

Anticipated merger between Cargotec Corporation and Konecranes Plc

Final report

© Crown copyright 2022

You may reuse this information (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence.

To view this licence, visit www.nationalarchives.gov.uk/doc/open-government-licence/ or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: publicsectorinformation@nationalarchives.gov.uk.

Website: www.gov.uk/cma

**Members of the Competition and Markets Authority
who conducted this inquiry**

Martin Coleman (*Chair of the Group*)

Jo Armstrong

Cyrus Mehta

Crispin Wright

Chief Executive of the Competition and Markets Authority

Andrea Coscelli

The Competition and Markets Authority has excluded from this published version of the report information which the Inquiry Group considers should be excluded having regard to the three considerations set out in section 244 of the Enterprise Act 2002 (specified information: considerations relevant to disclosure). The omissions are indicated by [✂]. Some numbers have been replaced by a range. These are shown in square brackets. Non-sensitive wording is also indicated in square brackets.

Contents

	<i>Page</i>
Summary	7
Overview	7
Background	8
The reference	8
The Parties and transaction	8
Industry background	9
Our findings	9
Relevant merger situation	9
The counterfactual	10
Market definition	10
Competitive assessment	14
Countervailing factors	31
Remedies	33
Decision	36
Final Report	38
1. The reference	38
2. Industry background	39
Container handling equipment	39
Quay Cranes	42
Yard cranes	42
HTE	44
MEQ	44
Spreaders	45
CHE supply chain	45
Maintenance and servicing	46
Utilities procurement rules	47
Impact of UK Exit	47
CHE customers	47
Industry trends	49
Digitalisation	50
Automation	50
Electrification	53
3. The Parties, the transaction and the RMS	53
Introduction	53
The Parties	54
Cargotec	54
Konecranes	55
Overlap	56
The transaction	57
Timeline of key events	57
Transaction terms	57
Rationale for the Merger	58
Parties' submissions	58
Evidence gathered on synergies	59
RMS	62
Enterprises ceasing to be distinct	63
UK nexus	64
Conclusion	64

4. Counterfactual.....	64
Introduction	64
Framework for assessing the counterfactual	65
Counterfactual scenarios considered by the CMA	66
Prevailing conditions of competition in all markets.....	67
Parties' submissions.....	67
Our assessment	68
[✂].....	69
Cargotec's submission	69
Our assessment	70
Entry by one or both of the Parties in the supply of ATT	75
Entry by Cargotec in the supply of ATT	75
Cargotec's views on its entry in the supply of ATT	76
The context for assessing Cargotec's entry in the supply of ATT	76
CMA's assessment of the likelihood of Cargotec's entry in the supply of ATT	76
Entry by Konecranes in the supply of ATT.....	77
Konecranes' views on its entry in the supply ATT	78
The context for assessing Konecranes' entry in the supply of ATT	79
CMA's assessment of the likelihood of Konecranes' entry in the supply of ATT	83
Conclusion on the most likely counterfactual	92
5. Market definition.....	93
Gantry Cranes.....	94
Product market definition.....	94
SC and ShC.....	109
Product market definition.....	109
Geographic market definition.....	115
MEQ.....	118
Product market definition.....	118
Geographic market definition.....	127
Automated Terminal Tractors	138
Product market definition.....	138
Geographic market definition.....	141
6. Horizontal unilateral effects theories of harm.....	142
Approach to unilateral effects	142
Conduct of the inquiry.....	143
Approach to evidence.....	151
Competitive dynamics in the supply of CHE products.....	164
The role of Chinese suppliers within the supply of CHE and the extent to which the Parties are able to compete against Chinese suppliers.....	165
The Parties' broad CHE portfolios and implications for closeness of competition	186
The role of tender processes in producing competitive outcomes	189
7. Horizontal effects: RTG and ASC	191
Horizontal unilateral effects in the supply of RTG	191
Framework and approach.....	191
Closeness of competition between the Parties and competitive constraints from alternative suppliers	192
Horizontal unilateral effects in the supply of ASC	230

Closeness of competition between the Parties and competitive constraints from alternative suppliers	230
8. Horizontal effects: SC and ShC	256
Framework and approach	256
Closeness of competition between the Parties and competitive constraints from alternative suppliers	257
Parties' views.....	257
Shares of supply.....	258
Bidding analysis.....	259
Third-party evidence.....	261
Internal documents	264
Entry and expansion of other suppliers of SC and ShC.....	269
Our conclusion.....	270
9. Horizontal effects: MEQ	272
Framework and approach	272
Parties' general views on MEQ markets	273
Response to Parties' general views on MEQ markets.....	274
Horizontal unilateral effects in the supply of RS.....	275
Parties' views.....	275
Shares of supply.....	276
Bidding analysis.....	280
Third-party evidence.....	284
Internal documents	296
CMA's conclusion	308
Horizontal unilateral effects in the supply of HDFLT	312
Parties' views.....	312
Shares of supply.....	313
Bidding analysis.....	318
Third-party evidence.....	323
Internal documents	333
CMA's conclusion	338
Horizontal unilateral effects in the supply of ECH	342
Parties' views.....	342
Shares of supply.....	343
Bidding analysis.....	347
Third-party evidence.....	351
Internal documents	362
CMA's conclusion	365
Entry and expansion of alternative suppliers of MEQ	368
Parties' views.....	368
Assessment of evidence on specific entry or expansion	370
10. Horizontal effects: ATT	372
The CMA's analytical framework.....	372
Parties' views.....	374
Evidence on competitive dynamics in the supply of ATT	377
Shares of supply.....	377
Internal documents	379
Third-party evidence.....	384
Other evidence relating to ATT development by potential alternative suppliers	391

Overall assessment of closeness of competition and potential competitive constrains in the supply of ATT	393
The Parties	393
Terberg	394
Other potential suppliers of ATT	395
Conclusion on the effect of the Merger on potential competition in the supply of ATT	397
11. Vertical effects	398
Framework and approach	398
Input foreclosure	399
Customer foreclosure	400
Market definition	400
Spreaders	400
MHC	402
Input foreclosure in the supply of crane spreaders to MHC suppliers	403
Parties' views	403
Our assessment	404
Customer foreclosure in the supply of mobile spreaders	406
Parties' views	406
Our assessment	407
12. Countervailing Factors	409
Countervailing factors: entry and expansion	410
CMA framework for assessing entry and expansion	411
Parties' views on entry or expansion	413
Barriers to entry and/or expansion	417
The investment and time required to enter and/or expand	418
The importance of having a strong track record and reputation	440
The importance of having established customer relationships	450
The importance of having interoperable connectivity solutions	457
Consideration of other possible barriers to entry or expansion	471
Assessment on barriers to entry and / or expansion	472
Entry and expansion as a result of the Merger	474
Parties views	474
Third-party evidence	474
Conclusion on entry and expansion as a countervailing factor	477
Countervailing factors: Merger efficiencies	478
Our assessment	479
Conclusion on countervailing factors	479
13. Remedies	479
Introduction	479
CMA framework for assessing remedies	481
Nature of the SLCs and resulting adverse effects	483
Overview of remedy options considered	484
Assessment of the effectiveness of prohibiting the Merger	486
Assessment of the effectiveness of divesting the entire CHE division of one of the Parties	487
Assessment of effectiveness of the Parties' Remedy Proposal	488
Remedy description	489
The views of the Parties	498
Our approach to the evidence on the effectiveness of the Parties' Remedy Proposal	501

Overview of third-party evidence	518
Composition risks	522
Purchaser risks.....	635
Conclusion of our assessment of the effectiveness of the Parties' Remedy Proposal	649
Assessment of the Termination Commitment Proposal.....	650
Conclusion on effectiveness of the Parties' Remedy Proposal.....	651
Conclusions on effective remedy options.....	651
Assessment of relevant customer benefits	652
Our assessment of RCBs	653
Conclusion on RCBs	653
Proportionality assessment.....	653
Proportionality assessment framework.....	653
Parties' views on proportionality	654
Our assessment of proportionality	654
Conclusion on proportionality	655
Decision on the effectiveness and proportionality of possible remedies	656
Remedy implementation	656
14. Decision	656

Appendices

- A: Terms of reference and conduct of the inquiry.
- B: Shares of supply.
- C: Bidding analysis.
- D: Third-party evidence.

Glossary

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

¹ Europe refers to the whole continent, including both the European Economic Area and 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 [X], we concluded that the evidence does not show with sufficient certainty that Cargotec would have [X] 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

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 ([X]) 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

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

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 [REDACTED], 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] [REDACTED]%) 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 [REDACTED]. 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] [REDACTED] % 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, [REDACTED].
 - (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.

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

- (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.
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' [redacted]. 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.
62. The evidence indicates that other suppliers, including CVS, Liebherr, FTMH, and Linde do not compete closely with the Parties for UK customers and

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

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:

- (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,

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.

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 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.

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

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 [X] with Konecranes for the development of ATT. The [X] 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.

Final Report

1. The reference

- 1.1 On 24 June 2021, Cargotec Corporation (Cargotec) and Konecranes Plc (Konecranes) (the Parties) submitted a request to the Competition and Markets Authority Parties) for their anticipated merger (the Merger) to be 'fast tracked' for a phase 2 investigation.⁷ In making such a request, the Parties conceded that the test for reference under section 33 of the Enterprise Act 2002 (the Act) was met in relation to a number of markets.⁸
- 1.2 On 13 July 2021, the CMA found that there was a realistic prospect that the Merger would lead to a substantial lessening of competition (SLC) in those markets and referred the Merger for an in-depth phase 2 inquiry. The terms of reference, along with information on the conduct of the inquiry, are set out in Appendix A. We are required to prepare and publish a final report by 1 April 2021.⁹
- 1.3 In exercise of its duty under section 33(1) of the Act, the CMA referred the Merger to its chair for the constitution of a group¹⁰ of CMA panel members (the Inquiry Group). In accordance with section 36(1) of the Act, the Inquiry Group is to investigate and report on the following questions:
 - (a) whether arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation (RMS); and
 - (b) if so, whether the creation of that situation may be expected to result in an SLC within any market or markets in the United Kingdom (UK) for goods or services.
- 1.4 In answering these questions, the Inquiry Group has applied the 'balance of probabilities' threshold to their analysis. That is, they have decided whether it is more likely than not that the Merger will result in an SLC.

⁷ Such a request is considered in accordance with paragraphs 7.5 to 7.21 of the [Mergers: Guidance on the CMA's jurisdiction and procedure \(December 2020\) \(CMA2 revised\)](#).

⁸ These markets are reach stackers, straddle carriers, and rubber-tyred gantry cranes.

⁹ In accordance with [section 39\(1\)](#) of the Act. The statutory deadline was extended for 39 days as a result of the Parties' failure to comply with section 109 notices addressed to each Party in accordance with [section 39\(4\)](#) of the Act. The statutory deadline was further extended by eight weeks pursuant to [section 39\(3\)](#) of the Act. For further information, see Appendix A on the conduct of the Inquiry.

¹⁰ [Section 33\(1\)](#) of the Act provides that the group is to be constituted under Schedule 4 to the Enterprise and Regulatory Reform Act 2013.

- 1.5 This document, together with its appendices, constitutes the Inquiry Group's Final Report, published and notified to Cargotec and Konecranes in line with the CMA's rules of procedure.¹¹ Further information can be found on the [inquiry case page](#).¹²
- 1.6 Throughout this document, where relevant, Cargotec and Konecranes are collectively referred to as 'the Parties' or, for statements referring to the future, 'the Merged Entity'.

2. Industry background

- 2.1 The Parties are both active in supply of container handling equipment (CHE).
- 2.2 This Chapter sets out:
- (a) a brief description of different types of CHE;
 - (b) a brief description of the main aspects of the supply of CHE, including an overview of: (i) the supply chain; (ii) the main customers; (iii) the importance of maintenance and servicing; (iv) the utilities procurement rules; and (v) impact of UK exit of the EU on the industry in the UK; and
 - (c) an overview of the main industry trends.

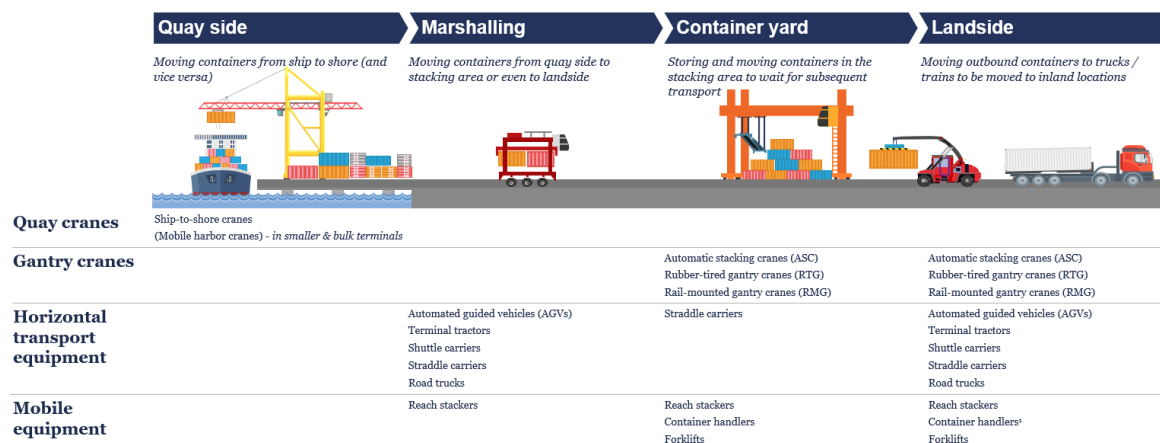
Container handling equipment

- 2.3 CHE is used to transport containers. It is available in a range of types for use in different situations. The main types of CHE used at different parts of a port terminal are shown in Figure 1.

¹¹ [CMA rules of procedure for merger, market and special reference groups \(CMA 17\)](#), Rule 11.

¹² The CMA's case page can be found at: [Cargotec Corporation/Konecranes Plc merger inquiry](#).

