



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: 29/03/2022



EUROPEAN COMMISSION

Brussels, 29.03.2022
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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 Where possible the information omitted has been replaced by ranges of figures or a general description.

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**Subject: Case M.9779 – Alstom / Bombardier Transportation
Approval of Hitachi as purchaser of Bombardier’s scope of the Zefiro V300
platform, following your letter of 10 December 2021 and the Trustee’s
opinion of 4 February 2022**

Dear Sir or Madam,

1. FACTS AND PROCEDURE

- (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”) within the meaning of Article 3(1)(b) of the Merger Regulation, compatible with the internal market subject to full compliance with the

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.

commitments submitted by Alstom and which were annexed to the Decision (the “Commitments”).

- (2) Pursuant to the Commitments, Alstom committed to divest Bombardier’s scope of the Zefiro V300 platform (the ‘Very High-Speed Divestment Business’). The Very High-Speed Divestment Business comprises the following:
- **Zefiro V300 Platform.** The exclusive right to develop, improve, manufacture and commercialise Bombardier’s scope of the Zefiro V300 platform as currently manufactured for and operated by Trenitalia (and, in the near future, ILSA)². In that regard, Alstom offered to transfer all Zefiro V300-specific IP rights and documentation relating to Bombardier’s scope.³ Besides, Alstom offered a non-exclusive, irrevocable and perpetual license of IP rights and documentation that are not Zefiro V300-specific;⁴
 - **Engineering personnel.** The transfer of up to [...] Zefiro V300 engineers and, at the option of the Purchaser, sub-system engineering support (e.g., through training, secondments, etc.);
 - **Vado Ligure site.** At the Purchaser’s option, the sale or lease of Vado Ligure facility, including engineering, production, and aftermarket services capabilities;
 - **Additional assets.** At the option of the Purchaser:
 - *Zefiro brand.* The Zefiro brand, subject to a license back for the Zefiro Express;
 - *Stock.* Bombardier’s current stock of Zefiro V300-specific components and spare parts;
 - *Maintenance personnel.* Up to [...] maintenance execution personnel and up to [...] maintenance engineering, customer service and support staff currently involved in providing maintenance services to Trenitalia for the Zefiro V300;
 - *Maintenance diagnostics software.* A non-exclusive license for Bombardier’s train maintenance diagnostic software tools limited to V300 Zefiro applications;
 - **Zefiro V300 projects and associated backlog with existing customers.** At the option of the Purchaser, Alstom offered to transfer, subject to customer consent, its contractual interest in supply and maintenance contracts for

² The Zefiro V300 platform means the Zefiro V300 train configuration committed or existing in respect of the Trenitalia projects and the ILSA project existing at the date of closing (as defined in the Commitments), together with such further modifications as may be agreed with the Purchaser such as in respect of any updates required for TSI 2019 compliance.

³ This includes all Zefiro V300-specific platform- and component-related IP rights, IP rights relating to the overall train design, vehicle architecture and vehicle safety and the application layer of sub-systems.

⁴ This includes platform descriptions and all platform-specific mechanical and electrical drawings and specifications necessary to fully understand and manufacture the platform and Zefiro V300-specific sub-systems and components.

Zefiro V300 projects with Trenitalia and ILSA, including backlog (the “Existing Projects”), and its interest in any new agreements related to the exercise of options, call-offs, and any follow-on orders by Trenitalia or ILSA;

