Representations provided on the appeal by Trenitalia France under Regulation 32 regarding the allocation process for infrastructure capacity

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Department for Transport

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 Trenitalia France'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.

FAO Martin Jones
Deputy Director, Access and International
Office of Rail and Road
25 Cabot Square
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14th 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 30 September 2026.

Eurostar International Limited ("**EIL**") notes that Office of Rail and Road ("**ORR**") has accepted for consideration an appeal under regulation 32 of the Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016 (the "**2016 Regulations**") by Trenitalia France ("**TF**") (the "**TF Appeal**").

This is EIL's response to ORR's request in your letter of 30 September for representations and supporting evidence in relation to the TF Appeal by no later than 16 October 2026.

THE SCOPE OF THE TF APPEAL

1.1 ORR has described the scope of the TF Appeal as concerning: "*the process followed by HS1 Limited (London St. Pancras Highspeed, "**LSPH**") in relation to:*
- *TF's request for infrastructure capacity and a framework track access agreement on the HS1 network;*
- *LSPH's consideration and application of its operational integrity requirements;*
- *the consistency and transparency of LSPH's treatment of TF's request when compared with its treatment of the application made by VTE Holdings Limited ("VTE");*
- *the process followed by LSPH in identifying, assessing and addressing competing requests for infrastructure capacity;*
- *the resulting decision to enter into a framework track access agreement with VTE; and*
- *the adequacy of the relevant provisions of LSPH's Network Statement.*"

1.2 EIL considers ORR's description accurately reflects the subject matter of the TF Appeal.

1.3 EIL notes that the TF Appeal raises some similar issues as EIL's separate appeal under regulation 32 of the 2016 Regulations (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. Insofar as they relate to the same flawed allocation process undertaken by LSPH, EIL requests that its submissions in the EIL Appeal are read as supplementing those in the TF Appeal and vice versa.

COORDINATION OF THE EIL APPEAL AND THE TF APPEAL

2.1 We note, given the significant connection in scope and subject matter between the EIL Appeal and the TF Appeal, that ORR intends to coordinate the procedures if and where appropriate. As previously confirmed (in EIL's letter dated 2 October 2026 in relation to the EIL Appeal), EIL is supportive of this in principle.

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2.2 Indeed, since the LSPH process for allocation is supposed to be transparent, fair and non-discriminatory for all, EIL submits that ORR must necessarily consider how LSPH's process applied to different parties together and comparatively.

2.3 For the same reason, EIL reserves the right to respond to any representations or evidence submitted in the TF Appeal by 16 October 2026 (by LSPH, the Department for Transport or any other party) which:

(1) were not submitted by that party in the EIL Appeal; and

(2) bear on EIL's rights or on the conduct or determination of the EIL Appeal.

2.4 EIL notes that ORR's letter of 30 September anticipated such an opportunity being provided in its statement that:

> "*Where additional information is received which raises matters on which other parties should have an opportunity to comment, ORR may invite further submissions*."

EIL'S REPRESENTATIONS IN RELATION TO THE TF APPEAL

Purpose and scope of these representations

3.1 EIL makes these representations as a relevant party under regulation 32(5) of the 2016 Regulations. EIL is not a party to the TF Appeal and neither seeks to advance TF's case nor to express any view on the merits of TF's request for capacity, its operational integrity or its comparison with VTE's application.

3.2 In accordance with ORR's statement that parties do not need to repeat material already provided in the EIL Appeal, EIL does not rehearse the representations it has made in that appeal. As stated above, however, EIL's representations made and evidence submitted (or that will be made and submitted) in the EIL Appeal stand and should be considered by ORR on their merits in full in the context of the TF Appeal also and vice versa.

3.3 EIL instead identifies here, in a targeted rather than exhaustive manner, facts and matters from its direct experience that are relevant to issues in the TF Appeal and/or to the connections between the EIL Appeal and the TF Appeal.

Overview

3.4 EIL's central observation is that its experience of LSPH's access process, as detailed in the EIL Appeal, bears material similarities to TF's experience as described by TF in the TF Appeal.

3.5 EIL invites ORR to note that two experienced operators, EIL (the incumbent international operator through the Channel Tunnel seeking to extend its existing firm rights) and TF (an established high-speed operator in France and Italy seeking to enter the cross-Channel market), have independently encountered similar features and non-compliances of LSPH's approach. That consistency is strong evidence that the matters raised are not isolated or specific to either operator, but reflect structural and/or systemic defects, defaults and non-compliances in LSPH's approach to allocating capacity on the HS1 network for the period from 2029/30 onwards.

3.6 EIL notes that TF, in its representations in the EIL Appeal, has likewise observed that LSPH's conduct "*is not limited to its treatment of EIL*". Each of our companies has independently corroborated the other's account of a flawed capacity allocation process including that EIL has also already addressed LSPH's use of its operational integrity test in a potentially discriminatory, unfair and non-transparent fashion in its letter of 2 October in relation to the EIL Appeal.

3.7 EIL identifies below (without limitation or exclusion) four key common features between TF's grievances and its own.

LSPH's unlawful treatment of VTE's draft Form P as a reservation of capacity

3.8 It was evidently a general operating premise within LSPH's allocation process (as experienced by both EIL and TF) for LSPH to treat the issue of VTE's draft Form P as reserving capacity for VTE. Despite requests from EIL and TF, LSPH has identified no regulatory basis for that approach.

3.9 LSPH's approach was substantively incorrect as a matter of law. Until ORR approves a framework agreement and it is executed, there is no access contract and no right to capacity (an applicant must "*conclude*" the necessary arrangements with the infrastructure manager before capacity is allocated, as set out in regulations 19(14)-(15)). Regulation 21(15) of the 2016 Regulations is clear that ORR approval must be granted before such a contract can be concluded, which it had not been at the relevant times.

3.10 LSPH's repeated failure to explain the lawful basis for its conduct and approach in response to reasonable and timely requests for such clarity is also itself inconsistent with LSPH's obligation to allocate capacity on a fair, non-discriminatory and transparent basis (regulation 19(16) of the 2016 Regulations).

3.11 The impact of this approach was to create a "first come, first served" approach at LSPH that resulted not just in unjustified delays in progressing applications of other applicants but a lack of open consultation to invite and identify competing aspirations and requests to allow for a properly informed decision by LSPH on relative viability and benefits of VTE's application (see further below). Certainly, once LSPH had issued the draft VTE Form P, LSPH indicated (see, without limitation, LSPH's 19 June 2026 and 15 July 2026 responses to consultation submissions) that any access request received for the same period would be treated as being subsequent to (rather than concurrent and competing with) what were alleged to be and treated as VTE Firm Rights.

LSPH's selective and inaccurate reliance on its Network Statement

3.12 LSPH also approached its access consideration process in relation to EIL and TF deploying the same selective reliance on its Network Statement. For example, TF observes in the TF Appeal that LSPH quoted section 2.3.3 of its Network Statement partially, omitting the words requiring LSPH, where it is considering more than one application at the same time and cannot accommodate all requests, to apply the priority criteria in the declaration of specialised infrastructure in Part D of the HS1 Network Code. EIL drew LSPH's attention to the same provision, including (without limitation) on 25 June 2026.

3.13 Neither EIL nor (apparently) TF has received any explanation from LSPH (or any other party) of how LSPH has applied that provision. EIL is not aware of any published methodology for resolving competing demands between operators at the same tier of priority and LSPH has identified none. There is no such methodology in LSPH's HS1 Network Statement or the HS1 Network Code.

3.14 Section 2.3.3 also requires LSPH, in deciding whether to enter into a Framework Track Access Agreement, to consider "*the extent to which the proposed arrangement will preclude the use of HS1 by other Applicants*" (a requirement on which TF also relies). That limb is not optional: it gives effect to regulation 21(4) of the 2016 Regulations, which provides that a framework agreement "*must not be such as to preclude the use of the railway infrastructure subject to that framework agreement by other applicants or services*".

3.15 Because that obligation requires the extent of any preclusion to be analysed and established, it cannot be discharged by LSPH without LSPH first identifying the other applicants and services concerned and their requirements. LSPH did not conduct such a process of identification and analysis or, if it conducted any such process, it was inadequate and took into account inaccurate information or assumptions made by LSPH.

3.16 These points go directly to the issue of the "*adequacy of the relevant provisions of LSPH's Network Statement*" and, more generally, the adequacy and compliance of LSPH's access consideration processes.

LSPH's failure to identify and coordinate competing access requirements

3.17 LSPH also ignored and/or failed compliantly to coordinate both EIL's and TF's access requests and aspirations, which competed with VTE's. TF has stated in the TF Appeal:

> "*LSPH cannot have been under any illusion about TF's requirements for capacity on HS1, and to fail to take those into account is a significant breach of fair process, and discriminated in favour of Virgin*."

3.18 EIL is unable to comment on that with direct knowledge, but EIL did draw LSPH's attention to its own access requirements during the same period on numerous occasions and also to the access aspirations of TF, Evolyn and Gemini (for example, in EIL's letter dated 27 May 2026 and 25 June 2026 email responding to LSPH's consultation on the VTE FTAA).

3.19 LSPH nonetheless incorrectly and non-compliantly maintained (based on selective reliance on paragraph 3.11(c) of ORR's Criteria and Procedures for the approval of framework agreements on the HS1 network (the "**ORR C&Ps**") and in contravention of its obligations under the 2016 Regulations and paragraph 3.12 of the ORR C&P) that it could consider only whether VTE's rights conflicted with rights under an existing access contract and its specimen timetable modelled irrationally only on EIL's current firm rights quantum rather than on well-publicised future growth plans.

3.20 At no point before or after LSPH's consultation on the VTE FTAA or the work relating to EIL's 2025 and 2026 FTAA signature processes did:

(1) LSPH seek further clarity on EIL's future growth plans;

(2) seek to test and validate critical assumptions it had seemingly made about EIL's future growth plans (which were materially inaccurate and which, EIL submits, LSPH should have known were materially inaccurate).

3.21 LSPH did not disclose to EIL the (inaccurate) assumptions that it had made about EIL's future growth plans until at a late stage in LSPH's consultation on the VTE FTAA. Immediately following their disclosure to EIL by LSPH, EIL explained to LSPH how and why they were inaccurate.

3.22 Further, at no point after receiving the further information and explanation from EIL about its future growth plans does LSPH appear to have revisited or tested its earlier analysis.

3.23 In addition, at no point prior to the consultation on the VTE FTAA did LSPH advise EIL that the possibility of seeking capacity beyond the end of its existing FTAA (August 2029) existed. EIL were first advised of this, verbally, at a bilateral meeting on 7 May 2026.

3.24 EIL's experience also illustrates how LSPH's approach has rested on untested and inaccurate assumptions. LSPH has at various times contended for an entitlement to rely on reasoning (which was flawed) that EIL's request of 30 October 2025 for some additional firm rights up to 2029, a modest short-term request to secure continuity of some of EIL's existing services up to 2029, represented the whole of EIL's additional future requirements, including in subsequent periods. Such an inference was not open to LSPH. Amongst other points (EIL will make further relevant representations in the context of the EIL Appeal), that request concerned a different period and different needs and EIL had been clear to LSPH directly and to the market more generally about its longer-term ambitions and requirements. In any event, LSPH clearly could have checked its assumption easily with EIL but did not. Paragraph 3.12 of the ORR C&Ps directs attention to the firmness of other operators' plans. An infrastructure manager cannot properly assess either that firmness or the extent of any preclusion of other applicants under regulation 21(4) of the 2016 Regulations based on assumptions about a known operator's requirements that it has not verified or tested with that operator.

3.25 Further, at the same time, in LSPH's Initial Responses to VTE FTAA Consultation Submissions dated 19 June 2026, LSPH assured the Department for Transport "*that it has proactively engaged existing and prospective operators on the HS1 Network, both domestic and international, on their plans for growth*." The content of both the EIL Appeal and the TF Appeal make clear that was not the case. That assurance is difficult to reconcile with LSPH's contemporaneous position, stated to EIL, that it could

have regard only to rights held under existing access contracts and with its refusal to consider properly (or at all) EIL's and TF's access requirements in parallel with VTE's.

3.26 The above is relevant to ORR's assessment of whether LSPH complied with its obligations to allocate capacity on a fair and non-discriminatory basis (regulation 19(16) of the 2016 Regulations), to avoid framework agreements precluding use of the infrastructure by other applicants (regulation 21(4) of the 2016 Regulations), to meet all requests for capacity so far as possible and coordinate competing requests (regulations 23 and 26 of the 2016 Regulations) and to have regard to other operators' aspirations under paragraph 3.12 of the ORR C&Ps.

LSPH's failure to coordinate with other infrastructure managers

3.27 TF submits that there is no evidence of LSPH, as part of its consideration of the VTE access application, cooperating with Eurotunnel or SNCF Réseau as required by regulation 20 of the 2016 Regulations in respect of routes submitted that are intended to run from London to Paris. In addition to regulatory obligations, it is not appropriate to take a decision on part of that route without coordination with those responsible for management and allocation of capacity on the rest of the route (which comprises the main part of the international route measured in miles). Despite the press announcements from LSPH, VTE and others in relation to international approval following ORR's decision on the VTE Form P, it is obvious that all that in fact has been allocated by LSPH is access from St Pancras to the Eurotunnel Boundary in Kent. International rail passenger transport necessitates coordination between adjoining infrastructure managers. The suggestion that LSPH could or should proceed with a unilateral decision on capacity allocation as part of a proposed international route is both unlawful and illogical.

3.28 EIL's experience is consistent with TF's experience. During the VTE FTAA consultation, EIL noted that SNCF Réseau was conducting an open framework capacity exercise for timetable years 2030/31 to 2034/35 in which EIL was participating and asked LSPH to explain and evidence how it was coordinating its allocation with other infrastructure managers. LSPH provided no substantive explanation.

3.29 Similarly, in December 2025, Eurotunnel published its latest Network Statement, communicating its intention to study in 2026 the introduction of an offer of framework agreements for services operating from 2030. Following receipt of an application by TF confirming a firm order for cross-Channel high speed fleet for delivery by 2030, on 19 August 2026, Eurotunnel notified all other potential applicants (including EIL) of its intention to conclude a framework agreement with TF granting capacity rights for services operating on the Paris-London route from 2030 and invited other potential applicants (including EIL) to submit requests for a framework agreement for services to operate on the Paris-London route by 30 September 2026 (this has since been extended to 19 October 2026), so it could examine and decide on them simultaneously.

3.30 That Eurotunnel process applies a common, published process to all applicants that is aligned expressly to regulatory requirements and involved proactive invitation of all competing requests so that they can be assessed together. Without prejudice to any comments EIL may have on the detail of Eurotunnel's process, it notes that LSPH's process has demonstrated neither feature.

3.31 EIL does not suggest LSPH should defer indefinitely to other networks' processes. However, it is obliged to cooperate with other infrastructure managers in the allocation of infrastructure capacity crossing more than one network (including under regulation 20(2)(a) of the 2016 Regulations). LSPH must manage its own access processes in a way that anticipates and coordinates with the processes of other infrastructure managers. EIL has not received a substantive explanation from LSPH or any evidence of any such coordination taking place. It should be noted that EIL were formally advised by both Eurotunnel and SNCF Réseau of the opening of their infrastructures to framework agreements as soon as potentially competing international route access requests were received. In contrast, EIL's first notification from LSPH of a potentially competing access request (or even the potential opportunity to apply for access from 2030 onwards) on the HS1 network was the publication of the VTA FTAA consultation on 24 April 2026, which further emphasises LSPH's lack of transparency and non-compliant approach.

3.32 EIL also invites ORR to consider the allocation practices of the various relevant connected infrastructure managers using its powers under regulation 20(2A) of the 2016 Regulations and to require LSPH to explain in detail how and when it has taken account of the other infrastructure managers' practices.

Significance for ORR's determination and remedies

3.33 The fairness, transparency and non-discrimination of an allocation process cannot in this case properly and fully be assessed by reference to the experience of one applicant alone. Where two applicants in different positions describe the same defective features of the process, that consistency is itself relevant evidence that those features were structural rather than incidental. EIL invites ORR to take its experience into account as relevant information in the TF Appeal (and, indeed, the EIL Appeal) for that purpose, while determining each appeal on its own facts and merits.

3.34 That systemic character also bears on remedy. ORR's power under regulation 32(5)(b)(iii) of the 2016 Regulations is to direct the infrastructure manager to remedy "*the situation from which the appeal arose*". If the situation arose from LSPH's general approach rather than its handling of one access application, EIL submits that directions confined to TF's individual application are unlikely to be effective and ORR should consider directions addressing LSPH's process as a whole, including the status of unapproved applications, a transparent methodology for assessing competing requests and aspirations and coordination with connected infrastructure managers. EIL notes that TF's proposed directions at paragraphs 2 to 4 of its second set of directions (in its 2.5 Summary section of the TF Appeal) are directed to similar matters.

