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**Common Market for Eastern
and Southern Africa**

Case File No. CCC/MER/02/15/2022

**Decision¹ of the Eighty-Third (83rd) Committee Responsible
for Initial Determinations Regarding the Proposed
Acquisition of Sole Control by Hitachi Rail Ltd of Thales'
Ground Transportation Systems Business**

ECONOMIC SECTOR: Transportation

31 May 2022

¹ In the published version of this decision, some information has been omitted pursuant to Rule 73 of the COMESA Competition Rules concerning non-disclosure of business secrets and other confidential information. Where possible, the information omitted has been replaced by ranges of figures or a general description.

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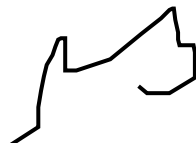
Introduction and Relevant Background

1. On 16th March 2022, the COMESA Competition Commission (the “**Commission**”) received a notification i involving Hitachi Rail Ltd. (“**Hitachi Rail**”) as the acquiring undertaking and Thales’ Ground Transportation Systems Business (“**Target business**”) as the target undertaking, pursuant to Article 24(1) of the COMESA Competition Regulations of 2004 (the “**Regulations**”).
2. Pursuant to Article 26 of the Regulations, the Commission is required to assess whether the transaction between the parties would or is likely to have the effect of substantially preventing or lessening competition or would be contrary to public interest in the Common Market.
3. Pursuant to Article 13(4) of the Regulations, there is established a Committee Responsible for Initial Determinations, referred to as the CID. The decision of the CID is set out below.

The Parties

Hitachi Rail (the acquiring undertaking)

4. Hitachi Rail is a private limited company incorporated under the laws of the United Kingdom. Hitachi Rail is a wholly-owned subsidiary of Hitachi, Ltd (“**Hitachi**”), a Japanese stock company listed on the Tokyo and Nagoya stock exchanges incorporated under the laws of Japan. Hitachi has 865 subsidiaries globally.
5. Hitachi, Hitachi Rail together with its subsidiaries and its controlled affiliates are referred to as “**Acquiring Group**”.
6. Hitachi Rail is a global provider of transport solutions including rolling stock, signalling systems, turnkey solutions, maintenance services and components.
7. Hitachi Rail’s “digital signalling & systems” business consists of two main activities, namely:
 - a. signalling and traffic management; and
 - b. station and information solutions.
8. Through its signalling and traffic management solutions, Hitachi Rail designs, manufactures, installs and commissions signalling components, systems and integrated mobility solutions for the management and control of new and upgraded railway, transit and freight lines worldwide. The station and information systems activities encompass three key areas which are smart security, smart ticketing, and human flow application.

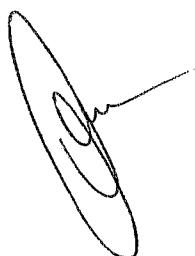


9. Hitachi Rail also designs, develops and manufactures an extensive range of modular signalling components which include, *inter alia*, switch machines, signals, level crossings, relays, interlocking systems and on-board interfaces.
10. As a rolling stock provider, Hitachi Rail offers a wide range of products such as high-speed, mainline (e.g., commuter and intercity) and urban rolling stock (e.g., metros and trams and monorails).
11. Hitachi Rail offers operations and maintenance services on its own rolling stock, signalling and turnkey solutions.
12. The parties submitted that Hitachi Rail operates in numerous countries across the world but does not conduct any activities in the Common Market. However, the Acquiring Group is active in Egypt and Zambia through the provision of the activities presented in Table 1 below:

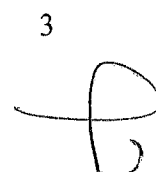
Table 1 – Activities of Acquiring in the Common Market

Member State	Operating Entity	Activity
Egypt	Hitachi Energy Trading S.A.E.	Supports customer's critical energy investment decisions and efficient energy operations across planning, forecasting, trading, portfolio optimization and market operations
	Hitachi Energy Technology S.A.E.	Holding Company
	Hitachi Energy Transformers S.A.E.	It is a global leader in transformers, offering liquid-filled and dry-type transformers as well as services for complete life-cycle support, including replacement parts and components.
Zambia	Hitachi Construction Machinery Zambia Co., Ltd	Supplies excavators, wheel loaders, road construction machinery and rigid dump trucks
	H-E Parts International Zambia Limited	Provides mining solutions.

