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

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Dear Office of Rail and Road

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

We refer to the Office of Rail and Road's ("**ORR**") letter dated 22 October 2026.

This letter contains Eurostar International Limited's ("**EIL**") comments on the response submitted on behalf of the Secretary of State for Transport ("**DfT**") to TF's appeal under regulation 32 of the Regulations (the "**TF Appeal**").

EIL has not been invited by ORR to comment on the responses submitted by other relevant parties in relation to the TF Appeal and, accordingly, does not do so in this letter. However, EIL fully reserves its position and rights in relation to those other responses.

We note at the outset that DfT's response is substantially the same to that of DfT's response in relation to EIL's appeal under regulation 32 of the Regulations (the "**EIL Appeal**"). Accordingly, this letter should be understood as applying equally to the issues raised by the EIL Appeal and, in particular, as EIL submissions in relation to DfT's response to the EIL Appeal. For the avoidance of doubt, EIL's submissions to ORR in respect of the EIL Appeal should also be understood to be repeated by EIL in the context of the TF Appeal as may be relevant and ORR should consider EIL's comments across both appeals together.

1 DFT'S POSITION

1.1 It is clear that DfT wants to ensure that the UK's international rail market has every opportunity for growth, with such growth being promoted by and in turn promoting wider investment in and economic and social benefits for the UK. In addition, DfT seeks to ensure that the interests of passengers are promoted in the course of capacity allocation, such that the benefits of international rail services are maximised for all.

1.2 DfT's response reflects concern that the achievement of its objectives could be impeded by the decision of HS1 Limited ("**LSPH**") to award extensive firm rights to a single operator (namely, VTE OpCo Limited ("**VTE**")).

1.3 EIL shares DfT's concern. LSPH's decision to grant firm rights over a significant period from 2030 has the potential significantly to impact EIL and other operators seeking to enter the cross-Channel international rail services market to their detriment. EIL, as an international rail operator, is committed to investing significantly in the UK's international rail offering, enhancing the service delivered to passengers and promoting international travel by rail (with the economic, social and environmental benefits doing so will deliver). ORR is aware of EIL's ambitions, strategy and investment to grow further and enhance its service offering in this market.

1.4 EIL welcomes competition in the cross-Channel international rail services market and recognises that such competition has the potential to grow the overall international rail passenger market and deliver additional benefits to passengers and investment in the UK. EIL has, for a long time, been competing with passenger airlines as well as cross-Channel ferry services in the delivery of passenger travel to and from continental Europe.

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2 DFT'S STATED OBJECTIVES

Growth, investment and passenger benefits

2.1 ORR is aware of EIL's objectives to grow and enhance its services to the benefit of passengers, including by delivering growth on existing routes and facilitating potential new international routes directly between London and Switzerland and London and Germany.

2.2 DfT has described such new international routes as having the potential to "*promote greener travel*", to "*boost tourism, grow our economy and bring people closer together*" and as part of "*a new era of European rail connectivity*" with "*enormous*" economic potential.

2.3 ORR is also aware of the aspirations of other operators to enter the market, including but not limited to TF and VTE.

2.4 To realise any of these ambitions, operators must make significant, long-term investment decisions upfront.

2.5 Investment decisions of this nature fundamentally depend on the allocation of future track access. The ability for businesses to invest in the UK and the development of the cross-Channel international rail market depends significantly on their confidence in the robustness of the processes for determining applications for this allocation.

2.6 Clearly, decisions about future track access will be foundational to the further development of the cross-Channel rail market. It is critical that those decisions are made and scrutinised with proper consideration of these questions and in full and effective compliance with the applicable statutory regime.

Opportunity to participate

2.7 LSPH has acknowledged (in the context of the EIL Appeal) that it did not take the opportunity to assess marketwide interest and invite competing applications so that the growth, investment and passenger benefits discussed above could be comparatively assessed.

2.8 DfT raises concerns in its response to the TF Appeal that there are existing and credible new operators with ambitions to enter the market that do not appear to have had an opportunity to participate in the process for this current capacity allocation. We believe this concern is well-founded; different parties were afforded different opportunities to participate in the process that led to the grant of rights to VTE without there being an objective justification for that variance based on accurate information and appropriate, validated assumptions.

2.9 Such an impactful decision on capacity allocation has been made by LSPH after it followed a materially opaque process that unfairly and discriminatorily excluded EIL to a large extent. Crucially, EIL was not aware that LSPH was considering applications for capacity allocation beyond 2030 until the draft VTE FTAA was published by LSPH and EIL was not invited to or even aware of the operational integrity assessment process to which other aspirant operators (including VTE and TF) were proactively invited by LSPH until long after it had concluded (indeed, it was disclosed to EIL for the first time only very recently by LSPH in its submissions in the EIL Appeal).

2.10 EIL maintains but does not seek to rehearse its previous submissions in relation to the unlawfulness of this treatment, but does submit that the unfairness and discrimination inherent in a process which allows an aspirant operator to reserve infrastructure capacity for a certain significant period before other operators (including existing operators with well-publicised growth plans, strategies and associated investments, such as EIL) were even aware that the infrastructure manager was considering capacity allocation for that period, flies in the face of DfT's wish for assurance that potential new operators and the incumbent have an opportunity to participate in the process (and, indeed, the direct assurance that LSPH gave to DfT during the VTE FTAA consultation process that it had "*proactively engaged existing and prospective operators…on their plans for growth*").

Allocation of capacity to support objectives

2.11 In its response, DfT encourages 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.

2.12 EIL is an established operator of high-speed, international passenger services on the HS1 network. It has a proven track record of delivering high-quality, good value services and social, environmental and economic benefits. As stated above and previously, EIL welcomes competition in the cross-Channel rail market and the benefits to passengers and the wider UK economy such competition could bring.

2.13 Notwithstanding this, EIL maintains that to deliver such benefits the competition must be predicated on fair, transparent and non-discriminatory access conditions. It is important for ORR to keep sight of the fact that competition in this market is a means to an end, namely, enhanced passenger benefits and an international rail market that promotes investment in and delivers economic, social and environmental benefits for the UK, not an end in itself. Effective competition in the international rail passenger market cannot be achieved lawfully or in practice by anti-competitive, discriminatory processes, but only by adherence to principles of fairness, transparency and non-discrimination, in accordance with the regulatory regime.

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

EIL reserves all its rights.

Yours faithfully



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6 November 2026

Dear Martin,

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

Thank you for your letter to all parties dated 22 October. We replied on 2 October 2026 to your letter of 2 September which invited representations on the appeal by Eurostar on the same matter. Gemini's general position remains unchanged, yet it is worth reiterating this position as it remains relevant to Trenitalia's appeal as it was to Eurostar's.

Gemini's interest is to ensure that the process for allocating infrastructure capacity through Track Access Agreements remains fair and open to competition, both currently and in the future. Gemini was invited by London St Pancras Highspeed to submit an assessment of operational readiness for a Framework Track Access agreement. We made the submission and, based upon LSPH's assessment, we were not taken forward for an Agreement. We understand the reasons for this, which LSPH have fed back to us. Thus far, the process followed by LSPH in respect of Gemini appears reasonable. This has no bearing on the way that either Eurostar or Trenitalia have been dealt with, since their circumstances are different.

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

Coordination and collaboration between infrastructure managers
Operators seeking to introduce new services to the cross-Channel route apply to at least three Infrastructure Managers (IMs). The access application processes run by SNCF Réseau and Get Link/Eurotunnel started after the LSPH process was completed. Thus, the LSPH access application process has already delivered its first conclusion before the other IMs' processes are able to consider the implication the same operators' applications for their own capacity.

Gemini would question whether this is effective, and whether it is line with applicable regulations. Outside the UK, Article 40 of the EU Directive[1] is relevant in that it obliges IMs to collaborate. We request that ORR satisfies itself that this obligation to 'collaborate' has been met; the dislocation of timing between these processes implies that it has not.

If IMs have not collaborated, the risk is that all capacity is allocated to the first competing operator to receive access to any single stretch of infrastructure. Gemini has a clear interest in seeing capacity preserved for its future operations, since these will genuinely grow the market by serving new destinations and markets not served by either Eurostar or TF. We explicitly wish to meet the ambitions you cite of supporting growth and bringing the benefits of international rail to new destinations and markets.

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

- Gemini requires limited use of St Pancras, with services starting and ending at Stratford International, and St Pancras being used for turnaround (and replenishment where necessary). Has the ORR taken this into account in its judgement that St Pancras is the capacity constraint for services being allocated on High Speed 1? Regardless of the forthcoming capacity works at St Pancras (which we are concerned will have limited impact on the station's ability to handle disrupted services), once Gemini achieves operational readiness, we believe that this capacity constraint does not bite
- The same EU Directive states at Article 42 that an IM should not preclude use of its infrastructure by other applicants or services, which the award of residual capacity seems to be doing. This would only be reasonable if LSPH has work under way at St Pancras that creates the certainty of committed additional capacity. Thus, the capacity constraint would be removed. If this committed capacity is not certain, LSPH should may be failing in its obligations according to the Directive. Can the ORR confirm which of these two positions is correct?

Summary
In summary, Gemini would ask the following of ORR in this review, as we did in the previous appeal:

1. Does the framework track access process followed in the UK mean that "first come, first served" applies to spare international capacity on the HS1 route?

2. What allowance needs to be made for future competition? On passing operational readiness with IMs in the UK and EU, we are keen to ensure that framework agreements would be awarded, without concerns that capacity has been incorrectly specified, or all residual capacity passed to another operator.

3. How are the interests of the incumbent operator balanced with the interests of different future operators, ensuring that the infrastructure is used effectively to deliver economic growth and societal and customer benefit?

Gemini remains committed to a service pattern that will make international rail travel more accessible to more customers by serving intermediate stations and new markets, specifically Stratford

[1] Directive 2012/34/EU

International, Ebbsfleet International and stations in Germany. We require a small amount of capacity to offer these services, but its availability is essential.

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

Kind regards

[redacted]

Adrian Quine
Chief Executive Officer
Gemini Trains
[redacted]

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

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

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1 These submissions are made by HS1 Limited trading as London St Pancras Highspeed ("**LSPH"**) in response to the consultation on representations made by Trenitalia France ("**TF**") and relevant parties in connection with TF's appeal dated 24 September 2026 ("**TF's Appeal**").

2 TF's Appeal was commenced by a Form R32 application notice made to the Office of Rail and Road ("**ORR**") by TF under Regulation 32 of the Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016 (the "**AMRs**"). The ORR invited representations on TF's Appeal, which were then received by the ORR from LSPH and relevant parties by 16 October 2026 ("**Consolidated TF Appeal Responses**"). The ORR shared the Consolidated TF Appeal Responses on 22 October 2026 and invited comments on them by 6 November 2026. This submission comprises LSPH's comments on the Consolidated TF Appeal Responses.

3 The Consolidated TF Appeal Responses were made by LSPH, the Department for Transport ("**DfT**"), Eurostar International Limited ("**EIL**"), Eurotunnel ("**ET**"), ProRail, SE Trains Limited ("**SET**") and VTE OpCo Limited ("**Virgin**"). TF, SNCF Reseau ("**SNCF-R**") and Infrabel did not respond to the consultation in relation to TF's Appeal. Each of the DfT, ET and ProRail elected to submit the same correspondence they submitted in relation to EIL's Appeal. LSPH therefore draws the following inferences:

(a) TF has nothing further to add in relation to its own appeal beyond what it said in TF's Appeal, and in the Consolidated EIL Appeal Responses insofar as its comments there related to its own appeal; and

(b) each of the DfT, ET, ProRail, and SNCF-R have nothing specific to say about TF's Appeal that each have not already said in response to EIL's Appeal (noting that Infrabel did not make any observations beyond the industry consultation stage).

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

(a) in these submissions;

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

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

(d) in LSPH's Consultation Responses to representations made in relation to EIL's Appeal of 23 October 2026 ("**LSPH's EIL Consultation Responses**").

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

6 The ORR is considering each of EIL's Appeal and TF's Appeal on their own facts and merits, but the procedures for both are being coordinated.

Summation of matters raised in the Consolidated TF Appeal Responses

7 In summary, the matters raised in the Consolidated TF Appeal Responses take the merits of TF's Appeal no further. Almost all the matters raised have already been dealt with comprehensively in LSPH's TF Representations, LSPH's EIL Representations, LSPH's EIL Consultation Responses and LSPH's responses to the industry consultation on the FTAA. LSPH maintains that TF's Appeal should be dismissed.

8 LSPH considers that there is very little new material in the Consolidated TF Appeal Responses. TF has not taken the opportunity to argue further or repeat points about its own appeal, but EIL says at paragraph 1.3 of its TF appeal responses:

> "*Insofar as they relate to the same flawed application 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.*"

Despite the ORR confirming that it will consider each of TF's Appeal and EIL's Appeal on their respective facts and merits, EIL has sought, inappropriately to comingle the arguments that each have separately made in relation to LSPH's capacity allocation process. EIL's arguments have changed and expanded regularly through the industry consultation on the FTAA, into its

R32 appeal notice, into its comments on the consultation on its own appeal, and now into the consultation on TF's Appeal. Despite saying at paragraph 3.1 of its submission that EIL does not seek "*to advance TF's case*", the effect of EIL's request in paragraph 1.3 is both to expand (i) its own appeal once again by adopting TF's Appeal and (ii) TF's Appeal by tendering EIL's own appeal arguments in return, but in each case, without being specific as to which arguments are to be read into which appeal. The central difficulty with EIL's approach is that the two appellants were in materially different positions: TF made an application for access in the relevant period which potentially competed with Virgin's; EIL did not.

9 LSPH now finds itself in the curious position of responding for the most part to comments made not by TF in relation to its own appeal and the responses thereto, but those made by EIL supposedly in reference to TF's Appeal, but patently in service of its own. Despite being mindful that the purpose of this consultation was for the interested parties to respond to TF's Appeal, LSPH feels, given the request EIL is seeking to make at paragraph 1.3, that it should address the points EIL is making in relation to its own appeal, whether or not they pertain or have any real relevance to TF's Appeal. In that regard, LSPH refers to and continues to rely on its arguments in LSPH's EIL Representations and LSPH's EIL Consultation Responses.

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

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

(i) LSPH's alleged unequal treatment as between applicant operators, noting specifically the experiences of EIL and TF;

(ii) LSPH's contingent reservation of the capacity in Virgin's Application pending ORR approval;

(iii) reliance on the relevant provisions of LSPH's Network Statement; and

(iv) LSPH's alleged failure to identify and coordinate competing access requirements;

(b) LSPH's alleged failure to cooperate with infrastructure managers of adjacent infrastructure to the HS1 network in order to coordinate capacity allocation processes and decisions;

(c) safeguards to ensure rights granted will be exercised within a reasonable time frame; and

(d) ORR's determination and remedies.

