Anticipated merger between Cargotec Corporation and Konecranes Plc

Final report

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Contents

Page

Summary ... 2
Overview ... 2
Background ... 3
The reference ... 3
The Parties and transaction ... 3
Industry background ... 4
Our findings ... 5
Relevant merger situation ... 5
The counterfactual ... 5
Market definition ... 5
Competitive assessment ... 10
Countervailing factors ... 27
Remedies ... 30
Decision ... 33

Summary

Overview

1. The CMA has found that the anticipated merger between Cargotec Corporation (Cargotec) and Konecranes Plc (Konecranes) (the Merger) may be expected to result in a substantial lessening of competition (SLC), as a result of horizonal unilateral effects in the supply of each of the following categories of equipment in Europe, including the UK (Europe)[1]:

    (a) rubber-tyred gantry cranes (RTG);

    (b) automated stacking cranes (ASC);

    (c) shuttle carriers (ShC) and straddle carriers (SC);

    (d) empty container handlers (ECH);

    (e) heavy duty forklift trucks (HDFLT);

    (f) reach stackers (RS); and

    (g) automated terminal tractors (ATT).

2. The Parties submitted proposed remedies intended to address the competition concerns we identified. We found – following a thorough assessment – that these remedies would be insufficient to restore the competition that would be lost as a result of the Merger.

3. We have therefore decided that the prohibition of the Merger is the only effective remedy to address the SLCs and the resulting adverse effects we have found.

4. Container handling equipment (CHE) plays a key role in the smooth running of UK ports, moving millions of containers each year in UK ports to make sure that goods arrive safely on our shelves and British businesses are able to supply their customers overseas. If the Merger had gone ahead without an effective remedy, port terminals and other customers of CHE could have faced lower quality products and services, and/or higher prices. This could

[1] Europe refers to the whole continent, including both the European Economic Area and the UK.

have also had adverse knock-on effects for consumers and businesses across the UK.

Background

The reference

5. On 13 July 2021, the CMA, in exercise of its duty under section 33(1) of the Enterprise Act 2002, referred the Merger for further investigation and report by a group of independent CMA panel members.

The Parties and transaction

6. Both Parties are Finnish public listed companies.

7. Cargotec offers equipment and services for cargo handling in ports, terminals, and for ship and road transport worldwide, including in the UK. Cargotec's main activities are divided into:

    (a) Kalmar, which offers CHE 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.

8. Konecranes offers equipment and services for lifting and cargo handling in shipyards, ports and terminals, worldwide, including in the UK. Konecranes' main activities are divided into:

    (a) Port Solutions, which offers CHE 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.

9. The Parties overlap in the supply of CHE, globally (including in the UK). CHE can be divided into three broad categories:

    (a) mobile equipment (MEQ), including RS, HDFLT and ECH;

    (b) horizontal transport equipment (HTE), including ShC, SC and terminal tractors (TT); and

(c) cranes, including, amongst others, RTG and ASC.

10. 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) and the downstream activities of both Parties in relation to the supply of certain types of cranes and MEQ.

11. We focused our inquiry on whether the Merger may be expected to result in an SLC:

(a) as a result of horizontal unilateral effects in relation to the supply of: i) RTG; ii) ASC; iii) SC and ShC; iv) RS; v) HDFLT; vi) ECH; and vii) Automated TT (ATT); and

(b) as a result of vertical effects in relation to: i) the supply of crane spreaders by Cargotec to its rivals in the supply of RTG, ASC, and mobile harbour cranes (MHC); and ii) the purchase by the Merged Entity of spreaders for MEQ from one of its rivals in the supply of MEQ spreaders.

Industry background

12. CHE is mainly used by maritime container handling terminals. Some of these terminals are managed by global terminal operators (GTO) which operate in more than one country. Some types of CHE, such as MEQ, are also used by customers in other industries.

13. Customers of CHE usually require timely after-sales services. After-sales services can be supplied by the original equipment manufacturers (OEMs), distributors or other third parties. Some customers develop their own in-house expertise to perform the repair and maintenance of their own CHE.

14. The CHE industry is evolving. Customers are increasingly demanding sustainable products which reduce their carbon emissions. There is also a broader drive towards the digitalisation, automation and electrification of products.

Our findings

Relevant merger situation

15. We have found that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation because completion of the Merger would result in the Parties ceasing to be distinct and the jurisdictional turnover test is met.

The counterfactual

16. In order to assess the effects of a merger on competition, we consider the prospects for competition with the merger against what would be the competitive situation without the merger: this is known as the counterfactual.

17. Our conclusions are that the most likely counterfactual and, therefore, the most appropriate counterfactual in relation to the supply of CHE, with the exception of the supply of ATT, is that the Parties would continue to compete with each other independently in broadly the same manner. While Cargotec submitted that, absent the Merger, it would [✄], we concluded that the evidence does not show with sufficient certainty that Cargotec would have [✄] within the period taken into account for our competitive assessment.

18. We concluded that the appropriate counterfactual in relation to the supply of ATT is stronger competition between the Parties than under the prevailing conditions of competition, as both Cargotec and Konecranes would have competed in the supply of ATT. Cargotec already has a well-advanced ATT offering and the evidence available to us shows that Konecranes also has a strong incentive, as well as the ability, to enter into the supply of ATT in Europe absent the Merger.

Market definition

19. Market definition provides a framework for assessing the competitive effects of the Merger. The boundaries of a market do not determine the outcome of the analysis of the competitive effects of a merger.

20. We have assessed: a) whether each type of CHE is a separate product market (with possible further segmentation) or whether it is part of a broader product market by considering the degree of demand-side and supply-side substitutability; b) the appropriate geographic scope for the assessment of the effects of the Merger in relation to each product market.

Gantry cranes

Product market

21. We concluded that there is limited demand-side substitutability between different types of Gantry Cranes, (ie RTG, ASC and rail-mounted gantry cranes (RMG)), in particular because of their different features, cost profile and functions. There is also limited supply-side substitutability between the supply of different types of Gantry Cranes, as a supplier cannot easily switch manufacturing capacity from one type of Gantry Crane to another. This is consistent with the differences between the market structure in the supply of each type of Gantry Crane, and suggests that conditions of competition are different. Therefore, we have assessed the effects of the Merger in relation to the supply of RTG and ASC separately. Given that the main suppliers of RTG offer automated RTG (A-RTG), we have not assessed the effects of the Merger in the supply of RTG and A-RTG separately, but have considered any differences in the offering of the RTG suppliers, in terms of automation, in the competition assessment.

Geographic market

22. We concluded that Europe is the appropriate geographic market for the assessment of the effects of the Merger in the supply of RTG and ASC. This is because: i) the market position of suppliers in Europe is distinct from that of suppliers operating in other regions in the world; ii) factors such as transportation costs and the different regulatory environment in Europe make it more difficult for a supplier of RTG and ASC active in other areas of the world to supply customers in Europe; and iii) having a sales and after-sales support presence in Europe, as well as a track record in Europe, is an important factor in the competition for the supply of RTGs and ASC and appears to affect customer preferences. These factors indicate that there are different competitive dynamics in Europe compared with other regions of the world.

