ME/6927/21

ANTICIPATED MERGER OF
CARGOTEC CORPORATION AND KONECRANES PLC

RESPONSE TO PHASE 1 DECISION

---

23 July 2021

Freshfields Bruckhaus Deringer

Skadden

1. Introduction and executive summary

1.1 In its reference decision of 13 July 2021 (the ***Reference Decision***[1]), the CMA indicated that it will, in its Phase 2 inquiry, continue to investigate its concerns that the Proposed Transaction may give rise to a substantial lessening of competition at most on a Europe-wide[2] basis (including the UK), in particular for reach stackers, straddle carriers and rubber-tyred gantry cranes (***RTGs***).

1.2 To assist the Group's understanding of the essential market dynamics concerning the supply of container handing equipment in the UK, this brief response first outlines the transaction rationale and the Parties' areas of activity in the UK, and then touches on three central issues, namely:

(a) ***The supply of container handling equipment in the UK has transformed since the entry of Chinese suppliers.*** China's "Belt and Road" initiative has seen the rapid entry of Chinese suppliers worldwide. Notably in the UK, both ZPMC and Sany have already entered the market and have developed robust sales networks for a range of container handling equipment, capturing significant market share (see e.g. Sany's growth in just three years from a UK share of supply of approximately [0-10%] in 2017 to [40-50%] in 2019 in reach stackers). The success of these rivals in the UK particularly over the past 10 years further demonstrates that barriers to entry for non-European suppliers are not high.

(b) ***Competitors compete through tender processes or equivalent negotiated processes, such as via requests for quotation (RFQs).*** The Parties typically sell container handling equipment by way of formal tender or through a customer-driven negotiated processes. Such processes are initiated by sophisticated buyers that have in-depth expertise in procurement and sourcing experience. This is particularly true for the UK, where the five largest ports account for approximately 84.8% of UK container port traffic in 2020.[3]

(c) ***New entrants have various options – including distributors – to set up sales and service networks.*** New entrants have a number of options to enter and gain immediate market presence in the UK through a distributor relationship without any need for a local presence. There is no requirement for suppliers to establish their own local presence or service network in order to be successful, as has been demonstrated by Sany's entry in the UK.

1.3 These issues will be considered in greater detail in the Parties' response to the Issues Statement in due course. In the interim, the Parties attach for the Group's reference their response to the European Commission's decision pursuant to Article 6(1)(c) of Council Regulation (EC) No. 139/2004 (the ***6(1)(c) Response***).[4]

---

1 Unless otherwise defined, capitalised terms follow the definitions adopted in the Parties' Final Merger Notice of 2 June 2021 (the ***FMN***).

2 Europe means the UK, the EEA, Switzerland, Ukraine and Turkey.

3 These are: Felixstowe, Southampton, London Thamesport, Liverpool and Tees & Hartlepool. This is according to data from the Office for National Statistics.

4 The 6(1)(c) Response is shared with the Group on a confidential basis.

2. Transaction rationale

2.1 The Parties' activities are largely complementary and the overlaps arising from the Proposed Transaction are limited to the area of container handling equipment (some of which is also used in industrial applications).

2.2 The Merged Entity will be able to create a more efficient cost-structure which is necessary to compete effectively in markets increasingly dominated by low cost and State-backed Chinese competitors. Chinese suppliers already hold leading positions on the various markets affected by the Proposed Transaction and are further expanding their businesses and offerings globally. The Merged Entity will be able to position itself as a credible and reliable alternative to Chinese and other competitors in the long-term.

2.3 In addition, by pooling Cargotec's and Konecranes' resources, the Merged Entity will be able to further enhance its research and development (***R&D***) capabilities and to provide a European platform for innovation, digitalisation and automation as well as sustainability and electrification.

3. The Parties' activities in the UK

3.1 By way of summary, the table below sets the Parties' activities based on deliveries made during 2017-2019.

Table 1: Summary of the Parties' activities (based on deliveries made, 2017-2019)

Equipment		UK		Worldwide	
		Cargotec	**Konecranes**	**Cargotec**	**Konecranes**
Mobile Equipment[5]	Reach stackers	✓	✓[6]	✓	✓
	Empty container handlers	✓	✓[7]	✓	✓
	Forklift trucks > 10t	✓	✓[8]	✓	✓
Horizontal Transport Equipment[9]	Straddle carriers (manual)	✓	✓	✓	✓
	Straddle carriers (automated)[10]	✗	✗	✓	✓
	Automated guided vehicles (***AGVs***)[11]	✗	✗	✗	✓
	Terminal tractors (***TTs***)[12] (manual)	✓	✗	✓	✗
Cranes[13]	RTGs (manual)	✓[14]	✗	✓	✓
	RTGs (automated) (***A-RTGs***)	✓[15]	✗	✓	✓
	Automated stacking cranes (***ASCs***)	✓[16]	✗	✓	✓
Spreaders[17]	Mobile equipment spreaders	✗	✗	✓	✗
	Cranes spreaders	✓	✗	✓	✗

Source: The Parties; based on delivery information of the Parties during 2017-2019; supplemented with relevant information for 2020 where relevant.

