

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

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October 2026

Department for Transport (on behalf of the Secretary of State for Transport) summary position with regards to the appeal relating to VTE Holdings Limited's Framework Track Access Agreement with HS1 Ltd

The Department for Transport welcomes the opportunity to provide its views regarding Eurostar International Limited's appeal against the approval of the VTE Holdings Limited's (VTE) Framework Track Access Agreement (FTAA) with HS1 Ltd (London St. Pancras Highspeed "LSPH"). The Government remains committed to supporting the growth of international rail services including between the UK and continental Europe. We consider it important that wider growth aspirations are reflected in long-term capacity planning arrangements. In that context, the entry of VTE into the cross-Channel passenger market represents a significant and positive development.

However, 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. The Department is conscious that this could potentially constrain growth and therefore we wish to be assured that potential new operators and the incumbent have an opportunity to participate in the process for future additional capacity allocation to meet their ambitions. Such an outcome would align with the Government's ambition to support growth, encourage investment and maximise the benefits that international rail can bring to passengers and the wider economy.

We recognise and support the ORR's independent role in considering access applications and determining appeals. We do not have any specific comments as to the impact of the decision under appeal to a rail link facility and are therefore not seeking to comment on the merits of the appeal itself. Rather, we would encourage consideration of how the allocation of scarce capacity can best support a competitive market, facilitate investment by multiple operators and maximise opportunities for future growth in international rail services.

Gareth Williams
General Secretary

FAO Martin Jones
Deputy Director, Strategy, Policy & Reform
Office of Rail and Road
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London, 2nd October 2026

Dear Office of Rail and Road,

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

We refer to your letter dated 2 September 2026.

Eurostar International Limited (“**EIL**”) welcomes Office of Rail and Road’s (“**ORR**”) formal engagement with EIL’s appeal under regulation 32 of the Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016 (the “**2016 Regulations**”) (the “**EIL Appeal**”).

This is EIL’s response to ORR’s request in your letter of 2 September for representations and supporting evidence by no later than 2 October 2026 and supplements the content of the EIL Appeal as submitted on 14 August 2026 (which is repeated in full).

The scope of the EIL Appeal

ORR has described the scope of the EIL Appeal as concerning:

“the process followed by HS1 Limited (London St. Pancras Highspeed, “LSPH”) in relation to the allocation of infrastructure capacity on the HS1 network.”

EIL agrees that ORR’s description accurately reflects the subject matter of the EIL Appeal. Moreover, as the process is required to be transparent, fair and non-discriminatory, EIL considers that proper examination of that process in the context of EIL’s access requests cannot be undertaken without also examination by the ORR of the processes applied to others.

Trenitalia France’s appeal

EIL also notes that ORR has accepted for consideration a separate appeal brought by Trenitalia France (“**TF**”) (the “**TF Appeal**”) and that the TF Appeal raises some similar issues as the EIL Appeal, including (without limitation or exclusion) concerns about LSPH’s process for considering requests and aspirations for HS1 network capacity in the context of the VTE FTAA and the treatment of competing access requirements.

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We note ORR's indication that given the significant connection between the EIL Appeal and TF Appeal that ORR intends to coordinate the procedures if and where appropriate. EIL is supportive of this in principle pending further details. As stated above, since the LSPH process for allocation is supposed to be transparent, fair and non-discriminatory for all, EIL submits in fact that ORR must necessarily to an extent look at the processes as they applied to different parties together and comparatively.

EIL will provide to ORR such representations and evidence as it considers appropriate in connection with the TF Appeal in accordance with the process ORR has set out in its letter dated 30 September 2026. Until then, Eurostar fully reserves its rights and position in relation to the TF Appeal at this stage.

LSPH's timescales in relation to EIL's access request

EIL applied to LSPH for additional track access rights for the operation of high-speed, international passenger services on the HS1 network on 21 July 2026 (the "**EIL Access Application**") having long before previously made clear its growth aspirations to LSPH directly and to the wider market.

Since then and the EIL Appeal, EIL has become concerned about the exceptional length of time being taken by LSPH to progress the EIL Access Application. EIL has provided substantial information to LSPH in connection with the EIL Access Application but has had no indication from LSPH as to the timing of LSPH's assessment.

EIL is concerned that LSPH is using its operational integrity test in a discriminatory, unfair and non-transparent fashion.

The information that EIL has provided to LSPH specifically in the context of the EIL Access Application more than demonstrates EIL's operational integrity. In addition to the substantial evidence now provided to LSPH, EIL has more than thirty years' experience in fact operating international passenger rail services (including as an operator on the HS1 network since it came into operation), has an existing fleet, skilled workforce and multi-national organisation base and has already entered binding commitments to the procurement of new rolling stock. EIL's operational integrity cannot reasonably be in doubt.

EIL notes that TF has raised similar concerns in the TF Appeal and that TF similarly appears to have substantial operational experience and resource, an existing fleet and firm rolling stock procurement arrangements.

In contrast, LSPH progressed VTE's application expeditiously notwithstanding that VTE is a newly created legal entity, has no track record of operational international (or any) passenger services and does not own trains (it has not announced a firm rolling stock order). It has not demonstrated and does not have the operational capabilities possessed by established operators but appears to have satisfied LSPH's operational integrity requirements whereas neither EIL nor TF appear to have done so.

In those circumstances, the manner in which operational integrity considerations have been applied by LSPH and the extent to which they have affected the timing and progression of competing applications, are matters that EIL considers fall squarely within the process issues that are the subject of the EIL Appeal and warrant careful scrutiny by ORR.

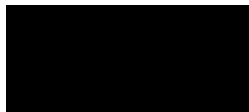
Next Steps

EIL looks forward to assisting ORR further during the EIL Appeal.

In addition to the concerns about the compliance of LSPH's processes more generally, the emergence of now multiple regulation 32 appeals concerning closely connected aspects of the same allocation process may itself indicate the need for comprehensive reconsideration of LSPH's responsibility and capability to undertake compliant allocation processes between competing requests in this context. As stated in the EIL Appeal, EIL submits that ORR should additionally consider whether it would be in the best interests of railway users and the international rail services market for ORR itself to intervene and undertake the process.

EIL reserves all its rights.

Yours faithfully,



Gareth Williams

General Secretary

ORR Consultation on Reg.32 Appeals on LSPH FTAA & Form P

Eurotunnel Response 02.10.2026

Eurotunnel are grateful for ORR's letters of 02.09 and 30.09.2026 requesting representations and relevant information regarding the LSPH process for allocation of Framework Agreements for cross-border capacity on the HS1 network.

Eurotunnel recently contributed to LSPH's consultation on its proposed Form.P and FTAA for VTE, with our consultation responses submitted on 27.05 and 25.06.2026.

Eurotunnel hereby wishes to reiterate both its praise and reserves expressed in response to LSPH's consultation, which can be outlined and updated as follows:

1. Excellent growth dynamics & cooperation on the cross-Channel high speed market

- **(#1)** ET & LSPH share a positive assessment on market progress and growth perspectives.
- **(#2)** ET maintains its high appreciation for the constructive spirit of cooperation & coordination between IMs in general development topics.
- In particular, the coordinated capacity development process between cross-Channel IMs (ET, SNCF Réseau, LSPH, Infrabel) conducted in cooperation since Sep-2023 is expected to conclude in Oct-2026 with the confirmation of a 5th coordinated hourly cross-Channel path introduced from the 2029 timetable, perfectly timed to support the planned development of new operators, new fleet and new routes on the cross-Channel high speed market.
- **(#3)** ET supports Virgin's progress at pace towards cross-Channel market entry, and welcomes LSPH's progress towards offering framework agreements to operators.
- **(#4)** ET supports LSPH's introduction in its FTAA's of a firm milestone for confirmation of a fleet order within a short, defined timeframe, so as to ensure 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 would equally support greater clarity & transparency on the duration of the short, defined timeframe, as this information is of material significance for other market actors.

2. ET expressed reserves on specific issues & decisions described in LSPH's Form.P

- **(#5) prior IM Coordination on Framework Agreements:** ET noted that the two decisions announced by LSPH on 24.04.2026 and presented in Form P (Operational Integrity decision & Framework capacity allocation) were not coordinated with ET and other IMs prior to their announcement, and could therefore not be supported nor replicated.
- ET observes that prior IM coordination on framework agreements (EU Dir.2012/34.art.40.1) does not impose synchronised processes nor delayed allocation decisions to wait for completion of other IM processes, but rather to exchange on respective assessments and approaches, to research coherence and identify potential issues and risk of misalignment in future decisions impacting cross-border capacity. Regulations clarify that such IM cooperation is required even where some IMs do not propose framework agreements (EU Reg.2016/545.art.12.3), and therefore also when other IMs do intend to propose them.
- However, ET notes that regular IM coordination exchanges on framework agreements on the Paris-London route are back in place since Aug-26, establishing positive coordination.
- **(#5.A) Operational Integrity:** LSPH's decision on 24.04.2026 to accept one sole operator was not coordinated nor agreed with ET & other IMs. 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.

- However ET understands that LSPH have since confirmed Operational Integrity for a 2nd new operator (on 13.08.2026, ORR email 30.09). ET welcomes LSPH's progress in this decision, which resolves that difference of assessment, thus improving alignment between IMs.
- **(#5.B) Simultaneous treatment of concurrent requests:** ET noted that in order to satisfy its IM duties of equal treatment (EU Dir.2012/34.art.42.2 & EU Reg.2016/545/art.5.3), 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. Accordingly ET would not be capable of replicating the LSPH decision of 24.04.2026 offering available capacity to one operator exclusively.
- ET will continue its efforts to satisfy capacity requests from all operators, to develop system capacity in coordination with all IMs, and to coordinate capacity allocation with all IMs on the basis of equal treatment & equitable access rights for all operators. ET is keen to achieve strong coordination with LSPH and other IMs, and notes that LSPH's efforts towards offering FTAA's to other eligible operators should lead to reinforced alignment between IMs.
- **(#5.C) St.Pancras Expansion confirmation:** ET stresses the urgency of confirming & launching St.Pancras international terminal capacity expansion works in 2026, in order to ensure that capacity increases are delivered in time for market entry in 2029-2030 and further fleet expansion from 2031. ET reiterates its keenness to assist LSPH and other market actors achieve this key enabler in line with traffic development commitments.
- ET notes that this confirmation will also allow full alignment between LSPH and other IMs, both in our coordinated capacity development process across the cross-Channel high speed system, and in our coordination on framework capacity allocation processes.
- **(#6) Verification of Adequacy:** ET noted that the LSPH Form P description of international operator timetable validation was performed in isolation from the applicable coordinated cross-Channel framework. ET reminded that cross-border capacity coordination, including assessment of long-term requests for capacity, necessarily relied on the coordinated cross-Channel capacity catalogue, in line with national & European regulations on allocation of framework capacity. Applicable regulations on capacity allocation on both sides of the Channel require that:
 - for Framework Agreements, quantitative capacity rights beyond the annual timetable period should be verified on a quantitative basis against available framework capacity;
 - detailed timetable validations down to specific path timings for individual operators (such as described in LSPH's Form.P) should only be conducted as part of the Annual Timetable process for capacity allocation (ie. annual rights in Track Access Agreements)

For completeness, as part of our coordinated capacity development process for the London-Paris-Brussels high speed network, ET, LSPH, SNCF Réseau and Infrabel have already cooperated extensively on detailed timetable validations down to specific path timings (without attribution to individual operators), leading to the coordinated cross-Channel capacity catalogue. ET reiterates that this coordinated cross-Channel framework constitutes the relevant basis for verification of adequacy of cross-border capacity rights allocated through framework agreements by each IM, rather than bespoke timetable studies for each operator. The simplification offered by the coordinated cross-Channel path catalogue is beneficial to all operators (transparency and predictability) and to all IMs (optimisation of capacity utilisation and efficiency of allocation processes). This simplified approach could also help LSPH improve clarity and acceptance by operators.

Eurotunnel looks forward to pursuing its positive cooperation with LSPH and other IMs on market development initiatives and capacity coordination processes.

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2 October 2026

Dear Martin,

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

Thank you for your letter to all parties dated 2 September.

Gemini's interest is to ensure that the process for allocating infrastructure capacity through Track Access Agreements remains fair and open to competition, both currently and in the future. Gemini was invited by London St Pancras Highspeed to submit an assessment of operational readiness for a Framework Track Access agreement. We made the submission and, based upon LSPH's assessment, we were not taken forward for an Agreement. We understand the reasons for this, which LSPH have fed back to us. Thus far, the process followed by LSPH in respect of Gemini appears reasonable.

The Appeal before the ORR concerns LSPH's treatment of Eurostar. As Gemini was not party to the exchanges between LSPH and Eurostar our comments are reserved to wider principles.

Coordination and collaboration between infrastructure managers

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 Réseau 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, and whether it is line with applicable regulations. Outside the UK, Article 40 of the EU Directive¹ is relevant in that it obliges IMs to collaborate. We request that ORR satisfies itself that this obligation to 'collaborate' has been met; the dislocation of timing between these processes suggests that it has not.

¹ Directive 2012/34/EU

If IMs have not collaborated, the risk is that all capacity is allocated to the first competing operator to receive access to any single stretch of infrastructure. This is a different risk from that faced by Eurostar, who may wish to reserve additional capacity for its own growth. Gemini wishes to see capacity preserved for its future operations, which will genuinely grow the market by serving new destinations and markets not served by Eurostar.

Residual capacity

The LSPH Form P suggests that VTE is awarded residual capacity, with St Pancras being a particular bottleneck. This raises the following points from Gemini:

- Gemini requires limited use of St Pancras, with services starting and ending at Stratford International, and St Pancras being used for turnaround (and replenishment where necessary). Has the ORR taken this into account in its judgement that St Pancras is the capacity constraint for services being allocated on High Speed 1? Regardless of the forthcoming capacity works at St Pancras (which we are concerned will have limited impact on the station's ability to handle disrupted services), once Gemini achieves operational readiness, we believe that this capacity constraint does not bite.
- The same EU Directive states at Article 42 that an IM shouldn't preclude use of its infrastructure by other applicants or services, which the award of residual capacity seems to be doing. The logic must be that LSPH has started its works at St Pancras (such that the capacity constraint is no longer an issue) or, is otherwise behaving outside of its obligations according to the Directive. Can the ORR confirm which of these two positions is correct?