3.35 Finally, and without prejudice to the EIL Appeal, EIL notes that TF's request for directions concerning the VTE FTAA would, if granted, affect capacity in which EIL also has a direct interest through its access requirements and its pending access application to LSPH of 21 July 2026. EIL asks that ORR ensures that any direction requiring LSPH to reconsider allocation does so on a basis that takes into account all competing applications and aspirations, including EIL's, rather than only those of TF and VTE.

3.36 EIL also notes ORR's duties under section 4 of the Railways Act 1993:

(1) to enable persons providing railway services to plan the future of their businesses with a reasonable degree of assurance; and

(2) to promote competition in the provision of railway services for the benefit of users.

3.37 EIL submits those duties (without limitation) are relevant to the choice and scope of any directions ORR makes.

3.38 In particular, directions requiring LSPH to adopt a published, transparent and non-discriminatory process for identifying and assessing competing requests for HS1 network capacity, applied consistently to all applicants and coordinated with connected infrastructure managers, would remedy the underlying situation from which the appeal arose under regulation 32(5)(b)(iii) (although not, for the avoidance of doubt, the consequences that have since developed from LSPH's non-compliant process). It would also further ORR's duties towards business certainty and the promotion of competition at a formative stage in the development of the cross-Channel international passenger market. The adequacy, transparency and fairness of the process by which HS1 network capacity is allocated will in practice determine investment decisions into the UK and whether, how much and on what terms competition in that market develops.

NEXT STEPS

4.1 EIL looks forward to assisting ORR further in relation to the TF Appeal and the coordination of it with the EIL Appeal.

4.2 As EIL has previously stated in the context of 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 sincerely



Gareth Williams
General Secretary
Eurostar International Ltd.

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 Reseau, 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 FTAAs 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 will 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 FTAAs 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 Reseau 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.

REDACTED VERSION FOR PUBLICATION

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

REPRESENTATIONS BY HS1 LIMITED TRADING AS LONDON ST PANCRAS HIGHSPEED

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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 Trenitalia France ("**TF**") dated 24 September 2026 under Regulation 32 of the Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016 (the "**AMRs**") ("**TF'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, as the context admits:

(a) paragraphs in these representations;

(b) paragraphs in the representations LSPH made on 2 October 2026 to the Regulation 32 appeal made by Eurostar International Limited ("**EIL**") on 14 August 2026 ("**EIL's Appeal**"); and

(c) paragraphs in the ORR's '*Criteria and Procedures for the approval of framework agreements on the HS1 network*' (5 March 2024) (the "**ORR C&Ps**"),

in each case, unless otherwise stated.

2 By its letter dated 30 September 2026, the ORR has accepted TF's Appeal for consideration and determination under the statutory framework set out in Regulation 32, and in the context of the ORR C&Ps. The ORR accepted EIL's Appeal for consideration in the same way on 2 September 2026.

3 The ORR has framed the scope of TF'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**") "*in relation to:*

(a) *TF's request for infrastructure capacity and a framework track access agreement on the HS1 network;*

(b) *LSPH's consideration and application of its operational integrity requirements;*

(c) *the consistency and transparency of LSPH's treatment of TF's request when compared with its treatment of the application made by* [*Virgin*];

(d) *the process followed by LSPH in identifying, assessing and addressing competing requests for infrastructure capacity;*

(e) *the resulting decision to enter into a framework track access agreement with* [*Virgin*]; and

(f) *the adequacy of the relevant provisions of LSPH's Network Statement*".

4 The ORR has invited representations from LSPH as respondent, TF 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* [*TF's Appeal*]*;*
- *any relevant factual background;*
- *the process followed and decisions made by LSPH in relation to the matters under appeal;*
- *to the extent felt necessary or relevant, the relationship between the matters raised by TF and those raised in the EIL appeal;*
- *any effect on existing or prospective access rights, capacity allocation or operation of the HS1 network; and*
- *any other matters considered relevant to ORR's determination.*"

5 LSPH replied to the ORR by letter dated 5 October 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 30 September 2026 letter, and submit its representations by 16 October 2026. The ORR confirmed in its 30 September 2026 letter that it would consider TF's Appeal and EIL's Appeal on their own merits, but that it would coordinate the procedures for them where appropriate, which LSPH is supportive of. In these representations LSPH responds only to the substantive grounds specifically advanced in TF's Appeal, but in doing so, draws on some of the exchanges between LSPH and TF in the Virgin framework track access agreement (the "**FTAA**") consultation and those in their operational integrity dialogue as those

exchanges and that dialogue still go to certain of TF's substantive grounds and LSPH's responses thereto.

6 These representations are split into the six sections identified in paragraph 4 above, headed A to F below. Under those headings, LSPH addresses the following matters:

(A) the issues raised by TF's Appeal and the principal grounds of challenge advanced under Regulation 32;

(B) the relevant factual background and chronology, including LSPH's assessment of operational integrity and the matters said by TF to give rise to concurrency between Virgin's application and TF's application;

(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 (including the HS1 Network Statement) and relevant framework agreement terms;

(ii) LSPH's operational integrity and financial viability assessments;

(iii) the proper interpretation and application of the aspects of the ORR C&Ps referenced in TF's Appeal, including paragraphs 3.11(b), (c) and 3.12 thereof;

(iv) the terms included in the FTAA around the management of mobilisation risks through conditions precedent and related provisions; and

(v) the treatment of capacity sought be Virgin pending ORR approval, including why there was no unlawful reservation of capacity and no obligation to defer the Virgin application process until TF achieved operational integrity;

(D) the relationship between the matters raised by TF and those raised in EIL's Appeal;

(E) the effect on existing or prospective access rights, capacity allocation or operation of the HS1 network, including the relief sought by TF, and why it should be refused; and

(F) other matters relevant to the ORR's determination.

7 TF's appeal is founded on a premise that is not borne out by the facts or the regulatory framework. By way of summary, LSPH's representations are straightforward:

(a) at the time that LSPH was processing Virgin's application, TF had not made an application which had demonstrated sufficient operational assurance. TF only achieved the required level of operational assurance 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 that made access applications to LSPH were afforded equal opportunity to achieve operational integrity both before and during the period over which the Virgin application was being considered;

(e) LSPH included terms in the FTAA to manage Virgin's progressive demonstration of operational integrity and financial viability which were reasonable, had the benefit of regulatory precedent, and were not discriminatory;

(f) there was no coincidence of LSPH's operational integrity assessment of TF's application and the ORR's approval of the Virgin application as LSPH had no visibility of the ORR's approval until it was published; and

(g) TF'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, TF's Appeal should be dismissed.

(A) THE ISSUES RAISED BY TF'S APPEAL

8 Many of TF's criticisms (see paragraph 11 below) substantially reprise points it made during the Virgin FTAA application and consultation process and in the bilateral exchanges between TF and LSPH regarding operational integrity once that consultation began. 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 and bilateral exchanges within these representations which are repeated in TF's Appeal. While TF'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 and operational integrity record. LSPH respectfully refers the ORR to LSPH's previous consultation responses and bilateral exchanges in full, should any further detail be necessary.

9 As LSPH understands it, the core challenges in TF's Appeal comprise:

(a) first, LSPH's decisions to conclude that TF did not attain operational integrity while Virgin did;

(b) second, that while TF has continued to seek to attain operational integrity status, LSPH has not waited and instead proceeded with Virgin's application; and

(c) in so doing, notwithstanding that ORR approval of the Virgin FTAA had not yet been granted and no executed FTAA was yet in force, LSPH has wrongly reserved the capacity allocated to Virgin in a contested access application situation, discriminating against TF.

10 As an applicant (as defined in the AMRs) TF 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 the HS1 Network Statement under Regulation 32(2)(a), and LSPH's "*allocation process for infrastructure capacity and its result*" under Regulation 32(2)(c), being LSPH's allocation of capacity to Virgin and not TF. TF's Appeal is premised on the contention that it had a competing application for capacity throughout the relevant period of LSPH's consideration and processing of Virgin's application. LSPH suggests that it is only if TF had in fact achieved operational integrity, notwithstanding LSPH's conclusion otherwise, that it might be said that TF had a competing application for capacity throughout the relevant period and so that there is any possibility that LSPH may have treated Virgin's application more favourably than TF's.

11 TF's primary contentions appear to be:

(a) that in relation to operational integrity:

(i) LSPH wrongly concluded that TF did not have operational integrity because LSPH failed to take due account of TF's future plans for the maintenance of its rolling stock;

(ii) LSPH failed to provide clear justification as to why TF did not have operational integrity;

(iii) LSPH placed disproportionate and unreasonable emphasis on aspects of operational readiness in its operational integrity assessments; and

(iv) LSPH's operational integrity process was an unlawfully administered precondition to entering into a framework track access agreement with TF;

(b) that, as there was competition for access, LSPH was in receipt of a contested capacity situation and therefore should have continued to consider TF's application together with Virgin's;

(c) that, instead, LSPH wrongly elevated Virgin's application above TF's competing application, including, it is said, by offering Virgin preferential terms which were not extended to TF, 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;

(e) that LSPH failed to duly coordinate capacity allocation decisions with other infrastructure managers; and

(f) that LSPH's approach in reaching its operational integrity conclusions and reserving Virgin's capacity was unfair, discriminatory and contrary to the AMRs.

12 In summary, LSPH says TF's Appeal should be dismissed for the following principal reasons:

(a) First, there was no unlawful discrimination. All operators that made applications to LSPH in the relevant period were afforded equal opportunity to achieve operational integrity, and LSPH considered the operational integrity submissions 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. All of TF's assertions as to comparative operational integrity versus Virgin are fallacious and/or anachronistic. 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, because TF did not provide an appropriate level of operational assurance until after LSPH and Virgin had submitted the application for

regulatory approval, and industry consultation had ended, LSPH was not in receipt of an access application which represented a contestable application for access.

(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 wait for another operator to achieve the required level of operational assurance. The AMRs do not require an infrastructure manager to defer or restart a live process whenever another operator that has a competing interest subsequently provides sufficient operational assurance to the infrastructure manager's satisfaction where previously it had not, and doing so could be unfair and discriminatory to the earlier applicant.

(e) Fifth, LSPH duly coordinated the capacity requests it had received and cooperated with infrastructure managers of adjacent infrastructure, in each case as it was required to do under the AMRs. The capacity allocation processes of adjacent infrastructure managers are not aligned in any of the terms of how, on what basis, and over what term capacity is allocated; neither are they synchronous as to when decisions are made. LSPH is not obliged by (or able under) the AMRs to wait for other infrastructure managers to make their own decisions before processing access applications that have been made to LSPH.

(f) Sixth, 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 increase its supervision of an infrastructure manager in the way that TF seeks to propose. In addition, whilst EIL's Appeal principally sought declaratory and procedural relief of the above nature, TF's Appeal goes further by seeking specific operative directions in relation to the FTAA itself, including that it not be entered into (which is

an untimely request), or be rescinded or modified, and/or that capacity be removed or relinquished, and/or, that longstop dates be shortened – there is no basis for the ORR to grant any relief of that nature.

13 LSPH considered that TF had made its application for capacity on HS1 on 30 April 2025 when it submitted its proposed timetable and capacity requirement (the "**TF Application**"). As confirmed in paragraph 13 of LSPH's EIL Representations, Virgin made its equivalent application to LSPH on 12 June 2025 (the "**Virgin Application**"). The TF Application, the Virgin Application, and the applications from other prospective operators in that time frame were considered together by LSPH and were understood (pre-timetable validation) to likely be contested applications, competing for varying levels of the available capacity on HS1 from the early 2030s. In accordance with its AMRs' coordination duty, LSPH invited Virgin, TF, and the other prospective operators that had made applications for access to LSPH in the relevant period to participate in LSPH's assessment of operational assurance. This assessment was undertaken in keeping with paragraph 3.11(b) of the ORR's C&Ps to determine which operators (whether some, all or none) had demonstrated that they, in the words of paragraph 3.11(b), "[*intend*] *and will be in a position to operate the services*", and so progress to the next stage of coordination of the remaining requests and contracting.

14 Paragraph 3.11 of the ORR C&Ps contains other components that together constitute the assessment and validation of an operator's operational integrity, and these representations speak to other parts of that overall test, however where the term "**Operational Integrity**" is used in these representations, reference is being made to the paragraph 3.11(b) component, unless otherwise stated. Having considered the Operational Integrity submissions those operators made in December 2025 and January 2026, LSPH determined that only one of them – Virgin – had a sufficiently developed and viable proposition that provided the required level of Operational Integrity. From that point, it was incumbent on TF and the other prospective operators to resubmit a developed and viable Operational Integrity submission for LSPH to assess. TF only provided such a submission and all required information in August 2026. Consequently, LSPH contends that at the point at which it determined that TF's Application and the applications of other prospective operators had failed to achieve Operational Integrity in January 2026, LSPH no longer had a duty to coordinate competing requests for infrastructure capacity, since at that stage TF and those other prospective operators had no competing application. LSPH contends that any subsequent establishment of Operational Integrity by TF did not impose an obligation on LSPH to reopen the Virgin Application.

(B) THE RELEVANT FACTUAL BACKGROUND AND CHRONOLOGY

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

Date	Event / Step
30 April 2025	TF submits application to LSPH for access on HS1, including an indicative timetable.
26 May 2025	TF submits letter to ORR seeking directions under section 17 of the Railways Act 1993 for access to Temple Mills depot.
12 June 2025	Virgin submits application to LSPH for access on HS1, including an indicative timetable.
30 October 2025	The ORR issued its decision on Temple Mills depot capacity.
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 not demonstrated Operational Integrity previously), including TF, Gemini, Evolyn and Virgin, to submit evidence to demonstrate Operational Integrity.
6 November 2025 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 November 2025	TF provided its first dossier of Operational Integrity information to LSPH.
12 December 2025	LSPH requested further Operational Integrity information from certain operators following review of their initial submissions, including TF.
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.
7 January 2026	TF provided its second dossier of Operational Integrity information to LSPH.

Date	Event / Step
9 January 2026	Deadline for further Operational Integrity submissions. Virgin, TF, and Gemini[1] made operational integrity submissions.
27 January 2026	LSPH communicated to each operator that participated in the Operational Integrity assessment exercise (including TF), 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 Application.
28 January 2026	LSPH met with TF to explain its Operational Integrity conclusions and specifically why TF had failed to attain Operational Integrity.
22 April 2026	LSPH and TF attended a site visit at Stratford International to help TF develop its proposal to use Stratford for stabling/hot spare storage.
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.
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	TF's consultation submission registered numerous objections as well as indicating that it would be making a new access application in the coming days and writing separately to request that LSPH commence framework track access agreement negotiations with TF.
29 May 2026	TF emailed LSPH (i) acknowledging the previous week's meeting (ii) LSPH's collaboration in developing TF's proposals for new services, (iii) indicating that TF would shortly be submitting a formal request to negotiate a framework track access agreement (iv) citing TF's confidence in achieving Operational Integrity and (v) requesting LSPH explain why TF had not met the Operational Integrity threshold in paragraph 3.11(b) of the ORR C&Ps. TF states that LSPH's Operational Integrity letter of 27 January 2026 failed to provide detail as to why. Reference made to Annex 1 of TF's consultation response in relation to the FTAA.

[1] LSPH's EIL Representations erroneously suggested that Evolyn had made an Operational Integrity submission. Evolyn elected not to make an Operational Integrity submission at this time.

Date	Event / Step
4 June 2026	LSPH letter to TF in response to 29 May email outlining the Operational Integrity process LSPH had followed and setting out the points raised by the Operational Integrity Panel which the panel considered TF needed to address in relation to its maintenance plans.
12 June 2026	TF emailed LSPH thanking LSPH for its ongoing collaboration and promising a full Operational Integrity dossier at the end of June 2026 so that LSPH could reconvene the Operational Integrity Panel.
19 June 2026	LSPH and Virgin issued initial responses to all consultation submissions, inviting further comment from consultees within seven days. In responding to TF's consultation submissions, LSPH stated that among other things, that if TF made a new application, the Virgin FTAA would be considered as "*another access contract*" for paragraph 3.11(c) purposes and therefore TF's application would be treated as subsequent to the Virgin 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.
23 June 2026	TF made a third Operational Integrity submission to LSPH in relation to its maintenance and stabling arrangements addressing the points LSPH had raised in its 4 June 2026 letter and requesting that LSPH convene the Operational Integrity Panel.
25 June 2026	Original Deadline for further consultation responses.
3 July 2026	TF emailed LSPH with further details of SNCF-R's support in relation to stabling capacity and maintenance facilities.
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.
17 July 2026	TF submitted further consultation responses to LSPH.

