Official Journal of the European Union

C 300

English edition

Information and Notices

Volume 62

5 September 2019

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IV

(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

EUROPEAN COMMISSION

Euro exchange rates ([1])

4 September 2019

(2019/C 300/01)

1 euro =

	Currency	Exchange rate		Currency	Exchange rate
USD	US dollar	1,1018	CAD	Canadian dollar	1,4679
JPY	Japanese yen	117,03	HKD	Hong Kong dollar	8,6389
DKK	Danish krone	7,4584	NZD	New Zealand dollar	1,7343
GBP	Pound sterling	0,90255	SGD	Singapore dollar	1,5270
SEK	Swedish krona	10,7530	KRW	South Korean won	1 327,96
CHF	Swiss franc	1,0848	ZAR	South African rand	16,3729
ISK	Iceland króna	139,30	CNY	Chinese yuan renminbi	7,8808
NOK	Norwegian krone	9,9838	HRK	Croatian kuna	7,4045
BGN	Bulgarian lev	1,9558	IDR	Indonesian rupiah	15 593,22
CZK	Czech koruna	25,834	MYR	Malaysian ringgit	4,6273
HUF	Hungarian forint	328,94	PHP	Philippine peso	57,205
PLN	Polish zloty	4,3395	RUB	Russian rouble	73,1531
RON	Romanian leu	4,7290	THB	Thai baht	33,732
TRY	Turkish lira	6,2482	BRL	Brazilian real	4,5603
AUD	Australian dollar	1,6225	MXN	Mexican peso	21,8430
			INR	Indian rupee	79,3890

([1]) *Source*: reference exchange rate published by the ECB.

Opinion of the Advisory Committee on restrictive practices and dominant positions at its meeting on 9 April 2019 concerning a draft decision in Case AT.40049 — MasterCard II

Rapporteur: Finland

(2019/C 300/02)

1. The Advisory Committee shares the Commission's concerns expressed in its draft Decision as communicated to the Advisory Committee on 26/03/2019 under Article 101 of the Treaty on the Functioning of the European Union ('TFEU') and Article 53 of the EEA Agreement.

2. The Advisory Committee agrees with the Commission that the proceedings concerning Mastercard can be concluded by means of a decision pursuant to Article 9(1) of Regulation (EC) No 1/2003.

3. The Advisory Committee agrees with the Commission that the commitments offered by Mastercard are suitable, necessary and proportionate and should be made legally binding on Mastercard.

4. The Advisory Committee agrees with the Commission that, in light of the commitments offered by Mastercard, there are no longer grounds for action by the Commission against Mastercard, without prejudice to Article 9(2) of Regulation (EC) No 1/2003.

5. The Advisory Committee recommends the publication of its opinion in the *Official Journal of the European Union*.

Final Report of the Hearing Officer [1]

Case AT.40049 — MasterCard II

(2019/C 300/03)

Introduction

(1) The present report is made in connection with a draft commitments decision under Article 9 of Council Regulation (EC) No 1/2003 [2] (the 'Draft Decision') which is addressed to Mastercard Incorporated, Mastercard International Incorporated and Mastercard Europe SA (together 'Mastercard').

(2) The Draft Decision concerns one of the two aspects of the Mastercard card payment system [3] that are covered by Case AT.40049: Mastercard's rules on 'inter-regional' multilateral interchange fees ('MIFs' [4]) applicable to card-based inter-regional transactions concluded at merchants located in the European Economic Area ('EEA') with consumer debit and credit cards issued by an issuer located outside the EEA. [5]

(3) The other aspect of Case AT.40049 has been addressed by Commission Decision C(2019) 241 final, dated 22 January 2019, which concerns Mastercard's previously applicable rules concerning 'cross-border acquiring' within the Mastercard system. [6]

Procedure concerning inter-regional MIFs

Investigative stage

(4) On 9 April 2013, the Commission initiated proceedings in Case AT.40049.

(5) Between April 2013 and December 2014, the Commission sent several requests for information to Mastercard.

(6) In April and May 2014, the Commission sent requests for information to over 40 acquirers concerning their activities in 10 EEA countries. [7] The questionnaires used, as well as the responses to them, have together been referred to in Case AT.40049 as the 'Acquiring Survey'. In May 2014, the Commission sent questionnaires to 33 acquirers seeking acquiring margin data not obtained in the context of DG Competition's 'Cost of Payments Study' (AT.40194 [8]). These questionnaires, together with the responses to them, have been referred to in Case AT.40049 as the 'Cost Study Survey'.

(7) The Commission adopted a statement of objections on 9 July 2015 (the 'SO') covering both aspects of Case AT.40049. The SO was notified to Mastercard on 13 July 2015.

Access to the file [9]

(8) On 24 July and 3 August 2015 respectively, Mastercard received access to the non-confidential part of the investigation file in Case AT.40049 by means of two separate CD-ROMs.

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(1) Pursuant to Articles 16 and 17 of Decision 2011/695/EU of the President of the European Commission of 13 October 2011 on the function and terms of reference of the hearing officer in certain competition proceedings (OJ L 275, 20.10.2011, p. 29) ('Decision 2011/695/EU').

(2) Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ L 1, 4.1.2003, p. 1) ('Regulation (EC) No 1/2003').

(3) In a 'four-party' payment system such as the Mastercard system, the parties involved in each purchase made by payment card are, besides the owner/licensor of the system: (1) the cardholder; (2) the financial institution which issued that card (referred to as the 'issuer'); (3) the 'merchant'; and (4) the financial institution providing the merchant with services enabling it to accept the card as a means of settling the transaction concerned (referred to as the 'acquirer').

(4) MIFs are sums that, in respect of transactions settled by way of a card payment in payment system such as the Mastercard system, are typically payable to the issuer by the acquirer in default of an alternative 'interchange' arrangement made bilaterally between issuer and acquirer in respect of the type of card and transaction concerned. MIFs are generally expressed in terms of a percentage of the face value of the associated card payment.

(5) See footnotes 3 and 4 for brief explanations of the terms 'MIFs', 'merchants' and 'issuer'.

(6) Concerning the procedure leading to that decision, see Final Report of the Hearing Officer, dated 18 January 2019, in Case AT.40049 — MasterCard II (OJ C 185, 29.5.2019, p. 8).

(7) Austria, Belgium, France, Germany, Italy, The Netherlands, Poland, Spain, Sweden and the United Kingdom.

(8) Survey of merchants' costs of processing cash and card payments, the final results of which were published by DG Competition on 18 March 2015 (http://ec.europa.eu/competition/sectors/financial_services/dgcomp_final_report_en.pdf).

(9) Paragraphs 8 to 18 of the present report provide more detail than the corresponding paragraphs 6 to 10 of the Final Report mentioned in footnote 6 above. This is because the information covered by Mastercard's relevant requests to the Hearing Officer for additional access and time relates more to MIFs than to Mastercard's previous cross-border acquiring rules.

(9) By letters dated 7 and 17 August 2015, Mastercard requested additional access to, in particular, the Acquiring Survey and the Cost Study Survey. Mastercard also sought access to certain documents prepared by a consultancy that had assisted DG Competition with the Cost of Payments Study (the 'Consultancy Documents'). In September 2015, Mastercard raised issues concerning the extent of redactions applied to materials on the first two CD-ROMs and the organisation and cataloguing of the part of the investigation file accessible via those CD-ROMs.

