

ME/6971/21

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

**RESPONSE TO THE NOTICE OF POSSIBLE REMEDIES**

**1. OVERVIEW**

- 1.1 In its provisional findings dated 8 June 2023 ("**Provisional Findings**"), the Competition and Markets Authority ("**CMA**") provisionally found that the anticipated acquisition by Hitachi Rail, Ltd ("**Hitachi Rail**") of the entire Ground Transportation Systems business of Thales SA (the "**Target**" and together with Hitachi Rail, the "**Parties**") (the "**Proposed Transaction**") may be expected to result in a substantial lessening of competition ("**SLC**") in the supply of: (i) digital mainline signalling ("**DMS**") systems in Great Britain; and (ii) communications-based train control ("**CBTC**") signalling systems in the UK.
- 1.2 As will be further detailed in the Parties' response to the CMA's Provisional Findings, the Parties strongly dispute the finding that the Proposed Transaction will result in an SLC in either of the abovementioned markets. This Response should therefore not be considered as an acceptance of the Provisional Findings; it is made solely in the event that an SLC finding is upheld in the CMA's final decision and without prejudice to any of the Parties' rights and further submissions.
- 1.3 In the notice of possible remedies dated 8 June 2023 (the "**Remedies Notice**") the CMA identifies the following possible remedies, (i) prohibition of the Proposed Transaction, (ii) full or partial divestment of the signalling business of either Hitachi Rail or the Target, (iii) behavioural remedies and (iv) any other practicable remedy that could be effective in comprehensively addressing the alleged SLCs.<sup>1</sup>

**2. THE PROPOSED REMEDY PACKAGE**

- 2.1 Without prejudice to the Parties' position in relation to the finding of any SLC or in respect of other rights, in the event that the CMA's final decision upholds the SLCs identified in the Provisional Findings, the Parties propose the following comprehensive remedy package (the "**Remedy Package**"), which fully addresses both of the SLCs:

***Mainline Divestment***

- 2.1.1 The divestment of Hitachi Rail's UK, French and German mainline signalling business (the "**Mainline Divestment Business**"), as summarised below:

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<sup>1</sup> Remedies Notice, paras 13 and 40.

- (a) Hitachi Rail proposes to divest all of the assets necessary to ensure that the remedy taker is able to deliver UK digital mainline signalling projects in a way which replicates Hitachi Rail's current capability. For more than 15 years, Hitachi Rail has serviced UK projects by leveraging its French operations, using Hitachi Rail's SEI/PAING ETCS wayside and (digital) interlocking platforms (the "**SEI Platforms**"), combined, more recently, with a small UK local presence. Under the Remedy Package, all of the shares of Hitachi Rail STS France SAS ("**Hitachi Rail France**") would be divested, thereby transferring ownership of the SEI Platforms<sup>2</sup> as well as the ARGOS wayside and interlocking platforms (the "**ARGOS Platforms**") and Hitachi Rail France's business for ETCS and legacy OBU projects along with ownership or access to related intellectual property rights (including know-how, source code, drawings, and existing generic and specific applications).<sup>3</sup> Around [500 - 530] Full Time Equivalents ("**FTEs**") currently employed by Hitachi Rail France would also be included. The remedy taker would also benefit from the transfer of all ETCS ATP wayside, interlocking, ETCS and legacy OBU projects, service and maintenance, and components backlog contracts awarded to Hitachi Rail France up until the divestment.
- (b) In addition to the above, the Mainline Divestment Business would include Hitachi Rail's UK DMS resources, [REDACTED] and other assets required for the UK DMS business. The remedy taker would also benefit from a backlog of current UK mainline signalling contracts,<sup>4</sup> resulting in a UK installed base. **Annex A** sets out further details on the deployment of the SEI Platform in the UK. Hitachi Rail's UK DMS business is intended to be carved out from Hitachi Rail Limited to a newly incorporated legal entity, which will be transferred to (and become a subsidiary of) Hitachi Rail France.

