



EUROPEAN COMMISSION

DG Competition

***Case M.9779 – ALSTOM / BOMBARDIER
TRANSPORTATION***

Only the English text is available and authentic.

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

Decision on the implementation of the commitments -
Purchaser approval
Date: 30/06/2022



Brussels, 30/06/2022
C(2022) 4744

PUBLIC VERSION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

Alstom SA
48, rue Albert Dhalenne
93400 Saint-Ouen-sur-Seine
France

Dear Sir/Madam,

**Subject: Case M.9779 – ALSTOM / BOMBARDIER TRANSPORTATION
Approval of CAF as purchaser of Alstom’s Mainline Divestment
Businesses (the Coradia Polyvalent Divestment Business and the Talent
3 Divestment Business), following your letter of 3 December 2021 and
the Trustee's opinion of 4 January 2022**

1. FACTS AND PROCEDURE

1.1. Commitments annexed to the Commission decision of 31 July 2020

- (1) By decision of 31 July 2020 (the “Decision”) based on Article 6(1)(b) and Article 6(2) of Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings¹ (the “Merger Regulation”), the Commission declared the concentration whereby Alstom S.A. (“Alstom”) acquires control of the whole of Bombardier Transportation (Investment) UK Ltd, the holding entity for Bombardier Transportation, the global rail solutions division of Bombardier Inc. (“Bombardier Transportation” and, together with

¹ OJ L 24, 29.01.2004, p. 1. 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.

Alstom, the “Parties”) within the meaning of Article 3(1)(b) of the Merger Regulation (the “Transaction”), compatible with the internal market subject to full compliance with the commitments submitted by the Parties and which were annexed to the Decision (the “Commitments”).

- (2) Pursuant to the Commitments, Alstom committed to divest some of the Parties’ assets in the market for self-propelled mainline rolling stock² and in the narrower possible segmentations for regional trains, Electrical Multiple Units³ (“EMUs”), and regional EMUs in France and Germany (the “Mainline Divestment Businesses”). More specifically, the Mainline Divestment Businesses consists of the divestment of: (i) Alstom’s Coradia Polyvalent platform and the Reichshoffen (France) plant (the “Coradia Polyvalent Divestment Business”) and (ii) Bombardier’s Talent 3 platform, and at the option of the purchaser (the “Purchaser”), the sale or lease of the Talent-3 specific carve-out of Bombardier’s Hennigsdorf (Germany) site (“Hennigsdorf Carve-Out Area”), (together the “Talent 3 Divestment Business”).

1.1.1. The Coradia Polyvalent Divestment Business

- (3) The Coradia Polyvalent platform is a mainline platform, currently manufactured in the Reichshoffen plant in France.⁴ To date, it has been sold at regional speeds⁵ [...]. The Coradia Polyvalent platform has received homologation in France, Switzerland, Algeria and Senegal and is currently undergoing homologation in Germany and Romania.
- (4) The Coradia Polyvalent Divestment Business comprises the following main items:⁶
 - The transfer of all Coradia Polyvalent-specific intellectual property rights and documentation at train level, which includes:
 - (i) The transfer of the Coradia Polyvalent industrial design for the external architecture, Coradia Polyvalent-specific patents and intellectual property rights, and
 - (ii) The transfer of Coradia Polyvalent-specific documentation, including know-how comprising the entire set of documentation required to employ and develop the Coradia Polyvalent;⁷

² For the purpose of the present decision, the terms “rolling stock”, “train” and “platform” are considered to have the same meaning.

³ An Electrical Multiple Unit, or EMU, is a multiple unit train consisting of self-propelled carriages, using electricity as the motive power. An EMU requires no separate locomotive, as electric traction motors are incorporated within one or a number of the carriages.

⁴ The Coradia Polyvalent is a versatile platform with a modular design allowing for a 3- to 6-car configuration with different entrance heights and interior layout. It is available in both EMU and bimode traction, and is the only low-floor bimode on the market.

⁵ It is capable of achieving regional (up to 160 km/h) and [...] speeds.

⁶ Schedule 2, The Coradia Polyvalent Divestment Business, point 1.1 and 2.

