

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

**Undertakings given by Hitachi Rail Limited to the Competition and Markets  
Authority pursuant to section 80 of the Enterprise Act 2002**

**Background**

- A. On 23 December 2022, in exercise of its duty under section 33(1) of the Enterprise Act 2002 (the **Act**), the Competition and Markets Authority (**CMA**) referred the anticipated acquisition by Hitachi Rail Limited of Thales SA's Ground Transportation Systems Business (the **Merger**) (together the **Merger Parties**) to its chair for the constitution of a group of CMA Panel Members (the **Inquiry Group**) (the **Reference**) to determine in accordance with section 36 of the Act:
- 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 situation may be expected to result in a substantial lessening of competition within any market or markets in the United Kingdom for goods or services.
- B. The period within which the report on the Reference is to be made (the **reference period**) was extended under section 39(4) of the Act on 23 December 2022, and further extended by a Notice of Extension under section 39(2) of the Act published on 27 July 2023. The extended reference period is due to expire on 6 October 2023.
- C. The CMA published its Provisional Findings Report and the Notice of Possible Remedies on 8 June 2023. The CMA provisionally found that:
- a. Arrangements were in progress or in contemplation which, if carried into effect, would result in the creation of a relevant merger situation; and
  - b. The creation of that situation may be expected to result in a substantial lessening of competition (**SLC**) as a result of horizontal unilateral effects within:
    - i. The market for digital mainline signalling systems and related services (digital mainline signalling systems) in Great Britain (**GB**); and
    - ii. The market for the supply of communications-based train control (**CBTC**) signalling systems and related service in the United Kingdom.
- D. During the reference period, [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]
- E. The Reference has not been finally determined in accordance with section 79(1) of the Act. The CMA wishes to ensure that no action is taken pending final determination of the Reference which might prejudice that Reference or impede the taking of any action by the CMA under Part 3 of the Act which might be justified by the CMA's decisions on the Reference.

- F. Now therefore Hitachi Rail Limited on the behalf of itself and, where relevant, its subsidiaries (together **Hitachi**) gives to the CMA the following undertakings pursuant to section 80 of the Act for the purpose of preventing pre-emptive action.

**1. Commencement, application and scope**

- 1.1. These Undertakings will come into force on the Commencement Date.
- 1.2. These Undertakings may be varied or superseded by another undertakings or may be released by the CMA under section 80(5)(b) or (c) respectively of the Act.
- 1.3. Notwithstanding any other provision of these Undertakings, no act or omission shall constitute a breach of these Undertakings, and nothing in these Undertakings shall oblige Hitachi to reverse any act or omission, in each case to the extent that it occurred, or was completed, prior to the Commencement Date.

**2. Management of the Hitachi business until determination of proceedings**

- 2.1. Except with the prior written consent of the CMA, Hitachi shall not, during the specified period, take any action which might prejudice the Reference or impede the taking of any action under the Act by the CMA which may be justified by the CMA's decisions on the Reference, including:
- 2.1.1. completion of the Merger; or
- 2.1.2. any action which might impair the ability of the Hitachi business to compete independently of the Thales business in any of the markets affected by the Merger.
- 2.2. Further and without prejudice to the generality of paragraph 2.1, except with the prior written consent of the CMA, Hitachi shall at all times during the specified period and in addition to the matters listed in Annex 2 of these Undertakings, ensure that:
- a. the Hitachi business is carried on separately from the Thales business;
  - b. the Hitachi business is maintained as a going concern and sufficient resources are made available for the development of the Hitachi business in the ordinary course of business without anticipation or contemplation of the Merger;
  - c. the nature, description, range and quality of goods and/or services supplied in Great Britain by the Hitachi business is maintained and preserved, other than an expansion, improvement, update, or other change made in the ordinary course of business; and
  - d. except in the ordinary course of business:
    - i. all of the Material Assets of the Hitachi business are maintained and preserved, including facilities and goodwill;

- ii. none of the Material Assets of the Hitachi business is disposed of; and
- iii. no interest in the Material Assets of the Hitachi business is created or disposed of.