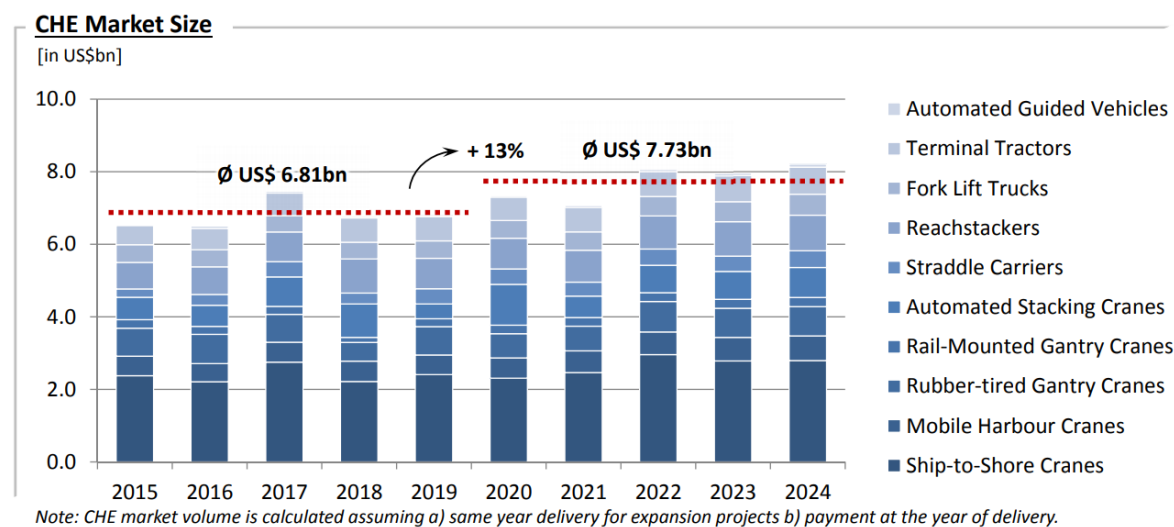
Figure 1: Suitability of different pieces of container and cargo handling equipment at a port terminal



Source: [3]

2.4 A market report by DS Research, *Container Terminal Foresight*, dated January 2020 (the CTF Market Report) estimates that the CHE global market size, excluding reach stackers, forklifts and empty container handlers, is around \$7 billion.¹³ It forecasts that it will increase to around \$7.7 billion average annual sales between 2020 and 2024.¹⁴ This increase is driven by a projected 10% of price increases (equating to around 2% per annum), 2% of replacement¹⁵ business, and 2% of new terminal business.¹⁶ Figure 2 below shows this forecast split by type of CHE.

Figure 2: CHE market size in US Dollars by type



Source: DS Research (January 2020), *Container Terminal Foresight 2024*, p 4.

¹³ *Container Terminal Foresight, January 2020*, p 5.

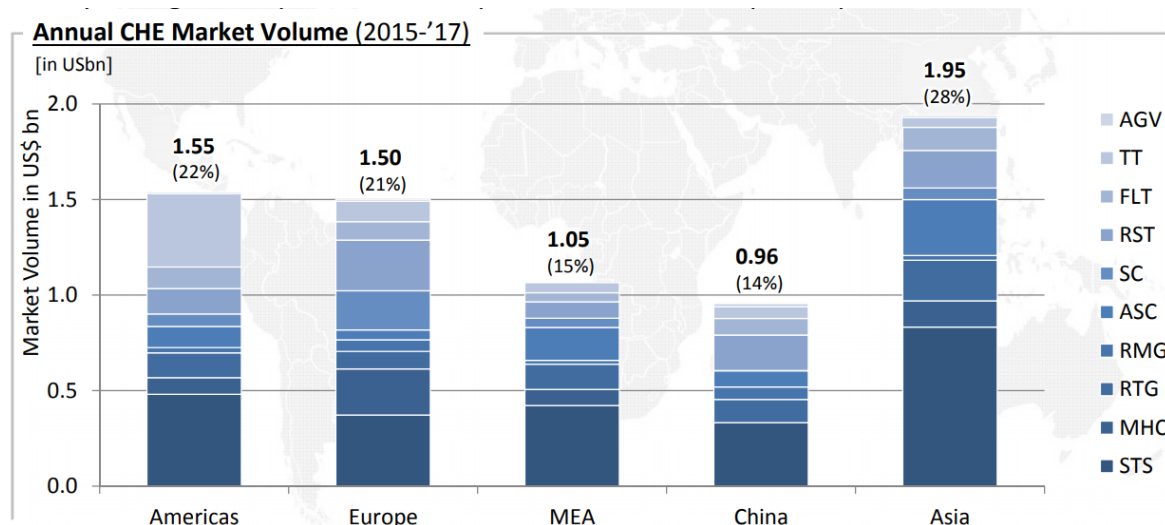
¹⁴ *Container Terminal Foresight, January 2020*, p 4.

¹⁵ Replacement refers to units sold to replace the same type of equipment at the end of operational lifetime.

¹⁶ *Container Terminal Foresight, January 2020*, p 5.

2.5 Figure 3 below shows the market between 2015 and 2017 split by region and by type of CHE.

Figure 3: Percentage shares of global sales revenues by CHE type and region



Source: DS Research (January 2020), [Container Terminal Foresight 2024](#), p 19.

2.6 The CTF Market Report estimates that the throughput¹⁷ of containers at maritime ports in the period from 2005 to 2019 increased by a compound annual growth rate (CAGR) of 5.5%. Table 1 below shows the comparable CAGR in the number of units in operation of different types of CHE.

Table 1: Compound annual growth rate of operational CHE units and comparison with throughput from 2005 to 2019

CAGR type	Operational units CAGR	Difference in percentage points between operational units CAGR and 5.5% throughput CAGR
Quay Cranes		
Ship-to-Shore Cranes	4.1% ¹⁸	-1.4%
Mobile Harbour Cranes	5.4% ¹⁹	-0.1%
Yard Cranes		
Rubber-Tyred Gantry Cranes	5.5% ²⁰	0%
Rail-Mounted Gantry Cranes	3.4% ²¹	-2.1%
Shuttle Carriers	0.9% ²²	-4.6%

Source: DS Research (January 2020), [Container Terminal Foresight 2024](#).

2.7 In this section, we provide high-level information, including some headline revenue and volume statistics, on the following broad categories of CHE:

(a) Quay cranes;

¹⁷ Throughput refers to the quantity of TEUs loaded or unloaded from vessels at maritime ports.

¹⁸ DS Research (January 2020), [Container Terminal Foresight 2024](#), p 21.

¹⁹ DS Research (January 2020), [Container Terminal Foresight 2024](#), p 32.

²⁰ DS Research (January 2020), [Container Terminal Foresight 2024](#), p 39.

²¹ DS Research (January 2020), [Container Terminal Foresight 2024](#), p 49.

²² DS Research (January 2020), [Container Terminal Foresight 2024](#), p 64.

- (b) Yard cranes;
- (c) Horizontal transport equipment (HTE); and
- (d) Mobile equipment (MEQ).

Quay Cranes

2.8 Quay Cranes comprise ship-to-shore cranes (STS) and mobile harbour cranes (MHC):

- (a) STS are used to move containers from ships to the quayside.
- (b) MHC are quayside cranes used for loading and unloading ships.

2.9 From a global perspective, STS is the dominant type of quay crane (with around 5,900 units), loading and unloading around 90% of all containers.²³

2.10 The CTF Market Report remarks that, '[a]gainst the background of an ever-growing fleet of STS cranes, the replacement business gets more important'. It estimates that the number of replacement units increased from annually five to ten units in the early 1990s, to roughly 40 to 50 units in the early 2000s, and to around 110 units today, which corresponds to around one-half of annual sales.²⁴

2.11 The CTF Market Report estimates that the MHC market comprises around 8% of the total CHE market.²⁵

2.12 Smaller MHCs with a lift capacity below 65 tonnes have increasingly been replaced by other types of cranes, with sales declining from around 40% of MHC sales in 2000 to around 10% in 2019.²⁶

Yard cranes

2.13 Yard cranes (also known as Gantry Cranes) comprise rubber-tired gantry cranes (RTG), rail-mounted gantry cranes (RMG), and automated stacking cranes (ASC):

- (a) RMG are common in large container terminals and are used to transport and stack containers. They are mounted on rails.

²³ DS Research (January 2020), [Container Terminal Foresight 2024](#), p 11.

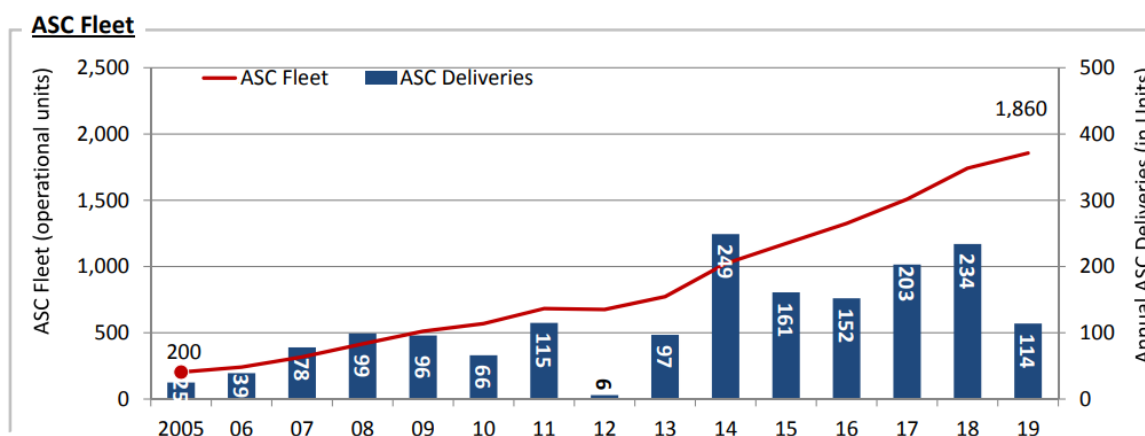
²⁴ DS Research (January 2020), [Container Terminal Foresight 2024](#), p 27.

²⁵ DS Research (January 2020), [Container Terminal Foresight 2024](#), p 32.

²⁶ DS Research (January 2020), [Container Terminal Foresight 2024](#), p 32.

- (b) RTG are mounted on tires and are used for handling containers in and from the stack. They can be driven from stack to stack and are therefore more flexible than RMG.
- (c) ASC are an automated (driverless) version of RMG. They perform both transport and stacking functions.^{27,28}
- 2.14 RTG are the dominant type of yard crane (with around 10,000 units), loading and unloading the majority of containers.²⁹
- 2.15 The CTF Market Report states that, in the past several years, there has been a trend towards RTGs being substituted with ASCs for new terminal projects and major expansion projects³⁰ The operational ASC fleet and deliveries between 2005 and 2019 is illustrated in Figure 4.
- 2.16 An article in the November 2020 edition of World Cargo News states that '[t]he rail-mounted yard crane market continues to grow, and deliveries in 2020 were more than double the level of 2019, at 298 cranes [264 ASCs and 34 RMGs]. Some 343 ASCs and RMGs were on order for delivery in 2021 and beyond'.³¹

Figure 4: Global ASC fleet (operational units) and deliveries from 2005 to 2019



Source: DS Research (January 2020), [Container Terminal Foresight 2024](#), p 58 (chart legend corrected by the CMA).

²⁷ The Parties' response to the European Commission PN RFI 4, [🔗]

²⁸ See more details about the characteristics and functions of each of these cranes in Chapter 6.

²⁹ DS Research (January 2020), [Container Terminal Foresight 2024](#), p 11.

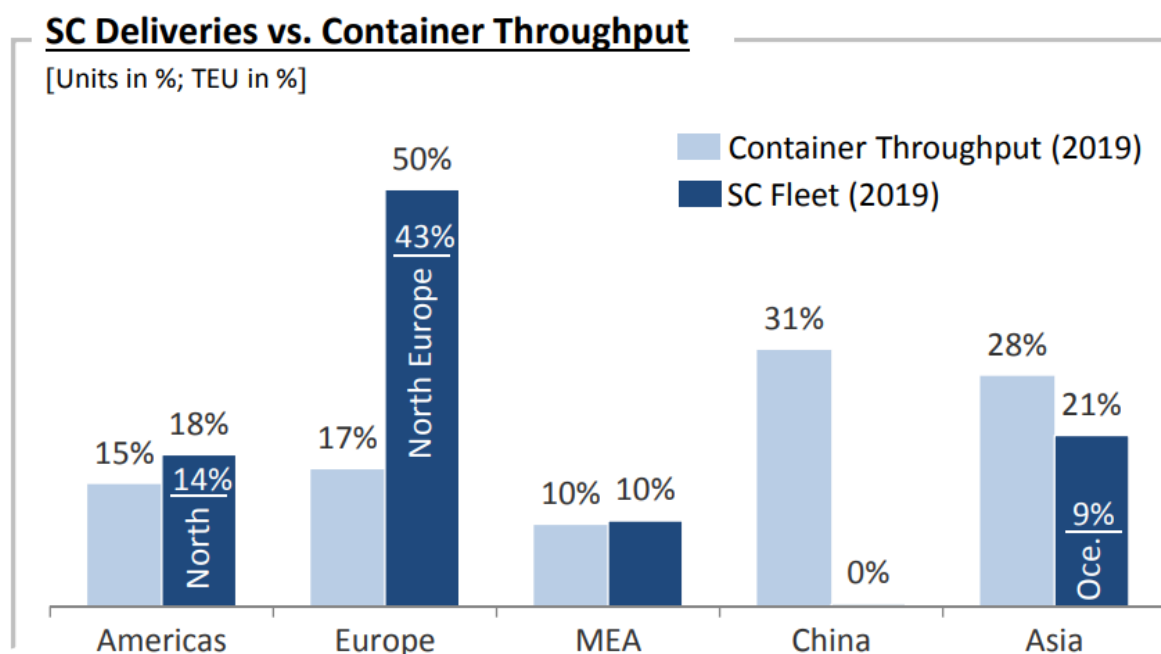
³⁰ DS Research (January 2020), [Container Terminal Foresight 2024](#), p 39.

³¹ [World Cargo News](#), (November 2020), p 37.

HTE

- 2.17 HTE comprises straddle carriers (SC), shuttle carriers (ShC), automated guided vehicles (AGV) and terminal tractors (TT).³²
- 2.18 The CTF Market Report estimates that the number of operational SC has been broadly stable in recent years, increasing from around 3,600 units in 2005 to around 3,800 units by the end of 2019, achieving a 0.9% CAGR in the period versus a 5.5% CAGR for container throughput, as illustrated in Figure 5.³³ It gives the following reasons for the stable market development:
- (a) 'Few new terminal projects choose SC as [HTE], resulting in SC sales mainly driven by replacement demand'.
 - (b) 'SC-operating terminals are mainly located in "low growth" regions, such as North America, Europe and Oceania'.³⁴

Figure 5: Regional distribution of SC deliveries and container throughput in 2019



Source: DS Research (January 2020), [Container Terminal Foresight 2024](#), p 69.

