EN

Case No COMP/M.4508 - ALSTOM UK / BALFOUR BEATTY / JV

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REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 30/03/2007

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COMMISSION OF THE EUROPEAN COMMUNITIES

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PUBLIC VERSION

MERGER PROCEDURE ARTICLE 6(1)(b)

To the notifying party

Dear Sir/Madam,

Subject: Case No COMP/M.4508 - Alstom UK/Balfour Beatty/JV
Notification of 23.02.2007 pursuant to Article 4 of Council Regulation No 139/2004

1. On 23 February 2007, ALSTOM UK Holdings Ltd ("Alstom", United Kingdom) belonging to the French Alstom group and the United Kingdom-based Balfour Beatty Group Limited ("Balfour Beatty") notified their intention to establish a joint venture ("JV") within the meaning of Article 3(1)(b) of the Council Regulation No 139/2004[1] ("the EC Merger Regulation").

2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of the EC Merger Regulation and does not raise serious doubts as to its compatibility with the common market and with the functioning of the EEA Agreement.

I. THE PARTIES

[1] OJ L 24, 29.1.2004 p. 1.

3. **Alstom UK,** is a subsidiary of Alstom group which develops and offers a range of systems, equipment and services in the rail transport market, including railway signalling. The Alstom group serves the power generation and rail transport markets, designing, supplying and maintaining a range of high technology products and systems. With regard to rail transportation, Alstom is involved in developing and offering a range of systems, equipment and services, including railway signalling, using technological platforms and standardised industrial systems.

4. **Balfour Beatty** is also a UK-based company providing engineering, construction and services to the building, civil engineering and rail markets with a strong focus on UK markets. Its railway business involves the design, construction, equipping, maintenance and management of rail assets, including railway signalling.

II. THE CONCENTRATION

5. The operation consists of the creation of a full-function joint venture under the name Signalling Solutions Limited (SSL), in which both parent companies will hold 50% of the shares. Whereas Alstom's strength is technology and engineering, in particular applying new, more modern technologies,such as electronic signalling Balfour Beatty is rather focused on construction, installation, maintenance and testing, especially in the more traditional non-electronic signalling. The purpose of the JV is the integration of the current complementary, activities of the parent companies with regard to the supply of rail signalling projects and equipment in the UK and Ireland.

6. The proposed concentration is a full-function joint venture within the meaning of Article 3(4) of the EC Merger Regulation.

III. COMMUNITY DIMENSION

7. The worldwide turnover for the Alstom group for the financial year ending on 31 March 2006 was 12,838 million EUR. The worldwide turnover for Balfour Beatty for the year 2005 was 7,720 million EUR. The Community-wide turnover for the Alstom group for the financial year ending on 31 March 2006 was […] million EUR, whereas for Balfour Beatty it amounted to […] million EUR in 2005. More than two thirds of Balfour Beatty's Community-wide turnover is achieved in the UK. There is no Member State in which more than two thirds of the Alstom group's Community-wide turnover is achieved.

8. It follows that the undertakings concerned have a combined aggregate world-wide turnover of more than 5 billion EUR.[2] Each of them have a Community-wide turnover in excess of EUR 250 million, but they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State.

9. Therefore the notified operation has a Community dimension within the meaning of Article 1(2) of the EC Merger Regulation.

IV. COMPETITIVE ASSESSMENT

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[2] Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ C66, 2.3.1998, p25).

A. RELEVANT PRODUCT MARKETS

a) Supply of rail signalling projects

10. **Signalling systems** are safety systems designed to keep trains on a railway at a safe distance apart. The key sub-system within any signalling system is the interlocking which controls train movement in order to prevent trains being too close or hitting each other.

11. **Signalling projects** may involve renewal, meaning that the existing signalling system is replaced with the same technology, or replacement/new installation usually with modern electronic technology. Projects last around three years and involve engineering, procurement of the necessary equipment, installation and testing. Their average value is around 30 million EUR and typically about 20% of the costs relate to material and equipment.

12. Currently two main technologies are applied in signalling systems: (1) the rather out-dated non-electronic technology and (2) the more modern computer chips-based electronic technology. Conventionally, rail networks are classified into three key types: (1) heavy railways including traditional mainline and suburban railways, (2) metro railways and (3) light railways, such as trams. The market investigation indicated that signalling projects might also be subdivided according to the size of signaling system projects (1) to small projects of a value below 8 million EUR, (2) to medium-sized projects of a value between 8 million and 75 million EUR and (3) to large projects of a value above 75 million EUR.

