

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

**Additional Final Undertakings given by Hitachi, Ltd., Hitachi Rail Limited  
and Thales S.A. to the Competition and Markets Authority pursuant to  
section 82 of the Enterprise Act 2002**

**1. Background**

- 1.1 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, Ltd (**Hitachi**) of the Ground Transportation Systems business (the **Target**) (the **Merger**) carried on by Thales S.A. (**Thales**) (together, the **Parties**), for further investigation and report by a group of CMA panel members.
- 1.2 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:
- 1.2.1 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;
- 1.2.2 the CMA should take action to remedy the SLC and any adverse effects resulting from it;
- 1.2.3 Hitachi Rail 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 (the **Divestment Business**) (the **Primary Divestiture Remedy**); and
- 1.2.4 in the event that customer consent from Network Rail, SNCF and Deutsche Bahn to the transfer of their Backlog Contracts [§§] to the Approved Purchaser of the Divestment Business is not obtained within the Divestiture Period, prohibition of the Merger would be an effective and proportionate alternative remedy (the **Alternative Remedy**).
- 1.3 On [Date] the CMA accepted Final Undertakings from Hitachi Rail pursuant to section 82 of the Act, for the purpose of giving effect to the Primary Divestiture Remedy (the **Final Undertakings**).
- 1.4 Now therefore, in order to give effect to Hitachi's obligations under the Primary Divestiture Remedy and if necessary, the Parties' obligations under the

Alternative Remedy in the event the necessary customer consents are not obtained within the time permitted, the Parties provide the following Additional Final Undertakings to the CMA pursuant to section 82 of the Act, (the **Additional Final Undertakings**).

## 2. Interpretation

2.1 Unless otherwise defined, words and expressions used and defined in these Additional Final Undertakings have the same meaning as they do in the Final Undertakings. Any reference to a person or position includes their or its successor in title.

2.2 In these Additional Final Undertakings:

**Act** means the Enterprise Act 2002;

**Additional Final Undertakings** means these final undertakings accepted by the CMA, and as may be varied in terms of paragraph 7;

**Commencement Date** means the date on which the Additional Final Undertakings come into force pursuant to paragraph 3;

**Effective Divestiture** means completion of the sale of the Divestment Business to an Approved Purchaser in accordance with the Transaction Agreements approved by the CMA;

**Final Undertakings** means the final undertakings accepted by the CMA under section 82 of the Act, for the purpose of giving effect to the Primary Divestiture Remedy;

**Group of Interconnected Bodies Corporate** means a group consisting of two or more bodies corporate all of whom are interconnected with each other within the meaning of section 129(2) of the Act, where any two bodies corporate are interconnected if (a) one of them is a body corporate of which the other is a subsidiary; or (b) both of them are subsidiaries of one and the same body corporate;

**Hitachi** means Hitachi, Ltd, incorporated under the laws of Japan under number 0100-01-008844, having its registered office at 6-6, Marunouchi 1-chome, Chiyoda-ku, Tokyo, 100-8280 Japan;

**Hitachi Rail** means Hitachi Rail Limited, a private limited company incorporated under the laws of the United Kingdom under number 05598549, having its registered office at 7<sup>th</sup> Floor, One New Ludgate, 60 Ludgate Hill, London, England, EC4M 7AW;

**Interest** means any interest conferring control within the meaning of section 26 of the Act which includes the ability, directly or indirectly, de jure or de facto, to control or materially influence the policy of a body corporate, or the policy of

any person in carrying on an enterprise but without having a controlling interest in that body corporate or that enterprise;

**Prohibition Period** means the period of 15 years from the Commencement Date;

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

**Thales** means Thales S.A. a public limited company organised and existing under the laws of France with registration number 552 059 024, having its registered office at 4, rue de la Verrerie, 92190 Meudon (Hauts de Seine), France

### **3. Commencement**

3.1 These Additional Final Undertakings shall commence and take effect as follows:

3.1.1 the undertakings in paragraph 4, will take effect on (i) the date of the day after the last day of the Divestiture Period or, if a Divestiture Trustee is appointed under paragraph 10.2 of the Final Undertakings, the day after the last day of the Trustee Divestiture Period, whichever is the later, and in either case, provided that the condition under paragraph 4.2.2 of the Final Undertakings is not satisfied by such date; or (ii) if prior to such date the Parties have jointly notified the CMA that the condition under paragraph 4.2.2 will not be satisfied, the date of such notification; and

3.1.2 with respect to the undertakings in paragraph 5, the date on which these Additional Final Undertakings are accepted by the CMA in accordance with section 82(2)(a) of the Act.

