

COMPETITION AND MARKETS AUTHORITY

Comments on the Addendum Provisional Findings Report

1. We write to you in relation to the Addendum provisional findings report (the "**Addendum**") published by the Competition and Markets Authority ("**CMA**") on 23 August 2023, where the Inquiry Group has provisionally concluded that the anticipated acquisition (the "**Merger**") by Hitachi Rail, Ltd ("**Hitachi**") of Thales SA's Ground Transportation Systems Business ("**Thales**") is not likely to result in a substantial lessening of competition ("**SLC**") in relation to the supply of CBTC signalling systems in the United Kingdom ("**UK**").
2. The CMA has invited any interested person to provide to the Inquiry Group its reasons as to why the Addendum should not become final or should be varied, as well as on the appropriateness of the remedies proposed in the Notice of Possible Remedies.

[REDACTED]

4. In particular, the Inquiry Group considers that Hitachi is an important CBTC player globally, with participation rates and win rates in brownfield tenders higher than Thales¹; and that Hitachi has an established track record of undertaking high-value brownfield projects, which has been able to successfully expand by competing in complex brownfield projects against the other three global rivals, Siemens, Alstom and Thales.
5. The Addendum also notes that Hitachi has capacity to bid for high value and complex brownfield tenders even when Hitachi did not benefit from any incumbency advantage². In fact, the Inquiry Group considers that Hitachi's bid activity in more complex brownfield projects may be indicative of its current level of experience and act as a signal to its rivals about its overall capabilities and competitive strengths for other complex projects³.

¹ Addendum, paragraph 2.42.

² Addendum, paragraph 2.59.

³ Addendum, paragraph 2.62.

6. Moreover, the Addendum states that Hitachi would be able to meet all 13 of TfL's characteristics required for the next London Underground tenders through a number of complex brownfield projects⁴.
7. However, the Addendum believes that since TfL requires several years in-service experience, many of Hitachi's brownfield projects may not qualify or be discounted in part or in full by TfL⁵. This is the reason why, besides Hitachi's capability and innovation efforts, the Addendum concludes that Hitachi currently does not have the experience and technical expertise to compete for more complex brownfield projects and will not do so until it has completed its ongoing projects and can demonstrate that they have several years in operation⁶. Therefore, the Addendum understands that the Parties are not likely to be close competitors for future London Underground tenders, giving the likely timing of these tenders.
8. [REDACTED]. Although some Hitachi's complex projects are expected to be completed by the end of 2029 and 2030, there are other complex brownfield projects where Hitachi's CBTC solution is or will be in operation for several years before the London Underground tender in 2030-2035. Furthermore, even for the projects that would be completed by the end of 2029 and 2030, TfL will have the opportunity to verify key project delivery milestones of the Hitachi CBTC solution well in advance (e.g. generic application Safety Case), which could be used to complement other references and consequently proof its suitability for the TfL tenders to come. Moreover, the Inquiry Group have received very positive feedback on Hitachi's performance by Hitachi's CBTC customers⁷.
9. [REDACTED]
[REDACTED]
[REDACTED] In fact, TfL has informed the Inquiry Group that it would not rate references individually, but that it would consider them in the round⁸; and that it has not carried out yet a detailed evaluation of Hitachi's CBTC projects⁹. Consequently, TfL has not excluded at this stage that all Hitachi's brownfield projects could be jointly considered relevant to demonstrate that Hitachi has addressed the same requirements as

⁴ Addendum, paragraph 2.67.

⁵ Addendum, paragraph 2.90.

⁶ Addendum, paragraph 2.91.

⁷ Addendum, paragraph 2.72.

⁸ Addendum, paragraph 2.24.

⁹ Addendum, paragraph 2.40.

London Underground in other railway environment. Contrary to the conclusions of the Addendum, TfL has not ruled out Hitachi as a credible competitor for London Underground future tenders.

10. Moreover, the Addendum has not provided any evidence that, in view of Hitachi's capacity and incentives, it could not improve its competitive position for the London Underground tenders in 2030, especially in the current context of CBTC expansion.
11. It is clear, then, that in view of Hitachi's capacity and competitive strength to bid for complex brownfield projects, the Merger will not only reduce significantly the number of CBTC global suppliers, but it will lead to a loss of dynamic competition in UK, since it will drastically reduce competitors' pressure on Thales to offer competitive solutions to TfL (neither from the technological nor from the economical point of view). Absent the Merger, it cannot be excluded at this stage that Hitachi would have the capacity, experience and incentive to participate in the London Underground tenders. Therefore, the Merger will eliminate Hitachi as a competitive constraint, further reducing the number of CBTC operators with presence in UK to just two. Competitive incentives will then be reduced to the detriment of customers.
12. In light of the above [REDACTED]
[REDACTED].
13. In addition to the above, as regards the appropriateness of the remedies [REDACTED]
[REDACTED] a structural remedy can solve the SLC effects resulting from the Merger; and that the divestiture package shall enable the purchaser to compete effectively with the merged entity from day one. Therefore, 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 case a divestiture package is finally only required for mainline digital signalling services, it shall include as well as all shared elements, products, platforms, resources and teams with other signalling businesses.

[REDACTED]
[REDACTED]

[REDACTED] 31st August 2023

[REDACTED]