Dear Margrethe,

Case COMP M.8677 – Siemens/Alstom

We are writing to you in relation to the ongoing investigation by the European Commission (the **Commission**) into the proposed merger of the mobility business of Siemens AG (**Siemens**) with Alstom SA (**Alstom** and, together with Siemens, the **Parties**) (the **merger**).

The merger brings together two particularly large and well-established players within the European railways supply chain, and the markets in which the Parties compete are critical to the supply of transportation services provided to consumers and businesses across the EEA. The Parties are a consistently strong presence across these markets, often holding a significant incumbency advantage (through the proprietary technology that they possess and their established track record). The Parties have historically been important innovators and are well-placed to leverage their existing advantages within evolving or emerging markets as the railway sector develops over the coming years. All in all, competition between the Parties has been (and, without the merger, would continue to be) a particularly important driver of cost-effective pricing and product and service innovation within the European railways sector.

The Commission's investigation (as reflected in the Statement of Objections issued on 29 October 2018) has found that the merger raises very significant competition concerns within a large number of markets, and is likely to lead to increased prices or lower quality products and services for consumers across the EEA.

We share these concerns. Indeed, while the competition concerns raised by the merger vary between different Member States, we consider that the overall loss of competition brought about by the merger would be both widespread and very significant.

We are aware that the Commission has been working extensively to explore remedies that might eliminate these concerns. It is clear, however, that the remedies ultimately offered by the Parties fall far short of what would be required to address all concerns to the required standard.

We are concerned, in particular, that the Parties' proposal to remedy the concerns that arise in the supply of very high-speed rolling stock (*i.e.*, the type of trains used on routes such as the Eurostar between the UK, France, Belgium and The Netherlands, the Thalys between France, Belgium and The Netherlands, and are currently under procurement for the High Speed 2 (**HS2**) railway in the UK) falls well short of what is required. The Commission's investigation has found that the Parties are, and have been for some time, by far the two largest suppliers of very high-speed rolling stock in the EEA, with both holding and maintaining a broad product portfolio and significant customer base, and competing very closely for tenders. Barriers to entry and expansion for new or emerging players are very significant and customers have little bargaining power that could protect them against price rises. It is clear, therefore, that this is a market in which the merger raises very serious and extensive competition concerns.

Concerns of such a grave nature require a very substantial remedy, typically the full divestment of one or other of the merging parties' overlapping businesses to a suitable buyer who could recreate the competitive rivalry lost through the merger. However, the Parties' offer in this case seems to fall short of that standard, as well as suffering from a number of other defects liable to undermine its effectiveness in practice. The remedy proposed is therefore unlikely to eliminate the competition concerns identified by the Commission and will leave the Parties' combined businesses facing insufficient competition in ongoing and future tenders.

Remedies offered to address other concerns, such as those in relation to signalling products and services, also seem to suffer from serious defects that may materially undermine their effectiveness. Many of these markets are characterised by strong incumbency advantages, which make the risks around the carve-out and transfer of a divestment package particularly significant. These risks are exacerbated where important elements of the Parties' existing businesses (such as key intangible assets) would not be fully transferred to the purchaser. It would also be difficult, given the strength, capabilities, and presence of the Parties across the EEA, for purchasers of those divestment packages to operate those assets with the same competitive intensity as the Parties do at present. Behavioural aspects of remedies, such as technology transfers, are also difficult to monitor, and therefore give rise to particularly acute risks in markets (such as those within the signalling sector) that can be susceptible to the abuse of dominance by established incumbents that refuse to appropriately grant access to critical technology.

In light of these shortcomings in the remedies offered by the Parties – and the risks around their effective implementation – we consider that they should not be considered to meet the Commission's requirements for acceptable remedies (which, of course, require all remedies to "*eliminate the competition concerns entirely*" and be "*comprehensive and effective from all points of view*").

Finally, as the Commission's investigation enters its final stages, we wish to reiterate our appreciation for the level of cooperation between the Commission and our authorities throughout the case, which we consider has been invaluable in helping to ensure that the interests of consumers across the EEA remain at the heart of merger control.

Yours sincerely,

Andrea Coscelli
CEO – Competition and Markets Authority

Prof. em. Dr. Jacques Steenbergen
President - Belgian Competition Authority

José María Marín Quemada
President - Comisión Nacional de los Mercados y la Competencia

T.M. Snoep
Chairman - The Netherlands Authority for Consumers and Markets