### **4. Prohibition**

4.1 Subject to paragraph 3 and except with the prior written consent of the CMA, for the duration of the Prohibition Period, Hitachi, Hitachi Rail and all members of the Group of Interconnected Bodies Corporate to which they may belong, undertake that they shall not:

4.1.1 acquire an Interest in the Target or any of its Subsidiaries;

4.1.2 acquire an Interest in an enterprise holding an Interest in the Target or carrying on the business of the Target from time to time; or

4.1.3 hold an option to acquire an Interest referred to in subparagraphs 4.1.1 and 4.1.2 above.

4.2 Subject to paragraph 3 and except with the prior written consent of the CMA, for the duration of the Prohibition Period, Thales and all members of the Group of Interconnected Bodies Corporate to which it may belong, undertakes that it

shall not, to the extent that any Interest would relate to the supply of digital mainline signalling systems as defined in the Report:

- 4.2.1 acquire an Interest in Hitachi Rail or any of its Subsidiaries;
  - 4.2.2 acquire an Interest in an enterprise holding an Interest in Hitachi Rail or carrying on the business of Hitachi Rail from time to time; or
  - 4.2.3 hold an option to acquire an Interest referred to in subparagraphs 4.2.1 and 4.2.2 above.
- 4.3 For the avoidance of doubt, paragraph 4.2 does not prohibit arm's-length commercial agreements in the ordinary course of business between Hitachi Rail, Thales and any members of the respective Groups of Interconnected Bodies Corporate to which they may belong.
- 4.4 Each of the Parties shall procure that each of its Subsidiaries complies with these Additional Final Undertakings.

## **5. Divestment Undertakings**

- 5.1 Hitachi undertakes that it will not and will procure that any Related Person will not:
- 5.1.1 take any action that would cause Hitachi Rail to be in breach of the Final Undertakings.
  - 5.1.2 for a period of 15 years after Effective Divestiture, directly or indirectly acquire any interest as a result of which it would own or control the Divestment Business in whole or in part, without the prior written consent of the CMA;
  - 5.1.3 for a period of 10 years after Effective Divestiture, use any elements of the WSP to bid for ETCS ATP wayside and interlocking projects in Germany, except with the prior written consent of the CMA. For the avoidance of doubt, this paragraph shall not prevent Hitachi Rail from using the Target's technologies to bid for ETCS ATP wayside and interlocking projects in Germany; and
  - 5.1.4 for a period of 10 years after Effective Divestiture (or 15 years if the ARGOS Framework Agreement is extended by five additional years), use any elements of the SEI (subject to paragraph 7(c) of Annex 1 of the Final Undertakings), PAI Interlocking, and ARGOS Platforms to bid for ETCS ATP wayside, interlocking, and ETCS and legacy on-board units (**OBUs**) projects in France, except with the prior written consent of the CMA. For the avoidance of doubt, this paragraph shall not prevent Hitachi Rail from using the Target's technologies to bid for ETCS ATP wayside, OBU and interlocking projects in France.

## **6. Provision of Information to the CMA**

- 6.1 The Parties shall promptly provide to the CMA such information as the CMA may reasonably require for the purposes of enabling the CMA to monitor the carrying out of these Additional Final Undertakings, or any provision of these Additional Final Undertakings; to review the effectiveness of the operation of these Additional Final Undertakings, or any provision of these Additional Final Undertakings; or perform any of its functions under these Additional Final Undertakings or sections 92, 93 or 94 of the Act.