11 LSPH deals with each of these themes in these submissions, but only insofar as the Consolidated TF Appeal Responses present additional points which have not yet been addressed in LSPH's TF Representations, LSPH's EIL Representations, or LSPH's EIL

Consultation Responses, cross-referring to each of those submissions where LSPH considers that they already respond to repeated points made in relation to TF's Appeal and/or EIL's Appeal.

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

Consultees' general observations about LSPH's process

12 As the DfT's consultation response in respect of TF's Appeal is identical to the one that the DfT made in relation to EIL's Appeal, LSPH refers to and continues to rely on paragraphs 12 and 13 of LSPH's EIL Consultation Response. LSPH reasserts (i) that it has not followed its own commercial processes in allocating capacity on HS1 but rather those identified in the HS1 Network Statement which are compliant with the AMRs and (ii) that it has not denied any operator the opportunity to participate in the process for allocating that capacity.

Equality of opportunity for access: the experiences of EIL and TF

13 EIL asserts that there are *"material similarities*" (EIL, Consolidated TF Appeal Responses, paragraph 3.4) between its and TF's experience of LSPH's access process. EIL invites ORR to note that "*two experienced operators… have independently encountered similar features and non-compliances of LSPH's approach*." (paragraph 3.5). That, EIL says, 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*". EIL then notes that (paragraph 3.6) "*Each of our companies has independently corroborated the other's account of a flawed capacity allocation process including…LSPH's use of its operational integrity test in a potentially discriminatory, unfair and non-transparent fashion*."

14 EIL then identifies "*four common features between TF's grievances and* [*EIL's*] *own*" (EIL, Consolidated TF Appeal Responses, paragraph 3.7), alleging that LSPH:

(a) unlawfully treated Virgin's draft Form P as a reservation of capacity;

(b) selectively and inaccurately relied on the HS1 Network Statement;

(c) failed to identify and coordinate competing access requirements; and

(d) failed to coordinate with other infrastructure managers.

15 Insofar as there is anything worth adding that LSPH has not already said in LSPH's TF Representations, LSPH's EIL Representations, or LSPH's EIL Consultation Responses in relation to these grievances, LSPH addresses each of those four features in turn in paragraphs 16 to 36 below.

Contingent reservation of capacity

16 EIL argues that LSPH unlawfully reserved the capacity it had allocated to Virgin in the FTAA pending ORR approval (EIL, Consolidated TF Appeal Responses, paragraphs 3.8 and 3.9), despite LSPH's submissions that it did so for good administrative reasons. EIL points to Regulations 19(14) and (15) that require capacity to be "*concluded*" in necessary agreements and Regulation 21(15) that requires regulatory approval before such an agreement can be concluded. There is no dispute in this regard: LSPH accepts and relies on the meaning and application of those provisions (paragraphs 56 and 58 of LSPH EIL Representations). It is on that basis that LSPH engaged in the industry consultation process in relation to the FTAA in the first place and only entered into the FTAA with Virgin after the ORR's Decision Letter. LSPH also agrees with EIL when it says in paragraph 3.9 that "*there is…no right to capacity*" until such an agreement is concluded, and it is precisely that principle which LSPH relies on when it takes issue with EIL's claim in the same paragraph that a framework track access agreement must be concluded "*before capacity is allocated*". While that statement may be true in the legal sense, which LSPH has acknowledged (paragraphs 56 to 58 of LSPH's EIL Representations), it is not true in an administrative or procedural sense.

17 Regulation 19(3) provides that an infrastructure manager must establish specific capacity allocation rules and processes for allocating capacity on its infrastructure. These rules and processes include, where the infrastructure manager is minded to allocate capacity, the requirement to first consult on a draft framework track access agreement in accordance with the ORR C&Ps as a prerequisite to the Regulation 21(15) requirement to secure regulatory approval before rights to capacity can be established. As a matter of necessity, those rules and processes must precede the conclusion of a framework track access agreement.

18 Where the infrastructure manager's determination is to allocate capacity, that infrastructure manager must necessarily record that allocation in a draft framework track access agreement before that agreement's conclusion in the interests of transparency for the ensuing consultation, but also for good procedural reasons, in the same way that any manager of a finite resource that someone has reserved would record that reservation in order that that resource is not double booked. As a matter of due process then, the infrastructure manager must have administratively allocated the relevant capacity before a framework track access agreement is concluded, albeit only on a contingent basis because of the requirement for regulatory approval; if regulatory approval is refused in relation to the capacity that has been allocated by an infrastructure manager in a draft framework track access agreement, then that capacity will not be allocated legally under Regulation 19 because the relevant operator had "*no right to* [*that*] *capacity*" before then. See paragraphs 56 to 71 of the LSPH EIL Representations, paragraphs 93 to 110 of the LSPH TF Representations, and paragraph 15 of LSPH's EIL Consultation Responses.

HS1 Network Statement

19 EIL contends that neither EIL nor TF received an explanation from LSPH (or any other party) of how LSPH has applied paragraph 2.3.3 of the HS1 Network Statement. EIL also alleges that LSPH has been selective in its reliance on the HS1 Network Statement (EIL, Consolidated TF Appeal Responses, paragraphs 3.12 and 3.13). Again, EIL seeks to claim that LSPH has no published methodology for resolving competing demands between operators "*at the same tier of priority*". In this regard:

(a) EIL does not elaborate on which other parties it has in mind and what they might have said to EIL as to the proper application of section 2.3.3;

(b) nor does EIL explain what it means by "*the same tier of priority*". LSPH assumes that this latter expression is another attempt to establish that EIL's 2029-2040 Application (as well as TF's Application) had the same status as Virgin's 2030-2040 Application when the Form P was published, which is refuted by LSPH in paragraphs 37 to 55 of LSPH's EIL Representations, and in the case of TF's Application in paragraphs 77 to 80 of LSPH's TF Representations; and

(c) LSPH has already provided an explanation of the application of section 2.3.3 in the context of EIL's Appeal (paragraphs 48 and 63 of LSPH's EIL Representations, and paragraphs 16 to 25 of LSPH's EIL Consultation Responses) and in the context of TF's Appeal (paragraphs 21 and 22 of LSPH's TF Representations). LSPH confirmed in paragraphs 23, 25 and 26 of LSPH's EIL Representations that the HS1 Network Statement pointed to the published methodology it would follow in allocating capacity on HS1, being that set out in the ORR C&Ps, including where relevant what process LSPH would adopt in the event of competing applications, recognising that after the conclusion of LSPH's Operational Integrity assessments there were no competing applications and so such process was not in fact relevant on the facts.

20 As noted in paragraph 16 of LSPH's EIL Consultation Responses, EIL has now adopted TF's preclusion arguments (TF, Consolidated EIL Appeal Responses page 54), citing the same sentence from section 2.3.3 of the HS1 Network Statement as a prelude to seeking to contend that LSPH failed to identify and coordinate competing access requirements. It is alleged that LSPH "*ignored and/or failed compliantly to coordinate both EIL's and TF's access requests and aspirations, which competed with* [*Virgin's*]*"*, thereby failing to duly consider the preclusive effect of Virgin's Application on them ((EIL, Consolidated TF Appeal Responses, paragraph 3.17). EIL's criticisms appear to be mostly about LSPH's process, which LSPH responds to in paragraphs 21 to 28 below, rather than what is or is not said in the HS1 Network Statement. EIL also appears to argue that LSPH's application of that process goes "*directly to the issue of the 'adequacy of the relevant provisions of LSPH's Network Statement'*". In other words, EIL appears to argue that the HS1 Network Statement is defective because of the process that LSPH applied. This appears to be no more than post hoc rationalisation.

Coordinating competing access requirements

21 EIL says the preclusion assessment "*is not optional*" because it gives effect to Regulation 21(4), and that the (emphasis added) "*obligation requires the extent of any preclusion to be analysed and established*", adding that "*it cannot be discharged by LSPH without LSPH first identifying the other applicants and services concerned and their requirements*" (EIL, Consolidated TF Appeal Responses, paragraphs 3.14 and 3.15). TF argued that this meant LSPH's duty when assessing preclusion required LSPH to take account of applicants that have "*credible well-advanced plans*" (TF, Consolidated EIL Appeal Responses, page 54). In contrast, EIL does not offer much assistance in the Consolidated TF Appeal Responses as to what it thinks LSPH should have regard to when undertaking the preclusion assessment. In the past EIL has argued that LSPH's duty should properly extend to EIL's (and other operators') public pronouncements of their growth aspirations (the Press Release in EIL's case) even though EIL's contemporaneous application to LSPH suggested that EIL did not intend to meet those growth aspirations, at least in the immediate term – see paragraphs 42 to 49 of LSPH's EIL Representations.

22 Despite not having a consistent position as to what requirements EIL considered LSPH should have had regard to in the relevant period under section 2.3.3 of the HS1 Network Statement, EIL nevertheless attempts to maintain that LSPH did not duly identify the other operators or their requirements when considering Virgin's 2030-2040 Application, or, in the alternative, insofar as it did identify those other operators and their requirements: (i) LSPH's consideration thereof was inadequate; and/or (ii) LSPH considered inaccurate information; and/or (iii) LSPH based its conclusions on incorrect assumptions. EIL provides no evidence or basis for these all-encompassing assertions.

23 Then EIL suggests, in the Consolidated TF Appeal Responses, that EIL itself drew "*LSPH's attention 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)*" (EIL, Consolidated TF Appeal Responses, paragraph 3.18). EIL appears to contend that its post-Form P industry consultation observations as to its and other operators' aspirations should have influenced or carried some weight in LSPH's preclusion analysis. This suggestion is in keeping with EIL's consistent attempts to establish that the post-Form P stage is not part of the end of a capacity allocation decision process but just the beginning – a period in which, in EIL's estimation, another operator can establish contestability at any point prior to regulatory approval.

24 But, EIL is caught by its own logic, which provides that consideration at that later stage would be untimely, since, according to EIL, LSPH should have first identified those other applicants and their requirements according to section 2.3.3 of the HS1 Network Statement before deciding whether to enter into a framework track access agreement which necessarily is a decision that must be reached before submitting Form P. LSPH points to the submissions that it made in paragraphs 18 to 25 of LSPH's EIL Consultation Responses, including evidence that at an early

stage and long before submitting the Form P, LSPH duly took account of other operators' applications and the extent to which it might be said that the capacity in Virgin's 2030-2040 Application precluded use by other operators.

25 In paragraph 19 thereof, LSPH observed that when LSPH was considering Virgin's 2030-2040 Application, its duty under section 2.3.3 of the HS1 Network Statement and Regulation 21(4) in relation to what might have been described as TF's "*credible and advanced plans*" ended when TF failed to demonstrate Operational Integrity in January 2026. In the case of EIL, LSPH would reiterate that EIL did not have any credible and advanced plans in the first place (paragraphs 42 to 49 and 72 of LSPH's EIL Representations). In short, neither TF's Application nor EIL's 2029-2040 Application competed with Virgin's 2030-2040 Application. In the case of TF's Application beyond a certain point (paragraphs 33 to 68 of LSPH's TF Representations), and in the case of EIL's 2029-2040 Application at all (paragraphs 37 to 55 of LSPH's EIL Representations).

26 EIL has adopted TF's Operational Integrity arguments even though these were not EIL's original industry consultation or appeal arguments. EIL claims that it has "*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*" (EIL, Consolidated TF Appeal Responses, paragraph 3.6). By that EIL appears to mean that:

(a) EIL has 30 years of experience and that its Operational Integrity is self-evident and/or that it considers that it had promptly provided adequate information to LSPH to demonstrate its Operational Integrity;

(b) TF similarly has substantial operational experience and resource, and

(c) by contrast, and without evidence, Virgin has not demonstrated and does not have operational capabilities possessed by established operators.

LSPH refers to paragraphs 26 to 42 of LSPH's EIL Consultation Responses as to its application of the Operational Integrity test insofar as it related to TF, EIL, and Virgin.

27 EIL states that at no point prior to the industry consultation did LSPH advise EIL that it was possible for EIL to seek capacity on HS1 beyond the end of EIL's existing framework track access agreement (2029) (EIL, Consolidated TF Appeal Responses, paragraph 3.23). EIL has spent a significant amount of time citing aspects of the AMRs in the industry consultation, in its appeal, in its comments on its own appeal, and in its comments on TF's Appeal which, it says, LSPH has failed to take account of. However, EIL has seemingly failed to consider Regulations 21(7) to (11) which set out clearly the range of possible durations of framework track access agreements and so how it was clearly possible to seek capacity on HS1 beyond 2029, when EIL's current framework track access agreement expires.