(10) DG Competition dealt with these requests from Mastercard. In particular, DG Competition organised a data room procedure whereby certain of Mastercard's external advisers could access, in a data room (the 'Data Room'), information obtained in the context of the Acquiring Survey, the Cost Study Survey and the Cost of Payments Study, albeit in anonymised form where relevant (the 'Data Room Procedure'). DG Competition also clarified certain cataloguing issues in connection with the material contained on the first two CD-ROMs and provided a third CD-ROM on 28 September 2015 containing, in native spreadsheet format, certain Cost of Payments Study data that had been provided in scanned format on the earlier CD-ROMs. After initially refusing access to the Consultancy Documents, DG Competition subsequently agreed to include them in the Data Room Procedure.

(11) Mastercard's external advisers had access to the Data Room for 15 working days in February and March 2016. As foreseen under the Data Room Procedure, they prepared a report for Mastercard's attention (the 'Data Room Report'). DG Competition reviewed this report in draft form, releasing a provisional, redacted version of the Data Room Report on 18 March 2016. In the corresponding cover letter, DG Competition explained why it had applied relatively extensive redactions to the detail of a particular section of the Data Room Report (the 'Redacted Detail'). DG Competition also explained that it would have to seek the agreement of relevant information providers to the inclusion of certain quotes and other information included in the final Data Room Report (the 'Outstanding Passages').

(12) On 23 March 2016, Mastercard objected to me about DG Competition's refusal to include the Redacted Detail in the released version of Data Room Report. Mastercard did not raise the matter of the Outstanding Passages with me.

(13) In my decision dated 6 April 2016, I disagreed with DG Competition's assessment of the Redacted Detail as business secrets or other confidential information. It did not appear possible for Mastercard to identify, on the basis of the relevant section of the Data Room Report, underlying confidential information. I also disagreed with the position taken in DG Competition's letter of 18 March 2016 that the Redacted Detail amounted to 'other confidential information' since, once proceedings in Case AT.40049 are terminated, Mastercard might use the Redacted Detail in national damages actions, and thus possibly in a manner contrary to the interests of any merchants having contributed data to the Cost of Payments Study that might be involved in such damages actions. I considered that, once Commission antitrust proceedings have been terminated, neither Regulation (EC) No 773/2004 [10] nor the 'Damages Directive' [11] preclude the use of information such as the Redacted Detail, obtained in the course of access to the file in those proceedings, for defensive purposes in national litigation for the application of Article 101 TFEU.

(14) On 7 April 2016, DG Competition made available to Mastercard the full text of the section of the Data Room Report that contains the Redacted Detail. DG Competition released the Outstanding Passages in instalments, so that by 22 April 2016 Mastercard had received access to the Data Room Report in full.

Time limit for responding to the SO [12]

(15) The cover letter accompanying the SO granted Mastercard eight weeks in which to respond in writing to the SO. In its letter of 7 August 2015 requesting additional access to the file, Mastercard stated its view that this period had not yet started to run. In a letter of 10 September 2015 proposing the Data Room Procedure, DG Competition set a deadline for Mastercard's written response to the SO (the 'SO Response') that would expire 20 working days after the first day of access to the Data Room. Following Mastercard's observations on the Data Room Procedure, DG Competition modified this deadline so that it would fall 25 working days 'from the beginning of the starting date of the Data Room'. When releasing the provisional, redacted version of the Data Room Report on 18 March 2016, DG Competition reset the deadline for the SO Response to 8 April 2016.

[10] Commission Regulation (EC) of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty (OJ L 123, 27.4.2004, p. 18) as amended.

[11] Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union (OJ L 349, 5.12.2014, p. 1).

[12] See footnote 9 above.

(16) By its letter to me of 23 March 2016, Mastercard requested an extension of this deadline, arguing that it was not possible to divorce the then inaccessible Redacted Detail from the SO Response as a whole.

(17) By decision of 6 April 2016, I extended the period for submitting the SO Response so that the deadline fell two weeks following the day DG Competition made the Redacted Detail available to Mastercard. I explained that it would have been inappropriate for me to make this deadline subject to the provision of the Outstanding Passages, given uncertainty over whether, and if so when, they would be provided.

(18) Mastercard submitted its written response to the SO on 21 April 2016, respecting the deadline I had set. After DG Competition released, on 22 April 2016, the final instalment of Outstanding Passages, Mastercard supplemented the SO Response and submitted an updated version of it on 6 May 2016.

Interested third persons

(19) I admitted Visa Europe as an interested third person in Case AT.40049 on 4 August 2015.

(20) On 29 January 2016, I admitted Visa Inc. and Visa International Service Association as an interested third person. They had applied and were represented as a pair.

(21) On 19 May 2016, I admitted a financial institution as an interested third person, explaining in my admission decision why that institution's request to participate in an oral hearing had come too late for me to be able to accede to it.

Oral hearing

(22) Mastercard developed its arguments at an oral hearing held on 31 May 2016. The two interested third persons representing the Visa card payment system ([13]) took part.

Commitments procedure

(23) On 26 November 2018, Mastercard submitted commitments (the 'Commitments') to the Commission in accordance with Article 9 of Regulation (EC) No 1/2003.

(24) On 5 December 2018, the Commission published a notice in the *Official Journal of the European Union* pursuant to Article 27(4) of Regulation (EC) No 1/2003, summarising the present case and the Commitments and inviting observations on the Commitments within one month. ([14]) On 29 January 2019, the Commission informed Mastercard of third party observations received following that notice.

Concluding remarks

(25) The Draft Decision states that in the light of the Commitments, 'the Commission considers that there are no longer grounds for action on its part and, without prejudice to Article 9(2) of Regulation (EC) No 1/2003, the proceedings in this case should therefore be brought to an end'.

(26) Overall, I consider that the effective exercise of procedural rights has been respected.

Brussels, 11 April 2019.

Wouter WILS

([13]) See paragraphs 19 and 20 above.

([14]) Communication from the Commission published pursuant to Article 27(4) of Council Regulation (EC) No 1/2003 in Case AT.40049 — MasterCard II (OJ C 438, 5.12.2018, p. 11).

Summary of Commission Decision

of 29 April 2019

relating to a proceeding under Article 101 of the Treaty on the Functioning of the European Union and Article 53 of the EEA Agreement

(Case AT.40049 — MasterCard II)

(notified under document C(2019)3033)

(Only the English text is authentic)

(2019/C 300/04)

On 29 April 2019, the Commission adopted a decision relating to a proceeding under Article 101 of the Treat on the Functioning of the European Union and Article 53 of the EEA agreement. In accordance with the provisions of Article 30 of Council Regulation (EC) No 1/2003 [1]*, the Commission herewith publishes the names of the parties and the main content of the decision, having regard to the legitimate interest of undertakings or associations of undertakings in the protection of their business secrets.*

1. INTRODUCTION

(1) The Decision makes legally binding the commitments offered by Mastercard Incorporated, Mastercard International Incorporated and Mastercard Europe SA (together 'Mastercard') under Article 9 of Council Regulation (EC) No 1/2003 ('Regulation 1/2003') in a proceeding under Article 101 of the Treaty on the Functioning of the European Union ('the Treaty') and Article 53 of the EEA Agreement.

(2) This Decision concerns Mastercard's rules on inter-regional multilateral interchange fees ('MIFs') applicable to card-based inter-regional transactions concluded at merchants located in the EEA with consumer debit and credit cards issued by an issuer located outside the EEA.

