Case - Cargotec / Konecranes

Assessment of the Provisional Findings' analysis of the Parties' bidding data

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1 Introduction

1.1 The PFs present bidding analyses for Rubber Tyre Gantry cranes ("**RTG**"), Automated Stacking Cranes ("**ASC**"), Empty Container Handlers ("**ECH**"), Heavy-duty Forklift Trucks ("**HDFLT**"), and Reach Stackers ("**RS**").[1]

1.2 These quantitative analyses consist of calculating loss ratios, that is, the proportion of volumes (or revenues) lost by one Party that is won by i) the other merging Party and ii) each of the other competitors. The aim of these analyses is to provide a measure of the closeness of competition between the Parties. The PFs conclude that these bidding analyses show that the Parties compete closely in the supply of each of the relevant products.[2]

1.3 For RTGs, the PFs also present an overlap analysis, calculating the ratio of tenders for each Party in which the other Party also participated. The aim of this analysis is to provide an additional measure of closeness of competition.[3]

1.4 This annex explains that the PFs' bidding analyses suffer from the same procedural errors as set out in the Parties' response to the PFs. In particular, the CMA fails to satisfy its duty of sufficient inquiry by relying almost entirely on the share of competitors' wins amongst the Parties' lost bids. The PFs' analyses of the Parties' lost opportunities fail to capture the competitive pressure exerted by unsuccessful competitors in those lost bids. Furthermore, by limiting the analysis only to lost opportunities available in the Parties' incomplete datasets, the PFs provide a materially incomplete view of closeness of competition. While the CMA could not perform a more thorough analysis based on the Parties' data due to various limitations (as

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[1] PF paragraphs 6.23 – 6.32, 7.20 – 7.69, 7.142 – 7.178, 9.27 – 9.47, 9.119 – 9.137, and 9.203 – 9.226. We note that, in addition to yard cranes and mobile equipment, the CMA has conducted some limited qualitative bidding analysis for straddle carriers and shuttle carriers, however the analysis is cursory and is not discussed further in this document.

[2] PF paragraph 6.23.

[3] PF paragraph 6.24.

previously explained to the CMA), it could (and should) have remedied this situation by collecting missing information from third parties. However, the CMA did not do so.

1.5 In particular, by relying entirely on the Parties' own bidding data[4] which are highly incomplete as regards information on other suppliers, the PFs fail to give due regard to explanations previously submitted by the Parties that their bidding data present significant limitations (and indeed, the reasoning provided in the PFs for rejecting the Parties' submissions on data limitations, is misleading and incorrect). These limitations make it impossible to analyse several issues relevant to the assessment of closeness of competition, such as:

  a. the frequency with which the Parties compete against each other, relative to third parties (this is partially implemented for RTGs only);

  b. [✂]; and

  c. [✂].

1.6 By analysing mainly the winners of the Parties' lost opportunities and only performing a partial participation analysis for RTGs, the PFs' analyses fail to capture a wider picture of the competitive dynamics of the MEQ and crane markets.[5] The CMA's claims, according to which the analysis of the Parties' bidding data shows that the Parties are close competitors,[6] cannot be supported by the assessment of the Parties' incomplete and limited bidding data.

2 The CMA fails to give due regard to limitations in the Parties' bidding data which affect the reliability of its analysis

2.1 The analysis in the PFs relies entirely on the Parties' own bidding data. As previously explained, the Parties' bidding data are highly incomplete, particularly regarding [✂], thereby do not provide the required support for the conclusions that the PFs seek to draw from them.

2.2 As a result, even where winners of opportunities lost by the Parties are known, it is not possible to assess reliably how much competitive pressure was exerted by each of the unsuccessful competitors.

2.3 In addition, Cargotec's and Konecranes's data have other limitations which, when taken as a whole, prevent their analysis from providing compelling support to the conclusions drawn by the PFs about the Parties' closeness of competition.

Data limitations

2.4 The Cargotec data used for the PFs' bidding analysis comes entirely from Cargotec's [✂]. The Konecranes data is constructed from the [✂]. The limitations of these datasets are set out below.

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[4] With the sole exception of the PFs altering the price of one [✂] opportunity won by [✂].

[5] We note that the PFs contain some copy-paste errors where results have been incorrectly copied from the CMA's raw Stata output to the text and tables in the body of the PFs. In this memo, we rely on numbers from the raw Stata output rather than those in the body of the PFs. Stata is the statistical software used by the CMA to conduct its bidding analysis.

