GULF NEWS
ANALYSIS
Published: February 27, 2019

Blocking the Siemens-Alstom Rail Merger Was in the EU's Public Interest

Creation of monopolies at home won't out-compete inbound Chinese investment

By Harry G. Broadman, Special to Gulf News

At first glance, the proposed merger between Germany's Siemens and France's Alstom to fight off the future intrusion of the giant state-owned Chinese rail industry into the European Union market might appear to be in the public interest. After all, what better way to combat size than to scale up. The EU Competition Commissioner, Margrethe Vestager, had the wisdom—if not the courage—to make the correct call in blocking Siemen's acquisition of Alstom.

While competing against firms from China is becoming tough going in virtually every sector across the globe—in large part because Chinese enterprises can get away by not having to play by the same rules as most businesses of other nationalities—sound public policy must be based on deftly balancing the welfare of a country's consumers, workers, and businesses.

The fact is that businesses and the governments of the countries in which they operate need more innovative strategies to compete effectively with the Chinese—or anyone else—than simply increasing scale. Ask any Chinese boss of the lumbering state-owned-enterprise (SOE) he or she runs if they wish they had more agility to enhance their firm's competitiveness against rivals. Don't be surprised if the answer is a resounding "yes".

Indeed, for Siemens and Alstom the answer won't be scale. That's looking through the wrong end of a telescope.

Just as in international trade policy, where China is in flagrant violation of the legal disciplines set out in its 2001 accession agreement to enter the WTO, the solution for the EU rail industry will, *in part*, turn on a coalition of countries forcing China to play by the rules of fair competition to which others around the world adhere. Regrettably, in the case of trade, the mainstage fight with China has only the U.S. in the ring. Nothing much will come from a bilateral scuffle. In the case of competition policy, the French and Germans taking on China by themselves is not much more potent.

At its barest of bones, Vestager's assessment of the contemplated Siemen-Alstom merger largely turned on this question: Would turning the dominant EU rail *duopoly* into what would effectively be an EU *monopoly* preserve or enhance the current potency—such as it is—of the competitive forces at play in the EU rail market? It would be hard to answer that question in the affirmative with a straight face.

The odds are that such a combination would not have a salutary effect on the level of rates charged to rail users, supply chain costs, quality of service, incentives to innovate, among other operational facets of the EU rail sector. In antitrust parlance, this is in essence the 'economic welfare standard' for making judgments about the impacts on market participants from a proposed merger that would necessarily eliminate a seller from the market.

In contrast, where market dominance of a firm is rooted in its rapid *organic* growth—such as is largely the case of the U.S. high-tech "FANGs" (Facebook, Amazon, Netflix and Google)—arguably the burden of proof is far more qualified. There's a good case to be made that their success in the market is the result of consumers rewarding them by buying increasing amounts of what they're selling because their prices are fair *and* the quality of what the firms are offering is sound.

That brings us back to Siemens and Alstom and the prospective threat of the Chinese in the EU rail sector. Do the German and French rail firms believe that their EU consumers won't be able to discern if the price/quality tradeoff of what they're bringing to market is superior than what the Chinese can offer?

One presumes that like in other countries around the world purchasing patterns of capital-intensive "durable" products, which certainly pertains to rail equipment, are made on a "life cycle basis". That is, buying the cheapest product available may well be irrational; if the quality is low, the item won't last for long. The result is that consumers—whether individuals, firms, or government agencies—learn about the usual tradeoff between price and quality.

There are interesting lessons about purchasing decisions with respect to Chinese products from other parts of the globe in this regard. Indeed, even in some poor African countries, the citizenry has demonstrated with their wallets that poorly made *and* inexpensive Chinese products aren't good value for money.

Siemens and Alstom should be confident that the same principle applies in the EU rail market, especially in cases where rail equipment is tendered through competitive public procurement processes. If so, they will outcompete the Chinese. This is especially the case since China's rail industry doesn't have much of a presence in the EU yet.

It goes without saying that if purchases of Chinese rail equipment are artificially stimulated due to bribes paid by the Chinese, that is not a competition law issue; rather it is under the purview of corruption law and that is locus of where reform should center.

Finally, Siemens and Alstom could also avail themselves of a variety of best-in-class one-off competitive co-investment corporate strategies to potentially team up on specific projects if that's what it takes to out-compete other firms—regardless of their nationalities. Who knows: maybe Siemens or Alstom even may want to consider entering into one-off partnerships with the Chinese in the EU market from time to time? With the proper protections, sometimes firms can safely learn a lot from about their competitors that way.

Harry G. Broadman is Managing Director and Chair of the Emerging Markets Practice at the Berkeley Research Group LLC, a global consulting firm focused on disputes, investigations, damages and arbitration; corporate finance; and business growth and risk-mitigation strategy in the areas of antitrust and regulation, trade and investment (including CFIS matters), corporate governance, and corruption (FCPA and UK Anti-Bribery Act). He's a member of the Johns Hopkins Faculty and an independent director on several corporate boards. He is former United States Assistant Trade Representative; Senior Managing Director at PricewaterhouseCoopers and PwC Chief Economist; Managing Director at Albright Capital Management; a World Bank official; Chief of Staff of the President's Council of Economic Advisers; a faculty member at Harvard University; on the RAND Corporation staff; and a fellow at the Brookings Institution.

Contact: http://www.harrygbroadman.com
The link to this column is: https://gulfnews.com/business/analysis/blocking-siemens-alstom-rail-merger-was-in-the-eus-public-interest-1.62329150