- **Supply agreements.** The transfer, at the option of the Purchaser, of all supply agreements with external suppliers for main components or services for Bombardier’s scope of the Zefiro V300 for the Existing Projects (including by transferring all relevant IP and procurement specifications), subject to any applicable consent rights;
 - **Transitional arrangements.** Alstom offered to put in place transitional arrangements, including (i) continuing to perform its supply obligations for all Existing Projects, and (ii) entering into temporary supply or licensing agreements with the Purchaser in respect of (a) options, calls offs or follow-on orders by Trenitalia or ILSA, or future very high speed⁵ orders for which Trenitalia (or any consortium in which Trenitalia will be the operator) issues a call for tender within [...] years of Closing and (b) future very high speed bids submitted within [...] years of Closing (the “Transitional Arrangements”). The Transitional Arrangements will last [...].
- (3) By letter of [...] to the Commission, Alstom proposed Hitachi Rail STS S.p.A.⁶ for approval as a purchaser of the Very High-Speed Divestment Business (the “Reasoned Proposal”) and submitted a copy of a Framework Agreement (the “Framework Agreement”) signed on 30 November 2021. The Framework Agreement includes, in appendix, draft ancillary agreements which Alstom and Hitachi are still in the process of finalising (together the “Transaction Agreements”). The acquisition by Hitachi of the Very High-Speed Divestment Business and the terms of the Transaction Agreements are conditional on the present decision to approve Hitachi as the Purchaser of the Very High-Speed Divestment Business by the Commission (the “Divestment Transaction”).
- (4) On 4 February 2022, Advolis, the trustee monitoring the implementation of the Commitments (the “Trustee”), submitted an assessment of Hitachi’s suitability as the purchaser of the Very High-Speed Divestment Business (the “Reasoned Opinion”). In the Reasoned Opinion, the Trustee indicated that, although the ancillary agreements to the Framework Agreement are not fully finalised, the open points currently being discussed by Alstom and Hitachi are limited enough not to affect its assessment of the terms of the 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 Very High-Speed Divestment Business would be sold in a manner consistent with the Commitments.

⁵ Very high-speed means projects or tenders, as applicable, involving the supply of trains that are required to be certified for operation at speeds of at least 300 km/h.

⁶ Hitachi Rail STS S.p.A. is a subsidiary of Hitachi Rail, Ltd (together with its subsidiaries, “Hitachi Rail”). Hitachi Rail, Ltd is a wholly owned subsidiary of Hitachi, Ltd (“Hitachi”), a Japanese stock company. Hitachi is the ultimate parent entity of a Japanese multi-national conglomerate headquartered in Tokyo (the “Hitachi Group”).

2. ASSESSMENT OF THE PROPOSAL

2.1. Legal framework

- (5) Pursuant to Section D of the Rolling Stock Commitments (the “ROS General Commitments” in order to approve Hitachi as a purchaser of the Very High-Speed Divestment Businesses, the Commission has to verify that Hitachi fulfils the purchaser criteria set in clause 15 of the Commitments and that the Very High-Speed Divestment Business is sold in a manner consistent with the Commitments. In particular, the Commission must ensure that:
- a. Hitachi is independent of and unconnected to Alstom and its affiliated undertakings (this being assessed having regard to the situation following the divestiture);
 - b. Hitachi has the financial resources, proven expertise and has the incentive and ability to maintain and develop the Very High-Speed Divestment Business as a viable and active competitive force in competition with the Parties and other competitors. Hitachi’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;
 - c. The acquisition of the Very High-Speed Divestment Business by Hitachi 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, Hitachi Rail must reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Very High-Speed Divestment Business.

2.2. Description of the proposed purchase

- (6) Hitachi Rail is an engineering provider and rolling stock manufacturer based in Italy.
- (7) Hitachi Rail has been active in the rolling stock industry for more than 100 years. Its rolling stock is currently operated in 38 countries. Hitachi Rail supplies high-speed and very high-speed trains, mainline trains, metros, tramways, monorails, driverless trains, and battery trains. Hitachi Rail has made significant inroads in rolling stock in the past years, effectively competing against historically large players such as Siemens, Alstom, and Bombardier and winning significant orders across the EEA.⁷
- (8) With respect to very high-speed rolling stock specifically, Hitachi Rail is the leading consortium partner for the Zefiro V300 platform operated in Italy and Spain, alongside Alstom (Bombardier). On 9 December 2021, the consortium Hitachi/Alstom (Bombardier) won the HS2 very high-speed project in the United Kingdom.⁸ In addition to its consortium with Bombardier for the Zefiro V300 platform, Hitachi Rail (and more generally, Hitachi Group) also won other (very) high speed projects in Italy (with the ETR700 platform), Japan and Taiwan (with the Series E7, Series N700 and Series E5 platforms, in consortium with Kawasaki).

⁷ Reasoned Proposal, paragraphs 11 and 12.

⁸ Announced on 9 December 2021.

- (9) Hitachi Rail's industrial footprint in the EEA currently spans manufacturing sites in France and Italy (Tito, Pistoia, Napoli, Reggio Calabria). Outside the EEA, Hitachi Rail has manufacturing facilities in the United Kingdom (Newton Aycliffe), USA (Miami, Batesburg), and Japan (Kasado and Mito Works). It also holds 10 maintenance facilities globally.
- (10) Beyond rolling stock, Hitachi Rail's portfolio also includes components, infrastructure, signalling (through its 2015 acquisition of Ansaldo) and services (maintenance, refurbishing, and financial services).

