Responses to the Representations provided on the appeal by Eurostar International Limited under Regulation 32 regarding the allocation process for infrastructure capacity

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Dear Office of Rail and Road

Consultation pursuant to an Appeal from Eurostar International Limited ("EIL") under Regulation 32 of the Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016 (the "2016 Regulations") concerning access to the HS1 network

We refer to Office of Rail and Road's ("**ORR**") letter dated 8 October 2026.

This letter contains EIL's comments on the responses submitted by HS1 Limited ("**LSPH**"), relevant parties (including VTE OpCo Limited ("**VTE**")) and on behalf of the Secretary of State for Transport ("**DfT**") in relation to EIL's appeal under regulation 32 of the 2016 Regulations (the "**EIL Appeal**").

It also builds upon EIL's letter to ORR of 2 October 2026 in which we noted the parallel appeal under regulation 32 of the 2016 Regulations by Trenitalia France ("**TF**" and the "**TF Appeal**") and that concerns raised by TF reinforce and evidence similar concerns to those of EIL as to the LSPH process that is the subject of both appeals. EIL was invited by ORR to make submissions, and it did make submissions in the context of the TF Appeal on 14 October 2026. For the avoidance of doubt, EIL's submissions to ORR in respect of the TF Appeal should also be understood by ORR to be repeated by EIL in the context of its own appeal as may be relevant and ORR should consider EIL's comments across both appeals together.

1 INTRODUCTION AND SUMMARY

1.1 ORR should uphold the EIL Appeal and make such determinations as are necessary to remedy effectively the defects from which it arose. The responses of other parties within the EIL Appeal and the picture emerging from the TF Appeal substantiate significant flaws in the process by which LSPH allocated capacity ultimately to VTE.

1.2 First, LSPH did not publish or operate a transparent, equitable and non-discriminatory process for allocating framework capacity from 2030. This was in breach of LSPH's regulatory obligations, contrary to the expectation of all stakeholders including the DfT and evidenced from the responses of capacity applicants, aspirants and other infrastructure managers. Unsurprisingly, only LSPH and VTE appear to be content with the process undertaken but neither have identified clear and comprehensive processes transparent to all that explicitly comply with LSPH's regulatory obligations. In particular, the HS1 Network Statement did not identify the relevant opportunity, timetable, procedure, deadlines, criteria or priority rule.

1.3 Second, LSPH unlawfully gave de facto priority and preference to VTE by treating its draft Form P and its unapproved Framework Track Access Agreement for Passenger Services with VTE (abbreviated as FTAA) as a "*contingent reservation*" of capacity. The 2016 Regulations contain no such priority rule. LSPH accepts that the 2016 Regulations confer no free-standing power to reserve capacity in that way. Certainly, if that was LSPH's approach, it was not one published by LSPH (or any other party) in advance and yet it is the experience of at least EIL and TF that their requests and applications for capacity in a window from 2030 onwards[1] were neither actively invited nor sought and have in practice been de-prioritised behind VTE's.

1.4 Third, LSPH failed to identify, compare and coordinate competing access requirements:

[1] EIL's application for additional rights covers the period 17 August 2029 to December 2040, coterminous with VTE's.

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(a) It did not test its fundamental and incorrect assumptions apparently about EIL's future requirements from 2030 onwards. It did not assess EIL's plans alongside VTE's;

(b) It applied its operational-integrity gateway unequally. The responses of others confirm that it invited VTE and certain other aspirant operators into that exercise but not EIL. It then used the result of that exercise to support its conclusion that there was no competing request from EIL to coordinate; and

(c) The fact that there are now competing requests and applications for capacity access over the framework period of the VTE FTAA and across multiple infrastructure managers from London to Paris is a testament to just how inadequate LSPH's processes were in identifying and understanding the true position on capacity demand.

1.5 LSPH has responded at length to suggest it was somehow a surprise to it that capacity sought by VTE from 2030 might somehow impact or also be sought by EIL, TF and potentially others for their growth plans. EIL submits that is entirely unsustainable as a proposition in light of public and widely known information and, in any event, an open admission of material failings in the process for capacity allocation if true. It is noted that the approach of other infrastructure managers such as Eurotunnel to invite applications by a specified deadline and assess them all together leaves no room for the foundational misassumptions and mistakes made by LSPH before and throughout its process.

1.6 Fourth, LSPH failed to cooperate with other infrastructure managers as it was required to do under regulations. There is no evidence from responses that LSPH made any material efforts to engage with other infrastructure managers prior to its decision to put forward VTE's FTAA for approval. The evidence is that respondent infrastructure managers raised concerns as to lack of cooperation by LSPH. As well as regulatory obligations, the need operationally to cooperate with adjacent infrastructure managers in respect of proposed international routes is obvious where LSPH only has the ability to grant access rights from London St Pancras to the Eurotunnel UK boundary. LSPH suggests that it cannot wait indefinitely for approvals elsewhere but that is a strawman position – the reality is that LSPH was obliged to make material efforts to cooperate and it did not. In doing so, any delay or prolonging of timescales is entirely of LSPH's own making.

1.7 The failures above caused EIL's requirements to be treated as subsequent to VTE rather than competing and resulted in a flawed and non-compliant allocation of capacity that impacts EIL and all other competing aspirants. Compliance with regulations is required to give all stakeholders assurance that any decision on granting framework agreements has been well assessed, is robust and maximises the benefits that international rail can bring to passengers and the wider economy. Such decisions affect the direction of the international rail market even beyond 2040 – after expiry of LSPH's concession over the infrastructure. LSPH's response seeks at length to justify the VTE FTAA decision based on its obscure procedural choices and narrow and limited interpretations of selective text. However, nowhere does LSPH assure that it has fully identified and assessed all viable competing requests and taken a decision that is in best interests of the international rail passenger market, bests supports its long-term growth and is the most efficient use of the infrastructure it manages. It cannot do so because LSPH admits in effect that it has not done this.

1.8 A prospective direction addressed only to future processes would not remedy the situation from which the appeal arose for the reasons given and, in particular, given the longer-term impacts of this framework agreement decision by LSPH that will extend beyond the lifetime of LSPH's concession. ORR should require the existing priority to be removed and direct a fresh, concurrent and non-discriminatory assessment of the competing requirements and a fair allocation of rights.

1.9 EIL does not seek to prevent new market entry or to obtain preferential treatment. It seeks a lawful allocation process in which VTE, EIL and all other applicants are assessed on transparent, equal and non-discriminatory terms, so that scarce capacity is allocated in the way that best supports growth and investment in international rail services.

1.10 This is a critical juncture in the development of the cross-Channel international rail market. The allocation of future capacity rights is pivotal to the successful development of that market and associated

investment into the UK and to the benefits they bring to rail users and the economy. Competition and growth are not promoted or supported by giving one operator an earlier and more favourable route to capacity through an opaque process. Investment certainty is not protected by preserving an allocation that is found to have resulted from an unfair or discriminatory process. Confidence in the market and the willingness of incumbent and new operators to invest in it instead requires transparent criteria, equal access to the allocation opportunity and a remedy capable of correcting any allocation materially affected by non-compliance.

1.11 ORR should therefore reject any suggestion that effective relief would be anti-competitive or destabilising or that it would deter investment. The source of the present uncertainty is the defective LSPH allocation process under appeal, not EIL's exercise of the statutory right of appeal.

2 SCOPE AND STRUCTURE

2.1 EIL does not respond to LSPH's representations point by point. It continues to rely on all its earlier submissions which remain before ORR and those that EIL has made in the TF Appeal process.

2.2 This letter instead addresses the key issues that determine the EIL Appeal, which are:

(a) whether LSPH published and operated a compliant process for the relevant capacity;

(b) whether it lawfully treated VTE's draft Form P and unapproved FTAA as conferring priority;

(c) whether it was required to identify and coordinate EIL's and other aspirant operators' competing requirements and whether it did so compliantly, including whether its operational-integrity and consultation processes afforded applicants fair and equal treatment and whether it dealt with identified defects adequately prior to concluding its consultation;

(d) whether it complied with its international coordination obligations; and

(e) what directions are required to remedy the resulting allocation.

3 LSPH'S PROCESS WAS NOT TRANSPARENT

3.1 ORR should conclude that LSPH's HS1 Network Statement did not include key elements that it was required to include and did not disclose the process that LSPH followed in relation to its allocation of capacity to VTE.

3.2 Regulation 13(4)(h) of the 2016 Regulations requires network statements to contain "*the procedures and deadlines in the capacity allocation process and specific criteria employed in that process*".

3.3 LSPH's HS1 Network Statement does not contain those details. Its only guidance to an operator seeking framework capacity is: "*contact the Infrastructure Manager at the earliest opportunity*". It states: "*There are no application forms which need to be submitted prior to contacting the Infrastructure Manager with a request for a Framework Track Access Agreement*". It contains no deadline, no application window and no statement or indication that framework capacity for 2030 onwards would be allocated and there was no reasonable basis for EIL or any other party to understand that the Network Statement was an indication that LSPH was inviting or open to consideration of applications for the whole remainder of the rest of LSPH's concession.

3.4 Those omissions were aggravated by the validity wording. The current (2027) version of the HS1 Network Statement stated that it was for use for "*capacity requests for the 2027 timetable year*". LSPH has sought to contend that this wording was "*clearly made in respect of capacity allocations as part of the December timetabling change process each year*". EIL submits that there was no such clarity. That is not what the document says.

3.5 LSPH's omissions were material. Without limitation, the HS1 Network Statement does not set out in sufficient detail or at all a schedule for applications, a template form (EIL was required to request this information from LSPH and was not provided with a copy of LSPH's Capacity Assessment Inputs Form

until 19 June 2026), the requirements governing operational integrity, the principles governing coordination under regulation 23 or the international procedures required by regulation 20(4).

3.6 LSPH's answer appears to be that the missing information can be found in paragraphs 3.12 to 3.30 of ORR's Criteria and Procedures for the approval of framework agreements on the HS1 network (the "**C&P**"). That answer fails. The C&P describe ORR's approval function and its approach to processing framework agreement applications. They do not set out LSPH's own published allocation process, deadlines, invitation mechanism or assessment criteria for competing international passenger operators.

3.7 Regulation 13 requires the HS1 Network Statement itself to contain this information. ORR describes network statements as follows[2]:

> "*Network statements need to be produced in accordance with The Railway (Access, Management and Licensing of Railway Undertakings) Regulations 2016.*
>
> *Those regulations have the aim of creating a more efficient rail network across the EU by stimulating greater competition.*
>
> *Network statements help to achieve that aim* ***by presenting all the information that potential applicants for network access need to know in order to request capacity on other networks****.*
>
> ***Each network statement should provide, for the infrastructure concerned, a single source of up-to-date and relevant information****. It must include information on access to, and the charges for, the supply of service facilities*." (emphasis added)

3.8 EIL does not accept that LSPH incorporated the C&P with the required clarity. In any event, LSPH cannot satisfy its obligations by pointing applicants to the regulator's approval guidance, particularly where that guidance still does not contain all missing aspects of LSPH's process.

3.9 The problem is most acute where competing operators are in the same priority category, which EIL and VTE are. The HS1 Network Code criteria rank international passenger, domestic passenger, freight and other services as categories and as between themselves. They do not explain how LSPH will decide between two international passenger operators (i.e. within the same category) seeking competing framework capacity. EIL raised that defect during LSPH's consultation. LSPH has identified no published methodology that fills the gap. As explored further below, LSPH's answer appears to be that it has in substance treated VTE's application on a 'first come, first served' priority basis (although it objects to that terminology) without any comparative assessment between competing requests.

