

ANTICIPATED ACQUISITION BY HITACHI RAIL, LTD. OF THALES SA'S GROUND TRANSPORTATION SYSTEMS BUSINESS

Issues statement

17 January 2023

The reference

1. On 23 December 2022, the Competition and Markets Authority (**CMA**), in exercise of its duty under section 33(1) of the Enterprise Act 2002 (the **Act**), referred the anticipated acquisition by Hitachi Rail, Ltd. (**Hitachi**) of Thales SA's Ground Transportation Systems business (**Thales**) (the **Merger**) (together, the **Parties** or, for statements referring to the future, the **Merged Entity**) for further investigation and report by a group of CMA panel members (the **Inquiry Group**).
2. In exercise of its duty under section 36(1) of the Act, the CMA must decide:
 - (a) Whether arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation; and
 - (b) if so, whether the creation of that relevant merger situation may be expected to result in a substantial lessening of competition (**SLC**) within any market or markets in the United Kingdom (**UK**) for goods or services.

Purpose of this issues statement

3. In this issues statement, we set out the main issues we are likely to consider in reaching a decision on the SLC question (paragraph 2(b) above), taking into account the evidence available to us to date, including the evidence obtained in the CMA's phase 1 investigation, and further evidence that will be obtained during our phase 2 investigation. This does not preclude the consideration of any other issues which may be identified during the course of our investigation.

4. The CMA's phase 1 decision (the **Phase 1 Decision**)¹ contains much of the detailed background to this issues statement. We are publishing this issues statement to assist parties submitting evidence to our phase 2 investigation.
5. As noted above, this issues statement sets out the main issues we are likely to consider in our investigation and we invite parties to notify us if there are any additional relevant issues which they believe we should consider.

Background

The Parties

6. Hitachi is a provider of transport solutions such as rolling stock, rail signalling systems and related services and maintenance both on a worldwide and UK basis. Hitachi is a wholly owned subsidiary of Hitachi, Ltd (**Hitachi Group**), the ultimate parent entity of a multi-national conglomerate headquartered in Tokyo and listed on the Tokyo and Nagoya Stock Exchanges.
7. Hitachi Group's turnover in the financial year 2021 was approximately £[REDACTED]billion worldwide and approximately £[REDACTED]million in the UK.
8. Thales is the Ground Transportation Systems business of Thales SA, active in the supply of rail signalling solutions and ancillary activities, such as integrated communication and supervision solutions, and revenue collection systems in the transport sector on a worldwide and UK basis. Thales SA is headquartered in Paris and listed on the Euronext Paris.
9. Thales' turnover in the financial year 2021 was approximately £[REDACTED]worldwide and approximately £[REDACTED]in the UK.
10. The Parties overlap in the supply of mainline rail signalling and urban signalling systems.
11. Mainline signalling systems are fundamental to the safe and efficient operation of modern railways, directing traffic and keeping trains apart to prevent collisions. The purpose of a signalling system is to determine the position of trains on the network, control their direction and signal to the driver when it is safe to proceed to the next section of track. Signalling systems also have a role to play in increasing capacity on the network, which is already constrained, by allowing more trains to run safely.² These systems comprise a number of separate sub-systems, including: (i) interlockings, which are the principal safety critical component of mainline rail signalling systems; (ii) automatic train protection (**ATP**) systems, including both wayside systems

¹ Available on the case page: [Hitachi / Thales merger inquiry - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/cases/hitachi-thales-merger-inquiry).

² ORR, [Signalling market study \(Final Report\)](#), November 2021, page 1.

(installed alongside the track) and on-board units (**OBUs**) (installed on mainline rolling stock), which ensure that trains comply with the instructions issued by the interlockings and that they travel at appropriate speeds; and (iii) operation and control systems (**OCS**), which are IT solutions designed to ensure the overall management of railway networks.