13. The parties submitted that the activities of the Acquiring Group are organized in the following business segments:



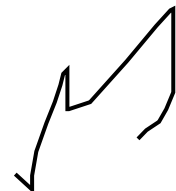

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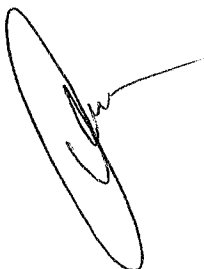
- a. IT solutions: which includes Information & Telecommunication systems and drone solutions;
 - b. Energy solutions: which includes nuclear power plants, power grids, wind turbines, power generation systems, energy & equipment management service, as well as power semi-conductors;
 - c. Industry solutions: which includes manufacturing, logistics, retail, maintenance, utilities (water services), as well as mass production and build-to-order products;
 - d. Mobility solutions: which includes transportation as well as elevators and escalators;
 - e. SmartLife solutions: which includes medical equipment, automotive systems, navigation & audio-visual, financial services for corporate/consumer and home appliances; and
 - f. Automotive systems solutions: which includes autonomous driving and advanced driver assistance systems, powertrain systems, chassis systems, motorcycle systems, software, aftermarket products and power products and industrial equipment.
14. The activities of the Acquiring Group also include the following:
- a. High Technologies, which provides analytical systems, electron microscopes, bio and medical systems;
 - b. Hitachi Construction Machinery, which supplies excavators, wheel loaders, road construction machinery and rigid dump trucks; and
 - c. Hitachi Metals, which offers metals and components for use in automotive, infrastructure and electronics.

Thales' Ground Transportation Systems Business (Target Business)

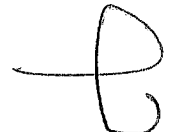
15. The Target Business is a division of Thales SA ("Thales"), a société anonyme publicly traded on the Euronext Paris stock exchange and incorporated under the laws of France.
16. Globally, the Target Business offers various solutions across four core business lines, namely:
- a. Mainline signalling, which encompasses train control systems (e.g., European Train Control System standards L1, L2, L3 and other legacy Automatic Train Protection such as Linienzugbeeinflussung, Traffic Management Systems and Driver Advisory Systems (e.g., Intelligent Traffic



- Orchestration), field equipment (e.g., conventional and digital axle counters, point machines, signals) and route control systems (e.g., digital interlocking);
- b. Urban rail signalling, which is dedicated to signalling for urban transport networks such as metro and light rail and covers trains control systems (e.g. communication Based Train Control), field equipment (axle counter, point machine, and signals) and route control systems (e.g. electronic interlocking – LockTrac), traffic management and driver advisory systems as part of the CBTC solution, in addition to related services (e.g. equipment and product management, analyses and audits that can be performed by the Target Business' experts, virtual training pack and documentation);
 - c. Integrated communication and supervision solutions, which focuses on solutions aimed at guaranteeing operational efficiency and ensuring passenger safety and comfort. These solutions include passenger information and announcement systems, integrated operation control centres, connectivity solutions (network backbone and radio), security, video surveillance, access control and supervisory control, data acquisition, or solutions for the control of passenger crowd, as well as digital services; and
 - d. Revenue collection systems.
17. The Target also offers operations and maintenance services on its own solutions.
18. The parties have clarified that the protection systems services business activities of the target relating to the development of solutions (including technological building blocks such as artificial intelligence, facial recognition, cybersecurity, video analytics) that can be used in the Ground Transportation Systems activities are not included within the scope of the notified transaction.
19. The parties submitted that in the Common Market, the Target Business operates in Egypt and Kenya and is active in mainline signalling, integrated communication and supervision solutions and revenue collection systems. Further, in Kenya, the Target Business is active in park and ride solutions, which combines suburban parking and public transportation.