2.2.1. *Independence from Alstom*

- (11) Pursuant to clause 15 (a) of the Commitments, in order to be approved as a purchaser by the Commission, Hitachi must be independent of and unconnected to Alstom and its affiliated undertakings. Based on the information provided by Alstom⁹, the Commission considers that Alstom and Hitachi are independent of, and unconnected to, each other.
- (12) First, Alstom and Hitachi do not own any substantial mutual shareholding interest. Hitachi has no direct or indirect capital interest in Alstom and Alstom has no direct or indirect capital interest in Hitachi. In addition, there is no common company holding a stake of 5% or greater in both Alstom's and Hitachi's shareholdings. Besides, Alstom and Hitachi have a limited number of shareholdings in the same companies, namely:¹⁰
 - a. [...].
 - b. [...]¹¹.
- (13) Overall, these mutual shareholding are very limited in scope and represent a negligible common commercial interest. As such, they do not cast doubt on Hitachi's independence vis-à-vis Alstom.
- (14) Second, the Commission notes that Alstom and Hitachi have some commercial relationships. However, these commercial relationships do not go beyond the industry's common practice.
- (15) In the EEA, these concern (i) consortia formed between Bombardier Transportation and Hitachi Rail/Ansaldo for the Trenitalia, ILSA and HS2 very high-speed projects, (ii)[...]; (iii) the M5 public-private partnership (supply of technology for the Milan metro line 5); (iv) the Tram di Firenze S.p.A. tram public-private partnership; (v) the Saturno Consortium (for the supply of signalling equipment for the Italian High Speed network); (vi) a temporary grouping for the deployment of ETCS wayside in Italy; (vii) the Alstom/Hitachi Italy Consortium for the ERTMS in Central-Southern Italy, and (viii) a number of project-specific supply agreements especially in signalling. Furthermore, the Commission notes that the acquisition by Hitachi of the Very High-Speed Divestment Business would create additional commercial links

⁹ Section III.A of Alstom's Reasoned Proposal submitted on [...].

¹⁰ Reply to the request for information dated 4 March 2022, paragraphs 2.1. and 2.2.

¹¹ Frameca is a consortium between multiple rolling stock suppliers, including Alstom, SGTE, Colas Rail, ETF-Eurovia Travaux Ferroviaires, Siemens, Thales, Hitachi and private shareholder Jean-Pierre Bertrand (reply to the request for information dated 22 March 2022).

between the parties in the form of transitional and non-transitional supply agreements or IP right licenses.

- (16) As described in the Decision, consortia between train suppliers are frequent in the markets for very high-speed rolling stock. Likewise, numerous supply agreements are regularly concluded between market participants for the provision of various components. In that context, given the prevalence of consortia and supply agreements in the industry, the Commission considers that these ongoing and coming commercial links between Alstom and Hitachi do not jeopardise Hitachi's independence vis-à-vis Alstom.¹²
- (17) In addition, the Commission considers that the supply and transitional agreements as well as the IP right licences stemming from the Commitments will not negatively affect the independence of the Very High-Speed Divestment Business. To the contrary, their purpose is to improve the viability and competitiveness of the Very High-Speed Divestment Business by providing Hitachi with the necessary technical support to meet customer requirements and gain customers' confidence, which will, in turn, allow Hitachi to compete efficiently with the Very High-Speed Divestment Business on a stand-alone basis in future projects. Besides, the Commission notes that the supply and transitional agreements stemming from the Commitments may be concluded at Hitachi's option only, for a limited period,¹³ excluding non-necessary and/or long-term links between Hitachi and Alstom.
- (18) In that regard, the Trustee confirms that those ties are necessary to allow the gradual disentangling of the Very High-Speed Divestment Business from Alstom. The Trustee therefore confirms that Hitachi is independent from Alstom.¹⁴
- (19) On the basis of the above, the Commission considers that Hitachi is independent of and unconnected to Alstom and its affiliated undertakings and that any possible existing ties are not in any way putting such independence into question.

