

ANTICIPATED MERGER OF CARGOTEC CORPORATION AND KONECRANES PLC

Issues Statement

6 August 2021

The reference

1. On 13 July 2021, the Competition and Markets Authority (CMA), in exercise of its duty under section 33(1) of the Enterprise Act 2002 (the Act), referred the anticipated merger between Cargotec Corporation (Cargotec) and Konecranes Plc (Konecranes) (the Merger) (together, the Parties or, for statements referring to the future, the Merged Entity) for further investigation and report by a group of CMA panel members.
2. In exercise of its duty under section 36(1) of the Act, the CMA must decide:
 - (a) whether arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation; and
 - (b) if so, whether the creation of that situation may be expected to result in a substantial lessening of competition (SLC) within any market or markets in the United Kingdom (UK) for goods or services.
3. In answering these questions, we will apply a ‘balance of probabilities’ threshold to our analysis. That is, we will decide whether it is more likely than not that the Merger will result in an SLC.¹

Implications of Coronavirus (COVID-19)

4. We are publishing this Issues Statement during the Coronavirus (COVID-19) pandemic, which is having significant impacts on consumers and businesses across the world. The CMA has published a [statement](#) on its website on how it has adjusted its working arrangements in response to the pandemic and

¹ IBA Health Limited v OFT [2003] CAT 27, paragraph 125 (confirmed in IBA Health Limited v OFT [2004] EWCA Civ 142, paragraph 46). See also [Merger Assessment Guidelines \(CMA129\) \(March 2021\)](#), paragraph 2.36.

[guidance](#) on key aspects of its practice during the pandemic. Our approach to evidence-gathering will take into account the difficulties that the pandemic may be causing for market participants in this sector. If appropriate, we will also take into account the impact of the pandemic in our assessment of the competitive effects of the Merger, although we are required to look beyond the short-term and consider what lasting structural impacts the Merger might have on the markets at issue.

Purpose of this Issues Statement

5. In this Issues Statement, we set out the main issues that we are likely to consider in reaching our decision on the SLC question (paragraph 2(b) above), having had regard to the evidence available to us to date. This does not preclude the consideration of any other issues which may be identified during the course of our investigation.
6. This case was referred² to a phase 2 investigation following a ‘fast track’ request from the Parties and the Phase 1 decision focused on certain markets where the Parties conceded that the CMA had evidence that the test for reference under section 33 of the Act was met. At phase 2, we are not limited to investigating the concerns identified in the phase 1 decision. We will continue our investigation to gather additional evidence in relation to the theories of harm listed in paragraph 9 below.
7. The Merger is being reviewed in other jurisdictions, including the European Union. While the CMA will ultimately reach its own view on the statutory questions it is required to decide, we intend to cooperate with other competition authorities in relation to both the substantive assessment of the Merger as well as, if applicable, any remedies that might be put in place to address any competition concerns that are identified.³
8. We are publishing this Issues Statement in order to assist parties submitting evidence to our investigation. This Issues Statement sets out the issues we currently envisage being relevant to our investigation and we invite interested parties to notify us if there are any additional relevant issues which they believe we should consider.

² [Phase 1 Reference Decision](#) on relevant merger situation, substantial lessening of competition and reference.

³ [Mergers: Guidance on the CMA's jurisdiction and procedure](#), paragraph 18.2.

Background

9. On 1 October 2020, the Parties entered into an agreement to merge. Upon completion, Cargotec's and Konecrane's shareholders will each hold approximately 50% of the shares and voting rights in the Merged Entity.
10. The Merger is being investigated by, and is conditional on the receipt of merger control approval from, a significant number of competition authorities, including the European Commission.

