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06 February 2025

Dear Mr Hickman and Office of Rail and Road (“**ORR**”),

EVOLYN’S APPLICATION FOR DIRECTIONS UNDER SECTION 17 OF THE RAILWAYS ACT 1993

1. Evolyn refers to the ORR’s letter dated 31 January 2025 regarding Evolyn’s application relating to Temple Mills International Depot (“**TMI**”) under section 17 of the Railways Act 1993 (the “**Act**”) and the question of how ORR should process with the application.
2. Without prejudice of Evolyn answers below to the issues raised in ORR’s last letter, it is important to state and make it clear from the outset that Evolyn wishes to proceed with its application under section 17.

Evolyn’s letters of 5 and 13 December 2024

3. Please, note that the contents and representations of Evolyn’s letters dated 5 December 2024 and 13 December 2024 correspond to a set of representations made by Eurostar, as contained in (i) its letter dated 25 September 2024 in respect of Evolyn’s original application form (“**Eurostar’s Initial Representations**”); in (ii) its letter dated 21 November 2024 in respect of Evolyn’s updated application form (“**Eurostar’s Further Representations**”) (together, “**Eurostar’s Representations**”); and (iii) Evolyn’s representations contained in its letter dated 5 December 2024 and 13 December 2024 in reply to Eurostar’s Further Representations (“**Evolyn’s Representations**”).
4. In accordance with the above and considering the Eurostar’s Representations, for clarification purposes, when Evolyn indicated that “(...) *the primary purpose of Evolyn’s application at this stage is to obtain information about the capacity at TMI (as a “railway facility”) from Eurostar (as the “facility owner”)*”, means that in order to be able to move forward in the drafting of the terms and conditions of the access contract, it was and it is necessary for Evolyn (and for Eurostar) to know and be aware whether there is indeed access capacity to TMI for a second international operator of the Channel Tunnel and for rolling stock. For the time being, Evolyn still does not have the necessary information to reach a decision in relation to the terms and conditions of the access contract.

5. At this stage, Evolyn needs and seeks to have clarity and certainty on the possibility of access to TMI and on what terms, in order to be able to negotiate and sign the final access contract. Please, bear in mind that Evolyn's start of operations was tentatively set for April 2026 but due to the impossibility to advance in the process as a result of the lack of information from Eurostar (on issues such as e.g.: capacity to access to TMI or installation capacity of the depot, etc.) Evolyn has been forced to delay the start date of its operations, incurring in extra costs associated to the project. In this respect, Eurostar and the ORR must understand that without any clarity on the possibility to access to the unique international depot in UK, it is not possible to develop Evolyn's project and, give contents to the access contract with Eurostar. Once Eurostar provides this information, progress on the negotiations will be made and Evolyn will be able to provide Eurostar with a draft access contract to TMI.

Section 17 of the Act

6. Evolyn understands that the ORR role under section 17(1) of the Act, on the application of any person, is to give directions to a facility owner requiring him to enter into an access contract with the applicant, but also, the ORR may from time to time request or invite further information, clarification or representations from the facility owner as set out, for instance, in Schedule 4(3)(3) of the Act.). So, this, in addition to the ORR's role as an independent economic and safety regulator which make sure that the rail industry is competitive and fair, and the publication on the "*Criteria and procedures for the approval of depot access agreement*"¹ by the ORR, make it clear that the ORR's functionality should not be limited to simply requiring any facility owner to enter into an access contract with any applicant but the ORR has also the statutory right to ask Eurostar for further information on access capacity to TMI.
7. To date, and after, approximately, more than one (1) year since the first official communication on this matter, no clear answer or confirmation has been received from Eurostar, as the sole facility owner of TMI, on whether there is or not sufficient capacity for the maintenance of new rolling stock in the future, whether from a new second international operator or even for itself as the current operator. Therefore, as the TMI location is a critical factor in the success of the Evolyn's project, and in order not to delay the final answer any further, Evolyn had no option but to engage the ORR to make progress on a fair basis.
8. In that sense, Evolyn wants ORR to ask Eurostar, as the sole facility owner of TMI, the necessary information about the access capacity of TMI which allow Evolyn to move forward with its project and make progress with negotiations. As indicated in Evolyn's letter dated 13 December 2024 Evolyn will be able to be more precise with Eurostar on the terms and conditions of the access contract, once Evolyn know what access will be available and, for instance, what physical amendments (if any) will need to be made

¹ In that guidance dated 5 March 2024, the ORR deals specifically with section 17 applications, and in that context states, "*We expect facility owners to engage in negotiations with prospective users in an open constructive and responsive way. Facility owners should provide prospective users with necessary information in a timely manner*".

inside the depot to accommodate its rolling stock. It is for this reason that Evolyn has not provided a copy of the proposed TMI access contract yet.

Evolyn's current position and conclusions

9. Evolyn does not wish to withdraw or suspend its application under any circumstances, which is understood to continue in full force and effect from July 2023.
10. Evolyn respectfully demands to ORR to request Eurostar (as "facility owner") to provide the information necessary on the capacity access to TMI to make progress in the negotiations and move the process forward.
11. Evolyn appreciates the ORR's initiative to commission an independent study of available capacity at TMI. Therefore, once the favourable outcome of the ORR's report is known, Evolyn will provide Eurostar with a draft of an access contract to TMI. In any case, Evolyn would be grateful if ORR would require Eurostar to be more transparent and clearer with the required information on TMI access capacity.
12. Regarding VTE's application, as indicated in Evolyn's letter dated 13 December 2024 Evolyn represents that VTE and Evolyn are different and independent entities and operators with no relationship or connection at all between them, so Evolyn agrees upon Eurostar and ORR responding under separate cover to each party.
13. Evolyn wants to remind that a railway undertaking must 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, as set forth in section 5(1) of the Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016.
14. Evolyn trusts that these representations will be of assistance and considers that its section 17 application provides proper context for the ORR and/or Eurostar to facilitate the provision of information about capacity.

Yours sincerely,

Evolyn Mobility Ltd.