

Anticipated merger of Cargotec Corporation and Konecranes Plc

Decision on relevant merger situation, substantial lessening of competition and reference

ME/6927/21

The CMA's decision to refer under section 33 of the Enterprise Act 2002 given on 13 July 2021. Full text of the decision published on 27 July 2021.

Please note that [X] indicates figures or text which have been deleted or replaced in ranges at the request of the parties for reasons of commercial confidentiality.

SUMMARY

1. Cargotec Corporation (**Cargotec**) and Konecranes Plc (**Konecranes**) have agreed to merge (the **Merger**). Cargotec and Konecranes are together referred to as the **Parties**, and for statements concerning the future, the **Merged Entity**.
2. The Competition and Markets Authority (**CMA**) believes that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
3. The Parties overlap in the supply of container handling equipment (**CHE**). CHE can be divided into three broad categories: (i) mobile equipment, (ii) horizontal transport equipment (**HTE**), and (iii) cranes. The Parties overlap in all three.
4. On 24 June 2021, both Parties submitted a request for a fast track reference of the Merger to an in-depth Phase 2 investigation. They each conceded that, if the CMA were to accept their request, it would find that the test for reference under section 33 of the Enterprise Act 2002 (the **Act**) was met as a result of horizontal unilateral effects in the supply of each of: (i) reach stackers; (ii) straddle carriers; and (iii) rubber-tyred gantry cranes (**RTGs**). These three types of equipment span the three broad categories of CHE referred to above.

5. The CMA found that there is a realistic prospect that the Merger would lead to a substantial lessening of competition (**SLC**) as a result of horizontal effects in the supply of reach stackers, straddle carriers and RTGs, and decided that it is appropriate to proceed with a fast track reference of the Merger to Phase 2, which will also facilitate the alignment of the CMA's inquiry with proceedings in other jurisdictions relating to the Merger.
6. As part of their request for a fast track reference, the Parties waived their procedural rights at Phase 1 and informed the CMA that they would not offer undertakings in lieu (**UILs**) for the purposes of section 73(2) of the Act. As a result, the CMA has not considered UILs under section 73 of the Act.
7. The CMA has therefore decided to refer the Merger pursuant to sections 33(1) and 34ZA(2) of the Act.

ASSESSMENT

Parties and their activities

8. Both Parties are Finnish public listed companies. The Parties are both active in the supply of CHE globally (including in the UK).¹ CHE is used to load and unload containers (to/from ships, trucks and railcars), to stack them, and to transport them across ports and inland intermodal terminals. Certain equipment is also used at industrial sites (such as steel mills).

Transaction

9. On 1 October 2020, the Parties entered into a combination agreement pursuant to which they agreed to merge. Upon completion Cargotec's and Konecranes' shareholders will each hold approximately 50% of the shares and voting rights in the Merged Entity.²

Jurisdiction

10. As a result of the Merger, Cargotec and Konecranes will cease to be distinct. The Parties each generated revenues of more than £70 million in the UK in 2019,³ and the turnover threshold is therefore met.⁴ The CMA therefore currently believes that it is or may be the case that arrangements are in

¹ Both Parties have activities outside CHE, but the only overlap is in CHE.

² Final Merger Notice, Executive Summary, paragraph 2.

³ Cargotec's UK turnover for FY2019 was [£] and Konecranes' was [£].

⁴ Section 23(1)(b)(i) of the Act. See paragraph 4.59 of [Mergers: Guidance on the CMA's jurisdiction and procedure \(CMA2revised\)](#).

progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.

Fast track reference

11. The CMA commenced its Phase 1 investigation on 28 May 2021. On 24 June 2021, both Parties submitted a request for a fast track reference of the Merger to an in-depth Phase 2 investigation. For a case to be fast tracked, the CMA must, at an early stage of its investigation, have evidence objectively justifying a belief that the test for reference is met.⁵ In addition, fast track cases are likely to be cases where it is unlikely to be possible to resolve the case through Phase 1 remedies.⁶
12. In light of the Parties' request for a fast track reference, the CMA has limited its assessment in this Phase 1 decision to whether the test for reference is met in relation to horizontal unilateral effects in the supply of: (i) reach stackers; (ii) straddle carriers; and (iii) RTGs. For the reasons explained below, the test for reference is met because there is a realistic prospect that the Merger would lead to an SLC as a result of horizontal unilateral effects in each of these markets in the UK. The CMA considers that the specific characteristics of this case, including the finding of SLCs across the three main categories of CHE, makes it unlikely to be possible to resolve the case through Phase 1 remedies. The CMA therefore decided that it was appropriate to use the fast track procedure, noting, in addition, that a fast track reference will facilitate alignment of CMA's inquiry with proceedings in other jurisdictions (including the European Commission) in relation to this Merger.
13. As the criteria for a fast track reference are met in relation to these theories of harm, it has not been necessary for the CMA to reach a conclusion, at Phase 1, in relation to any other potential competition concerns. Any other potential theories of harm will fall within the scope of the CMA's Phase 2 inquiry, which is not limited to investigating the concerns identified in this Phase 1 decision.⁷

Competitive Assessment

14. The CMA's assessment of the three theories of harm listed above is set out below, including its assessment of: (i) the relevant frame of reference; and (ii) closeness of competition between the Parties and the competitive constraints that they would face after the Merger.

