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EUROPEAN COMMISSION
DG Competition

***Case M.7871 - BOMBARDIER / CDPQ / BOMBARDIER
TRANSPORTATION UK***

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004
MERGER PROCEDURE**

Article 6(1)(b) NON-OPPOSITION
Date: 29/01/2016

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EUROPEAN COMMISSION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

Brussels, 29.1.2016
C(2016) 621 final

PUBLIC VERSION

MERGER PROCEDURE

To the notifying parties:

Dear Sir/Madam,

Subject: Case M.7871 - Bombardier / CDPQ / Bombardier Transportation UK Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004¹ and Article 57 of the Agreement on the European Economic Area²

- (1) On 17 December 2015, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which the undertakings Caisse de dépôt et placement Québec ('CDPQ', Canada) and Bombardier Inc. ('Bombardier', Canada) acquire within the meaning of Article 3(1)(b) and 3(4) of the Merger Regulation joint control of the newly created undertaking Bombardier Transportation (Investment) UK Limited ('BTUK', United Kingdom), by way of acquisition of shares.³

¹ OJ L 24, 29.1.2004, p. 1 ('the Merger Regulation'). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ("TFEU") has introduced certain changes, such as the replacement of 'Community' by 'Union' and 'common market' by 'internal market'. The terminology of the TFEU will be used throughout this decision.

² OJ L 1, 3.1.1994, p.3 ("the EEA Agreement").

³ Publication in the Official Journal of the European Union No C437, 29.12.2015, p. 6.

- (2) CDPQ and Bombardier are designated hereinafter as the 'Notifying Parties' or the 'Parties'.

1. THE PARTIES

- (3) CDPQ is an institutional investor headquartered in Montréal (Canada). CDPQ manages funds primarily for public and para-public pension and insurance plans. CDPQ invests in major financial markets, private equity, infrastructure and real estate, globally.
- (4) Bombardier is a Canadian multinational aerospace and transportation company, engaged in the design, development, manufacture and marketing of aircraft and rail transportation equipment and relating services. Bombardier is headquartered in Montréal (Canada) and listed on the Toronto stock exchange.
- (5) BTUK is a newly-incorporated UK entity. It is currently a wholly-owned indirect subsidiary of Bombardier. Post-transaction BTUK will be the parent holding company of the entities forming currently Bombardier's transportation business offering the full spectrum of rail solutions (rolling stock, maintenance services, system integration, signalling).

2. THE OPERATION AND THE CONCENTRATION

- (6) On 18 November 2015 CDPQ and Bombardier entered into an agreement ('Subscription Agreement') by which CDPQ will acquire a 30 % interest in BTUK, whereas the remaining 70 % of voting rights will remain with Bombardier.
- (7) CDPQ and Bombardier will, however, jointly control BTUK since according to the Shareholder Agreement, CDPQ has special approval rights as regards strategic decisions such as BTUK's budget and business plan and the terms and conditions of the CEO's employment. CDPQ will retain these rights as long as its equity interest in BTUK remains above 10 %.
- (8) The rail transportation business which Bombardier will transfer to BTUK entails the manufacture and supply of rolling stock and stationary equipment, transportation systems and signalling solutions and the supply of services including fleet maintenance, refurbishment and overhaul. BTUK will have a full-time management team dedicated to the day-to-day operation of the business.⁴ It will further have its own board of directors and various committees. BTUK will perform its business on a stand-alone basis. BTUK or its respective subsidiaries will conduct all activities specific to a transportation group: production, design, R&D, supply, maintenance. For this purpose BTUK or its respective subsidiaries will be transferred all the existing Bombardier assets and personnel which currently form Bombardier's transportation business. Finally, BTUK is created for an indefinite period of time.