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(c)

- (d) Alongside Hitachi Rail's UK and French businesses, all of the shares of Hitachi Rail STS Deutschland GmbH ("**Hitachi Rail Deutschland**"), would be included as part of the Divestment Business, resulting in the transfer of Hitachi Rail's office in Munich, Germany, which is a sales and project management office, and which also includes an integration and testing laboratory to perform factory acceptance tests with customers. Around [10 - 20] FTEs would be transferred along with all ETCS ATP wayside and interlocking backlog contracts awarded to Hitachi Rail Deutschland up until the divestment.<sup>5</sup>

### ***CBTC Divestment***

2.1.2 The transfer of Hitachi Rail's core CBTC v 6.6 (Orion) technology, comprising:

- (a) A divestment of the safety platform (which comprises the hardware and generic product software). Orion CBTC technology [REDACTED]  
[REDACTED]  
[REDACTED]
- (b) Provision of all relevant source code, technical data, functional specifications, interfaces, source code, technical data, drawings etc with the right to use and modify the Generic Application (*i.e.*, the set of functions and signalling principles used by the core CBTC v 6.6 (Orion) technology)<sup>6</sup> allowing the remedy taker to fully understand, manage and further develop the Orion solution or to build its own CBTC solution;
- (c) A transfer of a complete development lab and a specific application working lab including, *inter alia*, computers and workstations hosting software needed to undertake development activities for the Generic Application and the tools for undertaking the following activities in connection with Specific Applications (*i.e.*, adaptation of the Generic Application to the specificities of a given project): (i) configuring, (ii)

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■ [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

■ [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

executing scripts relevant for testing, (iii) performing all verification and application activities;

- (d) A right to use the references and track record for projects delivered using the Orion platform to date;<sup>7</sup>
- (e) In addition, at the request of the remedy taker, Hitachi Rail proposes to:
  - (i) Provide training in respect of the transferred solution, or
  - (ii) Over a period of [REDACTED] to train and provide up to [REDACTED] FTEs.

Collectively the "**CBTC Divestment**".

### ***Divestment Business***

2.2 The Mainline Divestment Business and the CBTC Divestment (together, the "**Divestment Business**") would include assets and personnel required to operate on a standalone basis:

2.2.1 The Divestment Business includes manufacturing, service and maintenance and core operation sites in France, together with development, sales, bidding, project management, engineering, and research and development functions, as well as all support functions (accounting and finance, human resources, legal, procurement, IT, and supply chain).

2.2.2 The following capabilities are included within the Mainline Divestment Business and include competencies relevant for the CBTC Divestment:

- (a) R&D, engineering, and project delivery (approximately [240-260 ] FTEs). In particular, the Mainline Divestment Business includes the site in Les Ulis from which it [REDACTED]

- (b) Production, including the manufacturing site in Riom, France (approximately [65 - 75 FTEs]). [REDACTED]

<sup>7</sup> The following projects have been delivered to date: Copenhagen (Denmark), Taipei Circular Line (Taiwan), Milan Line 4 (Italy), Ankara (Turkey), Noida (India), Kolkata (India), Wenzhou (China).

(c) Further capabilities transferred as part of the Mainline Divestment Business, which can largely be shared across the CBTC and mainline businesses [REDACTED]

(i) Sales and bidding function, based across France, Germany and the UK, including individuals with experience of bidding for CBTC projects;

(ii) Procurement functions, based in France;

(iii) Supply chain and logistics, based in France;

(iv) Support functions such as finance, treasury and accounting, human resources, IT, and legal; and

(v) Maintenance.

2.3 All UK aspects of the Mainline Divestment Business would be subject, amongst other things, to obtaining Network Rail's consent where required to the transfer of the relevant contracts and associated rights, permissions and licences (if any).

### 3. THE REMEDY PACKAGE FULLY ADDRESSES THE THEORIES OF HARM

3.1 The Remedy Package is described in further detail below in relation to each of the respective DMS and CBTC theories of harm.