2. CASE DESCRIPTION

2.1. Procedure

(3) On 9 April 2013, the Commission opened proceedings with a view to adopting a decision under Chapter III of Regulation (EC) No 1/2003. The Commission adopted a Statement of Objections ('SO') on 9 July 2015, setting out its competition concerns relating to Mastercard's inter-regional MIFs. The SO constitutes a preliminary assessment for the purposes of Article 9(1) of Regulation (EC) No 1/2003.

(4) On 21 April 2016, Mastercard replied to the SO in writing. On 6 May 2016, Mastercard submitted an updated reply to the SO. On 31 May 2016, an Oral Hearing took place.

(5) On 26 November 2018, Mastercard submitted commitments ('the Commitments') to the Commission.

(6) On 5 December 2018, the Commission published a notice in the Official Journal of the European Union pursuant to Article 27(4) of Regulation (EC) No 1/2003 ('Article 27(4) Market Test Notice'), summarising the case and the Commitments and inviting interested third parties to give their observations on the Commitments within one month following publication.

(7) On 29 January 2019, the Commission informed Mastercard of the observations received from interested third parties following the publication of the Article 27(4) Market Test Notice.

2.2. The Commission's competition concerns

(8) Mastercard sets rules on inter-regional MIFs that apply to inter-regional transactions concluded at merchants located in the EEA with consumer debit and credit cards issued by an issuer located outside the EEA. In the case of inter-regional transactions, the issuer (the cardholder's bank) and the acquirer (the merchant's bank) can also set the interchange fees in bilateral agreements (including where the issuer is outside the EEA and the merchant is located in the EEA). However, Mastercard has explained that bilateral agreements cover an insignificant share of inter-regional transactions.

[1] OJ L 1, 4.1.2003, p. 1.

(9) In the SO, the Commission took the preliminary view that Mastercard, as the representative of an association of undertakings, has infringed Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement by collectively setting rules on MIFs that apply to card-based inter-regional transactions with consumer debit and credit cards issued by an issuer located outside the EEA at merchant outlets located in the EEA. These include 'card present' or 'CP' transactions (in-store transactions when the cardholder is present in a shop) and 'card not present' or 'CNP' transactions (on-line transactions when the card number and authentication details are transmitted via internet, mail or telephone).

(10) In the SO, the Commission took the preliminary view that Mastercard's rules on inter-regional MIFs constitute a decision by an association of undertakings that has as its object and effect an appreciable restriction of competition in the market for acquiring card payments within the EEA.

(11) In the SO, the Commission came to the preliminary conclusion that Mastercards's rules on inter-regional MIFs amount to horizontal price-fixing. The inter-regional MIFs fix a significant component of the price charged to merchants for acquiring services through the Merchant Service Charges (MSCs). The Commission came to the preliminary conclusion that the restriction of competition on price follows from the very substance of Mastercard's rules on inter-regional MIFs. The Commission also came to the preliminary conclusion that the objective of Mastercard's rules on inter-regional MIFs is to fix a part of the price charged to merchants and to restrict competition to the benefit of Mastercard and its members/licensees, primarily the issuers. Such price fixing is by its very nature harmful to competition and reveals in itself a sufficient degree of harm to competition to be considered a restriction of competition '*by object*'.

(12) In the SO, the Commission also came to the preliminary conclusion that Mastercard's rules on inter-regional MIFs have the effect of restricting competition in the market for acquiring card payments within the EEA. According to the Commission's SO, Mastercard's inter-regional MIFs apply directly to almost all inter-regional transactions made at merchants in the EEA. They determine a significant component of the price charged to merchants for acquiring services through the MSC, therefore limiting the acquirers' scope for reducing and differentiating their MSCs, and acquirers pass them on to merchants. Therefore, inter-regional MIFs have a direct impact on prices by inflating MSCs.

(13) In the SO, the Commission came to the preliminary conclusion that the restrictive object and effect of Mastercard's rules on inter-regional MIFs appear to be further reinforced by the following factors, amongst others: inter-system competition that results in high MIFs (the higher the Mastercard MIF, the more attractive it becomes for an issuer to issue Mastercard cards), lack of downward pressure by acquirers on MIFs, and merchants' lack of countervailing bargaining power to constrain the level of MIFs. As regards acquirers, the Commission took the preliminary view that they appear to be indifferent to the MIFs because MIFs apply equally to all acquirers, which allows them to pass on the common MIF cost to the merchants.

(14) In the SO, the Commission took the preliminary view that Mastercard's rules on inter-regional MIFs are not objectively necessary.

2.3. **The Commitments**

(15) The key elements of the Commitments offered by Mastercard on 26 November 2018 are the following.

(16) Six months following the date on which Mastercard receives formal notification of this Decision, Mastercard commits to cap the MIFs for all consumer card-based payment transactions as follows:

(a) Debit IIF ([2]) for Inter-regional Card Present (CP) Transactions at 0,2 %; and

(b) Credit IIF for Inter-regional Card Present (CP) Transactions, at 0,3 %; and

(c) Debit IIF for Inter-regional Card Not Present (CNP) Transactions at 1,15 %; and

(d) Credit IIF for Inter-regional Card Not Present (CNP) Transactions at 1,50 %.

([2]) Mastercard defines inter-regional MIFs as interchange fees set by Mastercard that apply, by default, to consumer credit and debit card inter-regional transactions ('IIFs').

(17) At the latest within 12 working days from the notification of this Decision, Mastercard will notify each acquirer of Mastercard inter-regional transactions and will request that each acquirer, in turn, notify promptly their respective merchant customers that: i) the Commitments have been adopted and that ii) the Inter-regional MIFs will be capped for all future consumer debit and credit card inter-regional transactions for the duration of the Commitments.

(18) At the latest within 12 working days from the notification of this Decision, Mastercard will publish, in a clearly visible and easily accessible manner on Mastercard's European website, all inter-regional debit and credit MIFs applicable to inter-regional CP transactions and inter-regional CNP transactions subject to the Commitments. This obligation remains in force through the duration of the Commitments.

(19) Mastercard shall not circumvent or attempt to circumvent the Commitments either directly or indirectly by any act or omission. In particular, as of the notification of this Decision, Mastercard will refrain from all practices which have the equivalent object or effect of inter-regional MIFs. This includes specifically but not exclusively implementing programs or new rules whereby Mastercard transfers scheme or other fees charged to acquirers within the EEA to non-EEA issuers.

(20) Subject to its commitment of non-circumvention, Mastercard may adopt appropriate consumer protection measures to ensure that consumers will not be adversely affected by the effects of changes to its inter-regional MIFs in particular concerning matters such as fraud, currency conversion, refunds and charge backs.

(21) Mastercard shall appoint a Monitoring Trustee to monitor Mastercard's compliance with the Commitments. Before appointment, the Commission will have the power to approve or reject the proposed Trustee.

(22) The Commitments will remain in force for a period of five years and six months after notification of this Decision to Mastercard.

3. **CONCLUSION**

(23) The Commitments adequately address the concerns expressed in the SO.