12. Urban signalling systems are railway signalling systems used for local passenger rail transit, encompassing metro and light rail and tram (**LRT**) networks. These are designed to ensure safety on urban rail networks by preventing collisions and excessive speeds, as well as improving network capacity.

The transaction

13. On 3 August 2021 Hitachi entered into an option agreement with Thales SA to acquire Thales for €1.66 billion. Hitachi and Thales subsequently executed a Sale and Purchase Agreement (**SPA**) on 10 February 2022.³
14. The Parties informed the CMA that the Merger is also the subject of review by various competition authorities, including the European Commission.

Our inquiry

15. Below we set out the main areas of our intended assessment in order to help parties who wish to make representations to us.

Assessment of the competitive effects of the Merger

Jurisdiction

16. We shall consider the question of jurisdiction in our inquiry.
17. In the case of an anticipated merger, a relevant merger situation exists where the following conditions are satisfied:⁴
 - (a) Two or more enterprises⁵ have ceased to be distinct; and
 - (b) Either:

³ Final Merger Notice (**FMN**) submitted to the CMA on 13 October 2022, Sections 1-10, paragraph 2.1, and Annex Q2.001.

⁴ [Section 23](#) of the Act.

⁵ An enterprise is defined under [section 129\(1\)](#) of the Act as the activities, or part of the activities, of a business. A business includes a professional practice and any other undertaking which is carried on for gain or reward, or which supplies goods or services otherwise than free of charge.

- (i) the value of the target enterprise's UK turnover exceeded £70 million in its last fiscal year (the **turnover test**); or
 - (ii) the enterprises ceasing to be distinct have a share of supply in the UK, or in a substantial part of the UK, of 25% or more in relation to goods or services of any description.
18. In the Phase 1 Decision, the CMA found that it is or may be the case that it had jurisdiction to review the Merger on the basis that the two enterprises (ie Hitachi and Thales) will cease to be distinct on completion of the SPA. The value of the turnover of the enterprise being taken over exceeds £70 million in the UK in 2021, and as such the turnover threshold is met.⁶
19. The CMA therefore currently believes that it is or may be the case that arrangements are in progress or contemplation which, if carried into effect, will result in the creation of a relevant merger situation.

Counterfactual

20. We will compare the prospects for competition resulting from the Merger against the competitive situation without the Merger: the latter is called the 'counterfactual'. The counterfactual is not a statutory test but rather an analytical tool used in answering the question of whether a merger gives rise to an SLC.⁷
21. For anticipated mergers the CMA generally adopts the prevailing conditions of competition as the counterfactual against which to assess the impact of the merger. In the Phase 1 Decision, the CMA found no evidence supporting a different counterfactual, but we welcome any evidence in relation to this question.
22. The counterfactual assessment will often focus on significant changes affecting competition between the merger firms, such as entry into new markets in competition with each other, significant expansion by the merger firms in markets where they are both present, or exit by one of the merger firms.⁸ Any technology development of the Parties or other improvements of their urban and mainline signalling offering which would have taken place absent the Merger will likely be considered part of the prevailing conditions of competition.
23. The supply of mainline signalling in Great Britain is currently undergoing significant change. A market study carried out by the Office of Rail and Road

⁶ Section 23(1)(b)(i) of the Act. See paragraph 4.59 of [Mergers: Guidance on the CMA's jurisdiction and procedure \(CMA2revised\)](#).

⁷ [Merger Assessment Guidelines \(CMA129\) \(MAGs\)](#), paragraph 3.1.

⁸ [MAGs](#), paragraph 3.8.

