

ANTICIPATED ACQUISITION BY HITACHI RAIL, LTD OF THE GROUND TRANSPORTATION SYSTEMS BUSINESS CARRIED ON BY THALES SA

Directions issued pursuant to paragraph 3.5 of the Interim Undertakings accepted by the Competition and Markets Authority pursuant to section 80 of the Enterprise Act 2002

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 (**Hitachi Rail**) of the Ground Transportation Systems Business (the **Target**) (the **Merger**) carried on by Thales SA 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.

On 3 August 2023, the CMA accepted interim undertakings (**Interim Undertakings**) from Hitachi Rail Limited in relation to the Merger in accordance with section 80 of the Act to prevent pre-emptive action.

On 8 August 2023, the CMA issued written directions to Hitachi Rail to appoint a monitoring trustee (**Monitoring Trustee**) in order to monitor and ensure Hitachi Rail's compliance with the Interim Undertakings.

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:

- a) 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;

- b) the CMA should take action to remedy the SLC and any adverse effects resulting from it;
- c) Hitachi Rail should divest its mainline signalling businesses in France, Germany and the UK (including staff, technology, and a production and research and development (**R&D**) site) as described in the Report (the **Divestment Business**) (the **Primary Divestiture Remedy**).

The Report also provided that a Hold Separate Manager should be appointed to hold the Divestment Business separate from Hitachi Rail and to manage the day-to-day business of the Divestment Business. On 1 November 2023, Hitachi Rail appointed a Hold Separate Manager under commitments it has given to the European Commission.

In order to ensure that no action is taken pending final determination of the Reference under section 22 of the Act 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 decision on the Reference, the CMA now issues written Directions under paragraph 3.5 of the Interim Undertakings that Hitachi Rail must appoint a Hold Separate Manager of the Divestment Business in accordance with the terms provided for, and must comply with the obligations set out, in Annex 1.

Stuart McIntosh

Inquiry Group Chair

22 November 2023

ANNEX 1

Directions to appoint a Hold Separate Manager

Interpretation

1. In these Directions:

the Act means the Enterprise Act 2002;

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

CMA means the Competition and Markets Authority;

Commencement date means 3 August 2023, which is the commencement date of the Interim Undertakings;

Divestment Business means the business or businesses as defined in the Report, and includes Hitachi Rail's mainline signalling business in France, Germany and the UK (including staff, technology, and a production and R&D site) as described in the Report;

Effective Divestiture means completion of the sale of the Divestment Business to a purchaser approved by the CMA in accordance with the transaction agreements approved by the CMA;

Final Undertakings means the Undertakings to be given by Hitachi Rail Limited to the Competition and Markets Authority pursuant to section 82 of the Enterprise Act 2002;

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 7th Floor, One New Ludgate, 60 Ludgate Hill, London, England, EC4M 7AW;

Hitachi business means the business conducted by Hitachi Rail and its respective subsidiaries carried on at the Commencement Date, but excluding the Divestment Business;

Hold Separate Manager means the person appointed by Hitachi Rail in accordance with these Directions and to perform the functions set out in these Directions to manage the day-to-day business under the supervision of the Monitoring Trustee;

Hold Separate Manager Mandate means the terms and conditions on which the Hold Separate Manager is appointed by Hitachi Rail;

Interim Undertakings means the interim undertakings given by Hitachi Rail Limited and accepted by the CMA under section 80 of the Act on 3 August 2023;

Key Personnel means all personnel necessary to maintain the viability and competitiveness of the Divestment Business, including the Hold Separate Manager;

Monitoring Trustee means the person appointed by Hitachi Rail pursuant to the directions issued by the CMA on 8 August 2023 under paragraph 3.5 of the Interim Undertakings;

Report means the final report published by the CMA 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);

[✂]

Working Day means a day other than Saturday, Sunday or a public holiday in any of the UK, France or Japan;

Terms and expressions used in these Directions shall, unless otherwise defined herein and/or the context requires otherwise, have the same meaning as they do in the Interim Undertakings.

