

European Commission Decision of July 31, 2020, Alstom / Bombardier Transportation, Case M.9779

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On June 11, 2020, the European Commission received the notification of the concentration procedure pursuant to Article 4 of the Council Regulation (EC) No 139/2004 of 20 January 2004 (hereinafter referred to as “EC Merger Regulation”), concerning the companies *Alstom SA* and *Bombardier Transportation (Investment) UK Ltd.*, world leaders in the area of rail transportation, with operations in the production and manufacture of high-speed rolling stock and signaling solutions.

The notified transaction constituted a concentration under Article 3 (1) (b) of the EC Merger Regulation since - if the European Commission did not object - *Alstom* would hold all the issued and outstanding shares and the exclusive control of *Bombardier*.

The Commission carried out an analysis of the concentration for possible constraints on competition in the common market, or in a substantial part of it, namely through the creation or strengthening of a dominant position, with reference to Article 2 (5) of the EC Merger Regulation.

When delimiting the relevant market, the Commission distinguished two types of market:

- (1) Very high speed, mainline and urban rolling stock (trains): very high-speed rolling stock includes trains operated for long-distance travel at speeds of at least 300 km/h; mainline rolling stock includes intercity and regional trains; urban rolling stock includes metros and trams.
- (2) Mainline and urban signaling solutions: signaling solutions include signaling systems, installed on railway tracks and on-board units (“OBUs”) that provide safety controls on mainline and urban rail networks. These include European Train Control System (“ETCS”) OBUs, which are currently being rolled out throughout the EEA to facilitate compliance with European-wide standards, favor interoperability and safe cross-border travel.

In the analysis carried out by the European Commission, it was concluded that, under the terms in which it was notified, the concentration proved to be potentially restrictive of competition and, therefore, incompatible with the common market. In the “very high speed and mainline rolling stock” market, the merged entity would become the undisputed market leader, thus assuming a dominant position said market. In the “mainline rolling stock” market, both companies already held a dominant position individually, especially in France and Germany. The merger would densify that domain - and, eventually, restrict competition. In the “mainline signaling

solutions” market, the concentration would increase the difficulty of other OBU suppliers’ interface with the systems currently installed. There was also a risk that the merged entity would become the sole supplier of railway lines and OBUs in the Netherlands.

Following the anti-competitive problems that the Commission's analysis revealed, and to attain approval for the concentration, *Alstom* submitted the commitments below mentioned:

- (i) The divestment of *Bombardier's* assets currently contributing to its joint very high-speed platform with Hitachi, the “Zefiro V300”. *Alstom* also committed to a series of measures aimed at preserving the joint bid offered in consortium by *Bombardier* and *Hitachi* to *HS2*, the current largest opportunity for the production of very high-speed rolling stock in Europe;
- (ii) The divestment of (a) *Alstom's* mainline *Coradia Polyvalent* platform, (b) *Alstom's* production facility located in Reichshoffen in France, (c) *Bombardier's* mainline Talent 3 platform, and (d) part of *Bombardier's* production facility located in Hennigsdorf in Germany;
- (iii) The supply of legacy OBUs and necessary interfacing information and support, in favor of signaling competitors; and
- (iv) The supply of legacy OBUs to the Dutch infrastructure manager, *ProRail*, in favor of all interested operators.

With the commitments proposed and assumed by *Alstom*, and after the feedback received by the competing entities in the relevant market, the Commission concluded that the merger was compatible with the common market.

On July 31, 2020, the European Commission approved, under the terms of the EC Merger Regulation, the acquisition of *Bombardier Transportation* by *Alstom*, an approval subject, as mentioned above, to the full compliance of the set of commitments presented by the French industrial group.