(**ORR**), which concluded in 2021, found that the expected shift from legacy to digital standardised signalling systems over the next few years has the potential to revolutionise the way the railway operates. Following ORR's recommendations in the same study, Network Rail is due to implement a number of measures in the design of the tendering process for its next major signalling procurement, the Train Control Systems Framework (the **TCSF**), intended to increase competition from alternative suppliers to two incumbent suppliers – Siemens and Alstom (see paragraphs 40 to 42 for more details about the TCSF). We intend to consider these developments – including their impact on the competitiveness of the Parties in the supply of mainline signalling – as part of our competitive assessment rather than considering them in detail in our counterfactual assessment.⁹

Market definition

24. Where the CMA makes an SLC finding, this must be 'within any market or markets in the United Kingdom for goods or services'.¹⁰ The CMA is therefore required to identify the market or markets within which an SLC may be expected to result. An SLC can affect the whole or part of a market or markets. Within that context, the assessment of the relevant market is an analytical tool that forms part of the analysis of the competitive effects of a merger and should not be viewed as a separate exercise.¹¹
25. In the Phase 1 Decision, the CMA considered the impact of the Merger on competition in relation to the TCSF and the specific mainline signalling projects that will be procured through it. In particular, the CMA focused on two specific types of signalling projects that will fall under the TCSF:
 - (a) the joint supply of digital interlockings and ATP wayside equipment conforming to the European Train Control Systems (**ETCS**) standard¹² (**'ETCS ATP wayside re-signalling projects'**); and
 - (b) OCS projects.
26. We will consider the Parties' and other submissions and evidence on the relevant markets within mainline signalling, including on whether:

⁹ [MAGs](#), paragraph 3.7 and 3.10: 'The counterfactual is not intended to be a detailed description of the conditions of competition that would prevail absent the merger. Those conditions are better considered in the competitive assessment' and 'Significant changes affecting competition from third parties which would occur with or without the merger (and therefore form a part of the counterfactual) are unlikely to be assessed in any depth as part of the CMA's counterfactual assessment'.

¹⁰ [Section 35\(1\)\(b\)](#), the Act.

¹¹ [MAGs](#), paragraph 9.1.

¹² ETCS is a standardised ATP system, component of the European Rail Traffic Management System (**ERTMS**), which aims to replace national ATP systems.

- (a) the supply of signalling projects as a bundle (interlocking, ETCS ATP wayside and OCS) is distinct from the standalone supply of these components (eg in relation to interfacing to existing installed equipment); and
 - (b) the different components in signalling projects are or can be tendered separately and awarded to different suppliers.
- 27. In relation to geographic scope, the CMA found that a number of factors point towards a UK market for digital mainline signalling projects, such as the fact that ETCS ATP wayside systems and OCS still require adaptation and homologation on a national basis and the absence of EEA-wide standardisation in relation to interlockings – with the exception of the European Initiative to Linking Interlocking Systems (**EULYNX**)¹³ – which are one of the constituent elements for mainline signalling projects.
- 28. In the Phase 1 Decision, the CMA also considered the impact of the Merger on competition in relation to the supply of urban signalling projects for UK metro systems relying on communication-based train control (**CBTC**) technology.¹⁴
- 29. We will consider the Parties' and other submissions and evidence on the geographic scope of the relevant market.
- 30. We do not expect our findings in relation to the relevant markets to be determinative of the outcome of our competition assessment. Consequently, in our competitive assessment we will assess whether suppliers outside the UK pose a relevant potential constraint on UK mainline and urban signalling suppliers and to what extent references of mainline and urban signalling suppliers outside the UK are relevant for their competitive position in the UK.

Theories of harm

- 31. Theories of harm describe the possible ways in which an SLC may be expected to result from a merger and provide the framework for analysis of the competitive effects of a merger.
- 32. In the Phase 1 Decision, the CMA found that the Merger gave rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in the supply of: (a) ETCS ATP wayside re-signalling projects in the UK; (b) OCS projects in the UK; and (c) CBTC signalling projects for metros in the UK.

¹³ The EULYNX is a European initiative aiming to reduce the cost and installation time of signalling equipment by virtue of standardisation, encompassing 13 European Infrastructure Managers, including Network Rail.

¹⁴ CBTC is an urban signalling technology relying on continuous radio-based communication between the train and the tracks to precisely identify, at all times, the location of a train on the tracks.