Shuttle and straddle carriers

Product market

23. We concluded that there is limited demand-side substitutability between SC and ShC and other types of CHE, in particular because of their different features and functions. Furthermore, we concluded a limited degree of supply-

side substitutability, as evidenced by the different market structure in the supply of SC and ShC. We therefore concluded that SC and ShC form a separate market to other types of CHE.

24. We also currently consider that, although from a demand-side perspective SC and ShC are not directly interchangeable (eg SC are able to stack, as well as transport containers, while ShC cannot stack containers), there is a significant degree of supply-side substitution (ie it is not difficult for suppliers of SC to start supplying ShC). Notwithstanding the limited degree of demand-side substitution, we consider that it is appropriate to consider SC and ShC as part of the same product market due to supply-side substitution. This is consistent with the broadly similar market structure between SC and ShC.

25. Given that the main suppliers of SC and ShC offer automated SC and ShC, we have not assessed the effects of the Merger in the supply of automated SC and ShC separately, but have considered any differences in the offering of the SC and ShC suppliers, in terms of automation, in the competition assessment.

Geographic market

26. We concluded that Europe is the appropriate geographic market for the assessment of the effects of the Merger in the supply of SC and ShC. This is because: i) some smaller suppliers of SC and ShC operate in other regions of the world and are not present in Europe; ii) factors such as transportation costs make it difficult for a supplier of SC and ShC active in other areas of the world to supply customers in Europe; iii) demand characteristics and customer preferences seem to be, to some extent, distinct in Europe compared with other regions; and iv) having a sales and after-sales support presence in Europe is an important factor in the competition for the supply of SC and ShC and appears to affect customer preferences. These factors indicate that there are different competitive dynamics in Europe compared with other regions of the world.

MEQ

Product market

27. We found that there is limited demand-side substitutability between different types of MEQ (RS, FLT and ECH), in particular because of their different features, cost profile and functions. There is also limited supply-side

substitutability between the supply of different types of MEQ, with the differences between the market structure in the supply of each type of MEQ indicating that the conditions of competition within each are different.

28. We concluded that FLT with lighter and heavier lifting capacities may not be close substitutes:

(a) From a demand-side perspective, FLT are generally divided into different categories according to their lifting capacity (although the exact threshold may vary) and FLT with different lifting capacities fulfil different functions, with customers usually specifying which broad category of FLT they require.

(b) From a supply-side perspective: i) the market structure and conditions differ significantly between the supply of FLT with a higher lifting capacity and the supply of FLT with a lifting capacity of less than 10 tonnes; and ii) suppliers of FLT with lower lifting capacity cannot easily expand upwards from lighter ranges into producing heavier FLT.

29. While there is some inconsistency in the industry regarding the classification of FLT into ‘heavy’ and ‘light’, there is broad agreement that heavy FLT are different from light FLT. For the purposes of our assessment, we took an inclusive approach and considered as heavy FLT as those with a lifting capacity of more than 10 tonnes (HDFLT). Our conclusions would not change if we were to define a market for even heavier FLTs (for example, FLT with a lifting capacity greater than 25 tonnes). In our competition assessment, we have taken into account the constraints from suppliers that focus on the supply of FLT with lower lifting capacities.

Geographic market

30. We concluded that all product markets identified in relation to MEQ are no wider than Europe-wide, with some important UK-specific aspects of competition which affect the strength of competitors for some UK customers.

31. There are elements of competition that distinguish Europe from other regions in the world. In particular, factors such as transportation costs, the different regulatory environment in Europe and the importance of having a track record in Europe make it difficult for a supplier of MEQ active in other areas of the world to successfully supply customers in Europe. This is consistent with the market position of suppliers of MEQ in Europe being distinct from that in other regions in the world.

32. There are also some important UK-specific aspects of competition: i) certain distributors have a regional or national presence and perform an important role, including in the supply of after-sales services and establishing customer relationships; ii) having a sales and after-sales support presence at least in Europe, but ideally in the UK, is an important factor in the competition for the supply of MEQ and appears to affect customer preferences.

33. Nevertheless, there are important similarities between continental Europe and the UK, in terms of transportation costs, regulatory environment and importance of a European track record. These similarities are not present when comparing Europe with the rest of the world.

ATT

Product market

34. Evidence from internal documents and third parties indicates that, while sales to end-users appear to be a few years away, several suppliers are already engaged in significant activities intended to support the development and marketing of ATT offerings. We expect that ATT with some level of automation will be offered to customers in the near future, including in the UK, and that ATT are likely to be an important part of suppliers' equipment offerings in future.

35. We concluded that:

    (a) there is a separate product market for ATT from other CHE equipment, given their different features and functions, and that ATT should not be aggregated with other CHE given the limited degree of supply-side substitution; and

    (b) there is limited demand-side substitutability between TT and ATT, given important differences in functionality and cost, as well as a limited degree of supply-side substitution (eg some TT manufacturers have to establish partnerships to start supplying ATT).

36. Therefore, we concluded that it is appropriate to assess the effects of the Merger in relation to the supply of ATT.

Geographic market

37. We concluded that the market for the supply of ATT is no wider than Europe-wide, because: i) the differences in the market structure for the supply of TT between Europe and the rest of the world suggest that the conditions of competition for the supply of ATT are not the same across all regions in the world; and ii) there are some similarities between ATT and MEQ, including the more prominent role of distributors.

Competitive assessment

38. We have assessed whether the Merger will remove a competitor which previously provided a significant competitive constraint in the different markets defined above and whether, considering the remaining competitive constraints from other suppliers, the Merged Entity will have the ability and/or incentive to worsen or not improve its offering as much as it would absent the Merger. This is a horizontal unilateral effects theory of harm.

The role of Chinese suppliers within the supply of CHE and the extent to which the Parties are able to compete against Chinese suppliers

39. The Parties submitted that Chinese suppliers benefit from cost advantages in access to cheaper inputs and other benefits that state-sponsorship affords to Chinese rivals and that the Parties are unable to compete on the merits against state-sponsored Chinese OEMs. The Parties also submitted that a 'static' analysis of competition in the CHE industry disregards the rapid expansion of state-sponsored Chinese OEMs.

40. We have taken into account the constraint posed by Chinese suppliers in our forward-looking competitive assessment of each theory of harm, based on evidence of the competitive constraint posed by specific Chinese suppliers in each market. In particular, we looked at the competitive strengths and capabilities of these suppliers, in view of the relative importance of the purchasing criteria that customers take into account.

41. Notwithstanding that Chinese suppliers may benefit from cost advantages resulting from state-ownership, and that the Parties perceive that this poses a risk to their market position, the evidence considered clearly shows that the Parties are able to effectively compete against Chinese suppliers.