Summary

In summary, Gemini would ask the following of ORR in this review:

1. Does the framework track access process followed in the UK mean that "first come, first served" applies to spare international capacity on the HS1 route?
2. What allowance needs to be made for future competition? On passing operational readiness with IMs in the UK and EU, we are keen to ensure that framework agreements would be awarded, without concerns that capacity has been incorrectly specified, or all residual capacity passed to another operator.
3. How are the interests of the incumbent operator balanced with the interests of different future operators, ensuring that the infrastructure is used effectively to deliver economic growth and societal and customer benefit?

Gemini remains committed to a service pattern that will make international rail travel more accessible to more customers by serving intermediate stations and new markets, specifically Stratford International, Ebbsfleet International and stations in Germany. We require a small amount of capacity to offer these services, but its availability is essential.

Please do not hesitate to contact me if you'd like to discuss this further.

Kind regards



Adrian Quine
Chief Executive Officer
Gemini Trains



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

**REPRESENTATIONS BY HS1 LIMITED
TRADING AS LONDON ST PANCRAS
HIGHSPEED**

- 1 The following submissions are made by HS1 Limited trading as London St Pancras Highspeed (“**LSPH**”) in response to a Form R32 application notice made to the ORR by Eurostar International Limited (“**EIL**”) dated 14 August 2026 under Regulation 32 of the Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016 (the “**AMRs**”) (“**EIL’s Appeal**”). References in these representations to any Regulations or Parts are to Regulations and Parts in the AMRs and references to any paragraphs are to paragraphs in these representations unless otherwise stated.
- 2 By its letter dated 2 September 2026, the ORR has accepted EIL’s Appeal for consideration and determination under the statutory framework set out in Regulation 32, and in the context of the ORR’s ‘Criteria and Procedures for the approval of framework agreements on the HS1 network’ (5 March 2024) (the “**ORR C&Ps**”).
- 3 The ORR has framed the scope of EIL’s Appeal as concerning “the process followed by [LSPH] in relation to the allocation of infrastructure capacity on the HS1 network” to VTE OpCo Limited (“**Virgin**”), and has invited representations from LSPH as respondent, EIL as applicant and a wider group of other parties whom the ORR has identified as relevant. The ORR has asked that those *“representations should address:*
 - *the issues raised by [EIL’s Appeal];*
 - *any relevant factual background;*
 - *the process followed and decisions made by LSPH in relation to the matters under appeal;*

- *any effect on existing or prospective access rights, capacity allocation or operation of the HS1 network; and*
- *any other matters considered relevant to the ORR's determination."*

4 LSPH replied to the ORR by letter dated 8 September 2026 to confirm that it will engage with the above process, based on the scope of the appeal as set out in the ORR's 2 September 2026 letter, and submit its representations by 2 October 2026. In these representations LSPH responds only to the substantive grounds specifically advanced in EIL's Appeal, but in doing so, draws on some of the exchanges between LSPH and EIL in the Virgin framework track access agreement (the "**FTAA**") consultation as those exchanges still go to certain of EIL's substantive grounds and LSPH's responses thereto.

5 LSPH's representations are split into the five sections identified in paragraph 3 above, headed A to E below. Under those headings, LSPH addresses the following matters:

- (A) the issues raised by EIL's Appeal and the principal grounds of challenge advanced under Regulation 32;
- (B) the relevant factual background and chronology, including EIL's earlier and later applications, Virgin's application, and the matters said by EIL to give rise to concurrency between them;
- (C) the process followed and decisions made by LSPH and the reasons why LSPH's approach was lawful, fair, non-discriminatory and transparent, including:
 - (i) an account of the relevant regulatory and contractual framework, comprising the AMRs, the ORR C&Ps, the published HS1 access process documents and relevant framework agreement terms;
 - (ii) the proper interpretation of the aspects of the ORR C&Ps referenced in EIL's Appeal, including paragraphs 3.11(c) and 3.12 thereof; and
 - (iii) why there was no unlawful reservation of capacity and no obligation to restart the process when EIL later made its own application for access;
- (D) the effect on existing or prospective access rights, capacity allocation or operation of the HS1 network, including the relief sought by EIL, and why it should be refused; and
- (E) other matters relevant to the ORR's determination.

6 EIL's appeal is founded on the wrong premise. By way of summary, LSPH's representations are straightforward:

- (a) at the time that LSPH was processing Virgin's application, EIL had not made a competing application for the same capacity in the same period. EIL's earlier application was narrower and ended before the relevant period; its later application came only after Virgin's application had progressed through assessment, consultation and submission to the ORR;
- (b) in those circumstances, there was no conflict requiring coordination, no unlawful reservation of capacity, and no discriminatory or non-transparent treatment;
- (c) LSPH applied the capacity allocation process prescribed by the AMRs in a lawful, fair and practical way, recognising the obvious procedural significance of a prior live application that had already reached Form P stage;
- (d) operators were afforded equal opportunity to apply for capacity both before and during the period over which the Virgin application was being considered; and
- (e) EIL's proposed remedies would require an unjustified reset of an advanced process, disrupt the orderly allocation of capacity, and create uncertainty harmful to competition and investment.

For those reasons, and in all the circumstances, EIL's appeal should be dismissed.

(A) THE ISSUES RAISED BY EIL'S APPEAL

7 Many of EIL's criticisms (see paragraph 10 below) substantially reprise points it made during the Virgin FTAA application and consultation process. LSPH considered and responded to those points in detail at the time, but for ease of reference and for completeness LSPH re-states or refers to aspects of the relevant consultation responses within these representations which are repeated in EIL's Appeal. While EIL's Appeal seeks to re-cast these criticisms in the language of the AMRs, much of the substance has already been ventilated and answered in the consultation record. LSPH respectfully refers the ORR to LSPH's previous consultation responses in full, should any further detail be necessary.

8 As LSPH understands it, EIL's Appeal challenges what it describes as a decision by LSPH to treat the services and rights sought by Virgin as though they were already "*existing services*", "*existing firm rights*", "*another access contract*" or otherwise unavailable to others, when considering EIL's own access application, notwithstanding that ORR approval of the Virgin FTAA had not yet been granted

and no executed FTAA was yet in force (what EIL calls the “**HS1 Decision**”). In other words, that the HS1 Decision wrongly reserved the capacity allocated to Virgin in a contested access application situation, affording Virgin “*discriminatory special status*” contrary to the AMRs.

9 As an applicant (as defined in the AMRs) EIL states in its appeal that it considers it has been “*unfairly treated, discriminated against or is in any other way aggrieved*” under Regulation 32(1), particularly by LSPH’s “*allocation process for infrastructure capacity and its result*” under Regulation 32(2), being LSPH’s allocation of capacity to Virgin and not EIL, and within that process, the HS1 Decision. EIL’s Appeal is thus premised on the contention that it had a competing application for capacity at the time of the HS1 Decision (albeit that the Form R32 application notice does not identify when the supposed HS1 Decision was taken). LSPH suggests that it is only if EIL had a competing application for capacity that there is any possibility that LSPH may have treated Virgin’s application more favourably than EIL’s.

10 EIL’s primary contentions appear to be:

- (a) that LSPH failed to take account of EIL’s and other operators’ future capacity plans and aspirations and that those plans and aspirations were competing with Virgin’s capacity plans;
- (b) that, as there was competition for access, LSPH was faced with a contested capacity situation and therefore should have considered those plans and aspirations, including EIL’s, together with Virgin’s;
- (c) that, instead, the HS1 Decision wrongly elevated Virgin’s application above those competing applications or aspirations, resulting in LSPH unlawfully reserving the capacity being sought by Virgin;
- (d) that LSPH operated a non-transparent process, lacking a proper basis for assessing competing demands; and
- (e) that LSPH’s approach in reaching the HS1 Decision was unfair, discriminatory and contrary to the AMRs.

11 In summary, LSPH says EIL’s Appeal should be dismissed for the following principal reasons:

- (a) First, there was no unlawful discrimination. Existing and prospective operators were free to apply for access to HS1, and LSPH considered the applications it received in accordance with its regulatory duties and the criteria and procedures that it said it would follow. All operators were afforded equal procedural opportunity. The treatment of different operators

over time reflected differences in timing of their respective capacity applications, evidence, and the stage each operator had reached in the process, not discrimination.

- (b) Second, in the relevant period that LSPH was considering Virgin's application, EIL did not submit an access application which represented a contestable application for access. The capacity aspirations that EIL claims were expressed in that relevant period and which might have been contestable were not expressed directly to LSPH in a way that LSPH could have considered them sufficiently firm for the period that is the subject of EIL's Appeal. LSPH was not therefore required to have considered those aspirations as an application for capacity which competed with – such that it should have been considered alongside – Virgin's application. The access application that EIL did make in the relevant period did not compete with the capacity Virgin was seeking, either temporally or in terms of the access sought.
- (c) Third, there was no improper reservation of capacity. LSPH did not treat Virgin's draft FTAA as legally binding, or as being entered into before ORR approval. Once Virgin had made a live application and LSPH and Virgin had resolved to seek ORR approval, LSPH was plainly entitled and required as a practical matter to treat that application as a real and material claim on capacity, pending the ORR's determination.
- (d) Fourth, LSPH treated Virgin's application properly within a live access allocation process. LSPH was not required or able to defer that prior, advanced application in order to consider publicly expressed, non-specific aspirations of another operator or a competing application made much later. The AMRs do not require an infrastructure manager to defer or restart a live process whenever another operator seeks to crystallise a much later competing interest and doing so could be unfair and discriminatory to the earlier applicant.
- (e) Fifth, the relief sought is misconceived and disproportionate, would delay the introduction of competition for international cross-Channel passenger services and could introduce uncertainty which has a chilling effect on the market and available financing for such services. There is no basis for the ORR to direct, as a general proposition, that a live Form P application should be discounted by an infrastructure manager before ORR approval and execution. Nor is there any basis for a wholesale reset of the process, still less for the ORR to substitute itself for the infrastructure manager in the way that EIL seeks to propose.

12 EIL submitted the application that is the subject of its appeal on 21 July 2026 (the “**EIL 2029-2040 Application**”). The EIL 2029-2040 Application was for capacity from August 2029 to December 2040, this being broadly similar to the period for which Virgin applied in June 2025. EIL’s Appeal refers to that comparable period as the “**Relevant Framework Period**”. We adopt this term in these representations. EIL’s Appeal places reliance on the EIL 2029-2040 Application for the Relevant Framework Period, but LSPH’s case is that the timing and scope of that application matters, given the prior status of Virgin’s application (the “**Virgin 2030-2040 Application**”) and the more limited nature of EIL’s earlier application. Specifically, in October 2025, EIL made an application for a period which ended before the Relevant Framework Period began and for a level of access which did not compete with the contemporaneous Virgin 2030-2040 Application (the “**EIL 2026-2029 Application**”). This distinction matters because the coordination duty, which EIL says LSPH should have invoked, arises only if there are competing requests for infrastructure capacity in the same period to coordinate. LSPH contends that that duty was not engaged because (i) the EIL 2026-2029 Application did not conflict with the Virgin 2030-2040 Application for infrastructure capacity and (ii) the EIL 2029-2040 Application was too late to establish a conflict of infrastructure capacity during the application process for the Virgin 2030-2040 Application.

(B) ANY RELEVANT FACTUAL BACKGROUND

13 The factual background is important. We have therefore set out a key dates and events chronology below:

Date	Event / Step
12 June 2025	Virgin submits application to LSPH for access on HS1, including an indicative timetable.
22 October 2025	Eurostar Group publicly announced a rolling stock order.
30 October 2025	The ORR issued its decision on Temple Mills depot capacity.
30 October 2025	EIL made a formal access request to LSPH, by marked-up FTAA, limited in scope and with the end date in 2029 (the EIL 2026-2029 Application).
3 November 2025	Virgin requested an operational integrity assessment following the Temple Mills decision.
6 November 2025	Following Virgin’s request for an operational integrity assessment, LSPH invited prospective operators (which had

Date	Event / Step
	not demonstrated operational integrity previously) to submit evidence to demonstrate operational integrity. EIL was not invited to participate because the EIL 2026-2029 Application did not need operational integrity to be demonstrated as the capacity sought was below the capacity EIL had previously demonstrated operational integrity for.
25 November 2025	LSPH and EIL jointly submitted a Form P to the ORR in relation to EIL's requested access (the EIL 2026-2029 Application).
12 December 2025	LSPH requested further operational-integrity information from certain operators following review of their initial submissions.
17 December 2025	Further to a request from one operator, LSPH informed prospective operators of an extension of time to 9 January 2026 for further operational integrity submissions.
9 January 2026	Deadline for further operational-integrity submissions. Virgin, Trenitalia France, Gemini and Evolyn made operational integrity submissions.
9 January 2026 to 27 January 2026	LSPH convened an Operational Integrity Panel (OIP), a group of suitably qualified internal experts, to consider each operational integrity submission. OIP reviewed each submission and its recommendations were approved by LSPH Executive Leadership Team.
27 January 2026	LSPH communicated to each operator that participated in the operational integrity assessment exercise, the outcome of its operational-integrity assessment. Only Virgin was assessed to achieve operational integrity as a result of this process. LSPH began its timetable and performance validation assessment of the Virgin 2030-2040 Application.
6 February 2026	The ORR approved the EIL FTAA following the 25 November 2025 Form P submission (the EIL 2026-2029 Application).
17 February 2026	EIL and LSPH entered into the current FTAA which extended EIL's existing operations, as well as included additional contingent Amsterdam rights.
24 April 2026	LSPH and Virgin submitted Form P and draft Virgin FTAA to the ORR and published the redacted versions on its website and informed other operators thereof.

