CARGOTEC / KONECRANES

Response to the CMA's Notice of Possible Remedies dated 26 November 2021

1. Introduction

1.1 This paper sets out the response of Cargotec Corporation (***Cargotec***) and Konecranes Plc (***Konecranes***) (the ***Parties***) to the CMA's notice of possible remedies dated 26 November 2021 (the ***RN***). This response gives an overview of the Parties' remedy proposal – comprising Konecranes' MEQ business and Cargotec's Kalmar Automated Solutions (***KAS***) business, which consists of Cargotec's port cranes and straddle carriers business (the ***Remedy Proposal***).

1.2 This response does not set out all details of the Remedy Proposal. Further information can be found in **Confidential Annexes 1 and 2**, comprising the Parties' signed commitments to the European Commission and associated confidential appendices.

1.3 For completeness and as will be further explained in the Parties' response to the CMA's Provisional Findings (***PFs***), the Parties disagree with the CMA's preliminary conclusions that the Transaction[1] would give rise to a SLC in a number of CHE markets. The Remedy Proposal is therefore submitted on a wholly without prejudice basis.

1.4 Furthermore, the Parties strongly reject the suggestion that they should divest, as a minimum, a whole container handling equipment (***CHE***) division (*i.e.,* either Cargotec's Kalmar division or Konecranes' Port Solutions division) to remedy the substantial lessening of competition (***SLC***) provisionally identified by the CMA in relation to the supply of CHE in various product markets.[2] This response explains that the Parties' Remedy Proposal is consistent with the requirements set out in the CMA's RN, and in particular paragraph 31 thereof, and does not entail significant composition risks, asset risks or purchaser risks.

1.5 The CMA's initial view set out in the RN that the Parties would need to divest – "as a minimum" – the entirety of one of their CHE divisions (either Cargotec's Kalmar division or Konecranes' Port Solutions division) (the ***Full CHE Division Remedy***) is disproportionate and unreasonable. Insisting on a Full CHE Division Remedy as a single package to be sold to a single purchaser would go considerably beyond what is needed to address the concerns identified in the PFs (even if – contrary to the Parties' views – such concerns were well founded). Such a requirement is not justified by reference to:

(a) the current organisation and management of the Parties' different CHE business divisions – Konecranes' MEQ and Cargotec's KAS business constitute predominantly distinct businesses within each Party;

(b) the predominant business model employed by CHE competitors – many highly successful CHE competitors focus on one business area and are not present at all, or have a much less developed presence, in other areas of CHE in the UK and Europe; or

1 Capitalised terms not defined in this response have the meaning given to them in the PFs.

2 RN, para. 30.

(c) the typical requirements of customers, who source from multiple different suppliers within and across different CHE categories and do not generally seek to procure more than one type of CHE in the same tender.

1.6 A Full CHE Division Remedy would impose an unacceptably high and disproportionate cost on the Parties […]. Moreover, a Full CHE Division Remedy would also likely dissuade several potential purchasers that already have a presence in one or more CHE sector. This would (i) deprive such competitors of a valuable opportunity to grow by acquiring an attractive CHE business in a sector where they have no presence (or a limited presence); and […].

1.7 The approach taken in the Remedy Proposal of offering Konecranes' MEQ business separately from Cargotec's KAS business amounts to a fully effective and proportionate remedy to the provisional concerns identified in the PFs. This response addresses these considerations in greater detail.

2. High-level summary of the Remedy Proposal

2.1 The Remedy Proposal comprises the proposed divestment, whether to a single buyer or two separate buyers, of (i) Konecranes' MEQ business (the ***MEQ Divestment Business***); and (ii) Cargotec's straddle carriers and cranes businesses (the ***KAS Divestment Business***) (together, the ***Divestment Businesses***).

(a) The **MEQ Divestment Business**: […]

(i) […]

(ii) […]

(b) The **KAS Divestment Business**: […].

(i) […]

(ii) […]

2.2 The MEQ Divestment Business and the KAS Divestment Business would be marketed separately but could be acquired by either one or two purchasers. This will attract more interest as many industry purchasers have a portfolio in some areas but not others. […] Please see **Confidential Appendix 2** for further examples of potential purchasers.

2.3 For completeness, the Parties will also remedy the CMA's preliminary concerns in relation to the supply of automated terminal tractors, […].

3. Legal framework for imposition of remedies

3.1 According to the CMA's Remedies Guidance, the purpose of remedies is to address, effectively and in the least costly manner, the SLC and its adverse effects. The purpose of divestiture remedies is "*to create a new source of competition [...] or to strengthen an existing source of competition*", thereby addressing the loss of rivalry caused by a merger.[3]

[3] *CMA Guidance on Remedies*, paras. 3.4, 3.37-3.38.