The Parties

11. Both Parties are Finnish public listed companies.
12. Cargotec offers equipment and services for cargo handling in ports, terminals, and for ship and road transport. Cargotec's main activities in the UK are divided into:
 - (a) Kalmar, which offers container handling equipment and terminal automated solutions;
 - (b) Hiab, which offers on-road load handling equipment; and
 - (c) MacGregor, which provides engineering solutions and services for the maritime industry.
13. Konecranes offers equipment and services for lifting and cargo handling in shipyards, ports and terminals. Konecranes' main activities are divided into:
 - (a) Port Solutions, which offers container handling equipment and automation technology;
 - (b) Industrial Equipment, which offers hoists, cranes and material handling solutions for manufacturing and processing industries; and
 - (c) Service, which offers services and spare parts.
14. The Parties overlap in the supply of container handling equipment (CHE), globally (including in the UK). CHE can be divided into three broad categories:
 - (a) mobile equipment, including reach stackers, heavy-duty forklifts and empty container handlers;
 - (b) horizontal transport equipment (HTE), including shuttle and straddle carriers and terminal tractors; and

- (c) cranes, including rubber-tired gantry cranes (RTG) and automatic stacking cranes (ASC).
15. In addition, there are vertical links between the upstream activities of Cargotec in relation to spreaders (ie attachment mechanisms that allow cranes and other equipment to pick up containers - see paragraph 42 and 43) and the downstream activities of both Parties in relation to the supply of certain types of cranes and mobile equipment.

Our intended inquiry

16. Below we set out some specific areas of our intended assessment in order to help parties who wish to make representations to us. However, these will not be the only areas for our assessment. For example, we will also seek to assess how the industry operates, the rationale for the Merger and any other relevant issues (such as how market dynamics are expected to evolve in future).
17. At phase 2, we intend to focus our investigation on whether the Merger may be expected to result in an SLC within a market or markets in the United Kingdom, as a result of:
- (a) horizontal unilateral effects:
 - (i) in the supply of RTG;
 - (ii) in the supply of ASC;
 - (iii) in the supply of straddle carriers;
 - (iv) in the supply of shuttle carriers;
 - (v) in the supply of reach stackers;
 - (vi) in the supply of heavy-duty forklifts (with a lifting capacity of more than 10t);
 - (vii) in the supply of empty container handlers; and
 - (viii) in the supply of automated terminal tractors;
 - (b) vertical effects in relation to:
 - (i) input foreclosure in the supply of crane spreaders to RTG manufacturers;

- (ii) input foreclosure in the supply of crane spreaders to ASC manufacturers;
- (iii) input foreclosure in the supply of crane spreaders to mobile harbour crane (MHC) manufacturers; and
- (iv) customer foreclosure in the supply of mobile equipment spreaders to mobile equipment manufacturers.

Jurisdiction

18. The CMA's phase 1 decision found that it is or may be the case that the CMA had jurisdiction to review the Merger on the basis that two enterprises (ie Cargotec and Konecranes) will cease to be distinct and the Parties each generated revenues of more than £70 million in the UK in 2019, and the turnover threshold is therefore met.⁴
19. We shall consider the question of jurisdiction in our inquiry.

The counterfactual

20. The application of an SLC test involves a comparison of the prospects for competition with a merger against the competitive situation without a merger. The latter is called the 'counterfactual'. We shall, therefore, assess the possible effects of the Merger on competition compared with the competitive conditions in the counterfactual situation (ie the competitive situation that would have been most likely to have arisen absent the Merger). The counterfactual is not a statutory test but rather an analytical tool used in answering the question of whether the merger gives rise to an SLC.⁵
21. For most of the markets that fall within the scope of our inquiry, our starting point is that the Merger should be reviewed against the pre-existing conditions of competition. For the supply of terminal tractors, there is some evidence to suggest that Konecranes, which stopped manufacturing terminal tractors in 2017, would have become a competitor in the provision of automated terminal tractors, absent the Merger. We will consider whether we should assess the Merger with respect to this counterfactual, which would be more competitive than the pre-Merger situation.

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

⁵ [Merger Assessment Guidelines \(CMA129\) \(March 2021\)](#), paragraph 3.1.