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 letter confirming that the Operational Integrity Panel had convened to consider TF's 23 June and 3 July submissions and to request further information from TF regarding its ongoing Operational Integrity assessment.
7 August 2026	TF letter to LSPH in response to LSPH's request of 30 July for further information regarding its ongoing Operational Integrity assessment. Confirmation of public announcement of TF's rolling stock order with Hitachi.
7 August 2026 to 13 August 2026	Following TF's Operational Integrity assessment request, LSPH invited Gemini to participate in an Operational Integrity assessment. Operational Integrity Panel deliberations on TF submissions.
13 August 2026	LSPH letter to TF confirming that TF had achieved Operational Integrity and that the TF Application would be progressed towards validation, to which further information and a cost recovery agreement was required.
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.
2 September 2026	ORR letter confirming the ORR had accepted the EIL Appeal for consideration under Regulation 32 and initiated its consultation / invitation for representations.
8 September 2026	LSPH acknowledged the ORR's letter regarding the EIL Appeal and confirmed it would submit representations by 2 October 2026.

Date	Event / Step
24 September 2026	TF submitted Form R32 application notice of appeal to the ORR.
25 September 2026	TF informed LSPH of TF's Appeal.
30 September 2026	ORR letter confirming the ORR had accepted the TF Appeal for consideration under Regulation 32 and initiated its consultation / invitation for representations and sharing the TF Appeal with LSPH and Virgin.
5 October 2026	LSPH acknowledged the ORR's letter regarding the TF Appeal and confirmed it would submit representations by 16 October 2026.

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

16 In responding to TF'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

17 TF's Appeal makes similar accusations to EIL's Appeal in seeking to allege that LSPH failed to comply with its transparency, equity and non-discrimination duties under the AMRs in proceeding with the Virgin Application. LSPH refutes those accusations as it did the ones made in EIL's Appeal. LSPH notes the ORR has made the same observation in its 30 September 2026 letter confirming that it will consider TF's Appeal in relation to LSPH's compliance (or otherwise) with the AMRs, as it did in its equivalent letter of 2 September 2026 in relation to EIL's Appeal. Insofar as paragraphs 16 and 17 (*core AMRs duties*), 18 to 26 (*transparency duties*) and 27 to 36 (*equity and non-discrimination duties*) of LSPH's EIL Representations respond to TF's Appeal, LSPH relies on them as if set out herein, discounting aspects of those paragraphs which pertained specifically to EIL's Appeal, but with the following additional observations responding to specific points made by TF.

(1) *Transparency*

18 Regarding LSPH's transparency duties, paragraphs 18 to 26 of LSPH's EIL Representations already address the applicable framework, the purpose of the HS1 Network Statement and the ORR's contractual and procedural arrangements, the consultation history, and the limits on what could appropriately be disclosed during a live and commercially sensitive capacity-allocation process.

19 Where TF advances transparency complaints which go beyond those raised by EIL, LSPH's position is as follows:

(a) LSPH explained the regulatory framework to TF and why and on what basis it would undertake an Operational Integrity assessment of TF's proposition in LSPH's 6 November 2025 letter;

(b) where TF suggests that LSPH did not adequately explain the basis on which TF had failed to demonstrate Operational Integrity at the relevant stage, LSPH will rely on the contemporaneous correspondence and internal process records to show what information TF was asked to provide, why further information was sought, and how TF's position was assessed at the time – see paragraphs 33 to 68 (*LSPH's Operational Integrity and financial viability assessments*) below; LSPH's position is that:

(i) LSPH has been fully transparent with TF throughout the relevant process and at every relevant stage, TF has been afforded a clear account of LSPH's requirements; and

(ii) TF did not start to assert a lack of transparency on LSPH's part until the industry consultation on the Virgin Application;

(c) where TF suggests a lack of transparency in respect of deadlines for response, LSPH's position is that firm deadlines were required in order to manage the overall capacity-allocation and coordination exercise fairly and efficiently across multiple operators but that reasonable extensions of time were granted following operator requests – see paragraph 57(b) below;

(d) if there were any differences in treatment between TF and Virgin, that reflected the differences in the factual and evidential position of the respective parties at the relevant time, rather than a lack of transparency, and to that extent operators were either not similarly situated, alternatively any such differences of treatment were in any event wholly justified; and

(e) to the extent that TF seeks to rely on the timing of LSPH's most recent engagements with TF on TF's Operational Integrity, or on any asserted coincidence between that timing and the ORR's consideration of Virgin's application, as giving rise to an appearance of bias or pre-determination, LSPH's position is that such inferences are unfounded and unsupported – see paragraphs 58 to 61 and 67 below respectively.

20 TF's Appeal advances a complaint concerning the adequacy of the HS1 Network Statement, in particular section 2.3.3. TF's case appears to be that, although that

provision states that applications for framework track access agreements will be considered in the order in which they are received, and also contemplates the position where more than one application is being considered at the same time, LSPH applied the first aspect of that provision in practice at the expense of the second, so as to afford an earlier and more advanced application a form of effective priority.

21 This complaint is not so much a criticism of the HS1 Network Statement itself and whether it was transparent, as TF's grounds of appeal in section 2.2 of its R32 form notice suggest, but rather a complaint as to LSPH's application of section 2.3.3 of the HS1 Network Statement and whether LSPH acted consistently with that section and so whether its process was transparent. TF's argument can be considered as being similar to EIL's argument that LSPH impermissibly applied a "*first come, first served*" rule – see section 2.5 of EIL's R32 form notice. LSPH rejects that characterisation just as it did in paragraphs 59 to 86 of LSPH's EIL Representations, and reiterates in paragraphs 93 to 110 (*Contingent reservation of capacity pending ORR approval*) below.

22 LSPH does however acknowledge that section 2.3.3 of the HS1 Network Statement appears to conflate (i) the process for dealing with the contracting of multiple requests for capacity which cannot be accommodated with (ii) the process for dealing with the timetabling of multiple requests for capacity which cannot be accommodated. The relevant paragraph reads:

> "*While applications for Framework Track Access Agreements will be considered by the Infrastructure Manager in the order that they are received, if the Infrastructure Manager is considering more than one application at the same time and is unable to accommodate all of the requests for capacity, the Infrastructure Manager 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.*"

It is correct that LSPH will apply the priority criteria set out in Part D of the HS1 Network Code (the "**Decision Criteria**") at the later timetabling stage when faced with more than one request for capacity which cannot be accommodated in a timetable. But in order for LSPH to be faced with the need to apply the Decision Criteria at that later stage, more than one operator first needs to be a party to a framework track access agreement, as it is entry into that agreement (through the incorporation by reference of the HS1 Network Code) that affords the operator the contractual right to bid for specific paths to be included in the timetable in question. LSPH does not apply the Decision Criteria when faced at the contracting stage with more than one request for capacity to be included in a framework track access agreement – to include the access rights the operator is seeking to then be able to

subsequently bid to include in a timetable. In fact, as explained in these representations and the LSPH EIL Representations, when faced with more than one request for capacity to be contracted in a framework track access agreement, LSPH has in the past and will follow in future a capacity allocation process that is compatible with the AMRs and the ORR C&Ps (a process which section 2.3.3 of the HS1 Network Statement also points to). To the extent that it is said that this conflation indicates that LSPH has not followed a transparent process, that places form over substance because it is not in fact how LSPH considered operator applications in this case. LSPH has consistently communicated throughout the relevant period with TF and other operators through means other than the HS1 Network Statement (both in writing and face-to-face) that it would apply the criteria and procedures in the ORR C&Ps, including the criteria that applies where faced with more than one request to contract access which cannot be accommodated, and LSPH has duly applied those criteria and procedures, although it was not necessary to do this in the context of TF's Application beyond a certain point or the one EIL subsequently made in July 2026 at all. For this reason, any conflation in the HS1 Network Statement is not material to either appeal. LSPH will promptly amend the HS1 Network Statement.

23 TF states that as part of LSPH's alleged preferential treatment of Virgin, LSPH has not been transparent insofar as it has failed to clarify when under the terms of the FTAA, Virgin must provide LSPH with evidence that Virgin has entered into its rolling stock contracts. The obligation on Virgin to provide such confirmation is set out in paragraph 1.2(i) of Section 3 of the Passenger Access Terms[2], incorporated therein by virtue of clause 5.2 of the FTAA. The date for Virgin's compliance with that obligation, included in paragraph 1.3 of Section 3 of the Passenger Access Terms, was redacted as part of the consultation process.

24 Such redaction is not evidence of a lack of transparency. In keeping with LSPH's explanation of its handling of commercially sensitive information comprising part of the Virgin Application in paragraph 21 of LSPH's EIL Representations, it has followed its duties under Regulations 14(13) and 19(16)(c) to respect Virgin's commercial confidentiality, including in respect of LSPH's publication of the FTAA terms. It is well established practice for such dates not to be disclosed because a common understanding of the deadline to provide such evidence could create a ransom strip in the relevant operator's rolling stock negotiations, counterparties knowing that they will be able to secure preferred terms with the operator, where failure to accede to those preferential terms means the operator risks losing its access agreement by that deadline. LSPH notes that ultimately, it is not for LSPH to decide whether such deadlines or other redacted information should be withheld,

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[2] The Passenger Access Terms being a set of common access terms that form part of the FTAA and all other framework track access agreements entered into by LSPH for access to HS1.

but rather for the ORR to decide in accordance with section 71(2) of the Railways Act 1993, and the ORR decided that it was appropriate to redact.

(2) *Equity and non-discrimination*

25 Regarding LSPH's equity and non-discrimination duties, paragraphs 27 to 36 of LSPH's EIL Representations already address the test for discriminatory treatment, the application of paragraph 3.11(c) of the ORR's C&Ps in the context of conflicts with existing rights, the application of paragraph 3.12 of the ORR's C&Ps and operator aspirations, the applicant-led process for granting access to HS1, and duties to coordinate competing applications and potentially declare HS1 congested infrastructure.

26 Where TF advances equity and non-discrimination complaints which go beyond those raised by EIL, LSPH's position is as follows:

(a) insofar as TF alleges that LSPH acted inequitably or discriminatorily by treating TF less favourably than Virgin, that allegation is denied. TF says that LSPH did not consider the rights TF sought in parallel with those sought by Virgin, contrary to paragraph 3.12, nor coordinate their potentially competing requests. This was plainly not the case. LSPH took account of TF's aspirations in accordance with paragraph 3.12 of the ORR C&Ps and similarly took account of all others operators' "*requests for capacity*" in accordance with Regulation 23(1), acknowledging that TF had made an application to LSPH for access in April 2025. Once Virgin requested that its application be taken forward, LSPH invited TF to participate in a multi-operator Operational Integrity assessment process, thereby taking account of the aspirations it had expressed in that April 2025 application, as well as others, and so treating all operators equally;

(b) after the completion of the multi-operator Operational Integrity assessment process, TF and Virgin were not in materially comparable positions at the relevant time, Virgin having achieved Operational Integrity but TF having not. In particular, from that point:

(i) there was no requirement on LSPH to coordinate the capacity expressed in the TF Application further with the capacity expressed in the Virgin Application or any other relevant application under Part 5 of the AMRs as TF asserts (see also paragraphs 77 to 80 (*Lack of contested access only once Virgin satisfied the Operational Integrity assessment*) below); and

(ii) Virgin was progressing to a materially more advanced stage in the access process, including the Form P / consultation stage.

In those circumstances, differences in LSPH's treatment of the two applications, to the extent there were any, reflected differences in procedural posture and evidential readiness, not arbitrary or discriminatory treatment;

(c) further, and in any event, any difference in treatment was objectively justified. LSPH was entitled to proceed by reference to the status of the applications before it, the information then available to it, and its assessment of operational readiness and mobilisation risk. The fact that LSPH gave practical weight to Virgin's more advanced application does not mean that TF was subjected to unlawful discrimination. It reflects the ordinary and lawful administration of a capacity allocation process in which applications were not at the same stage at the same time because of material differences between them (one having achieved Operational Integrity and the other having not); and

(d) to the extent TF suggests that Operational Integrity was applied selectively or as a device to favour Virgin, that is also denied. LSPH's position is that Operational Integrity was a legitimate and consistently applied requirement directed to whether an operator was sufficiently prepared for the allocation and implementation of the relevant access rights – see LSPH's application of the Operational Integrity process as applied to TF (and to the extent relevant to TF's Appeal, others) in paragraphs 33 to 68 (*LSPH's Operational Integrity and financial viability assessments*) below. Any difference in outcome arose from the parties' differing factual positions, including the timing and sufficiency of the information each had provided, and not from any unequal application of principle or attempt to favour one applicant over others.

(3) *Cooperation in the coordination of cross-network capacity*

27 TF also alleges a failure on LSPH's part to properly cooperate in the coordination of cross-network capacity. LSPH also rejects this assertion. Regulation 20 sets out the duty on infrastructure managers to cooperate in the coordination of cross-network services with the purpose of enabling the efficient creation and allocation of infrastructure capacity under framework agreements (Regulation 20(2)) and to establish procedures to enable such cooperation (Regulation 20(4)). The Regulation reserves actual decisions about capacity allocation on an infrastructure manager's network to that infrastructure manager (Regulation 20(9)). Recital (15) of Implementing Regulation (EU) 2016/545 concerning framework agreements (the

"**Implementing Regulation**")[3], which while since revoked, provides important context as to the extent of that cooperation duty under the AMRs. The Implementing Regulation provided that the purpose of such cooperation is to ensure that such cross-network services are coherent.

28 LSPH considers that neither Regulation 20 imposes nor the Implementing Regulation imposed duties on infrastructure managers to synchronise their entry into framework agreements for capacity on their respective infrastructure (or their entry into other arrangements where infrastructure managers do not enter into framework agreements). This is the case even where the operator in question requires further capacity on adjacent railway infrastructure in order to provide end-to-end services between international destinations. Rather, the cooperation duties in those regulations require(d) infrastructure managers to seek to achieve coherency in a generalised sense, which requires an understanding of both the capacity and performance characteristics of adjacent infrastructure, and the capacity allocation and assessment processes adjacent infrastructure managers adopt, and efforts to identify potential issues in the operation of cross-network services and existing and anticipated use on adjacent infrastructure. Only in the timetabling of actual paths could it be said that there is a requirement to synchronise actual allocated capacity across networks – Article 12(1) of the Implementing Regulation said that infrastructure managers of adjacent railway infrastructure should ensure as far as possible that when scheduling train paths, those "*train paths match with one another*" and Recitals (9) and (11) of that regulation described requirements for coordinating and reconciling conflicting applications and requests.

29 While Article 12(1) of the Implementing Regulation said that the time frames of services that cross more than one network should match, it expressly recognised (i) that there may be circumstances where not all framework agreements are in place for all the infrastructure over which a cross-network service is intended to run (indeed there may be circumstances where there is only one framework agreement in place, as is the case with the FTAA), and (ii) even where all framework agreements were in place, the time frames may still not match. This underscores the conclusion that the entry into framework agreements or other capacity allocation agreements for services that operate cross network need not be (and are invariably not) entered into simultaneously, and by extension, that decisions by infrastructure managers to enter into such agreements need not be (and are invariably not) taken simultaneously.

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[3] Assimilated Law as per Retained EU Law (Revocation and Reform) Act 2023 but subsequently revoked by the Railways (Revocation and Consequential Provision) Regulations 2024.

30 Neither Regulation 20 nor the Implementing Regulation required (or requires) infrastructure managers to delay capacity allocation decisions to wait for those other infrastructure managers to make their own capacity allocation decisions. Indeed, Article 5(2) of the Implementing Regulation provided that, "*The infrastructure manager shall decide on the requests for framework agreements without delay*." In fact, what this means is that neither the Implementing Regulation nor by extension Regulation 20 via the AMRs' fairness duty permitted (or permits) infrastructure managers to delay capacity allocation decisions to wait for those other infrastructure managers to make their own capacity allocation decisions, a position diametrically opposed to that contended by TF. Practically, this means that if a request is made of an infrastructure manager for capacity in a framework agreement, that infrastructure manager must process that application promptly, even where, as was the case with the capacity requested by Virgin, that capacity concerns services that will be operated on HS1 which will also require capacity on adjacent railway infrastructure in order to reach their intended destinations. Paragraphs 79 and 80 of LSPH's EIL Representations also refer (equivalent paragraphs 106 and 107 hereof).

(4) *Independent allocation body*

31 TF says that LSPH has adopted a process that is inconsistent with the principles set out in Part 5 of the AMRs and the ORR C&Ps because, among other things, there is a requirement under Regulation 19(4) for the essential function of capacity allocation to be undertaken by an "*independent allocation body*" if the infrastructure manager is not itself independent of a railway undertaking that is applying to it for capacity on that infrastructure manager's infrastructure. TF suggests that it appears that Virgin is not independent of LSPH because a LSPH shareholder has an interest in the financing and leasing of Virgin's proposed rolling stock.

32 TF acknowledges that Regulation 19(4) concerns infrastructure manager independence from railway undertakings. LSPH considers that railway undertakings under the AMRs are train operators such as Virgin and TF and not rolling stock owners, so Regulation 19(4) is not relevant on the facts. In any event, as TF itself observes, the ORR was comfortable with the arrangements LSPH had put in place to manage the shareholder in question during the Virgin Application process.