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Jurisdiction of the Commission

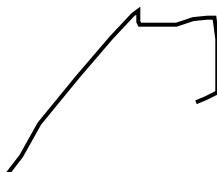
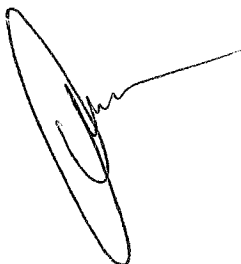
20. Article 24(1) of the Regulations requires 'notifiable mergers' to be notified to the Commission within 30 days of arriving at a decision to merge. Only mergers that satisfy the prescribed thresholds pursuant to Articles 23(4) and 23(5) of the Regulations are regarded as notifiable mergers. The merger notification thresholds are prescribed under Rule 4 of the Rules on the Determination of Merger Notification Thresholds and Method of Calculation (the "**Merger Notification Thresholds Rules**") which provides that:

Any merger, where both the acquiring firm and the target firm, or either the acquiring firm or the target firm, operate in two or more Member States, shall be notifiable if:


- a) the combined annual turnover or combined value of assets, whichever is higher, in the Common Market of all parties to a merger equals or exceeds USD 50 million; and*
 - b) the annual turnover or value of assets, whichever is higher, in the Common Market of each of at least two of the parties to a merger equals or exceeds USD 10 million, unless each of the parties to a merger achieves at least two-thirds of its aggregate turnover or assets in the Common Market within one and the same Member State.*
21. The merging parties have operations in more than two COMESA Member States. The parties' combined annual turnover in the Common Market exceeds the threshold of USD 50 million and they derive turnover of more than USD 10 million in the Common Market. In addition, the merging parties do not achieve more than two-thirds of their respective COMESA-wide turnover within one and the same Member State. The notified transaction is, therefore, notifiable to the Commission within the meaning of Article 23(5)(a) of the Regulations.

Details of the Merger

22. The notified transaction concerns the acquisition of sole control by Hitachi Rail of the global Ground Transportation System business of Thales, the Target Business. The parties submitted that Hitachi Rail shall acquire 100% of the share capital and voting rights of a company to be incorporated by Thales ("**NewCo**") to hold the Target Business.
23. Prior to the completion of the notified transaction, Thales will carve out the Target Business by transferring all legal entities and assets dedicated to the Target



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Business into NewCo, which has been incorporated². Following the notified transaction, Hitachi Rail will acquire direct control over the Target Business.

Competitive Assessment

Relevant Markets

Relevant Product Market

24. The CID noted that the Acquiring Group provides the following products and services in the Common Market:
- It supports customer's critical energy investment decisions and efficient energy operations across planning, forecasting, trading, portfolio optimization and market operations;
 - Liquid-filled and dry-type transformers as well as services for complete life-cycle support, including replacement parts and components;
 - Excavators, wheel loaders, road construction machinery and rigid dump trucks; and
 - Mining solutions.
25. The CID noted that the activities of the Target Business in the Common Market relate to (i) mainline signalling; (ii) integrated communication and supervision solutions; (iii) revenue collection systems; and (iv) park and ride solutions. It provides mainline signalling, integrated communication and supervision solutions and revenue collection systems in Egypt and park and ride solutions (which combines suburban parking and public transportation) in Nairobi, Kenya.
26. The CID observed that no categories of products and/or services supplied by the Acquiring Group and the Target Business may be considered reasonably interchangeable or substitutable. For this reason, the CID's assessment focussed on the products/services supplied by the Target Business.

The market for railway signalling services

27. Railway signalling is an essential component of railway infrastructure which allows trains to move safely around the network and it provides a traffic light system for the railway. The purpose of railway signalling services is to direct railway traffic to avoid collision of trains on the same track. Railway signalling systems ensure safe and smooth train movement mainly by (i) maintaining a safe distance between trains travelling on the same route; (ii) controlling the movement of trains at

² NewCo is Centelec UK Limited (a private company limited by shares with its registered seat at 350 Longwater Avenue, Green Park, Reading, Berkshire, United Kingdom, RG2 6GF and with registration number 13864526).