Appointment

2. Hitachi Rail must appoint a Hold Separate Manager to ensure that the Divestment Business operates as a viable and competitive business, separately from and independently of the Hitachi business. The Hold Separate Manager must be subject to the approval by the CMA of his or her identity and the terms and conditions of appointment. Any appointment must be made in accordance with the provisions of these Directions.
3. Hitachi Rail undertakes to secure the appointment (within five Working Days of the date of the CMA's Directions) or retention of the Hold Separate Manager to perform the functions set out in these Directions. Provided that the other conditions set out in these Directions are complied with, the Hold Separate Manager may be the same person as already appointed on 1 November 2023 pursuant to the commitments Hitachi Rail has given to the European Commission.
4. Hitachi Rail shall remunerate and reimburse the Hold Separate Manager for all reasonable costs properly incurred in accordance with the terms and conditions of his or her appointment and in accordance with the directions or instructions

given in paragraph 21 of these Directions, in such a way as not to impede the Hold Separate Manager's independence or ability to fulfil the Hold Separate Manager Obligation effectively and properly.

5. The Hold Separate Manager must act on behalf of the CMA and be under an obligation to the CMA to carry out his or her functions to the best of his or her abilities.
6. Hitachi Rail, its subsidiaries and its employees, officers, directors, advisers and consultants must cooperate fully with the Hold Separate Manager, in particular by providing the Hold Separate Manager with all cooperation, assistance and information as the Hold Separate Manager may reasonably require in order to discharge his or her functions.

The Hold Separate Manager Obligation

7. The primary obligation of the Hold Separate Manager will be to exercise day-to-day management and control of the Divestment Business so as to preserve and, if necessary, restore effective competition in the markets affected by the Merger. The Hold Separate Manager will exercise management and control of the Divestment Business in such a way as to ensure that it is held separate from the Hitachi Rail business.
8. The Hold Separate Manager Obligation shall include the performance of any other act or task necessary for the performance of the primary obligation of the Hold Separate Manager including the performance of the reporting obligations at paragraphs 16 to 17 of these Directions.
9. The Hold Separate Manager shall ensure that, except in the ordinary course of business or for the purposes of complying with the Interim Undertakings:
 - a. all of the assets of the Divestment Business are maintained and preserved, including facilities and goodwill;
 - b. none of the assets of the Divestment Business are disposed of; and
 - c. no interest in the assets of the Divestment Business is created or disposed of.
10. The Hold Separate Manager shall subject to paragraph 7.1 of the Final Undertakings further:
 - a. maintain the Divestment Business as a going concern and make available, or procure to make available, sufficient resources for the development of the Divestment Business, on the basis and continuation of the existing business plans;

- b. except in the ordinary course of business or for the purposes of complying with the Interim Undertakings, not make any substantive changes to the organisational structure of, or the management responsibilities within, the Divestment Business; and
 - c. except in the ordinary course of business or for the purposes of complying with the Undertakings, not alter the nature, description, range and quality of goods and/or services supplied by the Divestment Business;
11. Subject to paragraph 7.1 of the Final Undertakings, in respect of the [X] and until the [X] or other such period as approved by the CMA, the Hold Separate Manager shall ensure that:
- a. the Divestment Business will not [X];
 - b. having regard at all times to the obligation to hold separate the Divestment Business, the Divestment Business conducts [X] in the ordinary course of business in accordance with the approach that Hitachi Rail would take absent the Merger;
 - c. the Divestment Business ensures sufficient resources are made available and deployed to the [X] to meet its obligations under (b) of this paragraph and any ongoing engagements [X];
12. The Hold Separate Manager shall take such steps as the Hold Separate Manager reasonably considers necessary including but not limited to:
- a. Giving such directions to the officers and staff of Hitachi Rail or the Divestment Business including any person holding such position on a temporary basis as are necessary for the fulfilment of the Hold Separate Manager Obligation;
 - b. Attending such meetings of employees, officers (including board meetings, and meetings of any committee of the board) and members of Hitachi Rail and the Divestment Business as the Hold Separate Manager considers necessary for the fulfilment of the Hold Separate Manager Obligation; and
 - c. Complying with such requests as the CMA may reasonably make for the purpose of ensuring Hitachi Rail and the Divestment Business enable the Hold Separate Manager to fulfil the Hold Separate Manager Obligation.