13. Nonetheless, the question whether all signalling projects belong to one market or whether they should be subdivided according to the technology applied (electronic, non-electronic technology) according to rail network type (heavy/light railways, metro) and/or according to the size of the project may be left open, as the transaction does not impede effective competition under any possible market definition.

b) Supply of signalling products

14. Both parties are active in the development and sale of certain specialist products and components employed in signalling systems which are upstream markets to railway signalling projects. However, with a minor exception[3], there is no horizontal overlap between the parties with regard to any of these products.[4] There are two products sold by one of the parties, Alstom, which belong to a vertically affected market: interlocking equipment specifically applied to the electronic signalling systems in the UK heavy rail segment, and point machines applied in the UK heavy rail segment.

Interlocking equipment

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[3] Although both parties sell secondary drives in the UK, Alstom has only [0-5]% market share, whereas Balfour Beatty's market share is below [0-5]%.

[4] Alstom manufactures 3 products where its market share is below [0-5]%: signalling elements of automated train protection systems, signalling elements of train detection systems and secondary drives. Alstom is also active as a distributor of certain ancillary products to its electronic interlocking products for heavy rail. Balfour Beatty sells also a number of specialist products, such as Datalogger and Asset View.

15. Interlocking equipment, although making up only 1-5% of the costs of a project, is a crucial components of a signalling system. It controls the points and signals on one section of a railway network, thereby ensuring the safety of train movements.

16. It appears from the market investigation that interlocking equipment has to be adapted to the technology applied in the signalling system. Therefore interlocking equipment for electronic and non-electronic technology is different. Furthermore it might be specifically adapted to the rail type. In particular in the heavy rail segment, where technical solutions were developed by the historical national rail operator, specific national technical requirements are defined. In the UK, requirements are set by the Rail Standard Safety Board based on a dialogue with the rail operators, whereas the actual product approval is carried out by the rail operator.

17. Interlocking equipment produced by Alstom can only be applied for electronic technology. Although they can in theory also be used for metro rail and light rail signalling systems, it is specifically designed for use by UK heavy rail systems.

18. The exact delineation between different types of interlocking equipment is not necessary for the purposes of this decision, as the transaction will not result in a significant impediment of effective competition under any alternative product market definition.

Point machines

19. Point machines are part of turnouts that allow trains to change from one track to the other. They form an essential part of any signalling project, although accounting for a rather small part (below 1%) of the costs of a typical signalling project. Point machines tend to be produced to work in both electronic and non-electronic signalling systems, and can be used in all three segments, but are often adapted for their specific use. According to the market investigation they might even be specifically adapted within a segment. For instance point machines used for high-speed trains differ from other point machines. Point machines in the UK have to meet certain national standards defined by the Rail Standard Safety Board.

20. Point machines produced by Alstom might also in theory be used for metro rail and light rail signalling systems, but they are adapted for use by UK heavy rail systems.

21. The exact delineation between different types of point machines might be left open for the purposes of this decision, as in any event the transaction will not result in a significant impediment of effective competition.

B. RELEVANT GEOGRAPHIC MARKETS

a) Supply of rail signalling projects

22. The notifying parties submit that the market for rail signalling projects is national in scope. In particular, it submits that, in the UK, standards are set by the national Rail Standards and Safety Board together with the main national rail operator, Network Rail. Therefore rail signalling projects providers must be able to work within the existing national safety standards, which is particularly true for renewal projects.

23. On the other hand, in a recent decision of the Commission[5] relating to the rail signalling market, the market investigation suggested that the market is European-wide. However, the precise market definition might be left open in the present case, as the present transaction will not result in a significant impediment of effective competition under any possible geographic market definition.

b) Supply of signalling products

24. The notifying parties submit that markets for interlocking equipment and point machines for heavy rail are also national in scope given that these products are designed to meet standards specific to the UK.

25. The market investigation indeed confirmed the existence and relevance of standards specific to the UK with regard to both products. According to the estimation of Network Rail, the most important UK customer, the length of the approval process for interlocking equipment varies between 6 months and 2 years depending mainly on the extent to which the product proposed by the supplier needs to be adapted to meet specific UK requirements. On the other hand, with regard to point machines, the adaptation to the UK requirements tends to be less expensive and burdensome than for the rather complex interlocking equipment. Only point machine motors are UK-specific, the other parts of the machine are inherently compliant with specific UK requirements.

26. Therefore, whereas importation of these products, in particular point machines, is possible and apparently occurs to a limited extent, in the heavy rail segment, where Alstom is active, the market for these machines appears to be national. However, the precise market definition might be left open as the present transaction will in any event not result in a significant impediment of effective competition.