28 EIL describes that current framework track access agreement as "*a modest short-term request to secure continuity of some of EIL's existing services up to 2029*" such that LSPH was wrong to conclude that EIL's application relating to the provision of services up to 2029 represented

"*the whole of EIL's additional future requirements*" (EIL, Consolidated TF Appeal Responses, paragraph 3.24). There are three points to be made here:

(a) EIL elected to make an application only for the period between 2026 and 2029. EIL suggests it was incumbent on LSPH to clarify that EIL's actual intentions did not match that application, rather than it being incumbent on EIL to clarify to LSPH that the application EIL was actually making was somehow a stopgap and that a further, more fulsome application would follow and when it would do so. This argument does not bear scrutiny from any operator, never mind a sophisticated, commercial operator such as EIL which has a long track record of planning what capacity it requires and requesting that capacity of LSPH in order to service its passengers. Moreover, it should be remembered that EIL made this application fully cognisant that a number of prospective operators had publicly expressed their intentions to introduce their own cross-Channel services and so that they would be seeking capacity on HS1. It should have been at the forefront of EIL's mind having been involved in the contested applications for access to Temple Mills depot that EIL might not have as much latitude as it had hitherto enjoyed to seek capacity on HS1, and so if anything, the need for EIL to clarify its longer-term intentions was greater than it would have been at any other time;

(b) EIL returns to paragraph 3.12 of the ORR C&Ps, but this time acknowledges that the firmness of an operator's aspirations is significant in determining the extent to which an infrastructure manager should have regard to those aspirations when considering an access application before it. However, EIL adds that an infrastructure manager cannot properly assess that firmness or the preclusive effect of the capacity it is minded to grant under Regulation 21(4) unless it has verified or tested those aspirations with the relevant operator(s). By EIL's logic, when considering any application, an infrastructure manager must consult all other existing or prospective operators just in case they have aspirations they have not clearly expressed, or indeed expressed at all, otherwise proceeding with any such application could have a preclusive effect that the infrastructure manager has failed to recognise. This is not what Regulation 21(4) requires. LSPH duly considered the firmness of the aspirations which had been properly expressed to it and whether Virgin's 2030-2040 Application had a preclusive effect – see paragraphs 23 and 24 of LSPH's EIL Consultation Responses in particular. Compliance with Regulation 21(4) did not require LSPH to test and validate if EIL really intended (i) only to operate the services contemplated by its October 2025 application and no others, or (ii) to do so only until 2029 and not thereafter; and

(c) EIL appears to seek to have it both ways. It claims to have made what it classifies as a short-term request, for the first time now implying that a much larger and longer application would be forthcoming, while also suggesting that it was not aware that a longer application was possible because LSPH failed to notify EIL of that possibility. Both cannot be true. No expanded application (whether in relation to the scope of services to be run or the period over which they were sought to be run) was forthcoming

immediately after EIL's current track access agreement received ORR approval and was signed (the period between February and April 2026), or even immediately after the Form P was issued, triggering the industry consultation in relation to Virgin's 2030-2040 Application – when EIL implausibly suggests it first became aware that a longer FTAA was possible. EIL only promised an expanded application once the FTAA was published and only actually did so after the period for industry consultation responses on the FTAA closed. Even if the 2026-2029 could be classified as a short-term request, which it is not, the nine months between it being made and EIL's 2029-2040 Application being made clearly expose that the 2026-2029 was not a stopgap with a longer, expanded application in EIL's immediate contemplation that would be made shortly thereafter. Since around the time EIL made its 2026-2029 application, it had not established its own long-term plans beyond 2030, EIL cannot now pretend that it would have warned of the preclusive effect of Virgin's application on such plans if only it had known of that application, never mind accusing LSPH itself of failing to identify that effect.

Coordinating with other infrastructure managers

29 EIL has made much of the argument that LSPH's only relevant duties are those under the AMRs, thereby discounting, for example, LSPH's reliance on and adoption of the ORR C&Ps for its capacity allocation process. Yet EIL is quick to point to other, non-AMRs, sources when it considers that doing so supports its arguments.

30 First, EIL says that (emphasis added) "*In addition to regulatory obligations, it is not appropriate to take a decision on part of* [*the London to Paris*] *route without coordination with those responsible for management and allocation of capacity on the rest of the route*". EIL adds that 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*" (EIL, Consolidated TF Appeal Responses, paragraph 3.27). As to extra-regulatory considerations, LSPH has acknowledged that there is a misalignment as between the regulatory frameworks applicable to infrastructure managers in other jurisdictions and therefore as between the capacity allocation processes that the relevant adjacent infrastructure managers administer, but that is not a failing that gives rise to any basis for legal complaint and certainly not one that can or should be attributed to LSPH. Notwithstanding that perhaps inevitable misalignment, EIL has successfully navigated that regulatory landscape for many years (LSPH's EIL Consultation Responses, paragraph 51(b)). As to the question of lawfulness, LSPH has acknowledged the extent of an infrastructure manager's coordination duties under the AMRs – the only relevant regulations – which thus set the limits of LSPH's regulatory obligations for these purposes (LSPH's EIL Consultation Responses, paragraphs 48 to 53). Specifically, such duties do not require synchronous capacity allocation; indeed, under the AMRs, infrastructure managers cannot delay capacity allocation decisions to wait for the other infrastructure managers to complete their processes, a view the ORR shares. EIL seems to accept this principle itself when it adds, "*EIL does not suggest LSPH should defer indefinitely to other networks' processes*" (EIL,

Consolidated TF Appeal Responses, paragraph 3.31). Yet EIL (inconsistently) asserts in the next sentences that nevertheless, "*LSPH must manage its own access processes in a way that anticipates and coordinates with the processes of other infrastructure managers.*" That appears to suggest that LSPH should have either:

(a) deferred its own access process, if not indefinitely then until those other processes caught up, such that a multilateral decision to award capacity simultaneously to a single operator across all relevant adjacent infrastructure could be made, even though Regulation 20 does not prescribe that LSPH could or should have done this (see paragraphs 30, 73, 78 of LSPH's TF Representations and paragraph 48 of LSPH's EIL Consultation Responses); or

(b) in the alternative, somehow predicted the outcome of the other infrastructure managers' capacity allocation processes – processes which LSPH noted in paragraph 50 of LSPH's EIL Consultation Responses started many months after LSPH began its own, are nascent to the relevant infrastructure managers so still being developed, are subject to different regulation and administration, and in any event, will never be fully aligned across all relevant adjacent infrastructure.

31 Second, EIL points to processes that are being applied by other infrastructure managers in relation to third party infrastructure that is subject to different regulation as if those processes should provide the reference point for LSPH's capacity allocation processes instead of the AMRs. That is obviously wrong. EIL refers to ET's latest Network Statement and how, prompted by TF's application for access, ET notified all other potential applicants (including EIL) of its intention to conclude a framework agreement with TF, inviting other applicants to submit requests so that ET could examine and decide on them simultaneously (EIL, Consolidated TF Appeal Responses, paragraph 3.29). EIL also references a similar approach taken by SNCF-R through its framework agreement process for the Paris and Fréthun Tunnel South Portal line. EIL contrasts the notices given by the infrastructure managers for the respective access on their infrastructure under these processes with EIL's alleged ignorance of "*a potentially competing access request (or even the potential opportunity to apply for access from 2030 onwards)*" until publication of the FTAA (EIL, Consolidated TF Appeal Responses, paragraph 3.31).

32 There are a number of points to be made in response. First, while EIL may have been unaware that framework agreements under the AMRs could be longer than three years (indeed that the default duration is five years – and that they could, with justification, be as long as 15 years) it should not have been (see paragraph 27 above). Instead EIL tries to rely on an ex post facto argument that it was LSPH's responsibility to tell operators what potential capacity was available on HS1, something which the HS1 Network Statement does in any event. Second, EIL gives the erroneous impression that it was incumbent on LSPH to offer capacity to the market from 2030 as ET and SNCF-R have chosen to do. The AMRs do not prescribe this approach. LSPH has already explained that the AMRs do prescribe that applications for access are operator led and that infrastructure managers have confidentiality duties in relation to the applications that

are made to it (LSPH's EIL Representations, paragraphs 32 to 34 and paragraph 21 respectively).

33 LSPH notes in any event, that the coordinated processes ET and SNCF-R have chosen to run are analogous to the process LSPH followed. Once Virgin made an application to LSPH for access in November 2025, LSPH invited all other operators that had previously made an application to it in respect of the relevant period to participate in its Operational Integrity assessment as a prerequisite to concluding a framework agreement with one or more of them. The only difference between the processes is that LSPH did not invite EIL to participate in that Operational Integrity assessment, as EIL had made a contemporaneous application which was not for the period that coincided with Virgin's Application or the applications of the other prospective operators, and EIL had already demonstrated Operational Integrity for the services it wished to operate in that different period (see the Chronology in paragraph 13 of LSPH's EIL Representations).

34 Despite this, EIL cannot reasonably claim that the first it understood of Virgin's application was when the FTAA was published in April 2026. At the end of October 2025, the ORR published its Temple Mills decision, awarding the spare capacity at Temple Mills to Virgin. This was a process that had been ongoing throughout most of 2025 and in which all prospective operators and EIL itself fully participated. From that point, at the very latest, EIL understood that Virgin would be approaching:

(a) EIL itself to conclude the terms of a 10-year depot access agreement, as directed by the ORR, to stable and service Virgin's trains at Temple Mills, alongside EIL's own; and

(b) LSPH and other infrastructure managers in order to secure access to their infrastructure to run those trains to international destinations.

Given the level of access Virgin had sought through the Temple Mills application process (both the quantum of access and the duration of the depot access agreement sought), EIL would have had a clear indication of the level of access that Virgin would be seeking from LSPH on HS1 and from other infrastructure managers elsewhere.

Alleged common features of LSPH's process between TF's Appeal and EIL's Appeal

35 EIL repeats its claim that EIL and TF "*describe the same defective features of the process*" (EIL, Consolidated TF Appeal Responses, paragraph 3.33). While LSPH accepts the ORR's observation that there is a significant connection between the two appeals since they arose out of the same common factual outcome that LSPH allocated capacity to Virgin and not EIL or TF in the relevant period, EIL has simply extrapolated from that outcome the notion that LSPH's capacity allocation process contains some sort of structural failing, the effects of which both EIL and TF have suffered. This, EIL says, means each appeal provides corroborating evidence for the other. They do not. All EIL has done in the Consolidated TF Appeal Responses is taken yet another opportunity to seek to relitigate its own appeal, and despite acknowledging the

fundamental truth that EIL and TF were "*in different positions*" (EIL, Consolidated TF Appeal Responses, paragraph 3.33), EIL has chosen to discount this in order to try to use the mere existence of TF's Appeal as a lever to suggest that the combination of its own arguments together with TF's arguments raises systemic or structural issues with LSPH's process. This approach does not hold water.

36 EIL's and TF's common fate was arrived at by entirely different means, on different facts, by decisions shaped by different considerations, and as a result of their own different acts or omissions, the most telling of which is that TF made an application for access in the relevant period which potentially competed with Virgin's and EIL chose not to. Far from providing the corroboration that EIL asserts, these differences illustrate how different each appellant's circumstances were. EIL's adoption of TF's Appeal as if it is its own does not furnish EIL's own appeal with the credence it tries to present : it is based on placing form (the fact of two appeals) over substance (the different bases for those appeals). It is only the appeal process that has been consolidated and since the experiences of EIL and TF reflect their own individual factual circumstances, as the ORR has said, the facts and merits of their appeals should be considered separately.

Safeguards to ensure rights will be exercised in a reasonable timeframe

37 SET raises a general point in relation to TF's Appeal, stating that it "*strategically supports the introduction of additional international services on HS1 and recognises the wider benefits that increased international connectivity and competition can bring*" (SET, Consolidated TF Appeal Responses, page 70). However, SET 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.*"

38 Specifically, SET is concerned about "*the potential consequences of access rights being secured but subsequently not operated, or remaining unused for a prolonged period*", and notes the financial consequences of this for existing operators where costs which could have been shared are borne by a smaller number of services.

39 In the context of the FTAA and the wider regulatory and contractual framework, there are three ways in which this matter is addressed.

40 The first is by the use of conditions precedent in the FTAA. This is partly anticipated by SET, which mentions the use of "*milestones, longstop dates*". Paragraphs 81 to 92 of LSPH's TF Representations explain the inclusion and use of those conditions precedent to provide safeguards against inefficient capacity allocation. If any condition precedent is not fulfilled by the relevant milestone or longstop date, the FTAA will immediately end, releasing the capacity granted therein to the market once again such that any delay around the sharing of costs of the kind SET is concerned about is minimised. The use of conditions precedent is also supported by ET and SNCF-R as infrastructure managers: see paragraph 41 of LSPH's EIL Consultation Responses.

41 The second is the mechanisms within the HS1 Network Code, which SET will be familiar with, which provide for the removal of rights which are unused – the so-called "*use it or lose it*" regime. This enables LSPH to alter access rights where they are not being timetabled. Condition J1 contains a procedure which can be invoked by LSPH if access rights are not exercised, so that capacity can be made available to other users if the operator fails to exercise its access rights in the timetabling process. Once invoked, Condition J2 contains a procedure for the surrender of train slots if there is a failure to use.

42 Third, the Capacity Reservation Charge which is a feature of Section 6 of the Passenger Access Term (incorporated by reference into the FTAA and all other framework track access agreements) can be levied by LSPH on operators on the rights they fail to exercise. This is a significant deterrent to operators holding rights they do not intend to use, maximising the opportunity for operators to secure and utilise the capacity they really need, and so better drive the spread of costs across operators.

43 In the light of these various provisions, LSPH is confident that there are sufficient safeguards in place in the FTAA and in the HS1 Network Code to address SET's concern, so that the rights granted in the FTAA are duly exercised in a timely manner, and if not, that those rights can be taken up by others efficiently.

ORR's determination and remedies

44 The remedies EIL sought in its appeal have seemingly pivoted somewhat in light of TF's Appeal. Relying on its fallacious arguments of LSPH's alleged systemic failures, based solely on the premise that there are two appeals (where EIL's raises very different issues upon different fact patterns) (see paragraph 35 above), EIL now contends that the "*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, Consolidated TF Appeal Responses, paragraph 3.34).

45 LSPH presumes that when EIL refers to "*unapproved applications*", it means applications that have been made in a Form P which has been submitted to the ORR for industry consultation and approval, since that is the relevant stage of the Virgin Application process which EIL and TF have contested. Previously, EIL argued that the ORR should issue a more specific direction regarding the status of unapproved applications, that is that access rights expressed in an unapproved framework track access agreement should not be treated as any of existing services, granted, or Firm Rights pending ORR approval and signature. LSPH did not treat the rights in Virgin's Application as existing, granted or firm. The more general formulation of the remedy EIL now seeks does appear to leave open the possibility that the ORR might direct that rights in unapproved applications (of the kind that have reached Form P stage) should or can effectively be contingently reserved pending the outcome of industry consultation and ORR approval. LSPH further presumes that EIL does not invite such a conclusion.

46 So when EIL now asks for a direction regarding the status of unapproved applications, LSPH further anticipates that EIL still seeks a direction that until ORR approval (indeed until framework track access agreement signature) that the capacity in such an unapproved agreement is still potentially contestable by another operator. Given that presumption, and as EIL says that its requests for these directions are similar to those sought by TF in paragraphs 2 to 4 of its second set of directions in section 2.5 of TF's Appeal, LSPH contends that its view on the merits of such directions still stand and so refers to paragraphs 123(b) and (c) of LSPH's TF Representations.

47 EIL says that the direction it seeks, for LSPH to adopt a published, transparent and non-discriminatory process through the reconsideration of its allocation of capacity to Virgin, would remedy TF's Appeal and, if that reconsideration took account of EIL's competing application, it would also remedy EIL's Appeal, as well as meet the ORR's Railways Act 1993 duties to enable "*business certainty, and* [*promote*] *competition at a formative stage in the development of the cross-Channel international passenger market*" (EIL, Consolidated TF Appeal Responses, paragraph 3.38). LSPH agrees that these are important considerations but does not understand how such a direction would be in service of the outcomes those duties are meant to promote. EIL has nothing to say on the fact that the FTAA has been entered into, or the means by which such a direction would achieve a meaningful reconsideration of the capacity presently allocated to Virgin without the FTAA being in some way reversed or on addressing how the ORR would have the legal power to give such a direction.