- The provision of perpetual non-exclusive licenses and supply agreements at the option of the Purchaser for the Coradia Polyvalent-specific application of subsystems and components that are not specific to the Coradia Polyvalent;⁸
- The transfer of the Coradia Polyvalent contracts and associated backlog, whereby Alstom offered to transfer all existing Coradia Polyvalent backlog, subject to customer consent;⁹
- Alstom committed to use commercially reasonable efforts to transfer all agreements with third-party component suppliers relating to the components specific to the Coradia Polyvalent platform for which Alstom relies on third-party suppliers (subject to supplier consent).¹⁰ Absent supplier consent, Alstom committed to procure the relevant components from third-party suppliers for the duration of the Coradia Polyvalent contracts and transfer the components to the Purchaser at cost;¹¹
- The divestment of the Reichshoffen plant, whereby Alstom offered, through a transfer, the divestment of its entire Reichshoffen manufacturing plant located in Bas-Rhin, France (the “Reichshoffen Plant Divestment”);¹²
- The provision of supply and transitional agreements whereby Alstom offered, for a limited period,¹³ at the option of the Purchaser, to (i) supply carbody shells, bogies, and traction systems; (ii) supply TCMS, hardware & middleware; (iii) supply components and subsystems designed by

⁷ Including electrical and mechanical drawings, maintenance plan, copies of homologation documentation, etc.

⁸ Including EMU or bimode traction systems, documentation related to non-Coradia Polyvalent-specific bogies, TCMS components, and traction components.

⁹ This includes (i) the delivery of [...] Coradia Polyvalent trainsets as part of the 2009 frame contract with SNCF (valued at €[...] million), and existing options (Regiolis platforms, the 2009 frame contract being referred as to the “Regiolis Contract”) and (ii) the delivery of [...] Coradia Polyvalent trainsets (valued at €[...] million) as part of the 2019 contract with the Hello Paris Consortium (RATP and Keolis).

¹⁰ Schedule 2, paragraph 2.5 (a).

¹¹ Schedule 2, paragraph 2.6.

¹² Reichshoffen manufacturing plant consists of (i) engineering and manufacturing facilities for various types of rolling stock (newbuild and renovation), warehousing facilities, and testing facilities, together with associated permanent onsite personnel ([...] FTEs); and (ii) subject to customer consent, the transfer of the MI84 renovation project and a subcontract for the carbody shell manufacturing for Metro de Lille.

¹³ Supply agreements for the purpose of fulfilling obligations or potential options under the existing agreements will be concluded for a duration equal to the duration of the underlying agreements with the customers. Supply agreements concerning trains to be supplied for new tenders will be limited to new tenders awarded within five years of closing with the Purchaser and will last for a duration of three years from initial purchase under the relevant supply agreement (Schedule 2, paragraphs 6.2 and 6.3).

Alstom [...]; and (iv) provide transitional services agreements for warranty services and support functions that are currently provided by Alstom's central organization;

- [...]. At the option of the Purchaser, Alstom also committed to provide engineering support for the [...] of components and subsystems that fall outside the current competencies of the Reichshoffen Plant Divestment.

1.1.2. The Talent 3 Divestment Business

- (5) The Bombardier Talent 3 is a mainline train platform belonging to a family of railcars manufactured by Bombardier since 1996 and which design gradually evolved in time, with the platform's new generations. It is a flexible platform capable of achieving regional speeds (up to and including 160 km/h) with electric traction and currently manufactured at Alstom's Hennigsdorf and Bautzen sites in Germany. Talent 3 complies with currently applicable European standards and first entered into service with passengers in November 2020.
- (6) The Talent 3 Divestment Business comprises the following main items:¹⁴
 - The transfer of all Talent 3-specific IP rights and documentation at train level, which includes:
 - (i) The Talent brand, the Talent 3 industrial design, Talent 3-specific patents, and related intellectual property rights in the form of an exclusive and perpetual license;
 - (ii) The transfer of Talent 3-specific documentation, including know-how comprising the entire set of documentation required to employ and develop the Talent 3 including for bogies, propulsion, carbodies, and TCMS;¹⁵
 - The provision of perpetual non-exclusive licenses and additional assets and services that are not specific to the Talent 3 Platform, at the option of the Purchaser;¹⁶
 - The transfer of all Talent 3 contracts and associated backlog, subject to customer agreement;¹⁷

¹⁴ Schedule 3, The Talent 3 Divestment Business, points 1.1 and 2.

¹⁵ Including electrical and mechanical drawings, copies of homologation documentation, etc.

¹⁶ Including patents / right for train design shared with other Bombardier products, documentation for bogies including a license to use the FLEXX Compact 3 bogies platform, etc.

¹⁷ Schedule 3, paragraph 3.2.