---

5 See 6(1)(c) Response, para. 77 *et seq.*
6 During 2017-2019, [...]. [...].
7 During 2017-2019, [...].
8 During 2017-2019, [...].
9 See 6(1)(c) Response, para. 41 *et seq.*
10 See para. 3.2(a).
11 See para. 3.2(f).
12 See para. 3.2(b).
13 See 6(1)(c) Response, para. 14 *et seq.*
14 See para. 3.2(c).
15 See para. 3.2(d).
16 See para. 3.2(e).
17 See 6(1)(c) Response, para. 464 *et seq.*

3.2 As Table 1 shows, the Parties do not, in the main, have overlapping sales activities in the UK. In particular:

(a) **Automated straddle carriers:** Neither Party sold nor delivered automated straddle carriers to UK customers in the period 2017 – 2019. Although the Parties overlap on a global basis, the extent of such an overlap is *de minimis* as Konecranes has [...].

(b) **TTs**: Konecranes closed its manufacturing facility in Lentigione, Italy, in 2017 and is no longer active in the manufacture of terminal tractors. At present, Konecranes merely supplies [...]. Konecranes has [...][18] To the best of the Parties' knowledge, there are no fully functioning A-TTs available in the UK market yet.

(c) **RTGs:** Both Parties have participated in tenders to supply manual RTGs and A-RTGs in the UK. [...]. Konecranes has not won a bid for RTGs in the UK since [...]. All RTG tenders in the time period 2017-19 were won by Liebherr.

(d) **A-RTGs:** In the UK, there is no overlap as Konecranes has not sold any A-RTGs. [...]. [...] The tender ran from April to August 2017. [...] [...] [...]

(e) **ASCs:** Neither of the Parties have had any sales, nor won any bids in the UK since 2017. [...] [...]. Konecranes therefore does not have a material presence in the UK, so there is no basis for concerns in relation to loss of material competition for ASCs in the UK.

(f) **AGVs:** For completeness only, the Parties note that they do not have an overlap in activities in the UK or worldwide in respect of AGVs. [...].[19] [...].[20] In addition, there were no AGV sales in the UK by the Parties or their competitors, as far as the Parties are aware, over the last 10 years, and the Parties are not aware of any UK terminals that currently deploy AGVs. Therefore, unless there is (or will be) a greenfield project involving an AGV, there is currently no market for AGVs in the UK.

3.3 In addition, the Parties refer to Part VI of the 6(1)(c) Response[21] which addresses why there would not be any foreclosure concerns as a result of any link between Cargotec's upstream spreader activities and Konecranes' downstream activities in cranes and mobile equipment. In short:

(a) The Merged Entity will not have the ability or incentive to foreclose rival cranes suppliers. Cargotec's spreaders are not a distinctive input and the Merged Entity will continue to face strong competition in the upstream market from a number of rival providers (including RAM, Elme and Stinis). A hypothetical input foreclosure strategy would be unprofitable in the long-term given: (i) there are a number of alternative suppliers ready to expand in the upstream market; and (ii) Cargotec would [...].

(b) The Merged Entity will also have no ability or incentive to engage in customer foreclosure strategies that would negatively impact rival mobile equipment spreader suppliers – specifically, by pursuing any strategy that would impact Elme, which

---

18 As further detailed in the Parties' response to Question 7 of the CMA's RFI 3 dated 4 May 2021.

19 See 6(1)(c) Response, para. 204.

20 See 6(1)(c) Response, paras. 204, 451.

21 See 6(1)(c) Response, para. 464 *et seq.*

currently supplies mobile equipment spreaders to Konecranes.[22] In particular: (i) even if the Merged Entity were to divert Konecranes mobile equipment spreader purchases from Elme to Bromma, Elme would still retain access to a significant proportion of the customer base (c. [60-70%]); (ii) it has not been Konecranes' strategy to date to self-supply and there is no reason why this would change following the Proposed Transaction; (iii) even if the Merged Entity were to engage in this foreclosure strategy, Elme could switch its production capacities from mobile equipment spreaders to crane spreaders and so continue to operate efficiently without incurring significantly higher costs; and (iv) Cargotec's spreader plant in Malaysia is already running at high capacity, so Cargotec would not be able to accommodate the entire additional demand from Konecranes' mobile equipment spreader requirements without incurring significant additional costs.

3.4 In light of the above and the competitive dynamics noted in the sections below, the Parties consider that the Proposed Transaction would not give rise to a substantial lessening of competition in any potential product segment in the UK.

4. The presence of Chinese competitors in the UK

4.1 The UK container handling equipment industry has undergone significant changes in the past decade since China introduced its "Belt and Road" initiative – a global infrastructure development strategy adopted by the Chinese government to invest in an international trade network that drives long-term structural change to the competitive landscape in maritime transport, port terminals and container handling equipment industries.

