

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

By email: StationsandDepots@orr.gov.uk

9 May 2025

Dear Office of Rail and Road

Various Applications for Directions Under Section 17 of the Railways Act 1993

1. Eurostar sees great potential for growth of international passenger rail services, and is keen that this potential be fulfilled for the system as a whole. Eurostar is focused on helping find solutions that will benefit such growth, and work with the ORR to help achieve this.
2. Eurostar is concerned that the various concurrent s.17 processes will not deliver these solutions, but instead risk adding cost and delay for all parties concerned (including Eurostar):
 - At present, there are four applications in the process¹, all of which seek access to the same depot which, based on the ORR's own independent study, is already well-utilised.
 - The first s.17 application was initiated eight months ago, with currently no road map for the process of examination of this, or the other, applications. To date, the ORR has commissioned the recently published independent capacity study; and
 - A number of future steps are essential and must form part of any process.
3. Eurostar welcomes the capacity study, which it would itself have commissioned as part of the access process. It considers it a necessary step in establishing capacity at Temple Mills Depot ("TMI"). But it is not the only step in considering applications for access. Before there can be a decision, or any award of any capacity, there must be consideration of a number of additional, relevant factors. These include:
 - Technical compatibility of the specific rolling stock which is intended to enter and use the depot with the Temple Mills depot infrastructure
 - Service delivery review
 - Pricing
 - Establishment of criteria for multiple, competing applications;
 - An assessment of these criteria and the economic alternatives to TMI.
4. It is important for all that ORR sets out its forward looking process map for considering each Application, including timing. A number of fundamental questions around process are currently unanswered. These include does ORR intend to retain all elements in each of the various applications? If so, what is the map for this? If ORR does not intend to retain all elements, which will it retain, which elements will it return to Eurostar and when in the process will this occur?

¹ applications for directions under s.17 in relation to Temple Mills International depot (TMI) made to ORR by Evolyn, VTE Holdings Ltd (VTE), Gemini TOC Ltd (Gemini) and Trenitalia France.

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

eurostar.com

5. In setting this out, it is essential that ORR indicates how and at what stage in the process it will integrate Eurostar's use and plans into its process; its own legitimate future use and interests have yet to be considered as part of the process.
6. Moving beyond this, based on what is already known, there is a real risk of a conclusion that will not deliver the access aspirations of all of the s.17 applicants. However, there is a possibility that significant additional resource, time and legal effort is expended in reaching this point. Eurostar considers that, to maximise the growth potential of international rail, there is a need for a parallel, supplementary process to look at the bigger picture to unlock the potential in the system.
7. Eurostar is committed to finding solutions to unlock the growth opportunity that it, and others, see in international rail services so that more passengers can choose to travel by this mode of transport. It will lend its full assistance to ORR in conducting a broader system review.
8. Below Eurostar provides additional detail in support of the solutions-focused approach that it sets out above.
9. Eurostar is concerned about the lack of clarity and transparency from ORR to date as to how the s.17 processes are being conducted and how they will move forward. The objectives, timescales, decision points and decision-making principles and criteria in the context of the current circumstances are all unclear. This lack of transparency risks causing harm and unfairness to all participants.
10. The applications currently submitted remain, at best, nascent, if not speculative and are largely devoid of the detail and analysis that are necessary for ORR to take any related, properly informed, rational decisions across them all in compliance with its s.4 duties.
11. The s.17 processes that are being conducted are already (despite still being at an early stage) becoming protracted and unable adequately to deal with the multi-party interests and requirements of applicants, Eurostar and other interested parties (including those who may yet make a s.17 application). The ORR's process requires clarification and, potentially, adaptation to the circumstances.
12. It is clear to all now that there is insufficient capacity at TMI to meet the stated ambitions of all those entities that want to use it, including Eurostar. A s.17 process designed to focus on individual applications in isolation looking only at a single depot does not provide the framework for achieving the kind of holistic solution to this systemwide problem that the circumstances require.
13. The position is unsustainable as the current lack of clarity and the procedural uncertainty threaten investment decisions that need to be made imminently to grow international passenger rail services to and from the United Kingdom. This is a crucial period of potential growth post-COVID and demand is increasing. The current position is likely to stall the ability of the railway to capitalise on that opportunity and realise substantial benefits for consumers in the near term. That outcome would also not be compatible with ORR's wider statutory duties.
14. ORR must look beyond the narrow s.17 processes and their inherently limited scope examining the current light maintenance facilities at TMI to explore and assist in the development of options that facilitate the investment that is required to deliver growth and the consequent benefits.
15. Eurostar is a champion for the international passenger rail services market. It wants to see that market grow as much as it can. It anticipates fair competition and to compete for its share of that market with other rail operators, just as it competes with short-haul aviation and cross-Channel journeys already. Eurostar is investing and is prepared to invest further. It wants other rail operators to have the opportunity to do so too. The key to unlocking that potential cannot be found in TMI alone.