2.2.2. *Financial resources, proven expertise, and incentive and ability to maintain and develop the Very High-Speed Divestment Business as a viable and active competitor*

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

2.2.2.1. Financial resources

- (21) Hitachi is a multi-national conglomerate headquartered in Tokyo whose market capitalisation amounted to approximately EUR [...] billion in January 2021. The group achieved a net revenue of EUR [...] billion in 2021. The business segment 'mobility', which comprises the business units 'building systems' and 'railway systems', achieved revenues of EUR [...] billion in 2020. As pointed out by the Trustee, the Rolling Stock sub-unit, which includes the manufacturing of very high-

¹² The Commission notes that [...].

¹³ Schedule 1, provisions B. 3. and B. 4.

¹⁴ Reasoned Opinion, page 30.

speed trains, lost [...] of its revenues between 2018 and 2020 (EUR [...] billion down to EUR [...] billion). However, Hitachi provides in its annual reports a positive outlook despite the business disruption caused by the Covid-19 pandemic, and refers to recent significant wins with high speed projects in Europe and Japan. In addition, Hitachi reports a worldwide backlog across all railway subunits¹⁵ of YEN [...]tr (equal to roughly EUR [...] billion).¹⁶

- (22) Hitachi is a healthy profitable undertaking that enjoys a sound financial position. Hitachi's operating cash-flow climbed [...] in 2020 starting from EUR [...] in 2018. Hitachi's debt/equity ratio rose from [...] in 2018 to [...] in 2020.¹⁷ However, this ratio is still below [...], which proves a healthy financial position. Furthermore, Hitachi's R&D expenses amounted to [...] in 2020 at group level,¹⁸ which represents a stable investment compared to the years 2019 and 2018.
- (23) In that context, Hitachi intends to settle the purchase price of [...] from its own resources. In its annual report for the FY 2021, Hitachi reports cash and cash equivalents at end of the year of [...],¹⁹ which supports the view that Hitachi's financial resources are largely sufficient to support and develop the Very High-Speed Divestment Business going forward.
- (24) The Trustee confirms that Hitachi has a robust financial position.²⁰
- (25) In light of the above, the Commission considers that Hitachi's financial resources are largely sufficient to maintain and develop the Very High-Speed Divestment Business as a viable and active competitive force in competition with Alstom and other competitors going forward.

2.2.2.2. Proven expertise

- (26) Pursuant to Clause 15(b) of the Commitments, 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.
- (27) Beyond Hitachi's historic experience in the rolling stock industry, as described above, the company demonstrates a remarkable expertise in the provision of (very) high-speed rolling stock, and the Zefiro V300 in particular.
- (28) In that regard, the Decision states that "*Hitachi is the only supplier who has the technical and commercial knowledge of the Zefiro V300 platform.*"²¹ More specifically, Hitachi has been Bombardier's partner in the development and manufacture of the Zefiro V300 platform since its beginning in 2010. Hitachi's contribution to the production of the Zefiro V300 platform is critical, as it accounts for between [...] and [...] of the scope of work depending on the project

¹⁵ Business Unit Railway Systems, Rolling Stock, Services & Maintenance and Signalling & Turnkey.

¹⁶ Reasoned Opinion, pages 12-13.

¹⁷ Reasoned Opinion, page 12.

¹⁸ R&D expenses in Hitachi's business segment mobility (which includes Hitachi's railway business unit) amounted to [...] in 2020.

¹⁹ Reasoned Opinion, pages 30-31.

²⁰ Reasoned Opinion, page 31.

²¹ Decision, paragraph 1329.

considered.²² Therefore, Hitachi has been the leading partner in the consortium with Bombardier, and its contribution includes fundamental aspects of the platform supply such as customer relationship, final assembly, delivery, and contract and project management. As a consequence, considering Hitachi's involvement in the Zefiro V300 platform, no other supplier but Hitachi has a comparable knowledge and know-how of the development, production and commercialisation processes of the platform. In that context, Hitachi appears to be the most suitable and reliable purchaser of the Very High-Speed Divestment Business.

- (29) In addition, Hitachi also proved its capability to provide (very) high-speed platforms on a standalone basis in Italy (ETR 700) on in consortium with another operator (Kawasaki) in Japan (Series N700 and Series E5) and Taiwan (Series E7), proving that Hitachi's knowledge and expertise in the provision of (very) high-speed trains goes beyond the scope of the Zefiro V300 platform.
- (30) The Trustee confirms Hitachi's expertise, and considers that Hitachi essentially takes over a business where it is already active. The Trustee further notes that Hitachi's current involvement in the contract execution, its experience cooperating with Alstom and the close relationship with customers should enable Hitachi to successfully integrate the Very High-Speed Divestment Business into its current organisation.²³
- (31) In the light of the above, the Commission considers that Hitachi has the proven expertise to maintain and develop the Very High-Speed Divestment Business as a viable and active competitive force in competition with Alstom and other competitors going forward.