4.2 As a result, Chinese state-owned enterprises (***SOEs***) active in container handling equipment, such as ZPMC,[23] as well as privately-owned Chinese manufacturers, such as Sany[24] and Heli,[25] are rapidly expanding and increasingly dominating the industry with highly competitive offerings due to low production costs (through access to steel, cheap labour, transportation and state financing), which enables them to aggressively undercut other competitors (including the Parties) in tender opportunities. With the added support of the "Made in China 2025" initiative operating in parallel (discussed further below), Chinese suppliers are positioned to have even more access to capital for R&D and advancements in other areas – mostly notably, in the automation and electrification of container handling equipment.[26]

---

22 Phase 1 State of Play call on 23 June 2021. The CMA expressly mentioned Elme as a possible target of a competitor foreclosure strategy, given that Konecranes currently purchases mobile equipment spreaders from Elme, and so the Merged Entity could potentially divert this custom to Cargotec's spreader business, Bromma.

23 ZPMC refers to Shanghai Zhenhua Heavy Industries Co., Ltd. and is a Shanghai Stock Exchange listed SOE. ZPMC is a world leader in the design, construction, installation and contracting of large port loading and unloading systems and equipment, offshore heavy equipment, engineering machinery, engineering vessels and large metal structural parts, and it also offers self-produced cranes. For further detail regarding ZPMC and its operations, see FMN, paras. 173-179.

24 Sany refers to Sany Heavy Industry Co., Ltd. and is a Shanghai Stock Exchange listed company that is part of the SANY Group. Sany is a leading manufacturer of construction and mining equipment, port machinery, oil drilling machinery and renewable energy systems. Its main products include concrete pumps, truck mounted concrete pumps, concrete batching plants, asphalt batching plants, crawler cranes, truck cranes, rotary drilling rigs, compactors, pavers and graders. Sany's port machinery division supplies inter alia terminal tractors, reach stackers, empty container handlers, portal slewing cranes, telehandlers, material handlers as well as ASCs, ship-to-short quay cranes, RTG and rail-mounted gantry cranes (or ***RMGs***). For further detail regarding Sany and its operations, see FMN, paras. 180-182.

25 Heli refers to Anhui Heli Co., Ltd. Heli is the main subsidiary of Anhui Forklift Group Company. It is active in R&D, manufacturing and export of industrial vehicles and is the first listed company in China's forklift industry. The "HELI"-branded forklifts have more than 1,700 models and 512 categories of products, all of which have independent intellectual property rights. Since 1991, Heli has enjoyed the leading position in the domestic industry in China. In 2006, it became one of the world's top 10 industrial vehicle companies, and in 2011 it ranked eighth and, and seventh in 2016.

26 For example, Sany invested USD 1.6 billion in a global R&D centre in 2011 in relation to container handling equipment. See FMN, para. 573.

4.3 The entry and expansion of Chinese manufacturers in the UK is particularly supported by the prominence and ownership of the port at Felixstowe. Felixstowe is owned by Hutchison Port Holdings (***HPH***), one of the world's largest port/terminal operators, which is owned by Hong Kong-listed multinational conglomerate CK Hutchison. HPH is among a number of "global terminal operators" (***GTOs***) that control and operate port terminals worldwide – HPH operates 52 ports in 24 countries across all continents, including significant port holdings in the UK at Harwich International, London Thamesport and Felixstowe. Felixstowe is the largest container port in the UK, handling 48% of the UK's container trade. Felixstowe has in recent years exclusively purchased cranes from Chinese manufacturers (namely, ZPMC), and its influence as a leading container trade handler has led other UK ports, including Liverpool2 and DP World London Gateway, to adopt similar supply relationships. As a result, ZPMC has rapidly increased its shares in the supply of cranes to become the clear market leader in all crane segments in the UK.[27]

4.4 ZPMC has more recently entered the horizontal transport equipment markets. For example, ZPMC has already secured major new contracts for the supply of straddle carriers to terminals in Sweden (eight units to HPH Stockholm) and South Africa (at least 22 units to Transnet TPT, with an option for a further 66 units), in addition to the orders from Spain, South Korea and Bahamas. Cargotec expects that ZPMC will continue to aggressively compete for horizontal equipment opportunities, including in the UK. Cargotec also expects [...].

4.5 In the context of mobile equipment, Sany has already made significant inroads in the UK, holding shares of supply of approximately [20-30%] in reach stackers and around [0-10%] in empty container handlers between 2017-2019 based on deliveries. In contrast to ZPMC's direct sales model, Sany is active through an exclusive distributor relationship with Cooper Handling, and the Parties understand Sany is aiming to enhance its dealer network through Cooper Handling and potentially through their construction equipment activities in the UK.[28] Similarly, Heli is active in the supply of forklift trucks and other mobile equipment in the UK through its exclusive distributor, Grant Handling, which includes nationwide service technician recovery and 24/7 breakdown cover.