Date	Event / Step
24 April 2026 to 27 May 2026	Industry consultation period on the Virgin FTAA commenced, with documents sent to consultees and published.
27 May 2026	EIL's consultation submission registered numerous objections as well as indicating that it would be making a new access application.
19 June 2026	LSPH and Virgin issued initial responses to all consultation submissions, inviting further comment from consultees within seven days. In responding to EIL's consultation submissions, LSPH stated, among other things, that if EIL made a new application, the Virgin FTAA would be considered as "<i>another access contract</i>" for paragraph 3.11(c) purposes and therefore EIL's application would be treated as subsequent to the Virgin 2030-2040 Application. LSPH and Virgin's responses were shared with ORR in their entirety. Only LSPH responded to consultation submissions from potential Virgin competitors to preserve commercial confidentiality. LSPH published a summary of all consultation submissions and its responses thereto on its website.
25 June 2026	EIL submitted its second consultation submission challenging LSPH's process and treatment of the Virgin 2030-2040 Application.
25 June 2026	Original deadline for further consultation responses; LSPH later granted EIL a short extension.
29 June 2026	EIL submitted its third consultation submission following the extension of time granted on 25 June 2026.
7 July 2026	LSPH and Virgin issued further responses to consultation submissions. All responses were shared with ORR. Only LSPH responded to consultation submissions from potential Virgin competitors to preserve commercial confidentiality.
15 July 2026	LSPH published a summary of all consultation responses and its responses thereto on its website.
21 July 2026	EIL submitted an access application to LSPH for a new FTAA constituting an extension of existing firm rights / the grant of additional firm rights over the period 17 August 2029 to December 2040 (the EIL 2029-2040 Application).

Date	Event / Step
29 July 2026	Virgin's Form P for a new FTAA was updated to reflect the outcome of the consultation and returned to the ORR for approval.
30 July 2026	LSPH acknowledged the EIL 2029-2040 Application in a letter to EIL and outlined next steps for the processing of its application.
3 August 2026	EIL emailed LSPH enquiring as to why its track record of operations did not establish its operational integrity credentials and the basis for LSPH's request for the provision of commercially sensitive information in order to progress the EIL 2029-2040 Application.
7 August 2026	LSPH emailed EIL responding to its enquires around the EIL 2029-2040 Application, stating, among other things, that it believed it had to treat the services in Virgin's pre-existing application as existing services pending ORR determination, citing the relevance of paragraph 2.6 of the ORR Open Access Guidance and paragraph 3.12 of the ORR C&Ps to LSPH's consideration of EIL's application.
10 August 2026	Post consultation, EIL repeated its consultation challenge to LSPH's position in writing and asked LSPH to state clearly the regulatory basis on which it treated Virgin's pre-approval assigned rights as existing rights for access purposes.
12 August 2026	LSPH replied to EIL, stating that the points had been fully addressed in the Virgin consultation and that any further issues should be raised with the ORR.
13 August 2026	The ORR decided to pre-approve the FTAA between LSPH and Virgin that was the subject of the April 2026 Form P application and consultation.
14 August 2026	ORR letter communicating decision to pre-approve Virgin FTAA (" ORR Decision Letter ").
14 August 2026	EIL submitted Form R32 application notice of appeal to the ORR.
17 August 2026	ORR Decision Letter published by way of the Regulatory News Service.
18 August 2026	Virgin FTAA formally executed by the parties.
19 August 2026	ORR confirmed EIL's Appeal to LSPH and Virgin.

Date	Event / Step
2 September 2026	ORR letter confirming the ORR had accepted the appeal for consideration under Regulation 32 and initiated its consultation / invitation for representations.
8 September 2026	LSPH acknowledged the ORR's letter and confirmed it would submit representations by 2 October 2026.

(C) THE PROCESS FOLLOWED AND LSPH DECISIONS RELATING TO THE APPEAL

- 14 In responding to EIL's grounds of appeal in respect of LSPH's process and decisions, LSPH makes the following arguments.

LSPH's process and its compliance with the AMRs

- 15 EIL contends that the process LSPH adopted for proceeding with the Virgin application was wholly non-transparent, as well as unfair and discriminatory, and that this resulted in a prejudicial decision. EIL further argues that LSPH has failed thus far to explain the regulatory basis on which it conducted the process and reached the HS1 Decision. LSPH refutes all of this. However, noting the ORR's observation in its 2 September 2026 letter confirming its consideration of EIL's Appeal, that the appeal will be determined under the statutory framework set out in the AMRs, paragraphs 16 to 36 of these representations set out LSPH's assessment of that statutory framework and how LSPH considers that it has complied with this in conducting its process.
- 16 LSPH accepts that its legal obligations derive from the AMRs. LSPH followed an AMR-compliant process in granting capacity to Virgin. LSPH considers that there are a number of components which are the subject of EIL's Appeal that make up the process that the AMRs prescribe for infrastructure managers to follow in granting access to their infrastructure.
- 17 The procedural requirements of LSPH's duties derive from its core obligations under Regulation 5(1) to grant access on "*equitable, non-discriminatory and transparent*" terms, and under Regulations 19(16)(a) and (b) which respectively require infrastructure capacity to be allocated on a fair and non-discriminatory basis and entry into framework agreements to be non-discriminatory and transparent.
- (1) Transparency
- 18 Dealing with transparency first. Transparency of process and decision making does not require LSPH to precisely map all of its duties under the AMRs to its publicly stated capacity allocation process as EIL has repeatedly urged. Without

prejudice to LSPH's primary position, as EIL has based its appeal on LSPH's alleged failure to do this, LSPH considers that it must address this point specifically.

- 19 Regulation 13 sets out a key transparency requirement – the requirement to publish a network statement each year. Of most relevance to EIL's Appeal:
- (a) Regulations 13(4)(a) and (g) require LSPH to set out in its network statement the nature and characteristics of the HS1 infrastructure available on HS1 and a description including restrictions of use and requirements for maintenance (see section 3 of the HS1 Network Statement); and
 - (b) Regulation 13(4)(h) further requires LSPH to set out in its network statement the procedures and deadlines of its capacity allocation process, the specific criteria it will employ to allocate capacity in that process, and where applicable, the principles governing the coordination process for access applications. Together sections 2.2.1, 2.3.3, and 4.2.1 in the current HS1 Network Statement confirm that the criteria that will apply and the procedures that will be followed for obtaining access and coordinating access applications are those set out in the ORR C&Ps. That confirmation regarding the ORR C&Ps is also repeated in paragraphs 3.7, 3.8 and 3.9 of the International Growth Incentive Scheme appended to the HS1 Network Statement. Separately, Sections 3.1.2 and 9.1.1 of the HS1 New Operator Guide, which provides an introduction to HS1 for those operators that are minded to make a new application, confirm the same. Both the present HS1 Network Statement and the HS1 New Operator Guide are published on LSPH's website.
- 20 LSPH believes that infrastructure managers are required to publish this information in their network statements in order that operators can make judgements about whether and to what extent they wish to apply to operate services on the relevant infrastructure, and if they do, what processes they are required to follow and the basis on which their applications will be assessed.
- 21 When Virgin made its application, it was evident to LSPH that that application contained commercially sensitive information, and LSPH discussed this with Virgin. LSPH concluded, in accordance with Regulation 14(13), that it '*must respect the commercial confidentiality of information provided to it by [Virgin in applying] for infrastructure capacity*'. This general duty is reinforced in the context of the Virgin application process by Regulation 19(16)(c) which requires the infrastructure manager to "*respect the confidentiality of information supplied as part of the capacity allocation process*" and is in keeping with LSPH's understanding of previous open access applications on the wider rail network which have not been disclosed until those applications have been submitted to the ORR for consultation

and approval. LSPH could not therefore disclose details of that application until the parties were ready to apply to the ORR for approval and to consult industry participants (that is, after all of the other procedural requirements (cost recovery arrangements, operational integrity assessments, and timetable and performance validation among them) had been met), and FTAA terms had been agreed. EIL would expect the same respect for its commercial interests in application discussions with LSPH. Meeting this requirement does not diminish the transparency of the overall process.

- 22 EIL's consultation submissions raised extensive criticisms of LSPH's adoption of the criteria and procedures in the ORR C&Ps in making its decisions around the granting of access to Virgin, despite the HS1 Network Statement confirming this approach, and the ORR C&Ps themselves confirming the relevancy of the criteria and procedures contained within them to the allocation of capacity on HS1:

"1.3 We expect train operators and HS1 Limited to follow the procedures outlined here when negotiating and submitting proposed framework agreements and amendments to existing agreements for ORR approval."

- 23 EIL's arguments around the relevancy of the ORR C&Ps to LSPH's process have narrowed in its appeal. Accordingly, LSPH's responses on the relevancy of the ORR C&Ps to compliance with its regulatory duties have also narrowed in these representations. Nonetheless, LSPH stands by its other previous statements on the application of the ORR C&Ps in its process.
- 24 LSPH accepts that its compliance with its AMR transparency obligations turns in part on the extent to which it has adhered to the ORR C&Ps since operators are entitled to expect that LSPH will make application decisions in accordance with the process and criteria that it has said it will follow. LSPH's position is that it has done this.
- 25 One repeated criticism EIL made in the appeal which goes to the relevancy of the ORR C&Ps, concerned the alleged lack of transparency of LSPH's process because of, it is said, the insufficiency of detail provided in the HS1 Network Statement about how LSPH would manage competing demands between international passenger rail operators. That information is not set out in the HS1 Network Statement directly but instead can be found in paragraphs 3.12 to 3.18 (*"Consideration of alternative access rights"*), paragraphs 3.19 to 3.29 (*"Capacity choices, criteria and competition"*) and paragraph 3.30 (*"Approval of competing services"*) of the ORR C&Ps. Having confirmed in the HS1 Network Statement that the ORR C&Ps contain the criteria and procedures that would apply in the allocation of capacity on HS1, it follows that those paragraphs would be relevant in circumstances where LSPH was faced with competing demands between

international passenger rail operators. Repeating them verbatim in the HS1 Network Statement would be wasteful and risk divergence if the ORR subsequently updated the ORR C&Ps. But as we discuss below, these process requirements were not engaged beyond LSPH's due consideration under paragraph 3.12 thereof as LSPH was not faced with a competing access application in the relevant period. This outcome does not diminish the fact that those provisions were transparently available for EIL to consult.

- 26 Contrary to EIL's allegations, there is an extensive published regulatory procedure for determining access applications, which LSPH followed strictly. The HS1 Network Statement and related published documents it points to do not leave a vacuum as to process and so give rise to any lack of transparency. For all of the reasons given above, LSPH rejects EIL's allegation that there was no published regulatory basis for its approach.

(2) Equity and non-discrimination

- 27 Notwithstanding that EIL has sought to allege that LSPH has treated EIL less favourably than Virgin and to that extent, is said to have discriminated against EIL, nowhere does EIL articulate the test for – or standard of review applicable in respect of – such alleged discriminatory treatment. In circumstances where the AMRs gave effect to European law, the test of discrimination in a competition context is that articulated by the CJEU to the effect that “*the general principle of equal treatment, as a general principle of EU law, requires that comparable situations must not be treated differently and different situations must not be treated in the same way unless such treatment is objectively justified*”: Case T-612/17 *Google LLC v Commission*. LSPH's primary position is that there never were comparable and conflicting applications for capacity and therefore at no material stage were Virgin and EIL in materially comparable positions such that it might be said that Virgin had been treated more favourably than EIL.

- 28 If, contrary to that primary position, the ORR were to find that EIL and Virgin were in a sufficiently comparable position by having competing and/or conflicting applications, LSPH's position is that any difference in treatment was ‘objectively justified’, where the CJEU has made clear that a difference in treatment will not be objectively justified where such treatment is ‘arbitrary’: see Case C-48/22P *Google v Commission* at [182]; Case 11/74, *Union des Minotiers de la Champagne v France*, EU:C:1974:84, at [22] and Case 43/72, *Merkur v Commission*, EU:C:1973:108, [22]. It is denied, if sought to be suggested by EIL, that LSPH has treated EIL in an arbitrary manner.

- 29 EIL's Appeal refers to consultation exchanges between LSPH and EIL in June 2026 regarding LSPH's application of paragraph 3.11(c) of the ORR C&Ps. These

exchanges concerned what was then EIL's promised application for capacity (what would become the EIL 2029-2040 Application). In reply, LSPH:

- (a) pointed EIL to the process that it would follow and, in order to manage EIL's expectations, indicated that EIL's promised request (which EIL indicated would be for the same period as Virgin had applied for and would require additional capacity) would be treated as "*subsequent to Virgin's*"; and
- (b) confirmed that, in the context of paragraph 3.11(c) and the assessment of operational integrity, Virgin's FTAA would be treated "*as another access contract*".

LSPH's position on this approach is discussed in paragraphs 56 and 86 (*Contingent reservation of capacity pending ORR approval*) below, but LSPH considers that this aspect of its decision making goes to the core Regulation 5 duty to ensure the fair allocation of capacity as well as its duties under Regulation 19(3) regarding the application of capacity allocation rules, and Regulation 23 regarding the management of conflicting requests for infrastructure capacity.

30 EIL also continues to criticise LSPH's application of paragraph 3.12 in the ORR C&Ps in the Virgin access process. EIL's Appeal states that the ORR C&Ps, particularly paragraph 3.12 thereof, require LSPH to have considered alternative access rights, including future aspirations, when contemplating an application by an operator for access. EIL adds that the ORR C&Ps do not state that infrastructure managers can disregard competing requests or aspirations if a prior application has been commenced before them.