⁴ The management team will include existing personnel holding a number of functions within Bombardier's transport business including the following functions: President and Chief Operation Officer; Chief Technical Officer; Head of Project Management; Head of Finance; Head of Group Governance; Head of Global Supply Chain; President Rail Control Solutions; Head of Systems and Asia-Pacific division; presidents for three key regions; and Head of Human Resources.

- (9) Consequently, BTUK constitutes a joint venture performing on a lasting basis all the functions of an autonomous economic entity, with its own market presence. Thus, the transaction constitutes a concentration within the meaning of Articles 3(1)(b) and 3(4) of the Merger Regulation.

3. EU DIMENSION

- (10) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million⁵ (CDPQ: [...], Bombardier: EUR 15 137 million). Each of them has an EU-wide turnover in excess of EUR 250 million (CDPQ: [...], Bombardier: [...]), but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State. The notified operation therefore has an EU dimension.

4. COMPETITIVE ASSESSMENT

- (11) The proposed transaction concerns exclusively Bombardier's transportation business to be transferred to BTUK. BTUK's business will therefore comprise the full spectrum of rail solutions (including the design, development, manufacture or delivery and marketing of rolling stock, maintenance services, system integration, signalling).
- (12) There are no horizontal overlaps between CDPQ or the entities controlled by CDPQ and BTUK. A small number of potential vertical relationships arise as a result of CDPQ's joint control over Heathrow Airport Holdings Limited ('Heathrow').⁶ Heathrow owns and operates the Heathrow Express and Heathrow Connect rail link services between Heathrow Airport and central London (UK) and is a potential customer of BTUK.
- (13) Specifically, vertical overlaps may arise in relation to the supply of the following products and services, where Heathrow is an actual or potential customer: (i) supply of regional/commuter trains; (ii) supply of rolling stock maintenance services; (iii) supply of automatic people movers ('APMs'); and (iv) supply of railway signalling. There is, however, no vertically affected market in relation to railway signalling, however defined.

4.1. Relevant product markets

4.1.1. Regional / commuter trains

- (14) The Commission has found in previous cases that the rail transport technology markets can be divided into stationary equipment and rolling stock.⁷
- (15) Within the market for rolling stock supply the Commission has in previous cases further distinguished according to types of rail vehicles. The Commission found in

⁵ Turnover calculated in accordance with Article 5 of the Merger Regulation.

⁶ CDPQ also has joint control over [...]. [...] is not, however, active in the EEA [...]. CDPQ also has a non-controlling minority shareholding in Keolis and Eurostar.

⁷ Cases IV/M.580 *ABB/Daimler-Benz*, COMP/M.5754 *Alstom Holdings/Areva T&D Transmission Activities*.

this regard that separate markets exist, inter alia, for the supply of (i) high speed trains; (ii) electrical multiple and diesel units for intercity (mainline) transport; (iii) electrical multiple and diesel units for regional transport (regional trains); (iv) passenger coaches; (v) trams and light rail vehicles; (vi) underground vehicles/metros; and (vii) stationary equipment.⁸

- (16) Electrical multiple units ('EMU') and diesel multiple units ('DMU') are self-propelling multiple unit trains consisting of several passenger carriages, using electricity/diesel as motive power. No locomotive is used as electric traction motors are incorporated within one or a number of the carriages.⁹
- (17) Regional trains are used for regional rail transit for urban centres and surrounding regions. Regional trains are self-propelled units which operate at a speed of up to 160 km/h. They are built as single or multiple units. The Commission has previously left open whether a distinction should be drawn between EMUs and DMUs regional trains.

4.1.2. *Rolling stock maintenance services*

- (18) The Commission has previously defined separate markets for auxiliary services such as maintenance and refurbishment of rolling stock equipment, with a distinction between (i) light maintenance; (ii) heavy maintenance; and (iii) refurbishment, due to the different equipment, skills and technology required to conduct those services.¹⁰ The Commission also considered that the rolling stock maintenance services market could potentially be analysed together with the supply of new rolling stock, but ultimately left it open whether the supply of maintenance services should be considered as complementary services within one single market with rolling stock supply.¹¹
- (19) The Parties consider the maintenance service market to be separate from the market for rolling stock for the purpose of the notification.
- (20) The market investigation did not provide indications to depart from the Parties' views regarding the relevant product markets for regional / commuter trains, APMs and rolling stock maintenance services.
- (21) In any event, the exact product market definitions can be left open as the Transaction does not raise serious doubts as to its compatibility with the internal market under any alternative market definition.