48 LSPH also agrees with EIL that "*investment decisions into the UK* [*around cross-Channel passenger services*] *and whether, how much and on what terms competition in that market develops*" are on the line. As set out in LSPH's submissions on the state of that market at paragraphs 54 to 61 of LSPH's EIL Consultation Response, such a direction would have the very opposite effect to which EIL purports to champion. As noted in paragraph 61 thereof, allowing TF's Appeal would be contrary to the objective of the AMRs to promote competition in international high-speed passenger services. The effect of resetting the Virgin Application process would result in EIL continuing to be dominant in the cross-Channel passenger services market, perpetuating the status quo of the last 30 years – that is, with investment in UK cross-Channel passenger services principally depending on and being limited by the investment decisions that EIL has chosen to make into the UK. Such a reset would effectively stymie, rather than promote, the development of a competitive market for the foreseeable future.

49 In all the circumstances, TF's Appeal, in its own right, and as adopted by EIL in its own cause, should be dismissed.

TRENITALIA FRANCE
GROUPE FERROVIE DELLO STATO ITALIANE

Chief Executive Officer

BY EMAIL ONLY

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

For the attention of: Martin Jones, Deputy Director Access and International

05 November 2026

Dear Office of Rail and Road,

Trenitalia France ("TF"): Comments on representations in connection with TF's appeal (the "TF Appeal") under regulation 32 of the Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016 (the "Regulations") concerning access to the HS1 network

1 Introduction

1.1 We refer to your letters dated 22 October 2026 inviting comments on representations received by the Office of Rail and Road (the "**ORR**") in connection with the TF Appeal. This letter sets out TF's comments on those representations, specifically from:

1.1.1 the Department for Transport (the "**DfT Representations**");

1.1.2 Eurostar International Limited (the "**EIL Representations**");

1.1.3 Eurotunnel/Getlink (the "**ET Representations**");

1.1.4 HS1 Limited (trading as London St Pancras Highspeed) (the "**LSPH Representations**");

1.1.5 ProRail (the "**PR Representations**");

1.1.6 SE Trains Limited (the "**Southeastern Representations**"); and

1.1.7 VTE OpCo Limited (the "**Virgin Representations**").

1.2 We welcome the opportunity to comment on the representations. We are committed to working collaboratively with all parties to ensure that we are ready to introduce TF's proposed services from 2029, transforming connectivity between the United Kingdom and mainland Europe, and providing new competition to other international services, to the benefit of consumers and economic growth.

1.3 This letter does not repeat the points made by TF in the Form R32 in respect of the TF Appeal, which continue to apply. TF notes the suggestion made in the Virgin Representations that TF

has misrepresented the position in its Form R32. TF addresses those points in more detail in paragraph 10 below, and notes for the record that at the point the TF Appeal was submitted to the ORR, the statements made in that Form R32 were believed to be true, based on the information available to TF at the time. The ORR will no doubt take into account any further material provided by any other consultee as part of the TF Appeal process.

1.4 In the interests of ensuring these comments are as constructive as possible, TF has limited its comments to material points where it has commentary to add. Where TF does not comment on a representation made by a particular consultee, it should not be construed as TF agreeing with the point made by that consultee.

1.5 To the extent that the comments set out in this letter overlap with similar or overlapping issues being considered by the ORR in the context of the separate appeal of Eurostar International Limited ("**EIL**") made under regulation 32 of the 2016 Regulations (the "**EIL Appeal**"), TF requests that its submissions in this letter supplement those in the EIL Appeal (and vice versa).

1.6 Aside from individual names of people referred to in this letter (marked in bold and italic text), TF does not consider any of the comments made in this letter to be confidential or otherwise seriously and prejudicially affect the interests of TF. TF is therefore comfortable with this letter being published in full on the ORR's website with those names redacted.

2 TF services

2.1 TF's proposed services will transform connectivity between the United Kingdom and mainland Europe. TF will provide competition to other international services – and competition has been shown to drive growth in passenger numbers and improve the passenger experience, such as on the East Coast Main Line in the UK. TF customers will also be able to connect to other existing TF-operated services in Paris, delivering new journey opportunities within France and to Italy.

2.2 The new services are expected to drive growth in the UK and deliver significant economic benefits to the UK. TF therefore welcomes the commitment from the Department for Transport to supporting the growth of international rail services, and the need to recognise those growth aspirations in long term capacity arrangements. The power of open markets, competition, and adopting a holistic approach towards capacity allocation (recognising future aspirations of operators) are all highlighted in the DfT Representations, and are principles which TF supports. TF is also pleased to see the positivity on market progress and growth perspectives highlighted in the ET Representations. TF further recognises the Southeastern Representations which similarly support additional international services and recognise the wider benefits that increased international connectivity and competition can bring.

2.3 As noted in the TF Appeal, TF is an established operator in France, has an existing relationship with SNCF Réseau, and has already established a collaborative working relationship with Eurotunnel/Getlink ("**ET**"). TF looks forward to working with all relevant infrastructure managers to deliver a competitive service proposition for the benefit of passengers and potential passengers. In an attempt to play down the importance of those



factors, both LSPH and Virgin mischaracterise the relative levels of progress TF and VTE OpCo Limited ("**Virgin**") have made to date in, for example, paragraph 76 of the LSPH Representations and throughout the Virgin Representations. TF firmly disagrees with how Virgin has presented its relative preparedness.

2.4 Importantly, TF's proposal would see services introduced in 2029: the year before Virgin proposes to commence its services. This remains TF's plan notwithstanding Virgin's suggestions in the Virgin Representations. This is a highly relevant factor – and the DfT Representations highlight the need to take into account other ambitions to enter the market and participate in the capacity allocation process. The approach which has been adopted by LSPH has the effect of tying up available capacity on the railway 4 years before it is required by Virgin. This effectively precludes such capacity from being used beforehand, as an international operator is unlikely to wish to commence services knowing capacity is available only until 2030. Whilst we have set out our wider representations and comments on the validity of the operational integrity test applied by LSPH in both the TF Appeal and in this letter (and this paragraph is without prejudice to those representations and comments), TF notes that:

2.4.1 by undertaking the operational integrity test almost 5 years before anticipated service commencement, LSPH has artificially and unreasonably constrained who is able to participate in the capacity allocation process;

2.4.2 it appears to be suggested that LSPH is undertaking the operational integrity test now because of the "*available financing for such services*"[1] and, consequently, the timescales within such investment for rolling stock needs to be made. This impliedly is referring to Virgin's proposed funding arrangements for its services. If this is the case, the decision to undertake an operational integrity test now and for this reason is inherently discriminatory because the timing of the process is being driven by one applicant's proposed funding arrangements and associated timeframes. TF notes LSPH's emphasis on rolling stock investment, and particularly Virgin's rolling stock investment as a new entrant, in paragraph 121 of the LSPH Representations[2]. In the context of rolling stock, TF reminds the ORR that it is a new entrant on this route and has already placed a firm rolling stock order with Hitachi for new trains to deliver its proposed services, without (as yet) having capacity allocated to it on High Speed 1. TF understands that EIL has similarly already committed to new rolling stock without having been allocated capacity which is the subject of the EIL Appeal; and

2.4.3 in undertaking the operational integrity test in the manner LSPH has chosen – and at a particular point in time so far out from service operation – it has failed to adequately take into account reasonable expectations of what can be delivered between that point in time and service commencement (particularly as TF is an existing railway undertaking operating in France) and therefore has failed to apply its own test in a reasonable and rational manner.

[1] Paragraph 11(e) of the LSPH EIL Appeal Representations.
[2] Which cross refer to paragraph 109 of the LSPH EIL Appeal Representations.

In doing so, the DfT Representations rightly identify that growth is potentially constrained as the "*scarce capacity*" is not being best used to support a competitive market by multiple operators. In preferring Virgin over other credible new operators and new journey opportunities, the opportunity for further investment and the benefits of international rail to passengers and the wider economy is likely to be curtailed by LSPH.

2.5 TF is therefore disappointed that LSPH appears to be presenting the TF Appeal as TF seeking priority over other operators such as EIL and Virgin, as LSPH does in paragraph 102 of the LSPH Representations. As the TF Appeal sets out, TF is aggrieved that its application has not been considered in parallel with Virgin's. To the extent EIL seeks capacity, that should also be considered as part of a coordinated process. TF has not, as LSPH wishes to suggest, proposed that LSPH "*should have disregarded any potential conflicts between TF's Application and Virgin's Application altogether.*" TF is simply seeking parity and equality of consideration in that decision-making process and the directions sought by TF are reflective of that. TF believes that the competitiveness of international rail services will deliver real and tangible passenger choice and benefits and requires a coordinated approach to be adopted to optimise the use of scarce infrastructure capacity on High Speed 1.

3 ET Representations

3.1 TF highlights a number of material points emerging from the ET Representations which go to the heart of the issues contemplated by the TF Appeal and the associated EIL Appeal. Whilst these are referred to as appropriate in the comments in the remainder of this letter, TF considers it appropriate to comment on some of those ET Representations upfront, as they illustrate helpful context of the framework within which LSPH's decisions were made.

3.2 In particular, TF notes the following:

3.2.1 the decisions presented by LSPH were not coordinated by LSPH with ET and other European infrastructure managers (section 2 (#5)). This casts doubt on the points made by LSPH in the LSPH Representations on this issue. In particular, TF notes the statement from ET that regular coordination exchanges on framework agreements on the Paris – London route were only reinstated in August this year, sometime after LSPH published its proposal to enter into a framework track access agreement with Virgin. TF notes the various coordination claims made in the LSPH Representations, and is surprised that on the key essential function of capacity allocation and associated framework agreements, there was no coordination or exchange during the relevant period which is the subject of the TF Appeal;

3.2.2 ET suggests that there is no requirement to impose synchronised processes or to delay capacity allocation decisions, but there is a need to exchange information on assessments and approaches (pertinently, TF would expect such assessments to include the viability of depot plans) which clearly did not happen. TF makes further comments on this point in paragraphs 6, 7 and 8 of this letter below;

3.2.3 ET shared its "*documented observation*" with LSPH that two new operators demonstrated viable depot plans, which included TF's Maisons Alfort-Pompadour facility and the ET view that this was "*not affected by differences in national regulations nor timing of assessment*". These views were shared by ET "*at every point in time in 2026*" and therefore it can be inferred that LSPH was aware of these observations at the time it was making decisions on TF's operational integrity. ET "*could not support or replicate*" the assessment that LSPH reached in relation to the depot and its impact on operational integrity and LSPH's decision to accept solely Virgin "*was not coordinated nor agreed with ET and other [infrastructure managers]*". As an experienced infrastructure manager, ET's view is highly relevant, but is not referred to at all by LSPH in any of its reasoning, nor why LSPH reached a different view to ET. From the material available, including the assessment of LSPH's Operational Integrity Panel, it appears that LSPH disregarded ET's documented observations in their entirety. In this respect, TF notes its comments in paragraph 8 of this letter on how LSPH appears to have placed too much emphasis on Virgin having been granted access to Temple Mills depot (and had insufficient regard to the viability of TF's alternative depot plans); and

3.2.4 ET notes its belief that in order to satisfy the requirement on infrastructure managers of equal treatment, a coordinated process of framework capacity allocation is required, including eligible new operators (such as TF), as well as the incumbent, EIL. ET then explains that those applicants should be offered equitable capacity rights for the same periods at the same time, and accordingly ET would not be able to reach the same decision as LSPH (section #5.B of the ET Representations). As the legal framework set out in the 2016 Regulations originates from the same European Union law which ET cites (notwithstanding the minor changes made as a consequence of Brexit), this is a highly relevant observation with which TF agrees. TF highlights ET's view that it "*would not be capable of replicating*" LSPH's decision "*offering available capacity to one operator exclusively*". Indeed, as noted in paragraph 11 below, the remedy TF is seeking is to place all relevant applicants for capacity in the position they would have been in had LSPH complied with its legal and regulatory obligations. As capacity appears to be constrained on High Speed 1, and in particular is further constrained by the need for the terminal capacity expansion works at St Pancras referred to in paragraph #5.C of the ET Representations, it is only appropriate that all aspirations for capacity were taken into account in determining who available capacity should be awarded to. This plainly did not happen.

4 Grounds for making the TF Appeal

4.1 The LSPH Representations make much noise about whether or not TF is aggrieved and at what point TF became aggrieved. Those are moot points. The fact is that TF is aggrieved, which should have been obvious to LSPH given TF has issued the TF Appeal.

4.2 Regulation 32(1) of the 2016 Regulations provides:

"…an applicant has a right to appeal to the Office of Rail and Road if it believes that it has been unfairly treated, discriminated against or is in any other way aggrieved, and in particular against decisions adopted by the infrastructure manager, an allocation body, a charging body, a service provider or, as the case may be, a railway undertaking, concerning any of the matters described in paragraph (2)".

4.3 For the reasons already articulated in the TF Appeal, TF plainly satisfies this test. TF notes:

4.3.1 that there are no timescales or limitation periods for making an appeal to the ORR under regulation 32;

4.3.2 in any event, and as seemingly accepted by LSPH in the LSPH Representations, TF has clearly articulated its objections from when it became clear that LSPH had decided to allocate capacity and enter into a framework track access contract with Virgin in preference, and not in parallel, to TF (and therefore TF has promptly articulated those grievances);

4.3.3 TF disagrees with the presentation by LSPH of many arguments being raised "after the fact". The TF Appeal is being made on the basis of the grievances set out in the TF Appeal, which is a culmination of a series of erroneous steps by LSPH, and which manifested in an erroneous decision by LSPH;

4.3.4 in any event, when TF made particular grievances is irrelevant to the merits of those grievances;

4.3.5 TF continues to believe it has not been treated in an equivalent, fair and non-discriminatory manner by LSPH alongside other applicants for capacity. In that respect, TF reiterates the observations of ET, with which TF agrees, summarised in paragraph 3 above;

4.3.6 TF disagrees with LSPH's suggestion that TF is somehow trying to open up points which were answered by LSPH as part of a separate process. Clearly those points were not answered satisfactorily by LSPH, or there would not be an appeal. More broadly, the complaints forming the TF Appeal are wider than the decision by LSPH to enter into a framework track access contract with Virgin (which was the subject of the LSPH consultation);

4.3.7 TF does not believe that any differences in treatment acknowledged by LSPH were objectively justified or are otherwise reasonable; and

4.3.8 the allocation of capacity and its result is manifestly within the scope of regulation 32 (regulation 32(2)(c)), as are the other grounds articulated in the TF Appeal.

