

ANTICIPATED ACQUISITION BY HITACHI RAIL LIMITED OF THALES SA's GROUND TRANSPORTATION SYSTEMS BUSINESS

Notice of proposal to accept Final Undertakings pursuant to sections 41, 82 and 90 of and schedule 10 to the Enterprise Act 2002 and public consultation on the proposed Final Undertakings

Background

1. On 23 December 2022, the Competition and Markets Authority (**CMA**), in exercise of its duty under section 33(1) of the Enterprise Act 2002 (the **Act**), referred the anticipated acquisition by Hitachi Rail Limited (**Hitachi Rail**), a wholly-owned subsidiary of Hitachi Limited of the Ground Transportation Systems business (the **Target**) (the **Merger**) carried on by Thales SA (**Thales**) (Hitachi and Thales together, the **Parties**), to a group of CMA panel members (the **Reference**) to determine, pursuant to section 36 of the Act whether:
 - (i) arrangements are in progress or contemplation which, if carried into effect, will result in the creation of a relevant merger situation; and
 - (ii) 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 (**UK**) for goods or services.
2. On 3 August 2023, the CMA accepted interim undertakings (**Interim Undertakings**) from Hitachi Rail pursuant to section 80 of the Act for the purpose of preventing pre-emptive action in accordance with that section.
3. On 8 August 2023, the CMA issued written directions under the Interim Undertakings for the appointment of a monitoring trustee (the **Monitoring Trustee**) in order to monitor and ensure Hitachi Rail's compliance with the Interim Undertakings.
4. The CMA published a final report pursuant to section 38 of the Act, titled 'Anticipated acquisition by Hitachi Rail, Ltd of Thales SA's Ground Transportation Systems Business' (dated 4 October 2023) (the **Report**) which concluded, among other things, that:
 - I. the Merger if carried into effect may be expected to result in the creation of a relevant merger situation;
 - II. the Merger may be expected to result in a substantial lessening of competition (**SLC**) as a result of horizontal unilateral effects arising

from overlaps between the Parties in the supply of digital mainline signalling systems and related services in Great Britain;

- III. the CMA should take action to remedy the SLC and any adverse effects resulting from it; and
 - IV. Hitachi Rail should divest its mainline signalling business in France, Germany and the UK (including staff, technology, and a production and R&D site) as described in the Report and in Annex 1 of the Final Undertakings (the **Divestment Business**) (the **Primary Divestiture Remedy**).
5. The implementation of the Primary Divestiture Remedy will be subject to the following safeguards:
- I. Hitachi Rail will be subject to regular reporting requirements in accordance with paragraphs 5 and 13 of the Final Undertakings;
 - II. the Monitoring Trustee will monitor compliance with these Final Undertakings, including the progress of the implementation of the Primary Divestiture Remedy;
 - III. the appointment of a Hold Separate Manager;
 - IV. the purchaser of the Divestment Business must be an Approved Purchaser in accordance with the Purchaser Approval Criteria in Annex 2 of the Final Undertakings; and
 - V. provisions enabling the CMA to direct the appointment of a Divestiture Trustee to effect the final disposal of the Divestment Business.
6. The Report also provided that in the event that customer consent from each of Network Rail, SNCF and Deutsche Bahn to the transfer of their Backlog Contracts [X] to the Approved Purchaser is not obtained within the Divestiture Period, prohibition would be an effective and proportionate alternative remedy (the **Alternative Remedy**). Hitachi undertakes to give Additional Final Undertakings to give effect to the Alternative Remedy and its obligations under the Primary Divestiture Remedy.
7. The Interim Undertakings cease to be in force on the date of acceptance of these Final Undertakings by the CMA, pursuant to section 82 of the Act. Any derogations already granted by the CMA pursuant to the Interim Undertakings shall remain applicable.
8. The CMA has reached agreement with Hitachi Rail as to the terms of the Final Undertakings to give effect to the Primary Divestiture Remedy for the purpose

of remedying, mitigating or preventing the SLC and any adverse effects arising from it and the proposed Final Undertakings are attached to this Notice.

Notice of proposal to accept undertakings

9. The CMA now hereby gives notice pursuant to paragraph 2 of Schedule 10 to the Act that:
 - (a) the CMA proposes to accept the attached proposed Final Undertakings;
and,
 - (b) the proposed Final Undertakings seek to address the SLC identified in the Report and the adverse effects which may be expected to flow from it.
10. The CMA invites written representations on the proposed Final Undertakings from any person or persons who wish to comment.
11. Representations should reach the CMA by email by **5pm on 1 December 2023** and be addressed to hitachi.thales@cma.gov.uk.
12. The CMA will consider any written representations made in accordance with this Notice and may make modifications to the proposed Final Undertakings as a result. In the absence of any written representations, or in the event that the CMA decides, on consideration of the representations made and not withdrawn, not to amend the proposed Final Undertakings, the CMA proposes to accept the proposed Final Undertakings in their present form pursuant to section 82 of the Act. If the CMA considers that any representation necessitates any material change to the proposed Final Undertakings, the CMA will give notice of the proposed modifications.
13. Once accepted, the Final Undertakings may be varied, superseded or released by the CMA under section 82(2) of the Act.
14. This Notice and a non-confidential version of the Final Undertakings will be published on the CMA website.

Signed by the Authority of the CMA

Stuart McIntosh
Inquiry Group Chair

17 November 2023