(24) For each type of inter-regional transaction (that is CP and CNP, debit and credit), the MIF caps proposed by Mastercard do not clearly appear to be in excess of the requirements of the MIT. ([3]) The evidence on the file indicates that for inter-regional CP transactions, a per transaction MIF of 0,2 % for debit cards and of 0,3 % for credit cards could make merchants, taken together, indifferent between accepting a cash payment and a card payment. For inter-regional CNP transactions, the evidence on the file indicates that a per transaction MIF of 1,15 % for debit cards and of 1,5 % for credit cards could make merchants, taken together, indifferent between accepting a non-SEPA bank transfer or an e-money transfer and a card payment.

(25) The Commitments therefore deal with the preliminary competition concerns identified by the Commission in an efficient manner, as they provide a direct and tangible benefit to merchants and ultimately consumers in the form of MIFs that are substantially lower than the currently applicable levels.

(26) The Commitments contain a far-reaching non-circumvention clause, which prohibits Mastercard from engaging in any conduct that would directly or indirectly, by act or omission, have the equivalent object or effect of inter-regional MIFs. This includes, but is not limited to, the introduction of fees which are legally or economically equivalent to inter-regional MIFs. This is similar to the 2010 and 2014 Mastercard commitments. In the same way as in those commitments, new fees or increased scheme fees equivalent to inter-regional MIFs are covered by the non-circumvention clause.

(27) The Commitments' definitions of 'Card-Based Payment Instrument' and 'Card Present Transactions' exclude manipulations whereby the card scheme can re-define CP transactions as CNP transactions, as they clearly specify under which conditions CP transactions take place. Nevertheless, if such manipulation were to occur, this would be considered a breach and circumvention of the Commitments.

([3]) When analysing MIF levels, regard should be had to the Merchant Indifference Test ('MIT'), a methodology originally developed in economic literature and then further developed by the Commission to assess efficient interchange fees. The Commission uses this methodology as a benchmark or proxy for assessing compliance with Article 101(3) of the Treaty so as to ensure that merchants benefit from card acceptance.

(28) The Commission considers that the five-years and six-month duration of the Commitments is sufficient to address adequately the concerns expressed in the SO. Given that the Commitments provide for an implementation period of six months, the 'net' duration of the Commitments will effectively be five years.

(29) In the light of the Commitments, the Commission considers that there are no longer grounds for action on its part and, without prejudice to Article 9(2) of Regulation (EC) No 1/2003, the proceedings in this case should therefore be brought to an end.

(30) The Commission retains full discretion to investigate and open proceedings under Article 101 of the Treaty and Article 53 of the EEA Agreement as regards practices that are not the subject matter of this Decision.

Opinion of the Advisory Committee on mergers at its meeting of 31 January 2019 concerning a preliminary draft decision relating to Case M.8677 — Siemens/Alstom

(2019/C 300/05)

Concentration

1. The Advisory Committee (14 Member States) agrees with the Commission that the notified transaction constitutes a concentration within the meaning of Article 3(1)(b) of the Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings ([1]).

2. The Advisory Committee (14 Member States) agrees with the Commission that the notified transaction has an EU dimension pursuant to Article 1(2) of the Merger Regulation.

Market definition

3. The Advisory Committee (14 Member States) agrees with the following Commission's definitions of the relevant product markets:

   (a) High-speed rolling stock (including very high-speed rolling stock) or separately very high-speed rolling stock;

   (b) Legacy OBU projects;

   (c) ETCS OBU projects;

   (d) Standalone ETCS ATP wayside (so-called overlay) projects;

   (e) ETCS ATP wayside re-signalling projects (bundle of ETCS ATP wayside and interlockings);

   (f) Standalone interlocking projects; and

   (g) Interlocking equipment.

4. The Advisory Committee (14 Member States) agrees with the following Commission's definitions of the relevant geographic markets:

   (a) EEA-wide or worldwide (excluding China, South Korea and Japan) market for high-speed and very high-speed rolling stock;

   (b) National market for legacy OBU projects;

   (c) EEA-wide market for ETCS OBU projects;

   (d) EEA-wide market for standalone ETCS ATP wayside (overlay) projects;

   (e) EEA-wide market for ETCS ATP wayside re-signalling projects;

([1]) OJ L 24, 29.1.2004, p. 1 ('the Merger Regulation').

(f) National market for standalone interlocking projects; and

(g) National market for interlocking equipment.

Competitive assessment

5. The Advisory Committee (14 Member States) agrees with the Commission's assessment that the notified transaction would give rise to horizontal non-coordinated effects that would significantly impede effective competition on the markets for:

(a) High-speed (including very high-speed) or very high-speed rolling stock in the EEA or worldwide (excluding China, South Korea and Japan);

(b) ETCS OBU projects in the EEA;

(c) Standalone ETCS ATP wayside (overlay) projects in the EEA;

(d) ETCS ATP wayside re-signalling projects in the EEA;

(e) Legacy OBU projects in Belgium;

(f) Standalone interlocking projects in Belgium, Croatia, Greece, Hungary, Portugal, Romania, Spain, and the United Kingdom;

(g) Interlocking equipment in the United Kingdom.

6. The Advisory Committee (14 Member States) agrees with the Commission's assessment that the notified transaction would give rise to non-horizontal effects that would significantly impede effective competition on the markets for standalone interlocking projects in the United Kingdom.

Remedy

7. The Advisory Committee agrees with the Commission that the commitments offered by the Parties on 25 January 2019 (the 'Commitments') fail to address the competition concerns identified by the Commission on the markets for:

(a) High-speed (including very high-speed) or very high-speed rolling stock in the EEA or worldwide (excluding China, South Korea and Japan); 13 Member States agree and one Member State abstains.

(b) ETCS OBU projects in the EEA; 14 Member States agree.

(c) Standalone ETCS ATP wayside (overlay) projects in the EEA; 14 Member States agree.

(d) ETCS ATP wayside re-signalling projects in the EEA; 14 Member States agree.

(e) Legacy OBU projects in Belgium; 14 Member States agree.

(f) Standalone interlocking projects in Belgium, Croatia, Greece, Hungary, Portugal, Romania, Spain, and the United Kingdom; 14 Member States agree.

(g) Interlocking equipment in the United Kingdom. 14 Member States agree.

8. The Advisory Committee (13 Member States) agrees with the Commission's conclusion that the notified transaction, subject to the Commitments, would significantly impede effective competition in the internal market or in a substantial part of it. One Member State abstains.

9. The Advisory Committee (13 Member States) agrees with the Commission that the notified transaction must therefore be declared incompatible with the internal market in accordance with Article 2(3) and Article 8(3) of the Merger Regulation and Article 57 of the EEA Agreement. One Member State abstains.

Final Report of the Hearing Officer [1]

(M.8677 — Siemens/Alstom)

(2019/C 300/06)

1. On 8 June 2018, the European Commission (the 'Commission') received a notification of a proposed concentration by which Siemens AG ('Siemens' or the 'Notifying Party') would acquire sole control of Alstom SA ('Alstom') by way of a contribution of Siemens' mobility business to Alstom in consideration for newly issued Alstom shares (the 'Transaction'). Siemens and Alstom are collectively referred to as the 'Parties'.

2. On 13 July 2018, the Commission adopted a decision initiating proceedings pursuant to Article 6(1)(c) of the Merger Regulation [2] (the 'Article 6(1)(c) Decision'). In that decision, the Commission indicated that the Transaction has a Union dimension falling within the scope of the Merger Regulation and that it raised serious doubts as to its compatibility with the internal market and with the functioning of the EEA Agreement.