[6] See e.g. paragraphs 7.35, 9.36, 9.126, 9.210.

Cargotec [✂] data

2.5   Cargotec's [✂] data have [✂] shortcomings that limit their reliability.

2.6   First, [✂]

    a. [✂]

    b. [✂]

2.7   [✂]

2.8   Second, [✂]

2.9   Finally, [✂] records are subject to human errors. For example, the status of some older opportunities has not been updated and these are still recorded as ongoing sales opportunities, even though they have long since closed.

Konecranes [✂] data

2.10   Konecranes [✂] data record sales opportunities known to Konecranes' independent distributors. The [✂] system does not cover [✂]

2.11   [✂]

2.12   As with other datasets, [✂] records are subject to human errors.

Konecranes [✂]

2.13   Konecranes produces [✂] for Europe which contain [✂]. The data in these [✂] come from the [✂] system and the Konecranes MEQ dataset provided to the CMA contains [✂] from [✂] reports. These data have the following limitations:

    a. [✂]

    b. [✂]

    c. [✂]

    d. [✂]

Konecranes [✂] data

2.14   Konecranes' main CRM system, [✂], does [✂]

2.15   Any analysis done with the Parties' datasets is seriously impaired by the lack of information on [✂]. Furthermore, Konecranes' mobile equipment data suffers from [✂]

2.16   In light of the significant limitations in the Parties' bidding data, the PFs' exclusive reliance on the Parties' bidding data does not allow for a thorough analysis of the closeness of competition between the Parties.

The CMA's reasoning for rejecting the Parties' submissions on data limitations is objectively incorrect

2.17   The PFs argue that the bidding data can reasonably be used for loss analysis, stating that the Parties' bidding data cover a significant proportion of the market.[7] To demonstrate this, the PFs present tables comparing the volume of both won and lost bids by each Party to the total market volume.[8] This is, however, misleading as these figures include opportunities won by the Parties, which are excluded from the CMA's bidding analysis. For example, while the PFs report that Cargotec's data cover almost [✂]% of the RS market for the 2016 – 2020 period (EEA and UK), most of that volume comes from opportunities won by Cargotec. The PFs' loss analysis in fact fails to even cover [✂]% of the RS market. The figures presented in Tables 4 and 5 of Annex C of the PFs are thus misleading.

2.18   [✂] and [✂] below show that the data actually used in the loss analysis in fact covers a [✂] portion of the market. For example, the analysis covers [✂] [✂]% of the MEQ market for both Parties. None of the MEQ analyses cover [✂] [✂] of sales by competitors, and in some cases cover [✂] [✂].[9]

[✂]

3   The CMA fails to satisfy its duty of sufficient inquiry by relying on incomplete data and limiting its assessment to an unrepresentative sample of sales opportunities

3.1   To quantitatively assess the extent to which the Parties constrain one another, the PFs should have conducted an analysis of the opportunities won and lost by each of the Parties, taking into consideration both the runner-up and the difference between the second and third best competitors in each case.

3.2   Because the Parties' won opportunities lack information on the [✂] and how [✂], the CMA was unable to rely on the Parties' bidding data in order to analyse the suppliers' participation in these opportunities (including their [✂]). The CMA did not, however, seek to undertake its own data collection exercise from third parties even though this more complete analysis would likely have provided a more meaningful view of the magnitude of the competitive constraint exerted by each supplier.

3.3   In particular, the CMA did not seek to complete the Parties' data by collecting critical information on missing competitors and on the relative strength of bidders, except for in very few cases such as the sections on "Qualitative case studies".[10] This is despite the fact that this data could have been obtained as part of the CMA's customer surveys.

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7   PFs, Annex C. Paragraphs 22 and 24.

8   PFs, Annex C. Table 4 and Table 5.

9   For the Konecranes FLT >10t analysis, [✂]% of the market consists of competitor sales included in the bidding data while [✂]% of the market is [✂] not included in the bidding data.

10   PF paragraphs 7.36, 7.147, 9.39, 9.43, 9.130, 9.134, 9.213, 9.217, and 9.221.

3.4   The analysis conducted in the PFs is therefore limited almost entirely to data on opportunities lost by the Parties, which can provide only a partial and incomplete view on the closeness of competition between the Parties.