- Alstom committed to use commercially reasonable efforts to transfer all agreements with third-party component suppliers relating to the components specific to the Talent 3 platform for which Alstom relies on third-party suppliers (subject to supplier consent).¹⁸ Absent supplier consent, Alstom committed to procure the relevant components from third-party suppliers for the duration of the Talent 3 contracts and transfer the components to the Purchaser at cost.¹⁹
 - At the option of the Purchaser, Alstom offered to sell or lease the production and services areas and warehouse of its Hennigsdorf site located in Germany;
 - The provision of supply and transitional agreements whereby Alstom offered, at the option of the Purchaser and for a limited period²⁰ a number of additional assets and services to facilitate the Purchaser’s manufacturing and testing of the Talent 3. This includes: (i) testing services and track access at Hennigsdorf; (ii) equipment for wheelset/bogies final assembly and car bodyshell erection; (iii) Talent 1 and Talent 2 documentation, installed bases, existing service agreements and potential liabilities; (iv) assembled bogies and propulsion; and (v) engineering support for subsystems including carbodies and TCMS circuit boards production for Talent 3.
- (7) The Commitments further state that Alstom committed to provide engineering support [...] for all components, sub-components, and subsystems that fall outside the current competencies of the divestment of the Hennigsdorf Carve-Out Area.

1.2. Proposal of a purchaser

- (8) By letter of 3 December 2021 to the Commission, Alstom proposed the company Construcciones y Auxiliar de Ferrocarriles, S.A. (“CAF”) for approval as a purchaser of the Mainline Divestment Businesses (the “Reasoned Proposal”) and submitted a copy of a signed binding promissory note (the “Put Option Agreement or POA”). The POA includes, in appendix, a draft firm and definitive purchase agreement (the “Sales and Purchase Agreement” or “SPA”) which Alstom and CAF are still in the process of finalizing. All of these documents (together the “Transaction Agreements”) are subject to the present decision to approve CAF as the Purchaser of the Mainline Divestment Businesses by the Commission (the “Divestment Transaction”).
- (9) On 4 January 2022, the trustee monitoring the implementation of the Commitments, Advolis (the “Trustee”), separately submitted an assessment of

¹⁸ Schedules 2, paragraph 2.5 (a) and Schedule 3, paragraph 2.4 (a).

¹⁹ Schedule 3, paragraph 2.5.

²⁰ Supply agreements for the purpose of fulfilling obligations or potential options under the existing agreements will be concluded for a duration equal to the duration of the underlying agreements with the customers. Supply agreements concerning trains to be supplied for new tenders will be limited to new tenders awarded within five years of closing with the Purchaser and will last for a duration of three years from initial purchase under the relevant supply agreement (Schedule 3, paragraphs 5.2 and 5.3).

CAF's suitability as the purchaser of the Mainline Divestment Businesses (the "Reasoned Opinion"). In the Reasoned Opinion, the Trustee indicated that, although the ancillary agreements to the SPA are not fully finalised with a number of outstanding points to be discussed by Alstom and CAF, the remaining open points are limited enough not to affect its assessment of the terms of the Divestment Transaction against the Commitments. In that regard, the Trustee considers that all the criteria set out in paragraph 16 of the Commitments are met and that the Mainline Divestment Businesses would be sold in a manner consistent with the Commitments.

- (10) The acquisition of the Mainline Divestment Businesses by CAF was separately notified to the Commission on 2 May 2022 and subsequently unconditionally cleared by decision of 25 May 2022.²¹
- (11) By correspondence of 20 May 2022, the Trustee informed the Commission of the positive developments in the negotiations between Alstom and CAF in relation to, among others, the transfer of Talent 3 personnel, the pricing of the Talent 3 supply agreement and the Coradia Reverse supply agreement specifications.

2. ASSESSMENT OF THE PURCHASER PROPOSAL

- (12) According to the Commitments the purchaser of the Mainline Divestment Businesses must be independent and unconnected to Alstom and have the financial resources, proven expertise, and incentive to maintain and develop the business as a viable and active competitive force in the EEA.

2.1. Legal framework

- (13) Pursuant to Section D of the Rolling Stock Commitments (the "ROS General Commitments"), in order to approve CAF as a purchaser of the Mainline Divestment Businesses, the Commission has to verify that CAF fulfils the purchaser criteria set in clauses 15 and 16 of the Commitments and that the Mainline Divestment Businesses are sold in a manner consistent with the Commitments. In particular, the Commission must ensure that:
 - a. CAF is independent of and unconnected to Alstom and its affiliated undertakings (this being assessed having regard to the situation following the divestiture);
 - b. CAF has the financial resources, proven expertise and has the incentive and ability to maintain and develop the Divestment Businesses as a viable and active competitive force in competition with the Parties and other competitors. CAF's proven expertise is assessed in light of its experience and track record as a supplier of rolling stock in the EEA, as evidenced, inter alia, by prior sales and references;

²¹ Commission Decision in Case M.10616 – CAF/Coradia Polyvalent Business/Talent 3 Business (2022).