31 LSPH agreed in the consultation and continues to do so that, in adopting the ORR C&Ps, it must take account of alternative operator aspirations when one operator seeks to amend their access rights or obtain new ones in accordance with paragraph 3.12 of the ORR C&Ps, so as to fulfil its duties under the AMRs. Doing so appropriately would be consistent with the Regulation 5 non-discrimination duty, the duty of infrastructure managers to prepare business plans which include requirements to meet objectives around the optimal and efficient use of the infrastructure, provision and development of the relevant railway infrastructure and strategic needs in Regulation 12(1), and the capacity allocation duty in Part 5 of the AMRs (in particular Regulations 19, 22 and 23), including where relevant, where there is a need to coordinate competing aspirations. But LSPH maintains that the AMRs do not impose a duty on it to consider aspirations that are vague, not expressed directly to the infrastructure manager, and are contradicted by those aspirations that are expressly directed to it which do not compete with those aspirations that have been properly expressed. Paragraphs 40 to 46 below

consider LSPH's arguments regarding the application of paragraph 3.12 in its Virgin access deliberations.

- 32 Part 5 functions on the basis of operator-led applications. Regulation 19(5) provides that:

'any applicant may apply to the infrastructure manager for the allocation of infrastructure capacity'.

- 33 Regulation 19(7) provides that:

"An applicant applying for infrastructure capacity with a view to operating an international passenger service must give notice of that fact to the infrastructure manager concerned..."

- 34 The AMRs make similar such references throughout to '*applicants*' making access requests of the infrastructure manager, of infrastructure managers entering into framework agreements with applicants, and of applicants for access having appeal rights against infrastructure manager decisions to refuse applications or grant others. For example, Regulation 22(1) provides that applicants may submit a request to the infrastructure manager for an agreement granting rights to use railway infrastructure against a charge, and Regulation 22(2) requires an applicant wishing to apply for infrastructure capacity to submit an application in accordance with the timetable for the allocation process. Those provisions support LSPH's position that its duties in respect of a claimed future use of capacity are only engaged by an application or sufficiently concrete proposal articulated to it, not merely by public statements or general aspirations.

- 35 EIL's Appeal points to Regulations 23 and 26 as containing requirements on infrastructure managers to have in place arrangements for the co-ordination of competing capacity requests and congested infrastructure. The EIL contention being that LSPH did not engage those arrangements in its consideration of the EIL 2029-2040 Application. LSPH's position is that neither Regulation 23 nor Regulation 26 were engaged by either of the EIL 2026-2029 Application or the EIL 2029-2040 Application in the context of the consideration of the Virgin 2030-2040 Application. That is because there were no competing capacity requests to coordinate since:

- (a) the EIL 2026-2029 Application was concurrent with the Virgin 2030-2040 Application, but it was for a different time frame from the Virgin 2030-2040 Application and for a level of capacity which was subsequently confirmed did not compete with the Virgin 2030-2040 Application;
- (b) while the EIL 2026-2029 Application did not overlap with the Virgin application, cognisant of the ORR's strong presumption of the continuation

of existing access rights in its '*Duration of track access agreements (framework agreements)*' guidance, LSPH also considered that there would still be no conflict if EIL decided to continue its access rights in the EIL 2026-2029 Application into the Relevant Framework Period (although ultimately EIL did not make such further application); and

- (c) the EIL 2029-2040 Application was not concurrent with the Virgin 2030-2040 Application (see paragraphs 37 to 55 ("*Lack of concurrency of EIL 2029-2040 Application*") below).

36 It followed that there was no duty on LSPH to coordinate the requests Virgin and EIL had made through consultation under Regulation 23(4) as that duty only arises "*In the event of conflict between different requests for infrastructure capacity*" and there was none. And in the case of Regulation 26, there was no duty to declare congested infrastructure since, once the timetable validation exercise referred to in the Form P had been completed, it was clear that there was no congestion, LSPH being able to satisfy both Virgin's request and EIL's request in the EIL 2029-2040 Application adequately (including EIL's additional Amsterdam rights).

Lack of concurrency of EIL 2029-2040 Application

37 EIL claims that LSPH has established a '*first come, first served*' rule and that it is arbitrary and so inconsistent with LSPH's AMR duty to grant fair and non-discriminatory access to HS1. In order to run this argument, EIL tries to establish that the EIL 2029-2040 Application and Virgin's June 2025 application were concurrent – EIL refers or alludes to:

- (a) the HS1 Decision as having been taken during the period of EIL's own "*active application*" for access;
- (b) those two applications as being "*parallel*" and that LSPH was "*considering [those applications] at the same time*"; and
- (c) that EIL's and Virgin's proposed services, or a material portion of them, are contested over the Relevant Framework Period – they are said to be "*competing*", and "*conflicting*".

38 EIL seeks to establish a meaningful period of concurrency between the two applications in order to argue that those applications were contested, and as concurrent, contested applications that they must be considered under the AMRs fairly at the same time. EIL then seeks to argue that there was no regulatory basis to, as EIL puts it, prioritise between them. Consequently, EIL says LSPH was wrong in reserving Virgin's requested capacity, affording the Virgin 2030-2040 Application, as EIL puts it, "*discriminatory special status*".

- 39 The factual chronology set out in paragraph 13 above is important in this context because it demonstrates why EIL's concurrency case is incorrect and overstated. There was no meaningful concurrency between the Virgin 2030-2040 Application and the EIL 2029-2040 Application.
- 40 During the consultation, EIL tried to claim that concurrency was established because it had publicly declared its aspirations to operate new services and/or it had been established through bilateral discussions about the St Pancras Enhancement Project ("**StEP**"), both of which claims are refuted below. EIL based and continues to base its argument on paragraph 3.12 of the ORR C&Ps, which recognises that proposed rights may constrain other operators' aspirations to amend their rights or seek new ones and that, because of the existence of those aspirations, those proposed rights should not be permitted or should otherwise be adjusted to accommodate those aspirations. But, as LSPH pointed out in its consultation responses, that paragraph indicates that regard should also be had to the firmness of such alternative plans. The implication being that, if those alternative plans are not sufficiently firm, they should be discounted from the assessment of the impact of new service proposals.
- 41 What is meant by the "*firmness*" of alternative plans is not defined. But paragraph 3.12 provides two examples of what might point to that firmness for the capacity in question: (i) the negotiations with the infrastructure manager and (ii) the availability of suitable rolling stock. On the facts, the pre-consultation exchanges between EIL and LSPH on EIL's required capacity and the announcement of a rolling stock order placed by the Eurostar Group around the time of the Virgin application were the only relevant communications which indicated whether EIL's aspirations were firm enough to invoke any refusal or adjustment of Virgin's sought capacity pursuant to paragraph 3.12 in LSPH's deliberations.
- 42 The Eurostar Group published a press release on 22 October 2025 announcing the order of new rolling stock (the "**Press Release**"). As a result, EIL argues, LSPH should have taken account of the aspirations expressed in the Press Release when considering the Virgin 2030-2040 Application. LSPH confirmed in its consultation response that three considerations meant those aspirations expressed in the Press Release were not sufficiently firm for LSPH to consider them alongside the Virgin 2030-2040 Application.
- 43 First, LSPH was uncertain about the impact of the rolling stock order:
- (a) it had been made at Eurostar Group level, and not specifically by EIL, meaning the new units could be deployed in any of the other territories where the Eurostar Group operates and not just on HS1;

- (b) it contained significant optionality (both in terms of the number of units that might be ordered (20 of the 50 units being subject to a further order)) and how and where they might be deployed (they could be deployed in both single and multiple unit formation); and
- (c) it appeared to LSPH (after undertaking some analysis) that the order correlated with EIL's fleet replacement needs.

44 Second, the ORR's final decision to award capacity at Temple Mills Depot to Virgin on 30 October 2025 raised significant uncertainty about how the commitments in the Press Release could be fulfilled. The Press Release had indicated that all of the new rolling stock Eurostar Group had ordered would be accommodated in Temple Mills. However, from what LSPH understood from the ORR's decision, it would not be possible to accommodate both Virgin's fleet, EIL's current retained fleet, and Eurostar's new fleet at Temple Mills, even with Eurostar's proposed depot enhancements also announced in the Press Release. This threw EIL's entire depot strategy into question.

45 Third, EIL made an application to LSPH for access on 30 October 2025 (eight days after the Press Release and on the same date as the ORR's decision regarding Temple Mills) – the EIL 2026-2029 Application – which represented only a marginal increase on its existing access, with a handful of additional services to Amsterdam, and only from 2026 until 2029, and so ending before the Relevant Framework Period. That application – a function of EIL's tardiness in resolving its intentions before its existing FTAA expired – reinforced the sense that the Eurostar rolling stock order was not wholly or mainly to deliver additive services on HS1 which might have competed with Virgin's.

46 Regarding the bilateral exchanges regarding StEP, in the consultation EIL suggested LSPH had more insight regarding EIL's growth aspirations. LSPH went into detail in its consultation responses as to why this contention was fallacious. Of particular note was the fact that in those exchanges, EIL had not mentioned the rolling stock order and did not brief LSPH thereafter on what it meant for its future HS1 capacity requirement. That order did not become apparent to LSPH until the Press Release was published. LSPH subsequently found out from Eurostar's financial accounts that the order had been placed in May 2025, affording EIL plenty of opportunity to discuss it with LSPH.

47 In aggregate, there was sufficient uncertainty about the Eurostar group rolling stock order and there were no negotiations between EIL and LSPH in relation to access for the Relevant Framework Period which would render EIL's aspirations for the Relevant Framework Period as sufficiently firm such that LSPH should have taken account of them under paragraph 3.12 of the ORR C&Ps in considering the Virgin 2030-2040 Application. In contrast, LSPH took account of all firm aspirations that

had been expressed to it by prospective operators as well as by EIL in the EIL 2026-2029 Application. Recognising that the EIL 2026-2029 Application only represented a marginal increase on EIL's existing capacity requirement, and once LSPH had established that only Virgin had achieved operational integrity among the prospective operators, there were then no competing applications which LSPH was required to coordinate under Part 5 of the AMRs.

- 48 As explained in paragraphs 32 to 34 above, the applicant language and framing in the AMRs anticipate, indeed necessitate, an application or proposal to first be made to the infrastructure manager with sufficient certainty as to the capacity applied for or proposed before an infrastructure manager's regulatory duties to grant or refuse that capacity on equitable, non-discriminatory and transparent conditions are properly engaged. The AMRs do not impose any duty on infrastructure managers to solicit access applications from applicants or take account of press statements or other non-specific communications. Section 2.3.3 of the HS1 Network Statement makes clear that the onus is on operators. It says, "*Where an Applicant wishes to enter into a Framework Track Access Agreement it should contact the Infrastructure Manager at the earliest opportunity to discuss its requirements.*" But at no time during LSPH's consideration, processing, and active consultation on the Virgin application did EIL invoke those discussions and/or make an application for the Relevant Framework Period.
- 49 EIL has continued to seek to suggest that through its consultation responses to the Virgin application it has established the competing nature of its own aspirations. EIL's Appeal continues to speak of the aspirations it has expressed by these means and others, as well as the aspirations of others and LSPH's failure to take account of any of them, although EIL does not provide any specific detail in the appeal as to the other means by which its aspirations were communicated. Public aspirations, market interest and consultation objections are not the same as a concrete access application for identified rights.
- 50 But now EIL's Appeal places more reliance on the EIL 2029-2040 Application – what EIL refers to as its active application. That application has been made for the Relevant Framework Period. Virgin made the equivalent application for the Relevant Framework Period to LSPH on 12 June 2025, thirteen months earlier. In no sense can it reasonably be argued that the applications were concurrent in terms of when they were made and EIL's assertion that LSPH was "*considering [Virgin and EIL's applications] at the same time*" does not bear scrutiny. LSPH started considering the Virgin 2030-2040 Application from June 2025 in the same sense that LSPH is considering the EIL 2029-2040 Application now, and effectively stopped considering it in the same sense when it resolved to submit the Form P application in late April 2026. LSPH only began considering EIL's application from July 2026, when EIL made it.

- 51 Nor does the making of the EIL 2029-2040 Application retrospectively convert EIL's earlier expressed aspirations into a formal competing claim at the relevant earlier points in the process when the Virgin 2030-2040 Application was being considered. To reiterate, during the entire period of the active Virgin consultation, EIL did not make an application for access that might be said to compete with Virgin's. EIL's case therefore seeks, in substance, to backdate firm competition for capacity to any of broad public statements, bilateral exchanges which were not forthcoming, objections made during the consultation, or a late application to LSPH. This reliance cannot alter the fact that the only application that EIL made at the material time, and so could be said to have been concurrent with the Virgin 2030-2040 Application, was the EIL 2026-2029 Application. That more limited formal request did not correspond to the broader 2030-onwards rights EIL now says should have been treated as competing but rather ended before the Relevant Framework Period began.
- 52 To say that the eight days between the making of the EIL 2029-2040 Application and the updating of the Virgin 2030-2040 Application to the ORR for approval following industry consultation establishes any concurrency is to misrepresent two very different stages of the access application process as being equivalent.
- 53 As explained in paragraph 70 below, the Form P submitted on 29 July 2026 was only updated to reflect the outcome of the consultation. An updated Form P that has been submitted to the ORR and whose only difference from the preceding one submitted to the ORR is to record the outcome of the intervening consultation, is not in any way at the same stage as an application that has been freshly brought to the infrastructure manager and which is yet to go through the detailed evaluation and negotiation stages that precede a Form P even being prepared.
- 54 LSPH had been processing the Virgin 2030-2040 Application, including conducting an operational integrity assessment, procuring a timetable and performance validation exercise, negotiating the terms of the FTAA, submitting an application form to the ORR and consulting on the terms of the access it was willing to grant – meaning the only stage of the process for that application that needed to be completed before the FTAA could be signed was for the ORR to approve it – for nine months before EIL submitted the EIL 2029-2040 Application to LSPH on 21 July 2026.
- 55 In contrast, LSPH has yet to determine that the EIL 2029-2040 Application has achieved operational integrity, and so that application has not progressed through any other stage of the application process, including validating its timetable and performance impacts. There has been no discussion on the terms of a new FTAA to date and no consultation has begun.