### **3. Compliance**

- 3.1. Hitachi shall procure and ensure that each of its subsidiaries complies with these Undertakings as if these Undertakings had been given by each of them.
- 3.2. Hitachi shall provide to the CMA such information or statement of compliance as the CMA may from time to time require for the purposes of monitoring compliance by Hitachi and its subsidiaries with these Undertakings. In particular, two weeks from the Commencement Date, and subsequently every two weeks (or, where this does not fall on a working day, the first working day thereafter) the Chief Executive Officer of Hitachi, or such other person(s) of Hitachi as may be agreed with the CMA shall, on behalf of Hitachi provide a statement to the CMA in the form set out in Annex 3 to these Undertakings confirming compliance with these Undertakings.
- 3.3. At all times, Hitachi shall actively keep the CMA informed of any [REDACTED] relating to the Hitachi business relevant to [REDACTED], which includes but is not limited to the matters set out in Annex 1 to these Undertakings.
- 3.4. If Hitachi has any reason to suspect that these Undertakings might have been breached it shall immediately notify the CMA and any Monitoring Trustee that Hitachi may be directed to appoint under paragraph 3.5.
- 3.5. The CMA may give directions to a specified person or to a holder of a specified office in any body of persons (corporate or unincorporated) to take specified steps for the purpose of carrying out, or ensuring compliance with, these Undertakings, or do or refrain from doing any specified action in order to ensure compliance with these Undertakings. The CMA may vary or revoke any directions so given.
- 3.6. In the event that the CMA directs Hitachi to appoint a Monitoring Trustee pursuant to paragraph 3.5, the obligations of the Monitoring Trustee shall be set out in the directions. If a Monitoring Trustee is so appointed, Hitachi shall make available all information and shall provide all assistance that the Monitoring Trustee may require, in order to fulfil any obligations under any directions issued under paragraph 3.5, including in particular such information and assistance as the Monitoring Trustee may require in order to monitor and report to the CMA at such frequency and on the obligations as the CMA may specify in the directions.
- 3.7. Any directions given in accordance with paragraph 3.5 for the appointment of a Monitoring Trustee may permit the Monitoring Trustee to appoint an independent technical expert to assist the Monitoring Trustee in the performance of its duties, subject to the approval of the CMA.
- 3.8. Hitachi shall comply in so far as it is able with such directions as the CMA may from time to time give and to take such steps as may be specified or described in the

directions for the purpose of carrying out or securing compliance with these Undertakings.

#### 4. Interpretation

4.1. The Interpretation Act 1978 shall apply to these Undertakings as it does to Acts of Parliament.

4.2. In these Undertakings:

**Act** means the Enterprise Act 2002;

**business** has the meaning given by section 129(1) and (3) of the Act;

**Commencement Date** means date of execution of these Undertakings;

**control** includes the ability directly or indirectly to control or materially to influence the policy of a body corporate or the policy of any person in carrying on an enterprise;

**Hitachi business** means the mainline signalling business of the Rail Control division in Great Britain and Europe operated by Hitachi Rail, Limited and any of its subsidiaries, excluding the urban signalling business of the Rail Control division and the Vehicles division;

**Material Assets** means assets that are material to maintaining the Hitachi business and to allow the Hitachi business to compete independently as pre-Merger pursuant to paragraph 2.2 (a) and (b);

**ordinary course of business** means matters connected to the day-to-day supply of goods and/or services, research and development, investment/divestment, business development and corporate transactions unrelated to the Merger by the Hitachi business and for the avoidance of doubt matters not in anticipation or contemplation of the Merger (other than merger integration planning activities provided these do not extend to actual merger integration);

**specified period** means the period beginning on the date of these Undertakings and terminating when the Reference is finally determined in accordance with sections 79(1) and (2) of the Act or earlier if agreed by Hitachi and the CMA;

**subsidiary**, unless otherwise stated, has the meaning given by section 1159 of the Companies Act 2006;

**Thales business** means the ground transportation systems business operated by Thales SA;

**Undertakings** means these Undertakings given by Hitachi and accepted by the CMA, including the Annexes hereto, and as may be varied under paragraph 5.