Competitive constraint of Chinese suppliers – a more dynamic analysis

4.6 The challenges posed by the rise of Chinese competitors are manifold.

4.7 First, current market shares do not capture the competitive impact of competition from the Chinese suppliers. Container handling equipment are durable economic goods with a long useful life (for example, cranes can have a life cycle of 20-25 years [...] whilst horizontal transport equipment and mobile equipment can have life cycles of up to 10-20 years and 8-10 years, respectively) and they are therefore tendered infrequently. As tenders are also typically small in size, any bidding opportunity may cause significant variations to market shares due to the way orders are tendered/negotiated and placed.[29] A dynamic analysis of the competitive conditions is therefore necessary to consider the elements of competition, including that competitors engage in tenders or equivalent sales processes in relevant supply relationships (see next section).

---

27 The analysis applies during the period 2017-2019 for both the UK and on a worldwide basis. See Annex 3.1 of RFI 3. For the same period, the Parties did not supply RTGs in the UK whilst ZPMC delivered eight units between 2017-2019 (accounting for approximately 62% of the share of supply).

28 See, e.g., https://www.sanyuk.com/news/sany-announce-co-tractors-as-new-dealer-for-english-south-coast/.

29 This may be seen in the example noted in footnote 27, where a delivery of eight units represented 62% of the share of supply in the UK in 2017-2019.

4.8 Second, a number of important considerations are relevant in considering the competitive behaviour and effect of companies originating from a "centrally planned" economy.[30] This was considered by the European Commission recently in its White Paper on foreign subsidies,[31] which discussed the risk of competitive distortion through foreign subsidies and other practices which undermine the level playing field for both state-owned and private sector companies in the EU.[32] In particular, the White Paper highlights the potential for foreign subsidies – both direct financial aid and indirect access to sources of supply and other operational inputs (such as steel, transportation and the like) – on terms that would not be available to non-state supported actors. This in turn allows state sponsored competitors to produce more cheaply and ultimately offer their products and services on the international market at lower prices to the detriment of competitors that do not receive such support and subsidies, and, as a result, to outbid other operators that may be more efficient.[33] These risks apply equally to the UK.

4.9 The Chinese government has had a long-standing policy of "encouraging" Chinese companies, in particular, companies active in the ports and container terminal sectors, including container handling equipment manufacturers, to "Go Out"[34] and compete at a world-class level and on a worldwide basis. This policy is reflected in a number important economic policies – in brief:[35]

(a) **China's Five-Year Plans**. These are a series of social and economic development initiatives issued by China for every five-year period dating back to 1953. For example, the 13th Five-Year Plan for the period 2016-2020 put a very strong emphasis on innovation, requiring Chinese industries to move up in the value chain by abandoning old heavy industry and building up bases of modern information-intensive infrastructure. Major targets in relation to innovation include increasing the spending on R&D, raising the quality and volume of Chinese patents and enhancing human capital. A detailed version of the 14th Five-Year Plan is not yet released but a number of key suggestions have been raised by the Chinese government covering innovation and "Opening Up" and achieving "win-win" through international cooperation (which includes facilitating high-quality joint development of the "Belt and Road" Initiative).

(b) **The "Belt and Road" initiative, which launched in 2013**, is a global infrastructure development strategy to invest in nearly 70 countries and international organisations to enhance regional connectivity, particularly with respect to maritime shipping and railroad routes.[36] In recent years, China has increasingly focused its efforts on the construction, development, and operation of international ports and container

---

30 See the decision of the Bundeskartellamt (***BkA***) in File No., B4-115/19 *CRRC/Vossloh Locomotives* (dated 27 April 2020). In coming to its decision, the BkA noted "several peculiarities" which should be taken into account in considering the potential effects of a merger involving companies originating from a "centrally planned" economy. In particular, the BkA considered it appropriate to analyse competitive effects based on the consolidated activities of all Chinese SOEs active in a relevant sector and in upstream or downstream markets given the behavioural actions of such SOEs.

31 European Commission, *White Paper on levelling the playing field as regards foreign subsidies*, 17 June 2020. Accessible online at: https://ec.europa.eu/competition/international/overview/foreign_subsidies_white_paper.pdf.

32 *Id.*, p. 8. The European Commission cites the following examples of foreign subsidies: (i) foreign states giving subsidies (e.g. grants) or providing cheaper financing to an undertaking in the EU (e.g. a subsidiary located in the EU); (ii) foreign states giving subsidies to a parent company located outside the EU (e.g. corporate tax regimes providing selective incentives), which then in turn finances the subsidiary located in the EU through intragroup transactions; (iii) an undertaking in the EU receiving financing on preferential terms from foreign banks directly upon instruction of foreign states; and/or (iv) foreign states having cooperation arrangements with EU local authorities or EU development banks, whereby they may channel subsidies through these authorities or banks to undertakings in the EU.

33 *Id.*, p. 16.

34 China's "Go Out" policy was an effort initiated in 1999 by the Chinese government to promote Chinese investments abroad. See: http://www.gov.cn/node_11140/2006-03/15/content_227686.htm (Mandarin language only).