33. We are minded to focus our competitive assessment on these theories of harm at phase 2.
34. We will assess the unilateral horizontal effects of the Merger in relation to:
- (a) digital mainline signalling projects (ie including digital interlockings, ETCS ATP Wayside and OCS for digital projects), either as a bundle or as standalone components.¹⁵ Our assessment will have a particular focus on the competition for the TCSF, which is the overarching framework agreement under which these projects will be tendered and awarded; and
 - (b) supply of urban signalling projects for metros using communication-based train control (CBTC).
35. The evidence collected in phase 1 suggests that the different components of digital mainline signalling projects are likely to be mostly tendered and awarded as a bundle. As set out in paragraph 26(a), we will collect further evidence on this point and this will inform whether we assess the effects of the Merger in relation to the bundle or the separate components. In either case, the strengths of the Parties and their competitors in relation to the different components will form part of our competitive assessment.
36. Subject to new evidence being submitted, we do not currently intend to investigate any other theories of harm in relation to this Merger, including the theories of harm which the CMA found in phase 1 would not give rise to a realistic prospect of an SLC. In particular, we currently do not propose to investigate further the effects of the Merger in the supply of ETCS ATP Wayside Overlay, which is the standalone provision of ETCS ATP Wayside that is overlaid on the existing installed base of conventional interlockings.¹⁶
37. We may revise our theories of harm as the inquiry progresses and the identification of a theory of harm in this issues statement does not preclude an SLC being identified on another basis following further work, or our receipt of additional evidence.

¹⁵ During the phase 1 investigation, the Parties submitted that OCS projects comprise two components: (i) signalling control systems (**SCS**), which are deployed on top of interlockings (and referred to as 'local control'); and (ii) traffic management systems (**TMS**), a system architecture that integrates several local signalling control components and presents the route to the signalling operator through a single interface (referred to as 'central control'). We will investigate whether the conditions of competition differ between the supply of SCS and TMS and whether Network Rail tenders these systems separately. If that is the case, we will consider whether the supply of TMS in the UK needs to be investigated as a separate theory of harm or whether it can be deprioritised.

¹⁶ In phase 1, the CMA found that demand for standalone provision is likely to be very limited, because overlay projects are more complex and costly than replacing both interlockings and ATP Wayside together (ie re-signalling projects). The CMA also found that suppliers of the installed base of conventional interlockings have a competitive advantage with regard to ETCS ATP overlay projects (ie standalone ETCS ATP projects) because of the additional complexity borne by the interfacing requirements (Phase 1 Decision, paragraphs 319-330).

Horizontal unilateral effects in relation to digital mainline signalling projects

38. Unilateral effects can arise in a horizontal merger when one firm merges with a competitor that would otherwise provide a competitive constraint, allowing the merged entity profitably to raise prices or degrade non-price aspects of its competitive offering (such as quality, range, service and innovation) on its own and without needing to coordinate with its rivals. Unilateral effects giving rise to an SLC can occur in relation to customers at any level of a supply chain, for example at a wholesale level or retail level (or both) and is not limited to end consumers.¹⁷
39. Our assessment of mergers is generally forward-looking and we will seek to account for the future evolution of competitive conditions when assessing this theory of harm.¹⁸ This includes developments in the Parties' competitive offering and the competitive offering of third parties, taking into account a range of evidence (and not just evidence of historical market performance, such as market shares and tender data, which in this case primarily relates to the supply of conventional mainline signalling projects).
40. We also note that some of the main characteristics of the supply of mainline signalling projects in the UK (and also to some extent of the supply of CBTC signalling projects) are that tenders occur rarely, tend to be for high value contracts and are let by a very limited number of customers (mainly Network Rail for mainline signalling and Transport for London (**TfL**) for CBTC signalling projects).
41. In order to investigate horizontal unilateral effects in digital mainline signalling projects, we will consider the effect of the Merger in the upcoming tender for the TCSF. The TCSF will be the procurement framework through which Network Rail procures the major signalling projects – legacy and digital projects – for the next two control periods: CP7 (2024–2029) and CP8 (2029–2034). Under the current proposed arrangements, Network Rail intends to appoint five framework suppliers which will determine the competitor set for specific digital mainline signalling projects (ie for interlockings, ETCS ATP Wayside and OCS projects) over a ten-year period commencing in 2024.¹⁹
42. The estimated total value of the mainline signalling projects procured through the TCSF is expected to be around [X]. Each of the five suppliers will receive a minimum volume commitment [X].²⁰ [X].
43. The outcomes of competition for Network Rail's upcoming TCSF will therefore be important in assessing the impact of the Merger within the individual