3. On 16 July 2018, an extension of the time limit for adopting a final decision of 20 working days was granted under Article 10(3) second subparagraph, first sentence of the Merger Regulation.

4. On 6 August 2018, the Parties submitted their written comments to the Article 6(1)(c) Decision, in which they challenged the Commission's assessment as laid out in the Article 6(1)(c) Decision.

5. On 8 August 2018, the Commission adopted two decisions pursuant to Article 11(3) of the Merger Regulation, following the failure by both Siemens and Alstom to provide complete information in response to separate information requests from the Commission. These decisions suspended the time limits referred to in the first subparagraph of Article 10(3) of the Merger Regulation as of 7 August 2018. Siemens and Alstom each responded to the relevant information request on 4 September 2018, and the suspension expired at the end of that day.

6. On 29 October 2018, the Commission issued a statement of objections (the 'SO') pursuant to Article 13(2) of the Merger Implementing Regulation [3] which was notified to Siemens on the same day. Alstom received a copy of the SO. According to the SO, the Commission preliminarily considered that the Transaction would likely cause a significant impediment to effective competition in relation to various rolling stock markets, markets for mainline and urban signalling and in certain rail electrification markets, worldwide, in the EEA and/or in certain national markets, depending on the specific relevant product market.

7. The Parties were first granted access to file on 29 October 2018, following the adoption of the SO. Further access to file was granted on an ongoing basis until 31 January 2019, also in response to various requests by the Parties.

8. The Parties responded to the SO on 14 November 2018. They did not request the opportunity to develop their arguments in a formal oral hearing in accordance with Article 14 of the Merger Implementing Regulation.

9. Between 19 July and 27 November 2018, upon reasoned request, I admitted 24 interested third persons pursuant to Article 5 of Decision 2011/695/EU. These included competitors, customers, suppliers and trade unions. Out of these, 14 made submissions commenting on the SO.

10. On 12 December 2018, the Notifying Party formally submitted a first set of commitments which were market tested by the Commission on 17 December 2018. The Commission informed the Parties of the preliminary results of the market test on 21 December 2018, and on the further results received since then on 4 January 2019. The Notifying Party submitted revised commitments on 9 and 25 January 2019.

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[1] Pursuant to Articles 16 and 17 of Decision 2011/695/EU of the President of the European Commission of 13 October 2011 on the function and terms of reference of the hearing officer in certain competition proceedings (OJ L 275, 20.10.2011, p. 29) ('Decision 2011/695/EU').

[2] Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (OJ L 24, 29.1.2004, p. 1) (the 'Merger Regulation').

[3] Commission Regulation (EC) No 802/2004 implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (OJ L 133, 30.4.2004, p. 1) (the 'Merger Implementing Regulation').

11. On 23 January 2019, the Commission sent a letter of facts to the Notifying Party (the 'Letter of Facts'). The response of 28 January 2019 to the Letter of Facts includes general observations claiming that the Parties had been given insufficient time and context to effectively express their views. I have not received any direct requests or complaints from the Parties in this respect. Moreover, I note that the response to the Letter of Facts contains detailed arguments in relation to each section of the Letter of Facts, of which also the Advisory Committee has been duly informed. It does not appear to me that the Parties' right to be heard has been breached in this respect.

12. In the draft decision, while objections in certain relevant markets have not been maintained, the Commission concludes that the commitments do not eliminate all the identified competition concerns. As a result, the draft decision declares the Transact ion, pursuant to Article 8(3) of the Merger Regulation, incompatible with the internal market and the functioning of the EEA agreement.

13. Pursuant to Article 16 of Decision 2011/695/EU, l have examined whether the draft decision deals only with objections in respect of which the Parties have been afforded the opportunity of making known their views. I conclude that it does.

14. Overall, I consider that the effective exercise of procedural rights has been respected during the present proceedings.

Brussels, 1 February 2019.

Joos STRAGIER

Summary of Commission Decision

of 6 February 2019

declaring a concentration to be incompatible with the internal market and the functioning of the EEA Agreement

(Case M.8677 — Siemens/Alstom)

(notified under document C(2019) 921)

(Only the English text is authentic)

(Text with EEA relevance)

(2019/C 300/07)

On 6 February 2019 the Commission adopted a Decision in a merger case under Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings [1]*, and in particular Article 8(3) of that Regulation. A non-confidential version of the full Decision, as the case may be in the form of a provisional version, can be found in the authentic language of the case on the website of the Directorate-General for Competition, at the following address: http://ec.europa.eu/comm/competition/index_en.html*

I. THE PARTIES

(1) Siemens AG (Germany, hereinafter 'Siemens' or the 'Notifying Party') is a German corporation and the ultimate parent of the Siemens Group, headquartered in Munich, and listed on the Frankfurt am Main and Xetra stock exchanges. Siemens is active in a number of industrial areas with its mobility division offering a broad portfolio of rolling stock, rail automation and signalling solutions, rail electrification systems, road traffic technology, IT solutions, as well as other products and services concerning the transportation of people and goods by rail and road.

(2) Alstom SA (France, hereinafter 'Alstom') is a French corporation, headquartered in the Paris region, and listed on Euronext Paris Stock Exchange. Alstom is active globally in the rail transport industry, offering a wide range of transport solutions (from high-speed trains to metros and trams), personalised services (maintenance and modernisation) as well as offerings dedicated to passengers and infrastructure, digital mobility and signalling solutions.

II. THE OPERATION

(3) On 8 June 2018, the Commission received a formal notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 (the 'Merger Regulation') by which Siemens will acquire sole control of Alstom by way of a contribution of Siemens' mobility business to Alstom in consideration for newly issued Alstom shares (the 'Transaction'). Siemens and Alstom are collectively referred to as the 'Parties'.

(4) The Transaction concerns the acquisition of sole control of Alstom by Siemens. It involves the combination of Alstom and Siemens' mobility business, including its rail traction drives and related services activities (hereinafter the 'merged entity').

III. UNION DIMENSION

(5) The undertakings concerned have a combined aggregate worldwide turnover of more than EUR 5 000 million. Each of them has an EU-wide turnover in excess of EUR 250 million, but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State. The Transaction therefore has a Union dimension.

IV. PROCEDURE

(6) On 26 September 2017, the merger of Siemens' mobility (rail) business division with Alstom was announced.

(7) On 8 June 2018, the Commission received formal notification of the Transaction.

(8) On 13 July 2018, the Commission found that the Transaction raised serious doubts as to the compatibility of the Transaction with the internal market and adopted a decision to initiate an in-depth investigation. The Notifying Party submitted its written comments to the Commission's decision to initiate an in-depth investigation on 6 August 2018.

(9) On 16 July 2018, the Commission, with the agreement of the Parties, extended the legal deadline by 20 working days under Article 10(3)(2) of the Merger Regulation.

[1] OJ L 24, 29.1.2004, p. 1.

(10) On 8 August 2018, the Commission adopted a decision pursuant to Article 11(3) of the Merger Regulation, suspending the merger review time limit due to the failure of the Parties to provide certain requested documents. The suspension lasted from 7 August 2018 until 4 September 2018, the date on which the requested documents were provided.

(11) On 29 October 2018, the Commission adopted a Statement of Objections. The Notifying Party replied to the Statement of Objections on 14 November 2018. The Notifying Party did not request an oral hearing.

