

COMPETITION AND MARKETS AUTHORITY ("CMA")

Comments on the Notice possible remedies under Rule 12 of the Competition and Markets Authority

We write to you in relation to the Notice possible remedies under Rule 12 of the Competition and Markets Authority ("CMA") in relation to the anticipated acquisition (the "**Merger**") by Hitachi Rail, Ltd ("**Hitachi**") of Thales SA's Ground Transportation Systems Business ("**Thales**") and the invitation to provide comments to the CMA received on 12 June 2023.

1. Structural remedy

[REDACTED] that only a structural remedy can solve the substantial lessening of competition effects ("**SLC**") resulting from the Merger. Behavioural remedies (such as licensing or consortium agreements) will create dependencies on the merging entity that would prevent third parties to compete strongly. For instance, licensees may be able to perform some operational functions, but they would not be allowed to develop and evolve the relevant signalling solutions. Besides, the cost of licensing agreements, the speed and quality of the necessary assistance and support services to be delivered by the merging entity and the discrepancies that may arise in the implementation of these agreements, may not allow third parties to submit attractive and competitive offers to customers on a timely manner. Therefore, behavioural remedies would not be sufficient to remove the Inquiry Group's provisional concerns since third parties would still be dependent on the merging parties.

[REDACTED].

2. Scope of the divestiture package

In order to provide a solution to the provisional SLCs identified by the Inquiry Group, the divestiture package shall enable the purchaser to compete effectively with the merged entity from day one.

Divestiture assets and resources

The divestiture package shall include sufficient assets and resources as to allow the purchaser to exert a competitive constraint as strong as before the Merger. In particular, the divestiture package shall at least include:

- Mainline interlocking (including object and block controllers);

- ERTMS L2 solution: RBC and ERTMS manager;
- CBTC solution (GoA2 to GoA4): ATS, ATO, onboard ATP, Zone Controller (ZC), interlocking;
- Hardware and software platforms related to previous products;
- Tools including maintenance systems, simulation, testing and monitoring;
- IP rights related to previous products;
- Sufficient backlog to ensure the viability of the divestiture business, including past project commercial references, including references on brownfield projects; and
- all the necessary resources (tangible and intangible) as well as key personnel to maintain and evolve the products and successfully sale and deliver the projects.

Furthermore, a provision of any external service out of the carve-out perimeter shall be guaranteed for a defined time period in order to allow a proper transition.

Single divestiture package

[✂]:

- (i) From the point of view of product portfolio, it is usual for digital mainline signalling and CBTC systems businesses to have shared products, hardware and software platforms and solution management tools (for instance, maintenance tools, including predictive maintenance), thus resulting in important synergies between both businesses. [✂].
- (ii) Certain project delivery activities are often executed by the same teams for both digital mainline signalling services and CBTC solution businesses, including for example communication solution design (architecture definition, design, network configuration and cybersecurity management), installation, testing and commissioning. [✂].

- (iii) Finally, in terms of innovation, future trends show that higher grades of automation and network capacities will be required not only in urban rail transportation projects, but also in mainline rail services such as commuter or intercity lines. For this reason, the evolution of both mainline and urban signalling solutions benefits from each other and will have an increasing overlap in the coming years with some common areas of innovation. A clear example of this is ETCS L3 specifications (very limited on track deployments to date), which shifts one of the principles of mainline ATP from being track-centered to be vehicle-centered, as CBTC is. [X].

The existing links between the signalling products and the different components and tools they are made of, the shared resources, the project delivery capacities and the convergence trend of digital mainline and CBTC signalling solution [X]. [X].

EEA divestiture

It is not possible to carve out specific country applications from the generic solution. For instance, ERTMS is interoperable and deployed all over Europe (and beyond), so it will most likely not be possible to separate the UK part out of the cross-country generic solution. The same may apply for other products included in the digital mainline and CBTC signalling businesses. Mitigation of this risk can only happen if full operational solutions are carved out, including the scopes shared with other markets, at least at the EEA level. In addition, for the CBTC business to be economically viable and a competitive force, it must not be confined to the UK to reach sufficient scale.

Mix and match approach

For the remedy to work properly, it would be preferable if the divestiture package does not follow a mix-and-match approach. The divestiture package shall include only assets from one of the merging parties and shall be contained in a centralised structure and not dispersed across different sites in various countries. The closer and more concentrated in fewer sites the divestiture package, the easier it will be to have a successful integration.

3. Suitable purchaser

In order to run the divestiture package efficiently as a viable and competitive force in the market, CAF believes that the purchaser should have sufficient technical, innovation and commercial expertise in signalling. In particular, the purchaser will need to have innovation capacity in signalling products and solutions; the capacity to evolve these products; and to have proven expertise managing safety critical signalling developments (SIL4); as well as experience integrating CBTC solutions in automated metros. All the previous will boost the quick integration of the divested perimeter in the buyer company minimising risks.

Furthermore, the purchaser shall have the capacity to innovate and evolve these products. [X].

In addition, the vast majority of CBTC solutions are used in metro projects. Therefore, [X].

Moreover, recent years' market trends show that often CBTC solutions are not tendered on a stand-alone basis, but as one part of a bigger rail package instead. This could go from bundle projects (CBTC + rolling stock) to full turnkey solutions, which requires in the latter case access not only to metro rolling stock, but also to proven complex turnkey project management experience. It shall also be considered that both greenfield and brownfield projects exist, which involves in the second case the need to retrofit the existing vehicles with the new CBTC solution. [X].

4. Divestiture process

[X]. [X].

Furthermore, it would be necessary to appoint a monitory trustee to avoid any deterioration of the divestiture package during the divestiture process.

5. Cost of remedies

CAF does not have enough information at this stage to provide comments on the cost of remedies.

6. Relevant customers benefits

Unlike the behavioural remedies, the divestment of the relevant digital mainline and CBTC businesses of any of the merging parties will ensure the creation of an independent player in the market, [✂], and capacity to evolve and innovate the divested products, elements and platforms. Therefore, customers in the UK could benefit from an alternative offer and greater innovation.

CAF remains at the disposal of the CMA for any additional information or explanation that the Inquiry Group may consider useful.

In Beasain (Spain), 22 June 2023

CONSTRUCCIONES Y AUXILIAR DE FERROCARRILES, S.A. ("CAF")