3.5   In addition to not containing information on [✂], the Parties' data relied on by the CMA covers [✂] proportion of the relevant markets (as explained in section 2 above). The CMA has therefore failed to satisfy its duty of sufficient inquiry by relying on incomplete data and by failing to undertake its own data collection exercise to remedy the aforementioned limitations. As a result, the CMA has not performed a rigorous win-loss analysis such that it would be unreasonable to rely on the PFs' bidding analysis to conclude that the Parties are close competitors.

4   The PFs' participation analysis does not consider other competitors

4.1   In addition to performing loss analyses using incomplete data from the Parties, the PFs also include a participation analysis for RTG bids by the Parties.[11] The PFs argue that the participation ratios are consistent with the Parties being close competitors,[12] however the PFs do not look at participation rates for other competitors and so cannot make inferences on the Parties' closeness of competition relative to other competitors.

4.2   The RTG market is characterized by infrequent tenders of high value. During the over 5-year period reviewed by the CMA, both Parties participated in around [✂] opportunities in the whole EEA and UK. In addition, at least some RTG customers always seek offers from multiple suppliers. For example, the CMA quotes [✂] explaining that they have to have [✂][13] Given that the CMA's market share data indicate that [✂] suppliers delivered [✂]% of RTGs in Europe in 2016-20, one would expect all of these to be present in a high share of tenders.[14]

4.3   Given this, the analysis lacks probative value. The analysis only shows how often the Parties face each other, not how often they face each other relative to third parties. For example, whilst the CMA's analysis indicated that Konecranes participates in [✂]% of Cargotec RTG tenders in the EEA and UK, the CMA has not looked at whether competitors such as Liebherr, ZPMC or Mitsui participate in a similar share of Cargotec's tenders. As a result, the CMA is not able to assess whether Konecranes competes more closely with Cargotec than other competitors. Without having reliable information on third party participation, it is not possible to make inferences on closeness of competition between the Parties.

5   The PFs have excluded data which may materially change the results

5.1   The CMA fails to have due regard to relevant facts, which may materially change the results of its bidding analysis. Though not explicitly mentioned in Annex C, the analysis excludes opportunities that include multiple products in one observation. While there are only a few such opportunities, a thorough bidding analysis would have included a sensitivity check to see if

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[11]   PF Table 13.

[12]   PF paragraph 7.31.

[13]   PF paragraph 7.51 b.

[14]   [✂].

their inclusion would have significantly affected the results of the analysis. This sensitivity analysis would have revealed that:

a. Konecranes bid for [✂] STS and [✂] RTGs for [✂] but lost the opportunity to [✂]. Given that the CMA's analysis of RTG tenders lost by Konecranes in the EEA and UK during the 2016-2021 period only includes [✂] opportunities, the inclusion of this opportunity would have [✂] the number of bids and the volume that [✂] captured from bids lost by Konecranes.

b. Konecranes [✂] participated in opportunities for both ECH and RS for [✂], but lost [✂]. The combined volume of these opportunities is [✂] units, which represents over [✂]% of the total [✂] 2016 – 2020 market volume for RS and ECH combined. The CMA could have used Cargotec's data and public sources to identify the split between RS and ECH for these bids in Konecranes's data, however it did not. The analysis in the PFs thus understates [✂] role both in the ECH and RS markets.

6   Conclusion

6.1   In summary, the PFs' analysis is based on a limited set of data that corresponds to a [✂] of all sales opportunities in which the Parties competed. The CMA also fails to analyse competitive pressure exerted by unsuccessful competitors for both won and lost cases. In addition, the CMA's analysis is vitiated by other material errors in assessment.

6.2   If the CMA had engaged in its own data collection exercise, it could have analysed the competitive pressure exerted by other participating competitors for both the Parties' won and lost opportunities. Specifically, the CMA should have assessed:

a. win-loss analysis, taking into consideration ranking and relative strength of competitors in tenders, and the frequency with which one Party is the second-best alternative (i.e. the runner up) when the other Party wins, as discussed in paragraphs 3.1 - 3.5; and

b. the frequency with which the Parties compete against each other relative to third parties, as discussed in paragraphs 4.1 - 4.3;

6.3   The CMA's failure to carry out these steps falls short of its duty of sufficient inquiry. The result is that the CMA's bidding analysis therefore cannot provide meaningful insights into the competitive dynamics of the markets under consideration. As a result, the CMA's claims that the analysis of the Parties' bidding data shows that the Parties are close competitors, cannot be supported by the assessment of the Parties' incomplete and limited set of bidding data.