- c. The acquisition of the Divestment Businesses by CAF must neither be likely to create, in light of the information available to the Commission, prima facie competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed. In particular, CAF must reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Mainline Divestment Businesses.

2.2. Description of the proposed purchaser

- (14) CAF is a company headquartered in Beasain, Spain, and is listed on the Spanish stock market. CAF specializes in the design and manufacture of integrated systems for rolling stock and operates industrial factories in Spain, France, the UK, US, Brazil and Mexico. CAF is active globally in supply of rolling stock, maintenance services, engineering, railway signalling, as well as electric and hybrid buses.

2.2.1. Independence from Alstom

- (15) Pursuant to clause 15 (a) of the Commitments, in order to be approved as a purchaser by the Commission, CAF must be independent of and unconnected to Alstom and its affiliated undertakings. Based on the information provided by Alstom²², the Commission considers that Alstom and CAF are independent of, and unconnected to, each other.
- (16) First, Alstom and CAF do not own any mutual shareholding interest, as they have no cross-shareholdings nor cross-directorships.
- (17) Second, the Commission notes that Alstom and CAF have some commercial relationships. However, these commercial relationships do not go beyond a limited number of consortia and supply agreements, which are common practice within the industry.
- (18) More specifically, in the EEA, these relationships are limited to (i) a consortium with Bombardier Transportation²³ formed prior to Alstom's acquisition of Bombardier Transportation, (ii) a number of project-specific supply agreements for components, and (iii) CAF's provision of testing services for rolling stock to Alstom and Bombardier Transportation through the entity Centro de Ensayos y Análisis Cetest, S.L. Furthermore, the Commission notes that the acquisition by CAF of the Mainline Divestment Businesses will create additional commercial links between the parties such as [...], supply and transitional agreements.
- (19) However, the Commission considers that these commercial relationships do not entail any dependence of CAF on Alstom.
- (20) As described in the Commission clearance M.9779 – Alstom/Bombardier Transportation, consortia between train suppliers are frequent in the markets for mainline rolling stock. Likewise, numerous supply agreements are regularly concluded between the market participants for the provision of various

²² Section III.A of Alstom's Reasoned Proposal submitted on 3 December 2021.

²³ In 2021, RATP selected the consortium of CAF/Bombardier (against Alstom) to supply 146 trains to be operated by RATP and SNCF on the RER B suburban line in Paris, France.

components. Considering CAF in particular, the concerned agreements with Alstom represent a limited share of its turnover (on average between [0-10]% and [10-20]% depending on the year considered). In that context, given the prevalence of consortia and supply agreements in the industry, and Alstom's limited importance in CAF's activities, these ongoing and upcoming commercial links between Alstom and CAF remain limited and insufficient to cast doubt on CAF's independence vis-à-vis Alstom.

- (21) In addition, the Commission considers that the [...], supply and transitional agreements stemming from the Commitments will not negatively affect the independence of the Mainline Divestment Business. To the contrary they intend and contribute to improving the viability and competitiveness of the Mainline Divestment Business by providing CAF with the necessary technical support to meet customer requirements and gain customers' confidence in particular during the start-up period following its acquisition.²⁴ This will, in turn, allow CAF to compete efficiently with the Mainline Divestment Business in future projects based on its track record. Besides, the Commission notes that the supply and transitional agreements stemming from the Commitments may be concluded at CAF's option only, for a limited period,²⁵ excluding non-necessary and/or long-term links between CAF and Alstom.
- (22) In that regard, the Trustee confirms that those ties are necessary to ensure the medium-term viability of the Mainline Divestment Businesses site and, in particular, necessary to allow the gradual disentangling of the Reichshoffen site and Talent 3 platform from Alstom.²⁶
- (23) On the basis of the above, the Commission considers that CAF is indeed independent of and unconnected to Alstom and its affiliated undertakings and that any possible ties do not put such independence into question.

2.2.2. Financial resources, proven expertise, and incentive and ability to maintain and develop the Mainline Divestment Businesses as a viable and active competitor

- (24) Pursuant to clause 15 (b) of the Commitments, in order to be approved as a purchaser by the Commission, CAF must have the financial resources, proven expertise and have the incentive and ability to maintain and develop the Mainline Divestment Businesses as a viable and active competitive force in competition with Alstom and other competitors.