C. COMPETITIVE ASSESSMENT

a) Horizontal effects

27. Although both parties are involved in the supply of rail signalling projects, their combined market share remains in the last four years below 15% in the UK under any possible market definition. Given the volatile nature of the market, market share figures have been taken into account for the period from 2003 to 2006. Although they show slight changes from one year to the other, they reflect the current limited market position of the parties. Within the UK, the parties combined market share with regard to all signalling projects was [0-5]% in 2006, [5-10]% in 2005 and 2004 and [10-15]% in 2003. In the heavy rail segment their combined market share varies between [0-5]% and [10-15]% over a four year period.

28. Outside the UK, Alstom is active in all (heavy rail, metro and light rail) segments. Balfour Beatty is mainly active within the UK and its activities outside the country relate only to the heavy rail segment. According to the estimation of the parties, their combined market share in the EEA would be around [10-15]% ([10-15]% for Alstom and [0-5]% for Balfour Beatty). On a potential market for signalling projects in the heavy rail segment they would hold [15-20]% ([10-15]% for Alstom and [0-5]% for Balfour Beatty) whereas

5 Case COMP/M.4337 Thales/Alcatel Divisions Transport et Systèmes, of 07.11.2006.

on the hypothetical market for signalling projects in the heavy rail segment using electronic technology their combined market share would be [20-30]% ([10-20]% for Alstom and [5-10]% for Balfour Beatty).

29. However, as indicated above, the JV will only be active in the UK, where the parties will combine their existing activities relating to signalling projects and potentially in Ireland where the parties are not active for the time being. Within the UK, the far most important competitor is Westinghouse with a [40-50]% market share in the heavy rail segment, followed by Ansaldo with [10-15]%, WS Atkins with [5-10]%, Siemens with [0-5]% and GETS with [0-5]% in 2005. Additionally a number of players, such as Carillion, First Engeenering, Amey, AMEC, Jarvis, GrantRail and May/Gurney, hold [0-5]% in the heavy rail segment, and, similarly to Balfour Beatty, they focus on the the traditional, non-electronic technology.

30. The market for signalling projects consists of two types of players. On the one hand, integrated players like Alstom, Westinghouse, Siemens, and Ansaldo are not only active in the signalling system market, but also produce a range of essential products for signalling systems. In general integrated players tend to focus on larger and medium-sized projects. By way of example, the recent six large, so-called type A contracts have been attributed by Network Rail to Westinghouse, Alstom, Siemens and WS Atkins. On the other hand, non-integrated players such as Balfour Beatty compete for smaller and medium-size projects and are also often sub-contracted for large projects. Therefore, the notifying parties do not appear to be close competitors.

31. For the reasons set out above, the transaction will not result in a significant impediment of effective competition in the market for signalling projects as a result of the horizontal overlap between the parties.

b) Vertical effects

32. The proposed transaction will lead to two vertically-affected markets, as Alstom has market shares above 25% in the markets for electronic interlocking equipment and point machines for heavy rail in the UK, which are upstream of the markets for signalling systems[6]. Alstom manufactures this equipment and sells it mainly to signalling projects suppliers. After the transaction, these products will be sold through the JV.

Input foreclosure

33. The Commission's investigation revealed that the JV would neither have the ability nor the incentive to foreclose downstream signalling projects competitors, for the reasons set out below.

34. The UK market for interlocking equipment for heavy rail signalling systems has a value of around 5 million EUR. Based on 2006 figures Alstom sales account for [90-100]% of the

6 Balfour Beatty is also active downstream the signalling systems market through its controlling interest in Metronet, one of the two concessionaires of the London underground. (see Commission decision M2694 Metronet/Infraco of 21 june 2002). However, Metronet has signed long-term contracts (until 2015) for their signalling project requirements with Bombardier, one of its shareholders. Therefore, no competition concerns arise.

market, with two competitors, Westinghouse and Siemens. The Commission investigated whether Alstom's high market share was indicative of market power.

35. It has to be noted that Alstom sales have risen from [15-25]% to [90-100]% between 2004 and 2006. During the same period, Westinghouse's share has dropped from [65-75]% to [0-5]%. In the course of the market investigation, Westinghouse confirmed that it had encountered technical difficulties with this component during that period but that these issues have now been solved.

36. Therefore, it appears that the current figures overstate Alstom's competitive position. Alstom's currently very high market share ([90-100]%) in 2006 is linked to technical difficulties of Westinghouse in 2005-2006. Westinghouse confirmed during the investigation that this situation is temporary and that it will be in a position to compete with Alstom again in 2007-2008. The parties estimate that their 2007 share will be around [35-45]% as soon as its competitor starts delivering its products again.