35 See FMN, para. 166 *et seq*. and also the 6(1)(c) Response, para. 46.

36 See "Belt and Road Initiative", available at: https://www.worldbank.org/en/topic/regional-integration/brief/belt-and-road-initiative.

terminals, particularly along the Indo-Pacific shipping routes extending to Europe, along with the global expansion of its container handling equipment industry.

(c) **The "Made in China 2025" initiative** is a national strategic plan to further develop China's manufacturing sector. The Chinese government continues to focus on moving away from being the "world's factory", i.e. the producer of cheaper and historically lower-technology goods, and instead becoming the world's technological leader.[37] This strategy has encouraged Chinese container handling equipment suppliers to invest in innovative, high-technology equipment and automation solutions. Through these plans, China intends to upgrade the manufacturing capabilities of its industries, growing into a more technology-intensive powerhouse.[38]

4.10 In pursuing the objectives of the 13th Five-Year Plan, Chinese container handling equipment manufacturers such as ZPMC and Sany (among others), have in recent years rapidly developed innovative and high-quality products and aggressively expanded globally.[39] Chinese players have the financial support of State-backed cash funding, tax incentives as well as other direct and indirect subsidies that enable their access to "exceptional" financial resources that would not otherwise be available to commercial companies, such as the Parties. As a result, Chinese SOEs may be expected to implement low-price strategies that are more motivated by wider centrally "encouraged" strategic imperatives than by genuine comparative cost advantages. The Parties have observed this in practice by the entry of ZPMC and Sany in the UK and worldwide, and their expectation that further Chinese entry will follow in the near future. For example, XCMG,[40] which currently invests into mobile equipment in China (and supplies to Felixstowe) may also expand its portfolio into heavy equipment (such as cranes and horizontal transport equipment).

4.11 Given the crucial impact of State strategic direction and State-backed funding on the commercial strategies and expected market behaviour of the Chinese players, the Parties submit that the CMA should consider these factors as part of its investigation. By way of illustration, Table 2 sets out the level of direct government grants reported in each of ZPMC, Sany and the Sany Group's 2019 annual reports, from which it is self-evident that they have access to significant capital not only for investment but also for loss protection, thus enabling them to price aggressively in any given tender opportunity. This effect is enhanced by the parallel advancement of Chinese companies in the container shipping more broadly, where integrated majors such as COSCO[41] are able to provide preferential shipping services in transport and in ports – ZPMC has a strategic partnership with COSCO in the container handling equipment and maritime engineering sectors.

---

37 See "China to invest big in "Made in China 2025" strategy, available at: http://english.www.gov.cn/state_council/ministries/2017/10/12/content_281475904600274.htm. See also the 6(1)(c) Response, para. 68.

38 See FMN, para. 168.

39 See e.g. the 6(1)(c) Response, para. 106 *et seq*. in respect of horizontal transport equipment.

40 XCMG refers to Xuzhou Construction Machinery Group Co., Ltd. XCMG is a multinational SOE and manufactures a wide range of products, including cranes, excavators, loaders, road machinery, piling machinery, non-excavation machinery, concrete machinery, special vehicles, aerial working equipment, tunnel machinery and resource exploration machinery. Recently, XCMG launched new series of reach stackers, empty container handlers and forklifts for container and heavy material handling.

41 COSCO refers to China Ocean Shipping Co., Ltd., an SOE headquartered in Shanghai. COSCO's key business sectors include shipping, logistics, shipping finance, equipment manufacturing, and shipping services. As of 30 September 2020, COSCO had 1,371 vessels with a container fleet capacity of 3.16 million TEU ("twenty foot equivalent", i.e. the number of containers). COSCO's terminal operation business is managed by COSCO Shipping Ports Limited, which has invested in 59 terminals, including 51 container terminals globally. Outside of China, COSCO has interests in terminals at 14 ports, including material stakes in several ports in or adjacent to Europe: (i) Antwerp Terminal (Belgium); (ii) CSP Zeebrugge Terminal (Belgium); (iii) CSP Valencia Terminal (Spain); (iv) CSP Bilbao Terminal (Spain); (v) Euromax Terminal (Netherlands); (vi) Piraeus Terminal (Greece); (vii) Vado Reefer Terminal (Italy); (viii) Kumport Terminal (Turkey); (ix) Suez Canal Terminal (Egypt); and several others.

4.12 The increased presence of the Chinese competitors must therefore be considered in the context of their expected growth, so as to account fully for their likely competitive impact on the relevant market segments.

Table 2: Government grants[42]

Relevant grant identified in the annual report, 2019	ZPMC[43]		Sany[44]		Sany Group[45]	
	(RMB)	(approx. GBP)	(RMB)	(approx. GBP)	(RMB)	(approx. GBP)
Income-related government grants as deferred income (accrued balance)[46]	469,296,220	58,283,247	271,746,000	33,748,917		
Income deferred received during 2019	65,081,202	8,082,622	154,082,000	19,135,886		
Government grants[47]					1,464,220,000	181,845,691
Receipts in the year					185,964,000	23,095,404
TOTAL	**534,377,422**	**66,365,868**	**425,828,000**	**52,884,803**	**1,650,184,000**	**204,941,094**

Source: Annual reports.