#### *The Remedy Package fully addresses the alleged SLC in respect of DMS in Great Britain*

3.2 The Remedy Package as described above comprehensively remedies the SLC identified by the CMA in relation to DMS in Great Britain since the remedy taker will: [REDACTED] and (ii) become a new competitor for future mainline signalling projects in Great Britain (including DMS projects) leveraging Hitachi Rail's current UK mainline capabilities [REDACTED]. As such, it would address both aspects of the alleged DMS SLC.

3.3 **Ensured viability:** The Mainline Divestment Business includes current ETCS and interlocking technologies (the SEI and ARGOS Platforms) which the remedy taker will be able to use globally, together with relevant assets and personnel (see 2.2 above). In addition, the Mainline Divestment Business will:

3.3.1 Retain the extensive track records and customer credentials related to past projects awarded to and delivered by Hitachi Rail France, Hitachi Rail

Deutschland, and Hitachi Rail's UK mainline signalling businesses, which will reinforce its status as a credible and trusted competitor when participating in future calls for tenders.<sup>9</sup>

- 3.3.2 Comprise a backlog of existing contracts in France, Germany, the UK, as well as multiple other countries, with an approximate unfulfilled order intake of approximately [REDACTED]
- 3.3.3 Include personnel and assets for activities in relation to which the CMA has not identified an SLC but which will further ensure the Mainline Divestment Business' viability and competitiveness as a global signalling player, including in the UK. Notably:
  - (a) the divested technologies will enable the remedy taker to compete for both conventional (*i.e.*, interlockings projects) and digital wayside signalling projects globally.
  - (b) the Mainline Divestment Business will include Hitachi Rail France's profitable legacy- and ETCS-on board unit ("**OB**U") business, with all necessary hardware, software, IP rights, and other tangible and intangible assets.
- 3.4 As such, the Mainline Divestment Business will have: (i) an existing installed base in several countries; (ii) a diversified portfolio of projects; (iii) existing revenue-generating activities through the current backlog; and (iv) the ability to compete for future mainline signalling projects globally. Overall, the Mainline Divestment Business will constitute a significant competitive constraint for future mainline signalling projects both in the UK and globally; and given its diversified portfolio and financial standing, it will also have the capacity to develop new technologies and /or enter new markets if desired by the remedy taker.

***The Remedy Package fully addresses the alleged SLC in respect of future CBTC projects in the UK***

- 3.5 Under the Remedy Package, Hitachi Rail will provide the remedy taker with CBTC technology, R&D competency on the safety platform, related knowhow, and, at the remedy taker's request, additional training or personnel that the remedy taker may require to build out its organisation. In addition, the remedy taker will be able to use the track record of projects delivered to date using the Orion solution. As a result, the remedy taker will have the ability to compete for and deliver CBTC projects globally, including ultimately competing for projects in London, should it choose to do so.

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<sup>9</sup> For example, the SEI Interlocking Platform has been successfully used on both high-speed and conventional lines in France and on high-speed lines in the UK, [REDACTED] and the SEI Wayside Platform has been successfully used in the UK and [REDACTED] and on French European Rail Traffic Management System lines.

3.6 **Ensured viability:** As explained in paragraph 2.2 above, the CBTC Divestment is added to the Mainline Divestment Business in a complementary fashion, such that the Divestment Business comprises all the elements needed for a viable, standalone business. In particular, the Mainline Divestment Business comprises [REDACTED]

[REDACTED] Alongside these resources and the know-how transferred as part of the CBTC Divestment, the remedy taker will have all of the capabilities required to develop and produce its CBTC solution. In addition, almost all of the other capabilities listed (sales & bidding, procurement, supply chain & logistics and support functions) could be applied to the CBTC Divestment with no or minimal changes. Indeed, the Glasgow Metro project was won by the Hitachi Rail France team (including *e.g.*, project management, sales and bidding functions), who will be part of the Divestment Business. As explained above, at the option of the remedy taker, the CBTC Divestment would also include training for personnel or the transfer of additional development and engineering personnel specialised in the supply of CBTC projects, to be recruited, trained and transferred over a period of [REDACTED]

