

**Confidential**

**By e-mail**

Maria Duarte  
Director of Mergers  
Competition and Markets Authority  
The Cabot  
25 Cabot Square  
London, E14 4QZ

Your ref: Case ME/6971/21

14 April 2023

Dear Maria

**Case ME/6971/21 – Observations on the Office of Rail and Road (ORR) Phase 2 submission**

We refer to the ORR's Phase 2 submission dated 13 March 2023 ("**ORR's Phase 2 submission**") which sets out its views on the impact of the proposed acquisition by Hitachi Rail, Ltd. ("**Hitachi Rail**") of the entire Ground Transportation Systems business of Thales SA ("**Thales**"). The ORR's Phase 2 submission considers the impact of the proposed transaction on the GB mainline sector and, specifically, on competition for the Train Control Systems Framework ("**TCSF**").

The Parties welcome the ORR's views on these matters and agree with a number of introductory points made in its submission, especially as regards the strong incumbency advantages enjoyed by Siemens and Alstom-Bombardier in GB mainline signalling which the ORR notes will persist under digital rail<sup>1</sup>. The ORR also correctly recognises that an analysis based on historic data would suggest that the proposed acquisition will be relatively benign "*with Thales, in particular, having been a fringe player to date*".<sup>2</sup> There are, however, certain statements in the ORR's Phase 2 submission, which merit clarification or relate to factual points of which the ORR may be unaware.

---

<sup>1</sup> ORR's Phase 2 submission, paras 24-28.

<sup>2</sup> *Ibid.*, para 7.

### ***Competition for the TCSF***

The ORR has an ambivalent assessment of the impact of the proposed acquisition on potential competition for the TCSF<sup>3</sup>, which concerns the Parties. This is no doubt a conservative stance in the circumstances. Notably, the ORR recognises the potential for the merged entity to compete more strongly for the TCSF against the duopoly, which the ORR previously identified as the key competition issue in the sector.<sup>4</sup> At the same time, the ORR's submission gives insufficient weight to three key factors that demonstrate that a substantial lessening of competition cannot be considered "more likely than not" as a result of the transaction. These factors are addressed in turn below.

1. **The ORR does not appear to have been aware of [REDACTED]  
[REDACTED] and therefore overstates the substitutability and closeness of competition between the Parties:**

(a) The Parties are [REDACTED]  
[REDACTED] in the UK and so cannot be considered close competitors let alone one another's closest competitor: [REDACTED]  
[REDACTED]  
[REDACTED]. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] ■ [REDACTED]  
[REDACTED]  
[REDACTED] ■ [REDACTED]  
[REDACTED]  
[REDACTED]

(b) As a result, [REDACTED]  
[REDACTED]

---

<sup>3</sup> *Ibid.*, para 9.

<sup>4</sup> ORR Signalling Market Study Final Report (November 2021).

<sup>5</sup> [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

<sup>6</sup> [REDACTED]  
[REDACTED]  
[REDACTED]

<sup>7</sup> [REDACTED]

[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED].

2. **The ORR fails to recognise that, [REDACTED]  
[REDACTED]:**

(a) Notably, the ORR concedes that it does not have "*detailed evidence of the capabilities or credentials*" of signalling suppliers other than Siemens, Alstom-Bombardier, Hitachi Rail and Thales.<sup>8</sup> The ORR refers to these companies as the "*European big four*"<sup>9</sup> presumably as a result of their European references but this does not mean that they are either close competitors in the UK or inherently well-placed to compete for the TCSF. In fact, in the absence of such detailed evidence, it would be inappropriate for the ORR to speculate on the impact of any European suppliers on future competition for digital signalling in UK.

(b) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] As noted by the ORR, product specifications for use on the GB network are different to those in Europe and the UK homologation process is slow and expensive.<sup>11</sup> As a result, Thales has extremely limited UK signalling experience and [REDACTED]  
[REDACTED]  
[REDACTED] for digital projects within the TCSF.