5. The direct sales process – tender processes and RFQs

5.1 The Parties' respective container handling equipment portfolios are typically subject to formal tender processes (such as by way of the public procurement rules) or equivalent but informal negotiated processes (such as via RFQs) on a global basis.[48]

5.2 For cranes and horizontal transport equipment, virtually all projects and deliveries are purchased by tender. Tender processes are required due to the unique nature of crane and horizontal transport equipment solutions, which are designed and priced separately for each client, with the final price depending upon the required size and model, customer specifications, the number of units and delivery location.

5.3 Tender processes are also utilised for larger projects involving the purchase of several units of mobile equipment (e.g. developing a new port/terminal or replacing large parts of a fleet), or where public port operators acquire mobile equipment, as they are bound by public procurement laws.

5.4 Sales will generally only not proceed with a formal tender process where a customer purchases a small number of mobile equipment units on an *ad hoc* basis (e.g. with industrial customers). In this case, sales negotiations occur bilaterally with the customer based on price quotes

---

42 An indicative exchange rate of 1 GBP = 8.05199175 was applied using the monthly average values in 2019 noted: https://www.x-rates.com/average/?from=GBP&to=CNY&amount=1&year=2019.

43 ZPMC 2019 Annual report, https://q.stock.sohu.com/newpdf/202040851959.pdf. ZPMC also references significant additional grants of RMB 286,234,706 (or approx. GBP 35,548,311) including but not limited to "cash received from government grants and rewards".

44 Sany 2019 Annual Report (*Chinese only*), http://file.finance.sina.com.cn/211.154.219.97:9494/MRGG/CNSESH_STOCK/2020/2020-4/2020-04-24/6102557.PDF.

45 Sany Heavy Equipment International Holdings Company Limited 2019 Annual Report, https://www1.hkexnews.hk/listedco/listconews/sehk/2020/0422/2020042200809.pdf. See Item 27 on page 150.

46 Income-related government grants compensate for costs or losses. This may be recognised in the current profit or loss or be used to write off relevant costs in the period when relevant costs or losses are recognised. Where deferred, it is recognised as "deferred income."

47 Government grants are described as are recognised at their fair value where there is reasonable assurance that the grant will be received and all attaching conditions will be complied with. When the grant relates to an expense item, it is recognised as income on a systematic basis over the periods that the costs, which it is intended to compensate, are expensed. Where the grant relates to an asset, the fair value is credited to government grants and is released to the statement of profit or loss over the expected useful life of the relevant asset by equal annual instalments." In 2019, the Sany Group recognised RMB 285,511,000 (or approximately GBP 35,458,432) as income but the purpose of this maybe is not reported (see page 124 of the report).

48 See the 6(1)(c) Response, paras. 98-99, 460.

provided by suppliers or their agents and/or distributors. This is typically followed by one or more rounds of negotiations and revised commercial proposals by the "short-listed" suppliers or distributors, to ensure the best possible price. In essence, this process replicates the tender process in all material respects and ensures a structured process through which competitors are able to submit their offers (or negotiate relevant terms).

5.5 The fact that a tender/bidding process applies in respect of all types of container handling equipment is significant:

(a) **Structured purchasing procedures maximise the level of competition**: As explained above, customers use global tender processes to procure heavy container handling equipment (i.e. cranes and horizontal transport equipment[49]) or equivalent competitive processes for smaller equipment types. In the latter case, purchases typically involve multiple rounds of negotiation with more than one supplier and the price is negotiated on an *ad hoc* basis. Suppliers who aim to be included on a customer's shortlist have the possibility to supply test units, which is commonly done in the industry.

(b) **Customers are sophisticated and experienced.** GTOs such as HPH and DP World account for a significant proportion of global demand for container handling equipment. This is also the case in the UK – as noted above, HPH owns Harwich International, London Thamesport and Felixstowe, whereas Emirati-owned DP World owns two UK terminals (at Southampton and London Gateway). GTOs have sophisticated and experienced procurement departments that source at a global scale and often procure container handling equipment as well as services centrally at group level to maximise their purchasing power. In addition, framework agreements with OEMs are also often negotiated centrally at group level, though separate agreements may later be concluded with relevant terminals as applicable.