3.10 This was not a minor technical deficiency or, indeed, only a technical deficiency. VTE has said it was "*clearly informed*" of the process and the point at which capacity would become reserved. EIL was not told that framework capacity from 2030 onwards was being allocated or when it would be treated as reserved, was not invited to the November 2025 operational-integrity exercise (to which LSPH invited other aspirant operators), was not asked to confirm its longer-term requirements or whether it considered LSPH's (fundamentally mistaken) assumptions about its longer-term requirements were reasonable and appropriate and EIL first learned of the opportunity to apply for capacity from 2030 onwards when the VTE FTAA was put out for consultation by LSPH on 24 April 2026 (by which point LSPH had already decided to treat VTE's proposed rights as having priority).

3.11 LSPH says EIL was not invited to participate in an operational integrity assessment that VTE had requested and in which LSPH proactively invited Trenitalia France, Gemini and Evolyn (but not EIL) to participate in. LSPH admits that this difference in treatment was based on reasoning (which was flawed) that EIL's request of 30 October 2025 for some additional firm rights up to 2029, a modest, short-term request to secure continuity of some of EIL's existing services up to 2029, represented the entirety of EIL's additional future requirements. Such an inference was not open to LSPH, and it represented a fundamentally incorrect and key assumption that LSPH chose to adopt without validation rather than to

[2] Network statements | Office of Rail and Road

engage with EIL about or even to seek to test and confirm. EIL's request manifestly concerned a different period and different needs and EIL had been clear to LSPH directly and to the market more generally about its longer-term ambitions and requirements.

3.12 There is no basis by which LSPH can reasonably extrapolate from these circumstances an extraordinarily prejudicial assumption that EIL had no additional growth plans for the period from 2030 for LSPH to consider. Had LSPH sought in any way to test its assumption with EIL as to capacity requirements it would have received a straightforward answer in the terms of the access EIL has formally applied for. EIL made LSPH's manifest error clear to LSPH at the first possible opportunity within the consultation on VTE's draft FTAA and with its formal 2029-2040 access application.

3.13 LSPH failed to acknowledge the critical error that it had made in its assumptions or to take appropriate (or any) steps to remedy the situation. Instead, LSPH prioritised and pressed forward the VTE application to be approved in full knowledge that the decision on VTE's access was undermined by LSPH's failure properly to identify and consider EIL's capacity requests.

3.14 LSPH had no objective justification for treating EIL differently and significantly to its detriment in the way that it did.

3.15 The TF Appeal describes many of the same deficiencies, including in relation to the adequacy of LSPH's HS1 Network Statement and the transparency of LSPH's treatment of competing requests. Each of our companies has, therefore, independently corroborated the existence of material defects.

4 LSPH APPLIED AN UNPUBLISHED AND UNLAWFUL PRIORITY RULE

4.1 ORR should conclude that LSPH had no legal basis for treating VTE's draft Form P and unapproved FTAA as any form of reservation of capacity, existing service, existing right or access contract when assessing EIL's access requirements and application (or any other party's).

4.2 LSPH's representations in the EIL Appeal demonstrate the central failing. LSPH accepts that:

(a) the 2016 Regulations "*do not create a free-standing power for an infrastructure manager to 'reserve' capacity for an operator outside the statutory allocation process*";

(b) "*ORR approval is required before a framework agreement takes effect*"; and

(c) the 2016 Regulations "*do not prescribe the Form P process or its significance*".

4.3 Those concessions cannot be reconciled with the proposition that a draft Form P and unapproved FTAA could be used lawfully to reserve capacity for VTE.

4.4 Nevertheless, LSPH began treating the services and rights sought by VTE as existing (and therefore unavailable to others) once it had "*resolved as a business to proceed with Virgin's application and jointly submit the Form P and draft FTAA to ORR*" (paragraph 50 of its representations confirms that was in late April 2026, which EIL understands to be slightly earlier than when LSPH first put its proposals out to consultation on 24 April 2026). EIL points out that LSPH is more than just "*a business*" but a regulated infrastructure manager and should have acted as such in compliance with regulation, none of which permits or justifies the approach to reservation of rights that LSPH "*as a business*" decided to adopt.

4.5 LSPH treating VTE's draft Form P as a "*contingent reservation*" that made later requests subsequent rather than competing was a priority rule. It decided how significant capacity would be treated between operators for a ten-year period from 2030 onwards.

4.6 LSPH has failed to identify a regulatory basis for that approach (despite being asked to do so). EIL submits that there is no valid regulatory basis and restates its submissions in the EIL Appeal form and in its submissions under the TF Appeal without repeating them in this letter.

4.7 Further, if LSPH intended to apply such a rule, it was incumbent on LSPH under regulation 13(4)(h) of the 2016 Regulations to publish it in advance as a specific criterion employed in the allocation process

as it is a key factor in LSPH's (unpublished) procedure relevant to how it assessed and decided competing applications between international rail operators. Applying an unpublished priority rule is incompatible with regulations 5(1) and 19(16).

4.8 LSPH's latest characterisation (in its representations in the EIL Appeal) of its treatment of VTE's draft Form P as the implementation of a practical entitlement to treat the relevant capacity as effectively reserved is:

(a) internally inconsistent – LSPH accepts that the 2016 Regulations conferred no right to reserve the capacity but contends that the proposed VTE rights nevertheless had to be treated as prior to later requests (the latter proposition reintroduces in substance the priority that the former conceded); and

(b) inconsistent with LSPH's position during the consultation process – for example, row 29 of LSPH's 19 June 2026 responses to consultation submissions stated:

> "*For the avoidance of doubt and subject to ORR's approval, Virgin's Form P and the accompanying FTAA represent LSPH's settled intention to allocate the capacity outlined therein.*
>
> *Accordingly, in compliance with the ORR's established position, EIL's new request must be treated as subsequent to Virgin's, and consequently, Virgin's FTAA will be treated as "another access contract", as per 3.11(c) for the assessment of any conflict arising from EIL's new request*."

4.9 That is not merely a planning assumption. It is a substantial prioritisation that treats a draft and unapproved agreement with VTE as an existing contract.

4.10 The timing of LSPH's processes demonstrates the practical effect of the unequal and discriminatory process. LSPH adopted that approach in favour of VTE before:

(a) EIL was even aware for the first time of the opportunity to apply for HS1 network access during the relevant period (due in particular to the mistaken assumption that LSPH admits that it made as to EIL's prior application for short-term capacity extensions up to 2029 as being somehow exhaustive); and

(b) the VTE FTAA was put out for consultation for the first time.

4.11 EIL's actual capacity requirements, those of other aspirant operators and the views of other stakeholders were, therefore, relegated by LSPH's prioritisation of VTE or entirely misunderstood on LSPH's part before they even had any chance to make submissions to LSPH on it and before LSPH could conduct any form of comparative analysis between requirements on a properly informed basis.

4.12 LSPH's alleged reliance on the absence of other applicants is also not sustainable. EIL's case does not depend on proving that it submitted a formal application before VTE. Although EIL has submitted an application, EIL's primary case has always been that it was not necessary for it to do so for its access requirements to be properly considered by LSPH as competing with VTE's as required by the 2016 Regulations and that if LSPH had requirements for greater formality or information then it should have been clear as to its process and EIL would have engaged accordingly. However, EIL's appeal case can be put in alternative ways:

(a) Primarily, EIL was an applicant within the broad regulation 3 definition: it had a commercial interest in procuring capacity, its growth plans were known to LSPH, and it confirmed in writing that it intended to enter an FTAA. We have addressed above already the impact of LSPH's flawed assumption that EIL had somehow confirmed definitively that it had no such ambitions and that its application for shorter term capacity was exhaustive of all its requirements.

(b) Alternatively, if a formal application was essential, LSPH's own transparency failure explains why EIL did not apply earlier: LSPH published no window, deadline or invitation for the relevant

capacity and did not tell EIL that the opportunity existed (indeed, LSPH did not disclose to EIL opportunities for involvement in an access process that were disclosed to VTE, Gemini, Evolyn and Trenitalia France in late 2025 – EIL only became aware of that operational integrity process upon reading LSPH's representations in the EIL Appeal).

4.13 On either analysis, LSPH cannot rely on the absence of an earlier formal EIL application to justify the priority treatment it provided to VTE. EIL's requirements and those of all other aspirants and applications had to be identified by LSPH as part of any compliant regulatory process and assessed alongside VTE's. They were not.

4.14 The relevant definition of an "applicant" is broad, and it does not require a formal application to have been submitted:

(a) the regulatory definition of "applicant" in regulation 3 of the 2016 Regulations is: "*a railway undertaking or an international grouping of railway undertakings or other persons or legal entities… with a public-service or commercial interest in procuring infrastructure capacity*";

(b) in ORR's determination dated 3 July 2025 in relation to Virgin Management Limited's 26 February 2025 regulation 32 appeal it emphasised that "*the definition of applicant is wide*";

(c) LSPH's definition of an "applicant" in its HS1 Network Statement is: "*Any person that wants to apply for a train path including TOCs, shippers, freight forwarding agents and combined transport operators intending to employ a TOC to operate the train path on their behalf*"; and

(d) LSPH's HS1 Network Statement also stated: "*To apply for a train path on HS1, an Applicant must have entered into a Framework Track Access Agreement or a Track Access Agreement or* ***confirm in writing that it will be willing to and intends to enter into a Framework Track Access Agreement or a Track Access Agreement***" (emphasis added).

4.15 EIL had that commercial interest as did other operators whose aspirations LSPH knew about. EIL provided that written confirmation directly to LSPH, including in its letter to LSPH dated 27 May 2026 and in row 31 of its comments on LSPH's 19 June 2026 responses to consultation submissions. That confirmation was clearly provided during the consultation process and within a short period after EIL first found out that there was an opportunity to apply for framework access from 2030 onwards. LSPH chose to compound the error of its mistaken assumption by dismissing EIL's request for fair treatment in the consultation.

5 LSPH FAILED TO IDENTIFY AND COORDINATE COMPETING ACCESS REQUIREMENTS

5.1 ORR should conclude that LSPH was obliged to identify and coordinate competing access requirements and failed to do so. That conclusion follows (without limitation) LSPH's obligations under regulations 21 and 23 of the 2016 Regulations, its HS1 Network Statement and the C&P.

5.2 Paragraph 2.3.3 of LSPH's HS1 Network Statement requires LSPH, when deciding whether to enter into an FTAA, to consider:

> "*the extent to which the proposed arrangement will preclude the use of HS1 by other Applicants*".

5.3 That gives effect to Regulation 21(4), which provides that a framework agreement:

> "*must not be such as to preclude the use of the railway infrastructure subject to that framework agreement by other applicants or services*".

5.4 LSPH could not assess preclusion without identifying the other applicants and services concerned, their requirements and the extent to which VTE's rights would affect them.

5.5 Paragraph 3.12 of the C&P (as relied upon by LSPH) specifies a process to consider alternative access rights, which involves having regard to the firmness of other operators' alternative plans for the capacity being sought.

