

# EU Merger Control Policy in the Wake of Siemens/Alstom

Is reform on the horizon?

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# Today's presenters

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# The case that (almost) broke merger control?



‘The **current EU rules are obsolete**’

‘I think everyone knows that given China’s rise, given the industrials that emerge in all sectors – railway, space, energy, artificial intelligence – we need to gather Europe’s strengths [...] that’s why [the Commission’s decision is an] **economic error and a political mistake.**’

*Bruno Le Maire – French Economy Minister*



‘I think it’s important that we don’t take [up] the entire discussion about how competition rules should work because of a very specific decision where company decisions were what [led to it] being a prohibition. [...] **the reason this merger didn’t go through is not because of specificities of the competition rules**’

*Margrethe Vestager – EU Commissioner for Competition*

# Transaction rationale

**A new EU-based global mobility leader ("European Champion")**

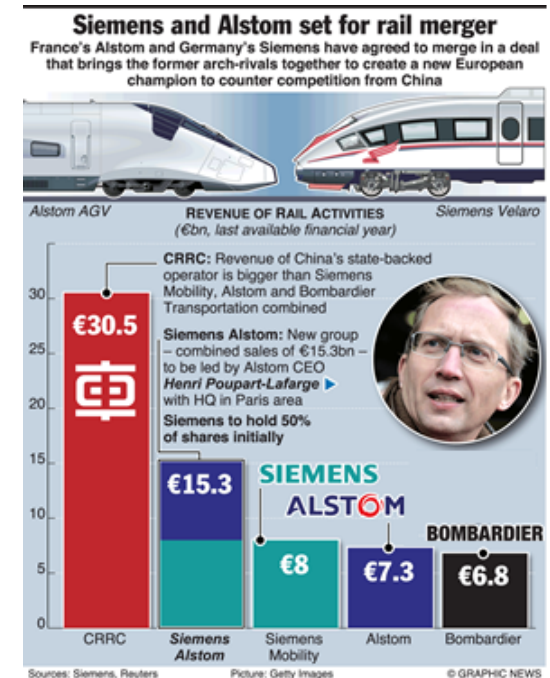
- Build and improve technology for next generation mobility needs (digitalisation and automation)
- Respond to increasing competitive pressure from:
  - Major and more cost-competitive competitors
  - Rapidly growing global leaders from Asia/China

