COMMISSION DECISION

of 3 April 2001

declaring a concentration to be compatible with the common market and the functioning of the EEA Agreement

(Case COMP/M.2139 — Bombardier/ADtranz)

(notified under document number C(2001) 1032)

(Only the English text is authentic)

(Text with EEA relevance)

(2002/191/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to the Agreement on the European Economic Area (hereinafter the EEA Agreement), and in particular Article 57 thereof,

Having regard to Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings [1] (hereinafter the Merger Regulation), as last amended by Regulation (EC) No 1310/97 [2], and in particular Article 8(2) thereof,

Having regard to the Commission decision of 6 December 2000 to initiate proceedings in this case,

Having regard to the opinion of the advisory Committee on Concentrations [3],

Whereas:

(1) On 20 October 2000, the Commission received a notification pursuant to Article 4 of the Merger Regulation of a proposed concentration by which Bombardier Inc., (hereinafter Bombardier) will acquire sole control of the undertaking DaimlerChrysler Rail Systems GmbH (hereinafter ADtranz) and will merge their activities world-wide.

(2) By decision dated 6 December 2000, the Commission found that the notified operation raised serious doubts as to its compatibility with the common market. The Commission accordingly initiated proceedings in this case pursuant to Article 6(1)(c) of the Merger Regulation.

I. THE PARTIES

(3) Bombardier is a Canadian corporation engaged in design, development, manufacture and marketing in the aircraft, rail transportation equipment and recreational product industries. In addition, the company offers services related to its core products and core businesses and is, through subsidiaries, involved in financial services and the development of real estate interests. Bombardier operates plants mainly in North America and Western Europe. Over 90 % of its revenues are generated outside Canada.

(4) ADtranz, which is wholly owned by DaimlerChrysler AG, is engaged in the manufacture and distribution of rail transportation vehicles. Its current activities cover the manufacture and sale of rolling stock equipment as well as fixed installation and signalling equipment. Even prior to and independent of the present transaction, the company decided to focus on its rolling stock business. Accordingly, ADtranz has entered into a binding agreement to sell its fixed installations business to the United Kingdom-based group Balfour Beatty, subject to clearance by the Office of Fair Trading. Moreover, ADtranz also intends to sell its signalling equipment operations, although a buyer has yet to be found.

II. CONCENTRATION

(5) Bombardier intends to acquire sole control over ADtranz by way of purchase and transfer of 100 % of ADtranz shares, all of which are currently held by Daimler-Chrysler AG. The notified operation therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

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[1] OJ L 395, 30.12.1989, p.1; Corrigendum in OJ L 257, 21.9.1990, p. 13.
[2] OJ L 180, 9.7.1997, p.1; Corrigendum OJ L 40, 13.2.1998, p. 17.
[3] OJ C 63, 12.3.2002.

III. COMMUNITY DIMENSION

(6) The undertakings concerned have a combined aggregate world-wide turnover ([4]) of more than EUR 5 billion (Bombardier, EUR 8,598 billion in its financial year ending 31 January 2000; ADtranz, EUR 3,560 billion in its financial year ending 31 December 1999). Each of them has an aggregate Community-wide turnover in excess of EUR 250 million (Bombardier, [more than EUR 250 million](*) in its financial year ending 31 January 2000; ADtranz, [more than EUR 250 million]* in its financial year ending 31 December 1999), but they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension within the meaning of Article 1(2) of the Merger Regulation, but it does not constitute a cooperation case under the EEA Agreement, pursuant to Article 57 of that Agreement.

IV. COMPETITIVE ASSESSMENT

A. *THE RELEVANT PRODUCT MARKETS*

(7) In its decision in case IV/M.580 — *ABB/Daimler-Benz* ([5]), the Commission categorised the market for railway transport technology into the following five product groups: mainline trains, regional trains, local trains, wayside systems and miscellaneous. These product groups were further subdivided into, *inter alia*, electrical and diesel locomotives, electrical and diesel multiple units (EMUs and DMUs), passenger coaches and freight wagons, trams and underground trains, components, spare parts and maintenance, etc. These subdivisions constituted the relevant product markets. Whilst the market investigation in this case has confirmed the delineation in ABB/Daimler-Benz to be largely still applicable, it has shown, nevertheless, that some additional subdivisions need to be taken into account. Therefore, the relevant product markets have been found to be the following:

— high-speed trains,

— self-propelled electrical multiple units (EMUs) and diesel multiple units (DMUs) for intercity transport (hereinafter also referred to as intercity trains or mainline trains),

— EMUs and DMUs for regional transport (hereinafter also referred to as regional trains),

— passenger coaches,

— trams and light-rail vehicles (the latter also referred to as LRVs),

— underground vehicles,

— airport people movers (APMs),

— heavy maintenance services,

— light maintenance services, and

— refurbishment of rail vehicles.

(8) High-speed trains, such as the French TGV ([6]) by Alstom or the German ICE ([7]) train, are highly integrated self-propelled units or locomotive-hauled trains which are designed to travel long distances at speeds of more than 250 km/h on conventional tracks. In many cases, however, dedicated tracks are used which allow for very high speed travel (usually between 270 km/h and 300 km/h).

(9) Self-propelled units for intercity transport are sets of coaches in which the traction components are fully integrated, i.e. passenger coaches and locomotives are merged. Such train sets cannot be separated, but may be coupled in order to increase their capacity. They are intended for long-range travel between urban centres on ordinary rail tracks, achieving speeds of 160 km/h to 250 km/h, and may have tilting technology. There are two basic types of self-propelled intercity train units, namely electrical multiple units (EMUs) and diesel multiple units (DMUs). As regards these two types of self-propelled units, the Parties' activities overlap and their combined market share does not vary significantly. It can therefore be left open in this case whether two separate product markets exist for intercity EMUs and DMUs.

(10) Regional trains are also self-propelled units, but operate at a lower speed of up to 160 km/h. They are built as single or multiple units. As in the case of intercity trains ([8]), it can be left open whether two separate product markets exist for regional EMUs and DMUs. The Parties suggest, however, the further separation of this market into three segments, according to the number of seats: trains with less than 100 seats, trains with between 100 and 170 seats, and commuter train sets with more than 170 seats. However, a clear majority of answers to the Commission's market

([4]) Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ C 66, 2.3.1998, p. 25).

([5]) Commission Decision 97/25/EC of 18 October 1995 (OJ L 11, 14.1.1997, p. 1, point 9).

(*) Parts of this text have been edited to ensure that confidential information is not disclosed; those parts are enclosed in square brackets and marked with an asterisk.

([6]) 'Train à grande vitesse' (high-speed train).

([7]) 'Intercity Express'.

([8]) See recital 9.

investigation did not agree with this market definition. In particular, many customers answered that they did not order vehicles according to this segmentation, which was seen as arbitrary since it is common practice to combine train sets during peak hours, or to order trains that have narrower seating. It should be mentioned that, according to some customer responses, a segmentation between single and double-decker cars could be envisaged. However, this issue does not need to be explored any further because it does not have an impact on the competitive assessment of the concentration.

(11) It has been suggested by third parties that the distinction between mainline and regional trains is not a rigid one since there is no accepted industry definition. While there is a certain degree of overlap between the two product markets for at least some products in the market, there are several features which render a distinction valid. For regional trains, top speed is not an overriding issue, due to frequent stops on those routes. There seems to be agreement at least in Germany that regional trains operate at speeds of up to 160 km/h. Capacity is more important for regional trains than comfort. These product requirements are reflected in the technical profile of the product, e.g. propulsion systems are designed for lower operating speed, the interior layout focuses on functionality. Therefore, from a demand-side point of view, the two products are different. As regards the supply side, it has to be noted that all major players in the market are active in both markets, with the exception of small players active in regional trains only, such as Stadler and Jenbacher, neither of which would be capable of switching to mainline trains without significant adjustment costs. Therefore, the distinction between mainline and regional trains remains valid for the purpose of this decision.

(12) Passenger coaches include all non-self-propelled railway vehicles, in particular for mainline and, to a smaller extent, for regional passenger transport, hauled by any type of locomotive. Coaches do not have propulsion, which makes adaptation to different national environments easier, and they require significantly less production technology than other rolling stock.

(13) As for trams and light-rail vehicles, the Parties have suggested a distinction between low-floor and high-floor trams. The answers to the Commission's market investigation indicated, from a demand side perspective, a clear trend by urban public transport companies towards low-floor trams, with high-floor trams being progressively replaced by low-floor trams when coming to the end of their life cycle. Also, the use of low-floor trams usually involves low-floor specific investment in infrastructure, i.e. platforms for level access to the cars. It would not be technically impossible to switch to the other system, and in fact, some tram operators even use both systems on the same tracks. Nevertheless, operators will be hesitant to revert to high-floor trams once they have introduced a low-floor system. The reasons for this are, *inter alia*, that the cost of specific low-floor platforms would be frustrated and that the increased comfort of level access could no longer be used as a value proposition. Moreover, low-floor trams are in many instances the best solution to comply with specific legislation or local policies designed to grant handicapped people better access to public transport. However, from a supply-side perspective, the answers to the Commission's market investigation clearly pointed towards substitutability between high-floor and low-floor trams. Therefore, these two segments do not seem to constitute separate product markets.

