

ANTICIPATED ACQUISITION BY HITACHI RAIL, LTD. OF THALES SA's GROUND TRANSPORTATION SYSTEMS BUSINESS

Directions issued on 8 August 2023 pursuant to paragraph 3.5 of the Interim Undertakings accepted by the Competition and Markets Authority on 3 August 2023 pursuant to section 80 of the Enterprise Act 2002 (the Act)

On 23 December 2022, in exercise of its duty under [section 33\(1\)](#) of the Enterprise Act 2002 (the **Act**), the Competition and Markets Authority (**CMA**) referred the anticipated acquisition by Hitachi Rail Limited of Thales SA's Ground Transportation Systems Business (the **Reference**).

On 3 August 2023 the Competition and Markets Authority (**CMA**) accepted Interim Undertakings (**Undertakings**) from Hitachi Rail Limited and its subsidiaries (together, **Hitachi**) in accordance with section 80 of the Act to prevent pre-emptive action.

The CMA now issues written directions under paragraph 3.5 of the Undertakings that, for the purpose of securing compliance with the Undertakings, Hitachi must appoint a monitoring trustee in accordance with paragraphs 3.6 and 3.7 of the Undertakings and the terms provided for in this Annex and must comply with the obligations set out in the Annex.

Signed,

Stuart McIntosh
Group Chair
8 August 2023

Annex

Directions to appoint a Monitoring Trustee

Interpretation

In these directions:

‘the Act’	means the Enterprise Act 2002;
‘business’	has the meaning given by section 129(1) and (3) of the Act;
‘Hitachi business’	means the mainline signalling business of the Rail Control division in Great Britain and Europe operated by Hitachi Rail, Limited and any of its subsidiaries, excluding the urban signalling business of the Rail Control division and the Vehicles division;
[✂]	[✂];
‘key staff’	means those staff with executive, managerial or technical responsibility [✂];
‘Monitoring Trustee’	means the monitoring trustee appointed in accordance with these directions;
‘subsidiary’	unless otherwise stated, has the meaning given by section 1159 of the Companies Act 2006;
[✂]	[✂];

‘Technical Expert’	means an independent technical expert or independent technical experts or advisors appointed in accordance with paragraphs 16 and 17 of this Annex;
‘Thales business’	means the ground transportation systems business operated by Thales SA;
‘Undertakings’	means the Undertakings given by Hitachi Rail Limited and accepted by the CMA under section 80 of the Act.

Terms and expressions defined in the Undertakings have the same meaning in these directions unless the context requires otherwise.

Appointment

1. Hitachi must appoint a Monitoring Trustee in order to ensure compliance with the Undertakings, in particular to:
 - a. monitor and report to the CMA at such frequency as the CMA may specify on compliance by Hitachi with the Undertakings; and
 - b. assist the CMA in taking any action which may be required for the purpose of ensuring compliance with the Undertakings, including for the purposes of the CMA's consideration of any requests made by Hitachi for a derogation from the Undertakings, or ensuring Hitachi's compliance with any directions issued by the CMA under paragraph 3.5 of the Undertakings.
2. The Monitoring Trustee must act on behalf of the CMA and be under an obligation and duty of care to the CMA to carry out its functions to the best of its abilities.
3. Hitachi must cooperate fully with the Monitoring Trustee, in accordance with paragraph 3.6 of the Undertakings and in particular as set out below, and must ensure that the terms and conditions of appointment of the Monitoring Trustee reflect and give effect to the functions and obligations of the Monitoring Trustee and the obligations of Hitachi as set out in this Annex to these directions.

General

4. The Monitoring Trustee must possess appropriate qualifications and experience to carry out its functions.
5. The Monitoring Trustee must neither have, nor become exposed to, a conflict of interest that impairs its objectivity and independence in discharging its duties under these directions, unless such conflict can be resolved in a manner and within a timeframe acceptable to the CMA.
6. Hitachi shall remunerate and reimburse the Monitoring Trustee for all reasonable costs properly incurred in accordance with the terms and conditions of the appointment and in such a way so as not to impede the Monitoring Trustee's independence or ability to carry out its functions effectively and properly.
7. Hitachi must appoint the Monitoring Trustee as soon as is reasonably practicable and in any event by **5pm, Tuesday 15 August 2023** (or such longer period as the CMA may reasonably agree in writing) and the Monitoring Trustee will continue to act either until the final determination of the Reference (unless the appointment of the Monitoring Trustee is extended under any Final

Undertakings or Final Order, if required), or until the CMA directs that the Monitoring Trustee is no longer required.

8. The appointment of a Monitoring Trustee by Hitachi is subject to the approval of the CMA as to the identity of the Monitoring Trustee and the terms and conditions of appointment in their entirety and:
 - a. the name of the proposed Monitoring Trustee and a second proposed Monitoring Trustee in reserve (should the CMA not approve the first proposed Monitoring Trustee) must be notified to the CMA as soon as is reasonably practicable and in any event by **5pm, Thursday 10 August 2023** (or such longer period as the CMA may reasonably agree in writing);
 - b. the draft terms and conditions of appointment must be notified to the CMA as soon as is reasonably practicable and in any event by **5pm, Friday 11 August 2023** (or such longer period as the CMA may reasonably agree in writing) – the terms of the appointment of the Monitoring Trustee shall fully reflect the obligations of the Monitoring Trustee set out in these directions; and
 - c. once the Monitoring Trustee has been approved by the CMA and appointed, Hitachi must provide the CMA with a copy of the agreed terms and conditions of appointment.