4.4 We further note that the ORR has accepted the TF Appeal, and no objection has been raised.

5 Misrepresentation of engagement between TF and LSPH

5.1 The LSPH Representations make more noise and bluster around the conduct of TF in meetings with LSPH since engagement commenced in relation to the allocation of capacity

to TF on High Speed 1. The implication appears to be that representatives of TF somehow accepted or acceded or otherwise approved of LSPH's conduct and approach, including (but not limited to) those decisions on which TF is aggrieved, or that otherwise TF is not actually aggrieved. This is nonsense.

5.2 What the LSPH Representations conveniently fail to recognise is that those ongoing discussions relate to a business relationship in its infancy. TF seeks capacity on High Speed 1. LSPH is the infrastructure provider responsible for allocating capacity on High Speed 1. It should be no surprise that TF has sought to act reasonably and collaboratively with LSPH with a view to launching what promises to be a transformational new service, giving passengers real choice. Acting reasonably and collaboratively is not the same as approving LSPH's process and decisions.

5.3 As a prospective operator of services on High Speed 1, TF recognises that its relationship with LSPH is still maturing, and TF hopes to grow that relationship further over time. TF was responding to LSPH's requests for more information in anticipation of being allocated capacity and was accordingly acting constructively. This included in responding to LSPH's requests for further information connected with TF's application for capacity. Being constructive in business relationships also is not the same as approving of LSPH's process and decisions.

5.4 TF does not recall the discussions with LSPH in the way presented in the LSPH Representations. In particular, TF did constructively challenge LSPH during the 28 January 2026 meeting between TF and LSPH referred to by LSPH in the LSPH Representations, while at the same time acting reasonably in the manner those challenges were raised with the intention of working through TF's concerns collaboratively with LSPH and in a manner which recognised the importance of maintaining a constructive business relationship. [redacted] (of FS Group/TF) who has been consistently present at meetings with LSPH, distinctly recalls setting out his disagreement with LSPH's assessment at the January meeting. Indeed, [redacted] recalls "*strongly disagreeing*" and "*pushing back*" on LSPH. [redacted] would be happy to answer any further questions the ORR may have if it considers this to be material to its decision-making process.

5.5 Notwithstanding TF's recollection of meetings with LSPH, even if it could be said that no contemporaneous objections were made (in paragraph 52 of the LSPH Representations) – and TF struggles to see how it can be presented in this way – not making a contemporaneous objection is not the same as TF accepting the LSPH position and approach.

5.6 In any event, TF believed that discussions with LSPH were being held with a view to TF being allocated capacity in a parallel process alongside Virgin and any other aspirant operator. It therefore came as a surprise to TF when LSPH published its consultation on the proposed framework track access agreement with Virgin, as it became evident that TF's application for capacity was no longer being considered concurrently and Virgin had been given priority. It is not unreasonable for TF to voice its concerns more loudly as those circumstances emerged.

5.7 TF remains committed to engaging collaboratively with LSPH, notwithstanding the TF Appeal. Whilst TF is and remains aggrieved by what has occurred (on the basis set out in the TF Appeal), an appeal such as this is not uncommon in the rail industry, and the relevant participants are typically able to move on following a determination. TF recognises that the success of its services will in part depend on a constructive and collaborative ongoing relationship with each infrastructure manager and looks forward to developing those relationships further.

6 LSPH's awareness of other aspirations for capacity

6.1 The ORR should note the similarity of many of the grievances raised by both TF and EIL. Whilst of course both grievances are based on separate sets of circumstances, and different situations, and different remedies are sought, there is considerable overlap. This is highly relevant given both EIL and TF are experienced international operators, and have direct experience of dealing with infrastructure managers across Europe. Paragraph 3.32 of the EIL Representations is noted in this respect.

6.2 TF also notes with concern the PR Representations. In particular, the paucity of information provided by LSPH, and the lack of involvement of other infrastructure managers. This is something which TF has raised in the TF Appeal, and the lack of transparency and engagement in the framework track access contract consultation appears to be a consistent message emerging from consultees. The concerns are raised by both railway undertakings and infrastructure managers and raise similar points.

6.3 LSPH itself admits in paragraph 26(c) of the LSPH Representations that as a matter of fact "LSPH gave practical weight to Virgin's more advanced application". Whilst LSPH seeks to justify this differential treatment, for the reasons set out in the TF Appeal and these comments, such treatment is not justified or lawful. LSPH appears to suggest in paragraph 17 of the LSPH Representations[3] that there never were comparable applications for capacity, which justified its differential treatment of Virgin and TF (and EIL). At the same time, LSPH admits that LSPH had received an application for capacity from TF. LSPH seeks to suggest TF's application was not comparable because TF had not satisfied the operational integrity test LSPH had erroneously imposed and disproportionately applied. Such a distinction is artificial: TF's application is comparable in substance, as it relates to capacity on High Speed 1, for services between London and Paris (acknowledging that some Virgin services are to other destinations as well), and for overlapping periods. LSPH's decision on Virgin's application had the potential to materially and adversely impact on TF's application, and therefore the comparable matters should have been determined in parallel. It is not correct, as LSPH seeks to imply in paragraph 25 of the LSPH Representations[4], that there is no objective justification for differential treatment only where treatment is "arbitrary" (although that will of course be a clear example). No objective justification for differential treatment could occur at a much lower threshold than arbitrariness and it will depend on the relevant circumstances. TF submits that wherever that threshold might be set, LSPH has not provided an objective justification for its differential treatment of TF which is supported by facts, and

[3] Which cross refer to paragraph 27 of the LSPH EIL Appeal Representations.
[4] Which cross refer to paragraph 28 of the LSPH EIL Appeal Representations.



therefore the threshold is comfortably exceeded. In any event, TF questions whether LSPH's treatment should be described as being arbitrary because the substance of both applications had material overlaps, the consequences of making a decision in favour of Virgin over TF were material and nevertheless LSPH chose to progress Virgin's application in priority, rather than in parallel.

6.4 LSPH cannot be in any doubt that, at the time it was processing Virgin's application, there were other aspirations for capacity – a matter LSPH itself acknowledges in paragraph 90 of the LSPH Representations. Indeed, LSPH itself indicates in paragraph 13 and the first row of the table in paragraph 15 of the LSPH Representations that it received TF's application on 30 April 2025. According to the same table, Virgin's application was made on 12 June 2025. Whilst TF has no visibility of such relevant facts, the EIL Representations make clear that EIL had similarly articulated its position to LSPH.

6.5 As noted below, LSPH claims that it was not obliged to treat TF as an applicant until TF had passed its operational integrity stage gate. In doing so, LSPH appears to be suggesting that its obligations as infrastructure manager, including (but not limited to) under the 2016 Regulations are not fully engaged until such time as operational integrity has been achieved. This is clearly not supported by the actual text of the 2016 Regulations for the reasons set out below.

6.6 Even if (contrary to the view expressed by TF in the remainder of this letter) the ORR determines that:

6.6.1 operational integrity was an appropriate stage gate for LSPH to apply; and

6.6.2 LSPH applied that stage gate test in an appropriate manner,

at the time it applied that test – more than 4 years before Virgin's services were due to commence – LSPH cannot have been in any doubt that TF would have been able to satisfy that test in sufficient time prior to those services being operated. Indeed, LSPH has now confirmed that TF has met the test, on or about the day on which the ORR's decision on the Virgin framework track access contract was made. It is strange that, despite there being a more than realistic prospect of TF being able to satisfy the test, additional time was not given by LSPH to allow that to be demonstrated and the applications considered in parallel; instead LSPH pushed ahead quickly to get Virgin's framework track access contract agreed and approved by the ORR.

6.7 In all of those circumstances, TF submits that it was not lawful, and was inconsistent with the duty to act in a fair and non-discriminatory manner, for LSPH to decide to allocate capacity to Virgin and to ignore other aspirations for that capacity. TF further notes the ET Representations confirm that the LSPH decisions presented on operational integrity in the Form P were not consulted with ET, and coordination exchanges on framework agreements on the Paris-London route were only recently reinstated in August 2026; the points made in the TF Appeal on coordination between infrastructure managers need to be considered in light of this added context.

6.8 LSPH claims (in paragraph 12(a) of the LSPH Representations) that it afforded "equal opportunity to achieve operational integrity". That is insufficient to comply with the 2016 Regulations:

6.8.1 regulation 5(1) requires a railway undertaking to be granted, "*on equitable, non-discriminatory and transparent conditions, access rights to such railway infrastructure as may be necessary for the purpose of operating all types of rail freight, or international passenger, services.*";

6.8.2 regulation 6(1) requires an infrastructure manager to supply the "minimum access package" (including handling requests for infrastructure capacity and the right to use such capacity granted – as contemplated by Schedule 2 of the 2016 Regulations) to all railway undertakings, in a non-discriminatory manner;

6.8.3 regulation 19(16) requires an infrastructure manager to "*ensure that infrastructure capacity is allocated on a fair and non-discriminatory basis*".

The 2016 Regulations clearly express rights as being "to access railway infrastructure" and to the actual allocation of capacity. LSPH itself recognises in paragraph 17 of the LSPH Representations[5] that "*infrastructure capacity [is] to be allocated on a fair and non-discriminatory basis and enter into framework agreements [is] to be non-discriminatory and transparent*". The right to equal treatment is not about operational integrity (that concept is not mentioned in the 2016 Regulations); the right to equal treatment relates to actual capacity. LSPH has failed to do this, as it admits in paragraph 80 of the LSPH Representations. LSPH appears to have misinterpreted its legal obligations under the 2016 Regulations by equating non-discrimination in the allocation of infrastructure capacity with (in LSPH's view, with which TF does not agree) non-discrimination of access to the operational integrity test. The 2016 Regulations obviously require the former.

6.9 Moreover, LSPH overlooks the statements it makes in its own Network Statement when it discusses "applicant" in paragraph 10 of the LSPH Representations. The definition of "Applicant" in the HS1 Network Statement is "*Any person who wants to apply for a train path including TOCs…*". TF is plainly an "Applicant". No mention is made in the HS1 Network Statement of that person having to satisfy an operational integrity test prior to qualifying for the capacity allocation process or even having been required to make a formal application (although, as LSPH acknowledges, TF had already done so). The HS1 Network Statement uses "Applicant" broadly and there is no "elevated" priority level where a person wants to apply for a train path and has satisfied the operational integrity test (that test is not mentioned in the HS1 Network Statement). TF notes section 4.4.4 of the HS1 Network Statement which sets out what LSPH will take into account before concluding a new framework track access contract or substantially increasing capacity under an existing framework track access contract. Again, no such mention is made of the operational integrity test LSPH has imported. LSPH's representations therefore appear to be a retrospective construction intended to justify LSPH's preferential treatment of Virgin, and is not founded in what LSPH has articulated it will do.

[5] Which cross refer to paragraph 17 of the LSPH EIL Appeal Representations.

6.10 Put simply, LSPH was aware of other applications and aspirations for capacity. Virgin's application for capacity was for a period commencing more than 4 years in the future, but nevertheless LSPH expedited that application and ignored the applications for capacity made by TF (and, seemingly, EIL). In so doing, LSPH contravened the 2016 Regulations. LSPH is now seeking to justify that contravention by claiming an artificial stage gate existed, and it was only once that stage gate had been reached (in LSPH's opinion) that it became obliged to comply with law and regulation. That is a bold proposition not grounded in law, and which TF does not support, as set out further below.

7 LSPH's misuse of operational integrity as a stage gate

7.1 Much like its approach to quoting its own Network Statement, LSPH's appears to rely on a selective reading of the Criteria and Procedures for the approval of framework agreements on the HS1 network (05 March 2024) (the "**C&Ps**") and the Open access guidance - making a track access application and ORR decision making (31 January 2025) (the "**Open Access Guidance**") in seeking to justify its approach. LSPH also refers in paragraph 18 of the LSPH Representations[6] to "*extensive published regulatory procedure for determining access applications, which LSPH followed strictly*". LSPH does not set out where that procedure is actually published and, as explained in paragraph 9 below, it is not a regulatory procedure which TF recognises as being a precedent. LSPH then cites paragraph 3.11(b) of the C&Ps as the basis of importing such a test, drawing on the words "*[intend] and will be in a position to operate the services*" (paragraph 13 of the LSPH Representations). It is quite a stretch from these eleven words for LSPH to develop and implement an operational integrity assessment in quite the way LSPH has sought to do as a condition to considering a legitimate request for capacity. There is certainly nothing in the C&Ps that suggests this is a stage gate test, which LSPH has itself imported. Indeed, paragraph 3.3 of the C&Ps lists a wide range of issues which the ORR expects to address in making judgments, and the criteria to be applied, and on operational integrity itself, paragraph 3.11 of the C&Ps makes clear that:

7.1.1 there are a number of issues the ORR will want to be satisfied about in considering operational integrity, and not solely paragraph (b); and

7.1.2 ultimately, it is for the ORR (and not LSPH) to make that determination.

7.2 Whilst convoluted, LSPH's argument in the LSPH Representations appears to be that because TF did not (in LSPH's view) meet the operational integrity stage gate, despite TF having made an application for capacity, TF had not made an application which was subject to the 2016 Regulations at all and therefore there was no competing application for access for the purposes of paragraphs 3.5 to 3.9 of the Open Access Guidance. On the LSPH view, this meant that, despite knowing about TF's application for capacity it could blindfold itself and deliberately ignore that application and was not required to coordinate competing capacity requests. This is plainly wrong as a matter of law and regulation.

7.3 TF is an established international operator which already operates high speed railway passenger services in France, in contrast to Virgin. TF's view is that even if it were appropriate to take into account operational integrity as LSPH has (which, to be clear, TF

[6] Which cross refer to paragraph 26 of the LSPH EIL Appeal Representations.



does not) for railway undertakings already operating high speed railway passenger services, there should either be a presumption in favour of operational integrity being achieved or weight placed on the existing capability of that applicant to operate railway passenger services. The presumption reflects the reality of services already being operated and the "*reasonable expectation*" (which is the test applied by LSPH – see below) that these could be extended, and would be fair and non-discriminatory on the basis that an existing railway undertaking can clearly evidence its existing ability to operate services.