**Complementarity**

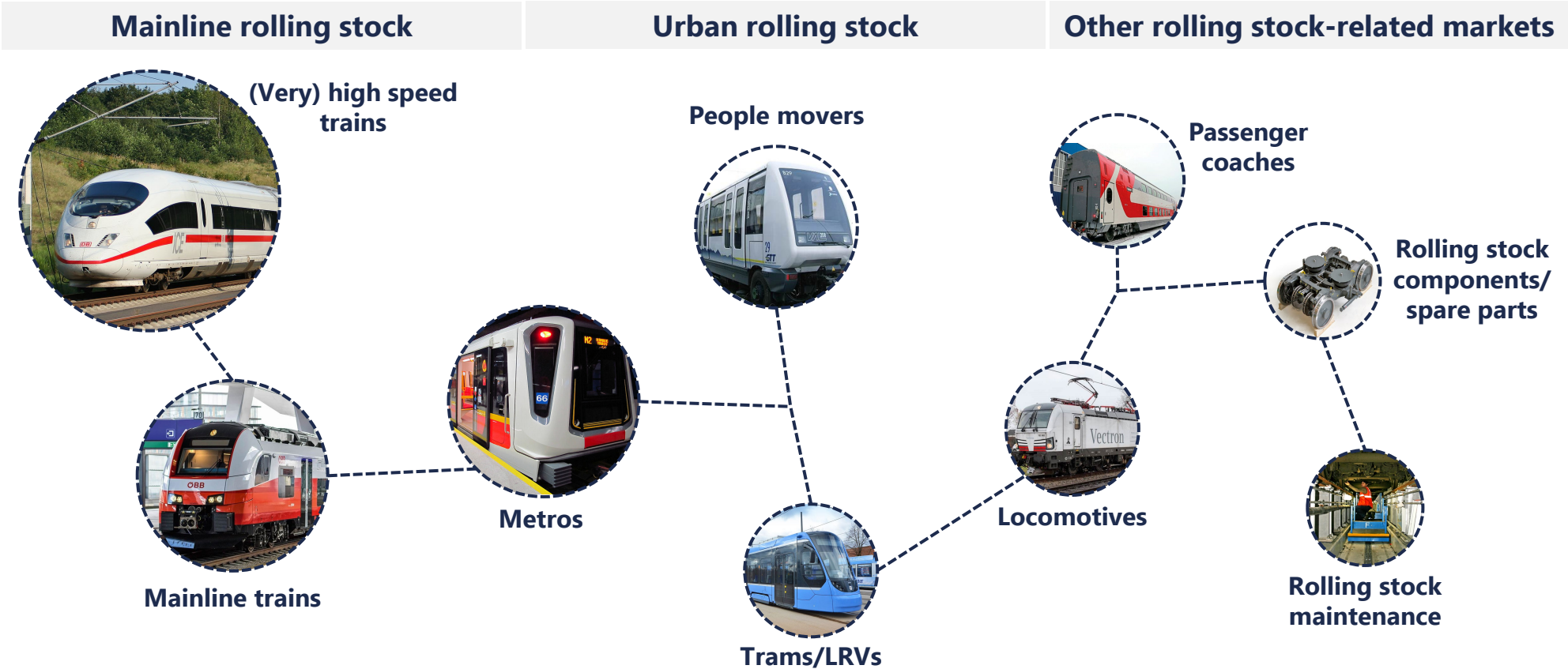
- Combine complementary activities to increase global reach and offerings for customers
- Improve access to emerging markets around the world
- Respond to customer demand for localisation, digitalisation and greater automation

**Synergies**

- Parties expected substantial synergies at the latest four years after closing
- Combined R&D capabilities will facilitate further innovation and move towards digitalisation