(12) The Notifying Party submitted commitments on 12 December 2018 (hereinafter 'First Commitments'). On 17 December 2018, the Commission launched a market test on the commitments submitted on 12 December 2018.

(13) On 9 January 2019, a first modified version of the commitments was submitted by the Notifying Party (hereinafter 'Second Commitments'). On 25 January 2019, a second modified version of the commitments was submitted by the Notifying Party (hereinafter 'Final Commitments').

(14) The meeting with the Advisory Committee took place on 31 January 2019.

V. **RELEVANT MARKETS**

(a) **High-speed and very high-speed rolling stock**

(15) The Commission considers that trains capable of speeds equal to and above 250 km/h ('high-speed rolling stock') constitute a separate product market. In addition, both supply and demand-side considerations, as confirmed by a common industry-wide understanding, sales and technical requirements and the results of the market investigation show that high-speed rolling stock (trains capable of speed from 250 km/to 299 km/h) is not substitutable to very high-speed rolling stock (trains capable of speeds equal to or above 300 km/h on dedicated tracks). Therefore, very high-speed rolling stock potentially constitutes a separate market. However, as the Transaction raises competition issues regardless of the precise market definition, effects will be examined on the basis of both conceivable market definitions. The Commission considers that sub-segmentations based on the type of traction system, architecture or the number of floors are not relevant.

(16) The Commission considers that the relevant geographic market is at least EEA-wide and includes Switzerland in light of common applicable rules and the absence of barriers to entry. The Commission cannot exclude that the market is worldwide, to the exclusion of China, Japan and South Korea, due to insurmountable barriers to entry in those countries, as explained by the Notifying Party and confirmed by the market investigation.

(17) The Commission considers that the relevant market is the market for high-speed trains, including the narrower market of very high-speed trains in the EEA (including Switzerland) and on a worldwide basis (excluding China, Japan and South Korea).

(b) **Mainline signalling**

(18) The Commission considers that mainline signalling and urban signalling are separate markets. Within mainline signalling, signalling projects and signalling products constitute separate markets. In addition, mainline signalling projects should be further segmented between subsystems (interlockings, automatic train protection (ATP), and operation and control systems), between legacy and European Train Control System (ETCS) projects, between on-board and wayside/trackside solutions, as follows:

(a) Legacy OBU projects;

(b) ETCS OBU projects;

(c) Legacy ATP wayside projects;

(d) Standalone ETCS ATP wayside (so-called overlay) projects;

(e) Standalone interlocking projects;

(f) ETCS ATP wayside re-signalling projects (bundle of ETCS ATP wayside and interlockings).

(19) The Commission does not further segment the markets by project size or ETCS level (ETCS Level 1, ETCS Level 2).

(20) In addition, the signalling product market for interlocking equipment forms a separate market.

(21) The Commission considers that the relevant geographic market for ETCS OBU projects, ETCS ATP wayside overlay projects, and ETCS ATP wayside re-signalling projects is EEA wide.

(22) The Commission considers that the relevant geographic market for legacy OBU projects, standalone interlocking projects, and interlocking equipment is national.

VI. **COMPETITIVE ASSESSMENT**

(a) **High-speed and very high-speed rolling stock**

(23) The Parties both manufacture and supply high-speed and very high-speed rolling stock.

(24) The Commission conducted its assessment on the basis of market shares calculated over the 2008-2018 period (order intake by value). The merged entity would have a combined market share of [70-80] % on the overall market for high and very-high speed rolling stock in the EEA (including Switzerland) and [60-70] % worldwide (excluding China, Japan and South Korea). On the narrower market for very high-speed rolling stock, the merged entity would have a combined market share of [70-80] % in the EEA (including Switzerland) and [60-70] % worldwide (excluding China, Japan and South Korea).

(25) The Parties' very large market shares on the overall market for high and very high-speed rolling stock as well as on the narrower market for very high-speed rolling stock constitute evidence consistent with the existence of a dominant market position. Competition concerns are all the more likely in that the Transaction will reinforce a concentrated market structure. Thus, the post-merger HHI in all segmentations will be considerably higher than 2 000, with a delta greatly above 250.

(i) *The Parties' competitors*

(26) Contrary to the Parties, competitors have had no or extremely limited sales of high or very high-speed trains to EEA customers other than to operators located in their home countries. In particular, as concerns very high-speed rolling stock, due to joint bidding strategies and portfolio limitations, the number of actual competitors facing the merged entity after the Transaction is essentially limited to two suppliers, namely Talgo and a consortium formed between Bombardier and Hitachi-Ansaldo. CAF has not had any sales of very high-speed trains.

(27) In addition to EEA-based suppliers, the Notifying Party considers that CRRC, Hyundai Rotem and Kawasaki exercise competitive pressure on a worldwide basis. However, CRRC has never won a high or very high-speed tender in the EEA. CRRC's position on the worldwide market remains marginal and results from a single sale, a 2017 Indonesian Railway contract obtained not through competitive tendering but as a result of government-level negotiations. As a result, CRRC remains untested in competitive tenders against the world's main suppliers of high and very high-speed rolling stock outside of China. In the EEA, CRRC has not been invited to present a bid in the upcoming HS2 (UK) tender. It follows that CRRC has not sold any high or very high-speed rolling stock in normal competitive conditions so far, nor has it been invited to do so. CRRC therefore cannot be considered to exercise a significant competitive constraint on the worldwide market outside of China, Japan and South Korea.

(ii) *Closeness of competition*

(28) The Commission considers that the Parties are close competitors, on the basis of: (i) their product offering and geographic footprint; (ii) bidding data analysis; and (iii) the Parties' internal documents.

(29) In terms of geographic footprint, both Siemens and Alstom are active outside of Germany and France, with sales to customers in Italy (NTV/Alstom), Belgium/France/Netherlands/UK (Eurostar/Siemens) Finland (Karelian/Alstom) and Poland (PKP/Alstom). Outside of the EEA, the Parties are active in Morocco (ONCF/Alstom), the US (Amtrak/Alstom), Russia (RZD/Siemens) and Turkey (TCDD/Siemens).

(30) Respondents to the market investigation confirmed that the Parties' product offerings compete closely. Customers have confirmed that the Parties' very high speed product offerings represent the best alternative to one another.

(31) The analysis of tenders in which either of the Parties has placed a bid (2008-2018) shows that the Parties are each other's most frequent competitors in high and very high-speed rolling stock tenders. Furthermore, the analysis of the bidding data shows that participation in tenders is generally limited, with two or fewer participants (i.e., suppliers placing a bid) in the majority of tenders for high and very high-speed trains in the EEA and at the worldwide level.

(32) Tender participation analysis shows that the Parties' interaction focuses primarily on very high-speed tenders whereas the frequency of the Parties' interaction is significantly lower in high-speed rolling stock tenders.

(33) Overall, especially in very high-speed rolling stock, the bidding analysis shows that the Parties constitute each other's closest competitors and main competitive constraint. In addition, bidding analysis shows that Talgo and the Bombardier/Hitachi-Ansaldo consortium exercise more distant competitive constraints on Alstom and virtually none on Siemens. CAF and Stadler do not exercise any competitive constraints in very high-speed rolling stock.

(34) Overall, the Parties' internal document confirm the close competitive constraints exercised by the Parties on one another before the Transaction and the more distant pressure exerted by rival suppliers.