(14) Underground vehicles or metros are electric vehicles that run on either steel or rubber wheels, and transport people within a city centre, always on completely segregated tracks and usually underground. Metros are generally heavier and sturdier than LRVs, mainly because of their greater capacity, and need to accommodate the high flow of passengers in and out of the cars at peak travel times. They are built to accelerate and decelerate quickly, mainly due to the short distances between stations.

(15) Airport people movers (APMs) are completely automated vehicles that form part of an integrated transit system carrying passengers from planes to terminals or between terminals in an airport. As travel times are short and passengers may be carrying luggage, quick loading and unloading are crucial, which is why they are fitted with large doors and little seating capacity. Furthermore, as routes are generally relatively simple, guidance systems are also much less sophisticated than those of automated guided transports (AGTs).

(16) As regards maintenance and refurbishment, the results of the market investigation suggest that a distinction should be made between light maintenance, heavy maintenance and refurbishment. Light maintenance includes day-to-day repairs, component exchanges and safety checks carried out on a regular basis. Heavy maintenance, on the contrary, covers more substantial interventions as well as major overhaul of railway vehicles, carried out in central workshops on a less regular and more infrequent basis, for a duration of several days or weeks. Finally, refurbishment involves

the modernisation and adaptation of rolling stock to a completely new concept or design. In many cases, only the body shell of railway vehicles remains unchanged. All three types of services require different equipment, skills and technology, and must therefore be regarded as separate markets.

B. *THE RELEVANT GEOGRAPHIC MARKETS*

National markets for regional trains, trams and light-rail vehicles, and underground trains

(17) In the case ABB/Daimler-Benz of 1995, the relevant geographic markets for rail vehicles were found to be national at least in Member States having a very large, domestic rail technology industry able to meet customers' demands ([9]). In more recent cases (COMP/M.2069 — Alstom/Fiat Ferroviaria ([10]) and COMP/M.1446 — DaimlerChrysler/ADtranz ([11])), the question was left open. The Commission, having conducted a thorough market investigation, found the market characteristics largely unchanged since ABB/Daimler-Benz.

(18) Bombardier submits that the market for rolling stock should be regarded as a European one, the rail vehicle industry having evolved considerably towards Europeanisation since the decision in ABB/Daimler-Benz. Reasons put forward by Bombardier to support that submission include the following: EU public procurement rules now also apply to train tenders and have undermined the practice of awarding significant contracts to national champions. Accordingly, manufacturers compete for orders across Europe and even outside the EEA. An increasing number of EU countries such as the United Kingdom, Spain, Portugal and Finland have already awarded contracts to companies from other countries. Even in certain EU countries (such as Germany, France and Italy) where contracts continue to be awarded to companies with a local presence or to consortia that involve a local company, bids are contested by train manufacturers from other EU Member States and non-EU countries. Furthermore, European-wide bidding has to be seen in the context of increasing standardisation of rail equipment and infrastructure in Europe. The major market players tend to offer so-called product platforms whose objective is to serve all customer requirements from a restricted number of basic products, rather than to design and produce customised products for each project. Thus, according to Bombardier, market entry barriers are lowered and European-wide bidding is facilitated.

(19) The Commission's investigation has confirmed, however, that at least for those Member States with a strong national rail industry, markets must still be considered to be largely national. Taking Germany as an example: not only have orders for rail vehicles gone almost exclusively to prime contractors or main suppliers established in Germany, but there have also been hardly any truly foreign suppliers bidding for tenders, in spite of the EU procurement rules and standardisation trends. The only significant foreign entrants to the German market have been the French company Alstom and the Canadian company Bombardier. Their success, however, depended significantly on the formation of consortia with German players at the beginning and later on the acquisition of the German company Linke Hoffmann Busch GmbH, Salzgitter (hereinafter LHB) in the case of Alstom, and Talbot and Deutsche Waggonbau (hereinafter DWA) ([12]) in the case of Bombardier. Thus, the experiences of Alstom and Bombardier itself rather support the definition of the market as national, in the case of Germany.

(20) The Commission's view was supported by most of the competitors and customers of the Parties. In particular, the remaining diversity of infrastructural requirements among different Member States was cited as the major obstacle to the Europeanisation of these markets. Thus, even though EU procurement rules have been implemented, it appears that the real obstacle to European-wide bidding still lies in the different national standards for rail infrastructure.

(21) Neither the Parties nor the results of the market investigation have provided strong evidence that an opening-up of national markets will be accomplished within the forecast period of five years that the Commission applied in the *ABB/Daimler-Benz* case, taking into account the peculiarities of the rail technology sector ([13]). In this respect, it must be borne in mind that the reasons put forward against the existence of a national market in Germany at that time were to a large extent identical to those put forward by the Parties in this case. Also, the results of the market investigation have proven to be in line with those in *ABB/Daimler-Benz*. Consequently, there is no reason to assume that the phenomena (in particular: entry of foreign competitors and sufficient standardisation, as for

([9]) Decision 97/25/EC of 18 October 1995, recitals 41 and 42.
([10]) Decision of 18 September 2000, recital 18.
([11]) Decision of 15 March 1999 (OJ C 97, 9.4.1999, p. 7), recital 10.
([12]) See Commission decision of 29 January 1998 in Case No IV/M.1064 — Bombardier/DWA (OJ C 49, 14.2.1998, p. 13).
([13]) Decision 97/25/EC of 18 October 1995, recital 43.

instance in the framework of the MARIE industrial forum ([14])) that have hardly shown any significant effect over the last five years will trigger a major change in market conditions in the near future.

(22) In this respect, it is important to note that Bombardier itself reasoned in internal strategy documents provided to the Commission in the notification that it has in the past faced the need to show local presence and therefore followed the common approach of buying local manufacturers and maintaining a widespread network of local production facilities in targeted markets. Bombardier also expressed the view that the Europeanisation of national markets was mainly hindered by the lack of harmonisation of technical standards across the existing infrastructure, and that it was progressing extremely slowly and might not even be accomplished at all.

(23) The Commission, therefore, concludes that the markets for regional trains, trams and LRVs, as well as for underground trains, are still national in scope.

Open market definition for high-speed trains, intercity trains, passenger coaches and airport people movers

(24) The lack of harmonisation results in an enormous cost burden, even for those products for which a tendency towards markets whose scope is wider than national is discernible. For example, high speed trains which operate on trans-European networks, such as the *Thalys* or the *ICE 3* ([15]), need several converters to be able to run in more than one country. This makes the train up to 60 % more expensive than in the one-nation configuration. However, the definition of the relevant geographic market for high speed trains can be left open, since the competitive assessment does not change, irrespective of the definition chosen.

(25) Furthermore, the Commission investigated the market for intercity trains, passenger coaches and airport people movers both at the national and at the EEA-wide level. As in the case of high-speed trains, the scope of the relevant geographic market for these products can be left open, since the competitive assessment does not change, irrespective of the definition chosen.

National markets for maintenance and refurbishment services

(26) As far as light maintenance, heavy maintenance and refurbishment services are concerned, the relevant geographical markets must clearly be defined as being national or even sub-national. The results of the market investigation have confirmed this conclusion. In fact, local presence of maintenance service providers is essential, as it would not be economical for train operating companies to move rolling stock from the region where it operates to other, more distant places for maintenance purposes only, given the loss of operating time and profit as well as the transportation costs that would be incurred. In order to avoid such drawbacks, many train operators currently even provide maintenance services 'in-house', in their own depots. This picture is not likely to change with the evolving trend among train operators to 'out-source' maintenance to train suppliers, in which case a local presence and the acquisition of local depots by suppliers is of utmost importance.

Conclusion

(27) In the light of the above, the Commission considers the relevant geographic markets for the following products and services still to be national: regional trains; trams and LRVs; underground trains; maintenance and refurbishment. In contrast, a trend towards European markets has become apparent for high-speed trains, intercity trains, airport people movers and passenger coaches. The precise definition of the relevant geographic market for those products can be left open, since the competitive assessment in the present case does not change, irrespective of the definition chosen.

C. *GENERAL MARKET CONDITIONS*

(28) The main characteristics of the rail technology market in Europe are the privatisation and increasing cost-consciousness of customers, an ongoing consolidation process among manufacturers, a trend towards platform-based products, and the fact that contracts are generally awarded through a bidding process.