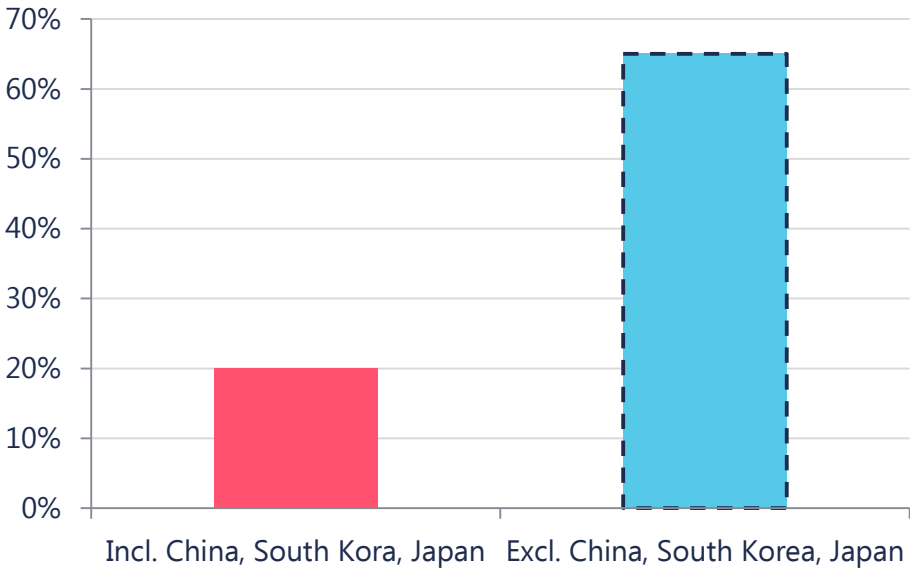
# Overview of rolling stock markets



# (V)HS – Market definition

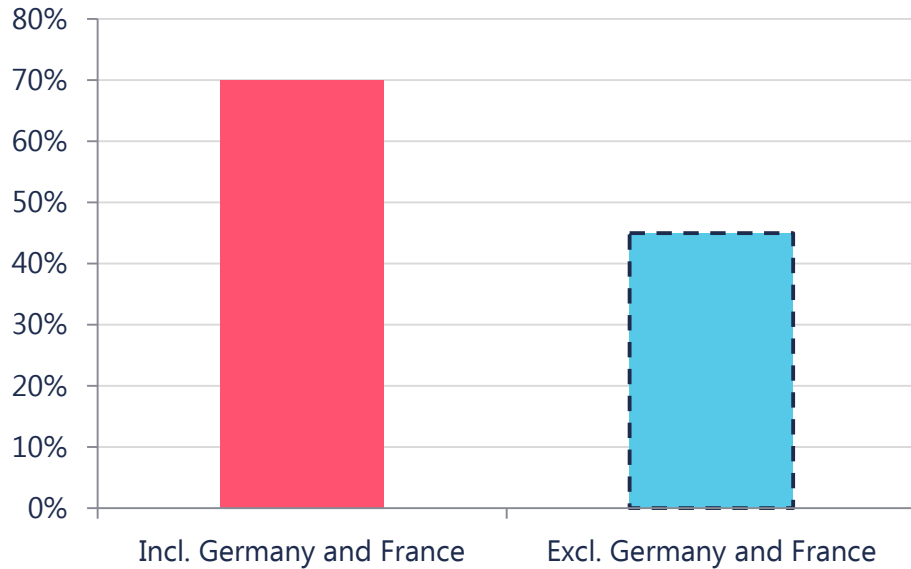
Inconsistent approach to excluding countries with restricted procurement practices

### Worldwide (V)HS Combined Share



vs.

### EEA (V)HS Combined Share



# (V)HS – Focus on historical data

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## Market share and bidding analysis focused on 10 year period

- 10 year period fails to account for current market conditions in last five years
- Overstatement of the importance of the TGV 2020 tender where Alstom was the sole bidder

hs2

7 bidders for  
pre-qualification

5 pre-qualified

*renfe*

5 bidders

Won by **Talgo**

# The Chinese are coming!

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- CRRC is the **world's largest supplier** of high speed trains (WW market share > 60%)
- Genuine concern and **competitive pressure** felt by business people
- Customers confirm that CRRC is a **credible entrant** within **3–5 years**
- The EC's concerns were based on
  - Presence only in 'lower range' ROS products
  - Doubts around its ability to meet European requirements
- **Appropriate time period to assess entry?**
  - Standard 2 - 3 years or longer?





# Remedies

(Very) high speed

- Flagship businesses for both companies: TGV and Velaro (ICE trains)
- Manufacturing integrated with other platforms
- EC rejected remedy offers based on AGV or Pendolino
- EC insisted that remedy would give purchaser access to one of the parties' newest (V)HS technology (TGV du Futur or Velaro Novo)
- Technology-transfer and licence based remedy offers based on Siemens' Velaro ultimately deemed insufficient by EC



# Overview of signalling markets

## Mainline rolling stock

## Other rolling stock-related markets



ETCS Wayside



Interlockings



ETCS OBUs



CBTC



Legacy wayside

OCS



Signalling Products (Interlocking Products in UK)



Legacy OBUs (Belgium)