37. Secondly, the market is expected to face a technology change. In the UK heavy rail market using electronic technology there are two technical solutions approved: SSI and non-SSI-based solutions. SSI protocol-based interlocking equipment was developed in cooperation with British Rail in the middle of 1980's. Alstom produces SSI protocol-based interlocking equipment for which it holds intellectual property rights together with one other manufacturer, Westinghouse. Currently this equipment is used in the vast majority of signalling projects. However, as Network Rail explained, electronic components and designs have advanced significantly over the last 20 years and there is now a need for new technology solutions that can be deployed in, and be compatible with, the existing infrastructure. For the time being Siemens managed to obtain product approval for its non-SSI based interlocking equipments and started supplying it in 2005. It follows that there is potential for growth on the UK market for suppliers who develop non-SSI based solutions.

38. The UK market for point machines for heavy rail signalling systems has a value of 6.5 million EUR. Based on parties' estimates Alstom accounts for [45-55]% of sales in volume, the three other competitors being SPX Rail Systems ([35-45]%), Westinghouse ([0-5]%), and IAD-Claverham ([0-5]%), which has recently entered the UK market for point machines. As Network Rail confirmed during the Commission's investigation in particular SPX Rail Systems' products are fairly substitutable with Alstom's point machines, although they are currently used in different physical environments. IAD-Claverham's point machine is specific to high-speed turnouts.

39. Furthermore, as indicated above, Network Rail is by far the most important customer for signalling projects within the UK heavy rail market with a strong interest to maintain competition among signaling project suppliers. It plays an important role when it comes to defining standards, in the actual product approval and also to a large extent with regard to the specific products to be used in the individual signalling projects. *"In that regard, Network Rail is keen to design its projects in a way that allow all appropriate companies to play a role in the competitive process for medium-sized projects."*[7] It would have the ability to detect and oppose any foreclosure strategy in the short term, for instance by changing its equipment requirement, in particular for large projects or by moving towards direct purchase and free issue to projects contractors. A competitor of the parties

[7] Minutes of a conference with Network Rail of 20 March 2007

explained during the investigation the "*it is unlikely that Network Rail (...) would allow a situation whereby the sale of these products would significantly benefit the parties involved (...). It is more likely that Network rail would move to direct purchase and free issues to all contractors to normalise the position*".

40. In that respect, it is important to stress, that *"Network Rail does not consider that the merger would significantly affect the conditions of sale of Alstom proprietary interlocking equipments (...) and point machines. (...) The impact, if any, is expected to be wholly positive."*[8]

41. Thirdly, the JV has limited incentives to foreclose input to downstream non-integrated competitors since they hardly compete for the same signalling projects. As outlined above, the market investigation has shown that Network Rail has split projects into distinctive work categories[9]. Large competitors tender for major re-signalling and remodelling contracts whereas non-integrated players target tenders for lower-value projects. Competition between these two types of suppliers of signaling systems solutions takes place for medium-size contracts.

42. Additionally, it is anticipated in the JV's business plan that sales of interlocking equipments and point machines to third parties will account for [10-15]% of the JV's sales in the first years, increasing to [15-20]% in the second and third years of operation. It is thus unlikely that Alstom would prevent the JV from supplying interlocking equipment and point machines to competitors. It would go against the JV's profit maximising strategy and against Balfour Beatty's, which has joint control […].

43. Furthermore, the incentives of the merged entity to adopt an input foreclosure strategy are limited by its modest market shares in the downstream market for signalling systems, as it has been outlined above.

44. Consequently, in particular given the presence of alternative suppliers and the interest and capacity of Network Rail to maintain effective competition, the merged entity is unlikely to have the ability and incentive to foreclose its competitors from the access to input to the signalling projects.

Customer foreclosure

45. During the course of its investigation the Commission received some expressions of concerns from point machine producers to the effect that the merged entity would foreclose access to a sufficient signalling systems customer base, thereby reducing their ability to compete.

46. Nevertheless, it appears that the merger has no appreciable effects as regards access to customers for point machines manufacturers since the JV is not an important customer in the downstream signalling systems market. As noted above, its market share in the UK market for signalling systems will remain below 15% under any possible market definition. Even if the JV would decide to source internally all of its internal needs for point machines, and hypothetically to interlocking equipments, there will remain

[8] Answer of Network Rail to the Article 11 letter of the Commission of 7 March 2007

[9] See http://www.networkrail.co.uk/aspx/3971.aspx

sufficient alternative customers in particular other signalling system providers not engaged in the production of these products, wholesalers, like Unipart Logistics and Network Rail itself for their upstream rivals to sell their products.

47. In the light of the above, given in particular that the JV is not an important customer on the downstream market, the merged entity is unlikely to have the ability and incentive to foreclose manufacturers' access to a significant customer base.

VI. CONCLUSION

48. For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EC) No 139/2004.

For the Commission
signed
Neelie KROES
Member of the Commission