1. THE TREND TOWARDS PLATFORM-BASED PRODUCTS

(29) Whereas in the past the design, development and manufacture of rail technology products took place in close collaboration between suppliers and customers,

([14]) MARIE (Mass transit rail initiative for Europe) is a voluntary initiative of the railway supply industry and the urban transport operators under the auspices of the European Commission. It aims to improve the competitiveness of urban rail systems and to accomplish the Single Market by means of standardisation. The areas of work were design harmonisation, financial engineering, life cycle costing and contractual terms and conditions.

([15]) Third generation of ICE trains.

with customers having a direct influence on the products to be manufactured and the selection of the firms producing them (tailor-made products), the trend is now for suppliers to offer their own set products (also referred to as platform-based products) from which customers can choose. The objective of this is to serve all customers from a restricted number of platforms rather than to design and produce completely new vehicles for each project. Even where national or customer-specific technical requirements differ, a platform-based approach allows manufacturers to obtain economies of scale and scope for those parts of the train that do not require customisation.

(30) Siemens was the first supplier to introduce a platform-based LRV product, in Potsdam in 1996. At that time, the existence of platform-based products exerted significant price pressure on competitors and resulted in overall price decreases. At present, all major European manufacturers have developed their own platform-based product lines. Alstom, for instance, is promoting its Citadis (trams), Metropolis (underground trains), X'Trapolis and Coradia (regional trains) platforms. ADtranz has begun to offer its Incentro (trams), Movia (underground trains), Itino (regional trains), and Crusaris (intercity trains) platforms. AnsaldoBreda has developed a platform in the tram sector called Sirio. Siemens' product portfolio includes the Combino (trams), MOMO (underground trains) and Desiro (regional trains) platforms. Bombardier's Cityrunner (trams) and Talent (regional trains) product lines are also platform-based. However, Bombardier does not currently manufacture platform-based products in other market segments.

(31) Nevertheless, there are customers, in particular in the tram sector, who are very reluctant to buy a platform product and continue to demand individual, customised solutions.

2. THE CUSTOMERS

(32) Customers for rail vehicles are not only the national railway companies, but also an increasing number of regional and local transport companies or municipalities, as well as a growing number of private undertakings. In addition to these undertakings (hereinafter also referred to as railway operators), certain private customers do not provide transport services themselves but have specialised in leasing rail vehicles to railway operators ([16]).

(33) Privatisation, fewer public resources and political pressure to develop efficient rail transport systems have resulted in railway operators becoming more sophisticated and cost-conscious in their procurement policies and using their purchasing power more effectively. In particular, purchasing pools and buying consortia have become more common in recent years, even among local train operators.

(34) Customers are increasingly concerned with product performance standards, life-cycle costs and contract management. The ability of manufacturers to offer, alone or as leaders of a consortium, the complete product, and to assume responsibility for it, has become one of the main selection criteria for rolling stock customers.

3. THE MANUFACTURERS

(35) Amongst the main European manufacturers of rolling stock, only four companies currently produce the mechanical part as well as electrical propulsion elements of rail vehicles. These so-called full-line suppliers (systems integrators) are ADtranz, Alstom, AnsaldoBreda, and Siemens.

(36) In addition to these, several smaller companies focus on supplying either mechanical or electrical elements of railway vehicles. Mechanical elements are produced by the two Spanish manufacturers Construcciones y Auxiliar de Ferrocarrilles (hereinafter CAF) and Patentes Talgo (Hereinafter Talgo), as well as the Swiss manufacturer Stadler Rail AG (hereinafter Stadler). These suppliers are, however, capable of supplying complete trains with diesel engines for propulsion (DMUs).

(37) Suppliers of electrical propulsion technology are the German company Kiepe Elektrik GmbH & Co. KG, Düsseldorf (hereinafter Kiepe) ([17]) and the Austrian company ELIN EBG Traction GmbH, Vienna (hereinafter ELIN). In the past, these companies were able to form consortia with the other suppliers to offer complete packages, whereas in recent years, the need for such consortia has diminished, due to the on-going consolidation and integration process in the rail technology industry and the introduction of (branded)platform products. As a consequence, suppliers of electrical propulsion have become component

([16]) These customers are also referred to as 'rolling stock leasing companies' (ROSCOs).

([17]) Kiepe is an independent manufacturer of electrical propulsion systems, especially for trams and trolleybuses. The company had to be sold by Daimler Benz as a condition of clearance in case ABB/Daimler-Benz of 1995 (IV/M.580), in order to ensure that another independent supplier of electrical components remained present in the market.

suppliers for a platform product or product family rather than partners in consortia.

(38) Bombardier has so far had an intermediate position between the systems integrators and the non-integrated manufacturers. Its main focus has been on supplying the mechanical parts of rolling stock. However, Bombardier does supply complete train sets with diesel propulsion (DMUs), and has also managed to bid as a prime contractor for trams, LRV's and regional trains with electrical propulsion, mainly in Germany and Austria, due to its close cooperation with Kiepe in the tram sector and ELIN in the trams and regional trains sector. In the context of this cooperation, Kiepe and ELIN provided the electrical propulsion.

4. BIDDING MARKETS; DATA TAKEN INTO ACCOUNT

(39) In determining the market strength of rolling stock manufacturers, account must be taken of the fact that most of the contracts for purchase of rail vehicles are awarded as the result of a bidding process in public calls for tender. Accordingly, market share figures only take into account the activity of the winners of a given contract but do not show how many credible competitors actually participated as bidders and thus created competitive constraints.

(40) Furthermore, demand for rail technology varies over time. Consequently, in order to assess the Parties' market strength correctly, a fairly long period must be considered. Therefore, as a general rule, the market shares analysed in this decision have been calculated on the basis of the undertakings' average market volume shares over the five-year period 1995-1999. In some cases, when market trends have changed substantially within this period, shorter periods have been taken into account in order to ensure that market shares reflect more accurately the post-merger competitive situation.

(41) It should also be noted that in many cases companies submit bids as a part of consortia. In the case of consortia, this decision regards the prime contractor as the winner of the contract; but market shares are attributed to the other members of the consortium according to their share in that consortium. Furthermore, it should be noted that this presentation cannot fully represent the competitive strength of the different members of consortia. Indeed, some members could be easily replaceable, while the participation of others could have been crucial to obtain the contract. Finally, as regards projects in which subsuppliers (namely Kiepe and ELIN) participate, market shares are solely attributed to the respective prime contractor, usually the manufacturer of the mechanical parts of the train. Whenever companies operate through their local subsidiaries ([18]), bidding data and market shares are attributed to the parent company.

(42) Only base contracts awarded between 1995 and 1999, or shorter periods when appropriate, were taken into account. To the contrary, options exercised by customers in that period were not considered, given that they were based on contracts tendered out earlier and do not reflect the same competitive environment. In particular, some of the underlying base contracts were awarded before the beginning of privatisation of train operating companies and the transposition into German law of the public procurement directives.

D. *AFFECTED MARKETS*

(43) The notified concentration affects the following markets:

— high-speed trains in Germany, the Netherlands and the European Economic Area (EEA),

— self-propelled units for intercity transport in Germany and the EEA,

— passenger coaches in the EEA,

— regional trains in Germany,

— trams and light-rail vehicles in Austria, France, Sweden and Germany,

— underground vehicles in Austria, and

— heavy maintenance services in the United Kingdom (UK).

(44) The businesses of Bombardier and ADtranz are to some extent complementary, given that the former is predominantly focused on manufacturing the mechanical elements of railway vehicles, whereas the latter also provides electrical propulsion elements. Therefore, in many markets there is no real overlap in the activities of the two parties, since they are part of a consortium in which Bombardier is supplying the mechanical part, whilst ADtranz is responsible for the electrical components. Nevertheless, there exist some significant overlaps in the Parties' activities, in particular

([18]) In particular, Alstom has so far been present in Germany mainly through its subsidiary LHB; Bombardier is the parent company of the German-based DWA; see recital 19.

in the markets for regional trains and trams/LRVs, where both offer their own branded products, as ADtranz also manufactures the mechanical parts of rolling stock.

1. HIGH-SPEED TRAINS IN GERMANY, THE NETHERLANDS AND THE EEA

(45) In the market for high-speed trains, both Bombardier and ADtranz are members of the ICE 3 consortium. The consortium leader and prime contractor for the ICE 3 is Siemens, which accounts for [… %]* of the consortium. The share of ADtranz in the consortium is [… %]*, Bombardier has [… %]*. There have been two orders in the EEA for high-speed trains over the five-year period 1995—1999, placed by Deutsche Bahn AG and by the Netherlands Railway (NS) respectively. Both operators ordered the ICE 3. Since both ADtranz and Bombardier are members of the same consortium supplying the ICE 3, there is no real overlap between the Parties' activities in either the Netherlands or Germany. If the relevant market were the EEA, the same reasoning would apply.