(c) **Customers leverage from infrequent demand.** Cranes and horizontal transport equipment are typically sold on a per-project basis and demand is infrequent and lumpy. This leads to particularly fierce competition, which reinforces customers' buyer power. On the other hand, the market for mobile equipment is less project-based; rather, demand for mobile equipment follows the overall economic cycle and regular replacement needs. Due to the current economic downturn caused by the COVID-19 pandemic, many major projects are on hold and competition for the few continued and upcoming projects in the market is particularly intense.[50]

(d) **Switching is facilitated by the tendering process.** Switching supplier is relatively easy and common. Switching costs mainly concern training and the need to stock additional spare parts – both factors can be (and often are) mitigated by having a mixed fleet, which is commonly adopted by terminal operators. For example, HPH adopted this strategy in 2001 in respect of Felixstowe, when it held a mixed fleet of RTGs manufactured by ZPMC and by Fantuzzi Reggiane in Italy.[51] In addition, in 2019, Sany delivered a total number of 15 reach stackers and empty container handlers in the UK through its distributor Cooper Handling (which had switched to Sany from Konecranes). One of these UK deliveries was made to Associated British

49 See the 6(1)(c) Response para. 98.

50 See e.g. [...]

51 "Felixstowe Orders More RTGs", Hutchison Ports Press Release dated 12 February 2001. See: http://www.londonthamesport.co.uk/pressreleases/frmPress.aspx?pid=144.

Ports, which is [...].[52] Some of Cargotec's EEA customers for empty container handlers have also recently switched to Hyster (e.g. Progeco France, CETEM Containers and Associated Terminal Operators and Eurogate). Training is typically not a major cost factor given container handling equipment is largely similar in operation. Switching between different OEMs is often observed in practice in all relevant areas, i.e. mobile equipment, horizontal transport equipment and cranes. Whilst additional costs may be incurred where automated equipment is concerned, these elements will be subject to negotiation as part of the tendering process – switching is possible as equipment suppliers are responsible for any additional software integration required.

6. New entrants have various options – including distributors – to set up sales and service networks

Distributors play an important role in ensuring new entry in the UK

6.1 Beyond the direct-purchasing process, suppliers may gain entry into the UK market by indirect means, including by way of distributors. As demonstrated by the successful entry of Sany into the UK market in reach stackers, such a strategy may be successfully deployed without a dedicated local presence in mobile equipment.

6.2 Distributors play a crucial role in facilitating new entry into the UK by foreign suppliers who lack a local sales presence, particularly in mobile equipment markets.

6.3 Distribution operations can differ significantly between suppliers (including between the Parties). However, certain advantageous characteristics are common to most distribution relationships in the industry:

(a) Distributors have local market knowledge, existing relationships with major customers, and a strong customer relations focus, which helps circumvent any barriers to entry caused by cultural factors or a non-UK supplier's lack of experience in the local market. Indeed, there are no UK manufacturers of the overlapping container handling equipment.

(b) Distributors are typically able to provide comprehensive aftersales services, meaning that suppliers without a local service presence can still offer services via their distribution network. Distributors usually also provide spare parts to the local market.

(c) Some distributors may also offer equipment on a rental basis and will usually have equipment in stock for fast deliveries, allowing them to provide a more nimble service to UK customers than a foreign supplier might provide on its own.

(d) Distribution agreements typically grant a non-exclusive right to sell products and spare parts of a particular brand. While distributors often have multiple brands in their portfolio, they usually focus on one brand per specific equipment type. However, if an OEM partner does not cover all types of e.g., mobile equipment, a distributor may mix and match and offer various brands side by side.

(e) Distributors often offer a supplier's entire mobile equipment portfolio. This allows distributors to offer a range of the supplier's mobile equipment products in order to meet the customer's specific needs, thereby providing a comprehensive service and

52 See: https://europe.breakbulk.com/Articles/sany-boosting-business-in-europe-for-containe.

introducing UK customers to the full range of the supplier's mobile equipment offering. Distributors are commonly appointed for a specific country, but sales regions may also be wider or narrower, depending on the specific distribution operation.

6.4 It is relatively easy to set up a distribution network, in part due to the short length of distribution contracts (typically 3-5 years) and consequent ease with which distributors can move between suppliers, as well as the ability of suppliers to leverage their existing networks for other heavy construction and load-handling equipment. [...] For example:

(a) Sany previously relied on its network of distributors which sold Sany's construction equipment, but it has recently expanded its distribution network dedicated to container handling equipment. In Europe, Sany now has a dedicated distributor network for container handling equipment comprising of distributors in 13 countries, including the UK. In the UK, Sany now works with Cooper Handling, which had until 2016 been Konecranes' distributor of mobile equipment.[53] Since then, Cooper Handling has sold Sany reach stackers, empty container handlers and forklift trucks to Associated British Ports, Goldstar Transport, Maritime Transport Ltd and Maritime Logistics Group. In this respect, Cooper Handling's wealth of experience in the UK market – it has been operating for over 20 years in the sale of all heavy lifting products in the UK – has clearly benefitted Sany.