¹⁷ MAGs, paragraph 4.1.

¹⁸ MAGs, paragraph 4.16.

¹⁹ Suppliers not on the TCSF are excluded and therefore will not be able to compete for these projects.

²⁰ [X]

relevant markets, as the TCSF will be the only contractual mechanism through which major signalling projects will be awarded. Given this, we will consider the nature of competition for the upcoming TCSF, including the mechanisms introduced in the TCSF procurement aimed at mitigating the barriers to entry and expansion in relation to tenders for mainline signalling projects identified in the ORR's market study.

44. In the Phase 1 Decision, the CMA found that Siemens and Alstom are considered to benefit from incumbency advantages primarily with respect to legacy mainline signalling.²¹ The CMA found that the move towards digitalisation of the mainline signalling infrastructure would likely reduce the degree of any incumbency advantages and reduce the entry barriers for suppliers that have established experience in digital mainline signalling projects in Europe. As such, we will focus our assessment on the effect of the Merger on competition for digital mainline signalling projects rather than on competition for conventional mainline signalling projects.
45. In phase 1, the CMA found that while both Parties currently have a limited presence in the UK in relation to digital mainline signalling projects, both are established players in Europe with strong digital signalling capabilities, and, absent the Merger, both would have independently bid for, and been close competitors for, the TCSF. Within this context, the CMA found that both Parties would be well placed to become significant suppliers and compete closely in relation to the supply of digital mainline signalling projects. While the CMA found that both Siemens and Alstom would also likely win a place on the TCSF and compete strongly for the supply of digital mainline signalling projects, it found that only a limited number of other European suppliers may be capable of competing for the TCSF and, as a result, be competitors for the supply of mainline signalling projects. The CMA found that these other suppliers were unlikely to be as strong competitors as either of the Parties and would exert only a limited competitive constraint on the Parties, Siemens and Alstom in relation to digital mainline signalling projects.
46. In order to investigate this theory of harm, we expect to consider:
 - (a) Competition for Network Rail's TCSF;
 - (b) The capabilities required by Network Rail for the supply of digital mainline signalling projects awarded through the TCSF;
 - (c) The impact of the new measures adopted by Network Rail in the TCSF that are intended to increase competition and promote entry and expansion of mainline signalling suppliers;

²¹ Phase 1 Decision, paragraph 229.

- (d) Whether the Parties are close and effective competitors in the supply of digital mainline signalling projects, including by assessing:
- (iii) The importance of the Parties' experience in the UK and Europe (ie of their references);
 - (iv) How their capabilities have been assessed in previous tenders for the supply of these projects in the UK and Europe;
 - (v) The Parties' plans and incentives to supply these services in the UK;
 - (vi) Whether the supply of digital mainline signalling projects requires the supply of a digital interlocking for compatibility and to what extent the fact that neither of the Parties²² currently has a digital interlocking product approved in the UK may affect their competitiveness in relation to digital signalling projects; and
 - (vii) Whether Network Rail's preference is moving towards integrated TMS (as submitted by the Parties);²³ and whether this shift makes it harder for the Parties to compete for digital mainline signalling projects that include an OCS component. This question is relevant, given that [X].²⁴
- (e) The extent of the constraint that the Merged Entity would face from existing or potential suppliers, including:
- (i) Whether and to what extent Siemens' and Alstom's incumbency in the supply of conventional mainline signalling systems may confer similar competitive advantages in the supply of digital mainline signalling projects under the TCSF;
 - (ii) The importance of the experience of other potential suppliers of digital mainline signalling projects (eg CAF, Indra, Resonate) in the UK and in Europe (ie of their references) for their competitiveness in the UK;
 - (iii) How the capabilities of these suppliers have been assessed in previous tenders for these services in the UK and Europe;
 - (iv) How the experience and capabilities of these suppliers compares to the experience and capabilities of the Parties;