(46) As for the competitive situation in the high-speed train sector, it should be noted that consortia are very common in the industry, given the enormous costs of development. This is not only true for the German and Dutch markets, examined in this case, but also for several other geographical markets in Europe and in third countries. For instance, the Italian ETR 500 is supplied by a consortium of AnsoldoBreda and ADtranz, and the Spanish *Talgo* 350 by Talgo/Siemens/ADtranz with Talgo manufacturing the coaches. The two European industry leaders, Alstom and Siemens, have also joined forces to win a contract in Taiwan.

(47) Bombardier supplies the centre coaches for the ICE 3, and also manufactures, in a consortium with Alstom, mechanical parts for the competing TGV. Alstom has stated in its reply to the Commission that, should Bombardier not be willing to participate in such projects following the merger, it could easily replace Bombardier as the supplier of centre coaches and other mechanical parts by either CAF or AnsaldoBreda.

(48) The demand side is also highly concentrated, both in national markets like the Netherlands and Germany and on a European level. Buyers are the national railway operators, with the exception of the United Kingdom. This means that in most countries there is only one buyer. These railway operators have started to form buyer consortia. For instance, the Belgian national train operating company SNCB teamed up with its French and British counterparts in 1989 in order to purchase TGV *Eurostar* high-speed trains. Similar agreements were entered into by SNCB with its French and Dutch counterparts for the acquisition of TGV *Thalys* high-speed trains in 1993.

(49) Deutsche Bahn and SNCF, the two main customers for high-speed trains in Europe, publicly announced in autumn 2000 that they consider tendering out jointly the fourth generation of high-speed trains which can operate in Germany, France and other countries. It is very likely that a new consortium will be formed to supply the fourth generation. Alstom and Siemens are currently negotiating terms and conditions of such a consortium to build this train. The Parties have stated that they would seriously consider developing a fourth generation high-speed train on their own.

Conclusion

(50) The competitive situation in Germany, the Netherlands and the EEA will not change as a result of the transaction, since Bombardier and ADtranz are already part of the same consortium, the ICE 3. Bombardier has supplied mechanical parts to Alstom for the TGV, but the market investigation shows that it could be easily replaced by other manufacturers. It is also likely that a merged entity will develop its own high-speed train, which could increase competition. Moreover, the demand side is also concentrated and has considerable buyer power which balances the concentration of the supply side. There is usually only one buyer in each country, that is to say a monopsonist, whereas on a European level, large buyers form buyer consortia. Therefore, the proposed transaction does not lead to the creation or strengthening of a dominant position in the market for high-speed trains in Germany, the Netherlands, or the EEA.

2. INTERCITY (MAINLINE) TRAINS IN GERMANY AND THE EEA

(51) Concerning intercity or mainline trains, the only national market where the activities of the Parties overlap is Germany. Two contracts were awarded between 1995 and 1999, both by Deutsche Bahn AG. One of the two contracts tendered out by Deutsche Bahn AG was awarded to ADtranz, the other to a consortium led by Siemens, with Bombardier as the supplier of mechanical components. Siemens has stated in its reply to the Commission that, should Bombardier not be willing to participate in such projects following the merger, it could easily replace Bombardier as the supplier of the mechanical parts. In the German market, therefore, the Parties did not compete against each other

because Bombardier did not submit a bid on its own. After the takeover of ADtranz by Bombardier, the number of suppliers, that is to say systems integrators able to offer intercity trains, will not change.

(52) On a European level, there were 11 tenders in the relevant period 1995-1999, representing a total volume of 1 482 cars and a total value of EUR 2,4 billion. Of these 11 tenders, Alstom won five (representing more than 50 % in terms of both value and volume), ADtranz two, and Bombardier one. The remaining three tenders were won by consortia of which Siemens was prime contractor for two contracts, and Alstom for one (the latter together with CAF). Given that Alstom was also part of one of the consortia led by Siemens, it follows that Alstom was the winner or part of the winning consortium in seven out of 11 contracts. Therefore, Alstom is the clear market leader.

(53) As in the case for high-speed trains, the demand side is also highly concentrated. This means that in most countries there is only one buyer, the national railway operator, which therefore enjoys significant countervailing power. The only exception is the United Kingdom, where three tenders accounting for more than half of European demand for intercity trains took place. However, the companies inviting tenders are large powerful train operators such as First Great Western Group or Connex which are active internationally and are backed by financing companies; the latter are themselves subsidiaries of large multinational banks, such as HSBC.

Conclusion

(54) As regards the German market, the competitive situation will not change significantly as a result of the merger. If the relevant geographic market were to be the EEA, the merged entity would become a distant second to the market leader Alstom. Siemens is regarded by all customers as a credible integrated supplier. Furthermore, there is considerable buyer power by the national railway companies or the train operators in the case of the United Kingdom. Therefore, the proposed transaction does not lead to the creation or strengthening of a dominant position of the Parties in the market for intercity trains in Germany or the EEA.

3. PASSENGER COACHES IN THE EEA

(55) In the market for passenger coaches, the Parties' activities are to a large extent complementary. Since either Bombardier or ADtranz, but not both, have won a contract in all Member States, there is no overlap at all. Only if the relevant geographic market were found to cover the whole EEA would this area represent an affected market. Even then, ADtranz would add only [0-10 %]* to Bombardier's [30-40 %]* European-wide market share. ADtranz has won only one contract in Austria. Competitors in this market include Siemens [5-15 %]*, Alstom [10-20 %]*, AnsaldoBreda [0-10 %]*, and CAF.

(56) As in the case for high-speed and intercity trains, the demand side is highly concentrated. This means that in most countries there is only one buyer, the national railway operator. All orders in the relevant period 1995-1999 were made by the national railway operators in Austria, Belgium, Finland, Germany, Greece, Italy and Spain which have considerable buyer power. Therefore, the proposed transaction will not lead to the creation or strengthening of a dominant position of the Parties in the market for coaches in the EEA.

4. REGIONAL TRAINS IN GERMANY

(57) In the market for regional trains in Germany, the Parties' combined market share would amount to [50-60 %]* (Bombardier: [20-30 %]*, ADtranz: [30-40 %]*). It should be noted that the largest part of ADtranz's market share was achieved by sales of its *Regioshuttle* and the marketing of Stadler's *Gelenktriebwagen* (GTW), entrusted to ADtranz until the end of the year 2000. Indeed, during the final three-year period (1997-1999) out of the five years (1995-1999) examined, that is to say, after the GTW was introduced in the German market ([19]) ADtranz only sold Regioshuttle and GTW regional trains in Germany. The second largest player in the German market would be Siemens [25-35 %]*, followed by Alstom with [10-20 %]*. There are only two fringe companies in this market, Swiss manufacturer Stadler and Austrian manufacturer Jenbacher Transportsysteme AG (hereinafter Jenbacher); the latter are, however, non-integrated companies which, together, accounted for a market share of less than 3 % (1995-1999) and can, at this point in time, not be regarded as independent competitors to the Parties ([20]).

(58) On the one hand, given that the markets in question are bidding markets, the competitive assessment of the notified concentration cannot be exclusively based on an analysis of market shares ([21]). Indeed, the Parties'

([19]) See recitals 63 and 64.
([20]) See recitals 62 to 66.
([21]) See recitals 39 and 40.

main competitors in the German market, Siemens and Alstom, remain credible and active bidders ([22]). On the other hand, the notified concentration will undoubtedly reduce the number of independent suppliers of regional trains in the German market from four (Bombardier, ADtranz, Siemens and Alstom, or their subsidiaries) to three (Bombardier/ADtranz, Siemens and Alstom, or their subsidiaries), with Bombardier/ADtranz obtaining clear market leadership. Against this background, the following aspects need to be taken into account:

(59) There were 42 tenders in the five-year period 1995-1999, representing a total volume of 2 631 cars and a total value of EUR 2,4 billion. Both Bombardier and ADtranz submitted separate bids ([23]) for a total of 24 contracts examined by the Commission, representing a value of EUR 963 million and a volume of 1 131 cars (43 % of the overall market), whereas in 12 cases examined by the Commission, representing a value of EUR 567 million and a volume of 607 cars (23 % of the overall market), only one of the Parties participated as a bidder. Four contracts, tendered out by Deutsche Bahn AG and representing a value of EUR 841 million and a volume of 873 cars (one-third of the overall market), were awarded to a consortium consisting of Bombardier, ADtranz, and their main competitor Siemens. In another two cases examined by the Commission, neither of the Parties submitted a bid. The Parties therefore competed against each other for the award of contracts representing 43 % of the overall market (1995-1999), that is to say, in those cases for which both submitted separate bids.