3.2 Notably, the CMA will "*select the <u>least costly and intrusive remedy</u> that it considers to be effective*" and "*will seek to <u>ensure that no remedy is disproportionate</u> in relation to the SLC and its adverse effects*" (emphasis added).[4]

3.3 When assessing the effectiveness of a divestiture remedy, the CMA will consider composition risks, purchaser risks and asset risks.[5]

3.4 The following sections explain why the Remedy Proposal does not entail significant composition, purchaser or asset risks. On the contrary, the Parties expect that the Remedy Proposal will attract significant interest from suitable purchasers, precisely because of the two Divestment Businesses' status as viable, pre-existing market-facing business units which will be transferred with all necessary tangible and intangible assets, personnel, and all essential business functions.

3.5 By contrast, a Full CHE Division Remedy would be disproportionate to the alleged harm caused by the Transaction, in that it would go beyond what is necessary to remedy any SLC.

4. […]

4.1 […].

4.2 […]:

(a) […];

(b) […];

(c) […]:

(i) […];

(ii) […];

(d) […];[6] and

(e) […]

4.3 […]

4.4 […]

4.5 […]

4.6 […]

A broad product portfolio is not required to compete effectively

4.7 **Customers do not tend to bundle together purchases of multiple equipment types.** Customers have mixed fleets and do not tend to single-source (*i.e.,* source different types of CHE from a single supplier). On the contrary, multi-sourcing is common. This

4 *Ibid*., para. 3.4.

5 *Ibid*., para 5.3.

6 […]

indicates that there is little competitive advantage to having (and certainly no requirement to have) a portfolio encompassing all CHE types.

4.8 In fact, all UK terminals with a capacity of more than 100,000 TEUs source equipment from multiple different suppliers. Focusing on the three largest UK ports, which in aggregate handle around 70% of UK throughput:

(a) HPH Felixstowe has purchased STS and RTG cranes from ZPMC, RTG cranes from Konecranes, empty container handlers and reach stackers from Cargotec, reach stackers from Sany and terminal tractors from a combined ZPMC/SHACMAN offering.

(b) DPW London Gateway has purchased STS cranes from ZPMC, empty container handlers from Konecranes and ASCs, straddle carriers and reach stackers from Cargotec.

(c) DPW Southampton has purchased STS cranes from Liebherr, straddle carriers from Cargotec and empty container handlers from Hyster.

4.9 Similarly, […]. Konecranes has […]. To Konecranes' knowledge, […]. As such, over the period 2016-20, Konecranes delivered […] units of MEQ and […] straddle carriers in the UK, […].

4.10 A more comprehensive analysis of European terminals shows similar results – terminals typically source equipment from multiple suppliers. This is unsurprising, given there is little overlap between MEQ and crane suppliers. In the EEA, only 11% of customers exclusively source MEQ from the same manufacturer as their yard cranes supplier. The remaining 89% either multi-source MEQ or single-source MEQ from a different supplier to their yard cranes supplier.[7]

4.11 **Plenty of suppliers have achieved success in one area of CHE without having a broader portfolio,** or having a nascent offering in other areas. For instance, there are several successful suppliers who specialise in MEQ (or whose broader offering beyond MEQ is nascent and/or has been determined by the CMA not to be particularly effective in the relevant markets in Europe). Examples include:

(a) **Hyster** is considered by the CMA in the PFs to be a "*strong competitor*" to the Parties in the UK and Europe in reach stackers, forklift trucks and empty container handlers, but has no broader CHE offering. Hyster is the largest empty container handler supplier in Europe and in the UK, with a […]% European share in 2018-20.

(b) **Sany's** MEQ offering has been very successful in the UK and accounted for more than […]% of reach stacker sales in 2020. Sany also has a material share in Europe in reach stackers but has not so far achieved sales of cranes or other CHE in Europe.

(c) **Linde** is a competitor in forklift trucks with a […]% share in the UK with the CMA's PFs indicating that "*both Parties lost a significant number of*

[7] Based on the list of 170 terminals submitted in response to the European Commission's RFI 3, delivered to the CMA on [date]. This analysis relates to terminals where yard crane and MEQ suppliers are known. The 11% includes customers with multiple yard crane suppliers who source MEQ exclusively from one of these suppliers.

opportunities to Linde in both the UK and Europe as a whole" and does not supply either cranes or straddle carriers.

(d) **Taylor** is an MEQ specialist, has a strong position in the US and Canada, with a network of over 70 dealers, and is also growing a presence in South America. Taylor has a global share of […]% of the full container handler market.

(e) **CVS Ferrari** has a strong global presence in MEQ and has signed a cooperation agreement with Toplift for the distribution of a range of MEQ products in North America. Outside of North America, CVS has a wide network of distributors in Europe, South America, Africa, the Middle East and Central Asia and, for example, is the […] largest competitor in reach stackers.

4.12 Conversely, there are highly successful cranes suppliers that do not have equivalent MEQ product lines. Notably:

(a) ZPMC, which has successfully penetrated the market as a cranes supplier worldwide (dominating in STS cranes and being a strong competitor in RTGs), but which has only very recently started to offer straddle carriers and reach stackers;

(b) Kuenz, is a significant supplier in Europe with a strong and particularly innovative offering in the market for RTGs, but currently lacks a broader offering;

(c) Mitsui, is currently active in Europe in the cranes markets and also competes for the supply of RTGs on a global basis, but currently lacks a broader offering; and

(d) Others including Liebherr, DSD Steel and JFE amongst others (see **Confidential Appendix 2** for more detail).

