 36 Gemini's application is atypical. It is not a general application for access to a depot in connection with the operation of standard passenger services on Network Rail's rail network. It is an application relating to a specific cross-border passenger service that will operate on unique (within the United Kingdom) and foreign railway infrastructure. Eurostar is not aware of a precedent depot access application determination relating to the operation of high-speed trains for international passenger services. Inputs and consents will be required from governmental, regulatory, police and security and border authorities in the United Kingdom, France, Belgium and the European Union as well as the Channel Tunnel Intergovernmental Commission. Amongst other things, special security arrangements are required for access to TMI and otherwise for the operation of an international passenger service.
- 37 ORR's existing access processes are not suited to considering access for an international rail service. There is nothing to account for the requirements for such a service to involve access to the Channel Tunnel or to French or Belgian railway infrastructure.
- 38 If ORR anticipates that it will be involved in giving directions in the future in relation to access in connection with the operation of an international passenger service, it should issue bespoke guidance following an appropriate consultation process, that should provide transparency for all affected parties, setting the additional and unique criteria and procedures for approving access to a facility dedicated to high-speed international passenger trains.
- 39 For the avoidance of doubt, ORR's Guidance for international rail operators starting rail operations into Great Britain does not constitute detailed, bespoke guidance of the sort discussed in paragraph 38 above. ORR appears to recognise that, stating that the guidance is "*high-level*", "*a starting point*", "*not a complete guide*" and not inclusive of all areas of relevant regulation or a "*statement of ORR's policy about how [it] will carry out [its] role in regulating access*".

Written representations on dealing with Gemini's application alongside other applications

- 40 Logically, consideration of Evolyn's, VTE's and Gemini's applications should be coordinated and/or the applications should be dealt with in parallel. Given the competitive sensitivity of information required, Eurostar acknowledges that dealing with them on a consolidated or joint basis would be challenging and we note from previous ORR correspondence that ORR does not intend to deal with them on such a basis. However, that does not mean that ORR cannot deal with them in a coordinated manner to ensure process efficiency and 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.
- 41 The applications are similar in nature, appear to seek similar rights (insofar as Eurostar can tell from the limited detail contained in the various application documents) and are likely to require consideration of many of the same matters. Eurostar has been able to make most of the same points in its initial written

representations, *mutatis mutandis*, in respect of all three applications. Each application is likely to impact upon and inform the other in manifold ways.

- 42 Consideration of that nature can be facilitated through the Access Process. If, contrary to Eurostar's submissions, ORR considers it should deal with the three applications in the first instance, ORR must set out its proposed process for coordinating its review and allow Eurostar and other interested parties the opportunity to comment on it. ORR should also set out how it considers Eurostar could, in parallel, continue engagement with Trenitalia France.

Matters to be excluded from Publication

- 43 Eurostar has highlighted in yellow the parts 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. Specifically, to Eurostar's knowledge, Trenitalia France has not made its approach in relation to access to TMI publicly known.
- 44 Eurostar is content for ORR to provide an appropriately redacted copy of this letter to Gemini (and VTE and Evolyn). Redactions should be applied to those parts of this letter highlighted in yellow, which are confidential as against Gemini (and Evolyn and VTE).

Eurostar hopes that its representations assist ORR. Eurostar will continue to engage constructively but does not consider that ORR should continue its consideration of either application. Eurostar would be grateful for ORR's addressal of the points raised in this letter and its previous correspondence.

Yours faithfully,

On behalf of Eurostar International Limited

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Temple Mills International Depot Service Facility Description