(60) Siemens is part of the BR 424-426 consortium (together with ADtranz and Bombardier) which won, in particular, contracts for 139 train sets (870 cars) from DB Regio AG. It is responsible for the electrical part of these trains. Furthermore, Siemens has two branded products in that market, the Desiro and the RegioSprinter. The RegioSprinter is a light weight DMU, which has so far only been sold in small quantities in Germany. According to the Parties, the RegioSprinter was not accepted by Deutsche Bahn AG because of its low buffer load (crashworthiness). By contrast, the Desiro is a newly-developed platform product which has been well received in the marketplace.

(61) Alstom has developed two product families, called Coradia and X'Trapolis, which are modular platform products. Alstom secured a large contract from DB Regio AG (BR 423) in a consortium with ADtranz, which is supplying the electrical part. It also won a significant number of contracts for the Coradia-Lint 27 and 41 recently.

(62) Jenbacher started developing a DMU in 1993 as a successor to its BR 5047, which is called the Integral. Jenbacher was awarded one contract for its supply in 1997 to the Bavarian Oberlandbahn. These 17 trains were delivered in early 1999 and brought Jenbacher a market share of less than 3 %. However, all 17 trains had to be taken back to the depot due to severe quality problems and will not be operational before early 2001. Jenbacher is currently looking for a strategic partner. Therefore, Jenbacher cannot be considered a strong competitor in this market.

(63) Stadler's market share outside Switzerland has been rather small and initially did not exceed 2 % in the EU, resulting from two contracts in Austria and Greece. The company's product, the Gelenktriebwagen (GTW), was not launched in the German market until 1997 by a consortium of ADtranz, DWA ([24]) and Stadler. The GTW accounted for [10-20 %]* of the German market over the three-year period 1997-1999.

(64) Stadler initially neither produced nor marketed the GTW itself. It entered the German market by giving a licence to DWA, which adapted the GTW to the German market and built the majority of the cars. Stadler was initially only a subsupplier to DWA for the manufacturing of the mechanical part. ADtranz is the supplier of the electrical part and was also responsible for the marketing of the GTW.

(65) In early 2000, Stadler acquired a majority stake in the former ADtranz production site in Berlin Pankow ([25]) where Stadler plans to manufacture itself the GTW for the German market. ADtranz still holds a minority share of one-third in what is now called Stadler Pankow GmbH hereinafter Stadler Pankow) Joint Venture. Under the Joint Venture contract, ADtranz is obliged to guarantee a certain number of manufacturing hours to fill the capacity which is higher than its capital participation. This obligation ends in […]*. In order to fulfil its obligations, ADtranz has transferred the manufacturing of its Regioshuttle (RS 1) to Stadler Pankow. The marketing and ownership of the RS 1, however, remains with ADtranz.

(66) The initial marketing agreement for the GTW between ADtranz and Stadler lapsed on 31 December 2000. Since 1 January 2001, Stadler has marketed the GTW itself. However, ADtranz as a […]* partner in the Stadler-Pankow Joint Venture is still able to influence decisions concerning the GTW. Therefore, Stadler can,

([22]) Either directly or through their subsidiaries, either as single bidders or as part of consortia.

([23]) Either directly or through their subsidiaries, either as single bidders or as part of competing consortia.

([24]) DWA is now a subsidiary of Bombardier (see recital 19).

([25]) Stadler and ADtranz currently have joint control over the Stadler Pankow Joint Venture (see recital 103).

at present, not be considered a fully independent competitor to the merged entity as long as its structural link with ADtranz remains unchanged.

(67) Although Deutsche Bahn Regio AG is the biggest customer for regional trains in Germany which has countervailing buyer power, there are several privately owned smaller operators of regional trains. The privatisation process is likely to continue. While some of these smaller regional train operating companies belong to the French company Connex (Vivendi), a group active across Europe, a majority does not. Therefore, the demand side is much more fragmented than in the market for high speed or intercity trains, and does not enjoy the same degree of buyer power. The risk of market dominance by the Parties cannot therefore be ruled out.

Conclusion

(68) For the above reasons, the notified concentration raises serious doubts as to its compatibility with the common market with regard to regional trains in Germany. It is likely to create a dominant position for the Parties in that market.

5. TRAMS AND LIGHT-RAIL VEHICLES IN AUSTRIA, FRANCE, SWEDEN AND GERMANY

(a) ***Austria***

(69) Only a very small number of contracts were awarded in Austria in the period 1995-1999. Of the six contracts examined by the Commission, Bombardier won [less than six]*, representing a value of EUR […]* million (40-50 %]* of the overall market) and a volume of […]% cars ([50-60 %]* of the overall market). Siemens won one contract, representing a value of EUR […]* million ([40-50 %]* of the overall market) and a volume of […]* cars ([35-45 %]* of the overall market). One contract representing a value of EUR 16,2 million and a volume of six cars was awarded to a consortium consisting of Bombardier, ADtranz, ELIN and Siemens. ADtranz's market share in Austria of [0-10 %]* (in value) is exclusively based on its participation in that consortium. There is, therefore, no overlap between the Parties with the exception of that resulting from their participation in that consortium, in which they did not compete against each other.

(70) Under these circumstances, the notified operation does not lead to the creation or strengthening of a dominant position for the Parties in the Austrian market for trams and light-rail vehicles. Firstly, since the markets at issue are bidding markets, and given that only a very small number of contracts were awarded, the competitive assessment of the notified concentration cannot be exclusively based on an analysis of market shares ([26]), as market shares to not reveal how many credible competitors actually participated in a public tender as active bidders. Secondly, the number of active credible bidders in the Austrian tram and LRV market will not change as a result of the notified concentration, as ADtranz only once participated in a winning consortium and, in that case, did not compete against Bombardier nor against any of the other major suppliers. Finally, the position of Siemens as a strong competitor in the Austrian market remains unchanged.

(b) ***France***

(71) As regards trams and light rail vehicles in France, the Parties have a combined market share of [30-40 %]* (Bombardier: [20-30 %]*, ADtranz: [10-20 %]*), whereas Alstom's market share is (… [55-65 %]*). In its investigation, the Commission has found no evidence for the creation of duopolistic dominance by Bombardier/ADtranz and Alstom in the French market. In fact, in addition to the current market leaders (Alstom, Bombardier and ADtranz), three competitors have been active as bidders in the French market, namely Siemens, AnsaldoBreda and CAF. For a total of seven contracts tendered out between 1995 and 1999, Alstom submitted six bids, Bombardier five, Siemens five, ADtranz four, AnsaldoBreda three, and CAF one ([27]). Only in two out of seven tenders examined did the Parties directly compete against each other as bidders. Given the strong position of Alstom in the French market and the presence of several active bidders, in particular Siemens, the takeover of ADtranz by Bombardier will not lead to the creation or strengthening of a dominant position in the French market for trams and light-rail vehicles.

(c) ***Sweden***

(72) As regards the Swedish market for trams and light-rail vehicles, only one contract (by SL Infrateknik AB, Stockholm, 1997) was awarded in the five-year period 1995-1999 examined by the Commission; this contract represented a total value of just EUR 21,9 million (twelve cars). Moreover, Bombardier and ADtranz had submitted their bid for that contract as members of a single consortium (shares in that consortium: Bombardier [… %]*, ADtranz [… %]*) and were, therefore, not competing against each other. Their activities in the Swedish market did not therefore overlap. The Commission's market investigation has revealed no evidence for the creation or strengthening of a dominant position for the Parties in Sweden.

([26]) See recitals 39 and 40.

([27]) In 2000 only three tram/LRV contracts were tendered out in France, all of which were won by Alstom.

(d) ***Germany***

(73) In Germany, by far the largest market for trams and light-rail vehicles in Europe, the Parties' combined market share amounts to [50-60 %]* (Bombardier: [30-40 %]*, ADtranz: [20-30 %]*), followed by Siemens ([30-40 %]*) and Alstom ([0-10 %]*, each calculated on a five-year basis covering the years 1995 through 1999.

(74) On the one hand, since the markets at issue are bidding markets, the competitive assessment of the notified concentration cannot be exclusively based on an analysis of market shares ([28]). Indeed, the Parties' main competitors in the German market, Siemens and Alstom, remain credible and active bidders ([29]).

(75) Regarding the tram and light-rail vehicle purchases in Germany examined by the Commission, Siemens participated as a bidder in 18 out of 19 projects tendered out from 1995 to 1999, was short-listed in most cases and won ten contracts; its success rate has, therefore, been above 50 %.

(76) As regards Alstom, this company submitted nine bids over the same period of time, was short-listed three times and won one contract. It should be noted that Alstom has recently been focussing on the production site of its German subsidiary LHB, Salzgitter, for the manufacture of regional trains and trams/light-rail vehicles for the German market. This could enhance the company's future chances of winning contracts in Germany and should allow it to increase its current market share.