²² We note, however, that [X] (paragraph 236 of the Phase 1 Decision).

²³ Phase 1 Decision, paragraph 278.

²⁴ SCS are deployed on top of interlockings and integrated TMS needs to interact directly with the SCS.

- (v) The plans and incentives of these suppliers to supply these services in the UK;
- (vi) Whether integrators²⁵ are credible competitors for the TCSF and whether they will compete for the supply of digital mainline signalling projects, on their own or in partnership with original equipment manufacturers (**OEMs**), including with OEMs that have no or limited presence in the UK; and
- (vii) Whether Resonate, on its own or in partnership with other supplier(s), will be a credible competitor for the TCSF and whether it will compete for digital mainline signalling projects, given that it is active only in relation to OCS and not in other mainline signalling subsystems.

47. In our assessment, we expect to consider the following evidence:

- (a) TFL's documents in relation to the design and scope of the TCSF (including, for example, whether the different components of mainline signalling projects awarded through the TCSF will be bundled or tendered separately);
- (b) Past performance in relation to the supply of digital mainline signalling projects in the UK and Europe, including an assessment of tender data, reviews of tender evaluation documents and the Parties' and other suppliers' references in relation to the supply of digital mainline signalling projects in the UK and in Europe;
- (c) TFL's views on the conditions of competition and the capabilities of possible bidders in relation to the supply of CBTC signalling projects;
- (d) Third parties' views on the capabilities of the Parties and other existing and potential suppliers of digital mainline signalling projects in the UK;
- (e) The Parties' internal documents about their future plans in relation to the supply of digital mainline signalling projects in the UK and their participation in tenders in the UK and Europe for the supply of these services;
- (f) Evidence on current arrangements and partnerships between OEMs and integrators for the supply of digital mainline signalling projects in the UK; and

²⁵ Integrators are suppliers who use technology owned by third-party OEMs to provide design and integration services for mainline signalling projects. Integrators in the UK include suppliers such as Atkins, Linbrooke, VolkerRail, Amey.

- (g) ORR's market study on mainline signalling and ORR's views on the competitive conditions in the supply of digital mainline signalling projects and on the impact of the Merger.

48. We will consider the questions and assess the evidence set out above in relation to the supply of digital mainline signalling projects, either as a bundle or as standalone components.

Horizontal unilateral effects in relation to the supply of CBTC signalling projects for metros

49. In the Phase 1 Decision the CMA also found that the Merger gives rise to a realistic prospect of an SLC in the supply of CBTC signalling projects for metros.
50. As in relation to the theory of harm discussed above, our assessment of mergers is generally forward-looking so that we will seek to account for the future evolution of competitive conditions when assessing this theory of harm.²⁶
51. As future UK demand for CBTC signalling is likely to be driven by the London metro (including Underground, Overground and DLR)²⁷ and given Thales' very strong market position in the London metro, we will focus our investigation on the effects of the Merger in relation to the supply of CBTC signalling to the London metro.²⁸
52. In Phase 1, the CMA found that the Parties are close competitors in relation to CBTC signalling projects for metros in the UK: (i) Thales is by some distance the largest provider of CBTC signalling projects for TfL services and it is likely to continue to compete strongly in future, particularly in London; and (ii) while Hitachi has been a weaker competitor to date in London, the CMA found that it is an established supplier globally and has the capabilities to become a stronger and closer competitor to Thales in the UK in future as it continues to develop its experience and global portfolio of references. In addition to the Parties and Siemens and Alstom, which are both likely to remain credible competitors for CBTC signalling projects in the UK, the CMA found it unlikely that any other competitor would constrain the Merged Entity.
53. In order to investigate this theory of harm, we expect to consider:

²⁶ MAGs, paragraph 4.16(b).