3.7 **The CBTC Divestment is proportionate.** The CMA must seek to ensure that no remedy is disproportionate in relation to the SLC and its adverse effects.<sup>10</sup> As such, the CMA must consider in the round, the scale of any SLC, the effectiveness of the remedy proposed as well as the cost and intrusiveness of the proposed remedy. The Parties will set out in detail their response to the substance of the CMA's case in relation to the alleged CBTC SLC when responding to the Provisional Findings, however, it is relevant to note the following points at this stage for the purposes of determining proportionality:

3.7.1 The CMA's concern relates to (at most two) potential CBTC tenders in London that *may* be launched by around 2035, subject to funding.<sup>11</sup> As such, the alleged SLC relates to tenders that are both unconfirmed and in the distant future. The CBTC Divestment would place the remedy taker in a position to build on an existing track record and develop its CBTC capabilities over time. It would be disproportionate to require any further divestment or more significant remedies now where even the *possibility* of an SLC would not arise for over a decade, during which time any number of factors may change the competitive assessment, including, for instance, a change to TfL's procurement strategy or assessment criteria, or the entry of new players.

3.7.2 Hitachi Rail does not currently exercise any competitive constraint on the Target in relation to London CBTC projects and [REDACTED]  
[REDACTED] In particular:

<sup>10</sup> CMA guidance on merger remedies, para 3.4.

<sup>11</sup> Provisional Findings, paras 9.44 to 9.46.

- (a) The Provisional Findings note that Siemens and the Target are the strongest competitors for future London CBTC projects.<sup>12</sup>
- (b) Hitachi Rail's share of supply for CBTC projects on the London Underground is 0%. Elsewhere in the UK and in Europe its market share is also extremely limited at [0-5%]<sup>13</sup>
- (c) Other than very limited resources dedicated to the current Glasgow CBTC project, Hitachi Rail does not have any CBTC business located in the UK.
- (d) The CMA provisionally found that there are high entry barriers for new suppliers (such as Hitachi Rail) on the London Underground.<sup>14</sup>

3.8 In summary, the CBTC Divestment fully and proportionately addresses the alleged SLC and would provide the remedy taker with the prospect of developing its own CBTC business and profile. However, Hitachi Rail reserves the right to develop further the Remedy Package, which might involve an alternative CBTC solution, should the CMA consider that the CBTC Divestment is insufficient. [REDACTED]

*No composition risk in respect of Divestment Business*

3.9 The Remedies Notice notes that partial divestments may raise composition risks where there are interdependencies between business areas, reliance on global capabilities or difficulties in identifying and separating required assets.<sup>15</sup> The Remedy Package fully addresses these concerns and would not result in any such composition risks as it is an **existing standalone business**:

3.9.1 The Divestment Business comprises an existing viable and competitive standalone business with all necessary tangible and intangible assets and personnel.

3.9.2 The Mainline Divestment Business includes two legal entities: Hitachi Rail France (a French-based entity, active globally with over 100 years' experience in signalling, including across conventional technologies, high-speed and mass transit systems) and Hitachi Rail Deutschland. Hitachi Rail has historically delivered UK mainline signalling projects using Hitachi Rail France's capabilities, in combination with Hitachi Rail's small UK presence. This UK presence will also form part of the Mainline Divestment Business, allowing the remedy taker to replicate Hitachi Rail's mainline signalling presence in the UK.

<sup>12</sup> Provisional Findings, para 69.

<sup>13</sup> Provisional Findings, tables 15 and 16.

<sup>14</sup> Provisional Findings, para 10.102.

<sup>15</sup> Remedies Notice, para 26.



3.9.3 In addition, as described in paragraph 2.2.2, the Divestment Business has full spectrum capabilities, including all necessary personnel and resources to ensure that the Mainline Divestment Business is not dependent on other entities (either globally or relating to other activities) within Hitachi Rail for the delivery of these functions.<sup>16</sup> The CBTC Divestment will therefore be provided as part of, and alongside, a fully standalone and competitive business, thereby ensuring its viability.