(77) Both Siemens and Alstom have a full product portfolio which covers the whole range of applications and can satisfy all customer requirements: Siemens was the first supplier to introduce a platform-based product. It currently markets the Combino low-floor tram, the CitySprinter high-floor tram and the dual voltage GT8-100D/2S-M, whilst Alstom offers the Citadis 100, 200 and 300 low-floor trams, the B-Wagen high-floor tram and the dual-voltage Citadis 500 tram train.

(78) On the other hand, the notified concentration will undoubtedly reduce the number of leading active suppliers of trams and light-rail vehicles in the German market from four (Bombardier, ADtranz, Siemens, and Alstom, or their subsidiaries) to three (Bombardier/ADtranz, Siemens, and Alstom, or their subsidiaries), with Bombardier/ADtranz obtaining clear market leadership. Against this background, the following aspects need to be taken into account:

(79) Firstly, although the Parties' product portfolios are to some degree complementary, the notified operation will allow the new entity (Bombardier/ADtranz) to better position itself in the market for trams and light-rail vehicles. On the one hand, it must indeed be acknowledged that even though high-floor trams, low-floor trams and tram trains were found to belong to the same product market ([30]), the Parties' activities in this field are to a certain extent complementary: in fact, ADtranz actively markets its platform-based Incentro, a 100 % low-floor tram, and its Vario-tram, a 100 % or 70 % modular low-floor tram, whilst Bombardier markets low-floor trams (such as Cityrunner, NGT6/8 and K 4000) as well as high-floor trams (K 5000) and dual-voltage Tram Trains. On the other hand, the notified operation will allow the Parties to offer a complete range of tram and LRV products, covering both the high-floor and the low-floor market segment, and thus enabling them to gain competitive strength.

(80) Secondly, although it can be accepted that the past bidding activities of the Parties were to some degree complementary, the notified concentration will enhance the new entity's possibilities of participating in public tenders. Indeed, it should be noted that the Parties only competed against each other in approximately half of the projects tendered out in Germany between 1995 and 1999. Both Bombardier and ADtranz submitted separate bids ([31]) for a total of [0 < 10]* contracts examined by the Commission, representing a value of EUR [… %]* million ([50-60 %]* of the overall market) and a volume of [… %]* cars [40-50 %], whilst in [0 < 10]* cases examined by the Commission, representing a value of EUR [… %]* million [30-40 %]* and a volume of [… %]* cars [30-40 %]*, only one of the Parties participated as a bidder. In another two cases examined by the Commission, representing a value of EUR [… %]* million [10-20 %]* and a volume of [… %]* cars [10-20 %]*, Bombardier and ADtranz were part of the same consortium and thus did not compete against each other. Nevertheless, the takeover of ADtranz will necessarily result in a strengthening of Bombardier's competitive position in that market. In fact, the enlargement of the new entity's product portfolio, covering the whole range of products in the tram and LRV sector, will allow it to submit bids in any public tender to be published in Germany ([32]).

([28]) See recitals 39 and 40.

([29]) Either directly or through their subsidiaries, either as single bidders or as part of consortia.

([30]) See recital 13.

([31]) Either directly or through their subsidiaries, either as single bidders or as part of competing consortia.

([32]) As for the enlargement of the new entity's product portfolio, see also the preceding paragraph.

(81) Thirdly, although the Parties' relatively high market shares can be counterbalanced to some extent by the increased influence of customers in the tram market, the Commission's market investigation has shown that buyer power is not sufficient to outweigh the effects of the notified concentration. On the one hand, customers' bargaining power has increased in so far as purchasing pools and buying consortia have become more common in recent years. For instance, two German municipal train operators, Leipziger Verkehrsbetriebe GmbH and Rostocker Straßenbahn AG, recently issued a joint call for tenders in the tram market ([33]), as did Mannheimer Versorgungs- und Verkehrsgesellschaft AG (MVV-Verkehr AG), in cooperation with Heidelberger Straßen- und Bergbahn AG, Oberrheinische Eisenbahn AG, Rhein-Haardtbahn GmbH and Verkehrsbetriebe Ludwigshafen GmbH ([34]). The market investigation has shown that more such consortia and cooperation can be expected in the future. On the other hand, it is true that a vast majority of customers are mainly local train operating companies or municipalities. Therefore, unlike in the market for high-speed or intercity trains, the demand side in the tram and LRV sector remains much more fragmented and does not enjoy a sufficient degree of countervailing buyer power to rule out the danger of market dominance by the Parties.

(82) Moreover, the overall results of the market investigation suggest that the remaining barriers to entry in the German tram and light-rail vehicle market cannot be disregarded, due in particular to customers' preferences for suppliers with a national, if not local, presence, and to certain quality requirements and technical specifications ([35]).

(83) Furthermore, the concentration will jeopardise the existence of electric propulsion supplier Kiepe, which is mainly active in the German market for trams. Although Kiepe has teamed up with different mechanical suppliers in the past, an important part of its turnover in the railway business has so far been generated by supplying Bombardier. Given that Bombardier will itself become an integrated producer of rail vehicles after the takeover of ADtranz, it will no longer have to rely on electrical propulsion equipment from smaller sub-suppliers, such as Kiepe or ELIN, who have so far been important partners for Bombardier. Consequently, the Commission's market investigation has revealed concerns that these suppliers might lose their businesses or be reduced to the role of niche players. In that case, they would no longer be able to serve as partners for non-integrated mechanical suppliers, such as Stadler, nor could they act as gatekeepers for potential, non-integrated market entrants, such as CAF or Talgo.

([33]) The contract was awarded in 1999.
([34]) The contract was awarded in 1999.
([35]) See recital 17 and following.

Conclusion

(84) For the above reasons, the notified concentration raises serious doubts as to its compatibility with the common market with regard to trams and light-rail vehicles in Germany. It is likely to create a dominant position for the Parties in that market.

6. UNDERGROUND VEHICLES IN AUSTRIA

(85) As regards underground vehicles, the Commission's market investigation has shown that only two contracts were awarded in Austria in the period 1995-1999. For only one of these contracts (Vienna underground, 'U-Bahn Typ V-Wagen', 1998) did Bombardier and ADtranz actually participate in competing bids (on the one hand, Bombardier with Kiepe as a subsupplier; on the other hand, Siemens with ADtranz and ELIN as subsuppliers); the contract was awarded to the consortium led by Siemens. As for the other contract (Vienna underground, 'U-Bahn Typ T', 1997), it was awarded to a consortium consisting of Bombardier, ADtranz and Siemens, with both Kiepe and ELIN as subsuppliers. In total, the Parties accounted for [50-60 %]* of the Austrian market (ADtranz [30-40 %]*, Bombardier [10-20 %]*), with the remaining [40-50 %]* being held by Siemens. However, under the circumstances referred to above, and since the markets at issue are bidding markets, the competitive assessment of the effects of the notified concentration in Austria cannot be based on a mere analysis of market shares ([36]). Actually, the Parties' competitive overlap with regard to underground vehicles in Austria is not significant.

(86) Moreover, the Vienna underground is the only urban metro system in place in Austria, and it is not expected that new tenders will be published within the next few years, either for the existing Vienna underground or for any new system in any other Austrian city. In its market investigation, therefore, the Commission has found no evidence of the creation or strengthening of a dominant position for the Parties in Austria with regard to underground vehicles.

7. HEAVY MAINTENANCE SERVICES IN THE UNITED KINGDOM

(87) In the heavy maintenance sector in the United Kingdom, the Parties' combined market share amounted to [30-40 %]* in 1999 (ADtranz: [20-30 %]*, Bombardier: [10-20 %]*), followed by Railcare ([10-20 %]*) and Alstom ([10-20 %]*). Local train operating companies

([36]) See recitals 39 and 40.

accounted for [20-30 %]* of the heavy maintenance market in the United Kingdom. Based on these figures, Bombardier and ADtranz would have achieved a leading position in the United Kingdom heavy maintenance market after the concentration, giving rise to competitive concerns:

(88) The notifying Party submits, however, that the major part of the turnover generated by Bombardier in the United Kingdom heavy maintenance segment was only achieved as a result of the execution of two contracts which were terminated before the end of 2000; at this point of time, according to the notifying Party, there is no order backlog, nor has Bombardier concluded any new contracts which are due to enter into force in the heavy maintenance sector, nor does Bombardier currently have significant spare capacities which would allow it to offer heavy maintenance services in the near future.

Conclusion

(89) In the light of the above, the concentration does not give rise to competition concerns in the United Kingdom heavy maintenance sector. Given that Bombardier's activity in the United Kingdom heavy maintenance market will significantly decrease from 2001, there will be no major overlap in the Parties' heavy maintenance activities from that time. The Commission has found no evidence for the creation or strengthening of a dominant position for the Parties in the United Kingdom.