²⁴ [...].

[...].

²⁵ Supply agreements concerning trains to be supplied for new tenders will be limited to new tenders awarded within five years of Closing and will last for a duration of three years from initial purchase under the relevant supply agreement (Schedule 2, paragraphs 6.2 and 6.3 and Schedule 3, paragraphs 5.2 and 5.3.).

²⁶ Reasoned Opinion, page 36.

2.2.2.1. Financial resources

- (25) In terms of financial resources, Alstom submits that CAF has a robust financial position with a turnover of EUR 2.762 billion in 2020. Alstom further indicates that the broad diversification of products and geographical areas in which CAF operates²⁷ have enabled it to mitigate the effects of the Covid-19 pandemic in 2020 in spite of the total or partial mandatory stoppage of production at various plants. In particular, CAF did not experience any contract or tender opportunity cancellations and the increase in activity in the second half of 2020 allowed CAF to grow its consolidated revenues by 6% year-on-year to EUR 2.762 billion for the full year 2020, which represented its all-time peak after four consecutive years of growth.. In terms of profitability, CAF's FY 2020 EBITDA stood at EUR 201 million, which amounts to a positive margin on turnover of 7.3% and is in line with industry standards. CAF's backlog amounted to EUR 8.807 billion, which is more than 3 years of annual revenues.
- (26) Based on the information provided by Alstom, the Commission notes that, on 30 June 2021, CAF had (i) [...], sufficient to cover the needs of the Mainline Divestment Businesses acquisition.²⁸ CAF, therefore, does not need any external financing and intends to finance the acquisition from its own resources. The acquisition is thus not conditional on any external financing arrangements and the agreed consideration will be paid in cash immediately upon closing.
- (27) In addition to the above, at CAF's request and for the benefit of the Reichshoffen Site, as part of the SPA²⁹ negotiated between the Parties, Alstom has undertaken to provide a significant amount of manufacturing hours from [...] and engineering hours³⁰ (per financial year) from[...].³¹ In addition, Alstom will provide [...] on a number of contracts.³² Such contractual commitments will contribute to and increase the financial resources already at CAF's disposal to maintain and develop the competitiveness of the Mainline Divestment Businesses.³³
- (28) The Trustee also confirms that CAF has a robust financial position.³⁴ In that respect, the Trustee underlines that CAF is a healthy profitable undertaking that enjoys a sound financial position in particular with regard to available liquidity. The Trustee further indicates that CAF liquidities have increased over the years 2017 to 2020 from EUR 606 million to EUR 1.1 billion and that it demonstrates

²⁷ According to Alstom, in 2020, CAF's exports represented approximately 90% of sales.

²⁸ Reasoned Proposal, paragraph 15.

²⁹ Paragraphs 14.12 and 14.13 of the SPA.

³⁰ Engineering hours correspond to the time (specified in hours) spent by certified engineers on specific projects requiring such expertise in particular when "traction current is switched off and trains are not running" as per the industrial customary definition.

³¹ Reasoned Proposal, paragraph 35. Respectively [...] and [...]. If new contracts are awarded to the Reichshoffen Site, the workload to be provided by Alstom will be reduced accordingly.

³² Alstom will guarantee CAF a minimum [...].

³³ Section 3.1.3. of the Reasoned Opinion.

³⁴ Section 5.2.1. of the Reasoned Opinion.

CAF's stable financial position. In addition, the Trustee confirms that CAF has [...] what is required to carry out the acquisition of the Mainline Divestment Businesses.³⁵

- (29) In the light of the above, the Commission considers that CAF's financial resources are sufficient to maintain and develop the Mainline Divestment Business as a viable and active competitive force in competition with Alstom and other competitors going forward.