Overview of the s.17 processes

16. Evolyn's s.17 application was submitted on 23 August 2024, some eight months ago. It was materially premature and sufficiently problematic that ORR considered it necessary to write to Evolyn seeking confirmation that it intended to proceed with its application. Evolyn's application lacks essential content

and any substantiating evidence or analysis. Evolyn's application had to be supplemented but remains materially deficient.

17. Evolyn's application catalysed other premature applications, in part, we would suggest because the process itself is unclear as to how s.17 operates when there may be multiple requests for access. Three further s.17 applications have since been submitted by VTE (23 October 2024), Gemini (24 February 2025) and Trenitalia France (28 March 2025) and other parties have indicated interest publicly but not (yet) made applications. All those applications are, in a similar way to Evolyn's, lacking in essential content and substantiating evidence or analysis. For example, VTE's application had to be supplemented but remains materially deficient and Trenitalia France's application form did not, even in outline, specify what access it sought (it subsequently provided scant details in a separate document).
18. It needs to be ascertained whether those issues are the consequence of a lack of detailed engagement by the applicants with the processes in which they have applied to participate or deficiencies in their essential preliminary work. Either way, these issues must be resolved by the applicants if they intend to pursue their applications.
19. Other entities are reported to be considering commencing similar services through the Channel Tunnel. Further s.17 applications may, therefore, be submitted in due course, for example, by SBB and Heuro. However, it is not clear how the current s.17 processes will deal with competing interests and the lack of clarity will be exacerbated if further applications are submitted.
20. There are also reports that applicants have negotiated arrangements between themselves that are potentially highly relevant to the s.17 processes. A Trenitalia France corporate press release² published around a week after its s.17 application was submitted refers to a Memorandum of Understanding (the MoU) between Trenitalia France and Evolyn relating to the development of a strategic partnership for delivery of European high-speed rail services. The MoU is not referenced in Trenitalia France's application or Evolyn's and it is unclear what impact the MoU will or might have on their applications for depot access or the terms on which they seek access. It is concerning that more information is available from the media than within the s.17 processes or applications. ORR should obtain and provide clarity given the obvious relevance to the s.17 processes.
21. An independent capacity analysis has been commissioned by ORR and conducted by IPEX. Eurostar accepts that such an analysis was necessary. Such a study would have been commissioned by Eurostar under the application process set out in Eurostar's Service Facility Description for TMI. Eurostar welcomes IPEX's report.
22. Eurostar has participated in ORR's consultation about ORR's initial findings in respect of IPEX's report (see Eurostar's letter of 28 April) and has flagged significant concerns about their robustness and clarity and the related risks of inaccurate interpretation and unsound reliance:
23. IPEX's report is explicit that IPEX anticipates significant further work being done to test whether its findings are robust. Without that work, no findings relying on it can be robust. Eurostar's letter of 28 April explained why many of IPEX's findings and identified options are not feasible, would not increase efficiency if implemented, could not safely be implemented and/or might not be cost effective.
24. No consideration has been given to Eurostar's future needs and legitimate plans for its services and the depot, in which it is actively investing. It is unclear how those plans, which will deliver significant benefits for passengers, will be considered on an informed basis in connection with the s.17 processes, not least because Eurostar has not been invited to provide information about them. Eurostar provided some information to ORR in respect of its future plans, such as increased use of its existing fleet and an investment in up to 50 new trains with further investment in the facilities to service them, in its letter of 28 April. Eurostar seeks further discussion with ORR about those plans and the benefits they will deliver

² <https://www.fsitaliane.it/content/fsitaliane/en/media/press-releases/2025/4/8/fs-group-high-speed-london-paris.html>

(some of those plans are, of course, confidential and commercially sensitive) so that ORR can consider them appropriately, including within the s.17 processes. Clearly, they must be appropriately considered.