42. Chinese suppliers face barriers to entry and expansion and, while some Chinese suppliers have had some success to date in certain markets covered

by our review, this has not been the case across all types of CHE. Any potential cost advantages would have existed for some time and therefore would be reflected in those companies' existing market positions. We do not expect that such advantages would, in themselves, result in further material expansion of Chinese suppliers. Nor do we consider it appropriate to assume that other Chinese suppliers that are not yet present, or that have a very small presence, are likely to enter or significantly expand, unless that is clearly supported by robust evidence.

43. We recognise that some Chinese suppliers (eg ZPMC and Sany) are credible competitors in specific markets, but we consider that the Parties have strong offerings and will continue to successfully compete against Chinese suppliers, including based on parameters of competition other than price and especially in the context of increased automation of CHE, proven track record and their broad portfolios.

The Parties' broad CHE portfolios and implications for closeness of competition

44. We found that the Parties both have broad portfolios of CHE including port cranes (including RTG and ASC), HTE (including SC and ShC) and MEQ. In addition, they each offer automation software (Cargotec's Kalmar One and Konecranes' TEAMS, an ECS developed by its subsidiary TBA) and connectivity solutions (eg Kalmar Insight and TRUCONNECT) for use with CHE. Taking this evidence in the round, we find that the Parties, as a result of their CHE portfolio being wider than most of their competitors, are likely to compete particularly closely for the customers who value such portfolio breadth now and in the foreseeable future.[2] By contrast, most of the Parties' competitors do not offer similarly broad ranges of CHE, and so they are likely to compete less closely with the Parties for the customers who value portfolio breadth.

45. As such, we consider that the similarities in the Parties' offerings, in providing broad CHE portfolios, further support our assessment that the Parties are close competitors in a number of markets in which we have assessed the competitive effects of the Merger

[2] ZPMC offers a relatively broad range of CHE, but does not currently have a significant presence in MEQ in Europe.

Horizontal unilateral effects in the supply of RTG

46. The Parties compete closely in the supply of RTG, with both having a strong offering (including on automation) and a proven track-record. They face only two material competitors, ZPMC and Liebherr. Therefore, a significant competitor would be removed by the Merger and only two material competitors (other than the Merged Entity) would remain in the market after the Merger. Other suppliers ([✂]) do not impose a material constraint.

47. Further, the positioning of the remaining competitors means that some customers may have even fewer than three competitive offers after the Merger: ZPMC is a strong competitor for larger volume RTG tenders (where it competes strongly on price) but it is less competitive for smaller volume tenders, while Liebherr is seen as having a relatively high end, expensive offer. Our conclusion is therefore that the Merger may be expected to result in an SLC in the supply of RTG.

48. The following evidence, in particular, demonstrates that the Parties compete closely in the supply of RTG:

(a) The Parties have very high shares of supply on a European basis, with a significant increment. The Parties are by far the largest two suppliers in Europe, with a combined share of supply in excess of 70% over 2011 to 2020. Although Konecranes' share of supply in the UK is lower, we do not interpret this as evidence of significant differences in competitive conditions between continental Europe and the UK. There are few sales in the UK, so shares of supply can be heavily influenced by the inclusion or exclusion of particular orders. Konecranes' win of a large RTG order in 2021 in the UK confirms that it is competitive in the UK, as well as in Europe more widely.

(b) Bidding analysis shows that, in Europe, the Parties face each other in the majority of the opportunities in which they participate, and frequently lose to each other.

(c) Evidence from third parties consistently shows that the Parties are close competitors, and several third parties raised concerns about the loss of competition in RTG that would result from the Merger.

(d) Evidence from internal documents indicates that the Parties perceive each other as strong competitors. These documents also indicate that both Cargotec and Konecranes have a strong RTG offering, including in

terms of quality and automation. The Parties closely monitor each other and produce strategy documents which focus specifically on competing with each other.

49. We consider that the Parties would face few significant competitive constraints following the Merger:

(a) ZPMC provides the strongest of the remaining constraints on the Parties. It has the next largest share of supply in Europe after the Parties ([10-20] [✂]% by revenue, [10-20] [✂]% by volume over 2011-20). Its share of supply is larger in the UK, although this results mainly from the supply of RTG to a single customer (HPH). Bidding analysis and third-party evidence indicate that ZPMC is a stronger competitor for larger volume tenders (where it competes strongly on price), than for smaller volume tenders. Third-party evidence also indicates that ZPMC may be at a disadvantage in relation to some customers (in particular customers without a strong in-house maintenance team) in light of the service levels it can offer in Europe. Internal documents are consistent with ZPMC being a material competitor that is improving but remains behind on certain parameters.

(b) Liebherr imposes some competitive constraint on the Parties, albeit less than that imposed by ZPMC. Liebherr has the joint fourth-highest share of supply in Europe (around [0-5] [✂]% by both volume and value over 2011-20). Its share in the UK is higher (around [20-30] [✂]% over 2011-20) although this derives from sales to two customers only. The Parties lost a small number of tenders to Liebherr in Europe and these all involved small volumes and values. Third-party evidence suggests that Liebherr's offering is generally seen as being high quality but relatively expensive.

(c) No other suppliers impose a material constraint on the Parties. Since entering in 2019, Kuenz has won four relatively small tenders in mainland Europe, and our bidding analysis shows that at least some of these were won in opposition to Cargotec. However, Kuenz has not bid on any UK tenders, and third-party evidence and internal documents suggest that Kuenz is not among the Parties' closest competitors. This appears to be due to its high-price, high-quality positioning and its selective bidding strategy. Bidding data shows that Mitsui has two tender wins in Europe against one of the Parties, however Mitsui (and Paceco Espana) have relatively small shares of supply in Europe.

Further, Mitsui (and Paceco Espana) have not made sales in the UK from 2011-20 and have not made any recent bids for UK tenders. Sany was [✂], and was mentioned in some of the Parties' internal documents (mainly at global level) and by some third parties, but, overall, the evidence does not indicate that Sany imposes a material constraint in relation to UK customers.

(d) The evidence that we reviewed in relation to entry and expansion does not indicate that the constraint imposed by these third parties (or any other third parties) will change materially in the foreseeable future.

Horizontal unilateral effects in the supply of ASC

50. The Parties compete closely in the supply of ASC, with both having a strong offering (including on automation) and a proven track-record, and face only two material competitors, ZPMC and Kuenz. Therefore, a significant competitor would be removed by the Merger and only two material competitors (other than the Merged Entity) would remain in the market after the Merger. Further, the positioning of the remaining competitors means that some customers may have even fewer than three competitive offers after the Merger: ZPMC may be a stronger competitor for larger volume ASC tenders (where it competes strongly on price), than for smaller volume tenders. Our conclusion is therefore that the Merger may be expected to result in an SLC in the supply of ASC.