2.2.2.2. Proven expertise

- (30) Pursuant to Clause 15(b) of the Commitment, the Purchaser's proven expertise is assessed in light of its experience and track record as a supplier of rolling stock in the EEA, as evidenced, inter alia, by prior sales and references.
- (31) In that regard, the Commission notes that CAF is a multinational engineering and rolling stock manufacturer with more than 100 years of experience in the rolling stock industry. CAF's rolling stock is operated in over 40 countries. In Europe alone, CAF won rolling stock projects in Belgium, Estonia, France, Germany, Hungary, Finland, Luxembourg, Italy, Ireland, the Netherlands, Norway, Portugal, Romania, Spain, Serbia, Sweden, and the UK. It offers a comprehensive portfolio, including rolling stock, components, infrastructure, signalling, and services (maintenance, refurbishing, and financial services).
- (32) Considering mainline rolling stock more specifically, CAF offers and operates a diverse mainline rolling stock portfolio, including both regional and intercity platforms in the EEA³⁶. CAF offers several traction options, including alternative energy solutions. In the EEA, CAF has won mainline projects in Spain, Italy, the Netherlands, Sweden, and recently, in France and Germany. CAF's EEA-based mainline rolling stock customers include SNCF and RATP in France, VRR in Germany, Regione Friuli Venezia Giulia and Ferrotramviaria in Italy, NS in the Netherlands, Renfe and Euskotren in Spain, and AB Transitio in Sweden. In fact, CAF's home-base Spain only accounted for [...] of CAF's revenues in 2020, demonstrating CAF's success as a European player.
- (33) Based on this experience, and considering CAF's integration plans for the Mainline Divestment Businesses, the Trustee also considers that CAF has the necessary industrial expertise to consolidate the Mainline Divestment Businesses within its wider organisation as well as to maintain and develop them as viable and active competitive forces in competition with Alstom and other competitors.³⁷
- (34) In the light of the above, the Commission considers that CAF has the proven expertise to maintain and develop the Mainline Divestment Business as a viable and active competitive force in competition with Alstom and other competitors going forward.

³⁵ Section 5.2.1. of the Reasoned Opinion.

³⁶ Mainline trains such as the Civity Nordic, the Civity XL or the Comfort 200.

³⁷ Section 5.2.2 of the Reasoned Opinion.

2.2.2.3. Incentive and ability

- (35) The Commission notes that CAF's business strategy is focused on expanding its competitive position in the EEA.³⁸ The Commission thus notes that CAF has every incentive and the ability to maintain and develop the Mainline Divestment Businesses as a viable and active competitive force to win tenders across the EEA.
- (36) First, with respect to the **Coradia Polyvalent Divestment Business**, CAF has a particular focus on the French market, evidenced by its acquisition of the whole of CFD Bagnères in 2010, which included a manufacturing plant in Bagnères de Bigorre in France. CAF's enduring commitment to this market eventually led the company to win its first French contract in 2019, proving CAF's ability to win tenders for mainline trains in France.³⁹
- (37) In that respect, the Trustee points out that CAF considers the acquisition of the Coradia Polyvalent Divestment Business to be strategic and beneficial from a long-term profit perspective [...].
- (38) Indeed, while CAF won a second mainline EMU project in France⁴⁰ (for regional EMUs) in 2021, it participated in this project with Bombardier Transportation, [...]. The acquisition of the Mainline Divestment Businesses will [...] provide CAF with additional manufacturing capabilities and the ability to effectively compete on a standalone basis with a versatile and homologated platform.⁴¹ The Coradia Polyvalent platform will provide CAF with a framework agreement with a significant French client (SNCF) and will ensure workload for the Reichshoffen plant in the short term.
- (39) In that context, together with its current business in Bagnères de Bigorre, CAF targets revenues in France of more than EUR [...] million and a French rolling stock market share of [...]%. In order to achieve this objective, CAF plans to invest further in the Reichshoffen site over the next [0-10] years to upgrade the plant's manufacturing capabilities to [...].⁴²
- (40) Second, with respect to the **Talent 3 Divestment Business**, CAF is also increasingly targeting other European mainline rolling stock markets and, in particular, Germany. In that respect, the Trustee indicates that CAF does not seek to [...]. On this basis, CAF has already identified [...] opportunities in the German market for CAF trains [...].⁴³ As such, CAF will be in a position to [...] as a basis for future product development.

³⁸ See, e.g., CAF's July 2017 presentation to investors ("On Track to deliver shareholder returns"), noting CAF's goal for "[f]urther penetration in European mainline market (new bids to large incumbent operators; participation in large-contract bids)", page 15 ("A strong foundation for growth"), available at: <https://www.caf.net/pdf/CAF-investor-presentation-july17.pdf>.

³⁹ Commission Decision in Case M.9779 – Alstom/Bombardier Transportation of 31 July 2020, paragraph 208.

⁴⁰ <https://www.caf.net/en/sala-prensa/nota-prensa-detalle.php?e=323>

⁴¹ Section 5.2.3 of the Trustee's Reasoned Opinion of 4 January 2022.

⁴² Section III.B.3 of Alstom's Reasoned Proposal submitted on 3 December 2021.

⁴³ Section 5.2.3 of the Trustee's Reasoned Opinion of 4 January 2022.

