



EUROPEAN COMMISSION

DG Competition

Case M.7801 - WABTEC / FAIVELEY TRANSPORT

Only the English text is available and authentic.

REGULATION (EC) No 139/2004

MERGER PROCEDURE

Purchaser approval - Art. 8(2)

Date: 23.11.2017



Brussels, 23.11.2016
C(2016) 7726 final

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE
IMPLEMENTATION OF
COMMITMENTS

To the notifying party

Dear Sirs,

**Subject: Case M.7801 – WABTEC / FAIVELEY TRANSPORT
Approval of Flertex S.A.S as purchaser of Faiveley Transport
Gennevilliers S.A.S. following your letter of 3 November 2016 and the
Trustee’s opinion of 10.11.2016**

I. FACTS AND PROCEDURE

1. By decision of 4 October 2016 (‘the Decision’) based on Article Article 8(2) of Council Regulation EC No 139/2004 of January 2004 on the control of concentrations between undertakings (the ‘Merger Regulation’)¹, the Commission declared the operation by which Westing House Air Brake Technologies Corporation (‘Wabtec’) acquires sole control of Faiveley Transport S.A. (‘Faiveley’) compatible with the internal market and the EEA Agreement following modification by Wabtec, subject to conditions and obligations (the ‘Commitments’). Faiveley and Wabtec are hereinafter collectively referred to as the ‘Parties’.
2. In particular, the Commitments provide that Faiveley’s sintered friction materials business Faiveley Transport Gennevilliers S.A.S. (‘FTG’) shall be divested to a third-party purchaser independent of the Parties.

¹ OJ L 24, 29.1.2004, p.1.

3. By reasoned submission of 3 November 2016, Wabtec proposed Flertex S.A.S. ('Flertex') for approval by the Commission as the purchaser of FTG and submitted the proposed Sale and Purchase Agreement and related documents (the 'Proposed Agreement').
4. On 10 November 2016, Advolis, acting as the Monitoring Trustee appointed by Wabtec and approved by the Commission (the 'Trustee'), submitted an assessment of Flertex's suitability as a purchaser and, in particular, has indicated that it fulfils the criteria of the purchaser requirements in section D of the Commitments attached to the Decision. In their assessment, the Trustee has also indicated that, on the basis of the Proposed Agreement, the Divestment Business would be sold in a manner consistent with the Commitments.

II. ASSESSMENT OF THE PROPOSAL

(a) General

5. Flertex is a French-registered, privately-held company active in the production and sale of various friction products, including organic friction materials for railway applications. Flertex has currently [...] FTEs and operates on three main sites in France.

(b) Independence from the Parties

6. Wabtec submits that Flertex is entirely independent of and unconnected to the Parties. While Flertex currently makes some supplies of organic friction materials to Faiveley, those supplies are limited and do not make Flertex economically dependent of Faiveley.
7. In its reasoned opinion, the Trustee has confirmed that it considers Flertex to be independent of and unconnected to the Parties.
8. The Commission notes that a sub-contracting agreement between Wabtec and FTG is foreseen concerning the production of sintered brake pads for the TGV fleet of SNCF. While that contract is not totally insignificant for FTG, the Commission considers that the contract does not go further than what is customary for transitional arrangements and does not include elements that would make FTG, or Flertex as its purchaser, unduly dependent on Wabtec.
9. On the basis of the information provided by Wabtec and the Trustee, the Commission concludes that Flertex is independent of and unconnected to the Parties.

(c) Financial resources, proven expertise and incentive to maintain and develop the FTG as a viable and active competitor

10. Wabtec submits that Flertex has the financial resources, proven expertise and incentive to maintain and develop FTG as a viable and active competitor. In particular, Flertex is already active in friction materials, its roots in the business go back 60 years and it has been a profitable business for many years. Flertex generated a turnover of EUR [...] million in 2015.
11. Wabtec explains that the acquisition of FTG will not encumber Flertex's financial position. Flertex will purchase FTG at [...], Faiveley will assume [...] intra-

company debt before the divestment and contribute EUR [...] for the development of FTG's products and production capabilities following the divestment.

12. Wabtec further notes that Flertex is an industrial operator that has developed plans to develop and operate FTG and to integrate it with Flertex's current business. According to Wabtec, the product portfolios of Flertex and FTG are complementary and the acquisition will allow Flertex to broaden its total offering.
13. In its reasoned opinion, the Trustee submits that Flertex has a sound economic situation and is capable of meeting the financial requirements of purchasing and integrating FTG into its operations. According to the Trustee, Flertex has demonstrated that it has the appropriate expertise to maintain and develop FTG and that it is appropriately incentivised to do so. Flertex has developed plans for the integration of FTG into its business and identified ways to support and develop the profitability of FTG.
14. The Commission observes that the purchase of FTG entails a significant economic undertaking for Flertex. For instance, FTG accumulated a turnover of EUR [...] in 2015, which is [...] Flertex's own current turnover. Flertex would thus be acquiring a business that is [...] compared to its pre-existing activities.
15. Nonetheless, the Commission notes that Flertex has already operated in friction materials for a substantial period of time giving it expertise in the field and helping integration of FTG. The Proposed Agreement also foresees a [...] contribution by Faiveley in favour of Flertex and towards the costs related to integrating and developing FTG as part of Flertex. In addition, the Trustee has concluded that Flertex would remain economically viable following the acquisition of FTG.
16. The Commission considers that Flertex's long-standing own business activities in the field of friction materials for railway applications in the EEA demonstrates that Flertex has the proven expertise required to maintain and develop FTG as a viable and active competitor. Flertex has also developed plans to integrate FTG into its business and has identified ways to improve FTG's operations and financial performance, including economies of scale and other synergies with Flertex's current operations.
17. No reasons have come to the Commission's knowledge that would call into question Flertex's intentions and incentives of developing FTG as an industrial project and to integrate it efficiently into its existing business. Flertex appears to have made plans that foresee the development of FTG in the future as well, including R&D investments.
18. On the basis of the information provided by Wabtec and the Trustee, the Commission concludes that Flertex has the financial resources, proven expertise and incentive to maintain and develop the divested business as a viable and active competitor.