51. The following evidence, in particular, demonstrates that the Parties compete closely in the supply of ASC:

(a) The Merged Entity would have a high combined share of supply (around [60-70] [✂]%) on a European basis over 2011-20, with a significant increment. Although Konecranes has not made sales in the UK in recent years, it has been consistently competing in UK tenders. The Parties' combined share of supply in Europe was significantly lower in the most recent five-year period ([40 – 50] [✂]%), however both Parties still have material shares of supply on this basis and the evidence below shows that they continue to be significant players in the ASC market.

(b) In the limited number of ASC tenders in the UK, the Parties have competed against each other and Konecranes' presence was perceived as a substantial competitive threat by Cargotec. In addition,

bidding data shows that Konecranes has recently won a significant ASC tender in mainland Europe in opposition to Cargotec.

(c) Responses from third parties also suggest that the Parties are close competitors and that ZPMC is their main competitor.

(d) Evidence from internal documents indicates that the Parties perceive each other as being among the main competitors in the supply of ASC. These documents also indicate that they closely monitor each other and produce strategy documents which focus specifically on competing with each other. These documents further indicate that both Cargotec and Konecranes have a strong ASC offer.

52. We consider that the Parties would face few significant competitive constraints following the Merger:

(a) ZPMC has the fourth largest share of supply in Europe over 2011 to 2020 and the second largest share in the UK (where it is the only supplier other than Cargotec to have sold ASC over the period). ZPMC has become a stronger competitor over recent years (it did not make any sales in Europe over 2011 to 2015 but had a [20-30] [✂]% share over 2016 to 2020). Nonetheless, even pre-Merger, the market remains concentrated. In the UK, ZPMC won one tender in the last ten years Third-party evidence indicates that ZPMC may be a stronger competitor for larger volume ASC tenders (where it competes strongly on price), than for smaller volume tenders. We note that the most recent UK ASC tenders that we identified have been relatively large – ie 10 or more ASC units. Third-party evidence also indicates that ZPMC may be at a disadvantage in relation to some customers (in particular customers without a strong in-house maintenance team) in light of the service levels it can offer in Europe. The Parties' internal documents are consistent with ZPMC being a material competitor that is improving but remains behind on certain parameters.

(b) Kuenz has the third largest share of supply in Europe (and in mainland Europe) where it has won some opportunities in opposition to Cargotec) but did not make any sales in the UK over 2011 to 2020. Kuenz [✂]. Some suppliers said that they saw Kuenz as a competitor, but the UK customers that we heard from did not identify Kuenz as an option that they would consider when buying ASC.

(c) No other suppliers appear to impose a material constraint on the Parties. Liebherr has attempted to enter the market but has not been identified as an effective competitor by third parties. Internal documents do not support that it imposes a material constraint.

53. The evidence that we reviewed in relation to entry and expansion does not indicate that the constraint imposed by these third parties (or any other third parties) will change materially in the foreseeable future.

Horizontal unilateral effects in the supply of SC and ShC

54. Our conclusion is that the Merger may be expected to result in an SLC in the supply of SC and ShC, as the Parties are the closest competitors in this market and only one relatively weak competitor other than the Merged Entity (ZPMC) will remain in the market after the Merger.

55. The following evidence, in particular, clearly shows that the Parties compete closely in the supply of SC and ShC:

(a) The Parties currently have close to [90–100] [✄] % combined share of supply of SC and ShC on any geographic basis. On this basis alone, there is a strong *prima facie* expectation that the Parties are close competitors in the supply of SC and ShC.[3]

(b) Our review of SC and ShC bidding opportunities in the UK shows that the Parties were the only competitors in all but one of these opportunities; in the opportunity with a third participant, [✄].

(c) UK customers rated both Parties as having similarly strong product offerings, and comments from third parties indicated that they considered the Parties as close competitors. We also note that several third parties expected the Merger to negatively impact competition in the supply of SC and ShC.

(d) The internal documents that we reviewed in relation to SC and ShC show that the Parties perceive each other as one another's closest competitor, with both Parties actively participating in competition with the other and tracking the other's success.

[3] The Merger Assessment Guidelines (CMA129), paragraph 4.10.

56. We consider that the Parties would face no other competitors that would impose a material competitive constraint on the Parties post-Merger.

(a) We consider that ZPMC only provides a limited competitive constraint on the Parties in the supply of SC and ShC. It has [0–5] [✂]% share of supply in the UK and [0–5] [✂]% share of supply in Europe over the period 2017 to 2020, reflecting its limited success in UK and European tenders so far. UK customers did not consider that ZPMC would be a viable alternative to the Parties, either now or in the near future. The internal documents that we reviewed recognise that ZPMC has entered this market, but also reflected the Parties' [✂]. We have not received any evidence that ZPMC will expand and become a strong competitor to the Parties within the next two to three years.

(b) We do not consider that any other suppliers act as constraints on the Parties.

57. The evidence that we reviewed in relation to entry and expansion does not indicate that the constraint imposed by ZPMC (or any other third parties) will change materially in the foreseeable future.

Horizontal unilateral effects in the supply of RS

58. The Parties compete closely in the supply of RS, with both having a strong offering (including a reliable product, good quality after-sales support and wide range of products) and a proven track-record. The only other material competitors in the UK are Hyster and Sany. Therefore, a significant competitor would be removed by the Merger and only two material competitors will impose a constraint on the Parties in relation to UK customers. Further, to the extent that some customers do not consider Sany to be an effective alternative to the Parties, the remaining constraint on the Parties may be particularly limited in some cases. Our conclusion is therefore that the Merger may be expected to result in an SLC in the supply of RS.

59. The following evidence, in particular, demonstrates that the Parties compete closely in the supply of RS:

(a) The shares of supply indicate that the Parties are the two largest suppliers in Europe, and two of only four significant suppliers in the UK, over the period 2016 to 2020. Cargotec is the market leader in both geographies and the Merged Entity would have a combined share of supply of [50 – 60] [✂]% in the UK and around [70 – 80] [✂]% in

Europe. Although Konecranes has a lower share in the UK than in Europe, this share is nonetheless material ([10 – 20] [✂]%).

(b) Our bidding analysis covering 2016 to May 2021 shows that the Parties lost more opportunities to each other than to any other supplier in Europe and lost a significant number of opportunities to each other in the UK.

(c) Evidence from third parties consistently shows that the Parties are close competitors and mostly suggest that both Parties have high quality products. Several third parties raised concerns about the loss of competition that would result from the Merger.

(d) Internal documents show that Parties have similar strengths in MEQ more broadly in terms of their proven track records, strong sales and after-sales networks, wide product portfolios, and product development. Internal documents also show that both Parties are taking active steps to develop electrified MEQ and are monitoring each other's progress in this area. In relation to RS, specifically, internal documents are also consistent with the Parties competing closely, indicating that the Parties perceive each other as strong competitors within this market, and consider themselves as being among the few suppliers that offer a full range of RS (value, premium, and eco-friendly).

