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.