5.6 Regulation 23(1) of the 2016 Regulations requires the infrastructure manager to meet all requests for infrastructure capacity and, in doing so, take account of all constraints on applicants, including the economic effect on their business. Regulation 23(4) of the 2016 Regulations states the following:

> "*In the event of conflict between different requests for infrastructure capacity, the infrastructure manager must attempt, in consultation with the appropriate applicants, and through coordination of the requests, to ensure the best possible matching of all requirements and, in so far as it is reasonable to do so, may propose alternative infrastructure capacity from that requested in order to resolve the conflict*."

5.7 Those obligations all presuppose that the infrastructure manager first identifies the competing requirements and then assesses them.

5.8 LSPH did not do that. It progressed VTE's request without giving EIL a contemporaneous and equivalent opportunity to state its requirements in the same manner as VTE (or indeed other parties it seems) and to provide supporting material. LSPH relied on its own (inaccurate and unjustified) assumptions about EIL's rolling-stock order, rolling-stock strategy, depot strategy and short-term 2026–2029 application. It did not test those assumptions with EIL or against the information EIL had published to the market or communicated to LSPH directly. It then used the resulting uncertainty as a reason to discount EIL's requirements.

5.9 EIL's 2026–2029 application could not reasonably be treated as the full statement of EIL's long-term requirements. It served a separate and limited purpose. It concerned a different period. LSPH itself accepts that it did not correspond to the broader 2030-onwards rights. A short-term extension of existing rights cannot be treated as evidence that EIL had no growth plans for the relevant longer-term period.

5.10 LSPH could have tested its assumption with EIL very easily. It did not. LSPH did not disclose the assumptions it had made to EIL until an advanced stage of its consultation process, at which point EIL took swift steps to correct LSPH and to ask it to remedy its error, but to no avail.

5.11 LSPH cannot answer the point by invoking confidentiality under regulations 14(13) and 19(16)(c) of the 2016 Regulations (or otherwise). LSPH did not need to disclose VTE's confidential information to tell EIL that framework capacity for the relevant period was being considered for allocation and that competing requests should be brought forward by a stated deadline. Other infrastructure managers, Eurotunnel and SNCF Réseau took that straightforward approach and LSPH did not. Notably, LSPH felt it was able to invite other aspirant operators to participate in an operational integrity assessment exercise except for EIL.

6 LSPH USED OPERATIONAL INTEGRITY TO PRECLUDE COORDINATION OF APPLICANTS

6.1 ORR is asked to conclude that LSPH applied the operational-integrity gateway unequally and discriminatorily and then relied on the consequences of that inequality and discrimination.

6.2 LSPH invited VTE and certain other aspirant operators to participate in the November 2025 exercise but chose not to invite EIL without an objective justification based on accurate information. It then relied on the result that "*only Virgin had achieved operational integrity*" to support its conclusion that there were no competing requests to coordinate.

6.3 That conclusion cannot stand (indeed, EIL understands that LSPH later realised that TF had, in fact, achieved operational integrity but LSPH had erroneously concluded it had not). EIL's omission from the assessment was LSPH's unsupported decision, not evidence that EIL lacked operational integrity or had no competing requirements. A gateway from which an applicant was excluded cannot fairly be used to establish that the applicant presented no competing request.

6.4 In respect of EIL's application, progress has been notably slow in comparison to the urgency it appears was in place for VTE. The oddity of the delay is reinforced by LSPH's own Capacity Assessment Inputs Form, which states:

> "*existing FTAA holders seeking changes to their rights and **in this case many aspects of operational integrity may be taken as already demonstrated**, therefore LSPH/NRHS would only need to request limited amounts of new information from some of the categories set out below. In such cases we would usually expect only the information indicated by sections 1, 2 and 9 of this form to be necessary*".

6.5 EIL has operated international passenger rail services through the Channel Tunnel since 1994 and on the HS1 network since 2003. LSPH has not explained why the incumbent operator requires slower treatment than VTE. LSPH's own processes and documents indicate if anything that it ought logically to be faster.

6.6 There is a stark contrast in timing. VTE requested an operational-integrity assessment on 3 November 2025. LSPH's panel considered the submissions between 9 and 27 January 2026, communicated its outcome on 27 January 2026 and began timetable and performance validation the same day. EIL submitted its 2029–2040 application on 21 July 2026, but some three months later LSPH is still "*yet to determine*" whether EIL has achieved operational integrity and no consultation has begun. Indeed, LSPH has provided no details or update on any progress.

6.7 TF has made similar complaints as to the timings of LSPH's assessment of its operational integrity in its submission in its regulation 32 appeal, again, independently corroborating concerns about treatment.

6.8 LSPH now relies on the fact that the EIL 2029–2040 Application "*has not progressed through any other stage of the application process*". It cannot be fair or compliant with Regulations 5(1) and 19(16)(a) of the 2016 Regulations, for LSPH to rely on its own delay and non-compliance with the 2016 Regulations or its own process to defend its position.

7 LSPH DID NOT REMEDY DEFECTS WHEN CONCERNS WERE RAISED

7.1 ORR should conclude that LSPH failed to take appropriate measures to deal with concerns raised during consultation.

7.2 Regulation 23(9) of the 2016 Regulations states:

> *"The infrastructure manager must take such measures as are appropriate to deal with any concerns about the allocation process raised by interested parties."*

7.3 That will generally require more than a written reply where material concerns are raised. It will require measures capable of dealing with those concerns.

7.4 LSPH did not reopen its assessment to test its conclusions against new information or points of concern, did not coordinate the competing requirements and did not reconsider the priority it had afforded to VTE upon receiving responses to its consultation. This applies in particular to LSPH's mistaken assumptions as to EIL's prior shorter term access application being positive affirmation that EIL had no other access requirement at any other time.

7.5 EIL's continuing concerns have led to the EIL Appeal. However, the view that LSPH's response to concerns was inadequate is not confined to EIL including:

(a) ProRail's representations state that its concerns "*do not appear to have been substantively addressed*" by LSPH;

(b) it is implicit in Eurotunnel's reiteration of its previous reservations in its representations in the EIL Appeal that Eurotunnel's reservations at the relevant time were inadequately addressed by LSPH;

(c) contrary to the assurance LSPH provided to DfT during the consultation process that it had "*proactively engaged existing and prospective operators… on their plans for growth*", (which is incorrect with regards to EIL at least), DfT has expressed concern that there are "*existing and credible new operators with ambitions to enter the market that do not appear to have had an opportunity to participate in the process for this current capacity allocation*" and that this "*could potentially constrain growth*"; and

(d) TF states in its separate regulation 32 appeal that LSPH's response on 19 June 2026 did not adequately respond to its concerns regarding the different treatment of VTE's and its prospects.

8 LSPH DID NOT COORDINATE INTERNATIONAL CAPACITY IMPLICATIONS

8.1 ProRail has stated:

> "*Unilateral framework agreements without prior alignment restrict market access for other parties and pose the risk that by each infrastructure manager making their own contracts the end-result is a disfunctional [sic] cross-border market*."

8.2 Based on its own decades-long experience as international rail passenger operator introducing during that time new services, routes and five fleets of rolling stock, EIL wholly supports the position that unilateral framework allocations risk restricting effective cross-border access.

8.3 ORR should conclude that LSPH did not undertake the cross-border cooperation required by regulations 20 and 23 of the 2016 Regulations before progressing the allocation to VTE or at all.

8.4 ORR should also conclude that:

(a) LSPH has not in fact sought to cooperate with other infrastructure managers since deciding to award capacity to VTE following a unilateral process; and

(b) only seeking to cooperate with other infrastructure managers after it has made a decision based on such a unilateral process is neither compliant with the 2016 Regulations nor *de facto* genuine cooperation nor likely to further ORR's duties under section 4 of the Railways Act 1993 (including to promote efficiency on the part of railway services providers, to promote improvements in railway service performance or to enable railway services providers to plan the future of their businesses with a reasonable degree of assurance).

8.5 Regulation 20 of the 2016 Regulations states:

"(1) This regulation applies to the allocation of infrastructure capacity in the form of a train path crossing more than one network, including a train path which crosses between a network in the United Kingdom and a network in the European Union.

(2) Infrastructure managers must—

> *(a) co-operate to enable the efficient creation and allocation of infrastructure capacity to which this regulation applies, including under a framework agreement; and*
>
> *(b) before consulting on the draft working timetable in relation to relevant train paths, agree with the other relevant infrastructure managers which international train paths are to be included in that draft working timetable."*

8.6 Regulation 23(1) of the 2016 Regulations obliges LSPH, as far as possible, to meet requests for train paths crossing more than one network.

8.7 During the VTE FTAA consultation, EIL asked LSPH to explain and evidence how it was coordinating its allocation with other infrastructure managers in the context of SNCF Réseau's open framework capacity exercise. LSPH provided no substantive explanation. LSPH's representations in the EIL Appeal are essentially silent regarding its compliance with its international coordination and cooperation obligations.

8.8 There is no evidence of LSPH cooperating with the other relevant infrastructure managers. Indeed, the representations from adjacent infrastructure managers confirm that LSPH's process was defective in this regard:

(a) Eurotunnel stated that LSPH's operational integrity and framework capacity allocation decisions of 24 April 2026 "*were not coordinated with ET and other IMs prior to their announcement and could therefore not be supported nor replicated*". It added that a coordinated process would require that eligible new operators "*and the incumbent are offered equitable capacity rights for the same periods at the same time*". Eurotunnel has stated that it "*would not be capable of replicating the LSPH decision of 24.04.2026 offering available capacity to one operator exclusively*".

(b) ProRail stated that it "w*as not previously informed nor involved in the development of this proposal*" describing this lack of prior engagement "*highly unusual*" given the direct implications for Dutch capacity. It added that it "*finds it difficult to understand how a framework agreement of this nature can be pursued without prior engagement with the relevant infrastructure managers, including Getlink/Eurotunnel, SNCF Réseau, Infrabel and ProRail*".

(c) SNCF Réseau states that it has made representations already to LSPH directly during its consultation on the VTE application, but EIL is not party to that detail. It is unclear if LSPH provided those prior representations to ORR but to the extent that they are relevant to this issue of international cooperation between infrastructure managers, EIL submits they should be made available and taken into account.

8.9 LSPH cannot answer its cross-border obligations by saying it allocates only HS1 network capacity. Regulation 20(2)(a) of the 2016 Regulations requires it to "*co-operate to enable the efficient creation and allocation of infrastructure capacity … including under a framework agreement*".

8.10 Further, its HS1 Network Statement sets out no procedure for doing so, which it is required to include under regulation 13(4)(h).

8.11 Additionally, LSPH's cooperation obligations had to be performed before it allocated capacity, not afterwards (to the extent that LSPH has taken any steps to engage with other infrastructure managers since seeking to conclude its process and submits that they could satisfy its obligations). Regulation 20(2)(a) of the 2016 Regulations requires infrastructure managers to "*co-operate to enable the efficient creation and allocation of infrastructure capacity… including under a framework agreement*". Cooperation can only enable a decision that has not yet been made. That is correct as a matter of practical logic in the interests of efficient use of a scarce resource as well as law. Regulation 20(4) requires procedures for coordination where allocation decisions "*have an impact*" on other infrastructure managers. That presupposes coordination before the impact occurs. LSPH effectively reversed the statutorily intended order in reaching a decision before taking any steps to coordinate or cooperate.

8.12 Eurotunnel, SNCF Réseau, ProRail and other relevant infrastructure managers work within an EU framework that requires competing framework requests to be examined "*simultaneously*". Although that is not directly applicable to LSPH in the same way, EIL submits it impacts on what effective and appropriate cooperation and coordination with those infrastructure managers who are subject to it involves.

