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PUBLIC VERSION

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus […]. Where possible the information omitted has been replaced by ranges of figures or a general description.

Construcciones y Auxiliar de Ferrocarriles, S.A.
Calle José Miguel Iturrioz, 26
20200 Beasain, Guipúzcoa
Spain

Subject: **Case M.10616 – CAF / CORADIA POLYVALENT BUSINESS / TALENT 3 BUSINESS**
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004[1] and Article 57 of the Agreement on the European Economic Area[2]

Dear Sir or Madam,

(1) On 2 May 2022, the European Commission received notification of a proposed concentration pursuant to Article 4 and following a referral pursuant to Article 4(5) of the Merger Regulation[3] concerning the acquisition of sole control by Construcciones y Auxiliar de Ferrocarriles, S.A. ('CAF', Spain; the 'Notifying Party') of Alstom's Coradia Polyvalent mainline rolling stock platform and

[1] OJ L 24, 29.1.2004, p. 1 (the 'Merger Regulation'). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ('TFEU') has introduced certain changes, such as the replacement of 'Community' by 'Union' and 'common market' by 'internal market'. The terminology of the TFEU will be used throughout this decision.
[2] OJ L 1, 3.1.1994, p. 3 (the 'EEA Agreement').
[3] Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (the "Merger Regulation"), OJ 21.04.2004, L 133.

Alstom's production facility located in Reichshoffen (together 'Coradia Polyvalent Business', France) and Bombardier's Talent 3 mainline rolling stock platform ('Talent 3 Business', Germany) (Coradia Polyvalent Business and Talent 3 Business are designated hereinafter as the 'Target' and together with CAF as the 'Parties') (the 'Transaction').[4]

(2) The present Transaction takes place as a result of a prior notification to the Commission of a proposed concentration between Alstom S.A. ('Alstom', France) and Bombardier Transportation (Investment) UK Limited ('Bombardier Transportation', UK). By decision of 31 July 2020, adopted pursuant to Articles 6(1)(b) and 6(2) of the Merger Regulation, the Commission declared that concentration compatible with the internal market and the EEA Agreement,[5] subject to full compliance with the commitments made binding by that decision. By these commitments, Alstom committed to divest – *inter alia* – the Coradia Polyvalent Business and the Talent 3 Business.

1. THE PARTIES

(3) CAF manufactures different types of railway vehicles, with production plants in Spain, France, United Kingdom, United States, Mexico and Brazil.

(4) The Coradia Polyvalent Business consists of Alstom's Coradia Polyvalent Platform, Alstom's Reichshoffen plant and related activities. The Coradia Polyvalent platform is a flexible mainline train platform capable of achieving regional (up to 160 km/h) and intercity (between 200 and 249 km/h) speeds with electric or bi-mode traction. The Reichshoffen plant is located in Bas-Rhin, France, and consist of, *inter alia*, engineering and manufacturing facilities for various types of rolling stock, warehousing and testing facilities, together with associated permanent onsite personnel.

(5) The Talent 3 Business consists essentially of the Talent 3 mainline train platform, formerly owned by Bombardier and currently manufactured at Alstom's Hennigsdorf and Bautzen sites in Germany. It is a flexible platform capable of achieving regional speeds (up to and including 160 km/h) with electric traction.

2. THE OPERATION

(6) On 23 November 2021, CAF and Alstom signed a put option agreement (the 'Put Option') and, on 25 April 2022, they concluded a Sale and Purchase Agreement ('SPA') for the sale of the Target.

(7) According to the Put Option and the SPA, the acquisition of the Coradia Polyvalent Business will be carried out through the acquisition by CAF of the shares of a special purpose vehicle established by Alstom in France. The sale and transfer to CAF of the specific assets comprising the Talent 3 Business shall be implemented as an asset deal whereby CAF shall acquire those assets from the relevant Alstom group affiliates.

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4 Publication in the Official Journal of the European Union, No C 193, 12.5.2022, p. 17.