Market definition

22. Market definition provides a framework for assessing the competitive effects of a merger.⁶ Within that context, the assessment of the relevant market(s) is an analytical tool that forms part of the analysis of the competitive effects of a merger and should not be viewed as a separate exercise.⁷
23. The boundaries of a market do not determine the outcome of the analysis of the competitive effects of a merger, as it is recognised that there can be constraints on merging parties from outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important than others. We will take these factors into account in our competitive assessment.⁸ Furthermore, we may not find it necessary to conclude on the precise boundaries of some relevant markets, if they have no impact on the CMA's competitive assessment.
24. In practice, the analysis of market definition and the competitive effects will often overlap, with many factors affecting market definition being relevant to the assessment of competitive effects and vice versa.⁹
25. In relation to product market definition, the evidence available to us so far generally suggests that there is limited demand-side and supply-side substitutability between different types of CHE. We will explore further the appropriate product market(s) for our assessment of the Merger, including whether it is appropriate to aggregate certain products within a single frame of reference based on supply-side considerations (eg in relation to straddle and shuttle carriers),¹⁰ and whether different types of certain products (eg automated and manual versions of certain product) should be considered within separate frames of reference.
26. In relation to geographic market definition, the evidence available to us so far indicates that the markets at issue may not be broader than Europe-wide,¹¹ in particular because certain suppliers appear to be present in some regions but not others and some third parties have told us that they consider the presence of regional servicing capabilities to be important. We will explore further the appropriate geographic market(s) for our assessment, including by considering

⁶ [Merger Assessment Guidelines \(CMA129\) \(March 2021\)](#), chapter 9.

⁷ [Merger Assessment Guidelines \(CMA129\) \(March 2021\)](#), paragraph 9.1.

⁸ [Merger Assessment Guidelines \(CMA129\) \(March 2021\)](#), paragraph 9.4.

⁹ [Merger Assessment Guidelines \(CMA129\) \(March 2021\)](#), paragraph 9.2.

¹⁰ 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 ([Merger Assessment Guidelines \(CMA129\) \(March 2021\)](#) (CMA129) (March 2021), paragraph 9.8).

¹¹ For the purposes of this document, this includes the UK, the EEA, Switzerland, Ukraine and Turkey.

any additional evidence on regulatory, safety and environmental requirements demand preferences (eg importance for UK customers of a supplier having a (direct or indirect) sales and after-sales presence in the UK), delivery times, transport costs, and regional track record. These factors are also relevant for our competitive assessment.

Theories of harm

27. The term ‘theory of harm’ describes the possible ways in which an SLC could arise as a result of a merger. The theories of harm provide the framework for our analysis of the competitive effects of a merger.¹² Identifying a theory of harm in this Issues Statement does not preclude an SLC from being identified on another basis following receipt of additional evidence or further analysis. We welcome views on the theories of harm described below.
28. Subject to the evidence we obtain regarding market definition (described above), we intend to assess whether the Merger may be expected to result in an SLC as a result of either unilateral horizontal effects or vertical effects in a range of product markets relating to the supply of the CHE (as listed in paragraph 17).
29. We will consider the evidence gathered so far and any new evidence we receive which is relevant to the theories of harm in our assessment of the Merger.

Horizontal unilateral effects

30. Unilateral effects can arise in a merger where one firm merges with a competitor that provides and/or is expected to provide a competitive constraint. Through the Merger, removing one Party as a competitor might allow the Merged Entity profitably to increase prices, lower the quality of its products or customer service, reduce the range of their products/services, and/or reduce innovation.¹³
31. In the supply of RTG, the evidence available to us so far suggests that:
 - (a) the Merged Entity will be the leading supplier of RTG in Europe; and
 - (b) the Parties’ offerings are close alternatives for UK customers, and they are two of the main four suppliers of RTG (ie the Parties, Liebherr and ZPMC).

¹² [Merger Assessment Guidelines \(CMA129\) \(March 2021\)](#), paragraph 2.11.

¹³ [Merger Assessment Guidelines \(CMA129\) \(March 2021\)](#), paragraph 4.1.