LSPH's Operational Integrity and financial viability assessments

33 As noted in paragraph 19(b) of LSPH's EIL Representations, the HS1 Network Statement confirmed that the criteria and procedures in the ORR C&Ps would be applied in considering applications for access to HS1. LSPH affirmed this approach in conversations with each of the prospective operators. Consequently, in keeping with paragraph 3.2 of the ORR C&Ps, LSPH recognised that before it

could decide whether to take forward an application to seek ORR approval of new access rights on HS1, LSPH needed to make a judgement (among others) as to which (if any) of the potential operators would be in a position to operate the services they had applied to operate by the date they said they intended to operate them from – to demonstrate Operational Integrity under paragraph 3.11(b) of the ORR C&Ps in other words.

34 The application of the Operational Integrity test by LSPH, is in service of its Regulation 18(2) duty to ensure the efficient use of HS1, along with its AMRs' duty of fairness. The test is a means of establishing that an operator that has applied to LSPH for capacity to operate on HS1 has the wherewithal to use that capacity it seeks to contract and thus minimise the risk that the operator turns out at some later point not to be operationally ready to start operating as applied for, in the meantime tying up that capacity inefficiently.

35 Once Virgin approached LSPH following the ORR's final decision regarding capacity at Temple Mills depot:

(a) LSPH wrote to all prospective operators (including TF) on 6 November 2025 inviting each of them to submit a dossier of evidence to demonstrate their Operational Integrity; the letter explained that achieving Operational Integrity was a prerequisite to proceeding with the contracting of access rights, that LSPH was undertaking the process in service of paragraph 3.11(b) of the ORR C&Ps, and the evidence that LSPH would require; and

(b) convened a group of internal experts, qualified in the assessment of operational readiness and the operation of services on HS1 (the "**Operational Integrity Panel**") to adjudicate on which (if any) of the prospective operators had achieved Operational Integrity.

36 Paragraph 1.8 of the ORR C&Ps says that when the ORR assesses access applications for HS1:

> "*In the majority of instances, we would expect to follow similar processes to those we follow for the Great Britain national network, where access applications are made under sections 17-22A of the Act.*"

In conducting its Operational Integrity assessments, LSPH therefore applied the same qualitative review of operational plans that the ORR would expect to conduct in respect of what the ORR calls '*Operational readiness and viability*' in Table 1 in Annex 1 of its '*Open access guidance: Making a track access application and ORR decision making*' (the "**Open Access Guidance**"). Annex 1 says in this regard, "*We* [*the ORR*] *would usually expect to consider* [*this question*] *for new applicants*

in order to ensure applicants have a clear indication and ability to use the capacity. There may be cases where ORR consider this for other applications." Annex 1 points to Annex 2 of the Open Access Guidance as a reference point for the assessment of operators' operations and performance plans. Annex 2 contains a description of the types of evidence that the ORR considers are necessary in order to assess operational viability and performance. Annex 2 of the Open Access Guidance therefore formed the basis of LSPH's Operational Integrity process and the evidence it sought from prospective operators.

37 Separately, paragraph 3.22 of the Open Access Guidance also confirms that open access applicants must demonstrate the financial viability of their proposition, so that the ORR can be assured of an applicant's ability to use the capacity applied for. Annex 1 of the Open Access Guidance states that the assessment of financial viability is performed through a qualitative review of an applicant's business plan. LSPH also adopted this qualitative review of operators' financial viability.

38 As a result of the decision by LSPH to follow the criteria and procedures in the ORR C&Ps in assessing operator applications, LSPH undertook assessments of the prospective operators' Operational Integrity and financial viability during December 2025 and January 2026. TF did not question LSPH's invocation of paragraph 3.11(b) of the ORR C&Ps or any aspect of its Operational Integrity and financial viability process, including LSPH's assertion of the prerequisite nature of Operational Integrity status, any of the evidence that LSPH had requested, or any requirement that TF provide further information where requested by LSPH.

39 TF provided its first Operational Integrity and financial viability dossier to LSPH on 27 November 2025 (the "**TF First OI Submission**"). The Operational Integrity Panel considered that the TF First OI Submission provided insufficient information in the areas of [redacted] maintenance [redacted]

[redacted]

[redacted]

[redacted]

[redacted][4]

Consequently, LSPH wrote to TF on 12 December 2025 to request further information in relation to TF's maintenance plans [redacted][5]. TF replied on 7 January 2026 with its further Operational Integrity submission which sought to address LSPH's concerns (the "**TF Second OI Submission**").

40 The Operational Integrity Panel reviewed the TF Second OI Submission from 8 January 2026. It concluded that the TF Second OI Submission provided adequate evidence of TF's [redacted][6], and that the thresholds for establishing Operational Integrity in these [redacted][7] respects had now been met. However, the Operational Integrity Panel remained of the opinion that the further information TF had provided in the TF Second OI Submission still failed to provide adequate evidence of a developed and viable plan of how the rolling stock would be maintained. While the TF Second OI Submission now mentioned the Maisons-Alfort Pompadour site, the site that TF references in its appeal, at that stage, the TF Second OI Submission confirmed that TF was still in discussions about the purchase of the site, meaning TF's access to it remained uncertain at that time. The Operational Integrity Panel noted, among other things, that:

[redacted]

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.

6 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.

7 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.

[redacted][8]

41 The Operational Integrity Panel believed this ongoing uncertainty was a function of the outcome of the ORR's decision to grant access at Temple Mills to Virgin rather than TF. The Operational Integrity Panel had noted from TF's application for directions letter to the ORR under section 17 of the Railways Act 1993 of 26 May 2025, that TF had placed significant weight on securing access to the Temple Mills depot for its future operations, stating that:

> "*Not only is TMI regulated under the Act, it is also clearly an essential facility for any future international operator between the UK and mainland Europe. It is currently the only reasonable location at which international rolling stock can be serviced and therefore forms an integral part of the business case for any further international operator seeking to launch operations to mainland Europe.*"

> "*Trenitalia France's application under section 17 of the Act has been made based on the latest ORR Guidance and due to the fact that it needs greater certainty as to the capacity available at TMI for the maintenance of its trains before it can finalise its business plans and commit to providing services between London and Paris.*"

42 The ORR's Temple Mills decision letter of 30 October 2025 noted that, of the applicants for access to Temple Mills:

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[8] 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.

> "*Trenitalia is the only applicant that has the backup of existing agreements with other depots in Europe, but in common with all applicants with services starting and ending in the UK, needs access to a UK based depot.*"

43 Despite this apparent available flexibility, TF considered Temple Mills to be "*essential*" and the "*only reasonable location at which international rolling stock* [*could*] *be serviced and therefore form*[*ed*] *an integral part of* [*its*] *business case*". TF acknowledged that its business case and investment decisions could not be finalised without certainty as to the maintenance capacity at Temple Mills. And the ORR noted that TF "*needs access to a UK based depot*". When the ORR made its decision on 30 October 2025 to award that capacity to Virgin instead of TF:

(a) while TF's emphasis on a UK-based depot may have since changed, at the time it considered Temple Mills to be vital to its operations; and

(b) the ORR considered that TF's Temple Mills submission had failed to address significant issues such as train length, maintenance periodicities, necessary work method and infrastructure changes, leading the ORR to record that "*We were unable to conclude with confidence that Trenitalia's fleet plan and proposed use of TMI are viable.*".

A similar failure to address significant issues in TF's Operational Integrity submissions led the Operational Integrity Panel to conclude that while the ORR had noted the potential for TF to access alternative locations on the Continent, TF did not actually have a ready alternative maintenance facility when it made those submissions to LSPH because what it did submit was not well developed or detailed.

44 Despite LSPH affording TF two opportunities to confirm its alternative maintenance plans, the Operational Integrity Panel reached a similar conclusion to the ORR. After concluding its assessments of all Operational Integrity submissions, LSPH wrote to TF on 27 January 2026 including an account of its decision-making process and confirming that TF had not reached the threshold for achieving Operational Integrity referenced in paragraph 3.11(b) of the ORR C&Ps and the reason for that conclusion was that:

> "*…we were not able to confirm that TIF has a developed and viable plan for stabling arrangements or have a concrete, developed and viable plan for rolling stock maintenance, which we are confident would support operations at your proposed start date.*"

45 LSPH met with TF the next day on 28 January 2026 to talk through LSPH's Operational Integrity conclusions regarding TF's submissions. TF indicated broad

acceptance of those conclusions, acknowledged some of the deficiencies that led LSPH to reach those conclusions, including that it did not have all necessary information at the point it submitted its Operational Integrity dossier to LSPH, and confirmed that it would work on its dossier and its alternative depot solution following the Temple Mills decision. TF added that it was confident of securing maintenance on the French side and that it would be looking for limited maintenance services and stabling on the UK side. LSPH offered continued support to TF in achieving Operational Integrity at a later date[9]. LSPH confirmed that it would need TF to provide LSPH with reasonable notice of when TF required LSPH to reassess its Operational Integrity since doing so would require LSPH:

(a) to reconvene the Operational Integrity Panel, which did not sit unless and until there was an Operational Integrity submission to evaluate; and

(b) to extend the opportunity to assess the submissions of other operators which had also not yet achieved Operational Integrity (should they wish to make them) in the interests of ongoing fairness, as LSPH had done in November 2025 following Virgin's Operational Integrity request.

46 TF's engagement with LSPH appeared to change when the industry consultation on the Virgin Application began. There was something of a disconnect between TF's posture as between (i) the bilateral discussions and correspondence regarding TF's active Operational Integrity submissions and LSPH's deliberations (between December 2025 and January 2026), and (ii) its consultation responses (from May 2026 onwards). From this point, TF's posture in its Operational Integrity correspondence with LSPH started to resemble that adopted in its consultation submissions. Only from this point then did TF start to object to LSPH's requests for further information, query LSPH's explanations as to why TF had not achieved Operational Integrity, and challenge LSPH's Operational Integrity decisions. If TF had have felt aggrieved in January 2026 by LSPH's Operational Integrity process or the conclusion LSPH reached that TF had not achieved Operational Integrity, it could have raised a Regulation 32 appeal then. It did not. Only when the Virgin Application was published did TF start to run non-transparency, inequity and discrimination arguments.

47 Among TF's objections to the Virgin Application in the consultation responses, TF observed that it did not understand how LSPH could have concluded that "*no other prospective operator was able to satisfy*" the Operational Integrity criteria given LSPH had communicated in its 27 January 2026 letter to TF that TF was "*making good progress in relation to these matters*" and TF indicated that it had "*advanced*

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[9] Including attending a site visit at Stratford International on 22 April 2026 to facilitate its stabling and hot spare plans and providing advice on how TF could better meet the Operational Integrity standard.

plans" to address the "*limited*" issues raised by LSPH. All of which betrays TF's failure to understand that the Operational Integrity test is a pass/fail test. An operator cannot pass that test with only some measure of Operational Integrity and "*good progress*" and "*advanced plans*" to provide the rest of the required assurance. Those plans have to be submitted to LSPH and that progress be evident.

48 TF's sense that achieving the Operational Integrity threshold can be met through future promises is perhaps why TF has conflated the conditions precedent in the FTAA with the Operational Integrity threshold test. TF appears to see the conditions precedent as being a means of mitigating deficiencies in an operator's Operational Integrity assessment. They are not that at all. In order for LSPH to include conditions precedent in a framework track access agreement, the counterparty operator must first have demonstrated the threshold level of Operational Integrity. Once demonstrated, the conditions precedent then serve as a means of ensuring that threshold level of Operational Integrity is maintained up to scheduled operation – see paragraphs 81 to 92 (*The management and mobilisation of risks in the FTAA*) below.

49 On 29 May 2026 following a meeting the preceding week on the subject, TF emailed to thank LSPH for its time and its ongoing collaboration in developing TF's plans to introduce services between London and Paris. Also acknowledging TF's consultation submission in relation to the Virgin Application and associated Form P, TF indicated that it would shortly be submitting a formal application to commence framework track access agreement negotiations. TF indicated its confidence in its own Operational Integrity and asked LSPH to explain in detail why it had not achieved this status in January 2026, suggesting that LSPH's confirmation letter to that end on 27 January 2026 did not provide detail as to why LSPH had concluded then that LSPH lacked a "*viable and developed* [*maintenance*] *plan*".

50 In levelling that charge, TF's email ignored (i) the meeting referred to in paragraph 45 above in January 2026 at which LSPH had explained at length why TF had not presented a viable and detailed maintenance plan, and (ii) LSPH's extensive account of its January findings in the industry consultation response to TF. LSPH nonetheless replied by letter on 4 June 2026 providing TF with a detailed account of how a revised maintenance plan would help TF achieve Operational Integrity (setting out [redacted][10] specific points in that regard).

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[10] 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.

51 TF replied to LSPH's letter of 4 June 2026 on 12 June 2026, thanking LSPH for showing its "*engagement and* [*giving TF*] *some helpful details*". TF added that it had "*made substantial progress since the previous submission for LSPH*", promising a full dossier by the end of June 2026 that addressed the Operational Integrity points LSPH had identified and so that LSPH could reconvene the Operational Integrity Panel – a tacit acknowledgement that its TF First OI Submission and TF Second OI Submission were lacking. In the intervening LSPH response to TF in the industry consultation regarding the Virgin Application, LSPH provided a detailed account of the findings of the Operational Integrity Panel regarding TF's 7 January 2026 dossier.

52 TF made its third Operational Integrity submission on 23 June 2026, observing that had LSPH provided full written assessments in December 2025 and January 2026 of TF's previous submissions, it would have resulted in those outstanding issues being resolved sooner. LSPH makes two observations in response to that contention. First, once again, TF's statement ignored the meeting referred to in paragraph 45 above in which LSPH provided TF with an account of the deficiencies in its original Operational Integrity submission, to which TF raised no contemporaneous objections, and LSPH's account of the same in the industry consultation response to TF. Second, TF's observation is a yet further tacit acknowledgement that its original Operational Integrity submissions were deficient and LSPH was right not to afford TF Operational Integrity status in January 2026.

53 Notwithstanding these exchanges, TF continued to argue in its further consultation responses on 17 July 2026 to the Virgin Application that:

(a) it disagreed with LSPH's earlier conclusion that only Virgin had achieved Operational Integrity;

(b) the conditions precedent in the FTAA served as alleged evidence that Virgin's mobilisation plans were no more advanced than TF's and that the inclusion of the conditions precedent was in fact alleged evidence that Virgin had not achieved Operational Integrity either (see paragraphs 81 to 92 (*The management of mobilisation risks in the FTAA*) below regarding the significance of the conditions precedent in the FTAA); and

(c) paragraphs 3.12 to 3.18 of the ORR C&Ps required LSPH to take continuing account of TF's aspirations in LSPH's Virgin Application deliberations.

54 LSPH wrote to TF on 30 July 2026 advising that the Operational Integrity Panel had convened and was assessing TF's 23 June and 3 July 2026 submissions. LSPH requested further information from TF [redacted]

[redacted][11] On 7 August 2026, TF replied providing the final pieces of missing information (which LSPH understands was not previously available to TF) to allow LSPH to make an Operational Integrity determination.

55 The Operational Integrity Panel confirmed to TF on 13 August 2026 that TF had achieved Operational Integrity. LSPH had concluded in January 2026 that TF's maintenance solution was not sufficiently developed and viable. While the TF Second OI Submission had begun to identify what ultimately turned out to be TF's preferred site, at that time, there was no certainty that TF would secure access to that site or on what basis, the design was not sufficiently advanced (it was generic at that stage), the site's relationship with other proposed maintenance sites was not fully scoped, the delivery programme was not sufficiently robust; in totality, the proposal was not considered mature enough. In contrast, TF's later Operational Integrity submission in June 2026, when supplemented with the further information LSPH requested, was assessed to be developed and viable when applying the same Operational Integrity applied in December 2025/January 2026. It clearly demonstrated that TF had since secured access to its chosen site. The design was specific to the site, the site's relationship with other maintenance sites had been more clearly described and the delivery programme was more detailed and credible. This progress between submissions is what led the Operational Integrity Panel to confirm TF's Operational Integrity.