E. *NON-AFFECTED MARKET: AIRPORT PEOPLE MOVERS (APMS)*

(90) ADtranz is the world leader in the market for APMs with a global market share of 70 %. Main competitors are Poma-Otis, a joint venture between Pomagalski of France and the American company Otis, Matra (Siemens) and Mitsubishi. ADtranz won the only new contract in the EEA in the period 1995-1999 awarded by the airport of Rome. Bombardier does not have its own APM product. Therefore, there is no overlap between ADtranz and Bombardier. As for Bombardier, after evaluating several options for entering the APM market, the company formed an alliance with Mitsubishi Heavy Industries (hereinafter MHI) in 1999. Bombardier markets and provides the overall system integration, and MHI provides the vehicle itself and the signalling system. To date, the MHI/Bombardier relationship has not resulted in any joint APM bids in Europe, although MHI/bombardier were in the process of preparing a bid for the Madrid Airport and intended to participate in the bid process for the Charles de Gaulle Airport project. However, Bombardier and MHI have agreed to terminate their relationship should the proposed transaction with ADtranz be consummated.

(91) Bombardier has already withdrawn from the Madrid Airport Project. Therefore, the transaction could strengthen the dominant position of ADtranz in the European APM market by putting at risk the entrance of a new supplier of APMs into the European market. However, MHI itself has stated that it was able to finalise the bid for the Madrid airport with Sumitomo. Therefore, the proposed transaction does not lead to the elimination of a potential entrant and does not strengthen ADtranz's dominant position in this market in Europe.

V. **UNDERTAKINGS**

(92) In order to address the aforementioned competition concerns that arise in the German markets for regional trains and trams, the Parties have submitted the undertakings described in recitals 93 to 100. The full text of those undertakings is set out in the Annex which forms an integral part of this Decision.

1. UNDERTAKINGS AIMED AT STRENGTHENING THE INDEPENDENCE OF STADLER ([37])

(93) ADtranz is currently operating a joint venture, Stadler Pankow, Berlin, with Stadler ([38]). This Joint Venture is being used by both parent companies as a common production site for the assembly of regional trains, such as ADtranz's Regioshuttle (RS) and Stadler's Gelenktriebwagen (GTW).

(94) ADtranz holds […]* of the shares in the Joint Venture, whilst Stadler holds the remaining […]* of the shares. Since ADtranz has the right to appoint […]* of the five members of the Joint Venture's supervisory board and a right of veto regarding the Joint Venture's budget, Stadler Pankow is jointly controlled by both parent companies.

(95) The Parties offer to withdraw from this Joint Venture and to divest ADtranz's stake in Stadler Pankow to Stadler.

(96) The Parties also offer to take certain interim measures to ensure that Stadler Pankow can continue its business activities. These include, in particular, a capacity load guarantee (up to a certain total of working hours per year) for Stadler Pankow until the end of […]*, thereby largely exceeding ADtranz's current obligations under

([37]) See paragraphs 1(e) to (g) of the undertakings, as set out in the Annex.

([38]) Stadler and ADtranz currently have joint control over the Stadler Pankow Joint Venture (see recital 103).

the Joint Venture agreement, and the commitment to supply Stadler, for a transitional period of […]* years, with certain components on current commercial terms, subject to adjustment for inflation.

2. UNDERTAKINGS AIMED AT PRESERVING EFFECTIVE COMPETITION IN THE GERMAN MARKETS FOR REGIONAL TRAINS AND TRAMS AND LIGHT-RAIL VEHICLES ([39])

(97) Furthermore, the Parties offer to grant exclusive licenses for production and marketing, in the EU, of two of their product lines, namely the Regioshuttle regional train and the Variotram tram, to Stadler. The Regioshuttle represents roughly [5-20 %]* of the German market for regional trains in the period 1995-1999, whereas Variotram represents approximately [5-20 %]* of the German market for trams/light-rail vehicles in that same period. Both products have been sold to various customers.

3. UNDERTAKINGS AIMED AT STRENGTHENING THE INDEPENDENCE OF ELIN ([40])

(98) Bombardier undertakes to divest its minority stake of [… %]* in the undertakings ELIN ([41]). ELIN is a manufacturer of propulsion technology for rail vehicles (both regional trains and trams) and has so far been one of Bombardier's electrical propulsion providers, for example for its Talent regional train and for trams of the Cityrunner Linz type.

(99) Furthermore, Bombardier undertakes — in addition to its existing cooperation with ELIN in the development of regional trains of the Talent type — to extend its cooperation with ELIN to light-rail vehicles of the Cityrunner Linz type for a period of five years. A Joint Development Agreement has already been concluded.

4. UNDERTAKINGS AIMED AT STRENGTHENING THE INDEPENDENCE OF KIEPE ([42])

(100) In addition, Bombardier undertakes to exclusively use traction equipment of the undertaking Kiepe for the worldwide sale of its high-floor trams of the K 5000 type and the EU-wide sale of tram trains of the Saarbrücken Vehicle type, over a period of […]* years. The proposed exclusive cooperation with Kiepe is binding upon Bombardier only (unilateral exclusivity). Furthermore, Bombardier offers to order installation work from Kiepe valued at DEM […]* per year over a period of […]* years. A cooperation agreement has already been concluded.

([39]) See paragraphs 1(h) and (i) of the undertakings, as set out in the Annex.

([40]) See paragraphs 1(a) and (b) of the undertaking, as set out in the Annex.

([41]) Bombardier and ELIN's majority shareholder, VA TECH ELIN EBG GmbH, currently have joint control over ELIN (see recital 105).

([42]) See paragraphs 1(c) and (d) of the undertakings, as set out in the Annex.

VI. **ASSESSMENT OF THE UNDERTAKINGS**

(101) As confirmed by the results of the market test conducted by the Commission, these undertakings can be considered sufficient to properly remedy the competition concerns in the German markets for regional trains and for trams and LRVs, as outlined above ([43]).

(102) The proposed undertakings will ensure the independence of three of the remaining non-integrated players in the markets for regional trains and trams/LRVs and increase their competitivity. These companies are, on the one hand, ELIN and Kiepe, both of whom are electrical propulsion providers; and, on the other hand, Stadler who is a mechanical manufacturer of regional trains and trams/light-rail vehicles. Stadler will be established as an important manufacturer of regional trains and trams for the German market, whilst Kiepe and ELIN will continue to play an important role as electrical propulsion suppliers to non-integrated mechanical manufacturers, in particular Stadler. The undertakings submitted by the Parties will, therefore, provide compensation for the disappearance of ADtranz as a manufacturer of regional trains and trams/light-rail vehicles.

1. THE SITUATION OF STADLER, ELIN AND KIEPE

(a) ***Stadler***

(103) As regards Stadler Pankow, the [… %]* minority stake of ADtranz in that Joint Venture grants it joint control, together with the majority shareholder, Stadler, given that, for instance, the Joint Venture's budget needs to be approved unanimously by both shareholders. Furthermore, ADtranz has the right to appoint […]* of the five members of the Joint Venture's supervisory board; thus, the Parties would have access to all relevant business information concerning the Joint Venture if the concentration was cleared unconditionally.

(104) Severing Stadler's structural link with ADtranz in Stadler Pankow will turn this company into an independent manufacturer of regional trains. Moreover, acquiring the Regioshuttle and Variotram licenses, as offered by the Parties, will allow Stadler to establish itself as a credible competitor in the German markets for both regional trains and trams, marketing on a stand-alone basis two

([43]) See recitals 68 and 84.

products which are already well introduced and sold in Germany. Nevertheless, certain guarantees will be necessary for a transitional period. These are provided by the Parties' commitments to offer a capacity load guarantee for the Stadler Pankow facility and to supply certain components to Stadler on current commercial terms ([44]).

(b) ***ELIN***

(105) As regards ELIN, the [… %]* minority stake of Bombardier's subsidiary DWA in that company grants it joint control, together with the majority shareholder, VA TECH ELIN EBG GmbH, Vienna, given that DWA has the right to veto certain strategic business decisions. In addition, Bombardier has an option to acquire the remaining [… %]* of ELIN as soon as the major part of ELIN's turnover is generated through projects with Bombardier. Furthermore, […]* of the four members of ELIN's supervisory board is appointed by DWA; thus, the Parties would have access to all relevant business information about ELIN if the concentration was cleared unconditionally.

(106) Severing ELIN's structural link with Bombardier will turn this company into an independent supplier of propulsion technology for regional trains and trams/light-rail vehicles. Nevertheless, certain guarantees will be necessary for a transitional period in order to allow ELIN to find new partners, replacing Bombardier, which will become vertically integrated after the acquisition of ADtranz and, thus, will no longer have to rely on ELIN as a supplier of electrical propulsion equipment. Two Joint Development Agreements concluded between Bombardier and ELIN provide for cooperation between these two companies for a period of […]* years, concerning both projects in the regional trains and in the tram sector (Talent and Cityrunner Linz), thereby allowing ELIN to continue to be active in both market segments.