8.13 Under LSPH's approach, however, other infrastructure managers were presented with a fixed outcome rather than an opportunity for constructive engagement and an outcome that, based on their submissions, they will be unable to replicate.

8.14 EIL does not suggest LSPH should defer indefinitely to other networks' processes and to the extent that LSPH is suggesting that is what EIL is saying is required, then it is simply wrong. However, it is obliged to cooperate with other infrastructure managers in the allocation of infrastructure capacity crossing more than one network. LSPH must manage its own access processes in a way that anticipates and coordinates with the processes of other infrastructure managers. As Eurotunnel has stated in its representations, coordination need not necessarily mean full synchronisation but does require exchanging assessments to "*identify potential issues and risk of misalignment*".

8.15 Any mismatch between HS1 network capacity and Channel Tunnel, French, Belgian or Dutch capacity is the foreseeable result of LSPH proceeding without sufficient prior coordination in the full knowledge that it was obliged to coordinate. By treating its role as focussing solely on the access rights that it can grant for an operator to run from London to Kent as LSPH appears to say that it did is both illogical and non-compliant.

9 MATERIALITY

9.1 ORR should conclude that these defects materially affected LSPH's allocation of capacity.

9.2 They were not merely technical or immaterial procedural defects. LSPH's approach determined the treatment of competing requirements, including as follows:

(a) VTE's proposed rights were treated as having priority before EIL knew that the relevant capacity was being allocated;

(b) no informed comparison or coordination of EIL's and VTE's requirements took place;

(c) EIL was excluded from the operational-integrity exercise used to identify viable competing requirements; and

(d) EIL's requirements were treated as subsequent rather than competing.

10 REMEDIES

10.1 The central question is what directions are required to remedy the situation from which the EIL Appeal arose. The answer follows from three propositions:

(a) LSPH's non-compliances affected the comparative treatment of EIL's and VTE's requirements;

(b) the resulting VTE FTAA grants capacity rights to 31 December 2040 without a compliant basis; and

(c) a direction applying only to future LSPH processes would leave that allocation and the prejudice caused by it intact.

Directions sought

10.2 On the basis that LSPH has failed to have and to operate a transparent, fair and non-discriminatory and otherwise compliant process in relation to the allocation of infrastructure capacity on the HS1 network, EIL asks ORR to direct:

(a) LSPH must take all steps within its power to bring the VTE FTAA to an end and/or remove the capacity priority and its consequences resulting from the defective process.

(b) LSPH must conduct a fresh, concurrent assessment of EIL's, VTE's and all other competing requirements under a published, transparent, fair, non-discriminatory and compliant process without affording priority by reason of any step taken under the defective process that LSPH previously conducted.

(c) LSPH must revise its Network Statement and associated regulatory documents (such as the HS1 Network Code) to specify the procedures, deadlines, criteria and coordination arrangements governing applications for framework capacity clearly and compliantly, including where there are competing requests within service categories.

10.3 LSPH should report to ORR on implementation at intervals determined by ORR. ORR should retain active oversight and give any further directions necessary to ensure that the fresh assessment is completed fairly and promptly.

ORR has the power to make the directions sought

10.4 LSPH appears to accept that ORR has powers to give effective relief in the context of the EIL Appeal (although EIL recognises that LSPH submits that ORR should not). However, VTE has contended in its representations in relation to the EIL Appeal:

> "*ORR does not now have the power to interfere with VTE's pre-existing contractual rights contained in the FTAA, which has been subject to regulatory scrutiny and pre-approved by ORR…The rights and capacity allocated in this FTAA cannot lawfully be unwound…*"

10.5 That assertion is incorrect:

(a) regulation 32(5)(b)(iii) of the 2016 Regulations states that ORR must "*where appropriate, issue a direction to the infrastructure manager...to remedy the situation from which the appeal arose*".

(b) regulation 32(10) of the 2016 Regulations requires ORR, in connection with a regulation 32 capacity allocation appeal, either to confirm no modification of the infrastructure manager's decision is required or to require modification and issue directions;

(c) regulation 32(11) of the 2016 Regulations makes ORR's decision binding and requires compliance with directions;

(d) regulation 21(5) of the 2016 Regulations states:

> "*A framework agreement must contain terms permitting the amendment or limitation of any condition contained in that framework agreement if such amendment or limitation would enable better use to be made of the railway infrastructure*"; and

(e) the VTE FTAA does contain such terms, including through the provisions for amendments in the incorporated HS1 Passenger Access Terms:

(i) "*…required pursuant to the terms of Regulation 21(5) of the Railways Regulations…*"

(ii) "*[where] any provision of the Contract has been declared unlawful by the ORR or any provision of the Contract needs to be amended to render such provision of the Contract lawful*"; and

(iii) "*to reflect any change in law, the Network Statement or the HS1 Network Code since the Effective Date*".

10.6 Read together, regulations 32(5), 32(10) and 32(11) require ORR to determine whether LSPH's decision must be modified and, where appropriate, to direct LSPH to remedy the situation from which the appeal arose. Regulation 21(5) and the corresponding FTAA provisions provide a mechanism through which an existing agreement may be amended or limited.

10.7 It is unclear to EIL whether full and frank disclosure was given to ORR by LSPH and/or VTE of all relevant material, information and concerns arising from LSPH's consultation and assessment of VTE's application. This includes those now being made directly to ORR by the parties. To the extent that there were deficiencies in how LSPH itself approached the seeking of approval from ORR, EIL reserves its rights to make further submissions but EIL would submit that any approval provided by ORR in such circumstances can and should be capable of being withdrawn as a matter of principle underpinning the integrity of that approval process.

ORR should make the directions sought

10.8 The directions sought go no further than is necessary. They would not allocate capacity to EIL or exclude VTE from the market or opportunity to obtain access rights. They would remove the priority produced by the defective LSPH process and require all applicants, including VTE, to compete on equal terms in a compliant assessment that best allows the scarce capacity to support investment in the UK and to deliver benefits for passengers and the economy.

10.9 LSPH's proposed future-only direction would not remedy the situation. The appropriate test is whether the direction would place the parties, so far as regulation 32 permits, in the position they would have occupied had LSPH operated a compliant process. A future-only direction would not do that. It would leave VTE's allocation through to 2040 untouched and EIL's competing requirements (and those of others) unassessed for competing capacity. LSPH's defects affected and caused the allocation; therefore, the remedy must address the allocation.

10.10 ORR should determine (in line with its general duties under section 4 of the Railways Act 1993, including to contribute to the achievement of sustainable development, to promote efficiency and economy on the part of persons providing railway services, to promote competition in the provision of railway services for the benefit of users of railway services and to enable persons providing railway services to plan the future of their businesses with a reasonable degree of assurance) that LSPH:

(a) did not publish or operate a transparent, equitable and non-discriminatory process for allocating the relevant framework capacity.

(b) had no lawful or published basis for treating VTE's draft Form P or unapproved FTAA as reserving capacity or conferring priority.

(c) failed to identify and coordinate EIL's competing requirements;

(d) applied its operational-integrity process unequally; and

(e) did not undertake the cross-border cooperation required for international services.

10.11 Those conclusions would not prefer EIL or any other aspirant operator over VTE. They would require each applicant to seek capacity under the same fair and lawful process. That would be consistent with and facilitative of ORR's and the UK Government's ambitions and duties to support growth, encourage investment and maximise the benefits that international rail can bring to passengers and the wider UK economy.

EIL looks forward to assisting ORR further in relation to the EIL Appeal.

EIL reserves all its rights.

Yours faithfully

[redacted]

Gareth Williams

General Secretary

Eurostar International Ltd

REDACTED VERSION FOR PUBLICATION

CONSULTATION PURSUANT TO AN APPEAL TO THE ORR UNDER REGULATION 32 OF THE RAILWAYS (ACCESS, MANAGEMENT AND LICENSING OF RAILWAY UNDERTAKINGS) REGULATIONS 2016

CONSULTATION RESPONSE BY HS1 LIMITED TRADING AS LONDON ST PANCRAS HIGHSPEED TO REPRESENTATIONS MADE IN RELATION TO AN APPEAL BY EIL

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1 These submissions are made by HS1 Limited trading as London St Pancras Highspeed ("**LSPH"**) in response to the consultation on representations made by Eurostar International Limited ("**EIL**") and relevant parties in connection with EIL's appeal dated 14 August 2026 ("**EIL's Appeal**").

2 EIL's Appeal was commenced by a Form R32 application notice made to the Office of Rail and Road ("**ORR**") by EIL under Regulation 32 of the Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016 (the "**AMRs**"). The ORR invited representations on EIL's Appeal, which were then received by the ORR from EIL, LSPH and relevant parties by 2 October 2026 ("**Consolidated EIL Appeal Responses**"). The ORR shared the Consolidated EIL Appeal Responses on 8 October 2026 and invited comments on them by 23 October 2026. This submission comprises LSPH's comments on the Consolidated EIL Appeal Responses.

3 The Consolidated EIL Appeal Responses were made by the following, as well as LSPH:

(a) Department for Transport ("**DfT"**);

(b) EIL;

(c) Eurotunnel ("**ET**");

(d) Gemini TOC Limited ("**Gemini**");

(e) ProRail;

(f) SNCF Reseau ("**SNCF-R**") referring to the representations made by SNCF-R in the LSPH industry consultation on the proposed FTAA;

(g) Trenitalia France ("**TF**"); and

(h) VTE OpCo Limited ("**Virgin**").

4 References in these comments to any Regulations or Parts are to Regulations and Parts in the AMRs and references to any paragraphs are, as the context admits and unless otherwise stated, to paragraphs:

(a) in these submissions;

(b) in LSPH's representations in response to EIL's Appeal of 2 October 2026 ("**LSPH's EIL Representations**");

(c) in LSPH's representations in response to TF's Appeal of 16 October 2026 ("**LSPH's TF Representations**"); and

(d) in the ORR C&Ps.

5 LSPH adopts the definitions from, as the context requires, LSPH's EIL Representations or LSPH's TF Representations. Most of the Consolidated EIL Appeal Responses submitted by other parties do not have numbered paragraphs, so references to those Consolidated EIL Appeal Responses are made by identifying the party, then the page number in the Consolidated EIL Appeal Responses, that is "**Party, Consolidated EIL Appeal Responses page X**", where the page number is the page number that the ORR has assigned in the consolidated form of consultation responses, rather than the page numbers that each consultee has assigned to its own responses.

6 The ORR has confirmed that it is considering each of EIL's Appeal and TF's Appeal on their own merits, but the procedures for both are being coordinated. In accordance with the ORR's prescribed process and by its deadline of 6 November 2026, LSPH will submit separate comments in relation to the consultation responses made in respect of TF's Appeal.

Summation of matters raised in the Consolidated EIL Appeal Responses

7 In summary, the matters raised in the Consolidated EIL Appeal Responses take the merits of EIL's Appeal no further. Most of the matters raised have already been dealt with comprehensively in LSPH's EIL Representations and/or LSPH's TF Representations. LSPH maintains that EIL's Appeal should be dismissed.