4.13 Finally, it has historically been common in the CHE industry for suppliers to expand their product offerings through strategic acquisitions. For example:

(a) Cargotec took shape through acquisitions – first of Sisu Ltd, which formed the basis of what is now KAMOS, and then through the acquisition of Nelcon's straddle carriers and cranes business in 2001.[8]

(b) Similarly, Konecranes' 2017 acquisition of Terex Corporation's MHPS business included MHPS's Noell straddle carrier business, which meant that Konecranes "*jumped from a small player in the straddle market to one of the top two suppliers*".[9]

(c) Further, Konecranes acquired its MEQ business as a standalone business in 2004 from SMV.

4.14 Different types of CHE equipment businesses are therefore commonly sold independently without this raising separation or interoperability concerns, which further contributes to the ease of divestment.

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8 See https://www.cargotec.com/en/about-Cargotec/our-story-and-history/kalmar/.

9 See https://www.worldcargonews.com/in-depth/in-depth/consolidation-in-the-straddle-market, https://investors.konecranes.com/mergers-acquisitions.

4.15 This market structure clearly demonstrates that it is not necessary to have a broader CHE portfolio to compete successfully in MEQ.

5. Cargotec's KAS Business is distinct from its MEQ business

5.1 As discussed above in relation to MEQ, it is commonplace for suppliers of cranes and/or straddle carriers to compete successfully without an additional CHE offering such as MEQ. As detailed above, current suppliers on the market in this position include ZPMC, Kuenz, Liebherr, Mitsui and DSD Hilgers, amongst others (see **Confidential Appendix 2** for more detail).

5.2 KAS is currently run separately from Cargotec's MEQ business unit, KAMOS, as well as the rest of Cargotec, with a dedicated senior leadership team and all required business functions for operation as a standalone business. Moreover, the ICS supply chain is entirely standalone, and only limited interconnections exist as between KAMOS and KAS (see further below).

5.3 The KAS Divestment Business would include all major business functions, assets and personnel required for successful operation of the KAS Divestment Business, including all project and service contracts, service capability, as well as the full KAS automation offering, Kalmar One, including ECS.

5.4 Cargotec would offer transitional services to the purchaser to address the limited interconnections between the retained business (including KAMOS) and KAS:

(a) […]

[…]

(b) […]

(c) […]

6. Minimal composition/asset risks

6.1 We note that the CMA highlighted in paragraph 31 of the RN certain key tangible and non-tangible assets and attributes. The table in **Confidential Appendix 1** illustrates how each of the Divestment Businesses includes these assets and attributes, and as such, the Remedy Proposal does not entail significant composition risks or asset risks.

7. Minimal purchaser risks

7.1 We note that the CMA set out in paragraph 33 of the RN certain key criteria for potential purchasers, namely that a purchaser should:

(a) be independent of the Parties;

(b) have the necessary capability to compete;

(c) be committed to competing in the relevant market; and

(d) not create further competition concerns.

7.2 The Parties expect there to be a significant number of highly credible buyers for each of the Divestment Businesses. These potential purchasers, which are detailed further in **Confidential Appendix 2**, include […]. These potential buyers are all independent of the Parties, and also meet the other three criteria. For example:

(a) […]

(b) […]

(c) […]

(d) […]

7.3 […] (see **Confidential Appendix 2** for further detail regarding these potential purchasers).

7.4 Clearly, both the MEQ Divestment Business and the KAS Divestment Business are highly marketable businesses, either sold separately or together, and will attract significant interest from a range of independent, experienced, well-resourced and fully committed purchasers.

8. Conclusion

8.1 The Remedy Proposal would completely eliminate the overlaps identified by the CMA in its PFs, and would be more proportionate and less costly than a Full CHE Division Remedy, which would burden purchasers with elements of the divestiture which they may not wish to have, or which may result in competition concerns.

8.2 Each of the Divestment Businesses is a financially viable and commercially attractive standalone business. The very limited nature of any dependencies as between the Divestment Businesses and the Parties' broader businesses, and the use of short-term TSAs to address these, imply that the Divestment Businesses are truly standalone and will entail minimal composition risks. Given the comprehensive nature of the Divestment Businesses, each of which includes all necessary assets, personnel, and business functions to operate as a viable independent competitor (as further detailed in **Confidential Appendix 1**), the Remedy Proposal also entails only nominal asset risks.

8.3 Finally, the broad range of potentially interested purchasers (as detailed further in **Confidential Appendix 2)** means that the Divestment Businesses will be acquired by a strong purchaser or purchasers which will exert effective competitive pressure on the Merged Entity post-Transaction, without giving rise to further competition concerns.

8.4 As a result, the Remedy Proposal would not involve any significant risks which should concern the CMA, and would be the least costly and most proportionate remedy which will address the concerns which the CMA has identified.