4.1.3. *APMs*

- (22) APMs are completely automated vehicles that form part of an integrated transit system carrying passengers from one place to another, typically over a short

⁸ Cases COMP/M.2139 – *Bombardier/ADtranz*, para. 7-16; COMP/M.5754 *Alstom Holdings/Areva T&D Transmission Activities*, para. 21-25; COMP/M.3653 - *SIEMENS/VA Tech*, para. 113.

⁹ Case COMP/M.5754 - *Alstom Holdings/Areva T&D Transmission Activities*, para. 24.

¹⁰ Case COMP/M.2139 – *Bombardier/ADtranz*, para. 16.

¹¹ Case COMP/M.2694 – *Metronet/Infraco*, para. 30.

distance. The Commission has found previously that airport APMs form a separate product market.¹² They are used to carry passengers from planes to terminals or between terminals in an airport. As travel times are short and passengers may be carrying luggage, quick loading and unloading are crucial, which is why they are fitted with large doors and little seating capacity. Furthermore, as routes and guidance systems are generally relatively simple.¹³

- (23) The Parties consider the definition of a market for APMs defined only for use in airports as artificially narrow, as equivalent APM transit systems are also used in other comparable contexts. The Parties submit that a metro system could be considered an alternative to an APM and there is nothing particular about an airport location which differentiates these products from those used at other locations.

4.2. Relevant geographic markets

4.2.1. Regional / commuter trains

- (24) As regards regional trains, the Commission had previously considered the market for regional trains to be not wider than national,¹⁴ but has subsequently acknowledged that there are indications of an at least EEA-wide market for electronic multiple units used for regional transport.¹⁵

4.2.2. Rolling stock maintenance services

- (25) The Commission has considered in previous cases that the respective markets for rolling stock maintenance services are national.¹⁶ The Parties do not put forward a different view.

4.2.3. APMs

- (26) The Commission has previously left open if the geographic market for airport APMs is national or wider than national.¹⁷
- (27) As regards the market for APMs the Parties consider the geographic scope of the market to be worldwide, but at least EEA-wide as all major suppliers are able to compete for tenders across the EEA and more widely.¹⁸

¹² Case COMP/M.2139 – *Bombardier/ADtranz*, para. 7.

¹³ Case COMP/M.2139 – *Bombardier/ADtranz*, para. 15.

¹⁴ Case COMP/M.2139 – *Bombardier/ADtranz*, para. 19.

¹⁵ Case COMP/M.5754 - *Alstom Holdings/Areva T&D Transmission Activities*, para. 40-43.

¹⁶ Case COMP/M.2139 – *Bombardier/ADtranz*, para. 26

¹⁷ Case COMP/M.2139 – *Bombardier/ADtranz*, para. 25.

¹⁸ The Parties submit in this context that (i) interested suppliers from across the world, such as MHI, Doppelmayr, Siemens, and others take part in competitive tender processes for APM supplies, and (ii) BT manufactures its APMs in the US; due to relatively low shipping costs a local production location is not an advantage in bidding procedures.

- (28) In any event, the exact geographic scope of the markets concerned can be left open as the Transaction does not raise serious doubts as to its compatibility with the internal market under any alternative market definition.

4.3. Vertically affected markets – competitive assessment

- (29) The proposed transaction will give rise to vertically affected markets between BTUK's upstream supply activities as regards (i) regional/commuter trains; (ii) rolling stock maintenance services; and (iii) APMs and Heathrow's downstream activities.
- (30) Overall, the respondents to the Commission's market investigation did not expect that the proposed transaction would have a substantial impact on the relevant markets or on their own companies.