Contingent reservation of capacity pending ORR approval

(1) The AMRs and LSPH's treatment of the capacity Virgin had applied for

56 LSPH accepts that the AMRs do not create a free-standing power for an infrastructure manager to 'reserve' capacity for an operator outside the statutory allocation process. Moreover, where the AMRs intend to create a power to reserve infrastructure capacity, they do so expressly, such as in Regulation 19(20) in relation to scheduled track maintenance and Regulation 24(4) in the context of ad hoc requests. LSPH's case is therefore not that it exercised such a free-standing power, but that it was required to take account of the practical and procedural significance of Virgin's live application within that process.

57 This is because the AMRs necessitate and/or proceed, as explained above, by way of (i) applications for capacity, (ii) consideration of operational integrity and timetable validation, (iii) allocation of capacity by the infrastructure manager, and, where appropriate, (iv) negotiation, consultation and entering into framework agreements specifying the characteristics of capacity over an agreed or ORR-determined period. LSPH's position is not that it exercised a separate 'reservation' power, but that an agreed draft FTAA which had reached a live Form P application stage could not rationally or lawfully be ignored in dealing with later requests.

58 LSPH also acknowledges that ORR approval is required before a framework agreement takes effect. That does not mean, however, that a live Form P application which has not yet received ORR approval must be deferred to take account of a subsequent application, and particularly one made after the period set for making submissions as part of industry consultation for an earlier application had ended. Once an infrastructure manager and applicant have progressed to the issue of Form P seeking ORR approval of agreed rights, that application forms part of a live allocation process and has obvious procedural and practical significance.

(2) EIL's Appeal mischaracterises LSPH's position and the HS1 Decision as unlawfully 'first come, first served'

59 The AMRs do not prescribe the Form P process or its significance. There is not a specific Regulation that either describes the Form P process or its legal status pending ORR approval, since it is a level of administration that regulations such as the AMRs rarely speak to. In reality, the ORR's prescription of that process naturally follows from its role in regulating access applications under the AMRs and its ability to prescribe information requirements under Regulation 19(7).

60 LSPH's case is not therefore that the AMRs expressly describe provisions for the reservation of capacity, or that such rights are legally perfected by doing so before approval. LSPH did not decide that Virgin already held approved or executed firm rights as a matter of law. Nor did it decide that Virgin's draft FTAA was already an "access contract" in the strict legal sense for all purposes. This was not a matter

of affording Virgin some illegitimate advantage, as it appears EIL is seeking to suggest. It was a matter of maintaining basic process integrity and workable administration in accordance with the process the ORR prescribes.

61 LSPH decided that, pending approval, the rights it had agreed to grant Virgin may properly be treated as live and material when dealing with later requests in order to appropriately plan for the allocation of capacity. That distinction is fundamental. There is a clear difference between: (i) saying rights are already granted and legally effective; and (ii) saying that a prior live application for those rights must be taken into account when considering later requests. LSPH's position has always been the latter, not the former.

62 EIL repeatedly seeks to characterise LSPH's approach as amounting to an unlawful "*first come, first served*" rule. That is not what LSPH did.

63 While section 2.3.3 of the HS1 Network Statement confirms that LSPH will consider applications for FTAA's in the order that they are received, and that puts applicants on notice that LSPH would apply a logical and reasonable approach to the management of applications, it goes on to add an important rider to that approach. That is, where LSPH is considering more than one application at the same time. There, LSPH would expect to apply fair and non-discriminatory principles to best allocate the contested capacity in accordance with the ORR C&Ps, and as explained in paragraph 19(b) above, the HS1 Network Statement points applicants to the relevant paragraphs of the ORR C&Ps that LSPH would apply in those circumstances. But, as these representations demonstrate, the facts do not support that LSPH was faced with a contestable application from EIL or anyone else, once LSPH had conducted its operational integrity assessments. Therefore, LSPH was entitled to proceed with the one application that had met the application criteria in the ORR C&Ps. The fact that Virgin was the first applicant to trigger LSPH's operational integrity assessment in the relevant period that is the subject of EIL's Appeal did not mean that LSPH had invoked a "*first come, first served*" rule.

64 Timing, together with the procedural status of competing applications and the firmness of any competing plans, may properly matter. That is altogether different from the arbitrary rule that EIL seeks to attribute to LSPH.

(3) *The significance of a Form P submission*

65 What LSPH has consistently said is that, once a Form P application has been submitted, it is, pending ORR approval, the effective (that is, contingent)¹ reservation of capacity in order to maintain good procedural order. That is to say

¹ For clarity, LSPH adopts in these representations the term "*contingent reservation*".
10-119789728-1\334195-418

that LSPH took account of the capacity in the Virgin Form P for planning purposes. This is consistent with one of the underlying principles of the AMRs – that infrastructure managers can only allocate available capacity, taking account of existing allocated capacity and the need to maintain the infrastructure. This principle is enshrined in Regulations 5 regarding equity, non-discrimination, and transparency, and 19 (particularly Regulations 19(3) and 19(16(a)), 22 and 23 which set out the capacity allocation regime and scheduling and coordination requirements. In so doing, the AMRs recognise that capacity is a finite resource, that it must be allocated on a fair and non-discriminatory basis, and that it requires careful planning in order to produce timetables that are safe and operationally deliverable.

- 66 This conclusion is supported by Form P and the Form P process itself. Form P is the ORR's approved form for the infrastructure manager and applicant to submit when applying for ORR approval of the accompanying FTAA (and the capacity they have agreed therein) under the AMRs. The approval application that is made through the submission of that Form P and the FTAA terms that have been agreed (including the capacity specified therein) are subject only to changes driven by industry consultation and ultimately ORR approval. In other words, for procedural certainty, and fairness to consultees, Form P is the fixed point against which (i) consultation is undertaken, (ii) any resulting amendments are measured from (and so whether there is a need for further consultation), and (iii) the ORR issues its approval or refusal.
- 67 The submission by an infrastructure manager of a joint application with an applicant of Form P to the ORR requires that infrastructure manager to take account of the capacity in question pending ORR approval. If ORR approval is forthcoming, the parties are committed to the Form P terms (including the capacity specified therein) they submitted and no others. This is supported by the ORR's form of pre-approval letters, which authorise the parties to enter into the FTAA they consulted on and applied for.
- 68 That conclusion should be contrasted with a Form P which has been submitted to the ORR by an applicant alone because it could not reach agreement with the infrastructure manager on the amount, nature or terms of access. Because the infrastructure manager has not agreed to grant the capacity set out in such a Form P, it is not obliged to take account of it in its planning processes unless and until there is a successful appeal and the ORR directs that infrastructure manager to enter into a FTAA with the applicant for that capacity.
- 69 The only logical approach in circumstances where an infrastructure manager has agreed to apply with an applicant for ORR approval through the submission of Form P, absent a decision by them to produce a materially different application (for which further consultation would be required) or withdrawal, is for that

infrastructure manager to plan on the basis that the capacity in that Form P has been allocated. If ultimately ORR approval is not forthcoming, that is the only proper means by which the infrastructure manager should consider the previously applied-for capacity as available again for operators to apply for.

70 The facts that concern the Form P that is the subject of EIL's Appeal are as follows. LSPH and Virgin submitted Form P on 24 April 2026 and then duly carried out industry consultation. The consultation ended on 15 July 2026 when LSPH and Virgin published the summaries of the further submissions that had been received and their responses thereto. The Form P that was issued on 24 April 2026 was duly updated to reflect the consultation outcome, including the continuing objections, and returned to the ORR on 29 July 2026. No material changes were made otherwise to either the Form P or to the accompanying FTAA that were submitted on 24 April 2026.

71 The ORR's pre-approval of the Virgin application, contained in its letter to LSPH and Virgin dated 14 August 2026, confirms that the ORR's pre-approval was of the FTAA (and by extension the associated Form P) submitted to the ORR on 24 April 2026, rather than the FTAA (and by extension the associated Form P) that was updated and returned to the ORR on 29 July 2026. This reinforces the fact that the ORR's consideration of the Virgin application began when it was submitted in April 2026. So to entertain the idea that LSPH could itself consider the capacity it had agreed to grant Virgin in the pending Form P application as if it was still available to grant to EIL or anyone else, or that LSPH could unilaterally reset the process, would have been wholly contrary to the status of a Form P submission. If the ORR allowed infrastructure managers to behave in such a way, we would respectfully submit that doing so would undercut the ORR's consideration and approval process, leading inevitably to market confusion and uncertainty, which would be contrary to one of the foundational principles of the ORR's regulation, which is to enable providers of railway services to plan the future of their businesses with a reasonable degree of assurance. A capacity application process which treated capacity that has already been applied for as still available unless and until ORR approval, would lead to chaos, wasted cost and likely challenge.

(4) When the HS1 Decision was taken

72 EIL does not clarify when it considers that LSPH made the offending HS1 Decision, except to say that it was *"taken and confirmed by HS1 during the process of consideration of EIL's active application"*. Nor does EIL clarify when its application was active from. LSPH says this can only reasonably be from 21 July 2026, when EIL actually submitted an application to LSPH for the Relevant Framework Period. EIL has tried at various points since the start of the consultation to suggest that its application was active before then, possibly as far back as October 2025 when the Press Release was published – see paragraphs 37 to 55 (*Lack of concurrency of*

EIL 2029-2040 Application). But EIL did not explain to LSPH what its future capacity requirements might be, either around the time of the Press Release or during the active consultation period, despite promising an application.

- 73 EIL asserts in section 2.3 of its appeal that LSPH took the HS1 Decision during EIL's active application. EIL adds in section 3.3 of its appeal that:

"The underlying process flaws that have led to the HS1 Decision are a continuation of the same flaws in the consultation and competing capacity requests assessment undertaken by HS1 as part of the VTE Access Application."

- 74 If LSPH is right about when the HS1 Decision was taken:

- (a) it cannot be true that LSPH took the HS1 Decision during EIL's active application, since EIL did not make an application until 21 July 2026; and
- (b) it cannot be the case that the process which led to the HS1 Decision followed the consultation as part of the Virgin access application, since the consultation was only undertaken after taking the HS1 Decision.

- 75 LSPH argues that it is important to establish when the HS1 Decision was taken because it either validates or disproves EIL's claim that it was taken during the consideration of the EIL 2029-2040 Application. If the HS1 Decision is considered to be LSPH's contingent reservation of the capacity in the Virgin application, LSPH would contend that that decision was taken once it resolved as a business to proceed with Virgin's application and jointly submit the Form P and draft FTAA to the ORR. It was from that point that LSPH contingently reserved the capacity in the Virgin application for planning purposes. LSPH merely articulated this contingent reservation during the consultation when consultees began to speak of their aspirations.

- 76 The fact is that the HS1 Decision was taken almost three months before the EIL 2029-2040 Application and so it is incorrect for EIL to assert that the HS1 Decision was taken during the active consideration of that application. Only if the EIL 2029-2040 Application became active before EIL made it, whether somehow from the Press Release or during the consultation when EIL started to present its objections and speak of its aspirations, could it be said that the HS1 Decision was taken during this period of activeness. But LSPH rejects either of those two propositions for the reasons given above.

- 77 And it is a non-sequitur to say as EIL does that the so-called flaws in the HS1 Decision process were a "*continuation*" of the so-called flaws in the consultation. While LSPH does not accept there were any flaws in the HS1 Decision or the consultation, EIL's allegation is precisely backwards. As a matter of logic, any

flaws in the HS1 Decision process must have occurred in advance of (i) the HS1 Decision (since that process culminated in that decision being taken) and (ii) any flaws in the consultation, as that consultation only began once the HS1 Decision had been taken.

78 LSPH's case is not that the AMRs expressly provide for 'reservation' of capacity in the sense alleged by EIL, nor that Virgin's rights had become legally operative before ORR approval. LSPH's case is that, in the context of the statutory framework for framework agreements and applications for infrastructure capacity, the capacity sought in a prior live Form P application could not sensibly be treated as though it were wholly unaffected by that application.

(5) LSPH was entitled, and required, to proceed on the basis of Virgin's prior live application

79 A duly advanced access application cannot sensibly be ignored because another operator later asserts competing aspirations or makes a later request. EIL appears to suggest that LSPH should have suspended the 9-month Virgin access application process which had been subject to multiple stages of evaluation, had already been submitted to the ORR, and for which the industry's opportunity to submit representations was over, to take account of its application to LSPH which had undergone none of those evaluation stages or processes.

80 Withdrawing or suspending the Virgin 2030-2040 Application at such a late stage would have required its consent, else risk its own appeal. In that practical and procedural sense, the capacity sought under the Virgin application could not simply be treated as wholly free and unencumbered for the purpose of EIL's later application and so LSPH was both duty-bound to proceed with Virgin's much more advanced application and take account of it when EIL signalled its intent to (and ultimately did) make its own application. Coordination of competing requests does not mean perpetual process reset. On the contrary, an infrastructure manager must be able to proceed with actual applications as they arise, applying the relevant criteria at the relevant time, while also responding fairly to later applications, if and when they are made.

81 However, EIL advocates for the alternative premise: that, once a later operator raises a potentially competing request or aspiration, the infrastructure manager must reset an earlier ongoing process and assess all possible aspirations afresh as though no prior application had advanced, however advanced that earlier application was. That premise is wrong. It is impractical and inconsistent with the structure of the AMRs and ORR-prescribed access process. The result would be earlier applicants being exposed to repeated re-litigation of the same capacity by later applicants, with no procedural weight attached to the fact that an application had advanced to agreed Form P stage. To allow such practice would be to invite

later applicants to potentially perpetuate the application process indefinitely, depriving earlier applications, and the entire application process, of coherence and certainty whether those later applicants were applying to make legitimate applications or merely to stifle competition. For these reasons, LSPH considers that if it had decided to “reset” the Virgin application once EIL made the EIL 2029-2040 Application, or even when EIL first articulated its aspirations during the consultation, that decision would likely have violated the Regulation 5 equity duty Virgin was owed.