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junctions or when crossing a path that could be used by another train; and (iii) regulating train speed according to the density of train traffic.

28. Railway signalling solutions comprise both trackside and on-board elements. On-board signalling equipment is purchased by rolling stock manufacturers or train operators while the track-side signalling equipment is purchased by infrastructure managers (for mainline signalling)³.
29. The CID noted that the market for railway signalling equipment can be divided into mainline signalling which equips the national railway networks and urban signalling which equips the local railway networks such as metro and light rail⁴.
30. Mainline signalling systems are signalling systems that provide safety and controls on mainline railway networks (including dedicated high-speed lines)⁵ which uses coloured traffic lights to direct train movements across fixed rails. The signals are lineside pieces of equipment which indicate to train drivers when it is safe to proceed and what route their train will take⁶.
31. Urban signalling systems ("**urban signalling**"), also known as mass transit, provide safety controls for metro and light rail networks. They prevent collisions between trains and increasingly respond to other challenges faced by network operators such as network congestion, security, and capacity constraints. As such, urban signalling systems are increasingly designed not only to ensure safety, but also to allow operators to improve the utilisation of their networks by allowing more trains to move more quickly and efficiently⁷.
32. Mainline signalling and urban signalling differ in as much as the technology required for mainline signalling projects is more sophisticated than the technology for urban transit. Therefore, mainline projects tend to be more expensive. The two types of signalling systems serve different needs and are based on different technologies and standards which have different interoperability requirements and different customer base.
33. The CID's assessment further noted that the broad market for mainline signalling can be further segmented into mainline signalling projects and mainline signalling products. Mainline signalling projects are comprehensive solutions involving project specific engineering, development and project management, procurement of the necessary equipment, installation, testing and, in most cases, maintenance,

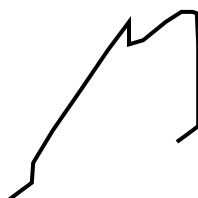
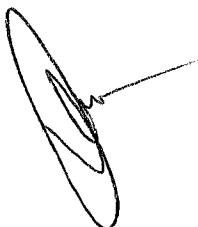
³ Case M.8677 - Siemens/Alstom, paragraph 560

⁴ Case M.8677 - Siemens/Alstom, paragraph 560

⁵ Case M.8677 - Siemens/Alstom, paragraph 560

⁶ www.networkrail.co.uk/stories/signals-explained/ accessed 6th May 2022

⁷ Case M.8677 - Siemens/Alstom, paragraph 591



while mainline signalling products are components used in railway signalling projects⁸.

34. The elements of railway signalling projects are⁹:

- a. Interlocking systems, which prevent trains from colliding and consist of signals (trackside and/or display on monitor in driver's cabin), trackside sensors (detect if a given sector of railway network is occupied by a train or vacant), point machines (move the rail at junction) and electronic interlockings (process the information generated by trackside sensors and operate the point machines and sensors).
 - b. Automatic Train Protection systems ("ATPs"), which protect each individual train by assisting the driver and intervene in case of human failure.
 - c. Operations and control systems, which operate interlockings, integrate information generated by interlockings and ATP systems and can also manage passenger information, fleet and crew.
 - d. Level crossing systems, which include components predicting train arrival, barriers and signals for intersections of railway line with a road or path.
35. Interlockings and ATP systems constitute the safety level of mainline signalling, while OCS represents the control level.
36. Urban signalling is principally a project-based business. Projects typically include project specific engineering, development and project management, manufacturing and/or procurement of equipment, installation and testing, and sometimes maintenance services¹⁰.
37. Given the absence of overlap among the activities of the parties and considering that the target is active in the provision mainline signalling (Cairo-Alexandria corridor) and urban rail signalling, the CID defined one broad market for the provision of mainline railway signalling services.