8 LSPH considers that there is little new material in the Consolidated EIL Appeal Responses that has not already been raised in the industry consultation on the FTAA or in EIL's Appeal and dealt with by LSPH in its responses to that consultation and LSPH's EIL Representations. EIL and TF have both taken the opportunity to seek to relitigate points they have previously made in their appeals. LSPH has sought to limit its arguments to the subject matter of EIL's Appeal, mindful that the purpose of this consultation is to respond to the points made in relation to that appeal and that there will be a separate opportunity to respond to representations made in relation to TF's Appeal. However, LSPH has sometimes found it necessary to highlight points that EIL and TF have each made in relation to TF's Appeal in order to properly respond to the subject matter of EIL's Appeal.

9 LSPH considers that the Consolidated EIL Appeal Responses can be collated into the following broad themes as follows:

(a) LSPH's decision-making and process concerning the granting of capacity to applicants seeking access to HS1, and specifically:

(i) LSPH's contingent reservation of the capacity in Virgin's Application pending ORR approval, leading to an alleged unlawful "*first come, first served approach*";

(ii) LSPH's Operational Integrity assessment process and decisions;

(iii) the relative speed with which LSPH is said to have processed the Virgin Application compared to other applications, said to reflect LSPH's alleged bias or preferential treatment; and

(iv) LSPH's allegedly inconsistent treatment of applicants in the management of mobilisation risks;

(b) LSPH's alleged failure to cooperate and coordinate capacity allocation processes and decisions with infrastructure managers of adjacent infrastructure to the HS1 network, an allegation that requires regard to be had to:

(i) the nature and extent of cooperation and coordination required of an infrastructure manager under the AMRs; and

(ii) the differences and similarities between the legal and regulatory requirements across those adjacent pieces of infrastructure; and

(c) the remedies sought by EIL for LSPH's alleged non-compliant processes and decisions.

10 LSPH deals with each of these themes in these submissions, but only insofar as the Consolidated EIL Appeal Responses present additional points which have not yet been addressed in LSPH's EIL Representations or LSPH's TF Representations. To the extent LSPH considers LSPH's EIL Representations or LSPH's TF Representations already respond to points made in the Consolidated EIL Appeal Responses, these submissions cross refer to the specific paragraph or paragraphs in the relevant representations. LSPH continues to rely on the submissions that it makes in LSPH's EIL Representations and in LSPH's TF Representations to the extent necessary to respond to the points made in the Consolidated EIL Appeal Responses as those points relate specifically to EIL's Appeal.

LSPH's decision-making and process concerning the granting of capacity to applicants

Consultees' general observations about LSPH's process

11 The DfT's consultation response says (emphasis added):

> "*…while we recognise that LSPH has followed its own commercial processes in allocating capacity, we are aware that there remains existing and credible new operators with ambitions to enter the market that do not appear to have had an opportunity to participate in the process for this current capacity allocation*." (DfT Consolidated EIL Appeal Responses, page 2)

12 LSPH disagrees with both of these assertions. First, the DfT appears to have made these comments based only on the fact that EIL, then TF, has appealed and without having read or considered LSPH's representations or those of any other interested party. Second, while the DfT does not explain what it means by the suggestion that LSPH has followed its own commercial processes in allocating capacity to Virgin, or in what specific way, LSPH has not in fact followed any commercial processes or in any way veered from the statutory process set out in the AMRs. As LSPH has comprehensively explained in paragraphs 18 to 36 of LSPH's EIL Representations, and paragraphs 17 to 32 of LSPH's TF Representations, LSPH has followed the equitable, non-discriminatory and transparent processes required by the AMRs. Second, the DfT fails to explain the basis for its assertion that certain operators may not have had the opportunity to participate in the process for the granting of capacity on HS1 as it asserts. In any event, the assertion is wrong. Paragraphs 83 to 86 of LSPH's EIL Representations, and paragraphs 108 to 109 of LSPH's TF Representations explain that all relevant operators had equal opportunity to apply for access and all in fact did apply in the relevant period and were treated in accordance with LSPH's prescribed process for capacity allocation. Those that met LSPH's evaluation and validation requirements (first Operational Integrity assessments then timetable validation (in each case where needed)) were taken forward and contracted (EIL's 2026-2029 Application and Virgin's 2030-2040 Application). Those applicants that did not meet the Operational Integrity threshold at the relevant time but who still expressed a wish to have their applications taken forward in 2026, and those applicants that made applications after the relevant time (TF's Application and EIL's 2029-2040 Application respectively) are currently being evaluated and validated.

13 The DfT states that it is not seeking to comment on the merits of EIL's Appeal, but its observations do so indirectly by casting doubt on the process that has been followed, including the extent to which all operators had an equal opportunity to apply for capacity. LSPH notes that the concession that the DfT granted LSPH in 2010 to operate and maintain HS1 was predicated on an established contractual and regulatory framework which was underpinned by oversight from an independent regulator. That principle of independence is affirmed in the AMRs, which promise both LSPH and all operators of rail services on HS1 a high degree of business assurance, but also robust appeal rights and remedies in respect of LSPH's decisions and processes. LSPH invites the DfT to clarify its comments.

Equality of opportunity for access

14 EIL's and TF's overarching argument regarding LSPH's process is that their requests for capacity (in EIL's case, in whatever form EIL contends it was made, whether by the Press

Release or formally much later) should have been considered by LSPH at the same time as LSPH considered Virgin's Application. It is alleged by both that, because LSPH did not do that, LSPH's approach gave Virgin preferential treatment, the effect being, to adopt TF's term in its consultation response, to "*foreclose*" the capacity Virgin was granted to other applicants (for example, TF, Consolidated EIL Appeal Responses pages 53 to 55). Whether expressly or impliedly suggested by EIL and TF, they allege that this approach amounted to a "*first come, first served*" process. Gemini is not as direct in its criticism of LSPH's process but does pose the rhetorical question of whether a "*first come, first served*" approach has been adopted in relation to the allocation of capacity on HS1 for the ORR to answer (Gemini, Consolidated EIL Appeal Responses page 9). They therefore all arrive at the same point.

15 This argument chiefly consists of the notion that LSPH allegedly treated the draft FTAA throughout the industry consultation as if it was a signed FTAA (TF, Consolidated EIL Appeal Responses page 54). LSPH has made extensive submissions to confirm the fact that at the stage at which the draft FTAA was agreed and submitted via Form P, LSPH contingently reserved the capacity specified in the FTAA for prudent administrative purposes, pending ORR approval. See paragraphs 59 to 71, and 75, 83 to 86 of the LSPH's EIL Representations and paragraphs 21, and 93 to 105 of LSPH's TF Representations.

16 While conscious of the need to ensure the comments in this submission remain focused on the consultation responses concerning EIL's Appeal, it is worth articulating the points that TF makes about section 2.3.3 of the HS1 Network Statement and the need to avoid entering into a framework track access agreement that precludes the use of HS1 by other applicants. This is because EIL, no doubt prompted by TF's Appeal, now appears to have adopted this argument also, even though it is not an express argument in its appeal.

17 TF points to the duty on LSPH in section 2.3.3 of the HS1 Network Statement when considering entering into a FTAA, to take into account "*the extent to which the proposed arrangement will preclude the use of HS1 by other Applicants*" (TF, Consolidated EIL Appeal Responses page 54). This, it is said, is a duty that should be performed in service of achieving compliance with Regulation 21(4), which provides that, the effect of a framework agreement "*must not be such as to preclude the use of the railway infrastructure subject to that framework agreement by other applicants or services*". TF contends that LSPH must carry out this assessment in the round – taking account of applicants that have "*credible well-advanced plans*" in a parallel process.

18 As LSPH understands TF's arguments in this context, TF appears to allege that LSPH (i) failed to identify and take account of the services that other applicants such as TF wished to operate, then (ii) either failed to recognise or indeed recognised but ultimately disregarded the impact of Virgin's Application on those services, thereby precluding the use by at least TF, but possibly other applicants, of HS1 to operate their own services, contrary to Regulation 21(4).

19 TF presents no evidence that LSPH failed to identify and take account of the services that TF wished to operate when weighing up whether to enter into a framework track access agreement

with Virgin. The evidence in fact points the other way. Mindful of TF's Application, LSPH invited TF to participate in the Operational Integrity exercise in December 2025/January 2026, clearly demonstrating that LSPH had identified the services TF wished to operate, and that LSPH was taking account of them in parallel with Virgin's and others' proposed services in LSPH's deliberations as to whether to allocate capacity and to whom. If TF is right that LSPH must carry out its preclusion analysis to take account of applicants that have "*credible well-advanced plans*", that duty ended insofar as it related to TF when TF was found not to have credible well-advanced plans that demonstrated its Operational Integrity (a finding that TF did not seek to appeal). By TF's logic, at that point, as explained elsewhere, there was no longer any requirement to determine the preclusive effect of Virgin's Application on TF's Application. TF makes no suggestion that LSPH somehow violated Regulation 21(4) in the period prior to concluding that TF could not demonstrate Operational Integrity. Nor can TF seek to advance an allegation that LSPH violated Regulation 21(4) after its Operational Integrity decision, since by that stage TF did not have a viable competing application.

20 As best as LSPH can understand its contention, TF appears to be arguing that the simple fact of entering into the FTAA precludes TF from being awarded the capacity or a proportion thereof which has been specified in the FTAA. That is not the purpose of Regulation 21(4): were it otherwise every framework track access agreement would be said to be preclusive, since track capacity is finite and the quantum of paths specified in such an agreement represents a specified proportion of that finite capacity which cannot then be granted to another operator (recognising that a framework track access agreement must not prescribe the actual paths in question). On this logic, it would follow that LSPH could never enter into any framework track access agreement that conferred any access since the very act of so doing would be preclusive. Plainly that is not what Regulation 21(4) means or entails.

21 On the contrary, the purpose of Regulation 21(4) (and so the parameters of the consideration exercise in section 2.3.3 of the HS1 Network Statement) is to ensure that the framework track access agreement LSPH is minded to enter into does not afford the counterparty operator all residual or future HS1 capacity to the exclusion of other operators insofar as that would have a foreclosing effect.

22 EIL now also takes up TF's argument in its consultation response to TF's Appeal (EIL, consolidated TF appeal responses page 5) to say that LSPH failed to undertake the section 2.3.3 preclusion analysis. LSPH presumes EIL is now making this argument as an extension or substitution for EIL's preceding industry consultation arguments (which it largely did not repeat in its appeal) that LSPH failed to take account of EIL's aspirations under paragraph 3.12 of the ORR C&Ps. Now similar to TF, again without evidence, EIL contends that either LSPH did not conduct the preclusion analysis or it did so inadequately, taking into account inaccurate information or having made inappropriate assumptions (EIL, consolidated TF appeal responses page 5). Moreover, while EIL correctly suggests that the objective in Regulation 21(4) defines the parameters of LSPH's duty under section 2.3.3 of the HS1 Network Statement to analyse the preclusive effect of entering into a framework track access agreement

(EIL, consolidated TF appeal responses page 5), like TF, EIL does not explain what it thinks preclusion means in the context of Regulation 21(4). It is somewhat challenging to seek to claim that analysis that must be undertaken has not been undertaken if it cannot also be said what that analysis requires or entails and LSPH must necessarily reserve its position pending EIL and TF clarifying what they say Regulation 21(4) means and entails and thus why it is said that LSPH failed in that duty.