MEQ

- 2.19 MEQ comprises reach stackers (RS), empty container handlers (ECH), forklift trucks (FLT).³⁵

³² See more details about the characteristics and functions of each of these cranes in Chapter 6.

³³ DS Research (January 2020), [Container Terminal Foresight 2024](#), p 64.

³⁴ DS Research (January 2020), [Container Terminal Foresight 2024](#), p 64.

³⁵ See more details about the characteristics and functions of each of these cranes in Chapter 6.

2.20 Cargotec has estimated the global revenues and units sold for each type of MEQ in 2020. This information is shown in Table 2 below.

Table 2: Cargotec's assessment of MEQ global 'market' size by revenue and volume

Type of MEQ	Total 'market'* size / € million	Total 'market' size / units	Average unit price / € thousand†
RST	g4	1,908	322
ECH	139	732	190
FLT	597	3,162	189
Spreaders	86	2,770	31

Source: Cargotec internal document, [REDACTED].

Notes:

* In the context of this information, 'market' refers to the market determined by Cargotec.

† Total 2020 'market' size divided by the number of units.

2.21 MEQ is sold to maritime ports³⁶ and other industrial customers (eg in warehouses or industrial applications for other cargo types, such as in paper mills and steel mills).³⁷

Spreaders

2.22 Spreaders are the piece of CHE used to grip containers. This function is typically based on a hydraulic or electric pump and steel glide plates. Spreaders are used in all types of port cranes (eg STS cranes, Gantry Cranes, MHC cranes, etc), some MEQ (RS and container handlers) and some HTE (SC and ShC).³⁸

CHE supply chain

2.23 Based on the evidence we have obtained, we understand that the supply of CHE is largely an assembly business, whereby suppliers source components from third parties rather than manufacturing components themselves.

2.24 Large CHE (such as Quay Cranes, yard cranes and HTE) is typically sold directly to container handling terminals.

2.25 MEQ may be leased, sometimes in collaboration with financial services providers.

³⁶ See list of UK terminal ports in Table 3.

³⁷ Merger Notice, [REDACTED].

³⁸ Merger Notice, [REDACTED].

- 2.26 Some suppliers of CHE also act as distributors. For example, in certain countries, Konecranes supplies manual TT as a distributor of the Dutch supplier, Terberg.³⁹
- 2.27 Customers seeking to procure Quay Cranes, yard cranes or HTE largely use formal tender processes due to the specialist nature of these products, which are often designed and priced separately for each customer, with the final price dependent upon the specification, number of units and delivery location.⁴⁰
- 2.28 By contrast, customers seeking a small number of MEQ units on an *ad hoc* basis (for example, industrial customers) do not generally use formal tender processes.⁴¹

Maintenance and servicing

- 2.29 After-sales services include services such as preventive maintenance inspections, routine maintenance to adjust and lubricate equipment, compliance inspections to satisfy regulatory and safety requirements, repairs and retrofits, modernisations, as well as the supply of spare parts.⁴²
- 2.30 CHE is usually in heavy use, sometimes continuously day and night, which makes regular maintenance and servicing necessary, and this is also important from an operational perspective. Customers usually demand a high degree of responsiveness and expect to receive maintenance and repair services for all types of CHE at short notice.⁴³ From a container handling terminal operator's perspective, it is important that planned and unplanned downtimes are kept to the minimum to avoid significant disruptions to operations.
- 2.31 After-sales services are provided to customers by original equipment manufacturers (OEMs), distributors or other third parties. Some customers develop their own in-house expertise to perform repair and maintenance of their own CHE.⁴⁴
- 2.32 We provide more detail about the importance of servicing and maintenance in relation to each type of CHE in our competition assessment in Chapters 7, 8 and 9.

³⁹ Konecranes Form CO [REDACTED]

⁴⁰ Parties response to the CMA Phase 1 Decision, 23 July 2021, paragraph 5.2.

⁴¹ Parties response to the CMA Phase 1 Decision, 23 July 2021, paragraph 5.4.

⁴² Merger Notice, [REDACTED].

⁴³ Merger Notice, [REDACTED].

⁴⁴ Merger Notice, [REDACTED].

Utilities procurement rules

- 2.33 The Government sets thresholds which apply to the award of contracts or framework agreements by ports,⁴⁵ above which certain advertising and tendering rules apply.⁴⁶
- 2.34 Contracts by contracting authorities and utilities within the European Union and in the UK which fall within the scope of public procurement rules must be advertised in an 'open and transparent manner' so as to ensure equal access to contract opportunities across the European Union. This requires contracts to be advertised in prescribed forms in the UK e-notifications service.

Impact of UK Exit

- 2.35 As a consequence of the UK leaving the European single market and customs union, the UK now has autonomy over the technical regulations, standards and conformity assessment procedures required to place products on the UK market.⁴⁷
- 2.36 As part of our competitive assessment, we asked third parties about their perceptions of the impact of the UK's exit from the European single market and customs union on the container handling industry. While third-party views were mixed, there was no consensus that it created significant trade barriers in the UK and this corresponds with our conclusions based on the facts and evidence.

CHE customers

- 2.37 The Parties' CHE is used by container handling terminals, including maritime, river and inland terminals. Some of these terminals are managed by global terminal operators (GTOs) which have locations in more than one country. Some types of CHE, such as MEQ are also used by customers in other industries.

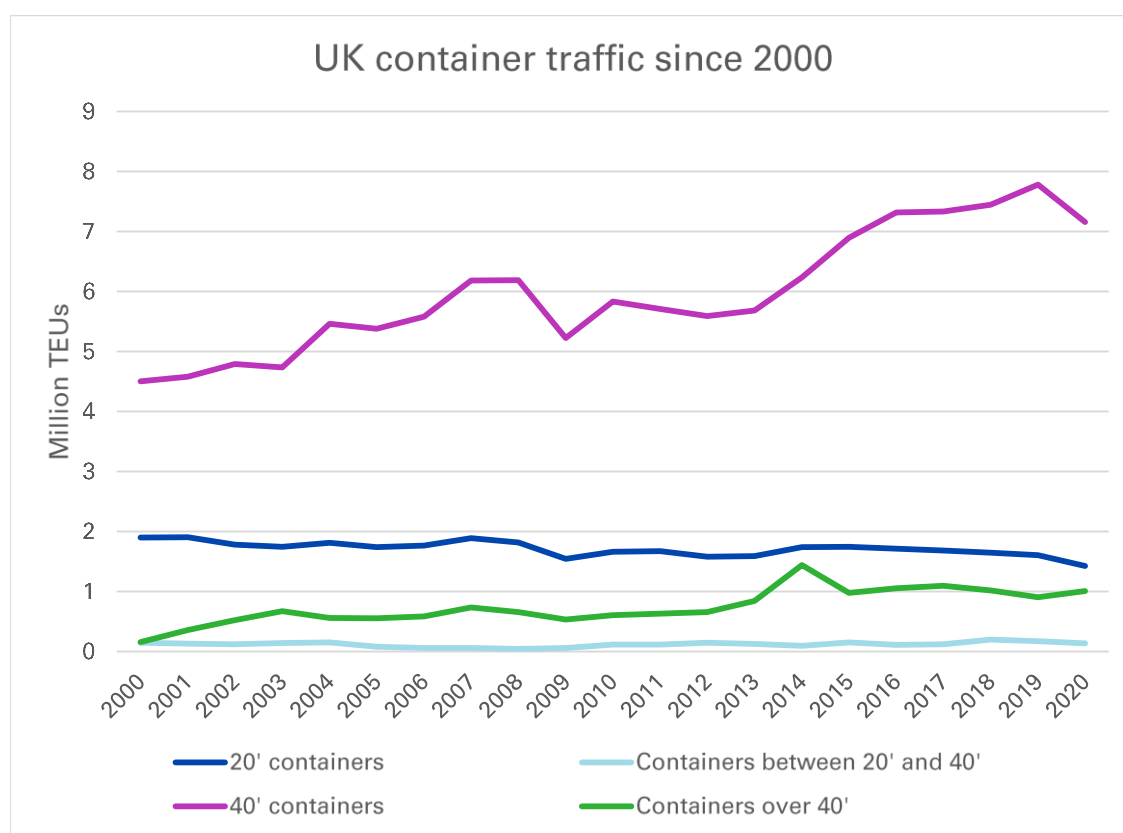
⁴⁵ Entities covered include public and private undertakings which carry on activities relating to the exploitation of a geographical area for the purpose of the provision of maritime or inland ports or other terminal facilities to carriers by sea or inland waterway.

⁴⁶ In England, Wales and Northern Ireland: the Utilities Contracts Regulations 2016; and in Scotland: the Utilities Contracts (Scotland) Regulations 2016.

⁴⁷ Cabinet Office (2021), [Policy Paper, The UK's new relationship with the EU](#).

- 2.38 Suppliers of CHE generally differentiate between ‘greenfield’ projects (new container handling terminals) and ‘brownfield’ projects (upgrades or expansions of existing operations).⁴⁸
- 2.39 A provider of research and consulting services, Dewry, estimates that 21 companies (which it classifies as global or international terminal operators) account for around two-thirds of global container throughput.^{49,50} As illustrated in Figure 6, over the last 20 years, the number of containers 40 foot⁵¹ in length which have gone through UK major ports has increased at a CAGR of around 5%.⁵²

Figure 6: UK container traffic since 2000 by container size, in millions of twenty-foot equivalent units (TEU)



Source: [Department for Transport \(2020\), Annual Port Freight Statistics](#), p 11 (CMA analysis of data)

⁴⁸ DS Research (January 2020), [Container Terminal Foresight 2024](#), p 2.

⁴⁹ Throughput refers to the quantity of TEUs loaded or unloaded from vessels at maritime ports.

⁵⁰ [Drewry \(2020\), Global Container Terminal Operators: Annual Review and Forecast 2020/21](#), p 4.

⁵¹ There are different sizes of container box. The International Standards Organisation has published standardised dimensions so that space is used efficiently. The most common sizes of container are as follows: a) Length: 20 feet or 40 feet; b) Height: 8 feet 6 inches; c) Width: 8 feet. The standardised measure used is twenty-foot equivalent units (TEU), where one 40 foot container equals two TEU (see [GlobalSpec, Engineering 360, ISO Containers](#)).

⁵² [Department for Transport \(2020\), Annual Port Freight Statistics](#), p 11 (CMA analysis of data).

2.40 Table 3 below shows the largest container handling terminals in the UK.

Table 3: UK ports sorted by millions of container tonnage in 2020

<i>Port name</i>	<i>Millions of container tonnage in 2020</i>	<i>Container handling terminal operator</i>
Felixstowe	19.19	Hutchison Ports
London*	15.35	DP World
Southampton	8.42	DP World
Liverpool	5.89	Peel Ports
Teesport	2.83	PD Ports
Forth	2.16	Forth Ports Group
Hull	2.15	Associated British Ports (ABP)
)Grimsby & Immingham	2.08	ABP
Belfast	1.57	Belfast Harbour
Bristol	0.82	The Bristol Port Company
Clyde	0.53	Peel Ports
Medway	0.31	Peel Ports
Portsmouth	0.29	Portsmouth City Council
Tyne	0.26	Port of Tyne
Warrenpoint	0.22	Warrenpoint Harbour Authority
Dover	0.06	Dover Harbour Board
Aberdeen	0.02	Aberdeen Harbour

Source: [Department for Transport \(2020\), Annual Port Freight Statistics](#), p 6 (CMA analysis). [UK Major Ports Group website, Members' Ports](#).

Notes:

* Port of London includes London Gateway.

2.41 Hutchison Ports and DP World are GTOs.

2.42 There are no greenfield container handling terminals in the UK, however, Teesport has significantly expanded with £120 million of investment over the past decade and 12% growth in year on year container volume in recent years.⁵³ [REDACTED].⁵⁴

Industry trends

2.43 We set out below some of the main industry trends which provide context for our competition assessment.

2.44 The Parties identified the following main trends in the industry:

- (a) the expansion of state-owned Chinese competitors;
- (b) the customers' demand for sustainable products which reduce their carbon emissions;
- (c) a drive towards digitalisation, automation and electrification (at least in part driven by (b)), and

⁵³ PD Ports, Teesport. See <https://www.pdports.co.uk/locations/teesport/>.

⁵⁴ Call note [REDACTED].

(d) the consolidation of customers.⁵⁵

2.45 We briefly introduce some of these trends below. The Parties' submission about the expansion of state-owned Chinese competitors and consolidation of customers is taken into account in our competitive assessment. The competitive position of the Parties and their competitors in the context of these trends is also considered in the competitive assessment.

Digitalisation

2.46 Digitalisation refers to the communication and recording of information relating to CHE, including the connection between CHE and a digital platform and the production of CHE usage data.

2.47 Digitised, ie more 'intelligent', CHE generally relates to CHE using various types of sensors that gather all kinds of data and feed to a dedicated platform. Today, almost all new CHE has sensors and software pre-installed; older equipment is often upgraded with such sensors and systems and thus can be made (almost) equally 'intelligent'. This applies to all types of CHE, ie cranes, HTE and MEQ. Certain sensors, for instance, are used to detect how much traction or speed is needed for particular tasks and thus can increase the equipment's energy efficiency.⁵⁶

2.48 Equipment users, eg port and terminal operators, generally have the possibility and are keen to utilize the data generated by the equipment they operate. Gathering data from CHE allows port operators (or other customers) to run data analytics and thus plan port operations more efficiently, eg by coordinating the interactions of their CHE better.⁵⁷

Automation

2.49 Automation refers to CHE which can fulfil its certain functions in an autonomous fashion (with less or without a human operator). There are varying degrees of automation, ranging from, eg certain automated features at equipment level to remotely controlled or even fully automated 'smart' equipment units. Even manual equipment is comparably 'smart' nowadays as there is various technology built into the equipment to enhance safety, precision, operability, etc.⁵⁸ Machines are typically only considered (fully) automated when they can be operated without any (or at least only limited)

⁵⁵ Merger Notice, [REDACTED].

⁵⁶ Merger Notice, [REDACTED].

⁵⁷ Merger Notice, [REDACTED].