13. The CMA may, on its own initiative or at the request of the Hold Separate Manager or Hitachi Rail, give written Directions or instructions to the Hold Separate Manager in order to assist it in the discharge of the Hold Separate Manager Obligation.
14. The Hold Separate Manager may enter into such agreements, deeds, instruments of transfer and other instruments and documents on behalf of the Divestment Business as are necessary for the performance of its duty, on such terms and conditions as it reasonably considers appropriate.
15. The Hold Separate Manager must immediately notify the CMA in writing if he or she forms a reasonable suspicion that the Interim Undertakings have been breached or if he or she considers that he or she is no longer in a position to effectively carry out the Hold Separate Manager's functions.

Hold Separate Manager Reporting Obligations

16. The Hold Separate Manager will provide to the CMA at such times to be agreed with the CMA from the Hold Separate Manager's appointment to Effective Divestiture, a written report in relation to:
 - a. material developments concerning matters relating to paragraphs 9 to 11 above;
 - b. details of Key Personnel who leave or join the Divestment Business;
 - c. any interruption of the business of the Divestment Business (including, without limitation, procurement, processing, logistics, sales and employee relations arrangements) that has prevented it from operating in the ordinary course of business for more than 24 hours;
 - d. all substantial changes to customer volumes won or lost for the Divestment Business including any substantial changes to customer demand as forecast in the business plan of the Divestment Business at the Commencement Date;
 - e. substantial changes in the Divestment Business' contractual arrangements or relationships with key suppliers;
 - f. adverse substantial changes in any material litigation or regulatory enforcement action;
 - g. the initiation, defence, progress and resolution of any material litigation or regulatory enforcement action; and

- h. adverse substantial changes in relation to the financial position and/or performance of the Divestment Business.
- 17. The Hold Separate Manager shall actively keep the CMA informed of any decision by the Divestment Business:
 - a. [✂];
 - b. to change any of the key staff with executive, managerial or technical responsibility (engaged at the date of these Directions) [✂] (other than as a result of employee departures or hiring in the ordinary course of business); and
 - c. to make any substantial change to [✂].

Hitachi and Divestment Business obligations

- 18. Hitachi Rail and the Divestment Business shall enable the Hold Separate Manager to carry out the Hold Separate Manager Obligation.
- 19. The Hold Separate Manager shall act on the instructions of the CMA in the performance of the Hold Separate Manager Obligation and shall not be bound by any instruction of Hitachi Rail. Hitachi Rail shall not seek to create or vary the Hold Separate Manager's functions and obligations except with the CMA's prior written consent.
- 20. Hitachi Rail shall remunerate and reimburse the Hold Separate Manager for all reasonable costs properly incurred in accordance with the terms and conditions of the Hold Separate Manager's appointment, provided that such remuneration and reimbursement shall not give rise to any conflict of interest or otherwise impair the ability of the Hold Separate Manager to discharge the Hold Separate Manager's functions and obligations. For the avoidance of doubt such reimbursement shall include the fees and disbursements of such legal or other professional advisers, consultants and assistants as the Hold Separate Manager reasonably considers necessary for the discharge of the Hold Separate Manager's functions and obligations.
- 21. The Hold Separate Manager may give written directions to Hitachi Rail and/or the Divestment Business for the purpose of fulfilling the Hold Separate Manager Obligation. Hitachi Rail and the Divestment Business shall comply with such reasonable directions as the Hold Separate Manager may specify and cooperate fully with the Hold Separate Manager in its performance of the Hold Separate Manager Obligation.

22. Without prejudice to the generality of paragraph 21 of these Directions, that cooperation shall include:
- a. The grant to the Hold Separate Manager of all reasonable rights, powers and authorities as are necessary for the performance of the Hold Separate Manager Obligation;
 - b. ensuring that personnel are reasonably available where necessary for meetings in order to provide the Hold Separate Manager with all information necessary for the performance of the Hold Separate Manager Obligation;
 - c. the provision of such facilities as are necessary for the discharge by the Hold Separate Manager of the Hold Separate Manager Obligation; and
 - d. the provision of full and complete access to all personnel, books, records, documents, facilities and information of the Divestment Business as the Hold Separate Manager may reasonably require.