#### 4. **RELEVANT CUSTOMER BENEFITS WHICH WOULD BE LOST ON PROHIBITION**

4.1 The Parties have previously set out the benefits of the Proposed Transaction, which are expected to result in better pricing and services for customers globally and in the UK.

4.2 A summary of the key benefits identified by the Parties is set out below:

4.2.1 Combining the Parties' skills, resources, knowledge and experiences will result in a stronger competitor in the UK mainline signalling sector, that can more credibly compete against the dominant incumbent players in Great Britain (which hold c.97% of the current installed base), which in turn will result in improved pricing and services for customers.

4.2.2 The Proposed Transaction will enable Hitachi Rail and the Target as a larger rail-focused company to attract more investment, including with respect to R&D, which will ultimately facilitate innovation for the benefit of customers.

4.2.3 The complementary technological capabilities of Hitachi Rail and the Target will allow the merged entity to make significant in-roads into the provision of digital mobility solutions at a greater scale.

4.2.4 The Proposed Transaction will allow the merged entity to benefit from economies of scale, improved procurement processes and associated cost savings for the ultimate benefit of its customers globally and in the UK.

4.3 The Remedy Package preserves the Parties' ability to deliver these customer benefits while a prohibition would prevent these benefits from materialising.

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<sup>17</sup> Provisional Findings, para 8.393 and 10.314.

## 5. SUITABLE PURCHASER

5.1 The Remedies Notice invites comments on the criteria that must be met by a suitable purchaser. The Parties set out their views as follows:

5.1.1 **No need for global track record of supplying DMS or CBTC.** The Parties do not consider it necessary for a suitable purchaser to have such experience for two key reasons:

- (a) the Remedy Package will comprise all necessary assets and personnel to compete credibly for signalling projects at a global level; and
- (b) the signalling sector is characterised by new entry from players in adjacent markets. For example, both CAF and Stadler primarily operated as suppliers of rolling stock but have since expanded to provide signalling solutions.

5.1.2 **Ongoing TCSF tender should not impact assessment of suitable purchaser.** This is because the Mainline Divestment Business will be able to capably deliver projects within the TCSF regardless of the experience of the remedy taker.

5.1.3 **No risk of unsuitable or inappropriate purchaser.** As the CMA will be aware, Hitachi Rail has been in discussions with potential purchasers as part of the remedy required to address the European Commission's competition concerns. To date, [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]

5.1.4 **No requirement for upfront buyer.** Given the level of interest and the strong profiles of potential purchasers, the Parties do not consider that an upfront buyer would be required.

5.1.5 **Other considerations.**

- (a) The Parties note that the CMA will wish to be satisfied that a prospective purchaser "is committed to competing in the [relevant] markets".<sup>18</sup> Given that any future London CBTC project would not be tendered for over 10 years, it would be unreasonable to require the remedy taker to commit to competing in such tenders.
- (b) The Parties note that a suitable purchaser would not need to have a UK-presence. In particular, (i) neither Party has a meaningful presence in the UK in relation to DMS (and Hitachi Rail's UK mainline signalling

<sup>18</sup> Remedies Notice, para 29(c).

presence will form part of the Mainline Divestment Business) and (ii) Hitachi Rail does not have any local capabilities for a future London CBTC tender.