²⁷ The other metro systems in the UK are: Glasgow and Tyne and Wear.

²⁸ We will investigate, however, whether the Tyne and Wear metro is likely to procure CBTC in the foreseeable future. If that is the case, we will consider whether to assess the effect of the Merger in relation to the supply of CBTC signalling to the Tyne and Wear metro.

- (a) Future demand for CBTC signalling projects for the London metro;
- (b) The capabilities required for a strong CBTC signalling offer and the competitive framework for upcoming tenders for CBTC signalling projects;
- (c) Whether the Parties are close and effective competitors in the supply of CBTC signalling projects, including by assessing:
 - (i) The importance of the Parties' experience in the UK and in the rest of the world (**ROW**) (ie of their references) in relation to the delivery of CBTC signalling projects;
 - (ii) How their capabilities have been assessed in previous tenders for the supply of these projects in the UK and in ROW, including in relation to high-capacity metros;
 - (iii) Whether Hitachi has or is expected to have the capabilities to effectively bid to deliver CBTC signalling projects for the London metro system, having regard to the complexity and technical requirements of the London metro;
 - (iv) Whether Thales will have a competitive advantage in future tenders for CBTC signalling projects for the London metro, where Thales has a strong presence, as a result of interoperability and connectivity requirements between the different lines of the London metro; and
 - (v) The Parties' plans and incentives to supply these services in the UK;
- (d) The extent of the constraint that the Merged Entity would face from existing suppliers, including:
 - (i) The importance of the experience of other suppliers of CBTC signalling projects (eg Siemens, Alstom and Ansaldo) in the UK and in ROW (ie of their references) for their competitiveness in the UK;
 - (ii) How the capabilities of these suppliers have been assessed in previous tenders for these services in the UK and in ROW, including in relation to high-capacity metros;
 - (iii) How the experience and capabilities of these suppliers compares to the experience and capabilities of the Parties; and
 - (iv) The plans and incentives of these suppliers to supply these services in the UK.

54. In our assessment we expect to consider the following evidence:
- (a) TfL documents in relation to past tenders and its plans for upcoming tenders;
 - (b) Past performance in relation to the supply of CBTC signalling projects in the UK and in ROW, including an assessment of tender data, reviews of tender evaluation documents and the Parties' and other suppliers' references in relation to the supply of CBTC signalling projects in the UK and ROW;
 - (c) TfL's views on the competitive dynamic in relation to the supply of CBTC signalling projects;
 - (d) Third party views on the capabilities of the Parties and other existing and potential suppliers of CBTC signalling projects in the UK; and
 - (e) The Parties' internal documents about their future plans in relation to the supply of CBTC signalling projects in the UK and their participation in tenders in the UK and in ROW for the supply of these services.

Countervailing factors

55. We will consider whether there are countervailing factors which prevent or mitigate any SLC that we may find. Some of the evidence that is relevant to the assessment of countervailing factors may also be relevant to our competitive assessment.
56. We will consider evidence of entry and/or expansion by third parties and whether entry and/or expansion would be timely, likely and sufficient to prevent any SLC from arising as a result of the Merger.²⁹
57. The Parties submitted that Chinese companies are expected to expand into European rail infrastructure markets in the coming years to utilise their spare capacity, such as CRSC and CRRC.
58. In the Phase 1 Decision, the CMA found that there are a number of significant barriers to entry and expansion in the supply of ATP wayside re-signalling and OCS, as well as in the supply of CBTC signalling projects and found no evidence that that entry or expansion triggered by the Merger would be timely, likely, or sufficient to mitigate the competition concerns arising as a result of the Merger.