(c) As explained in the Parties' submission on ETCS ATP wayside re-signalling projects, CAF, Indra, and Mermec (together with Resonate, and a number of integrators) are credible suppliers [REDACTED]  
[REDACTED]<sup>12</sup> The Parties have provided information on these suppliers' signalling

---

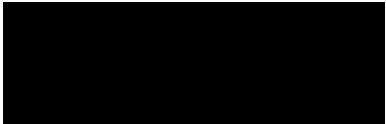
<sup>8</sup> ORR's Phase 2 submission, para 13.

<sup>9</sup> *Ibid.*

<sup>10</sup> See respectively, FMN Chapter 1, para 12.68 and the Parties' submission on ETCS ATP wayside re-signalling projects, para 4.14.

<sup>11</sup> ORR's Phase 2 submission, paras 22 and 23.

<sup>12</sup> The Parties' submission on ETCS ATP wayside re-signalling projects, para 5.1. In addition, there are other strong European OEMs such as Stadler, Progress Rail (ECM) or AZD Praha that should also be considered.



capabilities as well as previous interest in UK tenders, which may serve to address the evidence gap identified by the ORR.<sup>13</sup>

**3. The ORR places insufficient weight on the competitive constraints exercised by Atkins and other integrators:**

- (a) The ORR's Phase 2 submission notes that integrators have historically been successful in supplying major signalling projects in the UK but considers that integrators will struggle to compete for the TCSF alongside OEMs.<sup>14</sup> The Parties have provided evidence that corrects this misconception; in particular, evidence to show that (i) integrators actually have a stronger track record than the Parties in the UK and (ii) that Network Rail's procurement framework is expected to benefit consortia and integrators.<sup>15</sup>
- (b) The ORR notes that Atkins outscored Thales in the bidding process for the CP6 major signalling framework.<sup>16</sup> In addition to this, (i) Atkins (unlike Thales) has in fact won major signalling framework lots<sup>17</sup>, (ii) Atkins has an interlocking that is approved for use in the UK<sup>18</sup> and (iii) Atkins has considerable experience of delivering signalling projects in the UK, with 'boots on the ground' capabilities in mainline signalling and a deep knowledge of Network Rail's processes, thereby benefitting from many of the advantages identified in the ORR's Phase 2 submission.<sup>19</sup>
- (c) In addition, while the ORR understands that Network Rail is seeking to structure the TCSF to increase the number of suppliers overall rather than integrators specifically, certain features of Network Rail's approach to procurement for the TCSF indicate that it intends to incentivise competition from integrators as well as new OEMs (and indeed consortia of integrators and OEMs). In particular, at

---

<sup>13</sup> The Parties' submission on ETCS ATP wayside re-signalling projects, section 5.

<sup>14</sup> ORR's Phase 2 submission, paras 15-17.

<sup>15</sup> The Parties' submission on ETCS ATP wayside re-signalling projects, paras 5.1-5.24 and 6.3.

<sup>16</sup> ORR's Phase 2 submission, para 15.

<sup>17</sup> Atkins won the primary award for two CP5 MaSREF lots with a combined value of GBP 353 million.

<sup>18</sup> Atkins offers the interlocking product ElectroLogIXS, which is licensed to Atkins by General Electric Transportation Systems (which was subsequently acquired by Alstom) for use in Great Britain and is approved for use in the UK. ElectroLogIXS is compatible with future implementations of ETCS. See further, the Parties' submission on ETCS ATP wayside re-signalling projects, paras 5.4 and 5.5.

<sup>19</sup> Paras 25-28. In addition, the ORR notes that Network Rail's share of spend with Atkins comfortably exceeds that of the Parties' combined. Babcock, Volker Rail and Linbrooke each also won CP6 framework lots with higher values than the Parties' total revenues for mainline signalling projects in the UK over the period 2012 to 2021.