60. The evidence shows that Hyster is a strong competitor to the Parties in both the UK and Europe as a whole:

(a) Shares of supply show that Hyster was the second-largest supplier in the UK over the period 2016 to 2020 on a volume basis (third-largest on a revenue basis) and the third-largest supplier in Europe over the same period.

(b) This is consistent with the results of our bidding analysis, which show that, after each other, Hyster accounted for the next largest proportion of the Parties' lost opportunities in Europe. In the UK, both Parties lost a significant number of opportunities to Hyster.

(c) Third-party views and the qualitative tender documents also show that Hyster is a strong competitor. Several third parties indicated that Hyster offers competitive prices and high product quality, although some others considered that it had low product quality.

(d) The internal documents that we reviewed confirmed, overall, that the Parties consider Hyster as one of their closest competitors in MEQ generally and in RS specifically.

61. The evidence indicates that Sany is generally a material competitor to the Parties in the UK, although not for some customers, but is not a material competitor in Europe as a whole. It shows that Sany has grown in the UK over recent years but does not suggest that the constraint from Sany will materially change going forward.

(a) Shares of supply show that Sany has a [20 – 30] [✂]% share of supply in the UK over the period 2016 to 2020, but is much smaller in Europe ([0 – 5] [✂]% share).[4] Sany had much higher UK sales in 2019 and 2020 as compared with previous years, although we note that [✂]. Nonetheless, Sany seems to now be a more significant competitor in the UK than its share of [20 –30] [✂]% over 2016 to 2020 would suggest.

(b) Our bidding analysis is consistent with shares of supply in suggesting that Sany is a material competitor to the Parties in the UK but is not a strong competitor in Europe as a whole.

(c) Third-party views and qualitative tender documents highlight Sany's low prices but also express some concerns regarding the quality of its equipment and after-sales service. This suggests that Sany may not be a strong constraint on the Parties in relation to customers that place less weight on price and more on quality.

(d) Internal documents show that the Parties consider Sany as a material competitor in MEQ on a global basis and that they perceive Sany as a threat in RS specifically (including in the UK, through its relationship with Cooper). These documents, however, also highlight the weaknesses of Sany's MEQ offer, in general, and of its RS offer in Europe and in the UK, in particular, including [✂].

(e) The evidence available to us does not support that Sany's growing position in the UK will necessarily lead to material future additional growth for Sany in the UK or Europe.

[4] We consider that this difference is likely to reflect the role of its national distributor (Cooper).

62. The evidence indicates that other suppliers, including CVS, Liebherr, FTMH, and Linde do not compete closely with the Parties for UK customers and exert, at most, a limited competitive constraint on the Parties in Europe and the UK.

63. The evidence that we reviewed in relation to entry and expansion does not indicate that the constraint imposed by these third parties (or any other third parties) will change materially in the foreseeable future.

Horizontal unilateral effects in the supply of HDFLT

64. The Parties compete closely in the supply of HDFLT, with both having a strong offering (including a reliable product, good quality after-sales support and wide range of products) and a proven track-record. The only other material competitors in the UK are Hyster and, to some extent, Linde and Svetruck. Hyster is a strong competitor to the Parties, whereas the competitive strength of Linde and Svetruck is more limited (with Svetruck providing a stronger constraint in Europe but a lesser constraint in the UK). Therefore, a significant competitor would be removed by the Merger and, at most, three material competitors will impose a constraint on the Parties in relation to UK customers. Further, the positioning of the remaining competitors means that some customers may have fewer than four competitive offers after the Merger: in particular, unlike the Parties, Linde is not active in the supply of HDFLT with lifting capacities greater than 18 tonnes. Our conclusion is therefore that the Merger may be expected to result in an SLC in the supply of HDFLT.

65. The following evidence, in particular, demonstrates that the Parties compete closely in the supply of HDFLT:

    (a) The shares of supply indicate that, in both Europe and the UK, the Parties are two of only four suppliers with shares of supply greater than 10% over the period 2016 to 2020. Cargotec is the market leader in Europe and one of the market leaders, alongside Hyster, in the UK. The Merged Entity would have a combined share of supply in HDFLT of [30 – 40] [✄]% in the UK and around [50 – 60] [✄]% in Europe. The Parties' combined share is higher still at the heavier end of the HDFLT market.

    (b) Our bidding analysis covering 2016 to May 2021 shows that the Parties lost more opportunities to each other than to any other supplier in both the UK and Europe as a whole.

(c) Evidence from third parties consistently shows that the Parties are close competitors, particularly at the heavier end of the HDFLT market, and generally suggests that both Parties have high quality products. A number of third parties raised concerns about the loss of competition that would result from the Merger.[5]

(d) Internal documents are also consistent with the Parties competing closely, indicating that the Parties perceive each other as being strong competitors and as having an advantage over other competitors by offering a full range of HDFLT.

66. The evidence shows that Hyster is a strong competitor to the Parties in both Europe and the UK.

(a) Shares of supply show that Hyster was the second-largest supplier in Europe over 2016 to 2020 on a volume basis (third-largest on a revenue basis) and one of the market leaders (alongside Cargotec) in the UK over the same period.

(b) This is consistent with our bidding analysis, which suggests that, after each other, Hyster accounted for the next largest proportion of both Parties' lost opportunities in Europe. In the UK, both Parties lost a significant number of opportunities to Hyster.

(c) Hyster was commonly mentioned as a competitor by third parties but was not always ranked highly. Third parties generally noted that Hyster was high quality, but there were conflicting views about its price competitiveness.

(d) Internal documents confirmed that the Parties consider Hyster as one of their closest competitors in MEQ generally and in HDFLT specifically. Both Parties' documents noted that Hyster is price competitive and offered a wide product range.

67. The evidence indicates that Linde competes with the Parties, but mainly in relation to HDFLT with lifting capacities up to 18 tonnes:

[5] However, several third parties stated that the wider choice of suppliers available for HDFLT relative to other MEQ indicated that the Merger would have a more limited impact on competition in the supply of HDFLT.

(a) Shares of supply show that Linde has a [10 – 20] [✂]% share of supply in the UK but is smaller in Europe ([5 – 10] [✂]% share).

(b) Our bidding analysis shows that both Parties lost a significant number of opportunities to Linde in both the UK and Europe as a whole.

(c) Third-party evidence, including from qualitative tender documents, was mixed, with UK customers ranking Linde more highly than competitors, but overall indicated that Linde was seen as a feasible alternative to the Parties.

(d) Linde is considered as a credible competitor in HDFLT in Cargotec's internal documents, but it is not often mentioned in Konecranes' internal documents. It does not seem to offer a range as wide as the Parties in terms of lifting capacity and value positioning.

68. The evidence indicates that Svetruck may compete with the Parties, but only in relation to certain customers:

(a) Shares of supply show that Svetruck has a [10 – 20] [✂]% share of supply in Europe but is much smaller in the UK ([0 – 5] [✂]% share).

