

## COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: LM027May20

In the matter between:

Alstom Société Anonyme

**Primary Acquiring Firm**

And

Bombardier Transportation (Investment) UK Ltd

**Primary Target Firm**

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Panel: M Mazwai (Presiding Member)  
Y Carrim (Tribunal Panel Member)  
F Tregenna (Tribunal Panel Member)

Heard on: 06 and 18 November 2020  
Decided on: 19 November 2020

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### ORDER

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Further to the recommendation of the Competition Commission in terms of section 14A(1)(b) of the Competition Act, 1998 ("the Act") the Competition Tribunal orders that-

1. the merger between the abovementioned parties be approved in terms of section 16(2)(b) of the Act subject to the conditions attached hereto marked as **Annexure A**; and
2. a Merger Clearance Certificate be issued in terms of Competition Tribunal rule 35(5)(a).



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Ms Mondo Mazwai  
Presiding Member

19 November 2020

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Date

Concurring: Ms Yasmin Carrim and Prof. Fiona Tregenna

**CONFIDENTIAL**

**Alstom Société Anonyme**

**and**

**Bombardier Transportation (Investment) UK Limited**

**Case No.: LM027May20**

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**CONDITIONS**

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**1. DEFINITIONS**

1.1 “Act” means the Competition Act, 89 of 1998.

1.2

“ [REDACTED] ”  
[REDACTED]

1.3 “AGATE” means the Advanced Generic Alstom Traction Electronics solution produced in Alstom’s facility in Villeurbanne, France, comprising a suite of components which have been supplied by Alstom to [REDACTED] and TFR previously for application in certain of TFR’s existing locomotives.

1.4

“ [REDACTED] ”  
[REDACTED]  
[REDACTED]

1.5 “Alstom” means Alstom Société Anonyme, a company incorporated under the company laws of France.

1.6 “Approval Date” means the date referred to on the Tribunal’s Merger Clearance Certificate (Form CT 10).

- 1.7 “Bombardier Transportation” means Bombardier Transportation (Investment) UK Limited, a company incorporated under the company laws of England.
- 1.8 “Commission” means the Competition Commission of South Africa.
- 1.9 “Conditions” means these conditions.
- 1.10 “Confidential Information” means any trade, business secrets, know-how, commercial or industrial information, intellectual property, or any other information of a proprietary nature that is not generally available to or known by others.
- 1.11 “Ebilock” means Bombardier Transportation’s Ebilock interlocking product, which is designed and its software is developed by Bombardier Transportation Sweden, and its hardware components are produced by various suppliers worldwide, and which is part of Bombardier Transportation’s Interflo signalling solution that has been approved by TFR for application in TFR tenders.
- 1.12 “Enterprise and Supplier Development Programme” means any of the Merging Parties’ existing policies or programmes as at the Approval Date, which are aimed at prioritising procurement from small local suppliers of the Merging Parties, and providing technical and training support to such suppliers and other small businesses operating in the South African rail industry.
- 1.13 “Implementation Date” means the date occurring after the Approval Date, on which the Merger is implemented by the Merging Parties.
- 1.14 “iVPI” means Alstom’s Integrated Vital Processor Interlocking component, produced in Alstom’s facility in Rochester, U.S.A, which Alstom has agreed to supply to [REDACTED] for potential application in [REDACTED]’s bids for tenders for TFR.
- 1.15 [REDACTED]  
[REDACTED]  
[REDACTED]

- 1.16 “Merger” means the merger notified to the Commission in terms of the Act under case number 2020May0016.
- 1.17 “Merging Parties” or “Parties” means Alstom and Bombardier Transportation.
- 1.18 “South Africa” means the Republic of South Africa.
- 1.19 “TFR” means Transnet Freight Rail, a division of Transnet SOC Ltd, which is a state-owned company incorporated under the company laws of South Africa.
- 1.20 “Tribunal” means the Competition Tribunal South Africa.

