

No industrial politics exception for European rail champion under EU merger control

A recent European Commission decision confirms that EU competition law is not designed to bail out EU companies in their battle against competitors from outside the EU. In prohibiting a merger between the train divisions of Siemens and Alstom, the Commission held that: market entrance by a Chinese competitor was unlikely, the merger would restrict competition in several markets, and the remedies offered by the parties were insufficient. By blocking the merger, the European Commission continues to withstand repeated demands from EU member state leaders to look at imminent competition from outside Europe while reviewing mergers. The run-up to the blocking decision has catalysed the debate about the creation of “European champions”.

What was this case about?

German-based Siemens wanted to take over the rail transport equipment and related service activities from Alstom, its French rival. Siemens notified the European Commission about this contemplated transaction. Almost eight months later, the Commission blocked the proposed deal, which is quite [rare](#). It was only the 29th time that the European Commission issued a prohibition decision since merger control was introduced in 1990. On the same day as the Siemens/Alstom decision, the Commission prohibited the [Wieland/Aurubis](#) merger, a deal involving the market for rolled copper products.

As for Siemens/Alstom, the Commission had concerns that the merger would cause a probable, significant impediment of competition on the markets for: (i) very high speed trains (300km/h and up), and (ii) mainline and metro signalling systems. In terms of the trains, the merged entity would have gained a very high market share, both in the European Economic Area and worldwide. The parties argued that the China Railway Rolling Stock Corporation (CRRC) was emerging as a significant potential competitor. However, the Commission found that 90% of CRRC's activities took place in China and that it had hardly participated in tenders outside China. CRRC was therefore unlikely to enter the European market and to be a competitive constraint on the post-merger entity. In its [press release](#) – the decision has not been published yet – the Commission did not refer to possible competitive restraints caused by other competitors, such as Canada-based Bombardier and Hitachi Rail.

Before the decision, Siemens and Alstom had proposed remedies to address the Commission's concerns. As for the signalling systems, the parties did not propose a simple divestiture of the assets of one of the parties but, according to the Commission, “a complex mix of Siemens and Alstom assets, with some assets transferred in whole or part, and others licensed or copied”. Production sites and personnel were to be split up, while the buyer would still depend on the merged entity through licence

and service agreements. According to the Commission, the proposed divestiture did not fully address the competitive concern for signalling systems. As for the very high speed train, the parties proposed the sale of an Alstom train which was *not* very high speed or a limited licence on Siemens' very high speed train technology. According to the Commission, these alternative remedies were not viable.

Public debate about the creation of European Champions

Ever since Siemens and Alstom announced their plans, the French Minister of Economy has frequently [stated](#) in public that he supported the creation of a “French-German world champion”. The German lead candidate for EPP and *Spitzenkandidat* for the post of president of the next Commission also publically expressed his support by [stating](#), “We have to create global champions if a Chinese train company is twice as big as Alstom & Siemens”. But there have also been different views. For instance, during the review of the proposed remedies, four national competition authorities in EU member states sent a public [letter](#) to the Commission stating that the proposed remedies were not sufficient to resolve the competitive concerns. This public interference by national authorities is unprecedented and perhaps paved the way for a blocking decision.

Supporters of the merger might have found a more willing ear among previous Commissioners. In 2000, the Commission was notified about the [pooling of 80%](#) of the shares in Airbus and the change from [joint to sole control](#). There, the Commission found that Airbus would face competition from larger US companies, such as Boeing and Lockheed-Martin. After the approval of the Airbus concentration, Mario Monti, Commissioner for Competition, [said](#) that the restructuring of Airbus was “an important attempt to restructure the European aeronautic and defence industry”. In contrast, [according](#) to Commissioner Vestager, industrial policy should focus on market failures and not on creating or supporting European champions.

After the Siemens/Alstom decision, the German *Spitzenkandidat* [lamented](#): “How can Europe compete with the rest of the world if we don't have European champions? If EU competition rules are not fit for today's challenges, then we need to change the rules.” He is not alone in his stance. Recently, the [European Council](#) called for “concrete action to ensure a strong and competitive industrial base for the single market”. The Friends of Industry, a group of ministers from 20 EU Member States [announced](#) in December 2018 that they would come up with concrete proposals to the European Commission “to better take into account international markets and competition in merger analysis”. In an era of increased protectionism and trade wars, we can look forward to some heated debates about this topic in the aftermath of the Siemens/Alstom prohibition decision.