2.2.2.3. Incentive and ability

- (32) The Commission notes that Hitachi's business strategy has a clear focus on [...], as evidenced by its recent win of the HS2 project in December 2021 (in consortium with Alstom (following its integration of Bombardier, Hitachi's former consortium partner).²⁴ Furthermore, as noted by the Trustee, and allowed by the Commitments,²⁵ Hitachi required in the Framework Agreement signed with Alstom that Hitachi should be entitled, at its sole discretion, to autonomously manufacture the [...] remaining trains to be delivered to Trenitalia,[...].²⁶ This clearly demonstrates Hitachi's ambition to expand its scope and develop the very high-speed business on a standalone basis in the future.
- (33) These findings are in line with the Commission's assessment in the Decision, where it considered that Hitachi is the supplier with the strongest incentives to further develop and operate the Zefiro V300 platform. Indeed, the Zefiro V300 is the only very high-speed platform currently operated by Hitachi in the EEA, for which the

²² The 2010 Trenitalia (Italy) project and the 2018 ILSA (Spain) project, as well as the more recent HS2 project, which was awarded to the consortium Hitachi/Bombardier (now Alstom) in 2021.

²³ Reasoned Opinion, page 31.

²⁴ At the time of the Decision, the possibility for the Hitachi/Bombardier consortium to win the HS2 tender post-merger was anticipated by Alstom and the Commission.[...].

²⁵ Schedule 1, provisions A. 1.2 (e) and B. 2.2 (d).

²⁶ Reasoned Opinion, page 22. On 17 May 2019, Trenitalia and the consortium Hitachi/Bombardier entered into an amendment agreement whereby the consortium would supply 14 addition Zefiro V300 platforms. [...].

company made considerable investments for the past 10 years. Given the opportunities related to the ongoing contracts for the Zefiro V300 platform,²⁷ the Commission considers that Hitachi's investments in the platform should not decrease in the foreseeable future. To the contrary, the past and recent successes of the Zefiro V300 platform (and its revised version in the context of the HS2 tender) in Italy, Spain and the United Kingdom increase Hitachi's incentives to maintain and further develop the platform in the future.

- (34) Besides, the Commission notes that Hitachi showed a strong interest in being the purchaser of the Very High-Speed Divestment Business early in the divestment process, has and had already signed Memorandum of Understanding with Alstom and Bombardier prior to the Decision, on 8 July 2020.
- (35) Finally, the Commission considers that, for the reasons explained in Section 2.2.2.2 of this decision, Hitachi has the ability to supply the Zefiro V300 platform and further develop the Very High-Speed Divestment Business.
- (36) The Trustee concludes that Hitachi has the ability and incentive to maintain and develop the Very High-Speed Divestment Business as a viable and active competitive force in competition with Alstom and other competitors.²⁸
- (37) In the light of the above, the Commission considers that Hitachi has the incentive and ability to maintain and develop the Very High-Speed Divestment Business as a viable and active competitive force in competition with Alstom and other competitors going forward.

2.2.2.4. Conclusion on Hitachi's financial resources, proven expertise and incentives and ability to maintain and develop the Very High-Speed Divestment Business as a viable and active competitor

- (38) On the basis of the above considerations, of the information provided by Alstom and taking into account the Reasoned Opinion submitted by the Trustee, the Commission concludes that Hitachi has sufficient financial resources, proven expertise and the incentive and ability to maintain and develop the Very High-Speed Divestment Business 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*

- (39) Pursuant to clause 15 (c) of the Commitments, the acquisition of the Very High-Speed Divestment Business 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.

²⁷ For instance, in September 2021, Hitachi (without Alstom as partner) concluded a 30-year full maintenance service contract with ILSA for its 20 very high-speed train fleet. Pursuant to clause 3.10 (j) of the Framework Agreement, Hitachi will be autonomously responsible for the contract execution.

²⁸ Reasoned Opinion, page 31.