23 EIL does not set out what its grounds are for asserting why LSPH is said to have breached Regulation 21(4) either and it is similarly unclear what EIL thinks LSPH's HS1 Network Statement analysis means and entails (as to which LSPH must again reserve its rights). If it is subsequently said by EIL that LSPH failed in this regard because it did not take account of the impact of Virgin's Application on EIL's services, having not invited EIL to participate in the Operational Integrity assessment in December 2025/January 2026, that is denied. Despite not inviting EIL to participate in that assessment exercise because of the nature of EIL's 2026-2029 Application, in giving due consideration to the Virgin Application, LSPH considered the effect on the continuing operation of the services in EIL's 2026-2029 Application, presuming that they would continue in the Relevant Framework Period in order to determine whether Virgin's Application would compete with those services in that timeframe (see paragraph 35(b) of LSPH's EIL Appeal Representations). Furthermore, only once Virgin's Application achieved Operational Integrity, did LSPH then proceed to conduct the timetable and performance validation exercise. That exercise, which took account of EIL's services, also confirmed that the services Virgin wished to run would not account for all residual capacity on HS1 or prevent EIL from continuing to operate its services. It is clear LSPH gave due consideration to this issue when it prepared a draft of the FTAA on terms which neither afforded Virgin exclusive HS1 access nor prevented EIL from operating its own services.

24 The evidence shows that LSPH undertook the analysis required under section 2.3.3 of the HS1 Network Statement and the FTAA does not preclude the use of the railway infrastructure by other applicants or services in compliance with Regulation 21(4).

25 There were good and valid, but different, reasons why each of EIL's, TF's and Gemini's relevant applications were not coordinated with Virgin's Application, whether at all or beyond a certain point (as the case may be), reflecting their different circumstances. EIL did not make a concurrent application with Virgin's Application. TF and Gemini did, but neither achieved Operational Integrity at the same time Virgin did. There is evidence in the case of TF (paragraphs 45 and 46 of LSPH's TF Representations), and an acknowledgement in the case of Gemini (Gemini, Consolidated EIL Appeal Responses page 8), that both accepted LSPH's decision in that regard at the relevant time. On the facts of the matter, there was equality of treatment between each of those operators and Virgin, but with necessarily different outcomes, entirely consistent with that of equal treatment. This did not give rise to any impermissible or unlawful form of "*first come, first served*" approach.

LSPH's Operational Integrity process and its conclusions

26 EIL and TF complain that LSPH has used an Operational Integrity test in a discriminatory, unfair and non-transparent fashion (EIL Consolidated EIL Appeal Responses page 4, TF Consolidated EIL Appeal Responses pages 52, 54 and 56). This is incorrect. LSPH notes Gemini's understanding of the reasons for LSPH's Operational Integrity decision in relation to its application, taken in January 2026 (Gemini, Consolidated EIL Appeal Responses page 8).

27 The arguments EIL and TF pose around Operational Integrity are different, reflecting their different circumstances concerning the subject, and LSPH notes that EIL has only just begun to make Operational Integrity arguments in its representations (none of the arguments now raised are arguments made in EIL's Appeal – the term is not used in its R32 Appeal Form). EIL now seeks to contend that LSPH's application of Operational Integrity considerations and how this has affected the timing and progression of applications is a matter that falls squarely within its appeal (EIL, Consolidated EIL Appeal Responses page 4). That is not correct: insofar as EIL has not raised LSPH's assessment of Operational Integrity as a ground of or element within its appeal, it cannot raise such a point now, in effect by way of reply, in the context of its own appeal.

28 TF, on the other hand, has been contesting its Operational Integrity status in some sense since the industry consultation began in April 2026. It would appear that both operators' arguments are now converging around the same premise. As TF puts it, LSPH used Operational Integrity as "[*an*] *artificial gate*" through which LSPH could say that EIL had not in fact made an application, and in TF's own case, such that TF's Application could not be taken forward concurrently with Virgin's Application. In other words, LSPH has allegedly used the Operational Integrity requirement to regulate the timing of applications to avoid its coordination duties under the AMRs. The charge regarding TF's Application is properly a matter of TF's Appeal which LSPH has dealt with in LSPH's TF Representations (see paragraphs 33 to 68 thereof), but insofar as anything TF asserts might relate to EIL's Appeal (as now argued by EIL):

(a) it is incorrect for TF to say that LSPH used Operational Integrity as any kind of gate, artificial or otherwise, to find or conclude that EIL had not made an application. As EIL did not make an actual application which warranted an Operational Integrity assessment until July 2026, such a claim is unnecessary – there was no Operational Integrity gateway for EIL to pass through (or rather, which EIL has failed to pass through on assessment; its Operational Integrity for the period 2029-2040 is currently being assessed); and

(b) each of TF and EIL try to establish that they have each had throughout the relevant period *"credible, well-advanced plans*" (TF, Consolidated EIL Appeal Responses page 54) which should have established their Operational Integrity sooner if not at the outset and that LSPH has failed to properly take account of those plans, prejudicing each of their applications.

29 To some degree, EIL goes further to suggest that its Operational Integrity status is self-evident, saying that the ongoing conversation with LSPH about Operational Integrity for the EIL 2029-2040 Application is unwarranted as EIL's 30-year track record speaks for itself in establishing its Operational Integrity. EIL sought to make a similar observation to LSPH on 3 August 2026 as part of their ongoing Operational Integrity discussions, asking LSPH why EIL's track record of operations did not establish its Operational Integrity credentials (Chronology, paragraph 13 of EIL's LSPH Representations). This is to miss the point.

30 The Operational Integrity assessment under paragraph 3.11(b) of the ORR C&Ps is an assessment of the precise proposition the applicant is putting to LSPH – LSPH also makes this point in paragraph 86 of LSPH's TF Representations. In the words of the ORR, the appropriate test is, has the applicant established that "[*it*] *intends and will be in a position to operate the services*" it has applied to operate? The answer cannot be self-evident; it must be established. A case must be made. The Operational Integrity process therefore is predicated on the extent and quality of information an applicant provides for the prospective period and the services that the applicant proposes to run in that period. What is more, it is incumbent on applicants to have the required information to hand – after all, the information comprising an Operational Integrity submission goes to the core of an operator's proposition and so if such information is not readily available, it suggests something short of Operational Integrity. Further, any suggestion that an incumbent is somehow exempt from the Operational Integrity process (i) would militate against the infrastructure manager duty in the AMRs to ensure efficient infrastructure use, and (ii) would be surprising not least because, were it otherwise, LSPH would be accused by other operators of conferring an incumbent advantage that results in the incumbent being treated more favourably than new entrant applicants.

31 But Operational Integrity does not have to be assessed for an application if the operational assurance pertaining to that application has already been demonstrated – the case has been made in those circumstances. A case in point is EIL's 2026-2029 Application, where EIL had already demonstrated that it would be in a position to operate the level and nature of services it wanted in that application. Consequently, LSPH did not invite EIL to demonstrate Operational Integrity in relation to EIL's 2026-2029 Application in late 2025. LSPH notes that EIL does not raise objections to LSPH's determination in that regard in late 2025. However, in the case of EIL's 2029-2040 Application, [redacted][1]

32 ET observes at (#5.A) of its consultation responses that:

[1] Redacted pursuant to section 71(2) of the Railways Act 1993 on the basis that its disclosure would or might seriously and prejudicially affect a person's or body's interests.

> "*ET shared with LSPH its documented observation that two new operators had demonstrated viable depot plans (TMI & MAPO respectively) for fleet maintenance at every point in time in 2026. ET noted that its factual observation was not affected by differences in national regulations nor timing of assessment, and accordingly ET could not support or replicate that LSPH assessment.*" (ET, Consolidated EIL Appeal Responses page 6)

LSPH accepts that ET previously shared this observation in June 2026 as part of the industry consultation on the FTAA, but, as it is entitled to do, LSPH disagreed with ET then and disagrees with it now. LSPH wrote to ET immediately after and said that, "*We would dispute the characterisation of* [*the above statement*] as "*fact*"". LSPH gave a brief account of the reasons why.

33 The two operators ET is referring to are Virgin (Temple Mills) and TF (Maisons-Alfort Pompadour or MAPO). As clearly established in paragraphs 39 to 45 of LSPH's TF Representations, TF's access to MAPO was not secured until sometime after the TF Second OI Submission was made in January 2026, and LSPH still had legitimate questions about TF's access to that site in June and July 2026 (paragraphs 50 to 54 of LSPH's TF Representations). LSPH does not therefore share ET's view that TF had demonstrated a viable depot plan for fleet maintenance in relation to MAPO "*at every point in time in 2026*", and since it is a matter of evaluative assessment whether an operator has demonstrated a viable depot plan, it could hardly be described as a purely factual observation. But as SNCF-R acknowledges (as referred to in paragraph 49(c)(ii) below), infrastructure managers can reasonably reach different conclusions according to different assessment criteria. The application of different assessment criteria and the reaching of different conclusions by different infrastructure managers according to their different regulatory frameworks does not mean inequitable treatment in (or as between) any of those frameworks.

34 It follows then that since in fact two operators had not established developed and viable depot solutions during LSPH's assessment of Operational Integrity in December 2025 and January 2026, ET's assessment in (#5.A) of its consultation response is not applicable, even if the Implementing Regulation was still law in the UK, which it is not. At (#5.B), ET states that (as per Article 42.2 of Directive 2012/34/EU and Article 5.3 of the Implementing Regulation) "*a coordinated process of framework capacity allocation between IMs would require that eligible new operators (for LSPH, two new entrants with viable depot solutions, see #5.A) and the incumbent are offered equitable capacity rights for the same periods at the same time.*" In ET's words, neither TF nor EIL were "*eligible*" at the relevant time to be offered capacity rights for the same periods concurrently. It would appear in reaching the conclusion that it does, that ET has applied the regulatory framework to which it is itself subject and then given its own assessment of Operational Integrity applying to that different framework (even though the operators in question only made Operational Integrity submissions to LSPH to evaluate in accordance with criteria and procedures that only apply to LSPH).

35 Unfounded as EIL's and TF's Operational Integrity arguments are, it appears that their only motivations for challenging LSPH's Operational Integrity process and decisions are in order to make unsubstantiated allegations of unequal treatment regarding LSPH's Operational Integrity assessment of their applications and how Virgin's Operational Integrity was established (see paragraphs 36 to 40 below).

The relative speed with which LSPH has been said to process the Virgin Application compared to other applications

36 EIL says that it has become "*concerned about the exceptional length of time being taken by LSPH to progress* [*EIL's 2029-2040 Application*]" after it was made on 21 July 2026 (EIL, Consolidated EIL Appeal Responses page 4). EIL adds that it has provided LSPH with substantial information in relation to its Operational Integrity qualification, but with no indication from LSPH as to when LSPH would complete its assessment. EIL concludes that its Operational Integrity "*cannot reasonably be in doubt*".

37 As noted in paragraph 35 above, LSPH's alleged procrastination is used by EIL to try and establish a point of differential treatment with LSPH's consideration of Virgin's Operational Integrity status, which is said to have been "*expeditiously*" processed. EIL contrasts Virgin's new entrant status (for example, its absence of a rolling stock order at the relevant time) with that of established operators to query how Virgin could have achieved Operational Integrity. This complaint is made despite the fact, as noted above, that as an established operator, EIL ought to be capable of readily demonstrating Operational Integrity. But EIL is not in a position to make this complaint where LSPH's previous Operational Integrity requests of EIL have been answered in a dilatory or inadequate manner as summarised below.