## 2. **CONDITIONS**

### Continued availability of AGATE, and related spare parts and support in South Africa

- 2.1 The Parties commit to continue to make AGATE available to [REDACTED] in South Africa [REDACTED]  
[REDACTED]  
[REDACTED] for twelve years from the Implementation Date.
- 2.2 The availability of AGATE, related spares, repair support and technical support shall at all times be provided on reasonable commercial terms that are reflective of prevailing market conditions.
- 2.3 Clause 2.1 and 2.2 are subject to the life cycle of the products in question that will be managed in accordance with the product life cycle management principles that apply currently, recognising that some compatible AGATE products are already retired or discontinued and the possibility that further compatible AGATE products may become retired, discontinued or obsolete, and in which case appropriate arrangements would be made for obsolescence management, which may include component replacement or storage, or replacement with new compatible technology.

#### Supply of iVPI and related spare parts and support in South Africa

- 2.4 The Merging Parties commit to continue to make iVPI, including spare parts and support, available to [REDACTED] in South Africa [REDACTED] [REDACTED] for a period of twelve years from the Implementation Date.
- 2.5 [REDACTED] supply of iVPI will be provided on the terms and conditions of purchase of the product (including provision of repairs, spares and support) by [REDACTED] from Alstom as negotiated on a case-by-case basis in accordance with the specific terms and conditions governing the applicable tender issued by TFR.
- 2.6 Clause 2.4 and 2.5 are subject to the availability of iVPI, related spares, repair support and technical support that will be provided on reasonable commercial terms and prevailing market conditions, subject to agreement with [REDACTED] and TFR on managing the life cycle of the products in question, including provision for the possibility that compatible iVPI products may become retired, discontinued or obsolete, and making appropriate arrangements for obsolescence management, which may include component replacement or storage, or replacement with new compatible technology, in accordance with the product life cycle management principles that apply currently.

#### Supply of Ebilock and related spare parts and support to TFR

- 2.7 The Merging Parties commit to make Ebilock and spare parts and support available to TFR in South Africa for twelve years from the Implementation Date.
- 2.8 Clause 2.7 is subject to the availability of Ebilock, related spares, repair support and technical support that will be provided on reasonable commercial terms and prevailing market conditions, subject to agreement with TFR on managing the life cycle of the products in question, including provision for the possibility that compatible Ebilock products may become retired, discontinued or obsolete, and making appropriate arrangements for obsolescence management, which may include component

replacement or storage, or replacement with new compatible technology, in accordance with the product life cycle management principles that apply currently.

#### Enterprise and Supplier Development Programmes

2.9 Social and economic development forms an integral part of the Parties' activities in South Africa. The Parties confirm that, post-merger, they will continue their existing Enterprise and Supplier Development Programmes in South Africa and will not reduce or discontinue these initiatives as a result of the transaction.

### **3. GOOD FAITH NEGOTIATION**

The Parties undertake to negotiate any requirements, agreements (including the negotiation and implementation of the terms of such agreements) and extensions referred to in these Conditions in good faith.

### **4. MONITORING OF CONDITIONS**

4.1 The Merging Parties shall submit a confidential compliance report to the Commission, describing the extent of its compliance with the Conditions in clause 2. These reports must be lodged promptly after each anniversary of the Implementation Date for a period of five years.

4.2 Each compliance report shall be accompanied by an affidavit (deposed to by a regional director of the Merging Parties) confirming the accuracy of the information contained in the compliance report.

### **5. BREACH OF CONDITIONS**

If the Merging Parties appear to have breached the above Conditions or if the Commission determines that there has been an apparent breach by the Merging Parties of the Conditions, this shall be dealt with in terms of Rule 39 of the Commission Rules.

6. **VARIATION**

The Merger Parties or the Commission may at any time, on good cause shown and on notice to the other party, apply to the Tribunal for any of the Conditions to be waived, relaxed, modified and/or substituted. Either party may oppose or support such application.