(b) Our bidding analysis indicates that both Parties lost a significant number of opportunities to Svetruck in both the UK and Europe as a whole.

(c) Third-party views regarding Svetruck's offer were mixed, with some third parties suggesting that Svetruck may not be a strong constraint on the Parties in relation to customers that place less weight on quality and more on price.

(d) Svetruck is mentioned in the Parties' documents, and is considered as a credible competitor, although sometimes only in relation to [✂].

69. Evidence consistently indicates that other suppliers (including Hyundai, Sany, Doosan, ZPMC and a number of other smaller suppliers) do not compete closely with the Parties for UK customers; as such, we consider that these suppliers of HDFLT are not stronger competitors than suggested by their shares of supply.

70. The evidence that we reviewed in relation to entry and expansion does not indicate that the constraint imposed by these third parties (or any other third parties) will change materially in the foreseeable future.

Horizontal unilateral effects in the supply of ECH

71. The Parties compete closely in the supply of ECH, with both having a strong offering (including a reliable product, good quality after-sales support and a wide range of products) and a proven track-record. The only other material competitors in the UK are Hyster and Sany. Therefore, a significant competitor would be removed by the Merger and only two material competitors will impose a constraint on the Parties in relation to UK customers. Further, to the extent that some customers do not consider Sany to be an effective alternative to the Parties, the remaining constraint on the Parties may be particularly limited in some cases. Our conclusion is therefore that the Merger may be expected to result in an SLC in the supply of ECH.

72. The following evidence, in particular, demonstrates that the Parties compete closely in the supply of ECH.

    (a) The shares of supply indicate that the Parties are two of only four significant suppliers in the UK over the period 2016 to 2020, and two of the three largest suppliers in Europe over the same period. The Merged Entity will have a combined share of supply of around [30 – 40] [✄]% in the UK and around [40 – 50] [✄]% in Europe. Although Konecranes has a lower share in the UK than in Europe, its UK share is nonetheless material ([5 – 20] [✄]%).

    (b) Our bidding analysis covering 2016 to May 2021 shows that, in Europe, Konecranes lost more opportunities to Cargotec than to any other competitor and Cargotec lost a significant proportion of its lost opportunities to Konecranes. The Parties also lost significant volumes to each other in the UK over the period considered.

    (c) Evidence from third parties consistently shows that the Parties are close competitors and mostly suggests that both Parties have high quality products. Several third parties raised concerns about the loss of competition that would result from the Merger.

    (d) Internal documents are also consistent with the Parties competing closely, indicating that the Parties perceive each other as strong competitors within this market and that they consider themselves as the only suppliers that offer a full range of ECH (value, premium, and eco-friendly).

73. The evidence shows that Hyster is a strong competitor to the Parties in both the UK and Europe as a whole.

(a) Shares of supply show that Hyster was the largest supplier in both the UK and Europe as a whole over 2016 to 2020. It would remain the largest supplier in the UK post-Merger.

(b) This is consistent with the results of our bidding analysis based on Europe as a whole, which suggest that Hyster accounted for the highest proportion of Cargotec's lost opportunities and the second highest proportion of Konecranes' lost opportunities (after Cargotec).

(c) Third-party evidence and the qualitative tender documents about its offer also show that Hyster is a strong competitor. Several third parties indicated that Hyster offers competitive prices and high product quality, although some others considered that it had low product quality.

(d) The internal documents that we reviewed confirmed, overall, that the Parties consider Hyster as one of their closest competitors in MEQ generally and in ECH specifically.

74. The evidence indicates that Sany is generally a material competitor in the UK, although not for some customers, but is not a material competitor in Europe as a whole. It does not suggest that the constraint from Sany will materially change going forward.

(a) Shares of supply show that Sany has a [10 – 20] [✂]% share of supply in the UK over 2016 to 2020 but is much smaller in Europe ([0 – 5] [✂]% share).[6]

(b) Our bidding analysis is consistent with shares of supply in suggesting that Sany is a material competitor to the Parties in the UK, but is not a strong competitor in Europe as a whole.

(c) Third-party evidence, including from qualitative tender documents, was mixed; it indicates that Sany offers low prices, but does not have a positive reputation in relation to service and/or product quality. This evidence suggests that Sany may not be a strong constraint on the

[6] We consider that this difference is likely to reflect the role of its national distributor (Cooper).

Parties in relation to customers that place less weight on price and more on quality.

(d) The Parties' documents reflect a growing competitive threat from Sany in ECH on a global basis, especially regarding electrification, while also suggesting that Sany has not yet established itself in MEQ in Europe (except in the UK).

(e) We found no clear trend in Sany's annual sales of ECH in the UK over the last five years and the evidence, overall, does not support that there will be material future additional growth for Sany in the UK or in Europe.

75. The evidence consistently indicates that other suppliers (including Svetruck, CVS and FTMH) do not compete closely with the Parties for UK customers and exert, at most, a limited competitive constraint on the Parties in Europe and the UK.

76. The evidence that we reviewed in relation to entry and expansion does not indicate that the constraint imposed by these third parties (or any other third parties) will change materially in the foreseeable future.

Horizontal unilateral effects in the supply of ATT (potential competition)

77. We consider that Cargotec is well placed to be one of the main future suppliers of ATT in Europe. Konecranes is also likely to be a material competitor in this market absent the Merger, but it is not likely to be among the most significant constraints to Cargotec as a standalone competitor.

78. We consider that Terberg is also likely to become one of the main competitors in the supply of ATT in Europe and therefore would (assuming that it can continue to operate independently from the Merged Entity) be a key competitor within this market.

79. We note that Terberg currently has a [✀] with Konecranes for the development of ATT. The [✀] as a result of a change of control over Konecranes.

80. In light of the alternative options that appear to be available to Terberg in the development of ATT, we are not concerned that the loss of Konecranes as a partner would materially affect the competitiveness of Terberg post-Merger. We are, however, concerned that the creation of an ongoing contractual link between Terberg and the Merged Entity, as brought about by the Merger,

could substantially soften the competitive constraint that Terberg would otherwise impose on the Merged Entity.

81. Other than Terberg (which cannot be regarded as a fully independent competitor given this ongoing contractual link), the Hyster-Yale-Capacity-VDL partnership and Westwell Lab/Q-Truck seem to be well placed to compete with the Merged Entity. While there are other potential suppliers of ATT (Einride, Volvo, Man, Gaussin and ZPMC) that are likely to compete with the Parties in future, the evidence suggests that their offerings may not be strong alternatives to the Merged Entity's ATT offering. The evidence does not suggest that other suppliers with activities within the broader automated vehicles space, such as Waymo/Alphabet, would impose any meaningful constraint on the Parties in relation to relation to the supply of ATT.