Integrated communication and supervision solutions

38. The Target Business' integrated communication and supervision solution activities include operations control, communications, security, passenger information and tram signalling as well as operation control centres, telecom solutions, passenger information, video surveillance, Supervisory Control and Data Acquisition ("SCADA"), digital services: predictive maintenance and passenger journey analysis.

⁸ Case No COMP/M.6843 - Siemens/ Invensys Rail

⁹ Case No COMP/M.6843 - Siemens/ Invensys Rail, paragraph 8

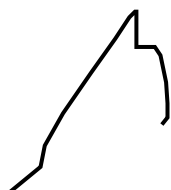
¹⁰ Case M.8677 - Siemens/Alstom, paragraph 592



39. Railway operators entrust the safety of their passengers and the goods of their customers to complex technical systems which are spread across wide distances and connected by a state-of-the-art telecommunications infrastructure that allows precise and secure exchange of information in real time. Integrated communications and supervision systems enable on-demand trains, just-in-time delivery, optimum security to ensure smooth operations and that a passenger boarding a metro has a satisfying journey.
40. The CID's noted that the integrated communication and supervision solutions of Thales comprised of the following¹¹:
- a. Power system supervision and management – which relates to the management of high and low voltage networks, optimisation and automatic reconfiguration of the distribution network, management of backup power supply.
 - b. Passenger information & comfort – which relates to remote management of passenger information, public address, radio, telephone and clocks.
 - c. Traffic management – which relates to train tracking, routing and regulation, depot management and timetable management.
 - d. Security management – which relates to access control, perimeter security, intrusion detection, CCTV, biometric security and encrypted communications.
 - e. Operation and maintenance – which relates to assistance to operators, including decision support system, statistics and maintenance management (minimum downtime, personnel management, financial tracking).
 - f. Fixed equipment supervision and management – which relates to management of auxiliary components (traction, fire detection, lifts, escalators, drainage, platform doors, emergency exits) and the ventilation and air conditioning system.
41. The CID observed that on the supervision side, the Operation Control Centre is the nerve centre of the metro network, which is managed through an intuitive user interface at station level or centrally. The Thales supervision system provides the operator with a single, integrated view of the transport system¹².
42. The communication systems ensure reliable and secure delivery of all information throughout the transport network.

¹¹https://pdfsecret.com/download/integrated-communication-supervision-solutions-thales_59faa6c5d64ab28ae25ec991_pdf accessed 31 May 2022

¹²https://pdfsecret.com/download/integrated-communication-supervision-solutions-thales_59faa6c5d64ab28ae25ec991_pdf accessed 31 May 2022



43. On passenger information and comfort side, passengers are continuously updated on travel information and important announcements. It also includes passenger information displays delivering real time information to on-board and station locations.
44. The CID, therefore, noted that integrated communication and supervision solutions is comprised of various components where the broad service can be segmented into communication on one side and supervision on the other, and within each segment, potential sub-segmentation can exist.
45. The CID, therefore, considered that there exists a broad market for the supply of integrated communication and supervision solutions given that on the demand side, train network operators demand the service as one, the reason being the critical nature of the service which cannot experience breakdowns and all components are linked to each other. For a more reliable service and to ensure the safety of the network and passengers' lives, it is reasonable to expect that train operators will require the whole integrated service from one supplier. On the supply side, the CID further noted that the whole integrated communication and supervision solutions are provided as one service by suppliers, such as the Target business.
46. The CID therefore opined that for the purposes of this transaction, the market for the provision of integrated communication and supervision solutions is a distinct relevant market.