- (40) Based on Alstom’s estimate, the Commission notes that Hitachi’s market shares on the markets for very high-speed level will remain limited after the acquisition of the Very High-Speed Divestment Business:[10-20]% at EEA level and below [10-20]% at global level.²⁹ Furthermore, the Commission notes that Hitachi is already the leading (in Italy) or equal consortium partner for the supply of the Zefiro V300 platform, which contributes to limiting the change of the market structure.
- (41) Likewise, the Trustee considers that competition concerns can be excluded *prima facie*.³⁰
- (42) Regarding necessary regulatory approvals, the Divestment Transaction does not meet the jurisdictional thresholds under the Merger Regulation. It meets the filing thresholds in Italy, where it was notified on 18 February 2022 to the Italian Competition Authority. The Italian Competition Authority subsequently assessed the acquisition by Hitachi of the Very High-Speed Divestment Business and issued an unconditional clearance decision on 15 March 2022.³¹
- (43) Furthermore, as outlined by the Trustee, the Divestment Transaction is required to obtain the clearance of the “Golden Power”³² Authority in Italy. However, the Trustee does not identify this obligation as a risk that could delay the implementation of the Divestment Transaction.
- (44) 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 are no *prima facie* competition concerns or any other risk that could delay the implementation of the Commitments.

2.2.4. Conclusion on the purchaser criteria

- (45) 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 Hitachi meets all purchaser criteria set out in clauses 15 and 16 of the Commitments.

3. ASSESSMENT OF THE TRANSACTION DOCUMENTS

- (46) Pursuant to clause 16 of the ROS General Commitments, “[t]he Sale and Purchase Agreement(s) (as well as ancillary agreements) relating to the divestment of any of the Divestment Businesses shall be conditional on the Commission’s approval”. More specifically, Alstom must be able to demonstrate to the Commission that the

²⁹ Estimation based on the order intakes for the period 2011-2021. In line with the Decision, global level does not include China, Japan and South Korea.

³⁰ Reasoned Opinion, page 32.

³¹ Case C12433 HITACHI RAIL STS/RAMO DI AZIENDA DI ALSTOM HOLDINGS.

³² The Golden Power Authority means the Italian "*Presidenza del Consiglio dei Ministri*" (Presidency of the Council of Ministers) or any other office, department or branch of the Italian Government which is competent, under the Golden Power legislation, to issue and release the Golden Power clearance (Framework Agreement, Schedule 2.1). The Golden Power legislation refers to the power of the Italian government to limit or stop foreign direct investments and corporate transactions involving Italian strategic assets. All transactions falling within the field of application of the Golden Power legislation must be reported in advance to the Italian Presidency of the Council of Ministers.

Very High-Speed Divestment Business is being sold in a manner consistent with the Commission's Decision and the Commitments.

- (47) As indicated in paragraph (3), Alstom and Hitachi signed the Framework Agreement on 30 November 2021 and are still in the process of finalising the draft ancillary agreements annexed to the Framework Agreement. Alstom indicates that the ancillary agreements [...].³³ Accordingly, Alstom and Hitachi have not yet executed the ancillary agreements.
- (48) The Commission notes that, although the ancillary agreements are not fully finalised yet, the Parties have reached a general agreement on all the main items of the Commitments, as reflected by the scope of the assets transferred defined in the Framework Agreement. As indicated by Alstom, the remaining topics to be discussed between Alstom and Hitachi concern practical arrangements³⁴. Alstom further indicates that the final ancillary agreements will be based on principles agreed between Alstom and Hitachi and which are compliant with the Commitments.³⁵ The Trustee confirmed that (i) the provisions of the Framework Agreement reflect the Commitments, (ii) the final drafts of the ancillary documents are based on principles that are consistent with the Commitments and (iii) the only outstanding points in those documents have no bearing on compliance with the Commitments.³⁶ As such, the Trustee notes that the documents fulfil the conditions of the Commitments to transfer the Very High-Speed Divestment Business to Hitachi.³⁷
- (49) The Commission addresses below three specific items in the Framework Agreement between Alstom and Hitachi, which do not jeopardise the compliance of the Transaction Agreements with the Commitments.
- (50) First, Hitachi chose not to exercise its right to acquire the Vado Ligure site. Considering that, pursuant to the Commitments, the sale or lease of the Vado Ligure facility could be exerted "*at the Purchaser's option*", the Commission considers that the exclusion of the Vado Ligure site from the scope of the Very High-Speed Divestment Business does not contradict the scope of the Very High-Speed Divestment Business as defined in the Commitments. Moreover, the Commission notes that Hitachi already holds manufacturing sites in Italy (i.e., in Tito, Pistoia, Napoli, and Reggio Calabria) capable of manufacturing rolling stock platforms including very high-speed trains.
- (51) Second, Hitachi will not take over the totality of the engineers and maintenance personnel included by the Very High-Speed Divestment Business³⁸. As explained by Alstom, this partial transfer stems from the fact that, as allowed by the Commitments, Alstom and Hitachi have agreed that Alstom would continue executing its scope for the (i) existing rolling stock orders placed under the 2010

³³ Reasoned Proposal, paragraph 15.