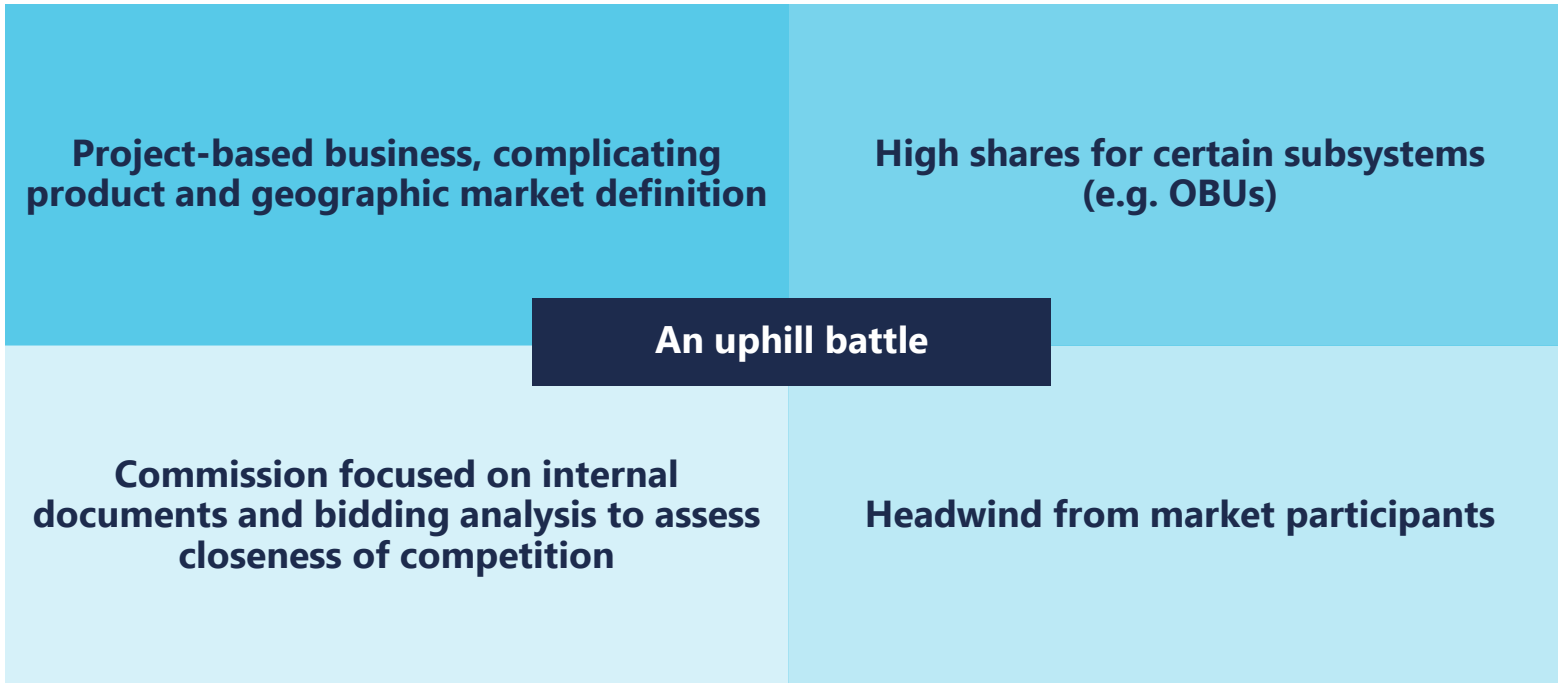
Metro Conventional



Light Rail

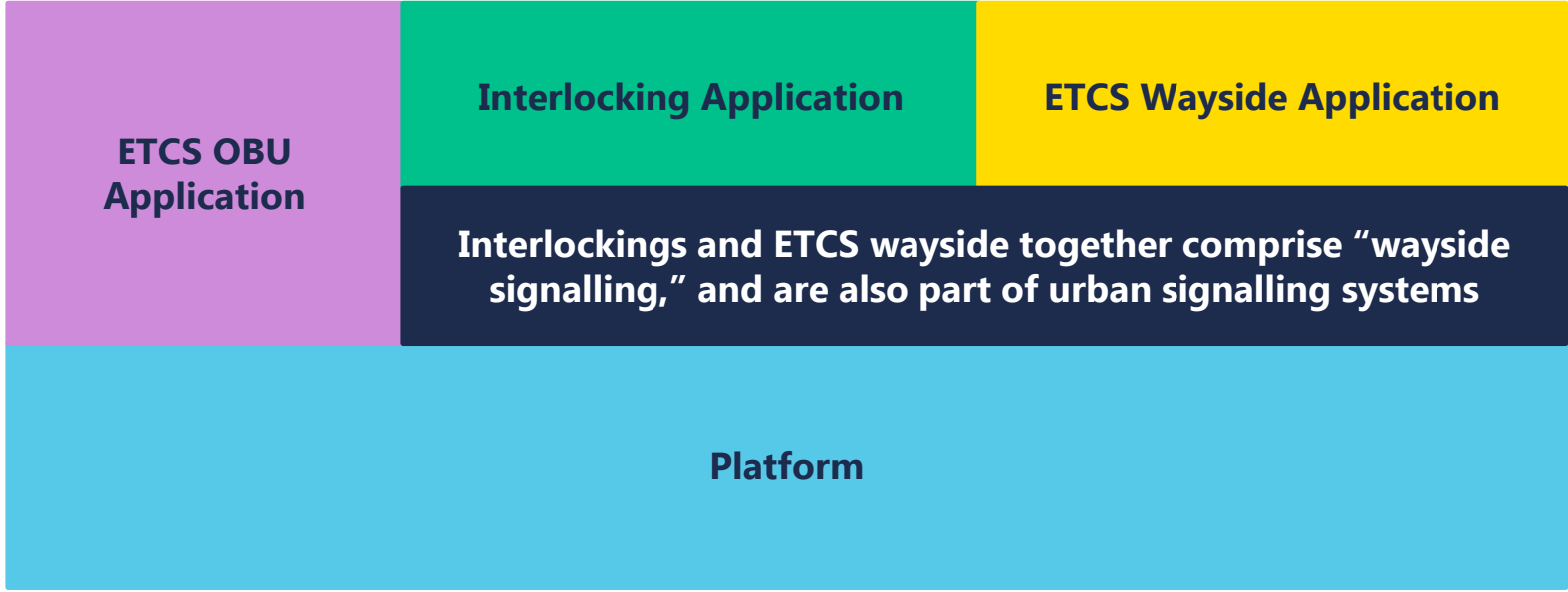
# Signalling Challenges

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# Remedies

Signalling: the role of shared platforms



**Complicating factor for "mix and match" remedy**

# Procedural learnings

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## Document Production

**Burden of document review and production now comparable to a US Second Request**

- More than 725,000 documents produced
- Complex privilege and data privacy concerns

## Pull and Refile

**Can notifying parties “pull and refile” the notification?**

- Post-6(1)(c) decision, withdrawal require termination and re-execution of the transaction agreement