38 Despite being an established operator, EIL does not appear to appreciate that the assessment of an Operational Integrity submission is not a quantitative exercise but a qualitative one, and EIL has not, in LSPH's opinion, been able to readily provide adequate information to establish a developed and viable plan to operate the services that EIL has applied to operate from 2029. The time between EIL's application and the present is partly explained by LSPH having to make more than one request of EIL for further information, EIL then providing that information, and for LSPH to assess it – information which LSPH maintains EIL should have ready access to. Moreover, and more fundamentally, EIL initially informed LSPH after making its application, [redacted][2] The parties continue to proceed towards a point where EIL has provided the requisite operational assurance.

[2] Redacted pursuant to section 71(2) of the Railways Act 1993 on the basis that its disclosure would or might seriously and prejudicially affect a person's or body's interests.

39 In a similar context, TF makes the following comparative assessment that it "*strongly believes that VTE has benefited from more lenience and engagement than other train companies seeking FTAAs, resulting in TF's application failing to progress at the speed it should have*" (TF, Consolidated EIL Appeal Responses page 52). TF says there have been significant delays in LSPH's communications, but only points to one instance in the post-industry consultation as evidence of this alleged problem (TF, Consolidated EIL Appeal Responses pages 52 and 56). LSPH responded to TF's Appeal allegations of delay in paragraphs 58 to 61 of LSPH's TF Representations, including noting the impact of EIL's Appeal and TF's Appeal on LSPH's capacity to deal with day-to-day management issues. These are points properly made in relation to TF's Appeal, but they are mentioned in these comments because of the concurrency of TF's and EIL's fallacious arguments around perceived delay. Both are now drawing false comparisons between the December 2025/January 2026 Operational Integrity assessments and the assessments of their Operational Integrity submissions in the second half of 2026, whilst omitting their own failures to provide adequate and timely information in circumstances where they appreciated, or at least ought reasonably to have appreciated, that their appeals would inevitably divert LSPH's resources away from their applications.

40 For the record, Virgin's Operational Integrity submission in December 2025 was comprehensive and constituted a developed and viable plan that established that Virgin had the intent and capability to operate the services it planned to operate when it planned to operate them, despite Virgin not having signed a rolling stock order by that point. Once again, as it did in the industry consultation, LSPH notes the ORR's observation in Annex 1 of the Open Access Guidance that it is not a requirement of Operational Integrity for an operator to have signed rolling stock contracts at the point Operational Integrity is assessed.

LSPH's alleged inconsistent treatment as between applicants for the management of mobilisation risks

41 Both ET and SNCF-R offer support in relation to LSPH's inclusion of conditions precedent in the FTAA as a means of managing mobilisation risks:

(a) ET notes that the firm milestone for the "*confirmation of a fleet order within a short, defined timeframe* [*ensures*] *that market development cannot be blocked or delayed by capacity commitments to any stalled or delayed project, to the detriment of other prospective or existing operators*" (ET, Consolidated EIL Appeal Responses page 6); and

(b) SNCF-R notes that a positive aspect of the FTAA is the allowance for milestones and associated termination clauses to ensure framework capacity can be made available again if the Virgin mobilisation encounters delays down the line, noting further that those milestones can be changed with regulatory approval (observation 11 of SNCF-R industry consultation response of May 2026).

42 EIL has not made arguments in this area in its appeal or consultation responses. TF has taken the opportunity to repeat its allegations that Virgin has been afforded preferential treatment by the inclusion of the conditions precedent, where TF was not afforded the same opportunity, and that LSPH failed to explain why it had included them and what the deadlines associated with those conditions precedent are (TF, Consolidated EIL Appeal Responses page 54). TF offers nothing more than has been said in TF's Appeal and these are matters for that appeal, and LSPH has fully responded to them in paragraphs 81 to 92 of LSPH's TF Representations. To the extent there is anything further to be said, should TF submit a response to the representations made in relation to its appeal, LSPH will reply then.

LSPH's cooperation and coordination duties

Relevancy to EIL's Appeal

43 EIL's Appeal does not materially address LSPH's duty to cooperate with adjacent infrastructure managers in the way TF's Appeal does – EIL's R32 Form notice makes one reference to Regulation 20, but simply to observe that it is part of an infrastructure manager's duties. EIL's consultation responses add nothing further on this point. LSPH does not therefore consider this duty under the AMRs and whether LSPH followed it to be a material part of EIL's Appeal, but LSPH reserves its position should EIL subsequently choose to raise arguments in this context.

44 TF continues to advance allegations that LSPH failed to coordinate with adjacent infrastructure managers in its capacity allocation process regarding the Virgin Application and that doing so was a failure to efficiently create and allocate the capacity Virgin has been afforded on HS1, in contravention of Regulation 20. LSPH gave a comprehensive response to TF's arguments in this regard in paragraphs 27 to 30 and 69 to 76 of LSPH's TF Representations, specifically around the nature and extent of cooperation required and how LSPH has duly cooperated as Regulation 20 requires.

45 Despite not needing to address this subject further in the context of EIL's Appeal, infrastructure managers of adjacent networks, namely ET, SNCF-R and ProRail, have made representations which warrant some response in this submission.

Issues raised by other infrastructure managers in relation to cooperation and coordination

46 ET expresses appreciation for the extent of cooperation between infrastructure managers, comprising LSPH, SNCF-R, Infrabel and ProRail, in the establishment of cross-Channel high-speed passenger services (ET Consolidated EIL Appeal Responses page 6 and observation 24 of SNCF-R industry consultation of May 2026). LSPH alluded to those cooperation efforts in paragraphs 86 and 105 of LSPH's EIL Representations and paragraph 74 of LSPH's TF Representations.

47 Where ET and ProRail appear critical in the Consolidated EIL Appeal Responses of LSPH's process is in relation to LSPH's specific decision to apply for ORR approval of the FTAA unilaterally or without specific advance consultation with them. They say that that decision

raises the risk of misalignment on cross border capacity – ET adds LSPH's timetable validation exercise was limited to its own infrastructure and so did not use the coordinated cross Channel catalogue (the integrated, unified system to allocate, structure and validate trains paths) and that therefore this work was of questionable value.

48 First, ET acknowledges, as LSPH explains in paragraphs 27 to 30 of LSPH's TF Representations, that synchronous capacity allocation processes are not imposed on infrastructure managers of adjacent infrastructure and nor are they required to delay capacity allocation decisions to wait for the completion of processes by other infrastructure managers (ET, Consolidated EIL Appeal Responses page 6) (which would have the effect of delaying every other infrastructure manager pending completion of the equivalent processes by the last infrastructure manager). The ORR concurs. In the ORR Decision Letter it is noted in paragraph 17(f) that LSPH "*cannot reasonably be expected to delay its own capacity allocation decisions indefinitely pending the completion of allocation processes on other networks and facilities*".

49 Second, each of the relevant consultees themselves note some of the material differences in the regulatory frameworks that the relevant infrastructure managers are subject to, which LSPH explained in paragraphs 72 and 73 of LSPH's TF Representations:

(a) TF acknowledges (TF, Consolidated EIL Appeal Responses page 55):

(i) that SNCF-R's capacity allocation process typically only allocates capacity a year in advance, although it is currently conducting a framework agreement process (see paragraph 50 below); and

(ii) that as a point of difference with other infrastructure managers, ET refuses to enter into capacity negotiations until an operator has a firm order for rolling stock;

(b) ProRail acknowledges the significant national differences between the legal and regulatory requirements each of the relevant infrastructure managers face, meaning that requests for capacity are dealt with in different ways in different jurisdictions. ProRail goes further by underscoring the fact that decisions about capacity on an infrastructure manager's network are decisions for that infrastructure manager alone (ProRail Consolidated EIL Appeal Responses pages 49 and 50);

(c) SNCF-R, which pointed back to its previous industry consultation observations, acknowledges that:

(i) "*contractual practices are unique to LSPH within a different regulatory and contractual environment to the European framework under which SNCF-Reseau is accustomed to operating*" (observation 3 of SNCF-R industry consultation response of May 2026;

(ii) "*as LSPH and ET have long been aware, different infrastructure managers may take different approaches to assessing project maturity, especially due to potentially different assessment criteria, but also in the event of varying review timescales*" (observation 5 of SNCF-R industry consultation response of May 2026); and

(iii) in contrast to ET's position referred to in paragraph 49(a)(ii) above, a "*framework agreement can be concluded with an operator to assist them in firming up their project, even if they do not yet meet all prerequisites for operating the proposed new service at the time of signing*" (observation 4 of SNCF-R industry consultation response of May 2026); and

(d) Gemini laments these regulatory and timing differences, noting "*Operators seeking to introduce new services to the cross-Channel route apply to at least three Infrastructure Managers (IMs). The access application processes run by SNCF Reseau and Get Link/Eurotunnel started after the LSPH process was completed. Thus, the LSPH access application process has already delivered its first conclusion before the other IMs' processes are able to consider the implication of Virgin's and other applications for their own capacity. Gemini would question whether this is effective…*" (Gemini, Consolidated EIL Appeal Responses page 8).

50 In contrast to the capacity allocation processes that each of the other infrastructure managers have implemented, LSPH has operated a transparent, regulated framework agreement-based regime, subject to published criteria and procedures, for more than a decade. It is LSPH's understanding that ET is only now developing a form of equitable and non-discriminatory access agreement for industry consultation after many years of operating without such. LSPH further understands that SNCF-R has been separately conducting its framework agreement consultation in relation to the Paris and Fréthun Tunnel South Portal line by way of assessing all expressions of interest at the same time having adopted a framework agreement policy for the first time in 2023, while both Infrabel's and ProRail's network statements confirm that capacity on their respective networks will continue to be allocated annually and not by way of framework agreements – although LSPH also understands that both of their regulators are advocating for the adoption of a framework agreement approach and ProRail at least acknowledges the contribution that framework agreements can bring (ProRail, Consolidated EIL Appeal Responses pages 49 and 50). All of this is to say that, even as these developments will bring the contracting of capacity on the relevant adjacent infrastructure into closer alignment, there will still remain differences of regulatory, contracting and appraisal approach between the adjacent infrastructure managers, and it is nothing to the point in these appeals which have been made under the AMRs in relation to the UK to observe that different rules and principles govern the processes of other infrastructure managers in other jurisdictions. The only regulatory framework of relevance is the AMRs.

51 Regarding ProRail's observation that the capacity commitments LSPH has given in the FTAA cannot guarantee end-to-end international capacity, as neighbouring networks remain subject to separate regulatory frameworks and independent capacity allocation decisions (ProRail, Consolidated EIL Appeal responses page 47), LSPH accepts that. LSPH would make the following points however:

(a) under the Netherlands regulatory framework, ProRail does not enter into framework agreements, only allocating capacity on a timetable-by-timetable basis, so even if LSPH had taken a coordinated decision with ProRail in relation to Virgin's Application, Virgin would still be left with a mismatch in capacity commitments between the two pieces of infrastructure – whereas Virgin would have a decade of certainty of access rights to operate on HS1, it would still only have a timetable's worth of certainty to operate on the Dutch network and would have to reapply each and every subsequent year of that decade to maintain an alignment of access rights; and

(b) EIL has managed to navigate these various misalignments in regulatory frameworks and capacity allocation decisions for many years; Virgin and any other operator that is granted access on any of the relevant pieces of adjacent infrastructure will need to do the same. LSPH notes Gemini's observations here and has some sympathy, but the issue is a function of the existence and application of different regulatory frameworks, infrastructure manager administration, and regulatory oversight, not, as alleged by others, LSPH's specific decisions in this matter, or any failure on LSPH's part to properly coordinate with the other infrastructure managers, a duty which in any event, only extends so far.