82 Whilst EIL’s Appeal now relies on the EIL 2029-2040 Application, EIL making that application does not retrospectively convert its earlier aspirations into a formal competing claim at the relevant earlier points in the process when the Virgin 2030-2040 Application was being considered.

(6) *LSPH’s approach was fair, non-discriminatory and transparent*

83 LSPH disagrees with the assertion by EIL that the HS1 Decision was discriminatory and prejudicial to EIL and other future operators. All operators have had an equal opportunity to request access to the HS1 infrastructure and meet the required operational integrity threshold. The requests LSPH received were considered and processed in accordance with the AMRs and the ORR C&Ps. LSPH duly processed the EIL 2026-2029 Application which was in fact the only application that was parallel to and concurrent with the Virgin 2030-2040 Application. That EIL 2026-2029 Application was to enter into a new FTAA for the period ending before the Relevant Framework Period for broadly the same capacity EIL was already operating, and so it was not in competition with the Virgin 2030-2040 Application.

84 EIL had an equal opportunity, alongside all prospective operators, to request additional capacity beyond what was included in the FTAA that resulted from the EIL 2026-2029 Application. It was open to EIL to make an application similar in scope to that made by Virgin at any time. Indeed, in its response to the Virgin Form P application, instead of just promising an application as it did in the consultation, EIL could have made such an application for Relevant Framework Period, identifying the precise number of paths it was seeking within that period. It opted not to do this, even though it was fully aware of the extent of the capacity in the Relevant Framework Period that Virgin had applied for.

85 As confirmed by Eurostar Group’s financial accounts, EIL placed its rolling stock order in May 2025. It chose not to make an application which affirmed its intentions for deployment of that rolling stock on HS1 until 14 months later, despite having knowledge of the Virgin application from April 2026 and being aware that section 2.3.3 of the HS1 Network Statement urged it to do so “*at the earliest possible opportunity*”.

86 LSPH remains ready to consider any future applications for access to the HS1 infrastructure and is indeed progressing the EIL 2029-2040 Application. LSPH has maintained advanced readiness to support EIL's and prospective international operators' growth. This readiness includes the proactive coordination of additional cross-Channel paths with adjacent infrastructure managers, the development of StEP, the publication of the International Growth Incentive Scheme and the support in the development of new destinations.

The significance of the consultation record and prior submissions

87 LSPH refers the ORR to and relies on the consultation record and its prior responses as part of the context for this appeal – a record which extends beyond the prescribed period of industry consultation set for the Virgin application process because EIL has, in LSPH's opinion, used the existence of the EIL 2029-2040 Application as an opportunity to continue to criticise LSPH's process and the HS1 Decision without adding any further substance to its preceding arguments. For certainty and ease of reference, the key specific communications relied on and to which the ORR is referred are listed out in the Annex attached. A substantial number of the points and allegations contained in EIL's Appeal were raised by EIL during that underlying process and were answered by LSPH at the time.

88 All of EIL's consultation submissions regarding its allegations were made during a period when EIL had not made a formal application for access itself for LSPH to consider, except as aforementioned after EIL submitted the EIL 2029-2040 Application once the opportunity to make consultation submissions was closed. But EIL's Appeal seeks to repackage those points as a challenge to the "*process followed*" by LSPH in the context of the EIL 2029-2040 Application. LSPH accepts that EIL's Appeal is a distinct statutory process, and while the appeal adds relatively little that is genuinely new in substance from EIL's consultation submissions, it is important to consider them in the correct context. The ORR can and should therefore have regard to both EIL's earlier submissions and LSPH's earlier explanations when assessing the merits of the present appeal.

(D) ANY EFFECT ON EXISTING OR PROSPECTIVE ACCESS RIGHTS, CAPACITY ALLOCATION OR OPERATION OF THE HS1 NETWORK

The effect of approving the capacity allocated to Virgin

89 The Form P which pertains to the Virgin 2030-2040 Application describes the anticipated effect of approving that application and the introduction of the services anticipated therein.

90 Section 4.1 of the Virgin Form P also sets out the capacity that LSPH agreed with Virgin to include in the associated FTAA. LSPH confirmed that it had commissioned independent WebTag analysis in 2020 to quantify the value of

international passenger services using HS1. Based on EIL's 2019 service level but inflating to today's prices, LSPH confirmed that those services delivered £385m of socio-economic benefits. LSPH also confirmed in that section that the services Virgin intended to run represented an 80 per cent. uplift on international passenger services using HS1, compared to EIL's 2019 offering (14,640 Virgin paths compared to EIL's 18,388). As a result, the coordinated four paths per hour currently available on HS1 and known capacity in the International Zone of St Pancras International would, subject to ORR approval, be accounted for. On the basis of that capacity uplift, LSPH calculated that Virgin's service proposals would deliver an additional socio-economic benefit of £308m from the early 2030s onwards. LSPH affirms that that capacity uplift and those benefits are anticipated to follow from the approval of the Virgin 2030-2040 Application.

- 91 Section 4.2 of the Virgin Form P confirms that LSPH procured Network Rail (Highspeed) Limited to conduct a timetable development and performance assessment in order to validate that Virgin's capacity allocation could be accommodated within the capacity envelope available on HS1 and taking account of existing services. This resulted in the production of a specimen timetable, which paragraph 3.24(a) of the ORR C&Ps anticipates as important evidence in the consideration of significant or complex access applications. LSPH stated in that section that it was confident based on that validation exercise and assessment, that the network capacity, reliability, maintenance/renewal and lack of conflict requirements of paragraphs 3.11(a) and (c) of the ORR C&Ps were met. Form P set out the key findings of LSPH's independent expert assessment of the validation exercise, which are not repeated in these representations, save for the following conclusions:

"The specimen timetable has proven there is sufficient spare capacity to accommodate the inclusion of the Virgin proposed service, while still accommodating the existing rights of SET[L], Eurostar and freight services.

Our analysis finds no show stopping or major performance risks."

The effect of allowing EIL's Appeal

- (1) *The disproportionate effect of the remedies sought*

- 92 In addition to seeking a direction that LSPH's decision was wrong in fact and under the AMRs, EIL seeks the following relief from the ORR:

- (a) a direction by the ORR that new services and track access rights sought by any FTAA applicant should not be treated as existing services nor granted rights nor Firm Rights, or anything similar, unless and until such

rights have been approved by the ORR and a corresponding FTAA in respect of them is executed;

- (b) a direction by the ORR that LSPH must reconsider EIL's Access Application on the above basis, ensuring non-discriminatory and fair treatment alongside other competing applications and aspirations including that of Virgin; and/or
- (c) in the alternative, that the ORR intervenes and/or conducts a full and fair, non-discriminatory and compliant assessment to determine which applicants and aspirants, if any, should be granted additional firm rights over the Relevant Framework Period.

93 These representations set out why LSPH's approach and decisions were correct in fact and under the AMRs and therefore why EIL's Appeal should fail. Each limb of the relief sought by EIL rests on the same false premise, namely that LSPH was bound to suspend Virgin's live application pending ORR approval and to rerun the process by reference to all asserted aspirations. That premise is wrong.

94 If, despite all the circumstances, the ORR is minded to allow EIL's Appeal, we set out below (without prejudice to LSPH's primary position) why the remedies sought by EIL are inappropriate and should be refused.

95 As to limb 92(a), there is no basis for the ORR to declare in the abstract that rights sought by an FTAA applicant can never be treated as relevant, material or capacity-affecting unless and until ORR approval has been granted and the agreement executed. Such a direction would be inconsistent with the realities of the access process and would deprive live applications of practical significance pending the ORR's own decision.

96 As to limb 92(b), there is no basis to require LSPH to reconsider EIL's application on the footing that the Virgin 2030-2040 Application had to be ignored altogether unless and until approved. That would proceed on the same flawed premise and would amount in substance to requiring a process reset which the AMRs do not demand. In any event, on 13 August 2026, prior to EIL's Appeal, the ORR had decided to approve the FTAA between LSPH and Virgin. That was confirmed in the ORR's Decision Letter (referring to its approval the previous day), and the FTAA was thereby formally entered into on 18 August 2026. Any requirement to reconsider EIL's application has been rendered moot unless the FTAA is set aside (see (3) *The adverse financial impact* below).

97 As to limb 92(c), the suggestion that the ORR should itself intervene to conduct a full comparative exercise among applicants and aspirants is particularly inappropriate. The statutory regime proceeds on the basis that the infrastructure manager is responsible in the first instance for administering and assessing access

applications, subject to ORR oversight and appeal. This is not a case for wholesale substitution of the ORR for the infrastructure manager.

98 A wholesale restart would in any event be disproportionate and disruptive. It would undermine the integrity of the existing access process, introduce uncertainty for all applicants, stifle, rather than encourage, competition (see (4) *The detrimental impact on competition* below) and distort rather than improve the orderly management of future applications.

(2) Reversion to the existing HS1 utilisation

99 If the EIL Appeal is allowed, the existing capacity utilisation of HS1 will remain unless and until a subsequent access application is approved by the ORR. The current utilisation is approximately two thirds of total available capacity, although this proportion fluctuates with seasonality of usage.

(3) The adverse financial impact

100 As mentioned in paragraph 96 above, LSPH and Virgin have already entered into the FTAA. The parties have therefore created enforceable rights and obligations between them, and they have each started to expend management time and cost in its performance.

101 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]²

102 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]³

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.

³ 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.

103 [REDACTED]

104 It is unclear how EIL's Appeal remedies could be effected in the context of an extant Virgin FTAA, since the EIL 2029-2040 Application introduces contestability to the capacity contained in the Virgin FTAA and LSPH considers that it would not be able to reconsider their access applications alongside each other (as EIL requires) with a view to the possible reallocation of some of Virgin's contracted capacity to EIL instead. [REDACTED]⁴ LSPH considers that a successful EIL appeal would therefore require an order to set aside the Virgin FTAA but without adequate redress for the signatories.

(4) The detrimental impact on competition

105 LSPH wishes to see greater competition and the growth of international rail on HS1. LSPH has maintained advanced readiness to support EIL's and prospective international operators' growth. This readiness includes the proactive coordination of additional cross-Channel paths with adjacent infrastructure managers, the development of StEP, the publication of the International Growth Incentive Scheme, assistance with mobilisation plans and the support it has offered operators in the development of new destinations.

106 But those broader policy objectives do not justify disregarding the actual procedural status of the applications before LSPH. Nor do they require LSPH to treat all public ambitions, aspirations and market interest as equivalent to duly made and progressed access applications.

⁴ 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.

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.

- 107 Allowing EIL's Appeal, LSPH considers, would be contrary to the broad objective of the AMRs to promote competition in international high-speed passenger services, since (i) if the thrust of EIL's remedies are realised, that would most immediately reset the Virgin application, effectively taking it back to square one, and (ii) the precedent a successful EIL Appeal creates is likely to have a chilling effect on future HS1 access applications.
- 108 The barriers to entry for new entrants seeking to introduce international high-speed passenger services are already significant. If uncertainty of process is added to the mix, which will be the consequence of a successful EIL appeal, those barriers get even higher, potentially closing the market to new cross-Channel services altogether. Moreover, allowing EIL's Appeal is likely to set a precedent for late applications, followed by later appeals. It would encourage similar applications being made by competitors at the end of the process for approving earlier rival applications, in an attempt to seek to undermine them by having them reset or at least subject to additional and/or drawn-out consultations to slow them down.
- 109 It is widely acknowledged that time is of the essence for any applicant operator whose intended services are predicated on the procurement of new rolling stock, since that requires heavy capital investment that can only be repaid once that rolling stock enters service. The need to enter service as soon as possible is therefore acute and any delay could have a significant adverse impact on an operator's business. The challenge is more acute for new entrants than incumbent operators that are at least already generating revenue. Allowing EIL's Appeal would therefore have a disproportionate effect compared to if Virgin had appealed a competing application made by EIL.

(E) ANY OTHER MATTERS CONSIDERED RELEVANT TO THE ORR'S DETERMINATION

- 110 Efficient infrastructure management requires a workable process. That process must permit the infrastructure manager to deal with actual applications on a fair and non-discriminatory basis, not suspend decision-making until every potential future operator has crystallised its ambitions into a formal request.
- 111 If, contrary to LSPH's primary case, the ORR was to conclude that there had been some defect in the process followed, the proportionate response would be a limited procedural direction only which addressed that defect for future application processes. It would not justify a sweeping declaration that no live application can be taken into account before approval, nor a wholesale restart of the allocation process that has been followed in relation to the Virgin application.
- 112 In conclusion, LSPH's position is that:

- (a) for the reasons set out above, LSPH's approach, decisions, and the process it followed were lawful, rational and compliant with the AMRs and the published HS1 framework;
- (b) EIL's Appeal should therefore be dismissed;
- (c) if, contrary to LSPH's primary position, the ORR was minded to uphold any aspect of the appeal, the relief sought by EIL would in any event be excessive, disproportionate and inappropriate; and
- (d) any remedy should be very tightly limited and procedural only (as described in paragraph 111 above) and should not amount to a wholesale restart of the process or an effective substitution of the ORR for the infrastructure manager.