## Stop the Clock

**One month “stop the clock” in Phase 2**

- Lengthy reviews and stop the clocks increasingly common in complex cases

# Rest of world

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Challenges arising from coordinating more than 30 merger control and foreign investment filings globally

**Sequencing  
of filings**

**Fact  
gathering:  
local or  
centralized?**

**Aligning  
substantive  
arguments  
and remedies**

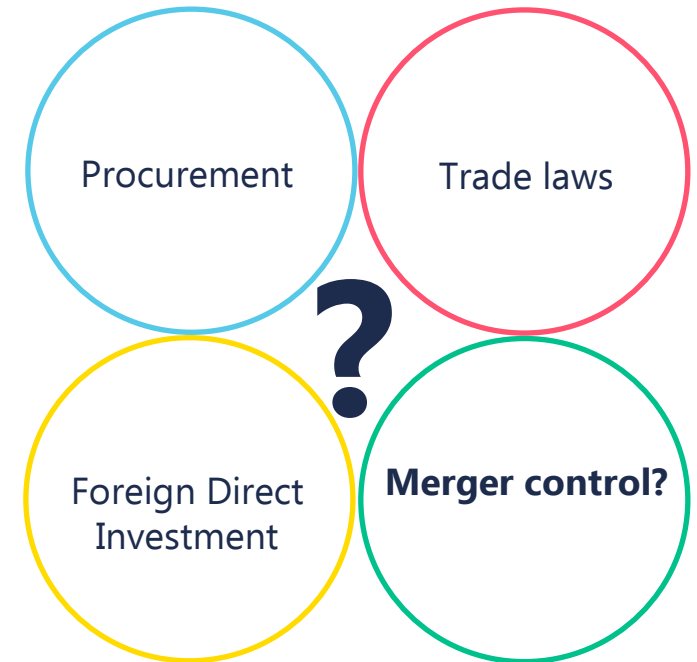
**Record  
number of  
waiver  
requests**

# The Aftermath ...

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Need for regulatory reform in the EU?