6. **THE REMEDY PACKAGE CAN BE ACHIEVED IN AN ACCEPTABLE TIMEFRAME**

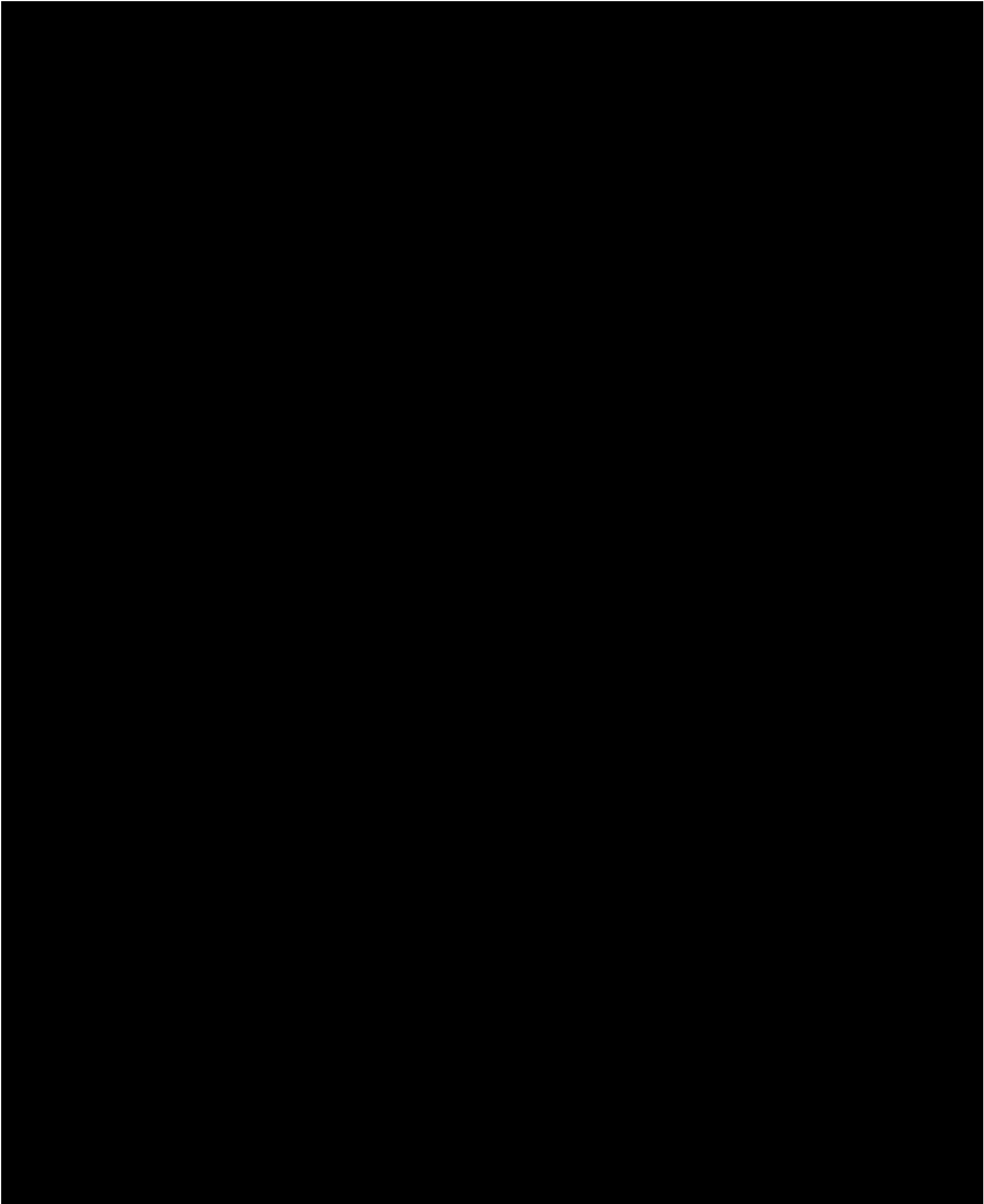
- 6.1 The Parties consider that it will be feasible to agree a sale agreement with a suitable purchaser within a period of 6 months.

7. **CONCLUSION**

- 7.1 The Parties strongly dispute the CMA's Provisional Findings that the Proposed Transaction will result in an SLC. However, to the extent that the CMA's final decision upholds the SLCs identified in the Provisional Findings, the Parties consider that the Remedy Package constitutes an effective and proportional means of eliminating the alleged SLCs.









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22 JUNE 2023

[REDACTED]