56 TF has carried its transparency criticisms in the context of Operational Integrity through to its appeal. TF claims in numerous non-specific ways throughout its appeal that LSPH has not been transparent in its allocation of capacity to Virgin and its management of TF's concurrent application. It only offers some specificity as to that alleged lack of transparency in limited ways in paragraph 2 of section 2.4 and section 2.5 of its Form R32 notice. In those sections, it is said that lack of transparency was evident in the following:

(a) LSPH was said not to have been forthcoming in explaining its conclusions regarding TF's Operational Integrity assessment – it is said that LSPH "*did not otherwise provide any clear justification as to why TF did not meet the operational integrity threshold*", or what TF had to do to address the

[11] 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.

perceived deficiencies in its Operational Integrity submissions and that this approach contrasted with the approach afforded Virgin; and

(b) the setting by LSPH of strict deadlines since November 2025 for TF to respond with information that related to its Operational Integrity assessment (although in paragraph 2 of section 2.4 of TF's Form R32 notice, TF also claims that LSPH's alleged failure in this regard was not limited to the Operational Integrity assessment exercise, without providing any particulars of the further alleged failures). TF contrasts this deadline setting with LSPH's alleged unconstrained and untimely responses to the information TF provided. What detail TF does provide in its appeal in relation to specific correspondence is LSPH's response (or alleged lack thereof) to TF's 23 June, 3 July and 6 August 2026 (in fact 7 August) correspondence. This is to ignore all preceding LSPH correspondence and communication regarding TF's Operational Integrity status, and the fact that LSPH duly responded to each of the identified pieces of correspondence in a timely manner – see paragraphs 58 to 61 below regarding TF's allegations of unfair treatment around perceived delays in LSPH's processing of TF's Application, relative to Virgin's Application.

57 In relation to:

(a) LSPH's alleged failure to explain, see paragraphs 39 to 54 above regarding the contemporaneous correspondence and dialogue between LSPH and TF; and

(b) the alleged inequitable timetable for considering Operational Integrity submissions, LSPH asserts the following. In the relevant period, LSPH was faced with multiple applications for access (not just those from prospective operators, but as mentioned in LSPH's EIL Representations, from EIL also). If it can be said that LSPH set strict deadlines for TF and other operators to respond to, that is precisely because of LSPH's need to try and coordinate the various access applications it was faced with, and, significantly, to ensure that its process remained fair and non-discriminatory for all under the requirements of the AMRs. LSPH could not reasonably achieve those requirements if operators who had provided essential Operational Integrity information on time were then made to wait repeatedly for others.

58 TF says in paragraph 1(c) of section 2.4 of its R32 Form notice that it took more than 200 days for LSPH to confirm TF's Operational Integrity, the suggestion being that this is a failing on LSPH's part. It is not entirely clear when TF measures this period from but perhaps from the submission date of its second Operational Integrity dossier on 7 January 2026 to 13 August 2026 when LSPH confirmed TF

had achieved Operational Integrity. The Operational Integrity Panel took 20 days in January 2026 to determine whether TF and the other prospective operators that submitted dossiers had achieved Operational Integrity, confirming its findings on 27 January 2026. TF made its third Operational Integrity submission on 23 June 2026, over six months later. Again, it was deficient in information. After TF provided the further information on 7 August 2026 that LSPH had requested, the Operational Integrity Panel took six further days to determine that TF had achieved Operational Integrity.

59 Despite then taking only 26 of those alleged 200 days to consider Operational Integrity submissions (some of which related to the consideration of submissions other than TF's), TF appears to attribute all of the intervening days from 27 January 2026 to 13 August to LSPH. The truth is that during that period, the Operational Integrity dialogue between LSPH and TF was ongoing, including time given over by LSPH to explain where TF's submission was lacking, TF promising to make a further Operational Integrity submission, and TF collating and providing further information. If there is anything to be said about the time between TF's initial Operational Integrity submissions and its achievement of Operational Integrity, most of that time is attributable to TF, not LSPH.

60 TF alleges that LSPH has failed to meaningfully engage in developing a framework track access agreement with TF, despite recent requests. TF notes that (as at the date of submitting its appeal) it has been more than a month since it requested that LSPH enter into a framework track access agreement following LSPH's confirmation that TF had achieved Operational Integrity. LSPH observes that TF fails to mention the process which LSPH outlined in its 13 August 2026 Operational Integrity decision letter which must be followed before the terms of a framework track access agreement can be considered. That letter confirms that, in service of the remaining components of the Operational Integrity requirement in paragraph 3.11(a) and (c) of the ORR C&Ps, LSPH invited TF to populate a capacity and performance assessments inputs form and enter into a cost recovery agreement with LSPH for the costs of undertaking timetable and performance validation. LSPH further noted that informal consultation may also be required if choices needed to be made pursuant to paragraph 3.20 of the ORR C&Ps.

61 LSPH considers that it is also worth noting that the same week that TF achieved Operational Integrity, EIL lodged its Regulation 32 appeal, followed by TF's own Regulation 32 appeal six weeks later. Responding to those appeals, particularly TF's Appeal with its numerous unsubstantiated accusations, has taken considerable LSPH management time, and as TF itself notes in section 2.4 of its Form R32 notice, "*LSPH is a lean organisation*". Those appeals have required a number of the same LSPH employees that would ordinarily be progressing TF's Application to divert time to respond to EIL's and TF's contentions.

62 LSPH's determination that TF had failed to demonstrate Operational Integrity at the relevant time is said by TF to be variously:

(a) a refusal on LSPH's part to enter into a framework track access agreement with TF;

(b) the inappropriate use of Operational Integrity as a "*stage gate*" to considering different requests for capacity by TF and Virgin;

(c) a deliberate framing of process to discriminate in favour of Virgin over TF by blocking or delaying LSPH's consideration of TF's Application; and

(d) fallacious since TF subsequently achieved Operational Integrity, but only after the Virgin Application was pre-approved by the ORR (as it later emerged, TF achieved this status on the same date as the ORR's decision to pre-approve).

63 TF's complaints appear to be based on little more than the proposition that, because Virgin progressed first, LSPH must have treated Virgin preferentially. That does not follow. TF is not, merely by observing the eventual outcome, in a position to know how LSPH in fact treated Virgin at each stage of the relevant process, still less to assert that any difference in timing or progress reflected unfairness, discrimination or arbitrary preference. If it is said that LSPH somehow applied the Operational Integrity test as a means of (or proxy for) pre-emptively determining a contested capacity allocation situation, that is denied. LSPH applied the same test to TF as it applied to Virgin, and it resulted in a different outcome. TF cannot properly establish unequal treatment simply by pointing to a different outcome and inviting the ORR to infer that there must therefore have been some unfairness in the process. Neither the law of 'inconsistency' in domestic public law (which will only impugn differential treatment that is irrational – see *R (on the application of Gallaher Group Ltd and others) v CMA* [2018] UKSC 25) – nor the law of equal treatment in EU law supports any principle that consistent or equal treatment requires equality of outcome as distinct from equality of procedural treatment and opportunity (which LSPH afforded to all applicants).

64 LSPH notes that it kept the ORR informed of its Operational Integrity process and shared with the ORR both the correspondence with operators and its Operational Integrity summary conclusion tables (based on the Annex 2 table set out in the Open Access Guidance (see paragraph 36 above)), and LSPH's Executive Leadership Team affirmed the Operational Integrity Panel's conclusions.

65 The fact that LSPH remained engaged with TF after its original Operational Integrity decision, and subsequently confirmed that TF had satisfied Operational Integrity, does not retrospectively place TF in that same position throughout the

earlier period, nor render LSPH's consultation explanation inadequate or unfair (retrospectively or otherwise).

66 LSPH asserts that it correctly applied the Operational Integrity test set out in paragraph 3.11(b) of the ORR C&Ps. LSPH reached the conclusions that Virgin had achieved Operational Integrity and TF had not in each case at the relevant time. It follows then, since LSPH was not satisfied that TF would be in a position to operate the services it had applied to operate at the time it said it would operate from, that it would be inappropriate for LSPH to proceed to coordinate the access requested in the TF Application with the access requested in the Virgin Application and then (assuming TF's Application could be accommodated to some degree) to the negotiation of framework track access agreement terms. LSPH anticipates that proceeding to later stages of the capacity allocation process with an operator over which there were doubts about that operator's ability to mobilise on time would be contrary to LSPH's:

(a) non-discrimination duties under Regulation 5(1) and 19(16); and

(b) duties under Regulation 18(2) to ensure the optimal competitiveness of international rail services and the efficient use of network capacity.

67 TF's insinuations about the coincidence of the ORR's decision to pre-approve the FTAA and LSPH's confirmation of TF's Operational Integrity are disparaging and completely baseless. LSPH wrote to TF to confirm that it had achieved Operational Integrity status on 13 August 2026. The ORR Decision Letter itself, which confirms the ORR's pre-approval decision, demonstrates that while the ORR took the decision to pre-approve on the same date as LSPH confirmed TF's Operational Integrity status, that decision was not documented until the next day. Moreover, as confirmed in paragraph 13 of LSPH's EIL Representations and paragraph 15 above, LSPH only became aware of the ORR Decision Letter by way of the Regulatory News Service on 17 August 2026. LSPH asserts in the strongest possible terms that there is no connection between its confirmation of TF's Operational Integrity status and the ORR's decision to pre-approve the FTAA. It follows that it is denied, if it is sought to be suggested, that LSPH delayed in concluding that TF had Operational Integrity until the ORR had approved the FTAA: LSPH did not have knowledge of the latter decision until four days after LSPH confirmed its approval of TF's Operational Integrity.

68 LSPH's treatment of the TF Application and the Virgin Application was the product of LSPH following its AMRs duties:

(a) to apply the capacity allocation process LSPH said would be applicable in the HS1 Network Statement in a transparent, equitable and non-discriminatory manner; and

(b) to ensure the efficient use of network capacity by only allocating the capacity that had been applied for to those applicants that had demonstrated they would be able to use it when they said they would use it.

Cooperation in the allocation of capacity between infrastructure managers, including the proper interpretation and application of the aspects of the ORR C&PS referenced in T&F's Appeal

69 TF asserts in its appeal that LSPH failed to cooperate with other infrastructure managers (Eurotunnel and SNCF-R) "*to enable the efficient creation and allocation of capacity*" (paragraph 2 of section 2.4 of the Form R32 notice). TF then says that if LSPH had cooperated in such creation and allocation, LSPH would have been aware of the progress TF says it has made in discussions with those other infrastructure managers, discussions which are said to be "*advanced*".

70 TF consequently seeks to argue that:

(a) it should have been a "*material factor*" in LSPH's decision to allocate capacity on HS1 to have (i) cooperated with other infrastructure managers around the coordination of cross-network capacity to enable its efficient creation and allocation and (ii) to have taken account of TF's progress in securing access to adjacent infrastructure relative to Virgin's progress in that regard; and

(b) as LSPH failed to do so, LSPH has not complied with its legal requirements, it has closed its mind to relevant information and has therefore taken an "*erroneous decision*" in allocating capacity to Virgin rather than TF.

71 First, TF provides no evidence of the alleged failure to cooperate with other infrastructure managers. Or rather, TF's evidence of a lack of cooperation appears to be the alleged absence of evidence of cooperation. Since TF is not one of the relevant infrastructure managers and has not been privy to direct exchanges between them and with others, the assertion appears to be predicated on no more than the fact that LSPH contingently allocated capacity to Virgin without the adjacent infrastructure managers allocating capacity to Virgin at the same time.

72 LSPH notes that the capacity allocation processes across each of HS1, the Channel Tunnel, the French network, the Belgian network and the Netherlands network have continued to be administered separately to date, with EIL (which currently operates services across all five networks) separately applying for capacity on each network according to (i) the different rules and processes overseen by the respective infrastructure managers of those respective networks

and (ii) the different time frames when such capacity is required and available for. In other words, the capacity allocation processes that apply to the railway infrastructure that is the subject of TF's appeal and other relevant railway infrastructure are not the same and not coterminous. TF seeks in its appeal to suggest that they are. It is an entirely different question whether they should be, but regardless, EIL clearly manages with these differences.

73 As shown in paragraph 29 above, there is express recognition in the overall regulatory framework for cross-Channel highspeed passenger services that capacity allocation processes across adjacent infrastructure will not necessarily be aligned. And as noted in paragraph 30 above, the regulatory duties imposed on LSPH do not require it to wait until the infrastructure managers of adjacent railway infrastructure have concluded their own capacity allocation processes for related capacity. As LSPH has established, it has a duty not to wait for such conclusions. LSPH could not therefore wait for Eurotunnel and SNCF-R to conclude their capacity allocation discussions with TF. If LSPH had waited for those discussions to conclude as TF contends, LSPH would still be waiting (see paragraph 76 below), contrary to its regulatory duties, to allocate capacity on HS1 notwithstanding Virgin's application in June 2025 and those of other prospective operators.

74 There is clear and compelling evidence of LSPH's efforts to cooperate with adjacent infrastructure managers, which efforts establish its compliance with its regulatory duties. Paragraph 86 (paragraph 110 of these representations) and 105 of LSPH's EIL Representations reference LSPH's efforts to coordinate additional cross-network services, but TF's specific accusations in this regard warrant a more detailed response. Specifically:

(a) LSPH, SCNF-Réseau and Eurotunnel have met frequently since September 2024 directly to discuss framework track access agreements and respective regulatory frameworks. LSPH has specifically and repeatedly highlighted in these conversations its regulatory obligations and how it would expect to respond to any future requests for framework track access agreement capacity, in keeping with its clear and published framework for entering into framework track access agreements. In particular, LSPH spoke to the ORR's decision-making and how LSPH expected to be faced with subsequent applications once the ORR's Temple Mills decision was made;

(b) LSPH and its timetable planners are active members of EuroLink, a trans-European group of infrastructure managers with the purpose of coordinating medium to long-term capacity planning;

(c) LSPH is an active member of RailNetEurope, the European organisation that facilitates international rail traffic across Europe. Paths on HS1 remain

advertised and available in this forum. Not all adjacent infrastructure managers are members of this organisation;

(d) LSPH is a member of the European Infrastructure Managers association where policy issues are discussed in relation to rail capacity planning and coordination, most recently in relation to the European Union's Capacity Allocation Regulations and its potential impact on alignment between UK and EU regulations on this matter;

(e) LSPH has regular bilateral meetings with SNCF-Gares et Connexions on coordinating international terminal capacity and to further the exchange of best practice of these unique rail facilities;

(f) LSPH alongside Eurotunnel has proactively worked in cooperation with DB Infrago and SBB, the Swiss infrastructure manager, on medium to long-term track and terminal capacity planning;

(g) LSPH has been engaged with other infrastructure managers since 2023 to establish a fifth coordinated hourly train path for cross-Channel services for the 2029 timetable onwards. Discussions and validation efforts on this are close to confirming the availability of this additional path; and

(h) LSPH entered into a memorandum of understanding with Eurotunnel in 2025 to form a strategic partnership to accelerate the growth of international cross-Channel high speed services. That memorandum seeks to increase available capacity, reduce journey times, target new destinations, and improve coordination of paths and infrastructure management.

75 Second, it is unclear how TF knows that it has made more relative progress with other infrastructure managers than Virgin. TF provides no evidence of the claim which appears to amount to speculation.

76 Third, and more significantly, it is noteworthy that:

(a) TF speaks merely of progress in discussions with other infrastructure managers. Progress in capacity discussions with infrastructure managers is not the same as securing regulatory approval for contracting that capacity, much less actually contracting that capacity; and

(b) Eurotunnel has confirmed that its capacity allocation process has only just begun, and so it is unclear really what progress TF is referring to as far as Eurotunnel is concerned.

In terms of the relative readiness of securing access to adjacent infrastructure then, TF and Virgin are in equivalent positions since neither have secured that capacity.

Lack of contested access only once Virgin satisfied Operational Integrity assessment

77 TF's argument appears to proceed on the premise that LSPH should have treated the relevant capacity as contested throughout the entire period leading up to the ORR's pre-approval of Virgin's FTAA. Rather, once LSPH had concluded at the end of January 2026, based on the evidence submitted by the applicants, that Virgin was the only operator that had demonstrated a sufficiently developed and viable plan to assure Operational Integrity, the factual basis for treating the position between prospective operators (including TF) as one of competing, concurrent applications requiring coordination under Part 5 of the AMRs no longer arose in the way TF seeks to suggest.

78 LSPH's duties under the AMRs to coordinate competing requests for infrastructure capacity presuppose that there are competing requests to coordinate. LSPH was faced with competing requests for infrastructure capacity up to the conclusion of the Operational Integrity process in January 2026 and during that time it duly coordinated the requests it had received – it was LSPH that invited all prospective operators to submit evidence of Operational Integrity precisely so LSPH could coordinate their applications in a fair and non-discriminatory manner at the same time. Once it was evident that there was only one of those applications which had the requisite level of operational assurance – Virgin's – LSPH was entitled and obliged to:

(a) cease further coordination of the prospective operators' applications, including the TF Application, and proceed with Virgin's application alone; and

(b) no longer wait for those applicants that had failed to provide that assurance requirement to subsequently do so.

79 Further, TF has failed to identify any actual prejudice arising from the contingent reservation of capacity pending ORR approval of the Virgin Application. The purpose of that reservation was administrative and operational, namely to ensure that capacity subject to a live approval process was not allocated inconsistently whilst the ORR's decision remained outstanding. That reservation did not determine the outcome of TF's Application, nor prevent TF from continuing to pursue Operational Integrity approval and a framework track access agreement. TF's complaint therefore conflates capacity administration during an ongoing approval process with the formal allocation of legally effective rights.