## **7. Acceptance of Service**

- 7.1 Hitachi and Hitachi Rail hereby authorise [X] and Thales hereby authorises [X] to accept service on their behalf of all documents connected with the Additional Final Undertakings (including any document of any kind which falls to be served on or sent to Hitachi, Hitachi Rail and Thales or any of their respective Subsidiaries in connection with any proceedings in court in the UK) orders, requests, notifications or other communications connected with the Additional Final Undertakings.
- 7.2 Unless Hitachi, Hitachi Rail and Thales inform the CMA in writing that [X] and [X] respectively has ceased to have authority to accept and acknowledge service on their or any of their Subsidiaries' behalf, any document, order, request, notification or other communication shall be validly served on Hitachi, Hitachi Rail and Thales if it is served on [X] and [X] respectively; and service shall be deemed to have been acknowledged by Hitachi, Ltd and Thales if it is acknowledged by [X] and [X] or such other nominee.
- 7.3 Any communication from Hitachi, Hitachi Rail or Thales to the CMA under the Additional Final Undertakings shall be addressed to such address as the CMA may from time to time stipulate.

## **8. Directions**

- 8.1 The Parties each undertake to comply with any written directions given by the CMA under these Additional Final Undertakings, and to procure that any holder of a specified office within each Party including its Subsidiaries also comply, and to promptly take such steps as may be specified or described in the directions for the purposes of complying with these Additional Final Undertakings, including by doing, or refraining from doing, anything so described which they have undertaken to do or refrain from doing under these Additional Final Undertakings.
- 8.2 The Parties each acknowledges that:
- 8.2.1 the CMA may choose not to issue directions immediately upon becoming entitled to do so, and recognise that any delay by the CMA in making a written direction shall not affect its obligations at such time as the CMA makes any written direction; and

8.2.2 the CMA may vary or revoke any direction so given.

## **9. Variations**

- 9.1 The terms of these Additional Final Undertakings may be varied with the prior written consent of the CMA in accordance with sections 82(2) and 82(5) of the Act.
- 9.2 Where a request for consent to vary these Additional Final Undertakings is made to the CMA, the CMA will consider any such request in light of the Report and will respond in writing as soon as is reasonably practicable having regard to the nature of the request and to its statutory duties.
- 9.3 The consent of the CMA shall not be unreasonably withheld or delayed.

## **10. Compliance**

- 10.1 The Parties undertake to comply with such reasonable written directions as the CMA may from time to time give and to take such steps as are within its reasonable competence for the purpose of carrying out or securing compliance with the Additional Final Undertakings.
- 10.2 The Parties undertake to procure that each of their Subsidiaries and (as may be the case) successors in title complies fully with the Additional Final Undertakings.

## **11. Governing law**

- 11.1 These Additional Final Undertakings shall be governed by and construed in all respects in accordance with English law.
- 11.2 Disputes arising concerning these Additional Final Undertakings shall be subject to the jurisdiction of the courts of England and Wales.

## **12. Termination**

- 12.1 Hitachi recognises and acknowledges that the Additional Final Undertakings shall remain in force, unless varied or released in accordance with the Act:
- 12.1.1 with respect to the undertakings in paragraph 4, and insofar as they enter into force pursuant to paragraph 3.1.1, until the end of the Prohibition Period; and
- 12.1.2 with respect to the undertakings in paragraph 5.1.2 for a period of 15 years from the Effective Divestiture, in paragraph 5.1.3 for a period of 10 years from the Effective Divestiture and paragraph 5.1.4 for a period of 10 years (or 15 years if the ARGOS Framework Agreement is extended by 5 years) from the Effective Divestiture.

FOR AND ON BEHALF OF HITACHI, LTD

Signature .....

Name .....

Title .....

Date .....

FOR AND ON BEHALF OF HITACHI RAIL LIMITED

Signature .....

Name .....

Title .....

FOR AND ON BEHALF OF THALES SA

Signature .....

Name .....

Title .....

Date .....