



Final Report of the Hearing Officer¹
Siemens / Alstom
(COMP/M.8677)

1. On 8 June 2018, the European Commission (the "Commission") received a notification of a proposed concentration by which Siemens AG ("Siemens" or the "Notifying Party") would acquire sole control of Alstom SA ("Alstom") by way of a contribution of Siemens' mobility business to Alstom in consideration for newly issued Alstom shares (the "Transaction"). Siemens and Alstom are collectively referred to as the "Parties".
2. On 13 July 2018, the Commission adopted a decision initiating proceedings pursuant to Article 6(1)(c) of the Merger Regulation² (the "Article 6(1)(c) Decision"). In that decision, the Commission indicated that the Transaction has a Union dimension falling within the scope of the Merger Regulation and that it raised serious doubts as to its compatibility with the internal market and with the functioning of the EEA Agreement.
3. On 16 July 2018, an extension of the time limit for adopting a final decision of 20 working days was granted under Article 10(3) second subparagraph, first sentence of the Merger Regulation.
4. On 6 August 2018, the Parties submitted their written comments to the Article 6(1)(c) Decision, in which they challenged the Commission's assessment as laid out in the Article 6(1)(c) Decision.
5. On 8 August 2018, the Commission adopted two decisions pursuant to Article 11(3) of the Merger Regulation, following the failure by both Siemens and Alstom to provide complete information in response to separate information requests from the Commission. These decisions suspended the time limits referred to in the first subparagraph of Article 10(3) of the Merger Regulation as of 7 August 2018. Siemens and Alstom each responded to the relevant information request on 4 September 2018, and the suspension expired at the end of that day.
6. On 29 October 2018, the Commission issued a statement of objections (the "SO") pursuant to Article 13(2) of the Merger Implementing Regulation³ which was notified to Siemens on the same day. Alstom received a copy of the SO. According to the SO,

¹ Pursuant to Articles 16 and 17 of Decision 2011/695/EU of the President of the European Commission of 13 October 2011 on the function and terms of reference of the hearing officer in certain competition proceedings, OJ L 275, 20.10.2011, p. 29 ("Decision 2011/695/EU").

² Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings, OJ L 24, 29.1.2004, p. 1 (the "Merger Regulation").

³ Commission Regulation (EC) No 802/2004 implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings, OJ L 133, 30.4.2004, p. 1 (the "Merger Implementing Regulation").

the Commission preliminarily considered that the Transaction would likely cause a significant impediment to effective competition in relation to various rolling stock markets, markets for mainline and urban signalling and in certain rail electrification markets, worldwide, in the EEA and/or in certain national markets, depending on the specific relevant product market.

7. The Parties were first granted access to file on 29 October 2018, following the adoption of the SO. Further access to file was granted on an ongoing basis until 31 January 2019, also in response to various requests by the Parties.
8. The Parties responded to the SO on 14 November 2018. They did not request the opportunity to develop their arguments in a formal oral hearing in accordance with Article 14 of the Merger Implementing Regulation.
9. Between 19 July and 27 November 2018, upon reasoned request, I admitted 24 interested third persons pursuant to Article 5 of Decision 2011/695/EU. These included competitors, customers, suppliers and trade unions. Out of these, 14 made submissions commenting on the SO.
10. On 12 December 2018, the Notifying Party formally submitted a first set of commitments which were market tested by the Commission on 17 December 2018. The Commission informed the Parties of the preliminary results of the market test on 21 December 2018, and on the further results received since then on 4 January 2019. The Notifying Party submitted revised commitments on 9 and 25 January 2019.
11. On 23 January 2019, the Commission sent a letter of facts to the Notifying Party (the "Letter of Facts"). The response of 28 January 2019 to the Letter of Facts includes general observations claiming that the Parties had been given insufficient time and context to effectively express their views. I have not received any direct requests or complaints from the Parties in this respect. Moreover, I note that the response to the Letter of Facts contains detailed arguments in relation to each section of the Letter of Facts, of which also the Advisory Committee has been duly informed. It does not appear to me that the Parties' right to be heard has been breached in this respect.
12. In the draft decision, while objections in certain relevant markets have not been maintained, the Commission concludes that the commitments do not eliminate all the identified competition concerns. As a result, the draft decision declares the Transaction, pursuant to Article 8(3) of the Merger Regulation, incompatible with the internal market and the functioning of the EEA agreement.
13. Pursuant to Article 16 of Decision 2011/695/EU, I have examined whether the draft decision deals only with objections in respect of which the Parties have been afforded the opportunity of making known their views. I conclude that it does.
14. Overall, I consider that the effective exercise of procedural rights has been respected during the present proceedings.

Brussels, 1 February 2019

Joos STRAGIER