80 From the point the Virgin Application and the TF Application were not in an equivalent procedural position, LSPH was entitled and obliged to distinguish between them from then, and the access each prospective operator had sought was no longer contested in the procedural sense. That approach is consistent with the AMRs and LSPH's application of the criteria and procedures in the ORR C&Ps did not exhibit inconsistent treatment of applicants and was in all events objectively justified.

The management of mobilisation risks in the FTAA

81 TF's Appeal refers to the inclusion of certain conditions precedent in the FTAA which regulate Virgin's mobilisation prior to commencing operations. Those conditions precedent are conditions precedent to Virgin's permission to use HS1. If Virgin satisfies each of the conditions precedent by the relevant specified date, that permission will be granted and Virgin will be able to operate the capacity specified in the FTAA. Conversely, if one or more of those conditions precedent are not satisfied by the relevant date, the FTAA will terminate before that permission is given.

82 TF argues that LSPH did not offer to enter into a draft FTAA with TF which included similar conditions precedent which would have addressed similar outstanding actions that would have regulated TF's mobilisation prior to commencing operations. This, TF says, demonstrates LSPH's greater willingness to address perceived deficiencies in the Virgin Application than the perceived deficiencies in the TF Application and is therefore an example of preferential treatment and by extension is discriminatory and contrary to LSPH's duties under the AMRs. LSPH refutes this.

83 Rather, LSPH did not proceed to negotiate the terms of a framework track access agreement with TF because TF failed to achieve the required level of Operational Integrity at the same time that Virgin did. Achieving Operational Integrity was a necessary precondition to proceeding to any conversation about FTAA terms and TF was fully aware of that from LSPH's 6 November 2025 letter initiating the Operational Integrity process.

84 TF's contention that LSPH applied a different standard between TF and Virgin regarding the satisfaction of their Operational Integrity rolling stock requirements appears to be based on a misapprehension of both the purpose of the conditions precedent included in the FTAA (see paragraph 48 above) and its reading of the rolling stock informational requirements of the letter LSPH sent TF on 12 December 2025 requesting further information for its Operational Integrity deliberations. TF's Appeal suggests LSPH required TF to provide "*a guarantee of supply and manufacturing slots from TF's proposed rolling stock manufacturer to become comfortable on rolling stock*", where instead, according to TF, LSPH afforded Virgin

Operational Integrity status without requiring such guarantee, instead addressing the risks associated with procuring new rolling stock through the inclusion of FTAA conditions precedent. LSPH believes TF is referring to the following paragraph in the Annex to that 12 December 2025 letter, which asks TF to provide:

> "*Information on advance plans to secure and operate suitable rolling stock, e.g. guarantee of supply and manufacturing slot from Hitachi ahead of entering into purchase agreement. Whilst period from purchase agreement to supply is clear, it is unclear how ready Hitachi would be to act on proposal or how long it would take to enter into such an agreement.*"

85 These words did not require TF to confirm the signature of a rolling stock order – after all, they refer to "*advanced plans*", not implemented ones, and they talk about confirmation of arrangements *before* signature of a rolling stock order. What LSPH was requesting was confirmation that TF's chosen rolling stock manufacturer – in this case Hitachi – would provide TF with assurance that (if that rolling stock order was placed in a timely manner) Hitachi would be able to build the anticipated rolling stock fleet in order for TF to operate its proposed services on time – in the words of paragraph 3.11(b), that TF "*will be in a position to operate the services*". What TF was being asked to provide was assurance from Hitachi that Hitachi would set aside capacity on its production line to build the trains when needed, conditional on an actual order being placed. That sort of assurance is customarily sought and provided in assessments of operational assurance. TF's insinuation also ignores Annex 1 of the 6 November 2025 LSPH letter initiating the Operational Integrity process, which invites operators to provide (emphasis added) "*Appropriate business plans, demonstration of suitable expertise and of a reasonable expectation of securing the required investment and rolling stock.*" This requirement was not strengthened by LSPH's subsequent information request.

86 TF's unfortunate conclusions in relation to the informational and procedural requirements LSPH had placed on its rolling stock solution were ultimately academic, since LSPH confirmed in its 27 January 2026 letter to TF that LSPH was satisfied that TF had provided adequate assurance around its rolling stock plans, including in relation to the information provided by Hitachi on TF's behalf. On 27 January 2026 then, TF's rolling stock solution was not considered to be a distinguishing Operational Integrity consideration from Virgin's rolling stock solution.

87 As a general point, LSPH contends that Operational Integrity assessments are inherently applicant specific. The information provided by operators reflects the particular features, risks and maturity of the proposal they are making at the relevant time. Differences in the supporting material requested do not establish

differential treatment. The relevant question is whether LSPH was given sufficient information properly to assess compliance with the applicable requirements in each case. In the case of TF, it had not. Consequently, TF's shortcomings in providing the required level of operational assurance could not be managed through the inclusion of a condition precedent in a framework track access agreement. As discussed in paragraph 48 above, such conditions precedent are included in order to ensure the required operational assurance is maintained, not that it is achieved at some point before an operator starts operating its services. Conditions precedent cannot be used to allow an operator to bypass the Operational Integrity test in the hope that it can meet it later, since the Operational Integrity test is a precondition that must first be met before proceeding to contracting. That is clearly not what happened with Virgin's Application and the conditions precedent in the FTAA have been included to ensure not that Virgin achieves the required level of operational assurance, but rather that it continues to demonstrate the level of operational assurance it demonstrated before the FTAA was entered into.

88 If however, to entertain for a moment the idea that TF had achieved the required level of Operational Integrity at the same time as Virgin, and that it had been demonstrated through timetable and performance validation that the capacity sought in the TF Application and the Virgin Application would have been contested, then:

(a) LSPH would have first sought to coordinate those competing requests in accordance with its coordination duty under Regulation 23(4) and the process set out 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; and

(b) if with or without any necessary flexing, the TF Application and the Virgin Application could be accommodated,

LSPH would have proceeded to contract both applications on substantively the same framework track access agreement terms. Specifically, as far as the conditions precedent are concerned, LSPH would have expected to include substantively the same mobilisation-related conditions precedent in both agreements – a point LSPH made to TF in the industry consultation, but this has seemingly been ignored in TF's Appeal. In that regard, in the timeframe that LSPH was negotiating the FTAA terms with Virgin (pre-consultation which commenced in April 2026), TF had yet to place its rolling stock order with Hitachi (LSPH understands that TF contracted its order in June 2026). As a result, LSPH would have insisted on including rolling stock related conditions precedent in TF's

framework track access agreement which would have been substantially the same as those that were included in the FTAA.

89 That is because LSPH actually began to develop the relevant conditions precedent provisions in the FTAA on a template basis. Paragraph 37 above confirms that LSPH conducted a financial viability assessment of prospective operators at the same time as it conducted its Operational Integrity assessments. Paragraph 3.23 of the Open Access Guidance confirms that the conclusion of a financial viability assessment may be a determination by the ORR to include provisions in track access agreements which will incentivise the due mobilisation of an open access operator's proposition and ensure the approved access rights are used. LSPH applied the principles in that paragraph of the Open Access Guidance to the framework track access agreement terms it would expect to contract in the future.

90 Recognising the expression of multiple prospective operators' wishes to operate services on HS1, in the later part of 2025, and in anticipation of any of those expressions of interest being realised, LSPH began to develop potential framework track access agreement terms under the guidance of the ORR. LSPH conceived of developing a mobilising framework track access agreement (or "**mFTAA**"), a form of framework track access agreement that included more protections than would be included in a framework track access agreement with an existing, proven, operator. This template development was reflected in LSPH's letter to the prospective operators on 6 November 2025, inviting their participation in the Operational Integrity exercise and to express their wish to commence negotiations on a framework track access agreement – that letter is headed '*Operational Integrity and Mobilisation FTAA*', and TF replays this heading in its first Operational Integrity submission on 27 November 2025. It was only later when the Virgin Application began to crystallise that LSPH started to adapt the template wording to Virgin's specific circumstances.

91 Rolling stock contract related conditions precedent are not uncommon in track access agreements with open access operators for access to the wider rail network and the ORR has overseen the regulation of those sorts of provisions for some time. The difference between those provisions and the ones included in what was the mFTAA, then FTAA, is the number and extent of conditions precedent, extending as they do to broader mobilisation activities, such as ongoing financial viability, resources and maintenance related plans. Including those protections in the mFTAA meant that, if the counterparty operator failed to duly mobilise in time, the capacity specified therein would return to the market sooner than would otherwise be the case, since the effect of this happening would be that the mFTAA would terminate – a powerful incentive for the operator to mobilise as it promised. This was, and remains, an efficient means of contracting capacity on HS1. The conditions precedent were not included, as TF seeks to suggest, to mitigate

increased risks associated with the Virgin Application relative to those associated with the TF Application. Rather, the additional protections reflect the significance of granting any capacity on HS1 to operate new international passenger services and were intended to guard against the risk presented by an unproven enterprise (whichever enterprise that turned out to be) or a proven one which sought to operate an unproven capacity request.

92 In light of the outcome of the Operational Integrity assessments in the early part of 2026, LSPH proceeded to adapt the mFTAA template terms to reflect the circumstances of the Virgin Application. Subject to the outcome of TF's Appeal and EIL's Appeal, it is LSPH's intention to publish the mFTAA in template form on its website confirming that it will expect to contract with other mobilising operators on those common terms.

Contingent reservation of capacity pending ORR approval

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

93 LSPH relies on and refers to paragraphs 56 and 57 of LSPH's EIL Representations in the context of the contingent reservation of the capacity set out in the Virgin Application.

94 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 an application that achieves Operational Integrity many months later, and particularly one achieved after the period 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) *TF's Appeal mischaracterises LSPH's position as to paragraph 3.11(c) of the ORR C&Ps and LSPH contingent reservation of capacity*

95 LSPH relies on and refers to paragraphs 59 to 61 and 63 of LSPH's EIL Representations in the context of the correct characterisation of LSPH's contingent reservation of the capacity set out in the Virgin Application and the correct interpretation of section 2.3.3 of the HS1 Network Statement. In addition, LSPH makes the following points in response to TF's specific charges.

96 TF argues in section 2.5 of the R32 form notice that:

(a) LSPH treated Virgin's rights as having already been granted when Form P was issued;

(b) it is LSPH's position that paragraph 3.11(c) of the ORR C&Ps and section 2.3.3 of the HS1 Network Statement offer justification for why LSPH did not consider the TF Application in parallel with the Virgin Application after a certain period; and

(c) LSPH needed comfort that TF's sought access rights would not conflict with access rights held under another access contract – specifically the FTAA even though it was in draft form and had not regulatory approval.

In aggregate, these arguments are similar to the argument in EIL's Appeal that LSPH operated a "*first come, first served*" approach.

97 Despite the contingent reservation of the capacity specified in the Form P, as evidenced by LSPH's continuing discussions with TF regarding its Operational Integrity status, this contingent reservation has not prevented LSPH from progressing other applications.

98 The fact that TF subsequently demonstrated Operational Integrity by progressing its maintenance solution, did not retrospectively invalidate the steps properly taken by LSPH in relation to the earlier Virgin Application. Nor did it require LSPH to disregard the Virgin Application pending that progress being demonstrated.

99 In any event, the relevant question is not whether LSPH took account of the Virgin Application, but whether it unlawfully treated that application as determinative or refused to consider the TF Application at all. LSPH did neither. LSPH's position was that the Virgin Application remained subject to the regulatory approval process, while TF's position could be considered further once it provided the required level of operational assurance.

100 LSPH spent considerable time in the industry consultation explaining its application of paragraph 3.11(c) of the ORR C&Ps as part of the Operational Integrity test. That test provides that, as considered by LSPH, LSPH must be satisfied that the operation of the services applied for (in this case, TF's services) would not necessarily conflict with the exercise of rights held under another access contract – the conclusion being that LSPH must not intentionally proceed with such an application if it would put it in breach of its obligations in framework agreements with other operators.

101 TF argues in a similar way to EIL that LSPH refused to consider TF's Application in parallel with Virgin's Application because of LSPH's deployment of paragraph 3.11(c) of the ORR C&Ps. In fact, LSPH did consider TF's Application in parallel with Virgin's Application until the point TF failed to achieve Operational Integrity, but up to that point, paragraph 3.11(c) was not relevant to the consideration of TF's and Virgin's respective applications. When considering TF's

Application further while Virgin's Application was the subject of a live Form P process, LSPH did confirm that through the application of paragraph 3.11(c) of the ORR C&Ps, that it would be required to take account of the capacity specified in that Form P in the consideration of whether there were conflicts with TF's Application.

102 TF also contends in a similar way to EIL that as the FTAA was still subject to the ORR's consideration and approvals process, the FTAA was not signed and so the rights expressed in it were not "*held under another access contract*" by Virgin for the purposes of paragraph 3.11(c) of the ORR C&Ps anticipates. However, despite TF seeking a direction in its appeal that LSPH should consider its application in parallel with Virgin's, on its reading, TF also appears to be arguing that LSPH should not subject TF's and Virgin's applications to a parallel process. Specifically, TF appears to say that LSPH should not have taken account of the capacity specified in the Form P under paragraph 3.11(c), such that LSPH should have limited its application of paragraph 3.11(c) to consider only potential conflicts between the capacity in TF's Application and the capacity in EIL's framework track access agreement, since at that time, that was the only executed access contract. The effect of that conclusion is that LSPH should have disregarded any potential conflicts between TF's Application and Virgin's Application altogether. LSPH says that is an illogical conclusion that undermines the efficiency and efficacy of the regulatory application and approval process. In LSPH's view, while on one reading of "*rights held under another access contract*" in paragraph 3.11(c) this will not include aspirational rights that an operator has spoken of but not applied for (as EIL has argued), it must – to ensure the administrability of the process envisaged with the AMRs include contingent rights expressed in an access contract that is subject to a live Form P process which is pending ORR approval.

103 This fact, TF argues, should have engaged paragraphs 3.12 to 3.18 of the ORR C&Ps in LSPH's deliberations. As a matter of fact, LSPH did duly engage paragraph 3.12 in relation to TF's Application in its deliberations but it was not required to coordinate TF's Application with the Virgin Application further under the succeeding provisions of the ORR C&Ps once TF failed to achieve Operational Integrity and provided no certainty of when it might make a resubmission in order to achieve that status.

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

104 LSPH relies on and refers to paragraphs 65 to 71 of LSPH's EIL Representations in the context of the correct characterisation of LSPH's contingent reservation of the capacity set out in the Virgin Application.

105 TF argued in the consultation that a draft Form P forms part of the application and consideration process regarding the allocation of capacity. LSPH agrees with that

assertion as far as it goes. TF went on to say that LSPH's position implied that even where an application for access rights was not agreed between an infrastructure manager and an operator, a Form P submission gives the access rights contained within it some form of higher status. This suggestion is wrong. As explained in paragraph 68 of LSPH's EIL Representations, where an operator submits Form P to the ORR alone, the infrastructure manager has effectively afforded the rights expressed in it no status at all unless and until the ORR directs that infrastructure manager otherwise. TF maintains the same argument of elevated status in the consultation in relation to a Form P that had been jointly submitted. LSPH submits that in the context of a jointly submitted Form P, the rights expressed (and contingently granted) therein are properly treated as having an elevated status as compared with rights that have been requested and that are being discussed but which have not been agreed and/or which are not yet ready to be submitted by way of a Form P application. That is a material distinction that is properly drawn. LSPH contingently reserved the capacity specified in the FTAA and associated Form P in anticipation of ORR approval for sensible planning and administrative reasons: requiring LSPH to effectively ignore the conclusion that has been reached in relation to a prior application for capacity is administratively absurd and not what the AMRs and ORR C&Ps require. See in particular paragraphs 65 and 67 of LSPH's EIL Representations. Otherwise LSPH reiterates what it said in paragraph 59 and 60 of LSPH's EIL Representations about the reservation of capacity and the status of access rights pending regulatory approval.

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

106 LSPH relies on and refers to paragraphs 79 to 81 of LSPH's EIL Representations, discounting aspects of those paragraphs which pertained specifically to EIL's Appeal, but with the following additional observations responding to specific points made by TF. A duly advanced access application cannot sensibly be ignored because another operator subsequently achieves sufficient credibility in its operational assurance. TF 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 only recently achieved Operational Integrity status.

107 Withdrawing or suspending the Virgin 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 TF's later Operational Integrity qualification and so LSPH was both duty-bound to proceed with Virgin's much more advanced application and take account of it when TF subsequently qualified.

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.

108 However, TF advocates for the alternative premise: that, once a later operator subsequently achieves Operational Integrity, the infrastructure manager must reset an earlier ongoing process 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. For these reasons, LSPH considers that if it had decided to "*reset*" the Virgin application once TF achieved Operational Integrity that decision would likely have violated the Regulation 5 equity duty Virgin was owed.