⁵ *CMA2revised*, paragraph 7.14.

⁶ *CMA2revised*, paragraph 7.15.

⁷ Section 36 of the Act; [Merger Assessment Guidelines \(CMA129\)](#), paragraph 2.33.

Frame of reference

15. The CMA considers that it is appropriate to assess the impact of the Merger on the supply of each of reach stackers, straddle carriers and RTGs separately:
- (a) From a demand side perspective, there appears to be limited substitutability between different types of CHE: (i) evidence from customers suggests each particular type of CHE has different features, a different cost profile and fulfils different functions; (ii) customers specify the particular type of equipment they wish to purchase in tenders; and (iii) a [REDACTED] submitted by Konecranes suggests that different CHE types are not effective substitutes.⁸
 - (b) Supply-side substitution⁹ also appears to be limited. Conditions of competition appear to be different, as suppliers have different shares of supply in relation to different equipment types.¹⁰ Although there is some evidence of supply side substitutability between straddle carriers and shuttle carriers, the CMA did not need to conclude on whether these should be included in the same frame of reference.¹¹ The CMA therefore focused its analysis on the supply of straddle carriers, where the Parties conceded that the CMA would find that the test for reference is met.
16. In relation to reach stackers and RTGs, the CMA considers that the appropriate geographic frame of reference is at most Europe wide¹² (including the UK). While some evidence suggests that competition occurs at a global level (eg some suppliers are active globally and transport costs are not an obstacle for some customers to source equipment from outside Europe), other evidence suggests that the frame of reference is likely to be narrower than worldwide:
- (a) There is evidence, such as shares of supply and internal documents,¹³ that conditions of competition vary between Europe and other regions.

⁸ Annex 501 'RFI PN4 Annexes QK15(d).2.pdf', page 91.

⁹ The CMA may aggregate products that are not demand-side substitutes where firms routinely use their existing production assets to supply such products; the same firms compete to supply these different products; and the conditions of competition between the firms are the same for each product (CMA129, paragraph 9.8).

¹⁰ For example, within mobile equipment, in Europe, Hyster's share in reach stackers is much lower than in empty container handlers, and some suppliers of forklift trucks do not supply reach stackers (eg Svetruck). Shares of supply differ for individual types of HTE, and many suppliers of other HTE do not sell straddle carriers. For example, Terberg is present in terminal tractors but not in any other HTE. Shares of supply also differ within different crane types. For example, [REDACTED].

¹¹ The competition analysis would not change if the supply of shuttle and straddle carriers were considered as a single frame of reference because shuttle carriers would account for a small proportion of overall supply and only Cargotec and Konecranes (and to a more limited extent ZPMC) appear to be active in the supply of both straddle and shuttle carriers (see paragraph 22).

¹² For the purposes of this decision, this includes the UK, the EEA, Switzerland, Ukraine and Turkey. These were the countries covered by the European data provided by the Parties.

¹³ Annex 257 [REDACTED] pages 3-4.

(b) The Parties also told the CMA that response time is important in the servicing of cranes and mobile equipment, and therefore both Parties have a network of servicing capability (either directly or through a partner or distributor) throughout Europe.¹⁴ Both Parties have a local presence in the UK. Konecranes operates through a distributor, Impact. Cargotec has UK servicing and sales presence. The Parties explained that some servicing for UK customers is carried out in the UK and for other servicing (eg less routine/more specialised repairs) engineers may be flown in from Europe.

(c) Some UK customers appear to have a preference for suppliers with a track record in Europe. A few third parties noted quality differences between European and non-European suppliers.

17. The CMA did not consider it necessary to conclude on the relevant geographic frame of reference for straddle carriers, as it has no impact on the CMA's competitive assessment, given that the Parties have a near monopoly position globally.

Closeness of competition and competitive constraints in reach stackers

18. The Merged Entity would be by far the largest supplier of reach stackers in the UK and Europe (and globally). The Parties' combined share of supply between 2017 and 2019 was more than [40-50%] in the UK and in Europe (and the increment resulting from the Merger would be significant, at least [10-20%]).

19. Other evidence also indicates that the Parties are close competitors in the UK:

(a) Most UK customers that responded to the CMA's merger investigation considered the Parties to be among their strongest alternatives.

(b) The Parties compete against each other in UK tenders.¹⁵

20. The evidence suggests that the Parties face limited competitive constraints from rival suppliers:

¹⁴ In the response to the EC PN RFI 5 (paragraph 34) the Parties state that, depending on the size of the fleet, the expected response time may be as short as 24 hours, ie the smaller the fleet and the fewer 'spares' of a certain type of equipment, the quicker the response time has to be. For larger equipment types such as larger cranes, customers are unlikely to have a large fleet. In Cargotec's technical presentation to the EC (31 March 2021), Cargotec explained that its network of direct and indirect service providers allowed it to meet customers' expectations of a response time within Europe of [redacted].