⁵⁸ Merger Notice, [REDACTED].

human involvement (be it an on-board driver or a remote operator). This is what is generally referred to as automated equipment.⁵⁹ Automation may involve a degree of human operation or supervision.

- 2.50 CHE can be equipped with automated capabilities when it is manufactured or by retrofitting existing CHE with components, accessories or software.⁶⁰
- 2.51 CHE can be controlled using equipment control systems (ECS). This is a software solution that monitors and guides automated CHE. Container handling terminals use terminal operating systems (TOSs) to manage their operations.
- 2.52 The implementation of automated operations generally requires three different layers of automation:
- (a) The equipment layer, ie automated equipment uses certain features (eg sensors, cameras, on-board control software systems) that are built into the equipment and are a prerequisite for automated operations. These features vary between equipment types.
 - (b) The ECS layer, ie the software that monitors and guides the automated equipment fleet to operate in a safe and efficient manner. The ECS layer is downwards integrated into the equipment layer and upwards integrated into the TOS.
 - (c) The TOS layer, the TOS controls the logistics of a terminal and plan and optimises container movements and storage at a terminal, as well as the use of assets and labour.⁶¹
- 2.53 The benefits of automation are typically said to be greater productivity, greater safety, and cost savings. One RTG competitor, for example, told us that automation is important for cranes 'due to the reduction of labour'.⁶²
- 2.54 One RTG Competitor told us that it is important for container handling terminal productivity that there is a 'symbiotic relationship' across its ECS and TOS.⁶³
- 2.55 The CTF Market Report states that the CHE market will be driven by:

⁵⁹ Merger Notice, [REDACTED].

⁶⁰ Konecranes, Port Services, Retrofits [online], available at <https://www.konecranes.com/service/port-services/retrofits> [accessed 23/11/2021].

⁶¹ Merger Notice, [REDACTED].

⁶² Call note [REDACTED].

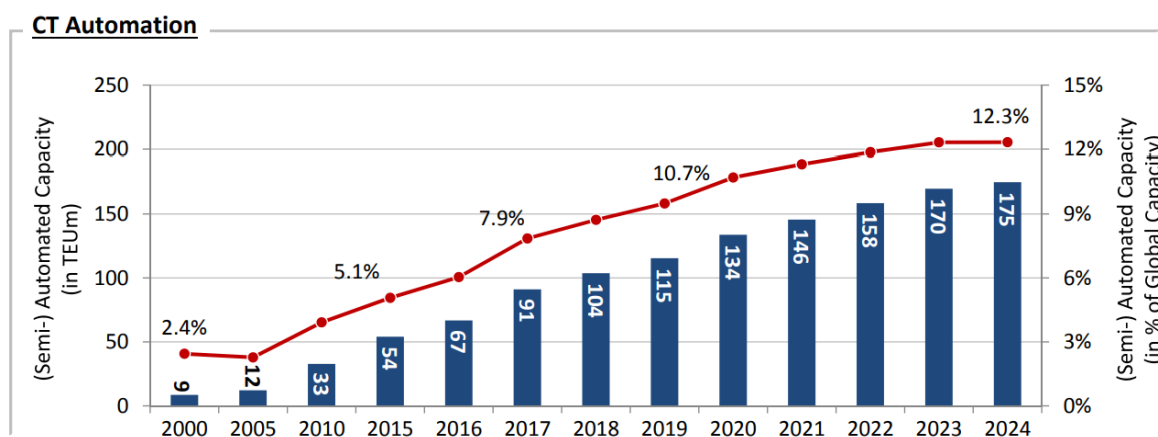
⁶³ Call note [REDACTED].

- (a) 47% new terminal business (demand arising from new terminals and capacity expansions).
- (b) 53% replacement demand (increasing replacement demand for outworn equipment at existing terminals).
- (c) The shift towards ASCs and, to a lesser extent, AGVs.
- (d) The trend towards electrification (for example, electric RTGs).⁶⁴

2.56 Whilst there is a clear industry trend towards automation, its rate of adoption and impact appears to be uncertain. Konecranes published a video in 2018 stating that reasons for a slow uptake of automated CHE include: (i) ‘the difficulty of safely separating man and machine within the automated handling process’; and ii) ‘how the technology must handle the rough operating conditions of RTG yards’.⁶⁵

2.57 The CTF Market Report states that the global capacity of semi-automated container terminals has increased from around 2.4% of global capacity to 12.3% of global capacity in 2020, as illustrated in Figure 7 below.

Figure 7: Semi-automated global container terminal capacity



Source: DS Research (January 2020), [Container Terminal Foresight 2024](#), p 6.

2.58 The CTF Market Report states that, ‘[t]he trend towards terminal automation is inevitable, considering 50% of terminal operating costs are personnel costs. We expect that at least 30% of the new build capacity will include some sort of automated equipment’.⁶⁶

⁶⁴ DS Research (January 2020), [Container Terminal Foresight 2024](#), p 87.

⁶⁵ Konecranes, (2018), [Konecranes ARTG system version 2.0 \[online\]](#), available at: <https://youtu.be/kHIt0v5MX8g> [accessed 23/11/2021].

⁶⁶ DS Research (January 2020), [Container Terminal Foresight 2024](#), p 1.

Electrification

- 2.59 The European Commission has published targets for the reduction of greenhouse gas emissions and percentage of energy consumed to come from renewable sources.⁶⁷
- 2.60 The UK government has set a target of reducing emissions by 78% by 2035 compared to 1990 levels.⁶⁸
- 2.61 Some CHE suppliers are responding to customer demand for low or zero emission CHE by researching and developing new products which are purely electric driven.
- 2.62 Some suppliers have already developed electric options for some types of CHE and are increasingly developing such options across their products.⁶⁹ Generally, smaller equipment, such as forklift trucks, and equipment that can be attached to the power grid is electrified first.⁷⁰
- 2.63 Although electrification and automation are technically independent from each other, electrification efforts are – to a certain extent – also driven by increased automation, given that automated equipment almost exclusively uses electric or hybrid drives.⁷¹

3. The Parties, the transaction and the RMS

Introduction

- 3.1 On 1 October 2020, Cargotec and Konecranes entered into a Combination Agreement and Merger Plan.⁷²

⁶⁷ European Commission, [Climate action \[online\]](https://ec.europa.eu/info/topics/climate-action_en), available at: https://ec.europa.eu/info/topics/climate-action_en [accessed 23/11/2021].

⁶⁸ Department for Business, Energy & industrial Strategy (April 2021), [UK enshrines new target in law to slash emissions by 78% by 2035 \[online\]](https://www.gov.uk/government/news/uk-enshrines-new-target-in-law-to-slash-emissions-by-78-percent-by-2035), available at: [UK enshrines new target in law to slash emissions by 78% by 2035 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/uk-enshrines-new-target-in-law-to-slash-emissions-by-78-percent-by-2035) [accessed 23/11/2021].

⁶⁹ Merger Notice, [REDACTED].

⁷⁰ Merger Notice, [REDACTED].

⁷¹ Merger Notice, [REDACTED].

⁷² Merger Notice, [REDACTED].

The Parties

Cargotec

Company information and ownership

3.2 Cargotec is headquartered in Finland.⁷³ Its 'B' class shares are listed on the Nasdaq Helsinki.⁷⁴ Its global consolidated revenue in 2020 was €3.26 billion,⁷⁵ and its UK revenue in 2020 was £[REDACTED] billion.⁷⁶

Main activities

3.3 Cargotec is active in the supply of material flow solutions.⁷⁷ It operates in 46 countries and has three main divisions (2020 revenue shown in brackets):⁷⁸

- (a) **Kalmar**: Cargo handling equipment and terminal solutions (€1.53 billion);
- (b) **Hiab**: On-road load handling equipment (€1.09 billion); and
- (c) **MacGregor**: Solutions and services for the maritime industry (€0.6 billion).⁷⁹

3.4 Cargotec also supplies spreaders for cranes and MEQ through its wholly owned subsidiary, Bromma.

3.5 Cargotec makes supplies of CHE through its Kalmar division and Bromma subsidiary.

3.6 The Parties' main overlap is in the supply of CHE, which is the business activity of Cargotec's 'Kalmar' division.

⁷³ Parties presentation to the CMA on 5 March 2021, p 4. See <https://www.cargotec.com/en/investors/shareholders/shareholders>.

⁷⁴ Cargotec's A shares are owned by the following major shareholders: Wipunen Varainhallinta Oy, Finland 14.13%, Mariatorp Oy, Finland 12.27%, Pivosto Oy, Finland (10.73%). The three main shareholders Wipunen Varainhallinta Oy, Mariatorp Oy, Pivosto Oy are investment companies owned by family members Ilkka Herlin, Niklas Herlin (deceased in 2017, Mariatorp now owned by his heirs) and Ilona Herlin respectively. Each investment company has between 22% and 24% voting rights in Cargotec. In addition, the three heirs each have a minority participation in Kone, an elevator and escalators company controlled by Antti Herlin. (Merger Notice, [REDACTED]).

⁷⁵ Cargotec, Annual Report 2020, p 60. See <https://www.cargotec.com/49262c/globalassets/files/investors/interim-reports/2020/cargotec-annual-report-2020-web.pdf>.

⁷⁶ Form CO, [REDACTED].

⁷⁷ Parties' submission presentation to the CMA [REDACTED].

⁷⁸ Parties' submission presentation to the CMA [REDACTED].

⁷⁹ Cargotec, Annual Report, 2020, p 5.

3.7 Cargotec assembles its Gantry Cranes at one location in China. It assembles all of its straddle and shuttle carriers in one facility in Poland, where it also assembles terminal tractors (in addition to terminal tractor production in North America). All of Cargotec's MEQ is assembled in Poland and China.⁸⁰

Financial performance

3.8 Table 4 below outlines Cargotec's revenue and operating profit since 2016.

Table 4: Cargotec's Revenue and Operating profit (2016-2020)

	2016	2017	2018	2019	2020
Revenue / €bn	3.51	3.28	3.30	3.68	3.26
Operating Profit / €bn	0.20	0.23	0.19	0.18	0.07
Operating Profit Margin	6%	7%	6%	5%	2%
Shareholders' Equity / €bn	1.40	1.43	1.43	1.43	1.30

Source: Cargotec internal documents [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED]

Konecranes

Company information and ownership

3.9 Konecranes is headquartered in Finland.⁸¹ Its shares are listed on the Nasdaq Helsinki.⁸² Its global consolidated revenue in 2020 was €3.18 billion,⁸³ and its UK revenue in 2020 was approximately £[REDACTED] million.⁸⁴

Main activities

3.10 Konecranes is active in lifting solutions for manufacturing and process industries, shipyards, ports and terminals. This includes, industrial cranes and hoists, port handling equipment, and industrial services. It has local subsidiaries⁸⁵ in around 50 countries and has three main divisions (2020 revenue shown in brackets):⁸⁶

(a) **Port Solutions:** Cranes for containers in marine/inland terminals and MEQ (€1.07 billion);⁸⁷

⁸⁰ Merger Notice, [REDACTED].

⁸¹ Parties' submission [REDACTED].

⁸² Konecranes' main shareholders are as follows: HC Holding Oy (10.01%), Solidium Oy (8.51%), Keskinainen Elakevakuutusyhtio Ilmarinen (2.85%), and others (78.63%). (Parties' submission presentation to the CMA [REDACTED].

⁸³ Form CO, [REDACTED].

⁸⁴ €[REDACTED].million, approximately GBP [REDACTED]. million using the European Central Bank's 2020 year-end average exchange rate of 0.8897. ([REDACTED].. Email [REDACTED].

⁸⁵ Konecranes, response to CMA RFI 3, [REDACTED].

⁸⁶ Parties presentation to the CMA [REDACTED].

⁸⁷ [Konecranes Financial Review 2020](#), page 39.

(b) **Industrial Equipment:** Overhead cranes and hazardous environment cranes and hoists, lifting systems (€0.97 billion);⁸⁸ and

(c) **Service:** Servicing and spare parts (€1.19 billion).⁸⁹

3.11 Konecranes makes supplies of CHE through its Port Solutions division.

3.12 Konecranes assembles Gantry Cranes in China and Europe (Croatia, Finland and Poland). It assembles its entire straddle carrier, shuttle carrier and AGV fleet in Germany, while MEQ is assembled in Sweden and China.⁹⁰

Financial performance

3.13 Table 5 below outlines Konecranes' revenue, operating profit, and shareholders' equity since 2016.

Table 5: Konecranes' Revenue and Operating profit (2016-2020)

	2016	2017	2018	2019	2020
Revenue / €bn	2.12	3.14	3.16	3.33	3.18
Operating Profit / €bn	0.08	0.32	0.17	0.15	0.17
Operating Profit Margin	4%	10%	5%	5%	5%
Shareholders' Equity /€bn	0.45	1.26	1.27	1.24	1.24

Source: Konecranes [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED].

Overlap

3.14 The Parties' main overlap is in the supply of CHE, including Gantry Cranes, MEQ and HTE. Both Parties also offer automation software and connectivity solutions associated with some of that CHE. The Parties overlap with regard to after-sales services and spare parts supply; terminal consultancy services; sale of used CHE and short-term rentals; and terminal software and automation.⁹¹

3.15 The Parties have overlapping service sites located in [REDACTED] cities.

3.16 The Parties submitted that they do not overlap with regards to the supply and/or servicing of industrial cranes and hoists.⁹²

⁸⁸ [Konecranes Financial Review 2020](#), page 38.

⁸⁹ [Konecranes Financial Review 2020](#), page 37.

⁹⁰ Merger Notice, [REDACTED].

⁹¹ Merger Notice, [REDACTED].

⁹² Merger Notice, [REDACTED].

The transaction

Timeline of key events

- 3.17 Konecranes told us that, over the past ten or more years, the Parties have occasionally been in contact with each other to explore possibilities for combining their ‘Ports’ businesses. It stated that these ‘contacts have been based on the assumption of [REDACTED]. However, ‘the contacts never led to any concrete steps in the past for various reasons, such as [REDACTED]’.⁹³
- 3.18 Cargotec told us that [REDACTED]. However, [REDACTED].⁹⁴
- 3.19 The Parties submitted that the key events leading up to the Combination Agreement and Merger Plan were as follows:
- (a) **February/March 2020:** Initial exploratory discussions between the two main shareholders of the Parties who ‘recommended to the Parties’ respective boards that they investigate the feasibility of the possible combination.⁹⁵
 - (b) **April 2020:** The Parties first discussed entering into some form of commercial cooperation agreement in late April when Cargotec’s board first approached Konecranes regarding a potential friendly combination. The Parties subsequently engaged in more detailed discussions about a potential merger of two equal parties, including by appointing joint advisors.⁹⁶
 - (c) **October 2020:** The Parties entered into the Combination Agreement.⁹⁷
 - (d) **December 2020:** The Parties’ extraordinary meetings approved the Merger Plan.⁹⁸

Transaction terms

- 3.20 On 1 October 2020, the Parties entered into a Combination Agreement and Merger Plan.⁹⁹ The Parties consider the Merger to be a ‘merger of equals’. The Merger would be implemented as a statutory absorption merger pursuant to the Finnish Companies Act.¹⁰⁰ On completion of the Merger, all

⁹³ Merger Notice, [REDACTED].