25. There is a lack of clarity as to how the IPEX study fits into the s.17 process for any application or is intended to or could resolve a situation of multiple competing requests and requirements for capacity. IPEX's report also considers many matters that are outside the scope of s.17 and ORR's competence as economic regulator.
26. It is clear from IPEX's report that there is insufficient capacity at TMI to accommodate all applicants or, indeed, any one of them. Even IPEX's best-case scenario (which, as above, is not robust) identified potential latent capacity that is inadequate to meet the published ambitions of the s.17 applicants (individually and collectively) and Eurostar.
27. Eurostar will continue fully to engage with and constructively support the multiple s.17 processes. However, greater certainty about how these processes are being and will be conducted is essential.
28. Further, the situation has plainly evolved into something much more encompassing than any single applicant's request for access to TMI; it has become a question of overall system capacity. None of this is envisaged or provided for in s.17 or ORR's accompanying guidance. s.17 is not designed to unlock systemwide issues and is incapable of doing so; by its nature, s.17 is directed to considering narrow issues affecting single applicants. The issues raised by the current circumstances appear beyond what s.17, at least in isolation, could address. Coordinated broader consideration outside of those processes by ORR and other stakeholders has become necessary.

The clear and present need for clarity

29. In summary, there is a very material lack of clarity and certainty about the current s.17 processes that ORR is conducting. That needs to be addressed as a matter of priority:
 - (a) There is insufficient clarity about how the s.17 processes will effectively engage with or produce satisfactory (for any participant) outcomes in respect of the multiple access applications, the requirements of Eurostar and any entities that have not yet made a s.17 application but have an interest in access.
 - (b) There is insufficient clarity on the objectives, timescales, decision points and decision-making principles and criteria relevant to the s.17 processes. The applicable statutory provisions and the related guidance that ORR has published set out only a procedural outline that is insufficient given the unusual nature of competing applications and the applications being in respect of the operation of international (rather than domestic) passenger rail services. While any determinative exercise by ORR must involve a calculation of ORR's respective s.4 duties, ORR accepts (see paragraph 11 of ORR's letter to Eurostar dated 27 February 2025) it is not possible for ORR appropriately to conduct such a calculation given the paucity of information provided by the applicants. Eurostar reiterates its points about the responsibilities of applicants to provide information³. It is wholly unclear how rational and procedurally fair determinations could be made within the current s.17 processes.
 - (c) The recent analysis of capacity at TMI and the focussed scope of the s.17 processes on the existing light maintenance facilities at a single depot do not appropriately engage with the issues of capacity in the overall system and alternative provision. Eurostar's letter of 28 April identified several potential economic alternatives for capacity within the UK that could support growth and positive outcomes for the applicants and rail users.
 - (d) At the same time, ORR has not engaged in the discussions that Eurostar has sought about how Eurostar could, within bilateral engagement with applicants, continue with its own

³ See paragraph 25(a) of its letter dated 25 September 2024, paragraph 28(a) of its letter dated 13 November 2024, paragraphs 16 to 19 of its letter dated 21 November 2024, paragraph 34 of its second letter dated 17 December 2024 and paragraph 8 of its letter dated 13 March 2025.

parallel application processes set out in Eurostar's Service Facility Description for TMI. Given the uncertainty around the s.17 processes, it is quite clear that the Service Facility Description processes could lead to inconsistent and incompatible outcomes and significant wasted time and cost, including for applicants and Eurostar. Eurostar reiterates paragraphs 8-12 of its letter dated 10 April 2025.

30. Eurostar has been seeking this clarity for some time and reiterates its requests for transparency from and engagement with ORR.
31. It is unclear to Eurostar how the current regulatory process will progress from this point. It cannot be clearer to any other stakeholders. That must be resolved. The uncertainty is now profound and threatens to disincentivise much needed investment and disrupt current plans for future development.
32. Eurostar seeks clarity from ORR and its engagement with all stakeholders to agree and put in place a process that gives confidence to stakeholders to support investment and opportunities to grow the system and the market for the benefit of all rail users in the current circumstances. The risk otherwise is that the current regulatory uncertainty leaves all parties and the system unable to plan effectively, which serves the interest of no one and least of all rail users.

Confidentiality

33. Eurostar is content for ORR to publish this letter and to provide copies to Evolyn, VTE, Gemini and Trenitalia France without redactions.

Eurostar hopes this letter assists ORR.

Yours faithfully,



Gareth Williams

On behalf of Eurostar International Limited