5 Case M.9779 – *Alstom / Bombardier Transportation*.

(8) The Transaction will result in a lasting change of control over the Target that will be solely controlled by CAF and thus consists of a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

3. UNION DIMENSION

(9) The Transaction does not have a Union dimension, but the Commission received a referral request on 10 January 2022, by means of a reasoned submission, pursuant to Article 4(5) of the Merger Regulation. A copy of this submission was promptly transmitted to the Member States on 11 January 2022. The Member States competent to examine the concentration did not express their disagreement to the request for referral within fifteen working days, i.e., by 3 February 2022, and the concentration brought about by the Transaction is thus deemed to have Community dimension.

4. COMPETITIVE ASSESSMENT

(10) CAF and the Target are both active in the supply of self-propelled mainline trains, i.e. trainsets used for a variety of distances, including around and between cities, across country borders and running on large networks of conventional tracks typically shared between several railway operators.[6] The Commission has examined some of these markets in recent decisions, including in case M.9779[7], in which the Commission conditionally cleared the acquisition by Alstom of Bombardier Transportation subject to the divestment of the Target to a suitable purchaser.

4.1. Market definition

4.1.1. Product markets

4.1.1.1. Precedents

(11) In its previous decisions, the Commission made a distinction between locomotive-hauled trains (which include a locomotive and several wagons) and self-propelled trains (which consist of a single trainset).[8] As regards self-propelled trains, the Commission also distinguished mainline trains (running at speeds below 250 km/h) from both high-speed trains (running at speeds above 250 km/h) and urban trains (running on urban networks and covering mass transit within cities).[9]

(12) Within mainline trains, the Commission considered a distinction between intercity trains (running at speeds between 160 km/h and 250 km/h) and regional trains (running at speeds below 160 km/h).[10]

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6 The defining feature of mainline trains is their self-propelled nature, meaning that power is distributed through several motors along the train. As a result, mainline trains can accommodate passengers in all cars and do not have dedicated vehicles with no passenger access (such as locomotives) at the front and end of the train that provide the pull (Case M.9779 – *Alstom / Bombardier Transportation*, para. 43).

7 Case M.9779 – *Alstom / Bombardier Transportation*.

8 Case M.9779 – *Alstom / Bombardier Transportation*, paras 57 and 61.

9 Case M.9779 – *Alstom / Bombardier Transportation*, paras 44 and 58.

10 Case M.9779 – *Alstom / Bombardier Transportation*, paras 59-60 and 62-70.

(13) As regards intercity and regional trains, while leaving the exact market definition open, the Commission contemplated a distinction according to the traction technology and the number of decks.[11] In this respect, the Commission examined further distinctions depending on the traction source, i.e., between trains drawing power from overhead catenaries to electrical multiple units ('EMUs') or by on-board diesel-engines (diesel multiple units ('DMUs'))[12], on the one hand, and between single-deckers and double-deckers, on the other hand.[13] In *Alstom / Bombardier Transportation*, however, the Commission considered that a distinction between single-deckers and double-deckers was not warranted.[14]

(14) Beyond EMUs and DMUs, bi-mode trains can operate on routes consisting of both electrified and non-electrified lines within a single journey without stops or changes.[15] Bi-mode trains combine electric traction with different technologies that allow trains to operate on non-electrified lines of the network including, among others, diesel engines (in which case, the combination would be called a diesel-electric multiple unit ('DEMUs')), batteries (in which case, the combination would be called a battery-electric multiple unit (('BEMUs')) or hydrogen fuel-cell technologies (in which case, the combination would be called a hydrogen-electric multiple unit ('HEMUs')).[16]

(15) The Commission has never contemplated the definition of a separate product market for bi-mode trains.

4.1.1.2. Notifying Party's view

(16) The Notifying Party does not express any specific views as to whether it considers the Commission's previous market definitions within rolling stock to be appropriate or not. CAF argues that the Transaction would not give rise to competition concerns under any conceivable product market definition or segmentation.[17] Specifically for bi-mode trains, CAF submits that these trains do not constitute a separate product-market, because some of the underlying technologies are still in development and bi-mode trains have features similar to EMUs and DMUs.[18]

4.1.1.3. The Commission's assessment

(17) The following assessment focuses on the two areas where the Parties' activities overlap, the supply of self-propelled (mainline) regional trains and the supply of regional bi-mode trains.