⁹⁴ Merger Notice, [REDACTED].

⁹⁵ Merger Notice, [REDACTED].

⁹⁶ Merger Notice, [REDACTED].

⁹⁷ Merger Notice, [REDACTED].

⁹⁸ Merger Notice, [REDACTED].

⁹⁹ Parties’ submission presentation to the CMA [REDACTED].

¹⁰⁰ Merger Notice, [REDACTED].

assets and liabilities of Konecranes would be transferred without a liquidation procedure to Cargotec. Konecranes shareholders would receive newly issued shares in Cargotec as consideration for the Merger, giving them approximately 50% of the shares and votes of the Merged Entity.¹⁰¹

3.21 The long-stop date for the Merger to be completed is 30 June 2022.¹⁰²

Rationale for the Merger

Parties' submissions

3.22 The Parties submitted that the Merger would:

(a) bring 'together largely complementary offerings across Cargotec's and Konecranes' businesses in industries, factories, ports, terminals, road and sea-cargo handling';¹⁰³ and

(b) give the ability to the Merged Entity to:

(i) 'create a more efficient cost-structure which is necessary to compete effectively on a global market dominated by cost-efficient and State-backed Chinese players';¹⁰⁴ and

(ii) 'further enhance its R&D capabilities and to provide a European platform for innovation, digitalisation and automation as well as sustainability and electrification'.¹⁰⁵

3.23 The Parties told us that the Merger would lead to estimated full annual run rate savings of €[REDACTED] from [REDACTED], of which:

(a) [REDACTED] would relate to the 'ports business' of the Merged Entity; and

(b) [REDACTED].¹⁰⁶

3.24 The evidence we have seen indicates that the Parties expect the following savings to be realised:

(a) Around €[REDACTED] to [REDACTED] in relation to procurement costs.

¹⁰¹ Parties' submission presentation to the CMA [REDACTED].

¹⁰² Combination Agreement [REDACTED].

¹⁰³ Merger Notice, [REDACTED].

¹⁰⁴ Merger Notice, [REDACTED].

¹⁰⁵ Merger Notice, [REDACTED].

¹⁰⁶ Merger Notice, [REDACTED].

(b) Around €[REDACTED] to [REDACTED] in relation to general and administration costs.¹⁰⁷

3.25 The Parties claimed that the Merged Entity would ‘cover an even wider part of the value chain with its offering, thereby enabling it to serve customers more efficiently with end-to-end services’.¹⁰⁸

Evidence relating to Cargotec’s rationale

3.26 An internal Cargotec document dated 27 April 2020 (around the beginning of the Parties’ initial merger discussions)¹⁰⁹ states that the Merger:

(a) [REDACTED];¹¹⁰ and

(b) [REDACTED].¹¹¹

3.27 This document states that the acquisition of Konecranes’ ‘Port Solutions’ ‘[REDACTED], however, [REDACTED]’.¹¹²

Evidence relating to Konecranes’ rationale

3.28 A report prepared by McKinsey & Company dated 16 June 2020 (around two months after the Parties entered into discussions regarding the Merger) includes the following statements:

(a) ‘In [the] case of a potential merger [between Cargotec and Konecranes], [REDACTED]’.

(b) ‘[REDACTED]’.¹¹³

3.29 The Parties told us that this report, [REDACTED].¹¹⁴

Evidence gathered on synergies

3.30 The Parties’ Synergy Assessment sets out a vision for the Merged Entity [REDACTED]:

(a) [REDACTED];

¹⁰⁷ Merger Notice, [REDACTED].

¹⁰⁸ Parties’ submission [REDACTED].

¹⁰⁹ This document was produced at an early stage in the Parties’ due diligence process. We consider the statements made in this context.

¹¹⁰ Cargotec internal document, [REDACTED].

¹¹¹ Cargotec internal document, [REDACTED].

¹¹² Cargotec internal document, [REDACTED].

¹¹³ Konecranes internal document, [REDACTED].

¹¹⁴ Parties’ submission, [REDACTED].

- (b) [REDACTED];
- (c) [REDACTED]; and
- (d) [REDACTED].¹¹⁵

Revenue synergies

3.31 A report prepared by Bain & Company, management consultants, on behalf of Konecranes dated 23 October 2020 (the same month as the Parties entered into the Merger) identifies [REDACTED]¹¹⁶ [REDACTED]:

- (a) [REDACTED].
- (b) [REDACTED].¹¹⁷

Combinational synergies

3.32 The McKinsey report with the initial results of the Merger Synergy Analysis states that the Merger ‘would create a leading Western player in the ports business with [a] stronger competitive position against the large Asian peers. Increased scale enabling to capture cost synergies’.¹¹⁸ It estimates that the Merged Entity would ‘have a combined synergy potential of [REDACTED]’.¹¹⁹ The document states that the biggest synergies are expected to arise from a reduction in the following costs:

- (a) [REDACTED];
- (b) [REDACTED].¹²⁰

3.33 This report states that there are ‘[h]ighly overlapping logistics networks’.¹²¹

- (a) The Parties’ Merger Announcement states that the Merged Entity’s preliminary financial targets include the following:
 - (b) ‘Above-market sales growth’;
 - (c) ‘Reaching >10% comparable operating margin’;

¹¹⁵ Merger Notice, [REDACTED].

¹¹⁶ Earnings before interest and tax.

¹¹⁷ Konecranes internal document, [REDACTED].

¹¹⁸ Merger Notice, [REDACTED].

¹¹⁹ Merger Notice, [REDACTED].

¹²⁰ Merger Notice, [REDACTED].

¹²¹ Merger Notice, [REDACTED]. We note the Parties’ submission that [REDACTED]. (see Parties’ submission, [REDACTED]). We have not placed significant weight on this evidence, but this analysis is still relevant as a third part report relying on detailed financial information this consultant had access to.

(d) Synergies greater than €100 million; and

(e) Gearing less than 50%.¹²²

Transformational synergies and improvement programs

3.34 In addition to the above combination synergies, the initial report on the Synergy Analysis includes the following 'initial list of transformational synergies' which it classifies as being 'merger-specific':

(a) [REDACTED]:

(i) [REDACTED];¹²³

(ii) [REDACTED]; and

(iii) [REDACTED].

(a) [REDACTED].

(b) [REDACTED].

(c) [REDACTED].

(i) [REDACTED];

(ii) [REDACTED];

(iii) [REDACTED].

(d) [REDACTED].¹²⁴

(e) [REDACTED]¹²⁵ '[REDACTED]'.¹²⁶

3.35 The Parties told us that the report prepared by McKinsey & Company, 'represents a high-level financial – but not operational – assessment by McKinsey, on the basis of their own assumptions and financial models relying on input which the Parties have not been able to validate. Also, for the R&D analysis, McKinsey relied for the most part on third-party sources

¹²² Cargotec (October 2020), Cargotec and Konecranes to merge creating a global leader in sustainable material flow [online], available at www.cargotec.com/en/nasdaq/stock-exchange-release-kalmar-hiab-macgregor/2020/cargotec-and-konecranes-to-merge-creating-a-global-leader-in-sustainable-material-flow/ [accessed 23/11/2021].

¹²³ Konecranes submitted that t[REDACTED]. (Konecranes submission, response to RFI 3[REDACTED]).

¹²⁴ Merger Notice, [REDACTED].

¹²⁵ Merger Notice, [REDACTED].

¹²⁶ Merger Notice, [REDACTED].

and other assumptions. This document therefore does not reflect the management view of either Party'.¹²⁷

- 3.36 Furthermore, the Parties told us that, [REDACTED]. However, the Parties anticipate that an important part of the deal rationale is to ensure that the parties are better placed to address sustainability challenges in the industry, by providing a platform for innovation in automation, robotics, electrification and digitalization. The Transaction will allow the Merged Entity to develop innovative products at an accelerated rate (as compared to each Party alone) and so to meet intense competition from American, European and Asian suppliers who are currently outpacing the Parties'.¹²⁸
- 3.37 Based on the evidence we have seen, the combinational synergies identified by the Parties appear to largely come from procurement and corporate functions and management cost removal.

RMS

- 3.38 Following the reference to phase 2 of the Merger, the CMA is required to determine on the balance of probabilities whether the Merger, if carried into effect, would result in a RMS¹²⁹ (the jurisdictional test).
- 3.39 Sections 23 and 24 of the Act set out two criteria required for the existence of an RMS.
- (a) Firstly, two or more enterprises must cease to be distinct;¹³⁰ and
 - (b) Secondly, either:
 - (i) the value of the turnover in the UK of the enterprise being taken over exceeds £70 million (the turnover test); or
 - (ii) the merged enterprises both supply or acquire goods or services of a particular description and will after the merger supply or acquire 25% or more of those goods or services in the UK (or a substantial part of the UK) (the share of supply test).¹³¹
- 3.40 These two limbs are considered in turn below.

¹²⁷ Parties' submission, [REDACTED].

¹²⁸ Parties' submission, [REDACTED].

¹²⁹ Section 36(1)(a) of the Act.

¹³⁰ Defined in further detail in section 26 of the Act.

¹³¹ Where an enterprise already supplies or acquires 25% of any particular goods or services, the test is satisfied so long as its share is increased as a result of the merger, regardless of the size of the increment (where there is no increment, the share of supply test is not met).

Enterprises ceasing to be distinct

- 3.41 The Act defines an ‘enterprise’ as ‘the activities or part of the activities of a business’. A ‘business’ is defined as ‘including a professional practice and includes any other undertaking which is carried on for gain or reward or which is an undertaking in the course of which goods are supplied other than free of charge’.¹³²
- 3.42 Cargotec and Konecranes are companies that operate as a going concern with the necessary assets, employees and customer contracts and therefore clearly satisfy the definition of an enterprise for the purposes of the Act.
- 3.43 The concept of ‘ceasing to be distinct’ is described in [section 26](#) of the Act. This provides that any two enterprises cease to be distinct if they are brought under common ownership or common control.¹³³ This is the case regardless of whether or not the business to which either of them formerly belonged continues to be carried on under the same or different ownership or control.
- 3.44 Pursuant to the Combination Agreement as well as the Merger Plan which the respective extraordinary general meetings of the Parties approved, the Merger would be implemented as a statutory absorption merger pursuant to the Finnish Companies Act whereby all assets and liabilities of Konecranes are transferred without a liquidation procedure to Cargotec.¹³⁴
- 3.45 Upon completion, Konecranes’ shareholders will receive newly issued shares in Cargotec as merger consideration and Konecranes will automatically dissolve. Each of Konecranes and Cargotec’s shareholders will own approximately 50% of the enlarged Cargotec.¹³⁵
- 3.46 Accordingly, in relation to the first limb of the jurisdictional test, the Merger is in contemplation and would, were it carried into effect, bring under common ownership Cargotec and Konecranes, enterprises which were previously separate and which would, as a result of the Merger ‘cease to be distinct’. We therefore conclude that the first limb of the jurisdictional test is met.

¹³² Section [129\(1\)](#) and [\(3\)](#) of the Act.

¹³³ ‘Control’ is not limited to the acquisition of outright voting control but may include situations falling short of outright voting control. [Section 26](#) of the Act distinguishes three levels of interest (in ascending order): (i) material influence (ii) de facto control, and (iii) a controlling interest (also known as ‘de jure’, or ‘legal’ control). Since the circumstances of the present case fall within ‘common ownership’ we have not considered the issue of ‘control’ further.

¹³⁴ Merger Notice, [§].

¹³⁵ According to the Combination Agreement, the Transaction is conditional, inter alia, on receiving clearances from those ‘jurisdictions where the threshold for a pre-merger control approval is met and which are required for the Completion’. This would include the European Union and US, but not the UK. (Merger Notice, [§]).

UK nexus

- 3.47 The second limb of the jurisdictional test seeks to establish whether the Merger has sufficient connection with the UK. This connection can be met on the basis of either (i) the target company's turnover (ie the turnover test); or (ii) the Parties' combined 'share of supply' (ie the share of supply test).

Turnover test

- 3.48 The turnover test is satisfied where the value of the turnover in the UK of the enterprise being taken over exceeds £70 million.
- 3.49 As referred to in paragraph 3.44 above, all of Konecranes' assets and liabilities would transfer to Cargotec as a result of the Merger. As a result, we consider that Konecranes is the enterprise being taken over for the purposes of the turnover test. Konecranes' turnover in the UK for the financial year of 2020 was £[~~XX~~].¹³⁶ Therefore, we conclude that the turnover test is met in this case.¹³⁷

Conclusion

- 3.50 In the light of the above assessment, we conclude that the Merger, if carried into effect, will result in the creation of an RMS.

4. Counterfactual

Introduction

- 4.1 The counterfactual is an analytical tool used in answering the question of whether the merger gives rise to an SLC. It does this by providing the basis for a comparison of the prospects for competition with the merger against the competitive situation without the merger. The latter is called the counterfactual.¹³⁸

¹³⁶ €[~~XX~~] million, ie approximately £[~~XX~~] million using the ECB's 2020 year-end average exchange rate of 0.8897. Form CO, [~~XX~~], [~~XX~~]. Alternatively, if the Merger is classified as a true merger, the turnover test is satisfied because the 2020 UK turnover of both Parties exceeds £70 million (Cargotec £[~~XX~~] million (€[~~XX~~]million) and Konecranes £[~~XX~~] million, Form CO, [~~XX~~]). Section 23(1)(b)(i) of the Act. See [CMA2 revised](#), paragraph 4.59.

¹³⁷ Data obtained in phase 2 confirms that the share of supply test is also satisfied (see for example Chapter 8 on horizontal unilateral effects of the Merger in the supply of SC and ShC for which the Merger results in an increment and the Parties' combined share of supply in the UK is 100%).