82. Given the significance of the competitive constraint Terberg would impose on Cargotec absent the Merger, compared to the constraint posed by the other firms developing an ATT offering, we consider that the contractual link between the Merged Entity and Terberg presents a material risk that competition between two of the main players within this emerging market will be substantially softened and that the remaining potential suppliers of ATT would not impose a sufficient constraint on the Merged Entity. Therefore, by creating a contractual link between the Merged Entity and Terberg, we concluded that the Merger may be expected to result in an SLC in the supply of ATT in Europe.

Vertical effects

Input foreclosure: supply of crane spreaders to suppliers of RTG, ASC and MHC

83. We have considered whether, as a result of the Merger, the Merged Entity may attempt to restrict rivals' access to Bromma spreaders, or offer spreaders on worse terms, directly harming the rivals' competitiveness and therefore competition in the downstream market for RTG, ASC and MHC.

84. While the Merged Entity would also have a vertical position in relation to RTG and ASC, our assessment has focused on whether horizontal unilateral effects arise as a result of the Merger in the markets for the supply of RTG and ASC. As we have found SLCs as a result of horizontal unilateral effects in each of these markets, we have not considered it necessary to assess the potential for any additional vertical effects of the Merger in these two markets.

85. In relation to MHC, we concluded that the Merged Entity lacks the ability to successfully engage in input foreclosure in the supply of spreaders to MHC suppliers, as the number of MHC opportunities where the Merged Entity may have the ability to reduce Liebherr's competitiveness does not seem substantial. The Merged Entity may also lack the ability to successfully engage in input foreclosure in the supply of spreaders to RTG and ASC suppliers, because the Merged Entity's rivals can source a significant proportion of spreaders through other means.

86. Our conclusion is therefore that the Merger may not be expected to give rise to an SLC as a result of input foreclosure in relation to the supply of crane spreaders to MHC suppliers.

Customer foreclosure: purchase of MEQ spreaders by the Merged Entity from one its rivals in the supply of MEQ spreaders

87. Our conclusion is that the Merger may not be expected to give rise to an SLC as a result of customer foreclosure in relation to the supply of MEQ spreaders.

88. Our assessment is that the Merged Entity would not have the ability to foreclose its main rival, Elme, in the MEQ spreader market. The Merged Entity might reduce its demand for Elme's spreaders and Konecranes is an important customer for Elme. However, it is not clear whether the potential reduction in scale for Elme (due to the Merged Entity favouring Bromma) would have a significant impact on Elme's overall competitiveness because of: i) Elme's wide range of spreaders (including non-standard and specialised spreaders); ii) the preference of some OEMs to not be reliant on Bromma for strategic reasons; and iii) the fact that spreaders represent a small part of the price of MEQ, means that a rise in Elme's spreader prices may not be sufficient for OEMs to stop buying from Elme. In addition, there may be at least some scope for Elme to increase demand for its spreaders from customers other than the Merged Entity. Furthermore, an increase in the price of Elme spreaders would not have a significant adverse effect on competition in downstream MEQ markets.

Countervailing factors

89. Countervailing factors – barriers to entry and/or expansion and/or rivalry-enhancing efficiencies - may prevent or mitigate any SLC arising from a merger.

Entry and expansion

90. We have considered whether effective entry or expansion will occur as a result of the Merger which might be timely, likely and sufficient to counteract the effects of the Merger.

91. We found that there are four main significant barriers to entry and expansion in the supply of the different markets in which we found an SLC: i) the investment and time required to enter and/or expand; ii) the importance of having a strong track record and reputation; iii) the importance of having established customer relationships; and iv) the importance of having interoperable connectivity solutions.

92. We have assessed the barriers to entry and expansion listed above in more detail in relation to the different markets in which we found an SLC, as well the likelihood of timely and sufficient entry and expansion. We found that some of the barriers to entry expansion, such as the importance of having established customer relationships and of having interoperable connectivity solutions, are not specific to a particular market and we have assessed entry and expansion across multiple markets.

93. In relation to the investment and time required to enter and/or expand, we found significant initial costs need to be incurred for a new entrant to be able to supply CHE and provide parts and servicing. Economies of scale also constitute a significant barrier to entry or expansion and may prevent small-scale entry from imposing an effective constraint. The investment needed to be able to provide maintenance and repair services is likely to constitute a particularly high barrier to entry and/or expansion in relation to the supply of Mobile Equipment, as a potential new entrant (directly or through a distributor) would need to serve a large number of customers in order to be commercially viable. In relation to the importance of having a strong track record and reputation, we found that this is very important in order to satisfy customers' purchasing criteria and that establishing a strong track record and reputation therefore presents a high barrier for new entrants.

94. In relation to the importance of having established customer relationships, the evidence shows that these relationships (among other factors) makes it difficult for new entrants to win market share and gives the incumbent supplier an advantage over potential competitors entering the market and/or competitors wishing to expand. This barrier is made greater where incumbent suppliers have a broad portfolio of CHE, as their existing customer

relationships may be even stronger from supplying a range of CHE equipment and, in so doing, have more frequent and deeper contact with customers

95. In relation to the importance of having interoperable connectivity solutions, we found that interoperability is a barrier to expansion in relation to the supply of Gantry Cranes. The incumbency advantages that arise from OEMs (such as the Parties) having developed connectivity solutions are particularly strong with regard to the supply of Gantry Cranes but we also found that automation is likely to extend across Gantry Cranes, HTE and MEQ over time. Having considered all of the evidence on the importance of having a broad portfolio of CHE in the round, in the context of increased automation and digitalisation, we also found that a potential or actual competitor may be at a disadvantage if they cannot offer interoperable connectivity solutions and automation software across a broad portfolio of different categories of CHE. Therefore, suppliers with interoperable connectivity solutions and ECS across their CHE portfolio (such as the Parties) have an advantage over potential competitors entering the market and/or competitors wishing to expand.

96. We found that there has not been recent material entry, and the frequency of entry is low, which is consistent with barriers to entry being high and entry being unlikely as a result of the Merger.

97. The evidence available to us does not support that any third party would have the necessary capabilities or intention to materially enter or substantially expand in the markets in which we found an SLC, in the near future, as a result of the Merger.

98. Therefore, our conclusion is that timely entry or expansion of sufficient scale is not likely to occur, as a result of the Merger, in order to prevent an SLC from arising in any of the markets in which we found an SLC.

Rivalry-enhancing efficiencies

99. The Parties did not demonstrate that the Merger would result in rivalry-enhancing efficiencies which would offset the adverse effects of the Merger on competition.

100. We have concluded that there are no countervailing factors which would offset the adverse effects of the Merger on competition.

Remedies

101. Where we conclude that a merger has resulted in, or may be expected to result in, an SLC, we are required to decide what, if any, action should be taken for the purpose of remedying, mitigating or preventing that SLC, or any adverse effect result from it.

102. We have considered three structural remedy options:

(a) Prohibition of the Merger, meaning that the Parties would continue to independently compete under separate ownership.