- (41) Following multiple attempts and bids over the past 10 years, CAF eventually succeeded in entering the German mainline rolling stock market in 2021 with a BEMU (or Battery Electric Multiple Unit)⁴⁴ project.⁴⁵ It is in that context that the Talent 3 Divestment Business will allow CAF to (i) expand its position in Germany where it ambitions to grow to [...] % of the market, (ii) enter the [...] market, and (iii) participate in additional [...] projects.
- (42) CAF's track record shows that it has a clear strategic incentive to compete with and win share from existing competitors, including Alstom. In that respect, the Trustee considers that the Mainline Divestment Business' assets put CAF in a promising position to expand its portfolio and to broaden its footprint, in particular in the French and German markets.
- (43) Finally, the Commission notes that certain commercial aspects of the Divestment Transaction have not been resolved at the time of the present decision. This includes, in particular, [...] and, (ii) the financial conditions of the split of work between Alstom and CAF within the draft consortium agreements (as described in paragraphs 54 to 56 below).
- (44) However, the Commission considers that the scope of ongoing negotiations does not affect the viability of the Mainline Divestment Businesses and thus CAF's ability to operate and develop the Mainline Divestment Businesses for the following main reasons.
- (45) [...].
- (46) [...].⁴⁶
- (47) Besides, the Commission notes that CAF, once confirmed as the Purchaser, is expected to [...]. In that regard, CAF's Strategic Plan⁴⁷ indicates that [...].
- (48) [...].⁴⁸
- (49) In the light of the above, the Commission considers that CAF has the incentive and ability to maintain and develop the Mainline Divestment Business as a viable and active competitive force in competition with Alstom and other competitors going forward.

⁴⁴ A BEMU is an electrically driven multiple unit or railcar whose energy is derived from rechargeable batteries driving the traction motors

⁴⁵ ZV VRR (Zweckverband Verkehrsverbund Rhein-Ruhr) and NWL (Zweckverband Nahverkehr Westfalen-Lippe), transport operators in the North Rhine-Westphalia state, selected CAF to supply 63 battery-powered trains (LTO), and to render maintenance services for the fleet for a term of 30 years (order intake value of c. EUR 400 million): <https://www.caf.net/en/sala-prensa/nota-prensa-detalle.php?e=342>.

⁴⁶ Trustee's Report of 22 June 2022 and Trustee's e-mail of 24 June 2022.

⁴⁷ "Project Percy, Strategic Plan", page 25 as submitted by CAF to the Commission in December 2021.

⁴⁸ Trustee's Report of 22 June 2022 and Trustee's e-mail of 24 June 2022.

2.2.2.4. Conclusion on CAF's financial resources, proven expertise and incentives to maintain and develop the Mainline Divestment Businesses as a viable and active competitor

(50) On the basis of the above considerations, the information provided by Alstom and taking into account the Reasoned Opinion submitted by the Trustee, the Commission concludes that CAF has sufficient financial resources, proven expertise and the incentive and ability to maintain and develop the Mainline Divestment Businesses as a viable and active competitive force in competition with Alstom and other competitors.

2.2.3. Absence of *prima facie* competition concerns and any other risk that could delay the implementation of the Commitments

2.2.3.1. Absence of *prima facie* competition concerns

(51) Pursuant to clause 15(c) of the Commitments, the acquisition of the Mainline Divestment Businesses by the purchaser must neither be likely to create *prima facie* competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed. In particular, the purchaser must reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition.

(52) The Divestment Transaction does not meet the jurisdictional thresholds under the European Union's Merger Regulation but does meet the filing thresholds in Austria, France, and Germany. On 10 January 2022, the Commission received a request from Alstom and CAF to assume jurisdiction to review the concentration as per Article 4(5) of the Merger Regulation. Since no Member State competent to examine the concentration under its national competition law has expressed its disagreement within the period of 15 working days provided by Article 4(5) of the Merger Regulation, the concentration is deemed to have a Union dimension.

(53) The Commission subsequently assessed the acquisition by CAF of the Mainline Divestment Businesses in Case M.10616 – CAF/Coradia Polyvalent Business/Talent 3 Business and reached the conclusion on 25 May 2022 that the Divestment Transaction did not raise serious doubts as to its compatibility with the internal market with respect to CAF's and the Mainline Divestment Businesses' activities in any relevant market in the EEA. On that basis, the Commission unconditionally approved the acquisition of the Mainline Divestment Business by CAF.