[REDACTED]

the PQQ stage, a high proportion [REDACTED] of points would be awarded for project delivery, which is particularly favourable to integrators with local experience. Based on these assessment criteria and [REDACTED],<sup>20</sup> integrators with licensed technology, or as part of a consortium, will be in a strong position to compete for the TCSF, as exemplified by Atkins' recent appointment as signalling partner for the Southern Region Integrated Delivery alliance for CP7 and CP8.

***The transaction does not give rise to a substantial loss of competition for slots 3 and 4 of TCSF***

The ORR's Phase 2 submission concludes with a pie chart which purports to show that, in addition to leading to an opportunity for greater competition for slot 2, the proposed acquisition may also lead to a lessening of competition for slots 3 and 4 under the TCSF. However, the latter point incorrectly assumes that Thales is most likely to compete with Hitachi Rail for those slots. In particular:

- (a) [REDACTED]  
[REDACTED]  
[REDACTED]
- (b) [REDACTED]  
[REDACTED]
- (c) The degree of substitutability between the Parties is overstated (for the reasons explained on page 2). In any event, this should not be the only metric by which the proposed acquisition is assessed: for the reasons described in the Parties' submission on the benefits of the merger, the proposed acquisition offers a number of opportunities for stronger competition in the UK (as the ORR recognises).<sup>22</sup>
- (d) [REDACTED]  
[REDACTED]. This does not seem to have been taken into account by the ORR. Moreover, the presence (or absence) of the other Party in the TCSF is one of many uncertainties that bidders

---

<sup>20</sup> See further the Parties' submission on competitive conditions, para 4.6(b).

<sup>21</sup> [REDACTED]  
[REDACTED]

<sup>22</sup> ORR's Phase 2 submission, para 55.

[REDACTED]

face and is by no means the main one. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]<sup>23</sup>

- (e) To the extent that there may be any theoretical loss of competition [REDACTED], it would be very minor [REDACTED]. In addition, any such theoretical loss of competition would certainly be outweighed by the increased competitive pressure that the merged entity would be able to exert on the incumbents, Siemens and Alstom-Bombardier, [REDACTED]. The ORR recognises this but makes no attempt to compare the two effects. Yet it is clear that a stronger challenger to the duopoly would enhance rivalry overall.<sup>24</sup>

***TCSF is not static and the bigger picture needs to be considered***

As a final observation, the ORR's Phase 2 submission is based entirely on potential competition for the TCSF in a scenario where the TCSF largely proceeds as envisaged by Network Rail. For the reasons set out above, and in the Parties' voluntary submissions, the proposed acquisition will not lead to a substantial lessening of competition regardless of the ultimate structure of the TCSF. However, the current expression of the TCSF simply reflects one possible (and uncertain) hypothetical framework and therefore should not be the sole lens through which competition is considered. In particular, the structure of the TCSF (in terms of its implementation, scope, size of guaranteed work-bank and split of work between digital and conventional signalling) is highly uncertain. In addition, diminishing volumes of digital signalling works (and delay to their procurement) will [REDACTED] and, the success of the TCSF will depend on the extent to which Network Rail is able to support new entrants.<sup>25</sup> It follows that a broader assessment should be taken of the impact of the proposed acquisition on competition in mainline signalling services.

---

<sup>23</sup> [REDACTED]

<sup>24</sup> Even a small increase in the merged entity's ability to challenge the incumbents would produce rivalry-enhancing benefits given the structure of the industry. [REDACTED]  
[REDACTED] This would change the dynamics of bidding in the TCSF and would increase competition. See further the Parties' submission on the benefits of the merger.

<sup>25</sup> See further the Parties' submission on competitive conditions.

[REDACTED]

Regardless of the ultimate design of the TCSF, such an assessment should lead to the natural conclusion that the proposed acquisition does not substantially lessen competition, and rather provides a much needed and important opportunity to create a stronger global challenger to the overwhelming strength of the current duopoly.

[REDACTED]  
[REDACTED]

Yours sincerely

[REDACTED]