¹³⁸ The Merger Assessment Guidelines (2021 – revised guidance) ([CMA129](#)), paragraph 3.1.

Framework for assessing the counterfactual

- 4.2 The CMA may examine several possible scenarios to determine the appropriate counterfactual. The counterfactual may consist of the prevailing conditions of competition, or conditions of competition that involve stronger or weaker competition between the merger firms than under the prevailing conditions of competition. The appropriate counterfactual may increase or reduce the prospects of an SLC finding by the CMA.¹³⁹
- 4.3 The CMA's conclusion on the counterfactual does not seek to ossify the market at a particular point in time.¹⁴⁰ A 'prevailing conditions of competition' counterfactual is not static and does not imply that the conditions of competition are expected to remain exactly the same as in the situation prior to the merger being contemplated by the parties (which we refer to below as the 'pre-merger' situation). Instead, the 'prevailing conditions of competition' refers to a scenario where the firms in the market continue to compete in broadly the same manner that they have done pre-merger, including any evolution in their competitive offerings, business models and customer propositions.
- 4.4 Three specific examples of situations where the CMA may use a different counterfactual from the 'prevailing conditions of competition' are:
- (a) entry or expansion by one of the merger firms;
 - (b) the exiting firm scenario; and
 - (c) where there are competing bids.¹⁴¹
- 4.5 The CMA seeks to avoid predicting the precise details or circumstances that would have arisen absent the merger.¹⁴² Establishing the appropriate counterfactual to assess the merger against is an inherently uncertain exercise and evidence relating to future developments absent the merger may be difficult to obtain. Uncertainty about the future will not in itself lead the CMA to assume the pre-merger situation to be the appropriate counterfactual.¹⁴³
- 4.6 The time horizon that the CMA considers when describing the counterfactual will depend on the context. In some markets, relevant developments may not

¹³⁹ CMA129, paragraph 3.9.

¹⁴⁰ CMA129, paragraph 3.1.

¹⁴¹ CMA129, paragraph 3.11.

¹⁴² CMA129, paragraph 3.11.

¹⁴³ CMA129, paragraph 3.14.

take place for some years while in others the relevant time horizon for the counterfactual will be shorter.¹⁴⁴

- 4.7 The CMA is likely to only focus on significant changes where there are reasons to believe that those changes would make a material difference to its competitive assessment. If two or more possible counterfactual scenarios lead to broadly the same conditions of competition the CMA may not find it necessary to select the particular scenario that leads to its counterfactual.¹⁴⁵
- 4.8 As set out in the Merger Assessment Guidelines ([CMA129](#)), the CMA will generally conclude on the counterfactual conditions of competition broadly – that is, prevailing or pre-merger conditions of competition, conditions of stronger competition or conditions of weaker competition. If two or more possible counterfactual scenarios lead to broadly the same conditions of competition the CMA may not find it necessary to select the particular scenario that leads to its counterfactual.¹⁴⁶
- 4.9 To help make an overall judgement as to whether or not an SLC has occurred or is likely to occur at phase 2, the CMA will select the most likely conditions of competition as its counterfactual against which to assess the merger. In some instances, the CMA may need to consider multiple possible scenarios before identifying the relevant counterfactual. In doing this, the CMA will consider whether any of the possible scenarios make a significant difference to the conditions of competition and, if any do, the CMA will find the most likely conditions of competition absent the merger as the counterfactual.¹⁴⁷

Counterfactual scenarios considered by the CMA

- 4.10 Based on the Parties' submissions and evidence available to the CMA, we have assessed which potential counterfactual scenario is the most likely and, thus, the appropriate counterfactual in this case. The counterfactual scenarios we have considered are:
- (a) **Prevailing conditions of competition in all markets.** Under this scenario, absent the Merger, both of the Parties would have continued under separate, independent, ownership. As noted above, this counterfactual is not static and incorporates the continued dynamic evolution of the market, and potentially any foreseeable financial

¹⁴⁴ [CMA129](#), paragraph 3.15.

¹⁴⁵ [CMA129](#), paragraph 3.9.

¹⁴⁶ [CMA129](#), paragraph 3.9.

¹⁴⁷ [CMA129](#), paragraph 3.13.

restructuring or re-orientation of the Parties' business models, so long as the firms in the market continue to compete in broadly the same manner.

(b) [REDACTED].

(c) Entry by **one or both of the Parties in the supply of Automated Terminal Tractors (ATT)**. Under this scenario, absent the Merger, one or both of the Parties would have made efforts to enter or expand in the supply of ATT.

4.11 We have considered and set out our conclusions on each of these potential counterfactual scenarios below.

Prevailing conditions of competition in all markets

4.12 Under this counterfactual, both Parties would continue to compete in broadly the same way, absent the Merger. As noted above, this counterfactual is not static and incorporates the continued dynamic evolution of the market, and potentially any foreseeable financial restructuring or re-orientation of the Parties' business models, so long as the firms in the market continue to compete in broadly the same manner as they have been doing prior to contemplation of the Merger.

4.13 As such, this counterfactual includes scenarios where firms adapt their competitive offerings and business models and respond to competitive and other pressures (including funding pressures). Such adaptations of competitive offerings and business models could include for example:

(a) Expanding service and product offerings to provide additional services;
and

(b) making incremental product improvements.

4.14 The prevailing conditions of competition may also include stronger or weaker competition from rivals (which would have occurred absent the merger).

Parties' submissions

4.15 With the exception of [REDACTED] both Parties submitted that the appropriate counterfactual in this case is the 'pre-existing conditions of competition'.¹⁴⁸

¹⁴⁸ Merger Notice, [REDACTED]

4.16 The Parties told us that ‘the relevant markets are characterised by a fundamental transformation’ which is ‘due to the expansion of Chinese players and major industry trends’.¹⁴⁹

Our assessment

4.17 We found no evidence from our review of the Parties’ business strategy documents (except in relation to the supply of ATT, as considered further below) suggesting that, absent the Merger, either Cargotec or Konecranes would not have continued to compete in broadly the same way.

4.18 No third parties have proposed that we should use an alternative counterfactual to the prevailing conditions of competition.

4.19 We note the Parties’ submissions regarding the ‘fundamental changes’ to the markets in which they operate resulting from the entry/expansion of Chinese suppliers and industry trends. There is no suggestion that such changes would not have occurred absent the Merger,¹⁵⁰ and therefore we assess the impact of such potential changes, including whether there would be any entry and/or expansion by Chinese players, as part of our competitive assessment of the Merger.

4.20 We note that Cargotec recently sold: a) its 49% ownership interest in a joint venture with a Chinese company, Jiangsu Rainbow Heavy Industries Co. Ltd, (‘Rainbow’) to its joint venture partner on 11 May 2020;¹⁵¹ and b) its TOS business, Navis, to Accel-KKR on 26 March 2021.¹⁵² Cargotec’s internal documents clearly show [REDACTED] and therefore they have not been considered to form part of Cargotec’s activities for the purposes of our assessment.¹⁵³

4.21 Therefore, we consider that it is likely that, absent the Merger, the Parties would continue to compete with each other independently in broadly the same manner. Thus, the appropriate counterfactual for the assessment of the Merger is, in general, the prevailing conditions of competition.

4.22 However, we consider below whether different counterfactual scenarios are appropriate in relation to:

¹⁴⁹ Merger Notice, [REDACTED]

¹⁵⁰ CMA129, paragraph 8.28.

¹⁵¹ Heavy Lift News, Cargotec sells its 49% Rainbow-Cargotec Industries, 11 May 2020.

¹⁵² Navis was sold for €380 million. Cargotec (March 2021), Cargotec sells Navis business [online], available at <https://www.cargotec.com/en/nasdaq/stock-exchange-release--kalmar--/2021/cargotec-sells-navis-business-to-technology-investment-firm-accel-kr-for-an-enterprise-value-of-eur-380-million/> [accessed 23/11/21].

¹⁵³ Cargotec internal document, [REDACTED]

- (a) [REDACTED]; and
- (b) the supply of ATT.

[REDACTED]

4.23 Under this scenario, absent the Merger, Cargotec would have [REDACTED].

Cargotec's submission

4.24 During the course of the inquiry, Cargotec told us that [REDACTED].¹⁵⁴

4.25 Cargotec told us that:

- (a) [REDACTED].¹⁵⁵ '[REDACTED]'.¹⁵⁶
- (b) [REDACTED].¹⁵⁷
- (c) [REDACTED].¹⁵⁸ In particular, Cargotec told us that: [REDACTED].¹⁵⁹
- (d) [REDACTED].¹⁶⁰

4.26 In response to the CMA's counterfactual working paper, Cargotec disputed the CMA's position that there is insufficient evidence to support [REDACTED]. Cargotec disagreed that there remained some uncertainty around [REDACTED],¹⁶¹ [REDACTED].¹⁶² Cargotec also noted that the fact that it has not submitted that [REDACTED] does not mean that, absent the Merger, [REDACTED].¹⁶³ At the Main Party Hearing, Cargotec stated that '[REDACTED]'.¹⁶⁴

4.27 In response to the Provisional Findings Report,¹⁶⁵ the Parties submitted that the CMA:

- (a) failed to have due regard to evidence on the CMA's file which points to the fact that [REDACTED], including: i) [REDACTED]; ii) [REDACTED];

¹⁵⁴ Cargotec submission [REDACTED].

¹⁵⁵ Cargotec submission [REDACTED].

¹⁵⁶ Cargotec submission [REDACTED].

¹⁵⁷ Cargotec submission [REDACTED].

¹⁵⁸ Cargotec submission [REDACTED].

¹⁵⁹ Cargotec submission [REDACTED].

¹⁶⁰ Cargotec submission [REDACTED].

¹⁶¹ Cargotec submission, [REDACTED].

¹⁶² Cargotec submission, [REDACTED].

¹⁶³ Cargotec submission, [REDACTED].

¹⁶⁴ Cargotec, Transcript of Main Party Hearing, [REDACTED]. We note that this statement is contemporaneous to the Merger and, as explained below, does not reflect a Board decision.

¹⁶⁵ [Parties' Response to the Provisional Findings Report](#), paragraphs 2.1 to 2.10.

- (b) relied on irrelevant considerations (eg [REDACTED]) when concluding that there is insufficient evidence that [REDACTED]; and
- (c) applied an inconsistent evidential standard when assessing the [REDACTED] as compared to [REDACTED], and that in determining the [REDACTED], the CMA used a higher standard than that described in the CMA's Merger Assessment Guidelines. The Parties submitted that the CMA cannot rationally conclude that the most likely counterfactual would be the prevailing conditions of competition simply on the basis that [REDACTED].

4.28 We address these submissions below.

Our assessment

4.29 We conclude that the evidence provided by Cargotec does not support the position that a counterfactual other than the prevailing conditions of competition is appropriate for the [REDACTED]. In particular, the evidence does not show with sufficient certainty that the most likely counterfactual scenario is that Cargotec would have [REDACTED] in the near term.

[REDACTED]

4.30 Cargotec made clear that it is not arguing that it would.¹⁶⁶ At the same time, Cargotec's submitted that its [REDACTED]¹⁶⁷ and that the [REDACTED].¹⁶⁸ We also [REDACTED].¹⁶⁹

4.31 First, while Cargotec [REDACTED].¹⁷⁰ As mentioned in Chapter 6, [REDACTED].¹⁷¹

4.32 Second, the evidence submitted by Cargotec in relation to [REDACTED]. While Cargotec said that '[r]ecent (very limited) wins are not a sign for recovery,'¹⁷² we note, as explained below, that revenues and gross profits are forecast to increase in future.

4.33 In this regard, [REDACTED]:

Table 6 - [REDACTED]

[REDACTED]

¹⁶⁶ Cargotec submission, [REDACTED]

¹⁶⁷ Cargotec submission, [REDACTED]

¹⁶⁸ Cargotec submission, [REDACTED]

¹⁶⁹ Cargotec submission slide deck [REDACTED]

¹⁷⁰ See [REDACTED]. [CMA129](#), paragraph 3.29.

¹⁷¹ Cargotec [REDACTED]

¹⁷² Cargotec submission slide deck [REDACTED]

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Source: Draft Form RM [REDACTED]

4.34 [REDACTED].

Figure 8: [REDACTED]

[REDACTED]

Source: Cargotec submission presentation [REDACTED]

[REDACTED]

4.35 As is clear even from Cargotec’s own submissions, ‘[REDACTED]’.¹⁷³ Other options that we have seen being considered include, [REDACTED].¹⁷⁴ Cargotec explained that, [REDACTED]. It submits that [REDACTED]¹⁷⁵ and are not [REDACTED].¹⁷⁶

4.36 In particular, Cargotec has identified [REDACTED] and [REDACTED].¹⁷⁷ One Cargotec internal document prepared for the Cargotec Board meeting, [REDACTED].¹⁷⁸ [REDACTED].¹⁷⁹

4.37 Cargotec has undertaken various other projects since [REDACTED].¹⁸⁰ [REDACTED] to reconcile with Cargotec’s submission that it would have been likely to [REDACTED]. [REDACTED].

4.38 Even if these measures have been taken, as submitted by Cargotec,¹⁸¹ in [REDACTED], the fact that Cargotec is considering different options indicates that Cargotec is [REDACTED], [REDACTED]. Internal Cargotec documents suggest that [REDACTED].¹⁸²

4.39 In another document about [REDACTED].¹⁸³ Although this document [REDACTED] (see paragraphs 4.33 and 4.34).

¹⁷³ Cargotec submission [REDACTED]

¹⁷⁴ Cargotec submission [REDACTED]

¹⁷⁵ [Parties’ response to the Provisional Findings Report.](#)

¹⁷⁶ Cargotec submission slide deck [REDACTED]

¹⁷⁷ Cargotec internal document, [REDACTED]

¹⁷⁸ Cargotec internal document, [REDACTED]

¹⁷⁹ Cargotec internal document [REDACTED]

¹⁸⁰ Cargotec submission [REDACTED]

¹⁸¹ Cargotec submission, [REDACTED]

¹⁸² Cargotec internal document, [REDACTED]

¹⁸³ Cargotec internal document, [REDACTED]

4.40 [REDACTED], and their results are not yet apparent, we cannot reasonably predict their outcome or conclude [REDACTED].¹⁸⁴ Moreover, one internal document submitted by Cargotec suggests that [REDACTED].¹⁸⁵ This document shows that [REDACTED].¹⁸⁶ [REDACTED].¹⁸⁷

4.41 On the basis of these elements, we consider that [REDACTED].

[REDACTED]

4.42 We note [REDACTED].¹⁸⁸ [REDACTED].¹⁸⁹

4.43 [REDACTED] In fact, [REDACTED]. It stated that [REDACTED].¹⁹⁰ [REDACTED].¹⁹¹ [REDACTED].¹⁹² [REDACTED].