7.4 LSPH's approach is inconsistent with the HS1 Network Statement, a point which it seemingly acknowledges in paragraph 22 of the LSPH Representations and its proposal to change the HS1 Network Statement. LSPH's position is that the first part of the sentence quoted in that paragraph relates to the initial allocation of capacity by way of a framework track access agreement, whereas the second part of the same sentence relates to the translation of that capacity into a timetable. That seems to be an artificial distinction LSPH is now trying to create to support its position. The words can be easily understood on a plain English interpretation and as currently drafted. Put simply, whilst applications for framework track access agreements will be considered in the order received, if more than one application is being considered at the same time, LSPH will act as if the priority criteria specified in Part D of the HS1 Network Code applied. In this case, as both Virgin and TF (as well as EIL) are proposing high speed international passenger trains, which is the highest priority (section 3.4.1 of the HS1 Network Statement and Condition D4.6.1 of the HS1 Network Code) those applications should have been considered in parallel. LSPH did not do so. TF reminds the ORR that it was LSPH which sought to rely upon the first part of these words to advance its own position, conveniently omitting the second part.

7.5 Paragraph 34 of the LSPH Representations seeks to rely on regulation 18(2) of the 2016 Regulations to justify imposing an operational integrity test. Perhaps unsurprisingly, LSPH once again selectively quotes wording. The full test of regulation 18(2) is as follows:

"*The infrastructure manager must, in particular, aim to guarantee the optimal competitiveness of international rail services and ensure the efficient use of the networks; to this end the infrastructure manager must cooperate with other infrastructure managers to establish appropriate procedures, subject to the rules set out in these Regulations.*"

This regulation simply does not give LSPH the right to import an operational integrity test when considering applications for capacity. LSPH appears to misrepresent the legal position in paragraph 93 of the LSPH Representations[7] where it claims the 2016 Regulations specifically contemplate operational integrity. Read in context, rather than the selective words LSPH has chosen to cite, this obligation involves cooperation with other infrastructure managers to establish procedures in relation to the allocation and charging of capacity. Moreover, LSPH conveniently overlooks the requirement to aim to "*guarantee the optimal competitiveness of international rail services and ensure the efficient use of networks*". TF's proposed services will increase competitiveness of international rail services and drive choice

[7] Which cross refer to paragraph 57 of the LSPH EIL Appeal Representations.



and benefits for passengers, and therefore to allocate capacity to Virgin in preference to TF is a grave error by LSPH in contravention of the requirements of the 2016 Regulations.

7.6 LSPH's approach is also inconsistent with the Open Access Guidance on which LSPH purports to rely. Paragraphs 3.5 to 3.9 of the Open Access Guidance clearly anticipate that an applicant should be considered, and more information may be sought, such as business cases, indicative timetables and economic modelling. There is no suggestion in the Open Access Guidance that in order to be considered an "applicant", operational integrity must first be secured. Indeed, the Open Access Guidance extends to "aspirant" operators (paragraph 1.4 of the Open Access Guidance) which is clearly a long way from being able to demonstrate operational integrity.

7.7 Indeed, LSPH's approach is clearly inconsistent with the law. TF notes the ET Representations described in paragraph 3 of this letter which share similar concerns on LSPH's compliance with legal requirements. An "applicant" is defined in the 2016 Regulations as being "*a railway undertaking or an international grouping of railway undertakings or other persons or legal entities… with a public-service or commercial interest in procuring infrastructure capacity*". There is no requirement for TF also to have passed an operational integrity test to fall within this definition and there is no requirement to have made a formal application (although TF had done so): the test is one of "interest" only. TF is an existing railway undertaking in France, and otherwise a legal entity with a public-service or commercial interest in procuring infrastructure capacity. TF further notes paragraph 26(a) of the LSPH representations: LSPH equates "*requests for infrastructure capacity*" in regulation 23(1) of the 2016 Regulations as being satisfied by an invitation "*to participate in a multi-operator Operational Integrity assessment process*". This is so far from the wording of the 2016 Regulations to be nonsense. In this respect, TF also notes its comments in paragraph 6.8 above.

7.8 If LSPH's view was correct (and it is plainly not) a consequential effect would be that each time a railway undertaking (or prospective railway undertaking) proposed any modification to capacity either held or requested by that railway undertaking, the operational integrity test must be undertaken, and whoever satisfied that test first would be successful. As EIL expresses it in paragraph 3.11 of the EIL Representations, "*first come, first served*". Such an approach deliberately closes its eyes to the operational realities of a railway, as well as the clear principles of fair and non-discriminatory access to the railway enshrined in the 2016 Regulations. It is inconsistent with established processes for the wider railway network, and the approach the ORR has itself adopted on the wider Great Britain railway network (see also paragraph 9 below). In that respect, TF notes – as LSPH does in the LSPH Representations – paragraph 1.8 of the C&Ps:

"*The focus of our regulatory involvement is to oversee the fair and efficient allocation of capacity on HS1, in accordance with the Regulations, and as set out in the relevant parts of the Regulatory Statement. 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.*"



7.9 In any event, LSPH was not transparent and had not made clear that it intended to use the operational integrity test as method of giving a particular operator priority over capacity. EIL makes complementary representations in the EIL Representations. TF notes paragraph 18 of the LSPH Representations[8] which set out LSPH's view that the 2016 Regulations do "*not require LSPH to precisely map all of its duties under [the 2016 Regulations] to its publicly stated capacity allocation process*". Whilst mapping out may not be expressly required under the 2016 Regulations, TF observes that does not offer LSPH an excuse for non-compliance with the 2016 Regulations and does not obviate the need to be transparent in the process which LSPH intends to adopt. Publication of a Network Statement which does not refer to an operational integrity test does not, as LSPH suggests[9], satisfy LSPH's transparency obligations. TF also does not accept that commercial confidentiality justifies LSPH not being transparent altogether[10]. Commercial confidentiality may justify certain details being redacted (as the ORR itself has accepted in this regulation 32 process) but does not justify LSPH's conduct in engaging solely with Virgin (and not disclosing the existence of such discussions until the framework track access agreement was published for consultation) to reserve capacity on High Speed 1 in preference to other applicants. The obligation to be transparent is an ongoing one under the 2016 Regulations and LSPH manifestly has not complied with it .

7.10 In this context, TF further notes LSPH's weak justifications in paragraph 96(b) of the LSPH Representations which purportedly excuse it from considering TF's application for capacity in parallel with Virgin's "*after a certain period*". What that period might be is not clear in either the HS1 Network Statement or the C&Ps and TF does not believe LSPH has ever been transparent in what a period would be, principally because TF contends that operational integrity was never intended, and should never have been used, to afford one operator priority over another.

7.11 The reality is that at some point during the process – and by no later than the time the Form P was published - LSPH was treating Virgin's request for capacity as reserved capacity on High Speed 1, whether actually or contingently. That is contrary to the legal position and no convincing reasoning has been provided by LSPH for it doing so – it being "practical" or "procedural" is no excuse for legal non-compliance. TF does not repeat the points made in the TF Appeal about how LSPH has treated the reservation of capacity and the status of the Form P. TF notes, and supports, paragraphs 3.8 to 3.11, paragraphs 3.14 to 3.16 and paragraph 3.33 (each inclusive) of the EIL Representations in this respect. LSPH's treatment of the status of a Form P is not an issue which would have emerged had LSPH undertaken a legally compliant capacity allocation process in the first place. LSPH claims to have acted "practically" throughout the LSPH Representations: if it had genuinely acted practically then it would have taken all capacity aspirations into account as part of the same process. TF therefore rejects the exaggerated mischaracterisation by LSPH of the effect of a compliant process as "*undercut[ting] the ORR's consideration and approval process*" or "*leading inevitably to market confusion and uncertainty*"[11]. A fair, transparent, non-discriminatory

[8] Which cross refer to paragraphs 18 to 26 the LSPH EIL Appeal Representations, the particular extract quoted being set out in paragraph 18 thereof.
[9] In paragraph 18 of the LSPH Representations, which cross refer to paragraph 19 of the LSPH EIL Appeal Representations.
[10] See paragraph 18 of the LSPH Representations, which refers to paragraph 21 of the LSPH EIL Appeal Representations.
[11] Paragraph 104 of the LSPH Representations, which cross refer to paragraph 71 of the LSPH EIL Appeal Representations.



and legally compliant process can only increase market confidence. It is not the TF Appeal creating any uncertainty claimed by LSPH: it is LSPH's own capacity allocation process.

7.12 TF disagrees with LSPH's claim in paragraph 19(a) of the LSPH Representations about the effect of the 6 November 2025 letter. No cut-off date for consideration of applications was communicated to all operators, and instead the process adopted by LSPH means that the first entity to satisfy the test gets priority. That cannot be correct. TF notes that the particular process LSPH has adopted is not set out in the HS1 Network Statement as contemplated by regulation 13(1) and 13(4)(h) of the 2016 Regulations, and indeed "operational integrity" is not referred to at all in the HS1 Network Statement. Based on representations set out by stakeholders and existing precedent, TF sets out in paragraph 9 below its comments on how LSPH may have undertaken the process in a compliant manner.

8 LSPH's misapplication of the operational integrity test

8.1 Paragraph 7 sets out TF's principal view that LSPH's application of the operational integrity test as a stage gate was wrong as a matter of law and regulation, notwithstanding the weak purported justification offered in the LSPH Representations.

8.2 If, notwithstanding those comments, the ORR is minded to accept LSPH's position, TF sets out its view that LSPH misapplied the operational integrity test it set for itself and responds to points made in the LSPH Representations in that respect.

8.3 First, paragraph 87 of the LSPH Representations explains LSPH's view that "*Operational Integrity assessments are inherently applicant specific*". It is interesting, therefore, that based on LSPH's own representations, no weight whatsoever has been placed on TF being an existing railway undertaking, operating within France and internationally to/from France, with existing structures, facilities and organisational arrangements being in place. LSPH has not taken into account this holistic position in assessing the overall operational integrity of both TF and Virgin.

8.4 Instead, LSPH has artificially focussed on one particular, narrow, aspect of TF's application, to claim that TF did not achieve operational integrity: TF's proposed depot arrangements. TF fundamentally disagrees with the view that LSPH has reached on this point – and accordingly whether or not (and by when) TF had actually achieved operational integrity. This is clear in the TF Appeal and contrary to LSPH's representation in paragraph 19 of its consultation response on the EIL Appeal.

8.5 TF submits that LSPH has unreasonably placed emphasis (and in any event has placed disproportionate emphasis) on Virgin being granted the right to access Temple Mills depot for light maintenance services in assessing TF's operational integrity. This appears to have been an overriding consideration of LSPH as it assessed TF's application:

8.5.1 "*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.*" (paragraph 41 of the LSPH Representations) – this appears to suggest the presumption was that access to Temple Mills equated to access to High Speed 1;

8.5.2 "*3 November 2025 – Virgin requested an Operational Integrity assessment following the Temple Mills decision*" (table in paragraph 15 of the LSPH Representations) – this appears to directly link the Temple Mills decision with operational integrity, implying the prominence of the depot as a deciding-factor;

8.5.3 paragraph 43 of the LSPH Representations appears to suggest that LSPH considered that the only TF business case involved using Temple Mills depot which was plainly wrong, and elsewhere in the LSPH Representations LSPH recognises the alternative depot proposals TF had shared with LSPH;

8.5.4 LSPH should not have placed any weight on representations made – not to LSPH but to the ORR – as part of the entirely separate section 17 application process for Temple Mills depot, as that was not information submitted to LSPH as part of the operational integrity assessment by TF;

8.5.5 even if the ORR considers it appropriate for LSPH to have taken those section 17 Temple Mills depot representations into account, LSPH placed too much weight on them. Those representations were made in the context of a contentious application for access to Temple Mills depot with multiple applicants seeking access and were made in the context of TF's business plan as it then existed;

8.5.6 the ET Representations make clear that ET had "*shared with LSPH its documented observation*" (section 2 of the ET Representations) that TF had demonstrated a viable depot plan for fleet maintenance "*at every point in time in 2026*" and "*ET could not support or replicate that LSPH assessment*". Seemingly, no regard whatsoever was had by LSPH to the views of ET, as an experienced adjacent infrastructure (also directly connected to the French network) indicating LSPH had closed its mind to the position and would not take into account information which did not support its established view; and

8.5.7 business plans can and do change, which LSPH recognises in paragraph 43(a) of the LSPH Representations. Whilst that was TF's business plan at the time, and whilst the Temple Mills decision was an unfortunate challenge to that business plan, TF quickly took steps to change that business plan and develop alternative proposals so that its plans to transform international rail travel could still be realised. These plans were shared with LSPH.

8.6 LSPH appears not to have appropriately taken into account those alternative options for light maintenance depot facilities presented by TF. Those were presented as options, with TF clearly demonstrating that there were a number of viable backup plans being progressed to ensure rolling stock could be maintained. LSPH appears to have unreasonably interpreted these backup plans as being too numerous or uncertain; whereas actually they demonstrate that TF was serious and had multiple contingencies. TF maintains that LSPH has placed too much emphasis on access to a rolling stock maintenance depot in the UK.

8.7 LSPH makes a representation in paragraph 44 that its Operational Integrity Panel "*reached a similar conclusion to the ORR*". This is misleading. LSPH is referring to TF's section 17

application for access to Temple Mills depot in this paragraph, and the ORR's conclusions were in the context of that specific application, to that specific railway facility, at a particular point in time, and based upon the evidence presented as part of that application. LSPH was considering an application for track capacity on High Speed 1, at a later date, and based on a different portfolio of evidence (it being noted that LSPH is not the facility owner of Temple Mills depot and did not have access to all of the material made available as part of that process). To draw parallels with the ORR's conclusions in the context of Temple Mills depot is fundamentally flawed and misleading.

8.8 TF notes paragraph 85 of the LSPH Representations, in which the test it applied for Virgin securing rolling stock was "*a reasonable expectation of securing the required investment and rolling stock*". It did not apply an equivalent "reasonable expectation" test to TF securing an alternative light maintenance facility. If LSPH had sone so, it would have taken into account each of the potential backup options and have concluded that, taken together, there was a reasonable expectation of securing rolling stock maintenance facilities.

8.9 Instead, LSPH required TF to identify its preferred depot maintenance option. Not only that, LSPH required evidence by way of a signed contract with SNCF Réseau to acquire property rights for the land on which Maisons Alfort-Pompadour is to be constructed. Even that was not sufficient for LSPH. Nor were the progress updates provided by TF as part of the regular cycle of meetings. Instead, LSPH required TF to provide copies of the documents being used to procure a construction contractor for the depot, including the technical documents forming part of the process. It was only at the point when TF had selected a preferred bidder to deliver the construction works that LSPH informed TF that it had now passed the operational integrity test. In contrast, the depot access agreement between EIL and Virgin was only signed in late August/early September 2026[12].