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

109 LSPH relies on and refers to paragraphs 83 and 86 of LSPH's EIL Representations in the context of LSPH's fair, non-discriminatory and transparent approach. LSPH disagrees with the assertion by TF that LSPH's decision not to proceed with TF's Application because it had not achieved Operational Integrity was discriminatory and prejudicial to TF. All prospective operators that made applications to access the HS1 infrastructure had an equal opportunity to 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 TF Application in parallel with the Virgin Application and others.

110 LSPH remains ready to consider any future applications for access to the HS1 infrastructure and is indeed progressing the TF Application following its attainment of Operational Integrity. LSPH has maintained advanced readiness to support prospective international operators' growth. This readiness includes the proactive coordination of additional cross-Channel paths with adjacent infrastructure managers, the development of the St Pancras Enhancement Project, 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

111 While TF has sought to raise many new points in its appeal which it did not specifically raise in its consultation responses relating to the Virgin Application or

in its ongoing Operational Integrity dialogue with LSPH, LSPH refers the ORR to and relies on the consultation record and that dialogue and its prior responses as part of the context for this appeal, since this demonstrates that many of TF's arguments have been raised after the fact and were not in fact made either during the exchanges on its Operational Integrity status or while engaging on the Virgin Application. 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 TF's Appeal were raised by TF during that underlying process and were answered by LSPH at the time.

112 LSPH accepts that TF's Appeal is a distinct statutory process, but it is important to consider the points TF makes in the correct context. The ORR can and should therefore have regard to both TF's earlier submissions and LSPH's earlier explanations when assessing the merits of the present appeal.

(D) THE RELATIONSHIP BETWEEN THE MATTERS RAISED BY TF AND THOSE RAISED IN EIL'S APPEAL

113 The ORR notes in its 30 September 2026 letter that there is a "*significant connection*" between EIL's Appeal and TF's Appeal. LSPH agrees that there are factual and legal overlaps between the two appeals, and to that extent, common issues of regulatory approach arise.

114 However, the appeals are materially different in their focus and how their arguments are advanced. EIL puts forward a broader objection in principle to the treatment of capacity in unapproved framework track access agreement applications as if that capacity constituted "*existing rights*" and places a high watermark on an infrastructure manager's duty to take account of operator aspirations. TF's appeal, by contrast, depends in significant part on case-specific factual allegations regarding LSPH's process around preconditions to capacity coordination and contracting and LSPH's judgement about the evidence TF presented. Those factual allegations fall to be assessed on their own evidential footing and are not resolved by a determination of the broader points raised by EIL or vice versa.

115 Both appeals converge on the notion that their respective capacity aspirations were part of a contested application process with Virgin's Application:

(a) thereby triggering LSPH AMRs duty to coordinate their aspirations with Virgin's in parallel; and

(b) because LSPH:

(i) did not consider those capacity aspirations to be part of such a contested application process (or not part of that process beyond a certain point); and

(ii) pending regulatory approval, contingently reserved the capacity in Virgin's Application in order to maintain the orderly operation of the allocation process,

that LSPH breached its fairness, non-discrimination, and transparency obligations under the AMRs.

116 LSPH's position in both appeals is that it fulfilled its fairness, equal treatment, and transparency obligations under the AMRs by adopting and correctly applying the criteria and procedures in the ORR C&Ps in terms of assessing operational readiness, considering the firmness of operator aspirations, determining the appropriate concurrency of access applications, and appropriately treating a live Form P application.

117 Accordingly, insofar as the ORR considers it necessary to address the relationship between the two appeals, LSPH submits that it should distinguish between: (i) any common issues as to the legal significance of the capacity allocation process under the AMRs, in particular the Form P application process; and (ii) the separate factual question of whether LSPH acted unfairly, discriminated against or was not transparent in its treatment of TF and/or EIL. LSPH denies that it did so, for the reasons set out above.

(E) 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

118 LSPH relies on and refers to paragraphs 89 to 91 of LSPH's EIL Representations in the context of the effect on existing or prospective access rights, capacity allocation or operation of the HS1 Network and the approval of the capacity allocated to Virgin.

The effect of allowing TF's Appeal

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

119 LSPH relies on and refers to paragraphs 98 and 109 of LSPH's EIL Representations in the context of the effect of allowing TF's appeal, but with the following additional observations responding to the specific remedies sought by TF. TF seeks a wide range of substantive and procedural remedies from the ORR:

(a) in relation to the FTAA a direction by the ORR:

(i) if the FTAA has not yet been entered into, that LSPH and Virgin should not enter into it;

(ii) if the FTAA has already been entered into, that LSPH and Virgin should rescind it; and

(iii) if the ORR considers rescission is not available or appropriate, that the FTAA should be modified to achieve any of the following:

(A) the removal of any capacity granted under it unless and until LSPH has undertaken a fair, transparent, non-discriminatory and concurrent process for determining allocation of that capacity as between TF, Virgin and any other relevant applicant;

(B) the inclusion of conditions requiring the relinquishment or reallocation of capacity if the outcome of such a process is that some or all of that capacity ought instead to be granted to TF; or

(C) the shortening of the longstop dates attaching to any conditions precedent so that any reservation of capacity endures only for the minimum period reasonably necessary; and

(b) in relation to process and further assessment:

(i) a direction by the ORR that LSPH should reconsider its decision to award Virgin the FTAA and the capacity specified therein, and in particular:

(A) LSPH must consider the Virgin Application concurrently with the TF Application and in a manner that is consistent with the AMRs and the ORR C&Ps;

(B) where the outcome of that consideration is that capacity allocated to Virgin should change, to modify the FTAA accordingly; and

(C) to enter into a framework track access agreement with TF which is consistent with the outcome of such concurrent reconsideration;

(ii) an undertaking by the ORR (with suitable directions to LSPH) to review LSPH's processes in allocating capacity to HS1 to ensure compliance with the AMRs and the ORR C&Ps, particularly in circumstances where there are multiple competing applications for capacity;

(iii) a direction by the ORR that LSPH should clearly explain how it will cooperate with other infrastructure managers, including Eurotunnel and SNCF, in the coordination of capacity across multiple networks and to provide assurances that LSPH will adhere to its cooperation obligation; and

(iv) a direction by the ORR that LSPH should be placed under increased supervision by the ORR in order to monitor actions and conduct to ensure LSPH follows fair, consistent and transparent processes.

120 These representations set out why LSPH's approach and decisions were correct in fact and under the AMRs and therefore why TF's Appeal should fail. Each limb of the relief sought by TF rests on the same false premise, namely that LSPH's decision to conclude that TF had failed to achieve Operational Integrity was flawed and that TF was thereby prejudiced as the TF Application was no longer considered concurrent by LSPH from that point, resulting in LSPH failing to coordinate the capacity sought by TF with the capacity sought by Virgin.

121 If, despite all the circumstances, the ORR is minded to allow TF's Appeal, we set out below (without prejudice to LSPH's primary position) why the remedies sought by TF are inappropriate and should be refused. In so doing, LSPH relies on and refers to:

(a) paragraphs 98 and 99 of LSPH's EIL Representations in the context of the disproportionate effect on existing or prospective access rights, capacity allocation or operation of the HS1 Network and any reversion to the existing HS1 utilisation;

(b) paragraphs 100 to 104 of LSPH's EIL Representations in the context of the effect on existing or prospective access rights, capacity allocation or operation of the HS1 Network and the anticipated adverse financial impact of a successful TF Appeal; and

(c) paragraphs 105 to 109 of LSPH's EIL Representations in the context of the effect on existing or prospective access rights, capacity allocation or operation of the HS1 Network and the anticipated detrimental effect on competition of a successful TF Appeal, except the last sentence of

paragraph 109 thereof which is not applicable in the context of TF's Appeal as a prospective operator.

122 As to limb:

(a) 119(a)(i), a direction that the parties should not enter into the FTAA is moot since, as noted in paragraph 96 of LSPH's EIL Representations, the FTAA has been entered into;

(b) 119(a)(ii), it is unclear that the ORR has the authority to issue a direction to the FTAA parties to rescind it recognising that doing so would divest the parties of private law rights under contract. LSPH necessarily reserves its rights pending TF identifying the precise ORR power(s) it is relying on. Moreover, as explained in paragraphs 100 to 109 of LSPH's EIL Representations, such a direction would have serious adverse financial and competition effects because of the resulting reset of the capacity allocation process and the reliance Virgin has started to place on that agreement to plan its business;

(c) 119(a)(iii)(A), a direction to remove the capacity in the FTAA pending a further capacity allocation process would either render the FTAA void for uncertainty at the outset or, at the very least, render the capacity rights specified therein as contingent on a capacity allocation and regulatory process with an uncertain outcome. For that reason, LSPH considers such a direction as (i) being akin to a direction to rescind and so it would have the same effect on the parties' private law rights under contract and so LSPH makes the same reservation as it makes in paragraph 122(b) above, and (ii) having all of the same financial and competition effects as a direction to rescind;

(d) 119(a)(iii)(B), a direction to include conditions requiring the relinquishment or reallocation of capacity if the outcome of the reset process is that some or all of that capacity ought instead to be granted to TF, would create the same uncertainty and be the same as a direction to remove the capacity pending such a reset process and so would have all of the same financial and competition effects as a direction to rescind; and

(e) 119(a)(iii)(C), a direction shortening the longstop dates attaching to any conditions precedent so that any reservation of capacity endures only for the minimum period reasonably necessary is unnecessary since that is the basis on which they have already been set under the supervision of the ORR as affirmed by the Decision Letter.

123 As to limb:

(a) 119(b)(i), a direction requiring LSPH to reconsider its decision is the equivalent of a resetting of the capacity allocation process which would leave the FTAA in an effective state of flux and would have serious adverse financial and competition effects, and in particular:

(i) a direction to modify the FTAA under 119(b)(i)(B) (*reconsideration and modification*) is the same as a direction under 119(a)(iii)(A) (*removal of capacity*) and 119(a)(iii)(B) (*relinquishing of capacity if reset process results in reallocation*); and

(ii) a direction to enter into a framework track access agreement with TF following a reset of the capacity allocation process presupposes that LSPH should award capacity to TF as a result of that reset. LSPH cannot engage in a capacity allocation process and take a capacity allocation decision which is predetermined. If required to engage in a concurrent reconsideration of the Virgin Application and the TF Application, LSPH could in principle reach a conclusion which decided to award all of the capacity currently in the FTAA to Virgin if that is consistent with what the AMRs and the ORR C&Ps require;

(b) 119(b)(ii) and 119(b)(iv), an undertaking by the ORR to review LSPH's processes in allocating capacity to HS1 would simply be an expression of the ORR's existing regulatory function under the AMRs, and a direction for greater supervision of LSPH's process on a sustained basis as it seems TF is advocating for, would remove the necessary separation between regulated entity and regulator anticipated under the AMRs. It raises legitimate questions around roles and responsibilities under those regulations. That said:

(i) LSPH notes that it has regularly informally consulted the ORR about the development and application of the process LSPH has applied in the coordination of capacity requests from operators, LSPH's Operational Integrity assessments, and the terms of the mFTAA and FTAA, among other things; and

(ii) the ORR retains a specific investigatory power under Regulation 34, which it could invoke if it had concerns about the efficacy of LSPH's processes and decisions.

For these reasons, there is no basis or need for such an undertaking and/or supervisory activity; and

(c) 119(b)(iii), a direction that LSPH should clearly explain how it will cooperate with other infrastructure managers and provide assurances that it will adhere to its cooperation obligation would be otiose since:

(i) an explanation of how LSPH would cooperate and any assurances LSPH gave would have no status and have no legal force vis-à-vis the FTAA which has already been entered into and which is the subject of TF's Appeal;

(ii) cooperation requires more than one infrastructure manager to be effective and however cooperative LSPH may be, it cannot ensure the effective cooperation of others as this is something entirely out of LSPH's control;

(iii) LSPH already regularly meets with Eurotunnel and SNCF, among other infrastructure managers, to discuss capacity allocation processes and decisions, path coordination, and capacity enhancement initiatives, among other things; and

(iv) as mentioned in paragraph 74 above, there are numerous examples of ways in which LSPH already cooperates with other infrastructure managers seeks to improve coordination of paths and infrastructure management,

none of which alters LSPH's existing cooperation duty under the AMRs or the ORR's powers to regulate LSPH's performance of that duty.

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

124 LSPH relies on paragraphs 110 and 111 of LSPH's EIL Representations in the context of any other matters relevant to the ORR's determination.

125 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) TF'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 TF would in any event be excessive, disproportionate and inappropriate; and

(d) any remedy should be very tightly limited and procedural in nature only (as described in paragraph 111 of LSPH's EIL Representations) and should not amount to a wholesale restart of the process or an effective substitution of the ORR for the infrastructure manager.

REDACTED VERSION FOR PUBLICATION

ANNEX – UNDERLYING COMMUNICATIONS RELIED UPON BY LSPH AND TO WHICH THE ORR IS REFERRED (further to paragraph 111)

No.	Document	Date
1.	TF's application to LSPH for access to HS1, including an indicative timetable	30 April 2025
2.	TF's application to the ORR for directions under section 17 of the Railways Act 1993 regarding access to Temple Mills depot	26 May 2025
3.	LSPH's letter to TF inviting TF to participate in an Operational Integrity assessment	6 November 2025
4.	TF's first dossier of Operational Integrity information submitted to LSPH	27 November 2025
5.	LSPH request for further information in relation to TF's first Operational Integrity submission	12 December 2025
6.	TF second dossier of Operational Integrity information submitted to LSPH	7 January 2026
7.	LSPH's letter to TF confirming that TF has not achieved Operational Integrity	27 January 2026
8.	LSPH's notes from LSPH/TF meeting in which LSPH explained why TF did not achieve Operational Integrity	28 January 2026
9.	TF's Virgin FTAA consultation submissions to LSPH (letter with appendix comments)	27 May 2026
10.	TF's email to LSPH confirming, among other things, that TF would submit another Operational Integrity dossier and requesting that LSPH explain why TF had not achieved Operational Integrity in January 2026	29 May 2026
11.	LSPH letter to TF outlining the points TF needed to address in any subsequent Operational Integrity submission	4 June 2026
12.	TF's email to LSPH thanking LSPH for its ongoing collaboration and promising another Operational Integrity submission by the end of June 2026	12 June 2026

No.	Document	Date
13.	LSPH's letter to TF enclosing LSPH's responses to TF's consultation submissions (table)	19 June 2026
14.	TF's letter to LSPH enclosing third Operational Integrity dossier confirming it had addressed the points LSPH raised on 4 June 2026	23 June 2026
15.	TF's further consultation submissions to LSPH (email with appendix comments)	25 June 2026
16.	TF emailed LSPH with further details of SNCF-R's support in relation to stabling capacity and maintenance facilities	3 July 2026
17.	LSPH's final Virgin FTAA consultation submissions letter to all stakeholders enclosing LSPH's summary of further consultation submissions	15 July 2026
18.	Letter from TF to LSPH including further consultation observations	17 July 2026
19.	LSPH's letter to TF confirming the closure of and outcome of the Virgin FTAA consultation	29 July 2026
20.	LSPH's letter requesting further information from TF regarding its ongoing Operational Integrity assessment	30 July 2026
21.	TF's letter to LSPH in response to LSPH's request for further information regarding its ongoing Operational Integrity assessment	7 August 2026
22.	LSPH's letter to TF confirming that TF had achieved Operational Integrity	13 August 2026

ProRail

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Datum	29 september 2026			
Uw kenmerk	e-mail 2 September 2026	Eigenaar	Sabine van de Riet	
Kenmerk/ID	-	E-mail	[redacted]	
SharePoint ID		Telefoon	[redacted]	
Onderwerp	Framework Agreement Virgin	Afdeling	LJV Corporate	
Bijlage(n)	Letter of ProRail dated 27 May 2026			

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,

[redacted]

Leendert Makkinga
CLO

Annex: Letter of ProRail dated 27 May 2026

southeastern

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

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

15th October 2026

SE Trains Limited (Southeastern) position with regards to Trenitalia France (TF) Appeal relating to VTE Holdings Limited's Framework Track Access Agreement (FTAA)

Dear Martin,

Southeastern welcome the opportunity to provide its views regarding TF's appeal against the process for approval of the VTE Holdings Limited's FTAA.

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

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

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

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

Yours sincerely,

[redacted]
Track Access & HS1 Contracts Manager

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

Southeastern is the trading name of **SE TRAINS LIMITED**. Registered in England under company number **03266762** Registered Office address: **Second Floor, 4 More London Riverside, London SE1 2AU**

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

16 October 2026

Dear Martin

Trenitalia France ("TF"): 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 30 September 2026 inviting representations from VTE OpCo Limited (**"VTE"**) relating to the Appeal. Unless otherwise defined herein, VTE adopts the defined terms used in the Appeal.