4.44 We cannot predict whether [REDACTED]. By contrast, the Parties did not provide any underlying evidence (such as internal documents) to substantiate their position [REDACTED]

[REDACTED]

4.45 Cargotec submits that [REDACTED].¹⁹³ Cargotec stated that [REDACTED].¹⁹⁴ [REDACTED].¹⁹⁵

4.46 We note, in this respect, that [REDACTED].¹⁹⁶ Having this principle in mind, we consider that the evidence available to the CMA does not support a conclusion that any decision had been made at Cargotec Board Meetings to [REDACTED]. Cargotec submitted that the CMA did not take into account evidence it should have considered (eg [REDACTED]).¹⁹⁷ We have considered all the evidence submitted by Cargotec but have, in accordance with the CMA's usual practice, placed more limited weight on evidence which post-dates the Merger being in contemplation.¹⁹⁸

¹⁸⁴ [REDACTED] (Cargotec submission response to European Commission RFI 36).

¹⁸⁵ Cargotec internal document, [REDACTED]

¹⁸⁶ Cargotec internal document [REDACTED]

¹⁸⁷ Cargotec internal document [REDACTED]

¹⁸⁸ [REDACTED].

¹⁸⁹ Response of the Parties to European Commission RFI 38.

¹⁹⁰ [REDACTED]

¹⁹¹ [REDACTED].

¹⁹² [REDACTED].

¹⁹³ Parties' submission response [REDACTED]

¹⁹⁴ Cargotec submission [REDACTED]

¹⁹⁵ Cargotec submission [REDACTED]

¹⁹⁶ [CMA129](#), paragraph 3.24.

¹⁹⁷ [Parties' response to the Provisional Findings Report](#).

¹⁹⁸ In this context, we note that certain of the evidence Cargotec seeks to rely on post-dates the CMA's working papers, ie was prepared after Cargotec had been provided with the CMA's preliminary views on the impact of the Merger on competition.

- 4.47 [REDACTED].¹⁹⁹ Given the date of these minutes, and for the reasons set out above, we can only place limited weight on this (and other documents contemporaneous with contemplation of the Merger). In any case, these minutes report the view of the management, with no indication provided that the board shared this view.
- 4.48 As a matter of principle, as with any recommendation made to the board by the management of a company, it is uncertain whether Cargotec's board would take a decision in line with management's view. [REDACTED].
- 4.49 At Cargotec's Main Party Hearing we were told that the [REDACTED].²⁰⁰ [REDACTED].
- 4.50 The main document submitted by Cargotec, produced before the Merger was in contemplation, that mentions [REDACTED]:
- (a) '[REDACTED]';
 - (b) '[REDACTED]'; and
 - (c) '[REDACTED]'.²⁰¹
- 4.51 [REDACTED]. In fact, none of the internal documents submitted by Cargotec include a detailed [REDACTED].²⁰²
- 4.52 This means that there is no evidence, which was produced before the Merger was in contemplation, that [REDACTED].²⁰³
- 4.53 In its response to the Provisional Findings Report, the Parties suggested that CMA has applied an inappropriate evidential standard to the [REDACTED] because the CMA required '[...] Cargotec to prove that [REDACTED].'²⁰⁴
- 4.54 We do not agree with this characterisation of our analysis. While evidence of such a decision (in particular if it predated contemplation of the Merger) would constitute compelling evidence for [REDACTED], we accept that evidence of such a decision is not a prerequisite for such a conclusion.

¹⁹⁹ Cargotec internal document, [REDACTED]

²⁰⁰ At the Main Party Hearing, Cargotec's Vice President for Mergers & Acquisitions said: [REDACTED] During a subsequent meeting of Cargotec's CEO with the Inquiry Group on 9 December 2021, Cargotec's CEO confirmed [REDACTED]. While we take account of these submissions, we note that [REDACTED]. In addition, [REDACTED].

²⁰¹ Cargotec internal document, [REDACTED]

²⁰² We note that Cargotec internal document [REDACTED]

²⁰³ CMA129, paragraph 3.29.

²⁰⁴ Parties' response to the Provisional Findings Report, paragraph 2.7.

- 4.55 Contrary to the Parties' submission, our decision on the most likely counterfactual in this case is based on the consideration of the range of available evidence in the round. In particular:
- (a) [REDACTED].
 - (b) The absence of evidence in [REDACTED] prepared prior to the Merger being in contemplation that [REDACTED] was being seriously considered. Had the [REDACTED] been under serious consideration [REDACTED], we would have expected, [REDACTED], to have seen some material evidence of related considerations.
 - (c) Evidence that [REDACTED], which is difficult to reconcile with a [REDACTED].
- 4.56 We do not agree with Cargotec's submission that we applied a different threshold to the [REDACTED] in which we considered relevant: i) internal documents from Konecranes' board showing that entry into [REDACTED] was aligned with Konecranes' commercial strategy and the steps taken by Konecranes towards [REDACTED]; and ii) evidence that, in the CMA's view, showed that that Konecranes has the ability to enter into the supply of [REDACTED] in the next few years.²⁰⁵
- 4.57 We have applied the same standard in both analyses. The evidence clearly supports that Konecranes entering [REDACTED] is the most likely counterfactual. In particular, in relation to the likely entry of Konecranes in the supply of [REDACTED], a number of documents, including documents prior to the Merger being in contemplation, support that Konecranes had the incentive and ability to enter in the market and that it has already taken clear steps to that effect. Conversely, as explained above, there is very limited evidence in Cargotec's internal documents prepared prior to the Merger being in contemplation indicating that [REDACTED] was being seriously considered, and also no evidence indicating that [REDACTED] prior to the Merger being in contemplation. In fact, [REDACTED].
- 4.58 In light of the above, [REDACTED].
- 4.59 We also considered Cargotec's submission that '[REDACTED] it is not an important constraint [REDACTED]'.²⁰⁶ We note, however, that no evidence was submitted suggesting that [REDACTED] and, as explained above in paragraphs 4.42 to 4.44 Cargotec [REDACTED]. The evidence available, therefore, does not support the position that, absent the Merger, [REDACTED].

²⁰⁵ Parties' response to the Provisional Findings Report.

²⁰⁶ Cargotec submission slide deck [REDACTED]

4.60 Therefore, we conclude that the most likely counterfactual in relation to [X] is the prevailing conditions of competition.

Entry by one or both of the Parties in the supply of ATT

4.61 Whereas manual TT are wholly controlled by a human operator, ATT have a higher level of software intervention provided by ECS which allows some or all of their functions to be performed automatically.

4.62 The term ‘automation’ is used to refer to a wide spectrum of functions, ranging from remote operation by a human operator to fully self-driving.

4.63 During the course of the inquiry, we found that some suppliers, [X], have taken some steps towards developing automation technology with the aim of entering the supply of ATT in the future.

4.64 We have considered whether either of the Parties is likely to enter the supply of ATT, absent the Merger.

4.65 In assessing whether the evidence shows that the entry or expansion by one of the Parties is the most likely counterfactual, the CMA’s guidance states that we may consider the Parties’ incentive and ability to enter or expand in competition with each other.²⁰⁷

Entry by Cargotec in the supply of ATT

4.66 We assess below whether it is likely that, absent the Merger, Cargotec would have made efforts to enter the supply of ATT.

4.67 If Cargotec were to enter in the supply of ATT (as a competitor of Konecranes in the supply of ATT as considered at paragraphs 4.84 to 4.159 below) this could have resulted in conditions of competition involving stronger competition between the Parties than under the prevailing conditions of competition.

4.68 Our assessment of whether Cargotec’s entry in the supply of ATT is the most likely scenario in this case is structured as follows:

- (a) Cargotec’s views on its entry in the supply of ATT;
- (b) the context for assessing Cargotec’s entry in the supply of ATT; and

²⁰⁷ [CMA129](#), paragraph 3.18.

- (c) the CMA's assessment of the likelihood of Cargotec's entry in the supply of ATT.

Cargotec's views on its entry in the supply of ATT

- 4.69 Cargotec told us that it [REDACTED].²⁰⁸
- 4.70 Cargotec [REDACTED].²⁰⁹
- 4.71 Cargotec [REDACTED].²¹⁰ [REDACTED].²¹¹ [REDACTED].²¹²

The context for assessing Cargotec's entry in the supply of ATT

- 4.72 Cargotec is active in the supply of TT under its Kalmar brand. It claims to be the 'world's leading manufacturer of terminal tractors, delivering more than 70,000 units since the very first terminal tractor was built in 1958'.²¹³
- 4.73 Cargotec told us that it delivered [REDACTED] TT units worldwide between 2018 and 2020. It estimated that it had a worldwide share of supply of manual TT of around [REDACTED]% between 2018 and 2020.²¹⁴
- 4.74 Cargotec explained its view that:
- (a) [REDACTED].²¹⁵
- (b) It 'is of the view that [REDACTED]'.²¹⁶

CMA's assessment of the likelihood of Cargotec's entry in the supply of ATT

- 4.75 We have assessed the likelihood of Cargotec's entry in the supply of ATT. In our assessment, we have set out below:
- (a) Cargotec's pre-Merger incentive to enter the supply of ATT.
- (b) Cargotec's pre-Merger ability to enter the supply of ATT.

²⁰⁸ Parties' submission response to CMA RFI 5, [REDACTED]

²⁰⁹ Parties' Form CO, [REDACTED]

²¹⁰ Parties' Form CO, [REDACTED]

²¹¹ Parties' Form CO, [REDACTED]

²¹² Parties' submission response to CMA RFI 5 [REDACTED]

²¹³ [Cargotec, Kalmar website](http://www.kalmarglobal.com/equipment-services/terminal-tractors/). See <http://www.kalmarglobal.com/equipment-services/terminal-tractors/>.

²¹⁴ Parties' Form CO, [REDACTED]

²¹⁵ Parties' submission response to CMA RFI 5, [REDACTED]

²¹⁶ Parties' submission response to CMA RFI 5, [REDACTED]

Cargotec's pre-Merger incentive to enter the supply of ATT

- 4.76 As explained below, we consider that Cargotec's submissions, as well as evidence from its internal documents, show that it believes [REDACTED], and that [REDACTED] (as summarised at paragraphs 4.69 to 4.71 above).
- 4.77 Cargotec's internal documents indicate that [REDACTED].²¹⁷
- 4.78 Another internal [REDACTED].²¹⁸
- 4.79 Our conclusion is that the available evidence demonstrates that Cargotec considers the supply of ATT to be strategically important to it and that it has an incentive to enter the supply of ATT.

Cargotec's pre-Merger ability to enter the supply of ATT

- 4.80 As set out above, Cargotec has a broad range of capabilities that will support its development of an ATT offering. This is consistent with the position set out in Cargotec's internal documents, which [REDACTED]. On this basis, we consider that Cargotec also has the ability to enter the supply of ATT.
- 4.81 Based on the evidence we have seen, which is summarised in paragraphs 4.72 to 4.74 and paragraphs 4.76 to 4.79 above, we consider that Cargotec has the ability to enter the supply of ATT.

CMA's conclusions about the likelihood of entry by Cargotec in the supply of ATT

- 4.82 Having considered Cargotec's submissions and the available evidence, our conclusion is that Cargotec would have entered the supply of ATT absent the Merger. As such, we consider that the prevailing conditions of competition scenario includes Cargotec's entry in the supply of ATT.
- 4.83 We expect this entry to occur in the time period used in the competitive assessment of the supply of ATT.

Entry by Konecranes in the supply of ATT

- 4.84 We assess below whether it is likely that, absent the Merger, Konecranes would have made efforts to enter as a competitor of Cargotec in the supply of ATT.

²¹⁷ Cargotec submission European Commission RFI PN2 [REDACTED]

²¹⁸ Cargotec internal document, [REDACTED]

- 4.85 Our assessment of whether Konecranes' entry in the supply of ATT is the most likely scenario in this case is structured as follows:
- (a) Konecranes' views on its entry in the supply of ATT;
 - (b) the context for assessing Konecranes' entry in the supply of ATT; and
 - (c) the CMA's assessment of the likelihood of Konecranes' entry in the supply of ATT.

Konecranes' views on its entry in the supply ATT

4.86 Konecranes told us that, '[t]imely entry in TT or ATT by Konecranes is highly unlikely'.²¹⁹

4.87 In particular, Konecranes submitted that:

- (a) 'It would take at least [REDACTED] for entry with a credible offering into the TT market, and several million euros in R&D, staff and facilities investments during which time competitors would also have continued to develop their own products. As such, Konecranes does not have the ability on its own to enter in a timely manner to reasonably be considered a "potential competitor"'.²²⁰
- (b) 'There are no [REDACTED] and in any event Konecranes would still not be able to develop a competitive ATT within at least the next [REDACTED]'.²²¹
- (c) 'There would need to be equipment-specific ECS, as the other HTE's operational and technological configuration is different than for TT (or in the future for ATT)'.²²²
- (d) In response to the CMA's working papers on ATT and the counterfactual, Konecranes submitted that it did not have any plans to develop its own [REDACTED] offering that it could have used to enter the ATT market in a timely way.²²³

²¹⁹ Parties' submission response to CMA RFI 5, [REDACTED]. [REDACTED].

²²⁰ Parties' submission response to CMA RFI 5, [REDACTED].

²²¹ Parties' submission response to CMA RFI 5, [REDACTED].

²²² Parties' submission response to CMA RFI 5, [REDACTED].