(b) Divestiture of either Konecranes' Port Solutions division or Cargotec's Kalmar division, being the Parties' respective container handling businesses.

(c) The Parties' Remedy Proposal, comprising two separate partial divestiture packages, one from each of Cargotec and Konecranes, which would be sold to a single purchaser; and a commitment to terminate Konecranes' partnership arrangement with Terberg relating to ATT.

103. In assessing possible remedies, we first seek to identify remedies that will, with a high degree of certainty, be effective in comprehensively addressing the SLCs that we have found. We then select the least costly remedy that we consider to be effective, where appropriate taking account of any relevant customer benefits. Lastly, we ensure that the least costly effective remedy is not disproportionate to the SLCs and resulting adverse effects.

Prohibition of the Merger

104. In this case, we have found only one effective remedy: prohibition of the Merger. We consider that this remedy would comprehensively address the SLCs as it would result in Cargotec and Konecranes continuing to compete as independent competitors.

Divestiture of either Konecranes' Port Solutions division or Cargotec's Kalmar division

105. We provisionally found that this remedy option was potentially effective but required further evidence from the Parties on the composition risks raised by such a remedy. The Parties told us that they did not wish to engage with us further on this remedy option and, as a result, we are unable to determine with

sufficient certainty that a remedy involving the divestiture of an entire CHE division would be effective.

The Parties' Remedy Proposal

106. Under this proposal, the Parties would divest two separate packages of assets, consisting of: i) the port cranes (RTG, RMG, ASC and ship-to-shore cranes., together Port Cranes) and straddle carriers operations (SC and ShC, together Straddle Carriers) currently carried out in Cargotec's KAS business unit (the KAS Divestiture Business); and ii) Konecranes' lift trucks mobile equipment (MEQ) business unit (the MEQ Divestiture Business). While the Parties initially indicated that the likelihood of the two packages would be sold to the same purchaser was relatively low, at a very late stage in the CMA's investigation (on 20 March 2022), the Parties' indicated that they would be willing to commit to sell both packages of assets to a single purchaser.

107. Konecranes also proposed to commit to terminate its partnership arrangement with Terberg. We considered that this would be effective in remedying the SLC in the supply of ATT.

108. After thoroughly assessing the Parties' Remedy Proposal, we have found substantial and wide-ranging composition risks associated with both structural elements of the proposal.

109. First, we identified significant risks arising from the scope of the Parties' Remedy Proposal. In particular:

(a) Certain assets currently used in the operation of the Parties' businesses that are not included in the Parties' Remedy Proposal.

(b) Other assets (such as the Parties' existing brands and their connectivity solutions and other software systems) have been included but only in part and/or with limitations attached to their use (eg licenses granted for a limited duration), which may undermine their value to the Divestiture Businesses.

(c) There is material uncertainty over the exact specification and configuration of the Parties' Remedy Proposal (in relation to the identification of the assets and people needed to operate each of the divestiture business effectively).

110. Second, we identified significant risks relating to the product portfolio and scale of the Divestiture Businesses. In particular:

(a) While our evidence base was mixed to some extent, we found that the Parties, as a result of their CHE portfolio being wider than most of their competitors, are likely to compete particularly closely for the customers who value such portfolio breadth now and in the foreseeable future. This means that two separate purchasers of the Divestiture Businesses would not be able to compete with the Merged Entity as effectively as if they had a full CHE offer (ie in a similar way to how the Parties currently compete, or in the future will compete, to win customers), resulting in a material weakening of the competitive constraint that we are seeking to restore through remedial action.

(b) The limited extent of each individual package, would also mean that the purchaser may also not benefit from some of the Parties' advantages of scale.

111. As noted above, at a late stage in the CMA's investigation, the Parties offered to commit to divesting both the KAS Divestiture Business and the MEQ Divestiture Business to a single purchaser. The sale of a single package of assets to a single purchaser would, by its nature, mitigate the risks we identify above regarding the product portfolio of the Divestiture Businesses.

112. A broad portfolio of CHE products and services assembled from a mixture of assets from each of the Parties (a so-called 'mix-and-match' approach) would, however, create additional composition risks. such that the divestiture package will not function effectively. In this regard, we consider that there is a material risk that merging and integrating the KAS Divestiture Business and MEQ Divestiture Business would lead to a weakening of their competitive position in the short to medium term, undermining the effectiveness of the remedy. The limited extent of each individual package would also mean that the purchaser may also not benefit from some of the Parties' advantages of scale.

113. Third, we identified significant risks relating to the complexity of the proposed asset carve-outs.

114. The Parties' Remedy Proposal does not involve the divestiture of fully standalone businesses, but comprise carve-outs of assets, operations, employees and customer and supplier contracts. The carve-out risks relating to the identification, allocation, and transfer of assets to be carved-out of the Parties' existing businesses are substantial and have the potential to significantly impair the competitive capabilities of the divested businesses.

115. In our view, each of these risks taken individually, raises substantial concerns as to whether the Parties' Remedy Proposal would achieve its intended effect with a sufficiently high degree of certainty. Cumulatively, the risks are such that the Parties' Remedy Proposal is unlikely to constitute an effective remedy and therefore a comprehensive solution to the SLCs we have found.

116. We found that, given these risks, a suitable purchaser of the Divestiture Businesses would need substantial complementary capabilities in order to mitigate the composition risks to any material degree. This would present a material risk by reducing the pool of suitable potential purchasers. While mitigating concerns relating to scope of CHE portfolio, the condition offered by the Parties that the suitable purchaser would need to acquire both the KAS Divestiture Business and the MEQ Divestiture business further restricts the pool of suitable purchasers. Furthermore, there are other composition risks which a purchaser is unlikely to be able to mitigate, such as those relating to scope of the divestiture packages and asset carve-outs, and the integration and development of the competitive capability of two distinct businesses. This risks an outcome in which the purchaser(s) of the Divestiture Businesses would be a structurally weaker competitor than Konecranes or Cargotec in some or all of the markets in which we have found an SLC.

117. For these reasons, we have concluded that the Parties' Remedy Proposal is not an effective remedy to the all of the SLCs we have found.

118. As such, the only effective remedy to the SLCs we have found was the prohibition of the Merger. As the Merger is likely to result in significant competitive harm in multiple markets and we have not seen any evidence that the costs of implementing a prohibition of the Merger would outweigh its benefits, we found that prohibition of the Merger is proportionate to the SLCs and their adverse effects.

Decision

119. We have found that:

(a) arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation; and

(b) the creation of that situation may be expected to result in an SLC as a result of horizontal unilateral effects in the supply of each of the following categories of equipment in Europe, including the UK: (i) RTG, (ii) ASC, (iii) SC and ShC, (iv) RS, (v) HDFLT, (vi) ECH and (viii) ATT.

120. We have decided that the prohibition of the Merger is the only effective remedy to address the SLCs and the resulting adverse effects we have found.