32. In the supply of ASC, the evidence available to us so far suggests that:
- (a) the Parties have been the pre-eminent suppliers in Europe over the last 10 years, each selling more ASC than other suppliers over that period; and
 - (b) the Parties' offerings are close alternatives for UK customers, competing mainly with only two other suppliers of ASC (ie Kuenz and ZPMC).
33. In the supply of straddle and shuttle carriers, the evidence available to us so far suggests that:
- (a) the Parties are the two main suppliers of straddle and shuttle carriers, with a combined share of supply of nearly [90-100%] on a UK-wide, Europe-wide and global basis; and
 - (b) the Parties' offerings are close alternatives for UK customers, with ZPMC being the only other supplier with any recent record of bidding for UK customers (with ultimately no success).
34. In the supply of reach stackers, the evidence available to us so far suggests that:
- (a) the Merged Entity would be by far the largest supplier of reach stackers in the UK and Europe (and globally); and
 - (b) the Parties' offerings are close alternatives for UK customers and they compete mainly with Hyster and Sany, and to a lesser extent CVS and Liebherr.
35. In the supply of heavy-duty forklifts, the evidence available to us so far suggests that:
- (a) the Merged Entity would be by far the largest supplier of heavy-duty forklifts of more than 10t and particularly of forklifts with a higher lifting capacity, on a Europe-wide and UK-wide basis; and
 - (b) the Parties' offerings are close alternatives for UK customers, with the other main suppliers being Hyster, Sany, Linde and Svetruck.
36. In the supply of ECH, the evidence so far available to us so far suggests that:
- (a) the Merged Entity would be the largest supplier of ECH on a European and UK basis; and
 - (b) the Parties' offerings are close alternatives for UK customers, with the other main suppliers being Hyster and Sany.

37. In the supply of automated terminal tractors, the evidence available to us so far suggests that:
- (a) there is some evidence to suggest that Konecranes, which stopped manufacturing terminal tractors in 2017, would have become a competitor in the provision of automated terminal tractors;
 - (b) the existing capabilities of both Parties, including their respective positions in CHE and the Parties' existing capabilities in automation, make them well-placed to be material competitors in the supply of automated terminal tractors; and
 - (c) while there may be a number of suppliers of automated terminal tractors in the future, the constraint that these suppliers are likely to exercise is unclear at this stage of the CMA's case.
38. To assess these horizontal unilateral theories of harm, we shall consider evidence on the nature and extent of competition between the Parties and their rivals, in particular on: i) Customer preferences and requirements; ii) each supplier's competitive strengths; iii) how the demand for certain equipment is expected to develop in the foreseeable future, and iv) the extent to which entry or expansion, including by Chinese suppliers, is likely to constrain the Parties, irrespective of the Merger.
39. In our competition assessment, we intend to consider the following evidence:
- (a) the trends in shares of supply of the Parties and their competitors over time on a UK-wide, Europe-wide and global basis;
 - (b) the nature of competitive tendering or negotiated purchasing by customers, and quantitative and qualitative evidence relating to previous tenders/negotiations for different types of equipment, primarily for UK customers;
 - (c) evidence from the Parties' internal documents;
 - (d) evidence from third parties, including the Parties' customers, distributors and competitors;
 - (e) evidence on long-term industry trends, particularly in automation and electrification and the extent to which it may affect the competitive dynamics; and
 - (f) any other relevant information.

Vertical effects

40. Vertical effects may arise when a merger involves firms at different levels of the supply chain, for example a merger between a firm and an upstream supplier or a downstream customer. In certain circumstances vertical mergers can weaken rivalry, for example when they result in foreclosure of the merged firm's competitors. This would weaken the constraints that the merged entity faces and, as a result, harm competition and therefore customers.¹⁴
41. In assessing a foreclosure theory of harm, the CMA's approach is to consider whether three cumulative conditions are satisfied:
- (a) Would the merged entity have the ability to use its control of inputs (input foreclosure) or to restrict rivals' access to a customer (customer foreclosure) to harm the competitiveness of its rivals?
 - (b) Would it have the incentive to actually do so, ie would it be profitable?
 - (c) Would the foreclosure of these rivals substantially lessen overall competition?
42. We are considering whether Bromma (a Cargotec company) would have the ability and incentive to stop supplying crane spreaders or worsen the terms of supply (eg degrading the quality or substantially increasing price) to foreclose downstream rivals of the Merged Entity in RTG, ASC, and MHCs.¹⁵ The evidence available to us so far suggests that:
- (a) Bromma has a significant market position in the upstream supply of crane spreaders and it supplies some of the Parties' downstream competitors, such as Kuenz in ASC and Liebherr in both MHC and RTG.
 - (b) The Merger could strengthen Cargotec's incentive to foreclose by creating a new vertical link in relation to the supply of crane spreaders by Cargotec and the downstream supply of MHCs by Konecranes (in which Cargotec is not currently active) and by increasing the likelihood of capturing lost sales downstream as a result of the Merged Entity's combined market position in the supply of RTG and ASC.