(iii) *Barriers to entry*

(35) Several barriers to entry in the high and very high-speed rolling stock markets have been identified in the course of the market investigation. Among the barriers identified, a number apply generally to any activity in high or very high-speed rolling stock, regardless of location. These include the costs to develop rolling stock and the requirement to hold an adequate track-record in order to credibly bid in calls for tenders. Other barriers to entry are specific to the EEA and include the European authorisation scheme for rolling stock, the necessity of having an EEA-specific track-record, informal localisation requirements and the privileged relationship between a number of EEA-based suppliers and national operators in their home countries.

(36) These barriers have been acknowledged by CRRC, which recognises that it is currently not a credible bidder outside of China. The same is true of other Asian suppliers which the Parties consider to be potential entrants but are currently inactive in the EEA and exercise no competitive constraints.

(iv) *Conclusion*

(37) For the reasons set out above, the Commission considers that the Transaction will significantly impede effective competition, due to horizontal non-coordinated effects in the market for high-speed trains, including the narrower market of very high-speed trains in the EEA (including Switzerland) and on a worldwide basis (excluding China, Japan and South Korea).

(b) **Mainline signalling**

(i) *ETCS OBU projects — horizontal unilateral effects*

(38) The Transaction would cause a significant impediment to effective competition due to horizontal non-coordinated effects, in relation to ETCS OBU projects in the EEA.

(39) The Commission conducted its assessment on the basis of market shares calculated over the 2008-2018 period (order intake by value). The merged entity would have a combined market share of [70-80] %, well ahead of its competitors.

(40) The Parties are close competitors, as shown by the analysis of bidding data for the period 2008-2018 and according to the views of customers and based on the Parties' internal documents. The Parties are important innovators in ETCS OBUs and the Transaction would remove an important innovator. The merged entity would enjoy a competitive advantage, which would weaken competitors and significantly decrease competition post-Transaction, due to the Parties' access to legacy signalling systems and the Parties' stronger position for international corridors. The Commission considers that new entry is unlikely in the EEA market, including from Chinese suppliers in the foreseeable future. To date, Chinese suppliers have not bid for any ETCS OBU projects in the EEA.

(ii) *Legacy OBU projects in Belgium — horizontal unilateral effects*

(41) The Transaction would cause a significant impediment to effective competition due to horizontal non-coordinated effects, in relation to legacy OBU projects in Belgium.

(42) In the period 2008-2018, Alstom was the sole supplier of legacy OBU projects in Belgium. Siemens is the only other supplier that has a homologated interlocking in Belgium. Siemens exerts a competitive constraint on the basis of its homologated interlocking that would be lost post-Transaction.

(iii) *Interlocking projects (standalone) — horizontal unilateral effects*

(43) The Transaction would cause a significant impediment to effective competition due to horizontal non-coordinated effects, in relation to standalone interlocking projects in Belgium, Croatia, Greece, Hungary, Portugal, Romania, Spain, and the UK.

(44) In countries in which affected markets arise, namely Croatia, Spain, UK, and Portugal, the merged entity would have high combined market shares (based on order intake by value in the period 2008-2018) of [90-100] % in Croatia, [40-50] % in Spain, [70-80] % in the UK, and [50-60] % in Portugal. The Parties are close competitors and any potential buyer power of the infrastructure manager would be insufficient to overcome the loss of competition from the Transaction.

(45) In addition to the countries in which there is an actual sales overlap between the Parties in the period 2008-2018, the Transaction would also lead to a significant impediment to effective competition in countries where given the very limited number of bidders the Parties exert a strong competitive constraint by participating in bids for standalone interlockings or bids involving interlockings. These countries are Greece, Romania, Belgium, and Hungary. The Parties are close competitors and any potential buyer power of the infrastructure manager would be insufficient to overcome the loss of competition from the Transaction.

(iv) *ETCS ATP wayside overlay projects — horizontal unilateral effects*

(46) The Commission considers that the Transaction would cause a significant impediment to effective competition due to horizontal non-coordinated effects, in relation to ETCS ATP wayside overlay projects in the EEA.

(47) The Commission conducted its assessment on the basis of market shares calculated over the 2008-2018 period (order intake by value). The merged entity would become the market leader with a combined market share of [30-40] %, well ahead of competitors.

(48) The Parties are close competitors, new entry (in particular by Chinese suppliers) is unlikely, and any potential buyer power of customers would be insufficient to overcome the loss of competition from the Transaction.

(v) *ETCS ATP wayside re-signalling projects — horizontal unilateral effects*

(49) The Commission considers that the Transaction would cause a significant impediment to effective competition due to horizontal non-coordinated effects, in relation to ETCS ATP wayside re-signalling projects in the EEA.

(50) The Commission conducted its assessment on the basis of market shares calculated over the 2008-2018 period (order intake by value). The merged entity would become the market leader with a combined market share of [50-60] % in the EEA, well ahead of competitors.

(51) The Parties are close competitors, new entry (in particular by Chinese suppliers) is unlikely, and any potential buyer power of customers would be insufficient to overcome the loss of competition from the Transaction.

(vi) *Interlocking equipment — horizontal unilateral effects*

(52) The Commission considers that the Transaction would cause a significant impediment to effective competition due to horizontal non-coordinated effects in the market for interlocking equipment in the UK.

(53) The merged entity would have a combined market share of [90-100] % based on market shares calculated over the 2015-2017 period (order intake by value). There would not be viable alternative suppliers of UK-specific interlocking equipment post-Transaction and any potential buyer power of customers would be insufficient to overcome the loss of competition from the Transaction.

(vii) *Vertical effects — input foreclosure from the market for standalone interlocking projects in in the UK*

(54) The Commission considers that the Transaction would cause a significant impediment to effective competition due to non-coordinated vertical effects in the market for standalone interlocking projects in the UK.

(55) The Commission considers that post-Transaction the merged entity will have the ability and the incentive to foreclose access to interlocking equipment to downstream rivals in the UK against whom the merged entity competes for the supply of standalone interlocking projects

(56) First, the merged entity will have the ability to foreclose access to interlocking equipment, by increasing prices or otherwise frustrating the ability of competitors active on the market for standalone interlocking projects, to bid competitively in tenders for which they rely on the Parties' interlocking products. This is the case given that the Parties' interlocking products are a critical component in the supply of standalone interlocking projects in the UK and the merged entity holds a significant degree of market power on the upstream market for the supply of interlocking equipment in the UK.

(57) Second, the merged entity will have an incentive to foreclose access to upstream signalling products post-Transaction because it would be a profitable strategy.

(58) Finally, the past behaviour of the Parties show they have already tried to frustrate the ability of competitors to bid for mainline signalling projects in the UK.

(viii) *Conclusion*

(59) For the reasons mentioned above, the Commission considers that the Transaction would cause a significant impediment to effective competition as a result of horizontal and/or non-horizontal non-coordinated effects, in relation to the following markets:

(a) High-speed and very high-speed rolling stock, including the narrower market of very high-speed rolling stock in the EEA and on a worldwide basis (excluding China, Japan and South Korea);

(b) ETCS OBU projects in the EEA;

(c) Legacy OBU projects in Belgium;

(d) Standalone interlocking projects in Belgium, Croatia, Greece, Hungary, Portugal, Romania, Spain, and the UK;

(e) ETCS ATP wayside overlay projects in the EEA;

(f) ETCS ATP wayside re-signalling projects in the EEA;

(g) Interlocking equipment in the UK.