³⁴ Such as [...].

³⁵ Reply to the request for information dated 4 March 2022, paragraph 1.3.

³⁶ Reasoned Opinion, page 17 and email from Advolis to the Commission on 22 March 2022.

³⁷ Reasoned Opinion, page 17.

³⁸ Which include (i) [...] engineers transferred out of a possible transfer of up to [...] Zefiro V300 engineers under paragraph 1.2 (b) of the Very High-Speed Divestment Business; (ii) [...] employees transferred out of a possible transfer of up to [...] maintenance execution and maintenance engineering personnel, as well as [...] additional FTE with the Vado Ligure site.

Trenitalia project (including the 2019 amendment) and the 2020 ILSA project, and (ii) 2014 Trenitalia maintenance project.³⁹ Consequently, as allowed by the Commitments, Hitachi did not require a full transfer of the rolling stock engineers included in the Commitments.

- (52) The Commission considers that the partial transfer of personnel will not limit Hitachi's ability to manufacture and operate the Zefiro V300 platform on a standalone basis going forward. Indeed, the transfer includes the most important FTEs, [...].⁴⁰ Besides, at Hitachi's request, Alstom will transfer rolling stock know-how [...].⁴¹ The Trustee also notes that [...].
- (53) Third, the Transaction Agreements [...], in particular in relation to PPC ([...])⁴² and hardware ALS/CBM controller.⁴³ Alstom considers that licencing this IP to Hitachi would [...].⁴⁴
- (54) The Commission recalls that the Very High-Speed Divestment Business, as offered by Alstom and accepted by the Commission in the Decision aims to give Hitachi the necessary tangible and non-tangible assets and knowledge to ensure Hitachi's ability to compete on a standalone basis.⁴⁵ In that regard, Alstom must implement the necessary measures to achieve this goal, including the IP licensing of those concerned core technologies if no alternative satisfying solution would enable Hitachi to compete efficiently on a standalone basis. More specifically, the Commission notes that Alstom's [...]. The latter set out that Alstom commits to either transfer IP (if it is Zefiro V300 specific) or provide a non-exclusive license to the relevant IP (if it is used by several platforms). The Commitments further state that "*Bombardier [Alstom] will retain the IP rights to core components, e.g., power modules, control software, and traction battery system.*" However, the Commission does not consider that this provision precludes Alstom from licencing the concerned non-Zefiro specific IP to Hitachi.
- (55) In that context, the Commission notes that Alstom and Hitachi reached an agreement which is considered acceptable for both Parties.

³⁹ To be more specific (i) the 2010 Trenitalia project (signed on 30 September 2010) refers to the construction and supply of 50 Zefiro V300 platforms to Trenitalia, including called options and variation orders signed; (ii) the 2019 amendment [...] refers to the addition of 14 Zefiro V300 platforms to be manufactured and supplied to Trenitalia; (iii) the 2020 ILSA project refers to the construction and supply of 20 Zefiro V300 to the ILSA Consortium; and (iv) the 2014 Trenitalia maintenance project refers to the full maintenance service of Trenitalia's Zefiro V300 fleet. Alstom's and Hitachi's agreement regarding Alstom's involvement in the execution of these contracts is in line with the Commitments. Indeed, as set out in provision B. 2.1 of Schedule 1, Bombardier (Alstom) will use reasonable best efforts to transfer its interest in any contracts, options, call-offs or follow-on orders (including orders not yet exercised) with existing customers, i.e., Trenitalia and ILSA, "[a]t the option of the Purchaser, and subject to customer consent and applicable law."

⁴⁰ [...].

⁴¹ Reply to the request for information dated 4 March 2022, paragraph 5.3.

⁴² [...].

