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Executive, Access & Licencing
Office of Rail and Road
25 Cabot Square
London
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17 January 2025

BY EMAIL ONLY

Dear Victoria

VTE HOLDINGS LIMITED'S APPLICATION FOR DIRECTIONS UNDER SECTION 17 OF THE RAILWAYS ACT 1993

VTE Holdings refers to Office of Rail and Road's (ORR) letter dated 5th December 2024 in relation to the above and Eurostar's letters dated 13th November 2024 and 17th December 2024 in relation to their initial representations regarding our application.

VTE Holdings is grateful for the opportunity to make these representations. As an initial observation, Eurostar's responses do seem to mirror a remark by ORR's CEO who was reported in the press as stating that Eurostar "...has some vested interest in making the process complicated". Similarly, in our view, the responses illustrate that "Eurostar are protecting their business, which is to be expected" just as Getlink's CEO remarked to the media. Notably, Getlink's CEO was also reported as saying regulations were "clear" that the depot [Temple Mills] was part of an "open access" network that should be open to other companies.

VTE Holdings believes that competition on this vital link to Europe is firmly in the public interest and essential to promote sustainable change in travel habits, giving customers choice and driving excellent customer experience and value for money. We would note that after 30 years of operation, Eurostar still only operates one significant regular new route (to Amsterdam) and only now that competition is on the horizon is Eurostar discussing new opportunities (but simultaneously noting that capacity at stations and depots is constrained). Only by having a strong and agile competitor with a recognised and trusted brand for looking after its customers will there be a change in this dynamic – and so it is now time for the route to reach its potential.

VTE Holdings would like to note that the process set out in Eurostar's Service Facility Description for gaining access to the depot seems, on the face of it, not to have been followed by Eurostar with respect to the introduction of the Class 374 train. Section 5 first bullet point suggests that "To access TMI...relevant licence and safety certification to operate services on the railway network" must be in place. When the first train was delivered to Temple Mills on 30th January 2014 the Class 374 was not authorised to operate on HS1 which came some considerable time later.

The two letters of representations from Eurostar can be distilled into a number of themes. These themes and our comments thereon are:

1. Representations on the suitability of ORR processes, ORR's jurisdiction and how ORR should proceed with the various S17 applications

ORR will, of course, make its own determination of these issues. We would note, however, that we do believe ORR has the relevant powers and oversight of the depot, and at a meeting held on 18th June 2024 these powers were made clear, which included

and arguably encouraged aspirant operators to submit S17 applications. This was no doubt based on various parties noting that access to the depot was critical and that ORR has a duty to make the market suitable for competition and ensure fair and reasonable access and to allow railway undertakings to plan their businesses with a reasonable degree of assurance. As Temple Mills depot is the only depot capable of accepting EU gauge trains, identifying the spare capacity and providing the environment to promote open competition would fall within these duties. This was a view shared at the November 2024 APPRG meeting.

Eurostar makes a range of legal and regulatory points in its letters. We wanted to make some related observations:

- The existence of the Service Facility Description doesn't oust the ORR's section 17 jurisdiction and we're encouraged that the ORR has decided to take jurisdiction by starting the formal statutory process.
 - Insofar as Eurostar argues that the ORR (and VTE Holdings) doesn't have enough information to reach a decision, e.g. in relation to capacity, the terms of the depot lease from DfT etc., the ORR has the statutory right to ask Eurostar for information (e.g. under paragraph 3(3) of Schedule 4 of the Railways Act 1993) and we would encourage the ORR to exercise its rights to obtain all relevant information. We welcome the fact that the ORR has commenced its own capacity analysis.
 - The ORR also has jurisdiction to consider Eurostar's approach and conduct under the TMI Depot Licence dated 20 April 2007, including Eurostar's obligation not to be unduly discriminatory. We would suggest this extends to Eurostar not unduly discriminating as between (i) applicants such as VTE Holdings and (ii) Eurostar in its capacity as a user of the facility (as distinct from a facility owner).
 - We would emphasise the importance of the ORR, when exercising its section 17 functions, of having regard in particular to promoting competition in the provision of railway services for the benefit of users of railway services (as per section 4(10)(d) of the Railways Act 1993).
 - Eurostar's suggestion of exempting TMI depot from the mandatory access regime (presumably under section 20 of the Railways Act 1993) would be wholly inappropriate and would only entrench barriers to entry and deny proper oversight of an essential facility to the detriment of promoting competition.
 - If necessary, VTE Holdings is prepared to make a complementary appeal under Regulation 32 of the Access Management Regulations.
 - Finally, we note that the ORR has competition law powers to investigate and tackle any possible anti-competitive activities.
2. Representations as to how the process noted in Eurostar's Service Facilities Description works

We understand the process described in the Service Facilities Description.

3. Representations as to the status of bilateral discussions prior to Eurostar unilaterally pausing further engagement and representations regarding the adequacy of the VTE Holdings application

VTE Holdings bilateral discussions were at a relatively early stage. Much of the detail needed to complete a more detailed application had not been shared or requested from Eurostar, and their unilateral decision to pause engagement with VTE Holdings is highly irregular and not contemplated as a course of action in the process set out in the Services Facility Description. Given ORR had stated in June 2024 that they would consider S17 applications, we were left with no alternative but to apply. While Eurostar claim there was no urgency, this overlooks the fact that, as many interested parties commented at length in the June 2024 meeting, and separately, access to the depot and certainty around that access are critical to securing the required funding to start a new operation. VTE Holdings will defer to ORR and others to decide whether the actions of Eurostar are in the spirit of promoting full and open competition on this strategically important open access infrastructure. We remain ready to progress full and meaningful dialogue with Eurostar.

We would also note that we do not believe that the primarily abstract test applies to this open access network and clearly this type of data would never be shared with a competitor – Eurostar is not a contracting authority. We are confident that we have a compelling business case and that significant growth can be delivered on the route by a business with a strong brand known for looking after its customers and its people. Furthermore, we are unclear as to what privately owned infrastructure ORR might be imposing access to as Temple Mills is held under lease from the Department for Transport and reserved for serving international rail operators.

4. Representations as to the capacity available at Temple Mills depot

Firstly, VTE Holdings welcomes the acceptance from Eurostar that this is a light maintenance depot. We noted, however, on our visit to the depot that at least one road was going to be reserved for heavy maintenance activities of the e300 trains and warehousing capacity was being provided to store bogeys for major overhauls of the e320 fleet, which seems to be inconsistent with the stated depot use, and indeed will utilise capacity unnecessarily that could otherwise be used to accommodate a new aspirant operator.

Regarding capacity, our Group experience operating rail services on the West Coast, as well as information we have received from manufacturers for this project, would show that for a modern and efficient fleet maintenance operation, train availability should be in the mid to high 80s in percentage terms. With the e300 fleet maintained on the continent, the availability of Eurostar's fleet looks to us to be more like 50% if all of the eight covered roads at Temple Mills are needed. We therefore believe that if we were able to review the current operation, significant savings could be identified and capacity made available for aspirant operators through efficient and well organised depot operation.

VTE Holdings hopes that these comments will assist ORR to decide on the best course of action and to comply with its duties to set the environment for open competition and to determine the efficient use of infrastructure, and to be clear about this to potential investors and funders. VTE Holdings would urge Eurostar to recommence discussions on access to Temple Mills depot while ORR decides what actions to take.

Yours sincerely



For and on behalf of VTE Holdings Limited