(c) ***Kiepe***

(107) As regards Kiepe, the guarantees offered by Bombardier will provide sufficient time for that company to find new cooperation partners, replacing Bombardier, which will become vertically integrated after the acquisition of ADtranz and, thus, will no longer have to rely on Kiepe as a supplier of electrical propulsion equipment. The cooperation agreement concluded with Bombardier for this transition period covers both a high-floor tram project (K5000) and a light-rail vehicle of the tram-train type (Saarbrücken Vehicle), thereby providing sufficient diversity for Kiepe to allow it to continue to be active in both market segments. Moreover, Bombardier's commitment to order DEM […]* worth of installation work from Kiepe per year for a […]*-year period provides additional economic security for that company until it can find new partners.

(d) ***Possible cooperation between Stadler, ELIN and Kiepe; 'gatekeeping'***

(108) Given that the undertakings submitted will preserve the independence of two propulsion suppliers (ELIN and Kiepe) as well as that of Stadler who provides only the mechanical parts of trains, cooperation between these three companies seems possible in the medium-term. All three companies have already shown interest in such cooperation, especially Stadler. Such cooperation would allow these three companies to compete as independent suppliers in the German markets for regional trains and trams/light-rail vehicles, against the Parties as well as against Siemens and Alstom.

(109) Moreover, ELIN and Kiepe could serve as gatekeepers in the German market for other companies, such as the two Spanish firms CAF and Talgo, in a way similar to that in which Bombardier entered the German market in cooperation with Kiepe. In fact, cooperation with suppliers of electrical propulsion, in particular with Kiepe as regards the sale of trams in Germany, was one crucial factor that allowed Bombardier to rapidly gain considerable market shares in that Member State over the last six years.

2. EFFECTS ON MARKET STRUCTURE

Regional trains in Germany

(110) The undertakings described above will establish Stadler as a significant and viable competitor in the German market. Indeed, firstly, the Parties will divest the Regioshuttle, a product line representing approximately [5-20 %]* of the market and currently owned and marketed by ADtranz; Stadler is the prospective purchaser of the Regioshuttle license. Secondly, after withdrawing from the Stadler Pankow Joint Venture, ADtranz will lose any influence on Stadler's Gelenktriebwagen (GTW) business; the company has

([44]) For details, see recital 96, as well as the fourth subparagraph of 1(e) and paragraph 1(g) of the undertakings, as set out in the Annex.

already ceased to market Stadler's GTW regional train as of 1 January 2001 ([45]). ADtranz's market share will decrease accordingly; since Stadler's GTW was introduced in Germany in 1997, it accounted for [10-20 %]* of the German market for regional trains (1997-1999) ([46]).

(111) Stadler's future market share will roughly correspond to the current share achieved by ADtranz ([20-40 %]* in the period 1995-1999, [40-50 %]* in the period 1997-1999); this assumption is conformed by the fact that, in recent years, ADtranz has only sold Regioshuttle and GTW regional trains in Germany. Of the three product lines that ADtranz marketed in this segment, two will now be transferred to Stadler. ADtranz's only remaining product line, the Itino, has not secured a single order to date. Since it is competitively close to Bombardier's Talent regional train, it is not unlikely that the Parties will stop manufacturing and marketing one of these products after the concentration.

(112) In view of the above, it can be concluded that the overlap in the Parties' activities regarding regional trains in Germany will be eliminated under the new market situation.

Trams and light-rail vehicles in Germany

(113) Similarly, ADtranz's share in the market for trams and light-rail vehicles in Germany will decrease significantly from [50-60 %]* to [40-50 %]* (based on the five-year period 1995-1999). This decrease will be due to the divestiture by the Parties of the Variotram, a product line representing roughly [5-15 %]* of the German market and currently owned and marketed by ADtranz. The [5-15 %]* market share can now be attributed to Stadler, the prospective purchaser of the Variotram license.

(114) Licensing the Variotram to Stadler will thus remove about half of the Parties' overlap in the German market for trams and light-rail vehicles due to the operation. It will, however, ensure that Stadler becomes a viable competitor in this market with the potential to replace the competitive position of ADtranz previous to the operation. Indeed, Variotram is one out of two ADtranz tram products sold by ADtranz in Germany in the relevant period 1995-1999. Compared to the NGT tram, Variotram is more modern and technically advanced. Stadler would be well suited to produce Variotram as it requires the same production technique as already used by Stadler Pankow for the Regioshuttle. Furthermore, acquiring the Variotram license will allow Stadler to diversify its product portfolio and to establish itself in the German tram market. The electrical propulsion suppliers Kiepe and ELIN, who are both already active in the tram and LRV sector, would be suitable partners for Stadler.

Conclusion

(115) The commitments submitted by the Parties enable the establishment of a new independent supplier of regional trains and trams/light-rail vehicles (Stadler) which will take over to a large extent the current market position of ADtranz. Furthermore, the undertakings will ensure that two independent suppliers of electrical propulsion (Kiepe and ELIN) remain active in both markets, which will allow for future consortia with Stadler and other non-integrated mechanical suppliers. The Commission has, therefore, reached the conclusion that, on the basis of the undertakings submitted by the Parties, the notified concentration will not lead to a dominant position for the Parties in the German markets for regional trains and trams/light-rail vehicles.

VII. CONDITIONS AND OBLIGATIONS

(116) Pursuant to the first sentence of the second subparagraph of Article 8(2) of the Merger Regulation, the Commission may attach to its decision conditions and obligations intended to ensure that the undertakings concerned comply with the commitments they have entered into vis-à-vis the Commission with a view to rendering the concentration compatible with the common market. A distinction must be made between conditions and obligations. The requirement for achievement of each measure that gives rise to the structural change of the market is a condition, whereas the implementing steps which are necessary to achieve this result are generally obligations on the Parties. Where a condition is not fulfilled, the Commission's decision declaring the concentration compatible with the common market no longer stands; where the undertakings concerned commit a breach of an obligation, the Commission may revoke its clearance decision, acting pursuant to Article 8(5)(b) of the Merger Regulation, and the Parties may also be subject to fines and periodic penalty payments as provided in Articles 14(2)(a) and 15(2)(a) of the Merger Regulation.

(117) In view of the foregoing, the Commission's decision in the present case must be conditional upon full

([45]) See recitals 63 to 66.

([46]) As long as ADtranz participates in the Stadler Pankow Joint Venture, the GTW project can be regarded as a consortium, with Stadler as prime contractor, with ADtranz providing propulsion, and with Stadler Pankow being a common production site; the corresponding market share would have to be split between Stadler and ADtranz. After ADtranz will have withdrawn from the Stadler Pankow Joint venture, as provided for by the undertakings submitted, what whole of the GTW market share will have to be attributed to Stadler alone.

compliance with all undertakings involving divestitures, both of minority participations in third companies and of product lines, including the licensing of product lines, as these bring about the structural change of the market. The latter also applies to the cooperation and supply requirements vis-à-vis third parties to which the Parties have committed themselves, as these are aimed at ensuring the success of the divestitures. On the other hand, those parts of the undertakings which refer to the Trustee to be appointed by the Parties shall be obligations upon them, as they aim at implementing the structural change of the market.

VIII. **CONCLUSION**

(118) For the reasons set out above, and subject to full compliance with the undertakings given by the Parties, it is to be assumed that the proposed concentration does not create nor strengthen a dominant position as a result of which effective competition would be significantly impeded in the common market or in a substantial part of it. The concentration is therefore to be declared compatible with the common market and the functioning of the EEA Agreement, pursuant to Article 2(2) and Article 8(2) of the Merger Regulation and Article 57 of the EEA Agreement, subject to full compliance with the undertakings set out in the Annex.

HAS ADOPTED THIS DECISION:

Article 1

The notified operation whereby Bombardier Inc., acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control of the undertaking DaimlerChrysler Rail Systems GmbH is hereby declared compatible with the common market and with the functioning of the EEA Agreement.

Article 2

Article 1 is subject to full compliance with the conditions set out in paragraphs 1(a), first subparagraph, 1(b), 1(c), 1(d), 1(e), first and fourth subparagraphs, 1(f), 1(g), 1(h), and 1(i) of the Annex.

Article 3

Article 1 is subject to full compliance with the obligations set out in paragraphs 1(a), second subparagraph, 1(e), second and third subparagraphs, and paragraphs 2 to 8 of the Annex.

Article 4

This decision is addressed to:

Bombardier Inc.
800 René-Lévesque Blvd. West
Montréal, Québec
Canada H3B 1Y8.

Done at Brussels, 3 April 2001.

For the Commission
Mario MONTI
Member of the Commission

ANNEX

Case No COMP/M.2139 — Bombardier/ADtranz

Undertakings

The full English text of the undertakings referred to in Article 2 and 3 may be consulted on the following Commission web-site: http://europa.eu.int/comm/competition/index_en.html