General

23. The Hold Separate Manager must neither have nor become exposed to a conflict of interest that impairs the Hold Separate Manager's objectivity and independence in discharging his or her functions under these Directions, unless it can be resolved in a manner and within a timeframe acceptable to the CMA.
24. All communications between the Hold Separate Manager and the CMA are confidential and must not be disclosed to Hitachi Rail, save with the prior written consent of the CMA. The Hold Separate Manager shall not disclose such communications to third parties, save for external legal advisers provided they are under a similar obligation to keep such communications confidential.
25. The CMA may issue such further directions as it considers necessary to ensure compliance with the Interim Undertakings. This may include (after consultation with the European Commission) directions to dismiss the Hold Separate Manager if the Hold Separate Manager ceases to perform his or her functions and obligations as Hold Separate Manager, or for any other good cause, including the exposure of the Hold Separate Manager to a conflict of interest.

Hold Separate Manager – Replacement, discharge, and reappointment

26. If the Hold Separate Manager ceases to perform the Hold Separate Manager Obligation, or for any other good cause, including the exposure of the Hold Separate Manager to a conflict of interest, the CMA may (after consultation with

the European Commission) issue directions to dismiss the Hold Separate Manager.

27. If the Hold Separate Manager is removed under paragraph 26 of these Directions, the Hold Separate Manager may be required to continue in its post until a new Hold Separate Manager is in place to whom the Hold Separate Manager has effected a full handover of all relevant information. The new Hold Separate Manager shall be appointed in accordance with the procedure in paragraphs 29 to 34 of these Directions.
28. Other than in accordance with paragraph 26 of these Directions, the Hold Separate Manager shall cease to act as Hold Separate Manager only after the CMA has discharged it from its duties at a time when all the functions with which the Hold Separate Manager has been entrusted have been met.
29. If the Hold Separate Manager is removed under paragraph 26 of these Directions. Hitachi Rail shall within the period of five Working Days from the direction to dismiss the Hold Separate Manager, submit to the CMA for approval a list of up to two persons whom it proposes to appoint as Hold Separate Manager. The proposal shall contain sufficient information for the CMA to verify that each proposed person fulfils the requirements set out in paragraph 3030 of these Directions and shall include a schedule of the steps to be taken to give effect to the Hold Separate Manager Mandate.
30. Each person on the list referred to in paragraph 29 of these Directions shall possess the qualifications necessary for the performance of the Hold Separate Manager Mandate and shall on appointment and thereafter be free of any conflict of interest including any conflict of interest that might arise by virtue of the terms of remuneration.
31. The CMA may (after consultation with the European Commission) approve or reject any or all of the proposed persons (such approval not to be unreasonably withheld) and may approve the proposed mandate subject to any modifications it deems necessary for the Hold Separate Manager to fulfil the Hold Separate Manager Obligation. If only one proposed person is approved, Hitachi Rail shall use its reasonable endeavours to appoint the person concerned as Hold Separate Manager in accordance with the Hold Separate Manager Mandate. If more than one proposed person is approved, Hitachi Rail shall decide which person to appoint as Hold Separate Manager from among the approved persons. Hitachi Rail shall appoint the Hold Separate Manager within two Working Days from the CMA's approval and on the terms of the Hold Separate Manager Mandate.

32. If all the proposed Hold Separate Managers are rejected by the CMA (after consultation with the European Commission), Hitachi Rail shall submit the names of at least two further persons within four Working Days from being informed of the rejection, in accordance with the requirements and the procedure set out in paragraphs 29 to 31 of these Directions.
33. The provisions of paragraph 34 of these Directions shall apply if:
 - a. Hitachi Rail fails to nominate further persons in accordance with paragraph 29 of these Directions;
 - b. Those further persons nominated by Hitachi Rail in accordance with paragraph 32 of these Directions are rejected by the CMA (after consultation with the European Commission), acting reasonably; or
 - c. Hitachi Rail is unable for any reason to conclude the appointment of the Hold Separate Manager within the time limit specified by the CMA (after consultation with the European Commission).
34. The CMA shall (after consultation with the European Commission) nominate one or more persons to act as Hold Separate Manager, and Hitachi Rail shall appoint one of those Hold Separate Managers within two working days starting with the date of nomination under the terms of the Hold Separate Manager Mandate.