¹⁵ The CMA received UK tender data from Cargotec Salesforce CRM covering [redacted] tenders over the period 2017 to 2020. The Parties submitted that [redacted]. The CMA also only received limited CHE tender data from some third parties. The CMA has therefore considered these data alongside other sources of evidence in its competitive assessment. Source: Annex 265 [redacted].

(a) Most customers identified Hyster as a credible alternative to the Parties. Views on Sany were mixed with one customer rating it highly, but another stating that its range of equipment and regional support / technical parts supply was limited.

(b) The CMA considers that the competitive constraint imposed by other suppliers (such as [REDACTED]) is likely to be very limited since none made UK sales in the 2017-19 period, they appear rarely in tender data and customers tended to rank them below the Parties as credible alternatives.

21. The CMA therefore considers that the Merger gives rise to a realistic prospect of an SLC in the supply of reach stackers.

Closeness of competition and competitive constraints in straddle carriers

22. Shares of supply show that the Parties are the two main suppliers of straddle carriers with a combined share of supply of nearly [90-100%] on a UK, European and global basis, with a substantial increment in all cases (of 10-50%).¹⁶

23. Other evidence indicates that the Parties are the main constraint on each other:

(a) UK tender data received by the CMA for the period [REDACTED] in straddle carrier tenders.¹⁷

(b) Customers told the CMA that the Parties are the main alternatives for the supply of straddle carriers. One customer mentioned ZPMC as an option, but said it is behind the Parties in terms of its offering.

(c) The Parties' internal documents indicate that that they consider each other to be their main competitors.¹⁸

(d) Although ZPMC has entered this segment, it has not succeeded in gaining material share (and the CMA understands that it has only sold units to a small number of European customers).¹⁹ The CMA therefore does not consider that ZPMC would be a sufficient constraint on the Merged Entity post-Merger.²⁰

24. The CMA therefore considers that the Merger gives rise to a realistic prospect

¹⁶ Based on shares of supply between 2017-2019. Only one other supplier (Liebherr) made [REDACTED] Europe and [REDACTED] (Annex 250 [REDACTED]). [REDACTED].

¹⁷ Cargotec's tender data covered [REDACTED]. Konecranes' tender data covered [REDACTED]. [REDACTED].

¹⁸ For example, Cargotec's Annex 766 [REDACTED]. See also Konecranes' Annex 'KC 126.pdf', page 29.

¹⁹ Final Merger Notice, paragraph 532.

²⁰ See CMA129, footnote 87.

of an SLC in the supply of straddle carriers.

Closeness of competition and competitive constraints in RTGs

25. The Parties are two of only three significant suppliers of RTGs in Europe, and had a combined share of supply of more than [40-50%] between 2017 and 2019. The only other supplier with a material share is ZPMC. All other suppliers (Liebherr and Mitsui) have a share of [0-10%] or less.
26. Although the Parties [redacted] UK sales between 2017 and 2019, sales are infrequent and shares of supply are highly sensitive to the time frame chosen.²¹
27. Other evidence suggests that the Parties compete closely in the UK:
 - (a) Tender data for the last [redacted] provided by the Parties shows that [redacted].
 - (b) Customers consistently told the CMA that the Parties are close competitors for RTGs.
 - (c) The Parties [redacted] in their internal documents.²²
28. Evidence suggests that the Parties face limited competitive constraints in the supply of RTGs in Europe (including the UK):
 - (a) Tender data suggests the [redacted].²³
 - (b) Most customers consider that the main alternative suppliers of RTGs in the UK are the Parties, Liebherr and ZPMC.
 - (c) Customers consider other competitors to be weaker. For example, Mitsui was not mentioned by any customers as a credible alternative, and most did not mention Sany as an alternative. The CMA therefore considers that these suppliers are likely to exert only a limited constraint on the Parties in Europe.
29. The CMA therefore considers that the Merger gives rise to a realistic prospect of an SLC in the supply of RTGs.
30. The evidence available to the CMA does not indicate that entry and/or expansion following the Merger in reach stackers, straddle carriers or RTGs will be timely, likely and sufficient to counter any SLC from arising.

²¹ If shares of supply for 2020 are looked at instead, [redacted].

²² See Annex 376 [redacted]; Annex 'KC 028.pdf'; Annex 750 [redacted], page 11; and 'Annex KC 126.pdf', page 29.

²³ As the Parties do not always know who the other bidders are at the point of a tender, the CMA could only identify competing bidders where a third party won the tender, or where customer supplied data to the CMA.

Decision

31. For the reasons set out above, the CMA believes that it is or may be the case that (i) arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation; and (ii) the creation of that situation may be expected to result in an SLC within a market or markets in the United Kingdom for goods or services, including in the supply of reach stackers, straddle carriers and RTGs.

32. The Parties requested and consented to the use of the fast track process and informed the CMA that they would not offer UILs. The CMA has therefore decided to refer the Merger pursuant to sections 33(1) and 34ZA(2) of the Act.

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