²⁹ [MAGs](#), paragraphs 8.28–8.43. Entry and expansion that would have occurred irrespective of the Merger will be considered as a constraint on the merged entity in its competitive assessment ([MAGs](#), paragraph 4.16(b)).

59. We will also consider any relevant evidence submitted to us by the Parties that the Merger is likely to give rise to efficiencies that will enhance rivalry, such that the Merger may not be expected to result in an SLC.³⁰
60. The Parties submitted that the Merged Entity will be better able to drive competition with regard to the TCSF tender than each of the Parties individually. The Merged Entity would have greater resources and capabilities than either Party currently, so it would be better able to meet KPIs, eg in relation to timescale and capabilities than each of the Parties individually.³¹
61. In order to form a view that claimed efficiencies will enhance rivalry such that the Merger does not result in an SLC, the CMA expects the Parties to show that the following criteria are met:
- (a) The claimed Merger efficiencies are merger specific, ie would not be likely to be achieved without the Merger (eg where there are significant barriers to the Parties' achieving the expected efficiencies without the Merger or where customers could not get the benefits of capabilities by switching to the other merger firm). The Parties should also show that the Merged Entity would not have a greater incentive to achieve any improvements absent the merger than as a result of the Merger;³²
 - (b) Rivalry is likely to be enhanced in the supply of those products and services where an SLC may otherwise arise because the Merger would strengthen the ability and incentive of the Merged Entity to act pro-competitively for the benefit of consumers (eg a merger might bring together complementary assets in research and development activities or otherwise reduce incremental costs in innovation);
 - (c) The claimed efficiencies would be timely, likely and sufficient to prevent an SLC from arising; and
 - (d) The claimed efficiencies would benefit customers in the UK.³³
62. In the phase 1 investigation, the Parties also submitted that customers in mainline rail and urban signalling segments hold significant buyer power. According to the Parties, customers have significant procurement experience and are highly cost sensitive. The Parties further submitted that customers can encourage new entrants or support specific suppliers.³⁴ As set out in the

³⁰ In order to reach a view that such efficiencies prevent or mitigate any SLC found, the CMA must be satisfied that the evidence shows that that the merger efficiencies: (a) enhance rivalry in the supply of those products where an SLC may otherwise arise; (b) are timely, likely and sufficient to prevent an SLC from arising; (c) be merger-specific; and (d) benefit customers in the UK (MAGs, paragraph 8.8).

³¹ Parties' response to CMA RFI of 22 September 2022.

³² MAGs, paragraph 8.17.

³³ MAGs, paragraphs 8.8 and 8.20.

³⁴ Phase 1 Decision, paragraph 435.

CMA's Merger Assessment Guidelines, most forms of countervailing buyer power do not result in new entry – for example, buyer power based on a customer's size, sophistication, or ability to switch easily – and are unlikely to prevent an SLC that would otherwise arise from the elimination of competition between merger firms. This is because a customer's buyer power depends on the availability of good alternatives they can switch to, which in the context of an SLC will have been reduced.³⁵ Subject to new evidence being submitted, we do not currently intend to investigate further buyer power as a distinct countervailing factor.

Possible remedies and relevant customer benefits

63. Should we conclude that the Merger may be expected to result in an SLC within one or more markets in the UK, we will consider whether, and if so what, remedies might be appropriate.
64. In any consideration of possible remedies, we may have regard to their effect on any relevant customer benefits that might be expected to arise as a result of the Merger and, if so, what these benefits are likely to be and which customers would benefit.³⁶

Responses to this issues statement

65. Any party wishing to respond to this issues statement should do so in writing, no later than **17:00 (UK time) on Tuesday 31 January 2023** by emailing Hitachi.Thales@cma.gov.uk.

³⁵ [MAGs](#), paragraphs 4.20.

³⁶ [Merger Remedies](#) (CMA87), paragraphs 3.4 and 3.15–3.24.