(18) With regard to mainline trains and a possible segmentation of the relevant product market within mainline trains, the Commission's investigation in the present case did not come to conclusions different from those reached in the Commission's precedents, in particular the *Alstom / Bombardier Transportation* decision.

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11 Case M.9779 – *Alstom / Bombardier Transportation*, para. 59.
12 Case M.9779 – *Alstom / Bombardier Transportation*, paras 71-73.
13 Case M.9779 – *Alstom / Bombardier Transportation*, para. 59.
14 Case M.9779 – *Alstom / Bombardier Transportation*, para. 79.
15 Case M.9779 – *Alstom / Bombardier Transportation*., fn 422 and para. 50.
16 Case M.9779 – *Alstom / Bombardier Transportation*, para. 50.
17 Form CO, para. 82.
18 Form CO, para. 81.

(19) For the purposes of the present decision, the Commission considers that self-propelled trains are distinct from locomotive-hauled trains and that, within self-propelled trains, mainline trains should be distinguished from both high-speed trains and urban trains. As regards mainline trains, the exact product market definition can be left open and the Commission's assessment will focus on all potentially relevant products markets where the Parties overlap, namely (i) self-propelled regional trains including all types of traction technology, and (ii) self-propelled regional EMUs.

(20) As for regional bi-mode trains, the evidence gathered by the Commission in the context of its preliminary investigation supports the analysis of a plausible separate market for regional bi-mode trains with a further distinction according to the underlying technology (i.e. between DEMUs, BEMUs and HEMUs), although there is no univocal support for such a finding.

(21) Traditionally, bi-mode trains combined electric traction with a diesel engine (i.e. DEMUs). Customers and competitors explained that DEMUs are becoming less and less common and the diesel engine is replaced by 'greener' propulsion technologies such as batteries or hydrogen (i.e. BEMUs and HEMUs).[19] A competitor explained that there are no platforms specifically designed for bi-mode trains, but that bi-mode trains are usually based on an extended and adapted EMU platform.[20] A majority of customers who expressed a view in the Commission's market investigation explained that prices for bi-mode trains and other mainline trains differ, whereas other parameters such as number of stops, distance operated, passenger comfort and capacity and train length are similar.[21] Some customers explained that bi-mode trains and other mainline trains can be used interchangeably on the same routes, while other customers stated that this is usually not done.[22] Finally, it appears that customers usually specify in their tenders the need for a bi-mode train and type of bi-mode train (i.e. DEMU, BEMU or HEMU).[23]

(22) For the purposes of this decision, it can be left open whether regional bi-mode trains constitute a distinct product market and whether a further delineation between DEMUs, BEMUs and HEMUs is warranted. The Commission's assessment takes into account all plausible product market definitions, namely the hypothetical product markets for (i) regional bi-mode trains as a whole, and for (ii) DEMUs, (iii) BEMUs, and (iv) HEMUs, considered separately.

4.1.2. Geographic markets

4.1.2.1. Precedents

(23) In *Alstom / Bombardier*, the market investigation was inconclusive as to whether the relevant markets for mainline trains are national or EEA-wide (including Switzerland).[24] The Commission nevertheless noted that self-propelled mainline trains are significantly different across EEA Member States in terms of customer

19 Minutes of a call with a competitor on 29 April 2022, para. 4.
20 Minutes of a call with a competitor on 29 April 2022, para. 2.
21 Replies to eQuestionnaire Q1 – Customers, question 4.
22 Replies to eQuestionnaire Q1 – Customers, question 5.2.
23 Replies to eQuestionnaire Q1 – Customers, questions 5, 5.1, 8.1.
24 Case M.9779 – *Alstom / Bombardier Transportation*, para. 198.

preference, technical specifications and regulatory requirements, which limits the possibility for rail operators to use a self-propelled mainline train operated in one EEA country into another EEA country.[25]

4.1.2.2. Notifying Party's view

(24) Again, the Notifying Party does not express a view as to the appropriate geographic market definition. CAF argues that the Transaction would not give rise to competition concerns irrespective of national or EEA-wide geographic markets.[26]