Revenue Collection Systems

47. The Target's Business revenue collection systems business line provides solutions for revenue collection (hardware, software and services) in three segments: automated fare collection systems (multi-modal/ operated, gated/ non-gated), road tolling and off-street car park payments.
48. The Target Business offers a solution for train operators to collect their revenue from passengers in public transportation through different means. The CID noted that the revenue collection systems can take various forms, such as providing the software and hardware for collection of revenue from passengers via mobile phones and pre-loaded cards which are tapped by the passenger before boarding. The specific mode required by the train operator depends on the level of infrastructural development and technological sophistication of the country and passengers.
49. The CID therefore noted that, on the demand side, there may exist potential submarkets for the revenue collection system in terms of cash and cashless systems, coins and bills system. However, given the absence of overlap among

the activities of the parties, the CID opined that no further segmentation of the market was required.

50. In view of the above, the CID considered the market for the provision of revenue collection systems as a distinct market.
51. On the basis of the foregoing assessment, the CID considered that the relevant product markets are:
 - a. **the market for the provision of mainline railway signalling services;**
 - b. **the market for the provision of integrated communication and supervision solutions; and**
 - c. **the market for the provision of revenue collection systems.**

Relevant Geographic Market

52. The parties submitted that the Target Business operates only in Egypt and Kenya. The CID considered that the relevant geographic market for the transaction should be global as the relevant players compete at a global level. The CID noted that when the relevant services are being demanded in a Member State, the Member State is likely to do so using an international tender bidding process where the players being invited to tender are foreign players.
53. The CID considered that in an event that a supplier increased the price of its services by 5 to 10% which is not matched by an improvement in the quality of the service, the Member State is likely to procure such services from other international players by launching another procurement tender.
54. Premised on the foregoing discussions, and for purposes of this transaction, the relevant geographic markets were construed as **global**.

Conclusion of Relevant Market Definition

55. For the purposes of assessing the proposed transaction, and without prejudice to the CID's approach in future similar cases, the CID identified the following relevant markets:
 - a. **the global market for the provision of mainline railway signalling services;**
 - b. **the global market for the provision of integrated communication and supervision solutions; and**
 - c. **the global market for the provision of revenue collection systems.**



Market Shares and Concentration

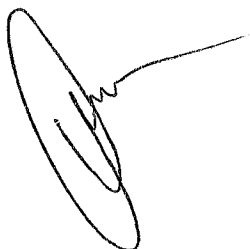
56. The CID noted that the parties did not provide market shares in respect of the identified relevant markets. However, the CID noted that the largest competitors to the Target business in the broad railway signalling market included Siemens AG, Alstom/Bombardier and Construcciones y Auxiliar de Ferrocarriles which operate on the global market. The CID further noted the parties' submission that they do not have any local competitor in the Common Market.
57. This notwithstanding, the CID considered that the proposed transaction will not result in any market share accretion in the relevant market premised on the fact that the activities of the acquirer and the Target Business do not overlap.
58. The CID considered that, competition in the relevant markets is likely to thrive given that the markets are bidding markets wherein the undertaking providing the relevant products/services would have to undergo a competitive bidding process before entering the relevant markets. The CID considered that assuming the relevant markets are global, the actual market shares for the parties in each defined market are likely to be lower given that it is unlikely that the Target Business will win all bids in each geographic areas where it bids to offer the relevant products/services.
59. The CID noted that the merged entity will face stiff competition from the other international players in each of the identified relevant markets where supply takes place through tenders. It was noted that other players are likely to offer effective competitive constraints in the market. As such, the notified transaction will not result in the removal of an effective competitor and will not substantially prevent or lessen competition in any relevant market.

Consideration of Third-Party Views

60. Submissions were received from Kenya and Zambia which did not raise any concerns as a result of the transaction on account of an absence of overlap between the parties' activities pre-merger.

Determination

61. Based on the foregoing reasons, the CID determined that the merger is not likely to substantially prevent or lessen competition in the Common Market or a substantial part of it, nor be contrary to public interest. The CID further determined that the transaction is unlikely to negatively affect trade between Member States.



62. The CID therefore approved this transaction. This decision is adopted in accordance with Article 26 of the Regulations.

Dated this 31st day of May 2022



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Commissioner Mahmoud Momtaz (Chairperson)



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Commissioner Vincent Nkhoma



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Commissioner Islam Tagelsir Ahmed Alhasan