8.10 TF believes that, notwithstanding the LSPH Representations, LSPH required TF to demonstrate a much higher threshold than Virgin for operational integrity to be achieved. For Virgin, LSPH states that it applied a "*reasonable expectation*" test of securing the rolling stock, but that did not require rolling stock contracts to be actually executed. For TF, "*reasonable expectation*" was construed by LSPH to mean "certainty of depot property rights" and "near certainty of construction contract" (i.e. a preferred bidder had been appointed). It was only then that LSPH determined that the operational integrity test had been satisfied, notwithstanding that the lead-in time for the depot facility is materially shorter than the lead-in time for new rolling stock. Had LSPH applied the same "*reasonable expectation*" test to TF and its depot facility, the evidence (including ET Representations) suggests that TF would have satisfied the operational integrity test sooner, to allow its application of capacity to be progressed in parallel with Virgin's.

8.11 For example, in paragraph 40 of the LSPH Representations, LSPH relies on TF still being in discussions about the purchase of the Maisons Alfort-Pompadour site to reach the conclusion that "*TF's access to it remained uncertain at that time*" (evidencing that LSPH was adopting a different test of "certainty" rather than "reasonable expectation"). As the Operational

[12] **https://www.orr.gov.uk/sites/default/files/2026-10/2026-08-28-orr-directions-notice-appending-the-executed-daa-dated-4-september%202026.pdf**

Integrity Panel noted (paragraph 40 of the LSPH Representations): "*Confirmation in the submission that negotiations are in fact ongoing, and not concluded, over the acquisition of the Maison Alfort Pompadour site for construction of a new maintenance facility. This indicates uncertainty over the outcome of these negotiations. This undermines the viability of the plan.*" The evidence clearly equates ongoing negotiations with uncertainty and undermining viability of the plan. If being in discussions about a depot purchase creates too much uncertainty about operational integrity for LSPH, then equally being in discussions about a rolling stock purchase between Virgin and Alstom should also create too much uncertainty about operational integrity. LSPH claims it did not, and has not provided any justification for doing so. LSPH's own evidence therefore points to an over-emphasis on the Maisons Alfort-Pompadour depot in its decision-making, and not consistently applying the "*reasonable expectation*" test it applied to Virgin.

8.12 In relation to evidence, TF submits that LSPH has required disproportionate levels of information, evidence and assurances in relation to Maisons Alfort-Pompadour facility for it to reach a view that TF had satisfied the operational integrity test. TF notes from the ET Representations that ET had formed a different view from LSPH's "*at every point in time in 2026*" and had communicated this to LSPH. In practice, it was only once a signed contract for the land and a preferred bidder for the construction contract had been identified that LSPH confirmed operational integrity, which goes far beyond what would be necessary for "*reasonable expectation*". LSPH claims in paragraph 66 of the LSPH representations that there were "*doubts about [that future operator's] ability to mobilise on time*"; TF contends that any doubts that LSPH held were not reasonable doubts, and were not rational or legitimate doubts to hold. This is particularly so in light of the representations from an adjacent infrastructure manager in the ET Representations which considered the same issue and had concluded that TF had achieved operational integrity from a much earlier point in time. TF agrees with that assessment, in which case (notwithstanding that TF does not accept the operational integrity test as being valid in the manner LSPH has chosen to use it) TF actually passed the operational integrity test much earlier than LSPH suggests, and its application for capacity should have been considered in tandem with Virgin's. This is a manifest and material error on LSPH's behalf which goes to the heart of its decision-making process and which created a capacity allocation process with Virgin which was fundamentally tainted by this mistake. This is the case notwithstanding LSPH's later determination that TF had in fact achieved operational integrity (whether that was to correct LSPH's own previous mistake, which it had since recognised – as a stakeholder in the EIL Appeal has suggested – or otherwise).

8.13 This therefore clearly demonstrates inequality of treatment, and discrimination in favour of Virgin, in how LSPH applied its own (erroneous) test. Accordingly – and contrary to LSPH's claim in paragraph 80 of the LSPH Representations, LSPH was not entitled to distinguish between TF and Virgin and, in doing so, breached its duty to act in a fair, transparent and non-discriminatory manner.

8.14 In any event, for the reasons set out in this paragraph 8, TF believes that in order to act in a fair and non-discriminatory manner, conditions precedent would have been appropriate as these were offered to Virgin. TF notes the paragraphs of the LSPH Representations in relation



to the use of conditions precedent. LSPH has articulated "operational integrity" as being a stage gate that needs to be achieved in order to proceed to engaging in a framework track access contract. In effect, LSPH considers conditions precedent will be used to ensure that commitments taken into account by LSPH in confirming operational integrity are then delivered in practice by the applicant.

8.15 In the LSPH Representations, LSPH seeks to present this as TF somehow misunderstanding that operational integrity needed to achieved as a stage gate before conditions precedent would be offered. Instead, what TF is struggling to understand is why Virgin did not have signed arrangements for the construction of new rolling stock (and therefore negotiations were not concluded), and accordingly there remained uncertainty, but LSPH still concluded that operational integrity was met (with conditions precedent offered), whilst the equivalent was not offered to TF. This continues to appear discriminatory.

9 The process LSPH should instead have undertaken

9.1 Each of the DfT Representations, EIL Representations and ET Representations, as well as the TF Appeal, are remarkably similar insofar as they each highlight the need to take all aspirant operators' requirements into account when determining who scarce capacity should be allocated to. Even the LSPH Representations draw parallels with the process undertaken on the wider railway network[13]. At the time LSPH decided to allocate capacity to Virgin, and taking into account the ET Representations, at best LSPH can only have been unsure about what capacity would actually be available to all aspirant and incumbent international high speed operators. The alternative would be that LSPH knew that it could not accommodate all capacity allocation aspirations and nevertheless proceeded to treat Virgin preferentially.

9.2 There being uncertainty about whether all applications for capacity could be accommodated, TF considers the only reasonable approach would have been for LSPH to consider all applications from all prospective and incumbent operators and applying an objective test when determining who that scarce capacity should be allocated to. As the effect of such a process would potentially be to exclude applicants from the international rail market altogether, it was important that all aspirations be considered in the round. As explained in the TF Appeal and this letter, TF considers this is entirely consistent with the legal and regulatory requirements binding on LSPH. What is not consistent with those requirements is importing a stage gate operational integrity test in the manner LSPH has sought to do.

9.3 Rather than simply criticising what LSPH has done, a theme emerging from the TF Appeal and stakeholder representations suggest a more coordinated approach should have been adopted by LSPH. TF observes that there are a number of existing examples of how LSPH might instead have undertaken the process:

9.3.1 most pertinently, the ORR's recent consideration of available capacity at Temple Mills depot, and to whom the limited available capacity should be allocated. That process – whilst triggered by applications under section 17 of the Railways Act 1993 – involved the ORR undertaking a considered review of what capacity would likely be available at the depot, and then considering the applications of all

[13] In paragraph 18 of the LSPH Representations, which cross refer to paragraph 21 of the LSPH EIL Appeal Representations.

aspiring operators, including EIL's aspirations for increased services. The ORR adopted a considered, evidence-based, approach to assessing those aspirations simultaneously, not on a "*first come, first served*" basis, and giving "*particular weight to [its] duties to promote competition and the use of the railway network*" (decision of 30 October 2025[14], paragraph 5). Whilst TF was disappointed with the outcome, it recognises the robust, evidence-based, process undertaken by the ORR to reach that decision, with all potential operators' requests being taken into account. This also resulted in an efficient approach to the allocation of available capacity identified at Temple Mills depot. TF submits that LSPH should have undertaken a similar process: understanding what capacity is reasonably available on High Speed 1 (taking into account the need to coordinate with other infrastructure managers and terminal capacity at St Pancras), all aspirant operators' requests for that available capacity, and adopting a robust, evidence-based, process to considering those requests and how they satisfy pre-published criteria for how capacity will be allocated. This need not have been an open-ended process, as LSPH suggests in the LSPH Representations. Instead, LSPH could have specified a date by which aspirations for capacity were required and published this widely to bring it to the attention of all aspirant operators;

9.3.2 the approach described above is the one adopted by Network Rail and the ORR most recently in relation to the allocation of capacity on the West Coast Main Line in Great Britain[15]. In that context, the aspirations of Lumo, Avanti and Wrexham, Shropshire & Midlands Railway Limited ("**WSMR**") were each considered in parallel against the available capacity, taking into account the need to maintain performance of the infrastructure. In making its decision, the ORR took into account all aspirations, from both the incumbent operator (Avanti) and aspirations of prospective operators Lumo and WSMR. Where there is insufficient available capacity for all aspirations (as was the case in this decision), a range of factors were then taken into account in deciding what capacity was available for allocation, and who that capacity should be awarded to. Operational viability is mentioned in the decision (paragraph 23) as having been considered by the ORR as a factor in the decision making process, but this formed part of a range of factors and was not a stage gate (and indeed, the ORR confirms that those factors did not alter its conclusions regarding space on the network). LSPH therefore should have adopted an approach which entitled all aspirant operators to participate in the capacity allocation process, with a range of factors being taken into account in determining who that capacity should be allocated to. In this respect, TF reminds the ORR of its statement that "*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.*" which LSPH cites in the LSPH Representations; and

9.3.3 for completeness, TF notes that Network Rail/the ORR has consistently adopted a similar process when considering competing requests for capacity, such as

[14] **https://www.orr.gov.uk/sites/default/files/2025-10/2025-10-30-tmi-decision-letter-final.pdf**
[15] **https://www.orr.gov.uk/sites/default/files/2026-10/2026-10-08-orr-wcml-decision-letter.pdf**

previous decisions in respect of the West Coast Main Line, as well as the East Coast Main Line (where, in resetting the timetable, all capacity allocations and aspirations were fully taken into account).

9.4 By adopting a process in which all competing requests for capacity are fully and holistically considered by the infrastructure manager, each applicant is fully heard, carefully considered, and a decision is made based on clear and transparent criteria. As a consequence, fairness, transparency and equality of approach to all is ensured. Such an approach would be consistent with the requirements of the 2016 Regulations, and with recent ORR practice. LSPH simply did not do this. Instead, LSPH adopted an opaque process which inappropriately imported a stage gate in order to prefer one applicant over all other applicants, and which was inconsistent with similar process followed for the Great Britain national network.

10 Virgin Representations

10.1 Unsurprisingly, Virgin appears to be the only stakeholder supportive of LSPH's position and process. Virgin makes a number of unfounded assertions in the Virgin Representations, which TF wishes to take the opportunity to correct.

10.2 At the time TF made the TF Appeal, it had not been made aware of the decision by the ORR to modify the date for satisfaction of the condition precedent "*by which VTE must enter into a rolling stock contract*" in the Virgin framework track access contract. That decision came to TF's attention once the ORR's website had been updated and after TF had issued the TF Appeal. Indeed, TF promptly wrote to the ORR in respect of the modification notice (and after the date on which the TF Appeal had been submitted) to raise its concerns about that modification.

10.3 Clearly, the modification notice is evidence of the framework track access having actually been entered into by LSPH and Virgin. No consolidated framework track access contract had been published on the ORR's website at that time and it will have been clear from the directions sought form the ORR that TF believed that there was a reasonable possibility that the framework track access contract had not yet been entered into. This was, of course, in the context of the EIL Appeal having already been made. From the available evidence, the framework track access contract does appear now to have been entered into and subsequently modified.

10.4 Contrary to what Virgin suggests, the need to extend the date in the framework track access contract for Virgin to enter into the rolling stock contracts indicates that (at that time) those contracts had not actually been entered into. TF notes the announcement made on 09 October 2026 (which is after the TF Appeal was made) that "*Virgin has signed an agreement with French rail group Alstom to supply 12 Avelia Stream trains. Alstom will also service the trains under a 30-year maintenance contract.*" [16] and that the ORR has published the signed agreement between Virgin and EIL for the maintenance of trains at Temple Mills depot. However, TF notes from the footnote to Alstom's 9 October announcement about the order

[16] **https://www.virgin.com/media-centre/news-releases/virgin-offers-first-glimpse-of-new-cross-channel-service-planned-from-2030**
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that "*Booking expected upon regulatory approval and financial close*"[17]. This appears to suggest that whilst rolling stock contracts may have been signed, no firm order has yet been placed for that rolling stock as it is dependent on further regulatory approvals and financial close. From the publicly-available information, it appears to TF that there is not yet a confirmed order in place. Whilst the terms of the framework track access agreement between LSPH and Virgin are carefully worded and refer to Virgin having provided LSPH with "*execution versions of a binding manufacture and supply agreement and train services agreement (or equivalent maintenance agreement or agreements) in each case in relation to a minimum of 12 new-build trains for operation on HS1, and of a lease or sublease which entitles the Train Operator to operate those trains until at least the Expiry Date*" [18] that does not necessarily equate to a firm rolling stock order having been placed. Given the lead-in times for new rolling stock, TF queries whether Alstom will be able to deliver in time for the proposed launch of services by Virgin in 2030. In contrast, as noted in paragraph 2.4.3, TF has committed to and has placed a firm order for rolling stock with Hitachi which contains strong incentives for Hitachi to deliver in time for TF to launch its proposed international services a year earlier in 2029.

10.5 TF's comment on the common shareholder in Virgin was based on the statement in paragraph 17g) of the ORR's decision letter[19] dated 14 August 2026 on the pre-approval of the Virgin framework track access contract. In that letter, it states that "*LSPH has confirmed details to ORR of the governance controls that it has implemented regarding Equitix's financial interests in both LSPH and VTE, including recusal arrangements and restrictions on participation in decision-making.*" The wording states that Equitix has a financial interest in both LSPH and Virgin, and that decision-making restrictions had been implemented, clearly suggesting that Equitix has an interest in both companies, rather than a rolling stock lessor to Virgin. If, as Virgin states in the Virgin Representations, Equitix's interest is only in the rolling stock itself, then TF is prepared for the record to be corrected accordingly.

10.6 TF's plans remain to launch services between London and Paris from 2029, notwithstanding the assertions Virgin makes in the Virgin Representations. Virgin is plainly wrong and would request Virgin to correct misleading information of its own accord or to request the ORR does so as part of its conclusions on the TF Appeal.

11 Remedies

11.1 TF strongly disagrees with how LSPH has characterised the remedy (and corresponding directions) sought from the ORR in the TF Appeal. TF is simply asking for a fair, non-discriminatory, legally compliant and regulatorily compliant process to be followed by LSPH, and the outcome of that process to be substituted in place of the existing position.