⁴³ The propulsion system (also called the Propulsion & Power Control or PPC) is a rolling stock sub-system which allows electrical energy to be converted to mechanical energy and propel a vehicle. It integrates components such as induction machines and transformers, as well as insulated-gate bipolar transistors. ALS and CBM controller (active centring system for railway vehicles, which improves the curving behaviour of the train and the decrease of the lateral acceleration perceived by the passenger in curves).

⁴⁴ Reply to the request for information dated 4 March 2022, paragraph 4.4.

⁴⁵ See for instance paragraph 1338 of the decision M.9779.

- (56) More specifically, the arrangement on PPC⁴⁶ includes, as set out in the Commitments, a non-exclusive license for PPC components. The only exception concerns [...], for which Alstom and Hitachi agreed that Hitachi will be supplied with these equipment/components through a long-term supply agreement⁴⁷ [...].
- (57) Similarly, pursuant to the Commitments, the arrangement on ALS/CBM controller foresees that [...].⁴⁸
- (58) The Commission considers that Alstom's and Hitachi's overall arrangement regarding PPC equipment/components and ALS/CBM controller is acceptable.
- (59) The non-exclusive license for PPC components and the long-term supply agreement [...] will allow Hitachi to produce the complete propulsion system and traction converter subsystem to carry out the ongoing very high-speed contracts. Alstom specifies that Hitachi will own the complete system and interface specification, and will be free to mix components or sub-systems. It will also ensure [...].⁴⁹ In the mid-term, the agreement will enhance Hitachi's incentives to develop its own solutions and knowledge regarding these core components independently from Alstom, as indicated by Hitachi to the Trustee, to take full control of the Zefiro V300 platform.⁵⁰
- (60) In addition, no specific concerns have been raised by Alstom or the Trustee regarding a potential refusal from [...] to conclude a supply agreement with Hitachi [...]. As explained by the Trustee, [...].⁵¹ Besides, the Commission notes that the supply agreement for software application will contribute to increasing Hitachi's independence vis-à-vis Alstom. In any event, Alstom indicated to the Commission that, were [...] to refuse concluding a similar agreement with Hitachi, Alstom could offer similar services to Hitachi.⁵²
- (61) As regard ALS/CBM controller, the non-exclusive license will allow Hitachi to make changes to the ALS/CBM algorithms and create a new version of the high-level software going forward in order to produce and test trains independently. Alstom will provide training support to Hitachi on how to create this new release of the high-level software.⁵³ Concerning the supply of ALS, CBM (and IMS) hardware with the low-level software already installed, Alstom indicated that the companies [...] (for ALS) and [...] (for CBM and IMS) are keen to provide Hitachi with the concerned components.⁵⁴ Hitachi will therefore source those components from a third-party separate from Alstom, which will reinforce its ability to compete on a standalone basis going forward.
- (62) Finally, the Commission notes that these arrangements have been mutually agreed between Alstom and Hitachi.

⁴⁶ Definition of PPC is explained in footnote 43.

⁴⁷ Similarly, long-terms agreements will be signed between Alstom and Hitachi regarding [...].

⁴⁸ Schedule 3.6(b) of the Framework Agreement and reply to the request for information dated 4 March 2022, paragraph 3.1.

⁴⁹ Reply to the request for information dated 4 March 2022, paragraph 4.1.

⁵⁰ Reasoned Opinion, page 16.

⁵¹ Reasoned Opinion, page 20.

⁵² Reply to the request for information dated 4 March 2022, paragraph 4.8.

⁵³ Reply to the request for information dated 4 March 2022, paragraph 3.4.

⁵⁴ Reply to the request for information dated 4 March 2022, paragraph 3.10.

- (63) Consequently, the Commission considers that these provisions , although they do not constitute a non-exclusive license of IP rights for PPC (noble parts) and ALS/CBM hardware, will not impair the viability and competitiveness of the Very High-Speed Divestment Business and Hitachi's ability to manufacture and operate the Zefiro V300 platform on a standalone basis going forward. They are adequate substitutes and are therefore in line with the Commitments.
- (64) 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 Very High-Speed Divestment Business is being sold in a manner consistent with the Commitments.

4. CONCLUSION

- (65) On the basis of the above assessment, the Commission approves Hitachi as a suitable purchaser of the Very High-Speed Divestment Business.
- (66) On the basis of the Proposed Agreements, the Commission further concludes that the Very High-Speed Divestment Business is being sold in a manner consistent with the Commitments.
- (67) 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.
- (68) 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