- Broad agreement that reforms are required to protect EU industry against unfair, state-funded foreign competition
- ... but mixed views on how to accomplish that reform
- Many participants in the debate ...
  - Franco-German *Manifesto for a European industrial policy fit for the 21st Century*
  - European Political Strategy Centre, “*EU Industrial Policy After Siemens-Alstom*”
  - Commissioner Vestager
  - National governments and competition authorities
  - Commercial and trade organizations (e.g. BDI)



# The Franco-German manifesto

## Invest in innovation

- Create European strategy for technology funding
- Strong EU commitment to disruptive innovation
- Become world leaders on Artificial Intelligence

## Adapt EU competition rules

- Greater consideration for state-control of and subsidies for foreign undertakings
- Updating merger guidelines to allow for more long-term approach, take greater account of global competition and (time frame of) potential future competition
- Right of appeal of the Council?
- State aids

## Protect ourselves

- Full implementation of European FDI screening framework
- Reciprocity mechanism for public procurement
- EU trade policy



‘The **current EU rules are obsolete**’

‘I think everyone knows that given China’s rise, given the industrials that emerge in all sectors – railway, space, energy, artificial intelligence – we need to gather Europe’s strengths [...] that’s why [the Commission’s decision is an] **economic error and a political mistake.**’

*Bruno Le Maire – French Economy Minister*



# Mixed views...

“We will continue to update our European competition framework to new technological and global market developments”

*European Council conclusions, 21-22 March 2019*

|   |   |   |  |
|---|---|---|--|
| <b>Commissioner Vestager</b>              | <ul style="list-style-type: none"><li>• The Commissioner has urged Europe to step up its trade instruments instead of loosening merger control</li><li>• To level the playing field with China Europe should improve the use of its trade instruments, public procurement regulation and screen FDI</li></ul>   | <b>Business community</b>                   | <ul style="list-style-type: none"><li>• BDI, the Federation of German Industries, published a paper called for a reappraisal of EU merger control to simplify the burdensome merger control process</li></ul>  |
| <b>European Political Strategy Centre</b> | <ul style="list-style-type: none"><li>• The Commission’s think-tank has published a paper titled “<i>EU Industrial Policy After Siemens-Alstom</i>”.</li><li>• Loosening of merger control rules carries significant risk and would entail systemic consequences</li><li>• Trade tools and policy coupled with a “Single Market renaissance” for the digital age and initiatives or support home-grown innovation</li></ul> | <b>Competition lawyers &amp; economists</b> | <ul style="list-style-type: none"><li>• Open letter from competition lawyers and economists opposing the proposals included the Franco-German manifesto</li><li>• Risk that implementation of Franco-German proposals will benefit only a small number of large EU companies</li></ul> |
| <b>National Competition Authorities</b>   | <ul style="list-style-type: none"><li>• NCAs have largely opposed proposed changes to merger control rules</li></ul>  | <b>Academics</b>                            | <ul style="list-style-type: none"><li>• Open letter from academics calling political reactions the prohibition decision “<i>extremely worrying</i>”</li></ul>  |

# Potential areas for merger control reform

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## Process

- EU process perceived as combining “*the worst of both worlds*”: detailed Form CO + extensive production of internal documents
- Siemens/Alstom: **1,200 page Form CO** with approx. **60,000 pages of annexes** + **> 725,000 internal documents**

## Jurisdiction

- Value-based notification thresholds in EU?
- Changes to the EC – NCA referral mechanisms?

## Substantive assessment

- Greater account of competition at global level
- Timeline for assessment of potential entry

## Decision making

- Oral discussion of decisions by College of Commissioners?
- Right of appeal of the European Council?

Questions  
& answers ?

# Thank you for joining us

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