[17] **https://www.alstom.com/press-releases-news/2026/10/virgin-and-alstom-join-forces-support-growth-cross-channel-high-speed-rail**

[18] **https://www.orr.gov.uk/sites/default/files/2026-08/2026-08-18-vte-opco-approved-agreement.pdf** (Clause 5.2 and paragraph 1.2(i) of the HS1 Passenger Access Terms, as amended).

[19] **https://www.orr.gov.uk/media/28663**



11.2 TF firmly disagrees with LSPH's presentation of the remedies it believes the ORR should be minded to grant (if the TF Appeal is successful). To be clear, TF would welcome any procedural guidance issued by the ORR to LSPH to apply to future capacity allocation processes, as that will provide clarity to all interested stakeholders. However, if the ORR were to adopt the approach proposed by LSPH in the LSPH Representations, TF is concerned that it would be left without an effective remedy and the situation from which TF's appeal arose would not be remedied. LSPH's approach is predicated on the existing capacity awarded to Virgin being preserved, and in those circumstances, LSPH would be rewarded for its own failings. Moreover, if such existing capacity is preserved, it will not be available to either TF or to EIL, with the corresponding disadvantageous situation perpetuating for the next 14 years. TF therefore is of the view that, without prejudice to the TF Appeal, the fair and reasonable remedy (and corresponding directions) must include resetting the capacity allocation process and for LSPH to undertake that process again in compliance with all legal and regulatory requirements. Spending a short amount of time now to remedy a situation created through LSPH's misunderstanding of the law is worthwhile in the context of the substantial investments which will be needed over those next 14 years.

11.3 TF notes that under regulation 32(5)(b)(iii), the ORR has the power (where appropriate) to issue a direction "*to remedy the situation from which the appeal arose*". This affords the ORR broad powers, and the outcome of the exercise of those powers must be to remedy the situation from which TF's grievance arose. If the LSPH view were to be adopted, whilst LSPH may have guidance on how to operate the process in future, the situation from which the appeal arose would not be remedied because the effect of the erroneous decision to award Virgin capacity would be preserved. That capacity would then not be available to TF or other operators seeking access to High Speed 1. This would only encourage "first come, first served" behaviours in future – for example an applicant could apply now for capacity on High Speed 1 from 2040, because no other operator (so far as TF is aware) has yet done so, and that applicant would be first in the queue beyond all others. This would be counterintuitive to the strong presumption of the continuation of existing access rights which the ORR has in published guidance[20].

11.4 Moreover, TF notes that paragraph 32(10) of the 2016 Regulations gives the ORR specific powers which apply where the appeal relates to the terms of an offer of infrastructure capacity or the refusal to allocate infrastructure capacity. This is the case in respect of the TF Appeal. Regulation 32(10)(b) specifically permits the ORR to require (by way of directions) LSPH to modify its decision – in this case the decision to award Virgin capacity in preference to TF. TF submits that such a direction is entirely appropriate in the situation from which the TF Appeal has arisen and that the Virgin Representations on this point are without merit. TF disagrees with the suggestion[21] that this would be disproportionate or disruptive. This would simply place all applicants in the position they would have been in prior to the commencement of the erroneous capacity allocation process by LSPH. This will serve to maximise competition and drive growth, factors mentioned in the DfT Representations. For

[20] **https://www.orr.gov.uk/sites/default/files/om/duration-of-framework-agreements-guidance.pdf** (paragraph 23).
[21] In paragraph 119 of the LSPH Representations, which cross refer to paragraph 98 of the LSPH EIL Appeal Representations



completeness, TF does not agree with how LSPH has presented the possible impact on competition in paragraph 121 of the LSPH Representations[22].

11.5 TF notes that the 2016 Regulations do envisage that the ORR has supervisory powers – for example, regulation 31(3) requires negotiations on charges to be carried out under the ORR's supervision. LSPH appears to acknowledge this as well in its own statement that "*the concession that the DfT granted LSPH in 2010 to operate and maintain HS1 was predicated on an established contractual and regulatory framework which was underpinned by oversight from an independent regulator*."[23] There are also parallels under the Railways Act 1993 regime where the ORR has undertaken enhanced monitoring of infrastructure managers or train operators where a particular issue has been discovered and determined by the ORR. We further note the ORR's "Holding London St. Pancras Highspeed to Account" policy[24] which sets out how the ORR will approach holding LSPH to account. This includes a number of potential steps to remedy issues (at paragraph 2.11) such as setting actions, providing public commentary and hearings and requiring a formal improvement plan, as well as (at paragraph 2.12) contemplating monitoring progress or contemplating whether a contravention of the Concession Agreement has occurred. In circumstances where LSPH has failed to comply with its legal duties on capacity allocation, the supervision remedy sought by TF – which LSPH disputes – is the same as or equivalent to existing powers which the ORR already has, and would be proportionate.

11.6 The ORR therefore clearly has a wide range of powers under the 2016 Regulations, which include the power to issue directions in the form sought by TF. TF therefore maintains the position set out in the TF Appeal that such directions should be issued by the ORR if it is minded to determine the TF Appeal in TF's favour.

12 LSPH EIL Appeal Representations

12.1 TF notes that the LSPH Representations incorporate by reference a number of paragraphs from LSPH's response to the EIL Appeal (the "**LSPH EIL Appeal Representations**"), which is being considered in parallel by the ORR. Similarly, the EIL Representations make clear (in paragraph 3.2) that EIL does not rehearse the representations made in the EIL Appeal and notes that its representations and evidence should be considered in full in the context of the TF Appeal.

12.2 TF was not provided with a copy of those paragraphs of the LSPH EIL Appeal Representations as part of the pack of documents shared by the ORR on 22 October 2026. Whilst most of the material has since been published on the ORR's website, a number of paragraphs of the LSPH EIL Appeal Representations have been redacted. This includes paragraphs of the LSPH EIL Appeal Representations which LSPH expressly and specifically refer to and seek to rely on in the LSPH Representations on the TF Appeal. In particular, paragraphs 101, 102 and 103, as well as part of paragraph 104 of the LSPH EIL Appeal

[22] Which cross refer to paragraphs 105 to 109 of the LSPH EIL Appeal Representations.
[23] Paragraph 13 of LSPH's consultation response in relation to the EIL Appeal, it being acknowledged that LSPH has made those points in the context of the EIL Appeal, whilst making points (as LSPH considers appropriate) on both the EIL Appeal and the TF Appeal.
[24] **https://www.orr.gov.uk/sites/default/files/2025-07/2025-07-30-holding-st-pancras-highspeed-to-account-policy.pdf**

Representations have been redacted. All of these paragraphs are expressly referred in the LSPH Representations on the TF Appeal.

12.3 , TF acknowledges the benefit of adopting an approach of incorporating certain paragraphs of the LSPH EIL Appeal Representations by reference into the LSPH Representations. However, TF notes that it needs to be given reasonable opportunity to respond to and comment on points which are relevant to the TF Appeal. Indeed, paragraph 22 of section 5 of the ORR's guidance headed "The Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016, as amended Access to the rail network and service facilities, infrastructure management and appeals" (05 March 2024)[25] (the "**ORR Appeals Guidance**") states: "*Where we receive written representations from other relevant parties we will send a copy to the applicant and the respondent. We will invite each of them to provide any comments, normally, within 10 days.*".

12.4 TF further highlights the principles of natural justice, and procedural fairness. This includes the right for TF to know the arguments that are being made against it (and being given the opportunity to respond). This reflects the underlying principle that a decision-maker, acting fairly, is not able to rely upon material that is kept entirely from the affected party, where the affected party is deprived of a meaningful opportunity to understand, challenge, and respond to that material. There is also a legitimate expectation that the person making the decision will follow the process set out by them, such as being given the opportunity to comment on the written representations received, in order to ensure there is fair opportunity to respond to points made. If there is material which LSPH is relying on in connection with the appeal – and the LSPH Representations specifically refer to the redacted paragraphs of the LSPH EIL Appeal Representations – it is only fair and proper, and consistent with the ORR Appeals Guidance, that TF is given reasonable opportunity to meaningfully comment.

12.5 TF therefore wrote to the ORR, seeking a copy of the redacted material in the LSPH EIL Appeal Representations. The ORR declined to provide a copy of the redacted material to TF, and therefore TF is unable to meaningfully comment on all of the LSPH Representations. This letter therefore sets out TF's comments on the majority of the LSPH Representations, other than the redacted material.

12.6 TF has had regard to paragraphs 36 to 42 of section 5 of the ORR Appeals Guidance. In particular, TF notes the following:

12.6.1 the ORR's starting point is that there should be as full disclosure as possible so that parties are able to property understand the content of the appeal, nature of representations being made and are given "*a full and fair opportunity to comment on all representations*" (paragraph 36 of the ORR Appeals Guidance);

12.6.2 the ORR will consider a request for non-disclosure in accordance with section 71(2) of the Railways Act 1993 and entitles the ORR to allow a particular matter to be determined where it "*seriously and prejudicially*" affects the interests of (in this case) LSPH. Where such a request is made "*The disclosing party should*

[25] **https://www.orr.gov.uk/sites/default/files/2024-03/guidance-on-the-access-2016-regulations.pdf**



consider whether it can provide such information in a more generalised format that can be disclosed." (paragraphs 38 and 39 of the ORR Appeals Guidance); and

12.6.3 in making such a decision, the ORR aims to strike "*a balance between complete transparency and protecting genuinely commercially sensitive information*." (paragraph 40 of the ORR Appeals Guidance).

12.7 In a spirit of cooperation and with the intention of ensuring the TF Appeal is conducted in as fair a way as possible, TF suggested three potential options to the ORR:

12.7.1 if the redacted material is commercially sensitive to the general public, provide the material to TF alone to allow it to fairly and properly respond to the LSPH Representations. The ORR declined this request and noted that even EIL had not been provided with the redacted material (a point EIL may itself wish to raise). TF was not aware of this and is surprised that even the appellant in the EIL Appeal has not been provided with material information made in the context of its own appeal;

12.7.2 ask LSPH to restate the redacted material in a form which covers the gist of the material points which it has made but without any commercially sensitive information being included. This request was consistent with the ORR's own stated process in the ORR Appeals Guidance (see paragraph 12.6.2 of this letter above). The ORR declined this request on the basis it was not necessary and that LSPH had explained the context in which it relied on the redacted material in the LSPH Representations. For the record, TF disagrees with this assertion and does not believe that it has sufficient visibility to understand the material points being made in the redacted material; or

12.7.3 ask ORR to disregard those paragraphs of the LSPH Representations, on the basis that if they are considered to be material to LSPH's representations, but TF has not been given fair opportunity to comment on them, it would not be appropriate for the ORR to rely upon them in reaching its determination. The ORR indicated that whilst the redacted paragraphs did not appear to contain information of significant relevance, it was not minded to determine that those paragraphs should be disregarded. Helpfully, the ORR also confirmed that if it considered it may be necessary to take any of the redacted material into account, the ORR would reconsider appropriate arrangements for sharing that material as appropriate and providing a suitable opportunity for comment.

12.8 At this stage, TF does not seek to question whether the ORR applied the statutory test set out in section 71(2) of the Railways Act 1993 in a manner consistent with the law, but TF reserves the right to do so at a later stage of this process. However, if LSPH considers the redacted material to be a key part of its representations on both the TF Appeal and the EIL Appeal (hence using that material in both the LSPH Representations and the LSPH EIL Appeal Representations) TF (and EIL) should be given fair opportunity to respond to the points made. TF recognises and appreciates the commitment from the ORR to do so.

12.9 This is particularly important as the redacted material is in the section of the LSPH Representations which address remedies the ORR may be minded to direct if it determines the TF Appeal in favour of TF (and/or, as the case may be, the EIL Appeal in favour of EIL). As explained in paragraph 11 of this letter, the remedy which the ORR may choose to direct (if the TF Appeal is successful) is likely to have a substantial impact on competition in the international passenger rail services market for the next 14 years. Therefore TF would have expected to have been given the opportunity to comment on all of the LSPH Representations on this pivotal point. TF would expect to have the opportunity to comment on the redacted material if it forms part of the ORR's decision-making process on the TF Appeal and welcomes the confirmation from the ORR in this regard.

TF would be happy to discuss any of the matters arising out of the TF Appeal, or the comments set out in this letter, with the ORR if helpful.

Yours faithfully,

Marco Caposciutti

CEO of Trenitalia France

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25 Cabot Square
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BY EMAIL ONLY

27 October 2026

Dear Martin

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

I write on behalf of VTE OpCo Limited (**"VTE"**) in response to your letter dated 22 October 2026, which enclosed the response to the Appeal submitted on behalf of the Secretary of State for Transport by the Department of Transport (the **"DfT"**) dated October 2026 (the **"DfT Response"**). The ORR has invited comments on the DfT Response from interested parties pursuant to regulation 32(7) of the Regulations by 6 November 2026.

We also refer to our letter to the ORR dated 16 October 2026 (our **"16 October Letter"**), which provided VTE's comments on the response from the DfT relating to the appeal brought by Eurostar International Limited under regulation 32 of the Regulations. In substance, the DfT's response to each appeal is identical. VTE's response is therefore very similar in substance. We had anticipated that the DfT's response may have been amended or corrected on account of our 16 October Letter. We are disappointed that does not appear to be the case. VTE is therefore compelled to provide a similar clarification.

VTE is again grateful to the ORR for the opportunity to comment. VTE is also grateful for the clear and transparent process that ORR has followed in conducting the Appeal. VTE recognises the ORR's independent role as the regulator in considering access applications and determining the Appeal and confirms that the comments set out in

this letter are offered to assist the ORR in that process based on the information that is available to VTE.

1. VTE welcomes the DfT Response and is grateful to the DfT for setting out its views. VTE particularly welcomes the DfT's recognition that the entry of VTE into the cross-Channel rail passenger market represents a significant and positive development, and its support for growth, competition and investment in international rail services. VTE shares those objectives and considers that its entry directly advances them.

2. VTE wishes to offer one point of clarification. The allocation of capacity by London St Pancras Highspeed (**"LSPH"**) is not merely a commercial process. It is a regulatory process, conducted on fair, transparent and non-discriminatory terms for access to the network, in accordance with the applicable regulatory framework governing access to the HS1 infrastructure. In particular, on 6 November 2025, LSPH invited all prospective operators wishing to commence negotiations for a framework track access agreement to demonstrate their operational integrity, a key hurdle to giving confidence that valuable rail capacity can be reserved. VTE passed this threshold by demonstrating that its plans were assessed as being credible and deliverable.

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

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

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

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

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

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

Yours sincerely



Philip Whittingham
For and on behalf of VTE OpCo Limited