4.1.2.3. The Commission's assessment

(25) The findings of the Commission's market investigation in the present case are in line with the conclusions reached in the *Alstom / Bombardier Transportation* decision. As regards self-propelled regional trains, a competitor confirmed the importance of a national manufacturing presence as well as national specifications and requirements, thereby pointing towards national markets.[27]

(26) Concerning bi-mode trains, competitors and customers highlighted the importance of national specifications, requirements and a local manufacturing footprint on the one hand, while pointing to the manufacturer's aim of developing of pan-European train platforms on the other hand.[28]

(27) For the purposes of this decision, the geographic market definition can be left open. The following assessment will take into account EEA-wide as well as national markets.

4.2. Competitive assessment

4.2.1. Market shares

(28) In light of all of the potential market definitions outlined in Section 4.1 above, the Parties' activities overlap:

- at EEA level: in the market for the supply of self-propelled regional trains[29] and, more specifically, on the segments for the supply of self-propelled regional EMU trains and regional bi-mode trains;
- in France: in the market for the supply of self-propelled regional trains and more specifically the supply of self-propelled regional EMU trains;
- in Germany: in the overall market for the supply of self-propelled regional trains.

25 Case M.9779 – *Alstom / Bombardier Transportation*, para. 199.
26 Form CO, para. 88.
27 Minutes of a call with a competitor on 29 April 2022, paras. 13 and 14.
28 Replies to eQuestionnaire Q1 – Customers, questions 11 and 11.1; minutes of a call with a competitor on 29 April 2022, paras. 7 and 8.
29 CAF manufactures and sells both intercity and regional mainline trains. The Target does not manufacture intercity mainline trains. More specifically: (i) the Talent 3 platform does not have intercity speeds built into its design and (ii) while the Coradia Polyvalent platform has intercity speeds (above 160 km/h) built into its design, it has never been sold at speeds higher than 160 km/h.

(29) The table below provides an overview of the segments on which the Parties' activities overlap at EEA level:

Table 1 – Self-propelled regional trains:

2011-2021		Overlap (Yes/No)	Combined Market share	CAF	Target
EEA	***All regional***	Yes	***[10-20]%***	[0-5]%	[5-10]%
	EMU	Yes	***[5-10]%***	[0-5]%	[5-10]%
	DMU	No	***N/A***	[…]	[…]
	Bi-mode	Yes	***[30-40]%***	[5-10]%	[30-40]%
France	***All regional***	Yes	***[20-30]%***	[5-10]%	[20-30]%
	EMU	Yes	***[10-20]%***	[5-10]%	[10-20]%
	Bi-mode	No	***N/A***	[…]	[…]
Germany	***All regional***	Yes	***[5-10]%***	[0-5]%	[5-10]%
	EMU	No	***N/A***	[…]	[…]
	Bi-mode	No	***N/A***	[…]	[…]

Source: Form CO

(30) As shown above, the Transaction gives rise to horizontally affected markets with respect to: (i) regional bi-mode trains at EEA level and (ii) regional trains (overall) in France.

4.2.2. Regional bi-mode trains (EEA)

(31) Both Parties manufacture and sell regional bi-mode trains in the EEA. CAF and the Target have not sold regional bi-mode trains in the same EEA Member State in the past ten years.[30] Therefore, their activities for regional bi-mode trains only overlap at EEA-level, but not at national level.

[30] Form CO, para. 94 (fn 19).

(32) The table below provides the detail of the Parties' and their competitors' market shares:

Table 2 – Self-propelled trains: Regional bi-mode trains (EEA)

Regional bi-mode trains (EEA) 2011-2021	**Value** *(EUR million)*	**Market shares** *(%)*
Target	[…]	[30-40]%
CAF	[…]	[5-10]%
Combined	**[…]**	***[30-40]%***
Alstom	[…]	[20-30]%
Stadler	[…]	[20-30]%
Siemens	[…]	[5-10]%
Hitachi	[…]	[5-10]%
Nawag	[…]	[0-5]%

Source: Form CO

(33) As shown in Table 2, the Parties' combined market share on this market at EEA level amounts to [30-40]% with an increment of [5-10]% brought by CAF.