**ANNEX – UNDERLYING SUBMISSIONS RELIED UPON BY LSPH AND TO WHICH
THE ORR IS REFERRED (further to paragraph 87)**

No.	Document	Date
1.	EIL first consultation submissions to LSPH (letter with appendix comments)	27 May 2026
2.	LSPH's letter to EIL enclosing LSPH's responses to EIL's first consultation submissions (table)	19 June 2026
3.	EIL's second consultation submissions to LSPH (email)	25 June 2026
4.	LSPH email to EIL confirming extension of time to 30.6.26 for further submission responses	26 June 2026
5.	LSPH response to EIL's second consultation submissions (email and attached table)	29 June 2026
6.	EIL's third consultation submissions to LSPH (email with appendix comments)	30 June 2026
7.	LSPH's final consultation submissions letter to all stakeholders enclosing LSPH's summary of further consultation submissions	15 July 2026
8.	EIL's fourth response letter to LSPH enclosing further objections to Virgin FTAA consultation and also referencing EIL's FTAA application for the Relevant Framework Period	21 July 2026
9.	EIL's email to LSPH confirming its FTAA application for the Relevant Framework Period and requesting information on next steps	21 July 2026
10.	LSPH's letter to EIL confirming the closure of and outcome of the consultation	29 July 2026
11.	EIL's email to LSPH in response to LSPH's 30 July 2026 letter requesting further information from LSPH in the context of the operational integrity assessment of the 2029-2040 Application	3 August 2026
12.	LSPH's email response to EIL – specifically the comments regarding Virgin's preceding application	7 August 2026

No.	Document	Date
13.	EIL's email response, specifically the section in respect of "VTE 'rights'" making a written challenge asking LSPH to state the regulatory basis for treating Virgin's pre-approval assigned rights as existing rights	10 August 2026
14.	LSPH's email reply to EIL stating that the points had been fully addressed in the Virgin consultation and any further issues should be raised with the ORR	12 August 2026

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

also via e-mail: [REDACTED]

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Datum 29 september 2026
Uw kenmerk e-mail 2 September 2026
Kenmerk/ID -
SharePoint ID
Onderwerp Framework Agreement Virgin
Bijlage(n) Letter of ProRail dated 27 May 2026

Eigenaar [REDACTED]
E-mail [REDACTED]
Telefoon [REDACTED]
Afdeling LJV Corporate

Dear mr. Jones,

By e-mail dated 2 September 2026 ProRail was invited by ORR to comment to the appeal of Eurostar International Limited concerning the process followed by London St. Pancras High Speed (LSPH) in relation to the allocation of infrastructure capacity on the HS1 network and to provide relevant information. ProRail will give comments and will provide information in this letter about the international aspects concerning this framework agreement.

On 24 April 2026, ProRail was invited by LSPH to comment on the proposed award of a Framework Agreement to VTE Holdings Limited (Virgin). Only limited information was provided and there was no timely involvement of the other infrastructure managers concerned. Attached is ProRail's response of 27 May 2026. In the response received on 19 June 2026, the concerns raised by ProRail do not appear to have been substantively addressed. In particular, the response does not engage with ProRail's concern that capacity commitments made by LSPH cannot, by themselves, guarantee end-to-end international capacity as capacity on neighbouring networks remains subject to separate regulatory frameworks and independent capacity allocation decisions. Furthermore, the Dutch rail network is subject to severe capacity constraints and has been declared congested, with demand substantially exceeding the available infrastructure capacity.

As highlighted by ProRail (and by Infrabel and SNCF Réseau), effective coordination between infrastructure managers remains essential to ensure that international capacity commitments are realistic, consistent, operationally feasible and deliverable across the entire route. Accordingly, ProRail considers that effective coordination between the relevant infrastructure managers should precede the award of framework agreements of this nature. Without such prior coordination, there remains a material risk that capacity commitments made on one network will not be capable of being accommodated on neighbouring networks, resulting in conflicting commitments and uncertainty for market participants.

ProRail respectfully requests ORR to take these cross-border implications into account in its determination and, in particular, to recognise that effective prior coordination between the infrastructure managers concerned is necessary before framework commitments with cross-border effects are established. ProRail would appreciate being kept informed of any further developments in this matter.

Yours sincerely,



Leendert Makkinga
CLO

Annex: Letter of ProRail dated 27 May 2026

London St. Pancras High Speed
To Mr. Edmund Butcher
90 York Way
London, N1 9AG
United Kingdom

Datum	27 May 2026	Behandeld door	Renske Breevoort, Jeroen Wesdorp
Uw kenmerk		Telefoonnummer	
Ons kenmerk	0001-1602824680-677		
Bijlage(n)	-		
Onderwerp	Response to consultation on VTE Holdings Ltd Framework Agreement		

Dear Mr Butcher, dear colleagues,

ProRail
Bezoekadres
Moreelsepark 3
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On 24 April 2026 I received your invitation to offer a ProRail position on the framework agreement that London St. Pancras High Speed has decided to award to VTE Holdings Limited (Virgin) for connections between London and Paris, Brussel and Amsterdam. This letter describes the position of ProRail in this matter.

ProRail notes that it has only recently been made aware of this consultation, at a very late stage in the process, with no further clarification offered. While we appreciate the opportunity to comment, we would like to underline that ProRail was not previously informed nor involved in the development of this proposal, despite the fact that the proposed services explicitly include operations to and from Amsterdam in the Netherlands, and that also the proposed services between London and Brussel and Paris impact the Netherlands. Given the direct implications for infrastructure capacity in the Netherlands, we consider this lack of prior engagement highly unusual. It also means that we have unanswered questions on the framework agreement itself, on the criteria used and on the process followed.

With regard to the substance of the proposal, ProRail would like to highlight the following:

1. Capacity availability in the Netherlands between Belgium border and Amsterdam.
ProRail cannot, at this stage, provide any assurance that sufficient capacity will be available on the Netherlands rail network between Belgium border and Amsterdam Centraal from 2031 onwards to accommodate the proposed Virgin services. This is particularly relevant in light of the expected growth in international open access passenger services, combined with already constrained infrastructure and competing capacity demands.
2. Absence of framework agreements in the Netherlands
ProRail currently does not offer framework agreements. Furthermore, under the existing Dutch capacity allocation Decree and prioritisation rules, no preferential treatment or priority is granted to framework agreements. Capacity requests are assessed in accordance with national and European allocation procedures, ensuring fair and non-discriminatory access.

3. Regulatory process for new services
ProRail is, at present, not formally aware of any notification by Virgin regarding the proposed services. In line with applicable European and national legislation, any railway undertaking intending to operate a new service must submit a formal notification at least 18 months prior to the intended start of operations to both ProRail and the Dutch regulatory body (ACM). This process is essential to assess feasibility, capacity availability, and potential impacts on the network.
4. Concerns on unilateral restrictions of a fair and open rail passenger market.
ProRail expects strong growth in the cross-border passenger rail market, in terms of passengers, more rail products, and more train operators and is fully committed to facilitate this growth. Also we acknowledge the contribution that framework agreements can bring. However, we believe these contractual agreements only work in practice when aligned cross-border. 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 cross-border market. Without more information, ProRail cannot rule out the possibility that this risk is present in this case. Especially since all three services in the contract (to Amsterdam, Brussel and Paris) have an impact on the same infrastructure capacity. Moreover ProRail understands (but to our knowledge has not been directly informed of this) that the incumbent operator already holds a framework agreement with LSPHS for similar services.

In light of the above, ProRail 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.

We strongly emphasise the importance of timely coordination and involvement of all relevant infrastructure managers when developing international capacity arrangements of this nature. Early engagement is essential to ensure realistic, feasible, and compliant outcomes.

ProRail remains open to further dialogue and coordination with all parties involved.

Yours sincerely,
On behalf of ProRail,

Jeroen Wesdorp
Head of international passenger transport strategy
ProRail Capacity Management

From: [REDACTED]
To: [REDACTED]
Cc: [REDACTED]
Subject: [EXTERNAL] TR: Appeal by Eurostar International Limited under Regulation 32 regarding the allocation process for infrastructure capacity on HS1
Date: 30 September 2026 14:27:07
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[20260902 EIL Req 32 - ORR letter to parties.pdf](#)
[2026-08-14-eurostar-international-limited-access-appeal-application-form-r32.pdf](#)

Cher monsieur Reed,

SNCF Réseau remercie l'ORR de sa sollicitation.

SNCF Réseau s'est exprimée lors de la consultation menée par LSPH relative au projet d'accord-cadre avec VTE Holdings Limited et n'a pas de remarques additionnelles à formuler.

Dear Mr Reed,

SNCF Réseau thanks ORR for its invitation to make representations.

SNCF Réseau submitted representations in the course of LSPH's consultation on the proposed Framework Track Access Agreement (FTAA) with VTE Holdings Limited and has no additional observations to submit.

Cordialement, Yours sincerely,

[REDACTED]
[REDACTED]
[REDACTED]

SNCF Réseau

[REDACTED]
[REDACTED]
[REDACTED]

24 September 2026

BY EMAIL ONLY

Mr Martin Jones

Deputy Director, Access & International
Office of Rail and Road

By email only to: [REDACTED]

Dear Martin,

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

Thank you for your letter of 2 September 2026 inviting Trenitalia France (“TF”) to provide comments and relevant information in relation to Eurostar International Limited’s (“EIL”) Regulation 32 appeal in respect of the process followed by London St. Pancras Highspeed (“LSPH”) in relation to the allocation of infrastructure capacity on the HS1 network (the “EIL appeal”).

Relevant factual background. TF has been working with LSPH on its own plans to launch a London-Paris service in 2029. TF has been engaged in lengthy discussions with LSPH which led LSPH formally inviting TF to confirm it wishes to commence FTAA negotiations on 6 November 2025. TF has worked continuously to provide evidence of its preparedness to LSPH, including by pointing to its significant investment of time and resources into maintenance facilities and rolling stock procurement, all of which is informed by TF’s (and the FS Group’s) extensive experience in timely delivery of international high-speed rail routes.

Regretfully, TF believes that LSPH’s processes have serious shortcomings. Substantively, TF considers that LSPH’s interpretation of the Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016 (the “Regulations”), ORR’s C&Ps, and its own Network Statement (and the corresponding process undertaken by LSPH) have unfairly advantaged VTE, and discriminated against TF, and have not been transparent; in particular by affording the VTE-LSPH draft FTAA a status that is clearly inconsistent with the law and regulation. Procedurally, TF strongly believes that VTE has benefitted from more lenience and engagement than other train companies seeking FTAA’s, resulting in TF’s application failing to progress at the speed it should have. This includes TF receiving confirmation that it had met LSPH’s operational integrity threshold on the same day ORR issued its decision approving the VTE-LSPH draft FTAA, and LSPH’s complete failure to respond to TF’s most recent (21 August 2026) request to progress FTAA negotiations quickly, which LSPH responded to only on 21 September 2026, a full month after TF sent it, and with a number of crucial process questions unanswered. As more particularly set out in TF’s Regulation 32 appeal, TF also has significant concerns that VTE’s application has been treated more



favourably than its own, and accordingly TF has been unfairly treated, discriminated against and TF has a number of grievances about LSPH's conduct.

TF provides the above as background to demonstrate that LSPH's problematic conduct is not limited to its treatment of EIL, but recognises that much of it relates to TF's own process with LSPH, TF has therefore decided to make a Regulation 32 appeal against LSPH in its own right and is sharing that appeal with the ORR concurrently with sharing these representations. Whilst there is some overlap between the situation which is the subject matter of the EIL appeal and TF's situation, there are sufficient differences that TF considers it appropriate to issue its own Regulation 32 appeal, so that all relevant information can be considered by the ORR and, where appropriate, directions can be issued in relation to the totality of the complaints raised in relation to LSPH's conduct. As noted in TF's own Regulation 32 appeal, TF considers that both the EIL appeal, and TF's separate appeal, should be considered concurrently given the overlap in the situation which is the subject matter of both such Regulation 32 applications.

Principal representations. In the context of EIL's appeal specifically, TF makes five principal submissions:

1. TF agrees with EIL's position that LSPH has acted contrary to the law and the regulatory process in treating the draft FTAA between LSPH and VTE Holdings Limited / VTE OpCo Limited ("VTE") as affording it equivalent status to a signed FTAA approved by ORR. An application for capacity is not the same as reserving that capacity, and LSPH should have considered all realistic potential requests for capacity, including from EIL and TF, as part of the process. Not doing so affords VTE preferential treatment.
2. The effect of LSPH's approach is an anticompetitive foreclosure of HS1 capacity against other applicants, contrary to regulation 21(4) of the Regulations. That duty falls on the infrastructure manager at the point at which the framework agreement is made, and cannot be discharged by an infrastructure manager that does not identify and take account of the other applicants and services concerned. LSPH knew who they were, yet did not do so.
3. LSPH's approach also risks mismatches in capacity allocation with the Channel Tunnel and French high-speed infrastructure managers, which could result in fewer services, and less choice, for passengers. TF does not suggest that LSPH or ORR should allow their own processes to be delayed indefinitely to accommodate international counterparts, but LSPH should nevertheless comply with regulation 20(2)(a) of the 2016 Regulations, which require LSPH to co-operate to enable the efficient creation and allocation of infrastructure capacity. There is no evidence of that having occurred when considering VTE's application and, if it had done so, undoubtedly LSPH would have taken into account this material factor in determining capacity on HS1, and other operator's aspirations to use that capacity. TF invites ORR to obtain the allocation practices of the connected infrastructure managers under regulation 20(2A), which ORR can do without determining any issue against LSPH, and to ask LSPH how it has taken account of other infrastructure managers' practices.
4. LSPH has, more generally, taken an opaque approach to engagement with TF, and apparently to EIL too, in not accounting for the substantively and procedurally different ways in which it has treated VTE's application, compared with other train companies' applications. The ORR should remind LSPH of its duty to engage in a fair and equitable process with all train companies.



5. ORR should use this appeal to provide guidance to LSPH on how capacity allocation should be fairly and equitably run, in line with legislation, ORR guidance and policy, and its duty to promote competition under section 4 of the Railways Act 1993. TF is also seeking certain specific directions from the ORR as part of its Regulation 32 application, including in relation to the VTE TAA and modifying the VTE TAA in a manner consistent with the outcome of a fair, transparent and non-discriminatory capacity allocation process undertaken by LSPH.

1. LSPH has no basis in fact or law to treat a draft FTAA as equivalent to a signed FTAA approved by ORR

Regulation 21(15) is explicit in requiring ORR approval before a FTAA can be entered into. TF understands that when EIL made its capacity allocation request, ORR had not approved the VTE FTAA. It is therefore irrational for LSPH to treat the draft VTE FTAA as though in force and conferring firm rights.