- 4.3. Any words or expressions used in these Undertakings, or the recitals of these Undertakings shall, unless otherwise defined herein and/or the context otherwise requires, have the same meaning as in the Act, and the Provisional Findings Report.
- 4.4. References to recitals, paragraphs, subparagraphs and annexes are references to the recitals, paragraphs and subparagraphs of, and annexes to, these undertaking unless otherwise stated.
- 4.5. Unless the context requires otherwise, the singular shall include the plural and vice versa and references to persons includes bodies of persons whether corporate or incorporate. Any reference to a person or position includes their or its successor in title.

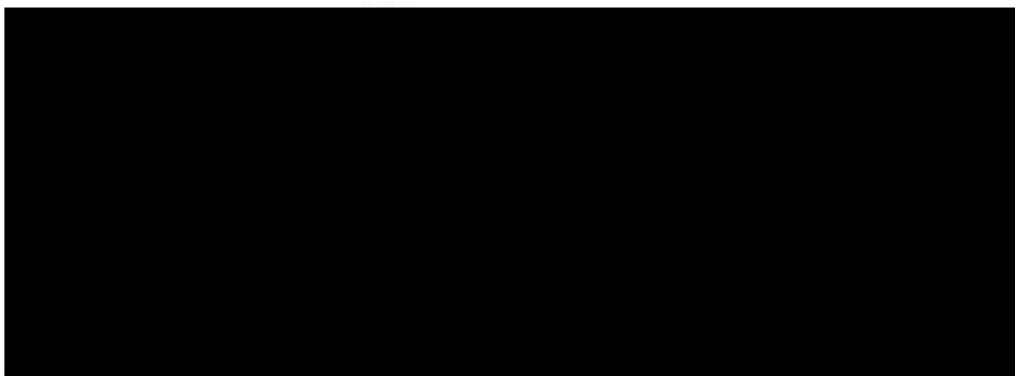
## **5. Variations to these Undertakings**

- 5.1. The terms of these Undertakings may be varied, superseded or released in accordance with section 80 (5) of the Act.
- 5.2. These Undertakings shall, if they have not previously ceased to be in force, cease to be in force if an order under section 81 comes into force in relation to the Reference.
- 5.3. The CMA shall consider as soon as reasonably practicable any representations received by it in relation to varying or releasing these Undertakings.

## **6. Governing Law**

- 6.1. These Undertakings shall be governed by and construed in accordance with English law.
- 6.2. Disputes arising concerning these Undertakings shall be subject to the jurisdiction of the courts of England and Wales.

FOR AND ON BEHALF OF HITACHI RAIL LIMITED



ANNEX 1

[REDACTED]

[REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

ANNEX 2

[REDACTED]

[REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



### ANNEX 3

#### Compliance statement for Hitachi

I *[Name]*, to the best of my knowledge, confirm on behalf of Hitachi that:

- a. Hitachi has complied with the undertakings given by Hitachi and accepted by the CMA on *[Date]* (“**Undertakings**”) in the period from *[insert date]* to *[insert date]*.
- b. Hitachi’s subsidiaries have also complied with the Undertakings in the period from *[insert date]* to *[insert date]*.
- c. No action has been taken by Hitachi in the period from *[insert date]* to *[insert date]* which might prejudice the Reference or will impede the taking of any action by the CMA which may be justified by its decision on the reference.
- d. Hitachi and its subsidiaries remain in full compliance with the Undertakings and will continue actively to keep the CMA informed of any [REDACTED] relating to the Hitachi business in accordance with paragraph 3.3 and Annex 1 and 2 of the Undertakings.
- e. Except as listed in paragraph (f) below there have been no [REDACTED] in the Hitachi business that should have been notified to the CMA pursuant to the Undertakings.
- f. *[list of [REDACTED]]*

FOR AND ON BEHALF OF HITACHI RAIL LIMITED

Signature .....

Name .....

Title .....

Date .....