(34) More specifically, within self-propelled regional bi-mode trains, the Parties' activities only overlap on the segment for DEMUs. The Target has not sold any BEMUs in the EEA and CAF has not sold any HEMUs in the EEA.[31] The table below provides the Parties' and their competitors' market shares on the sub-segment for DEMUs at EEA level:

Table 3 – Self-propelled regional trains: DEMUs (EEA)

Regional bi-mode trains: DEMUs (EEA) 2011-2021	**Value** *(EUR million)*	**Market shares** *(%)*
Target	[…]	[50-60]%
CAF	[…]	[0-5]%
Combined	**[…]**	***[50-60]%***
Alstom	[…]	[5-10]%
Stadler	[…]	[10-20]%
Hitachi	[…]	[10-20]%
Newag	[…]	[0-5]%

Source: CAF's response to RFI2 of 11 May 2022.

(35) Within the segment for DEMUs, the Parties' combined market share is [50-60]% in the EEA. Nevertheless, the Transaction is unlikely to give rise to competition concerns with respect to the supply of regional bi-mode trains as a whole, and bi-mode DEMU trains in particular, in the EEA for the following reasons.

(36) **First**, on the wider potential market for regional bi-mode trains, the Parties' combined market shares will be below [40-50]% bringing together the largest and fourth largest suppliers. Post-transaction there will remain two suppliers with significant market shares of more than [20-30]% each (Alstom and Stadler) and two further suppliers with a market presence and non-negligible market shares each exceeding [5-10]% (Siemens and Hitachi).

31 CAF's response to RFI2 of 11 May 2022.

(37) On the potential narrower market for regional bi-mode DEMUs, the increment brought about by CAF is very limited ([0-5]%). The Transaction would leave a number of credible established players with significant market positions on the market such as Stadler and Hitachi which account for [10-20]% and [10-20]% of the market respectively. In addition, Alstom also holds a non-negligible market share in this potential market of [5-10]%.

(38) **Second**, for regional bi-mode trains and also regional bi-mode DEMUs, the Parties do not appear to be close competitors as their activities do not overlap at national level[32] and the Parties have never participated in the same tender over the past ten years for the supply of any bi-mode trains in the EEA.[33] This was also confirmed by the responses received from customers who participated in the Commission's market investigation.[34]

(39) **Third**, the customers who participated to the Commission's market investigation confirmed that the merged entity would continue to face several credible competitors for the supply of regional bi-mode trains, and specifically also bi-mode DEMUs, in the EEA, including in particular Alstom, Siemens, Stadler and Hitachi.[35] In this respect, one customer explained that '*Each competitor ha*[s] *a platform and can propose or develop a bi-mode rolling stock depending o*[n] *customer need*'.[36]

(40) **Fourth**, the results of the Commission's market investigation confirm that the market for bi-mode trains is currently expanding to the development of new and 'greener' technologies such as hydrogen and battery propulsion, replacing regional bi-mode DEMUs but also other types of non-bi-mode regional trains. As a result, a rolling stock manufacturer explained that customers are likely to progressively turn to these new technologies in the future[37], which means that these other types of bi-mode trains (i.e. BEMUs, HEMUs) will exert an increasing competitive pressure on the merged entity's DEMUs (i.e. the only type of bi-mode train, for which their activities overlap).

(41) **Finally**, no customer and competitor expressed concerns in connection with potential effects of the Transaction on the market for bi-mode trains or respective sub-segments in the EEA. On the contrary, one customer explained for instance that '*l'acquisition d'une plateforme par CAF conduit à le renforcer sur ce segment, et est de nature à intensifier la concurrence sur ce segment*'.[38] Given CAF's current limited market presence and market shares, in particular for regional bi-mode DEMUs, the Transaction could enable CAF to become a more credible player and competitor in this segment.