Functions

9. Until the final determination of the Reference under section 79 of the Act or until such other time as the CMA requires, the functions of the Monitoring Trustee will be:
 - a. ascertaining and reporting to the CMA at such frequency as the CMA may specify on compliance by Hitachi with the Undertakings and the steps that have been taken by Hitachi to comply with the Undertakings;
 - b. confirming the accuracy and providing more information it considers necessary, in relation to any [X] which fall within the scope of Annex 1 of the Undertakings;
 - c. assisting the CMA with the consideration of any risks in relation to Hitachi's compliance with the Undertakings and advising the CMA on any necessary actions to address these risks;
 - d. assisting the CMA in taking any action which may be required for the purpose of ensuring compliance with the Undertakings, including for the purposes of the CMA's consideration of any requests made by Hitachi for a derogation from the Undertakings, or ensuring Hitachi's compliance with

any directions issued by the CMA under paragraph 3.5 of the Undertakings;

- e. monitoring and reporting on any issues arising which the Monitoring Trustee considers might prejudice the Reference or impede the taking of any action by the CMA which may be justified by its decisions on the Reference; and
 - f. without prejudice to the right of Hitachi to contact the CMA directly, responding to any questions which Hitachi may have in relation to compliance with the Undertakings, in consultation with the CMA.
10. The Monitoring Trustee must take such steps as it reasonably considers necessary in order to carry out its functions effectively, including:
- a. identifying the relevant individuals within Hitachi for the purposes of monitoring Hitachi's compliance with the Undertakings and carrying out its functions effectively; and
 - b. requiring the provision of information from specified individuals within Hitachi in order to ensure compliance with the Undertakings. If necessary for the sole purpose of monitoring compliance with the Undertakings and restricted to what is strictly required for such purpose, this may extend to the production of documents relating to communications within the Hitachi business and between the Hitachi business and the Thales business, subject in all cases to the provisions of paragraph 13.

Reporting functions

11. The Monitoring Trustee is required to provide an initial report (or presentation) to the CMA no later than one week following its appointment (or such shorter or longer period as the CMA may reasonably agree in writing) in a format agreed with the CMA, on the matters set out in paragraph 9 above and giving details of any arrangements which have been, or should be, put in place to ensure compliance with the Undertakings. In addition to the above, the initial report will also cover:
- a. [REDACTED];
 - b. [REDACTED]; and
 - c. [REDACTED].
12. After providing the initial report in accordance with paragraph 11, the Monitoring Trustee must provide a weekly written statement to the CMA (or otherwise as required by the CMA) in a format agreed with the CMA, stating whether or not, in its view, Hitachi has complied with the

Undertakings.

13. When providing the initial report and the written statements to the CMA in accordance with paragraphs 11 and 12, the Monitoring Trustee must ensure that it does not disclose any information or documents to the CMA which Hitachi would be entitled to withhold from the CMA on the grounds of legal privilege and nothing in these directions requires Hitachi to produce any information or documents to the Monitoring Trustee which are privileged.
14. The Monitoring Trustee must immediately notify the CMA in writing if it forms a reasonable suspicion that the Undertakings have been breached, or if it considers that it is no longer in a position to carry out its functions effectively. In that situation, the Monitoring Trustee must give reasons for this view, including any supporting evidence available (unless doing so would infringe the obligations referred to in paragraph 13 above).
15. All communications between the Monitoring Trustee and the CMA (including the initial report and written statements referred to in paragraphs 11 and 12 are confidential and should not be disclosed to Hitachi, save with the prior written consent of the CMA. The Monitoring Trustee shall not disclose such communications to third parties.

Independent technical expert

16. In accordance with paragraph 3.7 of the Undertakings, if necessary or appropriate for the performance of the Monitoring Trustee's duties and obligations under these directions, and where specific technical skills or knowledge are required, the Monitoring Trustee, if unable to provide the necessary skills or knowledge in-house, shall recommend to the CMA the appointment of an independent technical expert or independent technical experts or other advisors according to the terms specified below (the **Technical Expert**). The Monitoring Trustee shall consult with Hitachi on its recommendation for the appointment of a Technical Expert.
17. The Monitoring Trustee shall appoint the Technical Expert and/or other advisors at the expense of Hitachi, provided that any fees and other expenses incurred in this respect by the Monitoring Trustee are reasonable. The appointment of the Technical Expert and/ or other advisor will be subject to the CMA's approval. Prior to the appointment of such Technical Expert, the Monitoring Trustee will inform the CMA of the expertise and independence of the proposed appointee. Should Hitachi have any objections to the appointment of the Technical Expert and/or advisors proposed by the Monitoring Trustee, the CMA may, after having heard Hitachi, approve the appointment of such Technical Expert and/or advisors.
18. The Technical Expert must neither have, nor become exposed to, a conflict of interest that impairs its objectivity and independence in discharging its duties,

unless such conflict can be resolved in a manner and within a timeframe acceptable to the CMA.

Obligations of Hitachi

19. Hitachi and its respective affiliates and their employees, officers, directors, advisers and consultants must cooperate fully with the Monitoring Trustee, in particular by providing the Monitoring Trustee with all cooperation, assistance and information as the Monitoring Trustee may reasonably require in order to discharge its functions, including but not limited to:
 - a. the provision of full and complete access to all books, records, documents, information and available personnel of the Hitachi business as the Monitoring Trustee may reasonably require, subject to the provisions of paragraph 13; and
 - b. the provision of such office and supporting facilities as the Monitoring Trustee may reasonably require.
20. If Hitachi is in any doubt as to whether any action or communication would infringe the Undertakings, it is required to contact the Monitoring Trustee for clarification in advance of taking such action or making such communication.
21. If Hitachi has any reason to suspect that the Undertakings may have been breached, it must notify the Monitoring Trustee and the CMA immediately.