(d) Ability to sell internationally to railway industry customers

19. Wabtec submits that that Flertex is, and will be, able to sell internationally to railway industry customers. In particular, Flertex is already an established supplier of friction materials to the railway sector in the EEA. The majority of Flertex's total sales in 2015 were to the railway sector. While the majority of Flertex's sales were made to customers located in France, which is also the location of Flertex's

main facilities, a significant share of its sales to railway customers were made to customers located in countries other than France in 2014–2015. Within the EEA, Flertex sold to railway sector customers located in [...].

20. The Trustee submits that Flertex is, and will be, able to sell internationally to railway industry customers.
21. The Commission considers that Flertex's current sales of friction materials to railway sector customers in a number of different EEA countries indicate that Flertex is able to sell internationally to railway sector customers in Europe despite the fact that currently the majority of its sales are made to customers located in France. The Commission further notes that Flertex's integration plans include plans for a sales network in the EEA and outside of it.
22. On the basis of the information provided by Wabtec and the Trustee, the Commission concludes that Flertex has an ability to sell internationally to railway industry customers.

(e) Absence of prima facie competition problems

23. Wabtec submits that the acquisition of FTG by Flertex would not give rise to any prima facie competition concerns. In particular, there would be no horizontal overlaps nor vertical links between Flertex's and FTG's activities. Flertex produces and supplies organic friction materials while FTG is active in sintered friction materials. According to Wabtec, the divestment would not be subject to a merger control clearance in any jurisdiction.
24. The Trustee agrees with Wabtec as to the absence of prima facie competition concerns. According to the Trustee, no further regulatory approval is required for the completion of the divestment.
25. The Commission recalls that it has recently in the *Wabtec / Faiveley Transport* case concluded that organic and sintered friction materials for railway applications belong to different relevant product markets.² That supports Wabtec's submission of the absence of horizontal overlaps between Flertex and FTG. The Commission has also not been made aware of any factors calling Wabtec's submission into question.
26. Therefore, the Commission considers that prima facie competition concerns are not likely to arise as a result of the acquisition of FTG by Flertex.
27. This prima facie assessment is based on the information available for the purpose of this buyer approval and does not prejudice the competition assessment of the acquisition of FTG by Flertex by a competent competition authority under applicable merger control rules.

III. ASSESSMENT OF THE PROPOSED AGREEMENT

28. Wabtec submits that the Proposed Agreement is in accordance with the Commitments. Wabtec notes that the divestment transaction is structured as [...].

² M.7801 – *Wabtec / Faiveley Transport*, recital 237.

29. [...]
30. The Trustee agrees with Wabtec in that the Proposed Agreement is in accordance with the Commitments.
31. The Commission notes that the Commitments stipulate that *'[t]he Parties commit to, at the Purchaser's option, sell to the Purchaser the Financing Current Account Debt of the Divestment Business for a maximum price of EUR [...]'*. The arrangement agreed between Flertex and Faiveley thus differs from the arrangement foreseen in the Commitments with respect to the intra-group debt owed by FTG to Faiveley. However, the Commission observes that the phrasing of the Commitments specifically foresees that the arrangement shall be entered into at the request of the purchaser, the purpose having been that the purchaser may choose whether, and in which form, to require financing of the said debt. To this effect, the Commission notes that the agreed arrangement has been entered into at the request of Flertex.
32. On the basis of the information provided by Wabtec and the Trustee, the Commission concludes that the Proposed Agreement is consistent with the Commitments and that, accordingly, FTG is being sold in a manner consistent with the Commitments.

IV. CONCLUSION

33. On the basis of the above assessment, the Commission approves Flertex as a suitable purchaser for the above-mentioned reasons.
34. On the basis of the Proposed Agreement, the Commission concludes that the Divestment Business is being sold in a manner consistent with the Commitments.
35. This decision only constitutes approval of the proposed purchaser identified herein and of the Proposed Agreement. This decision does not constitute a confirmation that Wabtec has complied with its Commitments.
36. This decision is based on Section D of the Commitments attached to the Commission Decision of 4 October 2016.

For the Commission

(Signed)

Johannes LAITENBERGER

Director-General