4.3.1. Supply of regional / commuter trains to Heathrow

- (31) Heathrow operates the Heathrow Express service, and, jointly with Great Western Railway, the Heathrow Connect service. Heathrow owns its own trains, the three sub-surface stations at Heathrow Airport and a short below-ground section of the line between London Paddington and Heathrow Airport. Both of these services use regional/commuter rolling stock, which have been supplied and are serviced by a major European rolling stock supplier under a long-term contract. BTUK's market share on the upstream stream market of supply of regional/commuter trains would be [30-40] % in the EEA and [50-60] % in the UK. Heathrow's share on the procurement market for rolling stock is negligible, accounting currently for only [0-5] % of 4.000 trains in total operating in the UK.
- (32) Given the fact that BTUK will continue to face competition from other major suppliers (including, for example, Siemens, Alstom and Hitachi) and the fact that Heathrow's share of the procurement of regional/commuter trains is de minimis, BTUK will have neither the ability nor the incentive to engage in input or customer foreclosure, even if it were to become the sole supplier of Heathrow.¹⁹

4.3.2. Supply of rolling stock maintenance services

- (33) Heathrow, as a train operator, is a potential customer of BTUK for rolling stock maintenance services. BTUK's market share on the upstream market for rolling stock maintenance would be below 10 % at EEA level and at most [40-50] % at national level in the UK.²⁰ Corresponding to Heathrow's minor share of trains in

¹⁹ A concern was raised during the market investigation as to potentially sensitive information regarding Heathrow's suppliers being passed on by Heathrow to BTUK post-Transaction. In this respect the Commission notes that [description of certain internal company governance measures].

²⁰ The Parties' best estimates on the basis of a five-year average taking into account the specific characteristics of the market for rolling stock supply with infrequent tender processes, long-term contracts, etc. See cases COMP/M.5754 – Alstom Holdings/Areva T&D Transmission Activities, para.73 and COMP/M.2139 – Bombardier/ADtranz, para. 40 where the Commission has considered that for the market for rolling stock supply market shares on a five-year basis are appropriated.

the UK, it accounts only for [0-5]% of the demand for maintenance services in the UK.²¹

- (34) Given the fact that BTUK will continue to face competition from other major service providers (including, for example, Siemens, Alstom and Hitachi) and the fact that Heathrow's share of the procurement of rolling stock maintenance services is de minimis, BTUK will have neither the ability nor the incentive to engage in input or customer foreclosure, even if it were to become the sole supplier of Heathrow.

4.3.3. *Supply of APMs*

- (35) Heathrow operates one APM to shuttle passengers and staff between terminals. This APM was manufactured and is serviced by the business to be transferred to BTUK. The Heathrow APM was the only airport APM ordered in the UK within the past five years, leading to a market share in the UK upstream and downstream markets for both Heathrow and BTUK, of 100 %.²² Heathrow's presence on the global purchasing market for APMs is minor. Even if it was the only customer for airport APMs in the UK during the past five years, it should be borne in mind that the demand for airport APMs is very small and procurement is conducted seldom and in irregular/longer intervals. Thus, Heathrow's presence on the purchasing market in the UK within the five years cannot be considered to be representative. Even if Heathrow was to have a need for further APMs, the other Heathrow shareholders would have no incentive to prefer a BTUK offering.

5. CONCLUSION

- (36) For the above reasons, the European Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation and Article 57 of the EEA Agreement.

For the Commission
(Signed)
Margrethe VESTAGER
Member of the Commission

²¹ Parties' best estimates.

²² BTUK's share would be [60-70]% based on an EEA wide market. BTUK's share would be [30-40]% if the market for APMs is taken to be for all applications, not only airport applications.