TF does recognise that LSPH should have afforded VTE's capacity request weight in deciding EIL's application. LSPH is required by section 2.3.3 of its own Network Statement to consider parallel applications, and has a framework for doing so. Section 2.3.3 provides that applications are considered in the order in which they are received, but that where LSPH "is considering more than one application at the same time and is unable to accommodate all of the requests for capacity", it "will apply the priority criteria specified in the declaration of specialised infrastructure (see section 3.4.1) contained in Part D of the HS1 Network Code". The same section requires LSPH, in deciding whether to enter into a Framework Track Access Agreement, to take into account whether the request complies with the Regulations, including "the extent to which the proposed arrangement will preclude the use of HS1 by other Applicants".

TF submits that LSPH must carry out this assessment in the round. Where all available evidence to LSPH confirms that an applicant has credible well-advanced plans to introduce or continue a service and has expressed a reasonable request for capacity, a parallel capacity allocation process is appropriate.

Where LSPH has access to this evidence, it should not use artificial gates, such as whether a formal application has been made or whether there are limited questions around operational integrity, to avoid acknowledging commercial and operational reality. TF notes that, in its [determination](#) of the Regulation 32 appeal by Virgin Management Limited dated 3 July 2025, ORR noted at paragraph 81 that "[t]he definition of applicant is wide and includes 'legal entities... with a... commercial interest in procuring infrastructure capacity'".

This means that LSPH should, at the very least, consider EIL's, VTE's, and TF's capacity requirements collectively and simultaneously.

2. The effect of LSPH's approach is to foreclose HS1 capacity against other applicants

LSPH's approach means that VTE's capacity request has been assessed in an artificial environment that ignored other applicants' needs (including, in TF's case, an applicant with advanced plans to commence services in 2029, a year before VTE), and to grant VTE's



capacity a privileged status, ahead of ORR approval, that could only reduce capacity made available to other applicants, including EIL and TF.

The net result of this approach is to foreclose other train companies from accessing HS1 capacity, unduly limiting competition. TF is also cognisant of the ORR's duty to promote to competition in the provision of railway services under section 4 of the Railways Act 1993. That runs counter to the Regulations and to ORR's own criteria. Regulation 21(4) 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", and regulation 19(16)(a) requires the infrastructure manager to ensure that infrastructure capacity "is allocated on a fair and non-discriminatory basis".

TF notes that the UK–France transport connectivity declaration of 15 July 2025 agreed "that work must continue to support the development of thriving and competitive international rail services markets", and that "[t]he introduction of new entrants into these markets will bring a greater choice of services and lower fares". TF invites ORR to have regard to this governmental statement when considering the effect of LSPH's approach.

3. Other relevant matters: coordination with connected infrastructure managers

ORR's decision approving the VTE FTAA notes 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".

TF does not dispute this but submits that LSPH should manage its own capacity allocation process in a way that *anticipates* how other infrastructure managers approach their own allocation processes. This would be consistent with LSPH's duties under regulation 20(2)(a) of the Regulations, which requires it to co-operate with other infrastructure managers to enable the efficient creation and allocation of capacity.

SNCF Réseau's capacity allocation process can only allocate a year in advance. The practical consequence is that train companies will likely be at an advanced stage of readiness when capacity is allocated, and SNCF Réseau would be expected to receive applications from all interested parties, triggering parallel assessment.

As ORR will be aware, GetLink's approach is to refuse to enter capacity negotiations until a train company has a firm order for rolling stock. At this stage, GetLink consults with all potential applicants, in a process that allows it to consider their capacity objectives as part of a parallel assessment. In this regard, on 19 August 2026, GetLink invited all relevant train companies to enter into negotiations for a FTAA, with the invitation triggered by TF's request to negotiate an FTAA, which was accompanied by evidence of a firm order for rolling stock. This approach, which combines a clear threshold for any one train company starting the FTAA process (i.e., a firm order for rolling stock) with an open solicitation for other train companies to seek capacity, ensures fair and equitable treatment in capacity allocation.

LSPH was aware that the other infrastructure managers' processes would result in parallel assessment of potential capacity applicants' proposals. While this does not mean that LSPH is bound to follow their approach, it does mean that LSPH was aware that the most efficient utilisation of capacity would result from a coordinated approach.

LSPH should have carried out a parallel assessment of EIL's, VTE's, TF's, and any other serious candidate's capacity requests. Its failure to do so risks creating a scenario where



different train companies have significantly different capacity allocations in the UK on the one hand, and France and the Channel Tunnel on the other. This would result in underutilisation of capacity, fewer services, and less competition, all to the detriment of passengers, investment and growth, and would also have a significant detrimental effect on infrastructure managers and other train companies.

4. LSPH has taken an opaque approach to engagement with TF (and apparently EIL)

LSPH has agreed an FTAA with VTE with conditions precedent covering significant parts of its application, including its operational integrity assessment (which LSPH initially judged TF not to have met) and securing rolling stock.

LSPH has given no meaningful explanation of why VTE has been granted these conditions, has not offered similar conditions to other train companies (e.g., TF was never offered a condition precedent to meet operational integrity, despite its extensive experience running high speed services in France), and has not explained the time frames associated with them. This lack of transparency means that TF, EIL, and other potential applicants have no way to test whether LSPH has granted VTE special treatment and to assess whether we might have been able to benefit from the approach that LSPH was willing to give to VTE.

TF notes that this lack of transparency is compounded by significant delays in communications. TF has raised the unfairness of the conditions precedent provided to VTE on multiple occasions during the VTE FTAA consultation process, and in a formal process letter dated 21 August 2026. LSPH only replied to the latter on 21 September 2026, and even then only in part, with no acknowledgement or clarification of the nature of the conditions precedent granted to VTE.

5. ORR should use this appeal to set out the appropriate approach for fair and equitable capacity allocation

The allocation of capacity on HS1 is of crucial importance in ensuring competitive services for UK and international passengers. Mistakes in the application of the Regulations and misalignment with other international infrastructure managers creates a risk that this competition will fail to materialise.

TF therefore considers it crucial that ORR take all reasonable steps to ensure that the capacity allocation process is carried out in a fair and equitable way that allows train companies and their investors to have the confidence to spend the very significant amounts of money needed to bring new services online. Just because VTE's proposed services may be being funded in a different way to TF's does not mean that such services merit priority in their consideration by LSPH.

TF recognises that under regulation 32(5)(b)(iii) ORR must, where appropriate, issue a direction to remedy the situation from which the appeal arose. While this present appeal concerns EIL, TF considers that the LSPH decision-making process that led to EIL's dispute with LSPH has also resulted in unfair treatment of TF, and risks doing the same for other train companies. Accordingly, TF is submitting its separate Regulation 32 appeal to facilitate the ORR's broader consideration of the situation created by LSPH's process, and the consequences specifically for TF.

TF urges ORR to determine this appeal in a way that allows LSPH to understand how it should recalibrate its process with other train companies, including by making

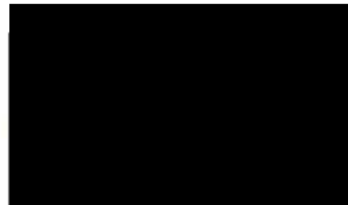


recommendations to LSPH on matters not directly related to EIL's grounds of appeal, but which will have immediate relevance in ongoing and subsequent applications and reapplications.

TF stands ready to provide ORR with any additional information it requires as expeditiously as possible.

Yours sincerely,

Marco Caposciutti
Chief Executive Officer
Trenitalia France SASU





VTE OPCO LIMITED
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50a Charlotte Street
London
W1T 2NS

Martin Jones
Deputy Director, Access & International
Office of Rail and Road
25 Cabot Square
London
E14 4QZ

2 October 2026

Dear Martin

Eurostar International Limited ("EIL"): Appeal under regulation 32 of The Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016 (the "Appeal" and the "Regulations")

Thank you for your letter of 2 September 2026 inviting representations from VTE OpCo Limited ("**VTE**") relating to the Appeal. We also acknowledge receipt of ORR's letter of 30 September 2026, which we shall respond to separately.

In response to your request for confirmation, VTE agrees with ORR that the Appeal concerns the allocation of infrastructure capacity on the HS1 network by London St Pancras Highspeed ("**LSPH**"). In summary, VTE's firm view is that the Appeal is without merit, as VTE believes that LSPH's process was in no way flawed and that there was no unfair or discriminatory treatment of EIL.

VTE recognises that LSPH will respond fully to the Appeal as the respondent and will have access to additional information that VTE does not have. Therefore, VTE has restricted its own observations and representations to those that arise on the face of the Appeal and which it considers are strictly relevant and may not be addressed by other interested parties. VTE's observations and representations are set out below.

Issues Raised by the Appeal and Relevant Factual Background

1. VTE notes that the agreed application Form P and the Framework Track Access Agreement between VTE and LSPH (the "**FTAA**") were issued to ORR on 24 April 2026, being the point at which capacity on HS1 was reserved under LSPH's process. This has material timing implications for the invitation to apply for capacity and the Appeal itself. The Appeal incorrectly states that VTE formally submitted an application via Form P on 29 July 2026; 24 April 2026 is the relevant date for the purposes of establishing VTE's primacy.
2. VTE notes that EIL formally submitted its request for capacity on 21 July 2026, almost three months after the agreed Form P was submitted as part of the consultation exercise and well beyond the end of the consultation period. This was followed up just over three weeks later with the Appeal. Paragraph 3 of

Section 2.6 of the Appeal seems to indicate that EIL was previously made aware of LSPH's treatment of capacity reservation, yet, as a fully informed incumbent, EIL chose not to appeal until much later.

3. VTE understands that there were no new capacity requests made during the FTAA consultation period.
4. ORR will no doubt have seen the representations on the FTAA that EIL made in response to LSPH's consultation and will have taken them into account in its decision to approve the FTAA. In VTE's view, the Appeal offers no new evidence.
5. VTE is not aware precisely which rights EIL applied for. However, it is unclear whether EIL has achieved the requisite level of operational integrity for its planned services as envisaged under the LSPH process. VTE's own operational integrity was confirmed in January 2026. VTE is not in a position to comment on EIL's readiness, but LSPH and ORR will no doubt have properly probed and considered this as part of the process to date and ORR will take an assessment of readiness into account in determining the Appeal. One observation VTE would make, however, is the apparent lag between EIL announcing an order for new trains in October 2025 and only starting to seek additional track access rights for new services much later, in the summer of 2026. VTE would have expected access rights to have been sought contemporaneously with the train order as part of proving the business case for new trains ordered for the purpose of operating new, additional services rather than shoring up existing services.
6. In Section 2.5 of its Appeal, EIL suggests that VTE being awarded depot capacity at Temple Mills Depot has led LSPH to prioritise VTE's FTAA application. There is no evidence to support this assertion. LSPH has conducted a process entirely independent of the Section 17 process for Temple Mills Depot.
7. In Section 2.3 of its Appeal, issued on 14 August 2026, EIL states that the FTAA between LSPH and VTE had not yet been approved. This is incorrect, as ORR pre-approved the FTAA on 13 August 2026.

Process Followed and Decisions Made by LSPH

VTE has engaged extensively with LSPH for more than three years, and has found it to act with the integrity, professionalism, transparency and clarity one would expect of a responsible infrastructure manager throughout that time. VTE has, at all times, been clearly informed and has understood the process and steps needed for capacity allocation under a framework agreement, including the point in the process when capacity would become reserved (i.e. the issuing of an agreed Form P and FTAA).

All applicants were provided with the same publicly available information and were afforded the same opportunity to apply for capacity. In any event, given that EIL has engaged with LSPH (or its predecessor company) for over 25 years and holds its own current FTAA, it would surprise VTE if EIL was not aware of the procedures and requirements for securing access.

Effect on Existing or Prospective Access Rights, Capacity Allocation or Operation of the HS1 Network

With no visibility of the rights being requested by EIL, VTE is unable to respond in any detail. Without prejudice to VTE's position that due process has been followed such that the Appeal should be dismissed and ORR's ability to make a direction does not arise, the precise remedy that EIL is pursuing is not clear. VTE contends that 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. VTE has advanced its plans based on the access it has secured in the FTAA and should be allowed to plan the future of its business with a reasonable degree of assurance. VTE and LSPH have executed a binding FTAA. The rights and capacity allocated in this FTAA cannot lawfully be unwound or offered to EIL, as to do so would directly conflict with the rights conveyed to VTE under the FTAA.

Other Relevant Matters

VTE has made a significant investment in a new cross-Channel service designed to promote more use of the network and introduce competition for the benefit of passengers. The FTAA is an important part of bringing forward these benefits. VTE has progressed its project in reliance on the prescribed and published process that was undertaken by ORR and LSPH, and the capacity allocated under the FTAA. Whilst VTE recognises EIL's legal right to appeal under the Regulations, it is for the same reason essential that the Appeal is concluded fairly and quickly, to provide all parties with the certainty they need. We therefore consider it essential that ORR's determination is delivered on 4 December 2026.

Conclusion

VTE has no reason to believe that LSPH has not complied with its obligations as an infrastructure manager or that it has not conducted a fair, open and transparent process affording all potential applicants equal opportunities to seek the available capacity. LSPH's decision to conclude the FTAA and secure ORR approval after the consultation period had expired, during which no other formal requests for capacity were received from operators, was entirely appropriate and lawful.

VTE therefore invites ORR to dismiss the Appeal and confirm, pursuant to regulation 32(10)(a) of the Regulations, that no modification of the infrastructure manager's decision is required in these circumstances. In the highly unlikely event that ORR does conclude that a modification is needed, VTE contends that ORR does not have the power to interfere with the FTAA and VTE's pre-existing contractual rights in reliance on which it has progressed its plans. VTE reserves all its rights in relation to the Appeal and ORR's ultimate decision.

VTE would be happy to discuss the topics raised in this letter further with ORR.

Yours sincerely

A black rectangular box redacting the signature of Phil Whittingham.

Phil Whittingham

Project Lead on behalf of VTE OpCo Limited