(42) In view of the above, the Commission concludes that the Transaction does not give rise to serious doubts as to its compatibility with the internal market concerning the

32 Form CO, para. 94 (fn 19).
33 Parties' bidding data (Form CO, Annexes 10 and 12 as well as Alstom's response to RFI 1 of 20 April 2022).
34 Replies to eQuestionnaire Q1 – Customers, questions 13, 15 and 16.
35 Replies to eQuestionnaire Q1 – Customers, question 14.
36 Replies to eQuestionnaire Q1 – Customers, question 14.1.
37 Minutes of a call with a competitor on 29 April 2022, paras 3 and 4.
38 Replies to eQuestionnaire Q1 – Customers, question 15.1.

supply of regional bi-mode trains, and in particular regional bi-mode DEMUs, in the EEA.

4.2.3. Self-propelled regional trains (France)

(43) At national level, the only market affected by the Transaction is the market for the supply of self-propelled regional trains (overall, including bi-mode trains) in France. The table below provides the Parties' and Alstom's market shares in this market:

Table 4 – Self-propelled trains: Regional trains (France)

Self-propelled regional trains (EEA) 2011-2021	**Value** *(EUR million)*	**Market shares** *(%)*
Target	[…]	[20-30]%
CAF	[…]	[5-10]%
Combined	**[…]**	***[20-30]%***
Alstom	[…]	[70-80]%

Source: Form CO

(44) As shown above, the market for the supply of regional trains (overall) is affected in France since the Parties' combined market share amounts to [20-30]% (with an increment of [5-10]%). However, the Transaction is unlikely to give rise to competition concerns for the following reasons.

(45) **First**, the merged entity will not acquire a significant degree of market power after the Transaction as the Parties' combined market share for the supply of regional trains in France remains limited ([20-30]%). Alstom, on the other side, will retain and exert a significant degree of market power, with a market share of [70-80]%.

(46) **Second**, the results of the market investigation confirmed that at least Siemens and Stadler could be considered as credible (potential) competitors for the supply of regional trains in France.[39] In this respect, one customer explained that these competitors have the '*platform for the market*'.[40] Similarly, in the context of the *Alstom / Bombardier Transportation* market investigation, Siemens and Stadler confirmed that they could participate in a tender for self-propelled regional trains in any country of the EEA, including France.[41] More specifically, Stadler already participated in a tender in France. In 2019, Stadler submitted a bid for a regional EMU project in France in direct competition to the Target's Coradia Polyvalent platform (which ultimately won the tender).[42] One competitor also highlighted that post-Transaction, CAF could become a viable partner for other suppliers, which may enter the French market.[43]

(47) **Third**, no customer or competitor expressed concerns in connection with the market for regional trains in France. On the contrary, customers consider that the

39 Replies to eQuestionnaire Q1 – Customers, question 20.

40 Replies to eQuestionnaire Q1 – Customers, question 20.1.

41 Case M.9779 – *Alstom / Bombardier Transportation*, para. 495.

42 Alstom's response to RFI 1 of 20 April 2022; case M.9779 – *Alstom / Bombardier Transportation*, para. 499.

43 Reply to eRFI – Competitors, question F.2.

Transaction will increase choice on the market.[44] In this respect, one customer explained that '*l'acquisition d'une plateforme par CAF conduit à le renforce*[r] *sur ce segment, et est de nature à intensifier la concurrence sur ce segment*'.[45] Another competitor stated that : '*The acquisition by CAF of the Talent 3 and Coradia Polyvalent platforms, and in particular Alstom's Reichshoffen site, will reinforce CAF's position in France and could put further competitive pressure on Alstom.*'[46]

(48) In view of the foregoing, the Commission concludes that the Transaction does not give rise to serious doubts as to its compatibility with the internal market concerning the supply of regional trains in France.

5. CONCLUSION

(49) For the above reasons, the European Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation and Article 57 of the EEA Agreement.

For the Commission

(Signed)
Margrethe VESTAGER
Executive Vice-President

44 Replies to eQuestionnaire Q1 – Customers, question 22.
45 Replies to eQuestionnaire Q1 – Customers, question 21.1.
46 Minutes of a call with a competitor on 29 April 2022, para. 19.