(b) US-based manufacturer Hyster has established itself as a leading brand in Europe and has dealers in almost all EU member states as well as the UK. In the UK, Hyster's distributor, Briggs, sold 63 pieces of Hyster mobile equipment in 2020 to G&W Terminal Services (a very substantial order). Hyster's distribution network offers an extensive range of service and maintenance options, all of which are designed to meet specific requirements of the customers. Hyster is constantly expanding its global dealer network – by way of example, in July 2020, Hyster introduced ten new dealers which are providing local coverage across France, including more than 300 technicians and experts trained by Hyster. Similarly, in 2018, Hyster expanded its dealer network in Germany, Austria and Switzerland to include a total of 17 dealers.[54]

(c) Svetruck has a worldwide network of dealers and agents with local presence on all continents. Svetruck's dealer network is strong in Europe, with presences in the UK as well as in 20 EEA Member States, Switzerland, Serbia and Ukraine.[55] In the UK, like Sany, Svetruck also operates through Cooper Handling, a large and experienced distributor of mobile equipment.[56]

(d) As noted above, Heli is active in the UK through its exclusive distributor, Grant Handling, which provides nationwide service technician recovery and 24/7 breakdown cover.

6.5 Moreover, once UK customers have become familiar with a supplier's mobile equipment products through a distributor, it can be easier for that supplier then to compete credibly in tender processes for other products (including, where necessary, directly in competition with the distributors). This is because their initial sales through distributors often establish brand

53 See "Ten Sany container handlers for maritime", available at: https://www.cooperhandling.com/ten-sany-container-handlers-for-maritime/.

54 See "360 degree service", available at: https://www.hyster.com/emea/en%E2%80%90gb/press/press%E2%80%90releases/360-degree-service-hyster-dealer-network-provides-optimum-support/

55 See "Svetruck Dealer Network", available at: https://www.svetruck.se/en/about/.

56 See: https://www.cooperhandling.com/ports-terminals-and-heavy-lifting/svetruck/.

recognition and a reputation for quality amongst UK customers. Indeed, the very fact that a supplier has concluded a distribution agreement already demonstrates that its products have a sufficiently high quality from the perspective of knowledgeable distributors who expect to be able to resell them. In this way, mobile equipment distributors can help to introduce new entrants to the UK market, allowing them to build a reputation in the UK which can facilitate growth into other markets such as for cranes and horizontal transport equipment (which typically do not involve distributors), since UK customers have already had a taste of the supplier's offering.

No requirement for a local presence – no need for a pre-existing service network

6.6 As the above demonstrates, a potential competing supplier may immediately gain access to UK mobile equipment markets through a distributor relationship. Even if this is not preferred and a potential entrant wishes to enter the UK markets by alternate means, a service network is not a pre-requisite for successful entry for the following reasons:[57]

(a) **Non-specialised skills required.** Mobile equipment is commoditised and therefore relatively easy to service. To the Parties' best knowledge, approximately 70% of all maintenance and repair work for mobile equipment is done in-house by customers (especially by port terminal operators). Bespoke servicing capabilities are therefore not necessary for the development of a sales presence.

Customers without significant in-house service capabilities can rely on a wide range of players for their servicing needs, including OEMs, distributors and dealers, independent service operators, contractors (especially in the Nordics) as well as traders. Similarly, customers do not rely exclusively on OEMs for the supply of spare parts, as spare parts are generally widely available on the market and are also sold by distributors, component suppliers and specialised spare parts suppliers (such as DBH). Consequently, the existence of large service networks operated by the OEMs themselves is in general not a determining factor when making purchasing decisions. Moreover, the Parties expect that the emergence of electric mobile equipment will further diminish the importance of after-sales services and the supply of spare parts, which already now is offered via numerous sources. Electric equipment requires less maintenance as the majority of servicing for mobile equipment is related to gearboxes and engines.

(b) **New entrants can easily set up their own service network.** The servicing needs of standardised components used in most types of heavy construction and load-handling equipment are generally similar. Therefore, OEMs that are already active in the supply of other types of equipment (such as ZPMC in the UK) can use their existing service networks for mobile equipment without the need to set up new servicing capabilities. Other options for OEMs to build or expand their service networks include:

(i) Cooperating with OEMs who supply similar or other types of container handling equipment or purchasing companies with local service networks.

(ii) As the manufacturing of mobile equipment consists of the assembly of various third-party components (e.g. engines, gearboxes, axels and drive lines), OEMs may rely on the service networks of third parties to service mobile equipment.

57 See the 6(1)(c) Response, paras. 224-6.

By way of example, Cargotec purchases engines from Volvo [...]. Sany (which also purchases its engines from Volvo) and other mobile equipment suppliers could similarly rely on the networks of Volvo and other component suppliers for the servicing of their mobile equipment.

(iii) In respect of spare parts, as the supply is typically centralised, OEMs would not need to establish a wide network of warehouses. By way of example, [...]. [...]. Both Parties serve UK customers in this way.

(iv) Many customers have significant in-house service capabilities and can cover most of repair and maintenance works themselves. Large global operators often have highly sophisticated in-house service know-how and personnel, whereas smaller terminal operators typically rely more heavily on external support which is often provided by third parties. In the UK, there is a historic tendency for terminal operators to service cranes themselves.

7. Conclusion

7.1 The Parties will develop their assessment of the above market dynamics further in their response to the CMA's Issues Statement. The Parties look forward to engaging with the CMA through the Phase 2 process and would be happy to assist in answering any question that may arise from this short response to the Reference Decision.