

Confidential

By e-mail

Mr Stuart McIntosh,
Panel Inquiry Chair
Competition and Markets Authority
The Cabot
25 Cabot Square
London, E14 4QZ

Your ref: Case ME/6971/21

10 July 2023

Dear Stuart

Case ME/6971/21 – Observations on the Office of Rail and Road (ORR) submission in response to the CMA's Remedies Notice

We refer to the ORR's advisory submission of 27 June 2023 (the “**Submission**”) in response to the CMA's Remedies Notice, which sets out its advice on potential remedies should the CMA conclude that the proposed acquisition by Hitachi Rail, Ltd. (“**Hitachi Rail**”) of the entire Ground Transportation Systems business of Thales SA (together with Hitachi Rail, the “**Parties**”) is likely to result in a substantial lessening of competition in the supply of digital mainline signalling.¹

As the ORR noted, it did not have the benefit of access to the Parties' remedies submissions in preparing its Submission. Accordingly, the Submission should be seen as a theoretical assessment of what a suitable remedies package might include.² Indeed, the Parties do not agree with all aspects of the Submission, in particular the section on “practical considerations and the timing of the TCSF” which we believe is erroneous in certain key respects (on which we would be willing to elaborate if that would be helpful to the CMA).³

¹ Submission, para 3. The information presented in the Submission relates solely to mainline.

² Submission, para 7.

³ We note the ORR's observations on timing implications on the TCSF (Submission, paras 8 – 9), but as the Parties have explained in their submissions to the CMA, [REDACTED]

[REDACTED] See Parties' Response to the CMA's RFI dated 19 June 2023, paras 2.4 and 2.5.

[REDACTED]

Nonetheless, the Parties were pleased to note that the proposed Remedy Package (detailed in the Parties' response to the CMA's Remedies Notice) is consistent with, and would satisfy, the core requirements suggested by the ORR in the Submission:

- The Remedy Package will include the four building blocks identified by the ORR as being important for the remedy taker to compete on an even footing⁴: (i) manufacturing facilities, (ii) design capability, (iii) R&D capabilities and (iv) installation, logistics and project management capabilities. The Divestment Business includes the **manufacturing site** in Riom, France (with approximately [65-75] FTEs), and the core site in Les Ulis, with **R&D, engineering and project delivery capabilities** (approximately [240 – 260] FTEs), as well as **design capabilities**, including, among other things, the development of generic and specific applications, system design, verification & validation, reliability, availability, maintainability and safety, safety certification activities, and quality and assurance.⁵
- The ORR notes that the Parties do not have strong installation, logistics and project management capabilities located in the UK.⁶ As previously submitted, the Divestment Business comprises Hitachi Rail's UK mainline signalling presence ([10 - 20] FTEs) together with the French resources and capabilities that have historically been involved in bidding and delivering UK projects, including individuals with previous experience of working with UK integrators.⁷
- The ORR also notes the importance of a **diverse portfolio**. The Divestment Business is diverse geographically, with a project backlog spanning *inter alia* France, Germany, the UK, [REDACTED].⁸ Its portfolio also includes various types of signalling projects, including the supply of interlockings, conventional and ERTMS wayside systems, on-board units, CBTC and components.⁹ As such, the Divestment Business will be well placed to navigate demand (or uncertainty of demand) in different markets.
- Importantly, the Remedy Package is **structural** in nature and the Divestment Business is a standalone, viable business (with an experienced management team) that in the hands of an appropriate remedy taker would be **capable of replicating the competitive**

⁴ Submission, para 14.

⁵ Parties' Response to Remedies Questionnaire, para 6.6.

⁶ Submission, para 14 (c).

⁷ Parties' Response to CMA RFI of 19 June 2023, paras 2.2. See also Parties' Response to Remedies Questionnaire, paras 4.7, 6.2.6, 6.3.3 and 6.6.

⁸ Parties' Response to Remedies Questionnaire, para 4.6.

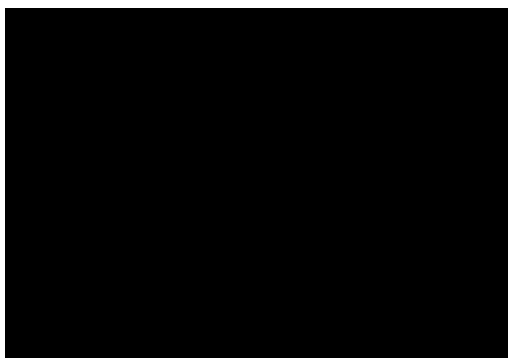
⁹ Parties' Response to CMA RFI of 19 June 2023, para 6.1.

constraint of Hitachi Rail in the UK.¹⁰ The remedy taker will be acquiring a business which has been established for over 100 years in the European signalling market, has more than 500 FTEs with substantial signalling, engineering and manufacturing experience and capability; and, crucially to the CMA's provisional theory of harm, a business which has experience of delivering mainline signalling projects for Network Rail.¹¹ The ORR's "observations on behavioural remedies" therefore have no application in this case.

While the Parties take issue with certain aspects of the Submission, we are pleased to note that the Remedy Package is entirely consistent with the ORR's expectations for a suitable remedy proposal, affirming the robust nature of the Divestment Business, and its ability to replicate the competitive constraint of Hitachi Rail in the UK. The Parties are confident that the Divestment Business will be able to provide some of the additional capacity required by Network Rail to achieve the digitalisation of mainline signalling services.

Please let us know if it would be helpful for the Parties to elaborate further on any of the points made above.

Yours sincerely

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¹⁰ Submission, paras 11 -12.

¹¹ Parties' Response to Remedies Notice, para 3.9.2.