52 In a similar vein, ET's contention around LSPH's timetable validation exercise mentioned in paragraph 47 above fails to recognise that LSPH's duty under the AMRs, at the point of determining whether to contract an application for access is to validate whether the proposed services are capable of operating on its own infrastructure reliably and that they would not preclude LSPH from carrying out its maintenance and renewal obligations. The right time to deploy the coordinated cross Channel catalogue comes when there are services to actually coordinate across adjacent pieces of infrastructure.

53 Regarding ProRail's further observation about a lack of information prior to the issue of Form P, LSPH would note that information sharing is the primary purpose of the industry consultation exercise which the issue of Form P initiates and ProRail was duly consulted. Further, LSPH understands that ProRail and Virgin have been in discussion about the prospect of Virgin operating services to Amsterdam from London since August 2023, including due diligence discussions as late as August 2025. LSPH also understands that ProRail confirmed its engagement with Virgin in relation to Temple Mills depot in July 2025 as part of the ORR's consultation exercise pursuant to section 17 of the Railways Act 1993. Indeed, it is LSPH's understanding that all relevant infrastructure managers have had extensive discussions with Virgin and other prospective operators about Virgin's ambitions for operating passenger

services on their and LSPH's infrastructure. When the Temple Mills decision was announced in October 2025, it could have been no surprise to any of the adjacent infrastructure managers that conversations about access to their infrastructure would start to crystallise fairly quickly thereafter.

The remedies sought by consultees for LSPH's alleged non-compliant processes and decisions

The growth of international rail services

54 LSPH remains strongly committed to growing international rail connectivity to London and modal shift, and it is strongly incentivised to ensure that the aspirations of *all* operators can be realised where possible. Over the past several years LSPH has proactively investigated and taken steps to facilitate competition in and expansion of the international system. Paragraphs 86 and 105 of LSPH's EIL Representations and paragraphs 74 and 110 of LSPH's TF Representations refer to LSPH's efforts in this area.

55 LSPH notes the DfT's positive statement that Virgin's entry into the cross-Channel passenger market "*represents a significant and positive development*". LSPH is also encouraged by the strong interest it is seeing in the market. However, despite this interest, many challenges remain to be overcome, including some of the structural weaknesses in the contractual framework which serve EIL's dominant market position, threatening the sustainability of cross-Channel highspeed passenger services competition. Now EIL's appeal threatens the introduction of that competition altogether.

The market within which cross-Channel services are currently provided

56 EIL's incumbency and its appeal should be analysed in the context of the international cross-Channel passenger services market within which EIL operates. That market and the role of services provided within it has been considered and defined by the UK Competition Commission, and by the European Commission ("**EU Commission**"), in the context of proposed acquisitions. In June 2013[3], the UK Competition Commission ("**UKCC**") considered the proposed acquisition by Groupe Eurotunnel S.A (which operated the Channel Tunnel rail services) of certain assets of former Sea France, which operated cross-Channel ferry services. The UKCC findings are at paragraphs 6.35 to 6.40. The relevant geographic market was the "*short sea*" (paragraph 6.36): the English Channel. As to products, the UKCC distinguished between passenger services and freight markets (paragraph 6.35) and concluded that there was a relevant passenger market in "*transport services to passengers on the short sea*". This is the market within which EIL operates.

57 EIL's role within that market was later considered by the EU Commission in 2015[4], when the EU Commission made a decision concerning the proposed change to sole control of EIL's

[3] Competition Commission Decision: June 2013

[4] SNCF Mobilités / Eurostar International Limited (2015), M.7449 Commission Decision

precursor, Eurostar (UK) Limited, by SNCF Mobilites, which operates rail passenger transport services. The relevant markets were considered in paragraphs 15 to 24, and the EU Commission concluded that they were (paragraph 24) those for international high-speed rail passenger transport between London and Paris, and between London and Brussels. Furthermore, the EU Commission then concluded (paragraph 28) that EIL has a strong position on those two markets, indicative of dominance. It can therefore be said that EIL is dominant in the market for transport services to passengers on the short sea. That dominance brings with it the long-established responsibility on dominant undertakings not to abuse their position of dominance through their behaviour in that market.

The structural weaknesses and evidence of EIL's efforts to maintain its dominance

58 The structural weaknesses referred to in paragraph 55 above include the following:

(a) the international rail system does not have vertical separation (or similar safeguards) between rail operators and key common services, meaning new entrants face relying on EIL to operate key services (such as EIL's role as Principal International Operator under the terms of the St Pancras International Station Access Conditions);

(b) some key facilities remain leased to EIL on exclusive, non-replicable, terms; and

(c) the HS1 concession agreement does not include a prescribed mechanism for investment in the stations on the HS1 infrastructure, any station enhancement – such as the StEP, which seeks to deliver capacity in time to meet operators' (including EIL's) declared aspirations for growth from 2029 onwards – consequently, StEP requires EIL's cooperation and agreement, and is the most pressing example of EIL's effective veto power.

59 [redacted]

[redacted][5]

60 EIL made significantly more industry consultation submissions than any other consultee, requiring LSPH to dedicate more time and resource than LSPH did to others' submissions to consider and reply to many of EIL's repetitious and unnecessary submissions. LSPH understands that the consultation was the longest access consultation ever conducted. EIL continued to repeat its objections to Virgin's Application after the consultation period for Virgin's Application ended, which required further LSPH consideration. LSPH acknowledges that EIL is entitled to exercise its appeal rights but it is clear that its appeal is without merit. Every organisation that wishes to see the expansion of international passenger services from London is incentivised to see St Pancras International expanded in time for the anticipated additional passenger numbers those services will bring. Except one. EIL recognises that StEP does not proceed without it and whatever access arrangements LSPH enters into with other operators, the expansion of international passenger services from London does not proceed without StEP. This pattern of behaviour would suggest that EIL has taken and may continue to take every opportunity to delay, add cost, and risk to the entry of another operator into the market in which it is dominant.

61 LSPH supports all operators' growth aspirations. Accordingly, allowing EIL's Appeal would, as noted in paragraph 107 of the LSPH's EIL Representations, be contrary to the objective of the AMRs to promote competition in international high-speed passenger services, since the effect of resetting the Virgin Application process would allow EIL to continue to be dominant in this market, unless and until LSPH can enter into a framework track access agreement with another operator that no longer faces such legal challenges.

[5] Redacted pursuant to section 71(2) of the Railways Act 1993 on the basis that its disclosure would or might seriously and prejudicially affect a person's or body's interests.

southeastern

[redacted]
Track Access & HS1 Contracts Manager
SE Trains Limited (**SOUTHEASTERN**)

Martin Jones
Deputy Director, Access & International
Office of Rail and Road

15th October 2026

SE Trains Limited (Southeastern) position with regards to DfT response to Eurostar International Limited's (EIL) Appeal relating to VTE Holdings Limited's Framework Track Access Agreement (FTAA)

Dear Martin,

Southeastern welcome the opportunity to provide its views regarding the DfT's response to EIL's appeal against the approval of the VTE Holdings Limited's FTAA.

Southeastern strategically supports the introduction of additional international services on HS1 and recognises the wider benefits that increased international connectivity and competition can bring.

However, Southeastern considers that the allocation of long-term access rights should be accompanied by appropriate safeguards to ensure that rights granted are capable of, and are genuinely intended to be, exercised within a reasonable timeframe.

Southeastern is concerned about the potential consequences of access rights being secured but subsequently not operated, or remaining unused for a prolonged period. This could have financial implications for existing operators where costs that were anticipated to be shared across a wider system are instead borne by a smaller number of services.

Southeastern therefore considers that, when determining the appropriate approach to access rights, consideration should be given to milestones, longstop dates and mechanisms for the release or relinquishment of unused rights. This would provide confidence that HS1 capacity is being allocated to credible services with a realistic prospect of operation, while protecting existing operators from unintended financial consequences.

Yours sincerely,

[redacted]

[redacted], **Track Access & HS1 Contracts Manager**

cc [redacted], Safety, Planning & Performance Director, South Eastern Railway

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BY EMAIL ONLY

16 October 2026

Dear Martin

Response to Consultation: Appeal by Eurostar International Limited under Regulation 32 of the Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016 concerning access to the HS1 network (the "Appeal")

I write on behalf of VTE OpCo Limited ("**VTE**") in response to your letter dated 8 October 2026, in which the ORR shared and attached the response submitted on behalf of the Secretary of State for Transport by the Department for Transport dated October 2026 (the "**DfT Response**"). ORR had invited comments from interested parties pursuant to Regulation 32(7) of the Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016 in connection with the Appeal.

VTE is grateful to the ORR for the opportunity to comment, and for the clear and transparent process the ORR has followed in conducting the Appeal. VTE recognises the ORR's independent role as the regulator in considering access applications and determining the Appeal and confirms that the comments set out in this letter are offered to assist the ORR in that process and are based on the information available to VTE.

1. VTE welcomes the DfT Response and is grateful to the Department for Transport for setting out its views. VTE particularly welcomes the Department's recognition that the entry of VTE into the cross-Channel passenger market represents a significant and positive development, and its support for growth, competition and investment in international rail services. VTE shares those objectives and considers that its entry directly advances them.
2. VTE wishes to offer one point of clarification. The allocation of capacity by London St Pancras Highspeed ("**LSPH**") is not merely a commercial process. It is a regulatory process, conducted on fair, transparent and non-discriminatory terms for access to the network, in accordance with the applicable regulatory framework governing access to the HS1 infrastructure. In particular, on 6 November 2025, LSPH invited all prospective operators wishing to commence negotiations for a framework track access agreement to demonstrate their operational integrity, a key hurdle to giving confidence that

valuable rail capacity can be reserved. VTE passed this threshold by demonstrating that its plans were assessed as being credible and deliverable.

3. On the basis of all the information available to VTE, and consistent with that framework, LSPH ran a completely open and transparent allocation process that afforded the incumbent and all the aspirant operators the opportunity to participate. The process was conducted on equal terms and was accessible to all operators with an interest in securing capacity, whether incumbent or new entrant. VTE has seen no evidence to suggest otherwise.

4. The consultation process that LSPH undertook demonstrates this. Operators, including both the incumbent and credible new entrants, were given the opportunity to engage with and participate in the process by which this capacity was allocated. Based on the information available to VTE, nothing it has seen suggests that any operator was prevented from participating in that process. VTE respectfully invites the ORR to have regard to this in its consideration of the Appeal and the DfT Response.

5. VTE's entry into the cross-Channel market will offer passengers genuine competition and will support the growth and investment that both the Government and the ORR are seeking to encourage. The introduction of a new operator alongside the incumbent is precisely the kind of development that a fair and open allocation process is intended to enable.

6. VTE has demonstrated credible, tangible plans to deliver these services. VTE looks forward to implementing those plans and to offering passengers real choice on cross-Channel routes.

VTE would be pleased to provide any further information the ORR may find helpful in determining the Appeal and thanks the ORR again for the opportunity to respond.

This response is submitted on the basis that it may be published on ORR's website. VTE does not consider any part of this response to be redacted or withheld from publication.

Yours sincerely



Philip Whittingham
For and on behalf of VTE OpCo Limited