¹⁴ [Merger Assessment Guidelines \(CMA129\) \(March 2021\)](#), paragraph 7.2.

¹⁵ For MHCs, as only Konecranes is active in the supply of MHCs, the Merger creates a new vertical link. For RTG and ASC, the Merger combines Cargotec and Konecranes' downstream businesses in these markets.

- (c) The foreclosure of the Parties' downstream rivals could have an adversely effect on competition in the downstream markets for the supply of RTG, ASC, and MHCs.
- 43. We are also considering whether the Merged Entity would have the ability and incentive to switch purchases of spreaders for mobile equipment from one of its rivals, foreclosing this competitor in the mobile equipment spreader market. The evidence available to us so far suggests that:
 - (a) Konecranes is currently an important customer of a Cargotec's rival in the supply of spreaders for mobile equipment.
 - (b) The Merged Entity may have the incentive to no longer purchase from this rival post-Merger, as it could achieve cost savings by vertically integrating and improving the economies of scale of its own business, in turn making Cargotec's rival a less cost-effective option for rival mobile equipment producers by reducing its economies of scale.
 - (c) The foreclosure of this rival could adversely affect competition in the upstream market for the supply of spreaders for mobile equipment.
- 44. To assess these vertical theories of harm, we shall consider evidence on the ability and incentive of the Merged Entity to pursue such foreclosure strategies and the impact that this could have on competition. We intend to consider evidence in relation to:
 - (a) Bromma's market power upstream and the extent to which customers would be able to switch to other suppliers of spreaders (taking into account many of the types of evidence set out in paragraph 39 above);
 - (b) the importance of Konecranes as a downstream customer for the supply of spreaders for mobile equipment (again taking into account many of the types of evidence set out in paragraph 39 above);
 - (c) the Merged Entity's profit margins in spreaders compared to its profit margins in RTG, ASC, MHCs and mobile equipment; and
 - (d) the impact of any potential foreclosure strategy on the Merged Entity's rivals and the competitiveness of the markets in which they operate.

Countervailing factors

- 45. For all the theories of harm, we will consider whether there are countervailing factors which are likely to prevent or mitigate any SLC that we may find. In particular, we will investigate:

- (a) whether, as a result of the Merger, suppliers of CHE,¹⁶ including Chinese suppliers, would be likely to enter and/or expand and whether the entry and expansion of these suppliers would be timely and sufficient to prevent an SLC;¹⁷ and
- (b) any evidence in relation to efficiencies arising from the Merger.¹⁸

Possible remedies and relevant customer benefits

46. Should we conclude that the Merger may be expected to result in an SLC within one or more markets in the UK, we will consider whether, and if so what, remedies might be appropriate.
47. In any consideration of possible remedies, we may, in particular, have regard to their effect on any relevant customer benefits that might be expected to arise as a result of the Merger and, if so, what these benefits are likely to be and which customers would benefit.¹⁹

Responses to this Issues Statement

48. Any party wishing to respond to this Issues Statement should do so in writing, by no later than **5pm on 16 August 2021** by emailing your written submission to Cargotec.Konecranes@cma.gov.uk.
49. Please note that, due to the ongoing Coronavirus (COVID-19) pandemic, we are not able to accept delivery of any documents or correspondence by post or courier to any of our offices.

¹⁶ These are suppliers who do not currently supply ECH into the European market.

¹⁷ [Merger Assessment Guidelines \(CMA129\) \(March 2021\)](#), paragraph 8.28.

¹⁸ [Merger Assessment Guidelines \(CMA129\) \(March 2021\)](#), paragraph 8.2. At phase 2, in order to form a view that claimed efficiencies will enhance rivalry such that a merger does not result in an SLC, the CMA must expect that the following criteria will be met: the merger efficiencies must: a) enhance rivalry in the supply of those products where an SLC may otherwise arise; b) be timely, likely and sufficient to prevent an SLC from arising; (c) be merger-specific; and (d) benefit customers in the UK (paragraph 8.8).

¹⁹ [Merger Remedies \(CMA87\)](#), paragraphs 3.4 and 3.15 to 3.24.