Summary and opening remarks

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 TF. Further, the Appeal and TF's submissions are inaccurate in a number of material respects, as identified below, with respect to VTE's cross-Channel project and its application for capacity to LSPH.

Accordingly, VTE invites ORR, publicly and for the record, to make clear in its decision the matters in respect of which TF is plainly wrong or to direct TF to correct the record itself. If ORR does not take this step, VTE is concerned that misleading information with respect to VTE's project will remain uncorrected and in the public domain.

These assertions include: (i) that an FTAA has not been signed; the Virgin FTAA has been executed; (ii) that Equitix, a shareholder in LSPH, is a shareholder in VTE; that is plainly incorrect and TF's implication as to LSPH's independence and integrity is entirely without foundation and ORR in its approval letter dated 14 August 2026 was satisfied with the governance measures taken to ensure no conflict of interest; and (iii) statements relating to various technical, commercial and regulatory matters which go to the heart of VTE's cross-Channel project and progress on rolling stock, maintenance and access (as identified below). VTE also takes issue with TF's characterisation of VTE's proposals as having deficiencies. This is patently not the case.

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 in detail below.

However, we would also draw ORR's attention to the following overarching points:

- The Appeal appears largely to repeat the contents of the submissions and arguments we anticipate TF must have already made during its operational integrity process and during consultation on Virgin's application for capacity. LSPH and ORR had the relevant information available to them during those processes and the Virgin FTAA has been executed with LSPH and ORR both fully in the knowledge of the information available to them (both publicly and privately) during those processes. ORR's approval letter dated 14 August 2026 provides a comprehensive assessment of these issues and demonstrates that they were carefully considered.

- TF relies on speculation and limited publicly available information to make largely baseless assertions about the progress of VTE's cross-Channel project. At all stages, LSPH and ORR have had the relevant information available to them to make their decisions and have agreed to, or approved, the Virgin FTAA.

- In the Appeal, TF repeatedly compares and conflates readiness at the time of consultation and its alleged readiness now. The Appeal is not an opportunity for TF to relitigate the operational integrity assessment based on its purported readiness today. We invite ORR to disregard any assertion that TF's alleged readiness now equates to its position at the time in which capacity allocation, operational integrity assessment and access agreements were considered.

- The operational integrity assessment undertaken by LSPH, at the time in which the application is considered, is a gating item to several of the obligations and principles upon which TF now seeks to rely. As TF failed its operational integrity assessment, there was no need to consider co-ordination across infrastructure managers (for example).

- Virgin has executed the Virgin FTAA with LSPH and VTE has executed a depot access agreement at Temple Mills and has signed an MSA, a TSA and a lease for the supply and maintenance of rolling stock for operation on the routes.[1] VTE is also involved in the ongoing consultation processes with Getlink/Eurotunnel and SNCF, and no single prospective operator should be more progressed than any other in those competitive processes.

- Notwithstanding the ongoing processes, objectively and on the whole, VTE is therefore materially further progressed than TF in its cross-Channel project. Further, if Getlink/Eurotunnel and SNCF as infrastructure managers are to have due regard

[1] https://www.alstom.com/sites/alstom.com/files/2026/10/09/20261009_PR_Virgin_EN.pdf

to coordination, which TF itself accepts in the Appeal they ought to have pursuant to Article 12 of Regulation EU 2016/545 and Regulation 20 of the Regulations, such duty to ensure co-ordination ought to favour VTE's project following the execution of the Virgin FTAA with LSPH.

- The Appeal allegedly concerns Reg 32(2)(a), which relates to "*a network statement in its provisional or final version*". The opportunity to appeal the relevant iteration of LSPH's network statement has been available to TF since June/July 2025 (and arises annually). On the information available to VTE, we are not aware that TF raised such concerns contemporaneously.

- Further and generally, the Appeal is unreasonably late and without justification. The outcome of the operational integrity assessment has been known since April 2026 at the latest.

- There is no evidential support for the assertion that TF will be capable of operation by mid-2029. This was TF's target date when it first entered into the ORR process during 2025 relating to Temple Mills, in relation to which, of course, it failed to secure access.

Process followed and decisions made by LSPH in relation to matters under the Appeal

TF is aggrieved as it alleges that it has been unfairly treated and discriminated against by LSPH, in particular with respect to the allocation process for infrastructure capacity when it considered applications for new FTAAs, including those made by Virgin and TF. TF also alleges that LSPH has not followed the criteria and requirements set out in Part 5 of the Regulations, the ORR C&Ps or the HS1 Network Statement. There is no evidence of this from anything that we have seen. The Appeal repeatedly alleges that LSPH has not been fair, consistent, transparent and non-discriminatory, and then provides no legitimate and substantive evidence that this is indeed the case.

Unfair and non-equivalent treatment of TF

Several of the points raised under this heading are for LSPH to address as it will have better access to information and to the decision-making rationale which underscored its processes and procedures. Nevertheless, it appears that TF is attempting to introduce points on the basis of its alleged position today in an attempt to increase the credibility of its project contemporaneously and at the time in which LSPH considered its application. This is plainly not appropriate.

Operational integrity

LSPH opened the window for applying for and concluding framework agreements based on the operational integrity of prospective operators at that time. The decision was taken by LSPH that Virgin was the only party capable of proceeding to negotiate the framework agreement.

In its approval letter dated 14 August 2026, ORR was satisfied that LSPH had carried out an appropriate assessment of VTE's operational integrity. ORR considered that the conditions precedent included in VTE's FTAA were appropriate and recognised their function as ongoing safeguards to ensure continuing compliance and readiness (notwithstanding TF in the Appeal asserting to the contrary). VTE is confident in its own position as to operational integrity.

LSPH was clear during its process that the Form P would reserve capacity as it is an agreed contract that LSPH would execute if ORR approved its terms. The Virgin FTAA requires ongoing operational integrity satisfaction. This is not a condition precedent to operation but an ongoing condition which Virgin satisfied contemporaneously and needs to continue to satisfy going forward, the efficacy of which ORR expressly acknowledged in its approval letter of 14 August 2026.

Rolling stock and maintenance

TF asserts that it is "*clearly and demonstrably better progressed with its rolling stock and maintenance arrangements than Virgin*". TF also asserts that "*Virgin has not yet placed an order for rolling stock*". The 2016 Regulations themselves envisage a situation where a framework agreement is a prerequisite for securing funding for rolling stock for new services (EU Regulation 2016/545, article 6(3)(a)). TF's point is therefore irrelevant. Nevertheless, it is not clear the basis upon which TF makes these assertions, which VTE contends are incorrect. VTE has signed rolling stock agreements. Further, LSPH and ORR have had all of the relevant information available to them at the time in which the relevant decisions were made.

For the avoidance of doubt, Virgin has an executed FTAA with LSPH and VTE has a signed MSA, TSA and lease, and has secured depot access at Temple Mills. Objectively therefore TF is not presently in a better position than VTE in any meaningful respect, including on rolling stock, capacity allocation, maintenance or depot access, and therefore (without prejudice to VTE's position that this is not required) any reconsideration of the position ought reasonably to conclude that VTE is in an even stronger position today than it was when the Virgin FTAA was concluded. Indeed, the fact that VTE has been able to conclude rolling stock supply and maintenance and depot arrangements so expeditiously reinforces the reliability and positive assessment of its operational integrity earlier in the process.

In its representations on Appeal, TF asserts that:

- It "*has already implemented its secondary plans to ensure it has a facility to properly store and maintain the new rolling stock, having secured a new maintenance depot in Paris at Maisons-Alfort Pompadour*". As has been made clear throughout these submissions, TF cannot rely upon its purported readiness now as evidence of its readiness contemporaneously when the operational integrity assessment was undertaken; and

- It "*already holds the equivalent of a railway undertaking licence and safety authorisation in France as it already operates services in France…*[w]*hilst TF recognises it will need to obtain equivalents for Great Britain and the Channel Tunnel, this will be materially simpler to do with those existing arrangements in place: as far*

as TF is aware, Virgin has not yet commenced either of those processes." This is irrelevant. Nevertheless, Virgin Group is experienced at attaining licences and safety certification in railways and very familiar with the process and what is required as well as across a variety of other sectors, including aviation, and VTE does not consider this gating item to be of any consequence to the Appeal.

Additional and supplemental points

In its Appeal, TF suggests that there is something somehow inappropriate and prejudicial about the sequencing of responses from LSPH and ORR. This allegation goes to the integrity and reputation of both LSPH and ORR.

Further, there are also several specific points with respect to TF's prospective project which (based on publicly available information) have still not been credibly explained, even based on the position as it stands today, including (but not limited to):

- VTE is not able to find evidence that the fleet order apparently intended to operate on TF's proposed cross-Channel service is specifically for Channel Tunnel / HS1 compatible trains. It seems that the order for nineteen Hitachi trains is for 10 options from a 2023 contract and 9 options from a March 2026 contract, neither of which specified UK compatibility; hence why Hitachi has seemingly neglected to confirm a 'new' train order, which it would usually do (as a publicly listed company). It is also clear from TF's announcement (via its ultimate parent, FS Group) that these trains are intended to service various European routes, including Paris-Lyon, Paris-Milan and Paris-Marseille, notwithstanding the technical changes and approvals required to run cross-Channel services using the same units.[2] There is no information in the public domain that satisfactorily answers this distinction between the units purportedly ordered by TF.

- It is not clear that an alleged depot over 100 kilometres from Gare du Nord represents an efficient and robust operational solution and business case for TF's prospective project, given its impact on driver numbers, stabling and fleet costs. Further, it is not clear that Gare du Nord empty stock movements have been agreed, further impacting congestion and feasibility.

- With respect to stabling of prospective TF services around London, VTE's understanding is that there is no obvious space around London St Pancras or at Temple Mills which would be available to TF and VTE is not aware of any agreement between TF and third parties which provides a legitimate resolution to this issue.

We invite ORR to reflect on these points when it considers the Appeal.

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[2] https://www.fsitaliane.it/en/media/press-releases/2026/8/7/fs-group-orders-19-high-speed-trains-to-boost-growth-in-france-a.html

Inconsistent and non-transparent process followed by LSPH in allocating infrastructure capacity in respect of the HS1 rail network

VTE accepts that LSPH knew that VTE, TF and EIL intended to make competing applications for infrastructure capacity. However, we do not understand the timelines, status and progress on the applications made to LSPH to have been equivalent and/or concurrent. Nevertheless, LSPH was in possession of the information that was required to make its decision on the VTE application and to support the execution of the Virgin FTAA. The fact that Virgin's application for an FTAA was preferred simply demonstrates that Virgin was the only aspirant operator to satisfy LSPH as to the viability and credibility of its cross-Channel project and was therefore the only party to progress to negotiate, and be awarded, an FTAA.

There is no evidence to suggest that TF applied for capacity rights or that LSPH failed to consider the requests for capacity in a consistent, fair, transparent and non-discriminatory manner. TF failed the operational integrity assessment. The Appeal arises because TF is simply aggrieved because it was not selected. Further, there is no evidence that LSPH inappropriately used operational integrity as a stage gate or "*unfairly and discriminatorily applied the 'operational integrity' test as between Virgin to TF to progress Virgin's application in preference to TF's application*". Again, VTE's view is that it is the only party to have satisfied LSPH on operational integrity. At all times, VTE considers LSPH to have been an open, fair and transparent infrastructure manager.

The Appeal makes several comments about the need for co-ordination between infrastructure managers, competing capacity requests and congested infrastructure. VTE agrees that due regard must be paid to Article 12 of Regulation EU 2016/545 and the Regulations once the operational integrity assessment has been passed. These should not be considered retrospectively to undo the Virgin FTAA. Instead, such provisions ought to be given due regard by other infrastructure managers with respect to co-ordination as they consider their own processes now. Contemporaneously, co-ordination was irrelevant to TF's application as LSPH was not satisfied that TF had operational integrity and so it failed in that gating item. Conversely, LSPH rightly concluded that VTE had operational integrity and it was therefore the only party capable of progressing to negotiate and finalise an FTAA at that stage.

It's also noteworthy that in its approval letter of 14 August 2026, ORR found LSPH's approach to co-ordination to be a credible position and that, while cooperation between infrastructure managers is important, LSPH cannot reasonably be expected to delay its own capacity allocation decisions indefinitely pending the completion of allocation processes on other networks and facilities.

The Appeal makes reference to TF being "*advanced in discussions with GetLink/Eurotunnel and SNCF (within their respective processes*)" and alleges that "*LSPH has made the allocation of capacity by other infrastructure managers (including Eurotunnel) more difficult and increased the risk of misalignment in the allocation of infrastructure capacity*". TF was (and is) no more advanced in discussions with Getlink/Eurotunnel and SNCF than VTE (or any other party) was (or is).

VTE and TF are both applying for infrastructure capacity with Getlink/Eurotunnel and SNCF and are equally as progressed in those applications. It is ill-conceived to suggest that TF

ought to have progressed with LSPH simply because it has existing relationships with Getlink/Eurotunnel and SNCF.

Effect on existing or prospective access rights, capacity allocation or operation of the HS1 network

VTE submits that the Appeal has no merit and should have no impact on existing or prospective access rights, capacity allocation or operation of the HS1 network.

In its Appeal, TF has invited ORR to make a series of directions as between LSPH and Virgin, including directions not to enter into, to rescind or to amend materially the Virgin FTAA based on alleged unfair and discriminatory conduct against TF by LSPH. As ORR is aware, the Virgin FTAA has been executed and is binding. ORR has no standing to direct termination and/or amendments to a private contract now executed between Virgin and LSPH and in reliance on which Virgin has continued to advance its plans.

Directions – Alleged unfair and non-equivalent treatment of TF

a) First, as we anticipate is supported by LSPH's submissions in response to this Appeal, there has been no unfair and discriminatory conduct. For this primary reason, each of the directions sought at (1)-(6) should be rejected;

b) Second, no new information appears to have been provided by TF in the Appeal. VTE therefore is confident that the Appeal will be rejected and no remedies or directions will be ordered;

c) Further and alternatively (and without prejudice to the foregoing):

    i. The Virgin FTAA has been executed. ORR cannot direct LSPH and Virgin not to enter into the Virgin FTAA. The direction sought at (1) should be rejected;

    ii. ORR has approved the Virgin FTAA. ORR cannot direct the rescission, termination or otherwise impeding of the contractual rights set out in the Virgin FTAA. For this reason, the direction sought at (2) should be rejected. VTE contends that ORR does not now have the power to interfere with VTE's pre-existing contractual rights contained in the Virgin FTAA, which has been subject to regulatory scrutiny and pre-approved by ORR. TF itself impliedly recognises the illegality of the remedy it seeks by providing alternative remedies in the event that "*ORR considers it is unable to direct a recission*"; and

    iii. For the same reasons, no conditions precedent, modification of longstop dates, reallocation of capacity or otherwise any amendments to the Virgin FTAA should or can be directed by ORR. For this reason, the directions sought at (3)-(6) should be rejected.

Directions – Alleged inconsistent and non-transparent process followed by LSPH in allocating infrastructure capacity in respect of the HS1 rail network

VTE anticipates that LSPH will respond in full to the directions sought. However, VTE makes the following submissions and observations:

a) LSPH has already considered the applications of VTE and TF. This process was consistent with both the Regulations and the ORR C&Ps. Virgin has executed an FTAA with LSPH which fully determines the allocation of capacity. The direction sought at (1) should be rejected;

b) The ORR already oversees, as regulator, the processes undertaken by LSPH and supervises the conduct of participants and interested parties across the rail network. It has already considered and approved the Virgin FTAA, and reviewed, and was satisfied with, the processes undertaken by LSPH as is clear from its approval letter dated 14 August 2026. As the ORR already has regulatory oversight and responsibility, the directions sought at (2) and (4) are effectively meaningless; and

c) With respect to the direction sought at (3), VTE considers that it would be helpful for all infrastructure managers to set out clearly how they will cooperate with each other with respect to coordination of capacity across multiple networks. This applies equally to LSPH, Getlink/Eurotunnel and SNCF. However, despite considering this to be a useful request from TF which VTE would welcome, VTE does not consider a direction from ORR to be necessary or appropriate to achieve this outcome, if indeed, legally possible.

Other matters considered relevant to ORR's determination

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 Virgin 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 TF'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 or before 4 December 2026.

Further, as identified above, the Appeal contains a number of material inaccuracies in respect of VTE's cross-Channel project. Such inaccuracies have consequences and require VTE to correct matters for its stakeholders. VTE invites ORR to correct the record, or to direct TF to do so, as soon as possible.

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 Virgin FTAA and secure ORR approval after the consultation period had expired 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 Virgin 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.

This letter is provided on a confidential basis and, to the extent that ORR is minded to publish this letter, we request that ORR consults VTE in relation to redactions.

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

Yours sincerely



Philip Whittingham
For and on behalf of VTE OpCo Limited