2.2.3.2. Absence of any other risk that could delay the implementation of the Commitments

(54) [...].

(55) [...].

- (56) The Trustee investigated the risk of possible implementation delays that may result from the [...]. The Trustee considered reasonable to dismiss such risks on the basis of main following elements: [...].⁴⁹ The Trustee further confirmed that [...].
- (57) With respect to any other possible risk of delay of the implementation of the Commitments such as, for instance, possible protracted discussions between CAF and Alstom about some commercial aspects of the Divestment Transaction (see paragraphs (43) to (48)), the Commission considers that, based on its own assessment of these various elements (including of the way Alstom has proposed to contractually resolve them) and that of the Trustee⁵⁰, none of these elements would jeopardize CAF's incentive and ability to maintain and develop the Mainline Divestment Businesses as a viable and active competitor and therefore its ability to implement the Commitments.

2.2.3.3. Conclusion on the absence of *prima facie* competition concerns and any other risk that could delay the implementation of the Commitments

- (58) On the basis of the above considerations, the information provided by Alstom and taking into account the Reasoned Opinion submitted by the Trustee, the Commission concludes that there is no *prima facie* competition concern or any other risk that could delay the implementation of the Commitments.

2.2.4. Conclusion on the purchaser criteria

- (59) On the basis of the above considerations and the information provided by Alstom, and taking into account the Reasoned Opinion submitted by the Trustee, the Commission concludes that CAF meets all purchaser criteria set out in clauses 15 and 16 of the Commitments.

3. ASSESSMENT OF THE TRANSACTION AGREEMENTS

- (60) The Mainline Divestment Businesses transaction agreements comprise: (i) the Put Option Agreement, (ii) the Sales and Purchase Agreement, and (iii) all their annexes and ancillary agreements.
- (61) Notwithstanding the fact that some of these documents are still in draft form, the Trustee has conducted a thorough review and considers that the finalisation of those documents will be based on key principles agreed between Alstom and CAF and compliant with the Commitments. The Trustee further confirms that the only outstanding points in those documents have no bearing on compliance with the Commitments and that, as such, the documents fulfil the conditions of the Commitments to transfer the Mainline Divestment Businesses to CAF.⁵¹
- (62) Two main adaptations from the Commitments must however be highlighted.
- (63) First, Bombardier encountered important delays and homologation issues concerning the Talent 3 mainline train platform in Austria, which eventually led to

⁴⁹ Section 5.3.2 of the Trustee's Reasoned Opinion of 4 January 2022.

⁵⁰ Trustee's Report of 22 June 2022 and Trustee's e-mail of 24 June 2022.

⁵¹ Section 4 of the Trustee's Reasoned Opinion of 4 January 2022.

the termination of the Austrian customer's (Österreichische Bundesbahnen, "ÖBB") call-offs. Following the termination of these purchase orders, the scope of the Talent 3 Divestment Business was adjusted whereby, in agreement with CAF, the transfer of all Talent 3 customer contracts were excluded and the number of Talent 3 employees transferring to the purchaser materially reduced.⁵²

- (64) Based on the Trustee's assessment, the Commission considers that, while the adjustments modify the Talent 3 perimeter envisaged in the Talent 3 Divestment Business, it would be disproportionate for CAF to take over all remaining Talent 3 contracts, including the liabilities, homologation issues and limited sales prospects. In addition, the Commission notes that the scope of the divested Talent 3 assets has been re-defined with CAF's agreement.
- (65) [...].
- (66) [...].⁵³
- (67) On the basis of the above considerations and the information provided by Alstom, and taking into account the Reasoned Opinion submitted by the Trustee, the Commission concludes that the transaction agreements are consistent with the Commitments and that, accordingly, the Mainline Divestment Businesses are being sold in a manner consistent with the Commitments.

4. CONCLUSION

- (68) On the basis of the above assessment, the Commission approves CAF as a suitable purchaser of the Mainline Divestment Businesses.
- (69) Moreover, on the basis of the Transaction Agreements, the Commission further concludes that the Mainline Divestment Businesses are being sold in a manner consistent with the Commitments.
- (70) This decision only constitutes approval of the proposed Purchaser identified in this decision and of the Transaction Agreements. This decision does not constitute a confirmation that Alstom has complied with the Commitments.
- (71) This decision is based on clauses 15 and 16 of the Commitments attached to the Commission Decision of 31 July 2020.

For the Commission

(Signed)
Olivier GUERSENT
Director-General

⁵² The Talent 3 assets as detailed in the Definitions of the SPA comprise mainly [...].

⁵³ [...].