VII. **REMEDIES**

(60) In order to remove the competition concerns identified by the Commission, the Parties submitted the First Commitments on 12 December 2018, which were market tested by the Commission on 17 December 2018.

(61) On 9 January 2019, the Parties submitted the Second Commitments. On 25 January 2019, the Parties submitted further revisions in the Final Commitments. The Second and Final Commitments were not market tested.

(62) The First, Second and Final Commitments included in particular measures aimed at solving the competition concerns identified by the Commission in relation to the markets for (i) high and very high-speed rolling stock (the 'Very High-Speed Rolling Stock Commitments'); and (ii) for mainline signalling (the 'Mainline Signalling Commitments').

(a) **Very High-Speed Rolling Stock Commitments**

(i) *Description*

(63) The Very-High Rolling Stock Commitments consist of two alternative packages:

(a) The Velaro Package consists of (i) the transfer of the right to develop, improve, manufacture and commercialise the third generation of Siemens' Velaro platform ('Velaro 3G'); and (ii) a technology transfer of the core technology bricks of Siemens' Velaro Novo concept (the 'Velaro Novo Licence'), which will be made available to the purchaser under certain conditions; or

(b) The Pendolino Package consists in the divestment of Alstom's Pendolino platform (the 'Pendolino Divestment'), which will be made available to the purchaser under certain conditions.

(ii) *Assessment*

(64) The Commission considers that both packages are insufficient to address the competition concerns described above in relation to very high-speed trains:

(a) The Velaro Package does not include any production, manufacturing and research and development assets. Moreover, the Velaro Novo licence is also too restrictive in scope (exclusive for 10 years in the EEA and non-exclusive worldwide) and contains important exceptions, which would prevent any remedy taker from exercising a material competitive constraint;

(b) The Pendolino package is inadequate as the Pendolino platform is a high-speed platform, unable to address the very high-speed competition concerns raised by the Commission. It is also limited because of envisaged carve outs, necessary third party agreements, back license of certain aspects.

(b) **Mainline Signalling Commitments**

(i) *Description*

(65) The Mainline Signalling Commitments consist of the 'ETCS OBU Commitment' and the 'ETCS wayside and interlocking Commitment'.

(66) The ETCS OBU Commitment includes access to Siemens' ETCS OBU technology via a transfer of Siemens' ETCS OBU software application, but only a licence/supply and service agreement for the underlying safety platform, limited in time to 4 years, after which the remedy taker would need to migrate the OBU application onto its own safety platform. The proposal includes a licence and supply and service agreement to be supplied with Class B STMs wholly owned by Siemens.

(67) The proposal includes also a transfer of Siemens' Belgian legacy OBU (TBL+) application, without the underlying platform and a licence to Siemens' Class B STMs. The Final Commitments extends the platform licence from 4 to 6 years to ease the migration to the remedy-taker's own platform and includes a right for the remedy taker to be supplied, pursuant to a supply and service agreement, with Alstom's Class B STMs at commercially negotiated rates.

(68) The ETCS wayside and interlockings Commitment comprises a mixture of transfer of ownership and licensing arrangements to Alstom technology, specifically:

(a) For ETCS ATP wayside: Transfer of ownership of Alstom's ETCS Level 1 and Level 2 software applications and a licence and supply and service agreement for the platforms on which the software applications run and a transfer of technology, which is a different form of licensing arrangement, for one of those platforms;

(b) For interlockings: A mixture of a transfer of technology and licensing for access to Alstom's main interlocking technology currently installed in the EEA. The merged entity reserves the right to compete outside of the EEA with the same technology. For certain other Alstom interlocking technology, the commitments comprise a mixture of transfer of ownership, transfer of technology and licensing.

(ii) *Assessment*

(69) The Commission considers that Mainline Signalling Commitments are insufficient to address the competition concerns that arise in mainline signalling markets.

(a) The ETCS OBU Commitment involves a limited term licence to technology which is insufficient to ensure the viability and competitiveness of the divestment business. Moreover, the remedy taker will be dependent on the merged entity for the supply of interfacing technology which would likely adversely affect its ability to compete effectively.

(b) The ETCS wayside and interlockings Commitment is inadequate because it is complex and involves a mix of assets and licensing arrangements that will likely result in implementation risks that will undermine the viability of the divestment business. The package is also limited in that it excludes manufacturing and research and development sites, pipeline technology and related personnel.

VIII. **CONCLUSION**

(70) Based on its analysis and available evidence, the Commission concludes that the Transaction is incompatible with the internal market and the functioning of the EEA Agreement.

V

(Announcements)

PROCEDURES RELATING TO THE IMPLEMENTATION OF COMPETITION POLICY

EUROPEAN COMMISSION

Prior notification of a concentration

(Case M.9490 — VWFS/TÜV SÜD AS/FC/CarMob)

Candidate case for simplified procedure

(Text with EEA relevance)

(2019/C 300/08)

1. On 29 August 2019, the Commission received notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 ([1]).

This notification concerns the following undertakings:

— Volkswagen Financial Services AG ('VWFS', Germany), controlled by Volkswagen AG ('Volkswagen', Germany),

— TÜV SÜD Auto Service GmbH ('TÜV SÜD AS', Germany), controlled by TÜV SÜD AG (Germany),

— FleetCompany GmbH ('FC', Germany), controlled by TÜV SÜD AS,

— Carmobility GmbH ('CarMob', Germany), controlled by VWFS.

VWFS and TÜV SÜD AS acquire within the meaning of Article 3(1)(b) of the Merger Regulation joint control of the whole of FC and CarMob.

The concentration is accomplished by way of purchase of shares.

2. The business activities of the undertakings concerned are:

— for VWFS: is a wholly-owned direct subsidiary of Volkswagen and offers dealers and customers financing, leasing, bank and insurance business, and mobility solutions. It provides fleet management solutions exclusively through its wholly owned subsidiary carmobility GmbH,

— for TÜV SÜD AS: is a provider of technical services, in particular of inspection and product certification services,

— for FC: is a brand-neutral provider of fleet management services to commercial customers and is active in more than 50 countries,

— for CarMob: is a brand-neutral provider of fleet management services to commercial customers only in Germany.

3. On preliminary examination, the Commission finds that the notified transaction could fall within the scope of the Merger Regulation. However, the final decision on this point is reserved.

Pursuant to the Commission Notice on a simplified procedure for treatment of certain concentrations under the Council Regulation (EC) No 139/2004 ([2]) it should be noted that this case is a candidate for treatment under the procedure set out in the Notice.

4. The Commission invites interested third parties to submit their possible observations on the proposed operation to the Commission.

([1]) OJ L 24, 29.1.2004, p. 1 (the 'Merger Regulation').
([2]) OJ C 366, 14.12.2013, p. 5.

Observations must reach the Commission not later than 10 days following the date of this publication. The following reference should always be specified:

M.9490 — VWFS/TÜV SÜD AS/FC/CarMob

Observations can be sent to the Commission by email, by fax, or by post. Please use the contact details below:

Email: COMP-MERGER-REGISTRY@ec.europa.eu

Fax +32 22964301

Postal address:

European Commission
Directorate-General for Competition
Merger Registry
1049 Bruxelles/Brussel
BELGIQUE/BELGIË

ISSN 1977-091X (electronic edition)
ISSN 1725-2423 (paper edition)

Publications Office of the European Union
2985 Luxembourg
LUXEMBOURG

EN