²²³ Konecranes submission, [REDACTED]

The context for assessing Konecranes' entry in the supply of ATT

- 4.88 In this section, we provide an overview of the context for Konecranes' entry in the supply of ATT by considering the following:
- (a) Konecranes' activities in relation to the supply of TT and development of ECS.
 - (b) Konecranes' [REDACTED].
 - (c) Konecranes' [REDACTED].
- 4.89 In 2017, Konecranes acquired a manual TT business as part of its acquisition of the Material Handling and Port Solutions (MHPS) business of Terex.²²⁴ However, in the same year, [REDACTED]. Konecranes told us that this step was taken [REDACTED]. Konecranes also told us that it has not subsequently taken any action to develop manual TT in-house.²²⁵
- 4.90 Konecranes is the distributor of Terberg's manual TT in Russia²²⁶, Kazakhstan, and Belarus.²²⁷
- 4.91 Konecranes has a subsidiary, TBA Group, which specialises in optimising port, terminal and warehousing operations and automation using software and services.²²⁸ TBA Group supplies ECS built for AGV and automated SC. Its website states, '[a]dvanced equipment control & scheduling system (ECS) for automated and efficient operation of all your automated container terminal equipment. TEAMS ECS schedules and operates any type of automated container terminal equipment and runs your terminal operation efficient, safe, reliable and optimized for your standardized operational procedures and equipment set up'.²²⁹ We note that Konecranes refers to TBA Group in certain internal documents as an [REDACTED] in [REDACTED] that could be used [REDACTED].²³⁰
- 4.92 We note that Konecranes made the following strategic decisions in the year prior to the Parties entering into discussions regarding the Merger:
- (a) In March 2019, it entered into the [REDACTED] for the [REDACTED].

²²⁴ Konecranes had not supplied TT before the acquisition of MHPS.

²²⁵ Konecranes submission, [REDACTED]

²²⁶ We note that some countries and companies have recently or may be considering ceasing activities in Russia. This has not been reflected in this Final Report, as it does not affect our competitive assessment.

²²⁷ Parties' submission [REDACTED]

²²⁸ [REDACTED]

²²⁹ TBA Group, TEAMS Equipment Control System [online], available at [TEAMS Equipment Control System | TBA Group \(https://tba.group/en/software/equipment-control-system-teams\)](https://tba.group/en/software/equipment-control-system-teams) [accessed 23/11/2021].

²³⁰ Konecranes internal document, [REDACTED]

(b) In February 2020, it entered into [REDACTED].

Konecranes' [REDACTED]

- 4.93 In May 2017, Konecranes and [REDACTED] entered into a Memorandum of Understanding (MoU), [REDACTED]. The MoU sets out, inter alia, that [REDACTED].^{231,232}
- 4.94 Konecranes and [REDACTED] (around one year prior to the Parties entering into discussions regarding the Merger) for the [REDACTED].²³³
- 4.95 The preamble of the [REDACTED] refers to the MOU as outlining [REDACTED]. The MOU seems to remain effective to the extent that it has not been superseded by the [REDACTED].
- 4.96 The [REDACTED] imposes the following general obligations:
- (a) [REDACTED]²³⁴
 - (b) [REDACTED]²³⁵
 - (c) [REDACTED]²³⁶
 - (d) [REDACTED].²³⁷
- 4.97 The [REDACTED] also imposes the following project-by-project obligations:
- (a) [REDACTED]²³⁸. [REDACTED] they have already issued an offer in a certain tender.²³⁹
 - (b) Once Konecranes and [REDACTED] have decided to jointly submit an offer for an ATT business opportunity, each should '[REDACTED]' and, upon submission of the tender, the Parties are [REDACTED].²⁴⁰
 - (c) [REDACTED].
 - (d) [REDACTED].²⁴¹

²³¹ Konecranes internal document, [REDACTED]

²³² [REDACTED] states that:

- a) [REDACTED]
- b) [REDACTED]
- c) [REDACTED]

²³³ Konecranes internal document, [REDACTED]

²³⁴ Konecranes internal document, [REDACTED]

²³⁵ Konecranes internal document, [REDACTED]

²³⁶ Konecranes internal document, [REDACTED]

²³⁷ Konecranes internal document, [REDACTED]

²³⁸ Konecranes internal document, [REDACTED]

²³⁹ Konecranes internal document, [REDACTED]

²⁴⁰ Konecranes internal document, [REDACTED]

²⁴¹ Konecranes internal document, [REDACTED]

- 4.98 In relation to this [REDACTED], Konecranes submitted that ‘there have been [REDACTED].’²⁴²
- 4.99 Konecranes told us that:
- (a) It made [REDACTED] since 2019.²⁴³
 - (b) ‘There have been [REDACTED] since [June 2020] and [REDACTED]. In light of the foregoing, Konecranes has [REDACTED] and would not even be able to do so within a relatively short timeframe (in the next 2-3 years).’²⁴⁴
 - (c) The [REDACTED] is in its ‘infancy’ and there was ‘[REDACTED].’²⁴⁵
 - (d) It has not entered into any [REDACTED].²⁴⁶
 - (e) It has jointly carried out [REDACTED].²⁴⁷
- 4.100 In response to the CMA’s working papers, Konecranes reiterated that Konecranes and [REDACTED] had made only limited progress on development of the proposed ATT [REDACTED].²⁴⁸ Konecranes explained that this meant that ‘[REDACTED].’²⁴⁹
- 4.101 Konecranes submitted that, around March 2020, it jointly agreed with [REDACTED].²⁵⁰
- 4.102 Konecranes subsequently clarified that, ‘[t]he [REDACTED] was [REDACTED], primarily due to the [REDACTED].’²⁵¹

Konecranes intention to [REDACTED]

- 4.103 In March 2019,²⁵² Konecranes explored the possibility of [REDACTED] to expand its offering into the supply of ATT and, as part of this process, it identified [REDACTED] as a [REDACTED].²⁵³ [REDACTED] is the [REDACTED].²⁵⁴ Its project name for the [REDACTED]. It envisaged [REDACTED] by the end of 2019.²⁵⁵

²⁴² Parties’ submission response to RFI 2, [REDACTED]

²⁴³ Parties’ submission response to RFI 5, [REDACTED]

²⁴⁴ Parties’ submission response to RFI 5, [REDACTED]

²⁴⁵ Parties’ submission response to RFI 5, [REDACTED]

²⁴⁶ Konecranes submission, response to RFI 4, [REDACTED]

²⁴⁷ Konecranes submission, response to RFI 4, [REDACTED]

²⁴⁸ Parties’ submission, [REDACTED].

²⁴⁹ Parties’ submission, [REDACTED].

²⁵⁰ Parties’ submission response to RFI 5, 25 [REDACTED].

²⁵¹ Konecranes submission, [REDACTED].

²⁵² Konecranes told us that in February 2017, Konecranes’s senior team indicated to [REDACTED] that it would like to start discussing the possible [REDACTED]. However, the discussions were not pursued during the rest of 2017 and until late 2018. In early January 2019, both sides met [REDACTED] and agreed to explore further how [REDACTED] and Konecranes could work together, either independently or through [REDACTED]. An NDA was signed in [REDACTED]

²⁵³ Konecranes internal document: [REDACTED]

²⁵⁴ Website, [REDACTED]

²⁵⁵ Konecranes internal document, [REDACTED]

- 4.104 Around September 2019, a proposal was made to Konecranes' board of directors to [REDACTED].²⁵⁶ Part of the rationale [REDACTED] was to [REDACTED].²⁵⁷ The proposal further stated that one 'value creation lever' for the transaction was to [REDACTED], which was estimated as having a \$3-4 million impact on gross profit (from the sale of TT equipment alone) between 2018 and 2024.²⁵⁸ [REDACTED].²⁵⁹
- 4.105 A Konecranes internal document, [REDACTED], prepared in [REDACTED]²⁶⁰ (around five months before the Parties entered into discussions regarding the Merger) refers to [REDACTED] as the fourth target (out of nine) under the heading, 'MAIN ACTIONS 2020' and the sub-heading, 'Develop new products/platforms'.²⁶¹ The same document shows [REDACTED].
- 4.106 In February 2020 ([REDACTED]before the Parties first discussed entering into some form of commercial cooperation agreement), Konecranes signed a [REDACTED],²⁶² reached an agreement on the main commercial terms, carried out due diligence and estimated that the [REDACTED] would be [REDACTED].The [REDACTED] states that Konecranes was willing in principle [REDACTED].²⁶³
- 4.107 On [REDACTED], Konecranes sent a letter to [REDACTED] chairman and chief executive officer, [REDACTED], notifying him of Konecranes' intention to [REDACTED] stating the reason for this was the [REDACTED].
- 4.108 Konecranes told us that:
- (a) Its plans to [REDACTED] were cancelled in April 2020 when '[REDACTED]'.²⁶⁴
 - (b) It 'had [REDACTED] at the time the Merger was negotiated and agreed'.²⁶⁵
 - (c) '[REDACTED] would not necessarily bring about Konecranes' immediate entry into the [REDACTED], as [REDACTED]. Konecranes would need to supply test units to [REDACTED] in order to earn references and establish credibility with customers. [REDACTED] would require some technical and industrial design modifications to be marketed and sold [REDACTED], as they are currently designed for the [REDACTED].

²⁵⁶ Konecranes internal document, [REDACTED]

²⁵⁷ Konecranes internal document, [REDACTED]

²⁵⁸ Konecranes internal document, [REDACTED]

²⁵⁹ Konecranes internal document, [REDACTED]

²⁶⁰ November 2019 pre-dates when the Parties told us that two of their main shareholders recommended to their respective boards that they investigate the feasibility of the Merger. Merger Notice[REDACTED]

²⁶¹ Konecranes internal document, [REDACTED]

²⁶² Konecranes internal document, [REDACTED]

²⁶³ Konecranes internal document, [REDACTED]

²⁶⁴ Parties response to RFI 5, [REDACTED]

²⁶⁵ Parties response to RFI 5, [REDACTED]

Examples include [REDACTED], and changes to the [REDACTED]. While not difficult to implement, these changes will still need to be engineered and tested'.²⁶⁶

4.109 In response to the CMA's working papers, Konecranes submitted that negotiations with [REDACTED] were cancelled due to Covid-19 concerns, unrelated to the Merger.²⁶⁷ Konecranes noted that the plans for [REDACTED] were 'in a very early stage' and that at the time of cancelling [REDACTED] the deal still had to be approved by Konecranes' Board.²⁶⁸ Konecranes also stated that, [REDACTED].²⁶⁹ Konecranes further submitted that, the emergence of COVID-19 meant that there was no certainty as to whether a new agreement on price could have been reached.²⁷⁰

4.110 Konecranes also told us that it 'informed [REDACTED] of this decision and decided to focus on preserving profitability and ensuring the successful continuity of existing business operations. Therefore, Konecranes has [REDACTED] in this product area'.²⁷¹

CMA's assessment of the likelihood of Konecranes' entry in the supply of ATT

4.111 We have set out below our conclusion on the likelihood of Konecranes' entry in the supply of ATT. In advance of this, and by way of context to our assessment, we have set out below:

- (a) Konecranes' incentive to enter the supply of ATT.
- (b) Konecranes' ability to enter the supply of ATT and its decision-making around the time of the Merger.

4.112 We also consider below whether the Coronavirus (COVID-19) pandemic had a material effect on Konecranes' incentive and ability to [REDACTED].

Konecranes' incentive to enter the supply of ATT

4.113 In order to assess the incentive of Konecranes to enter the supply of ATT, we reviewed internal documents for evidence of the following:

- (a) The strategic importance placed by Konecranes on the possibility of adding ATT to its future portfolio of CHE; and

²⁶⁶ Parties' submission response to RFI 5 [REDACTED]

²⁶⁷ Parties' submission, [REDACTED]

²⁶⁸ Parties' submission, [REDACTED]

²⁶⁹ Parties' submission [REDACTED]

²⁷⁰ Parties' submission [REDACTED]

²⁷¹ Parties' submission response to RFI 5, [REDACTED]

- (b) The steps taken by Konecranes towards supplying ATT, including entering into the [REDACTED] and potentially [REDACTED].

Evidence of the strategic importance placed by Konecranes on the possibility of adding ATT to its future portfolio of CHE

4.114 The internal document, [REDACTED] produced by Konecranes' senior team to be submitted to Konecranes' board, dated March 2019, shows that Konecranes considered entry in the supply of ATT to be a [REDACTED].

4.115 In particular, it states that:

(a) [REDACTED].

(b) [REDACTED].²⁷² [REDACTED].²⁷³

(c) Konecranes was targeting a [REDACTED] % market share in the supply of ATT.²⁷⁴

(d) Konecranes believed that it needed to have an ATT solution [REDACTED].²⁷⁵

(e) Konecranes considered that offering ATT would [REDACTED].²⁷⁶

(f) [REDACTED].²⁷⁷

4.116 A Konecranes internal document, 'Proposal to Board of Directors' dated 6 September 2019 regarding the proposed [REDACTED] states that:

(a) [REDACTED].²⁷⁸

(b) [REDACTED].²⁷⁹

(c) [REDACTED].²⁸⁰

(d) [REDACTED].²⁸¹

²⁷² Konecranes internal document, [REDACTED].

²⁷³ Konecranes internal document, [REDACTED].

²⁷⁴ Konecranes internal document, [REDACTED].

²⁷⁵ Konecranes internal document, [REDACTED].

²⁷⁶ Konecranes internal document, [REDACTED].

²⁷⁷ Konecranes internal document, [REDACTED].

²⁷⁸ Konecranes internal document, [REDACTED].

²⁷⁹ Konecranes internal document, [REDACTED].

²⁸⁰ Konecranes internal document, [REDACTED].

²⁸¹ Konecranes internal document, [REDACTED].

- 4.117 This document also states that TT and ATT were [REDACTED],²⁸² and that [REDACTED].²⁸³ In addition, the document shows that Konecranes considered the [REDACTED] would be a good fit with its pre-existing broader commercial strategy.²⁸⁴
- 4.118 Konecranes' internal document, [REDACTED] dated October 2019 [REDACTED] and states (amongst other reasons) that entering ATT (through [REDACTED]) [REDACTED] and that the [REDACTED].²⁸⁵
- 4.119 Konecranes' internal document, 'Backup slide', dated 9 February 2020 forecasts sales of Konecranes' [REDACTED].
- 4.120 We consider that this evidence over a period of several months in 2019 and 2020 shows that Konecranes had assessed the potential opportunity from entering the supply of ATT and assessed that it had strategic incentive to do so.

The steps taken by Konecranes towards supplying ATT, including entering into the [REDACTED] with [REDACTED] and [REDACTED]

- 4.121 As noted at paragraph 4.92, in the year prior to the Parties entering into discussions regarding the Merger, Konecranes:
- (a) Entered into the [REDACTED] with [REDACTED]; and
 - (b) carefully considered the capabilities of [REDACTED] and how the [REDACTED] might enhance its position within the supply of ATT.
- 4.122 In relation to the [REDACTED], the internal document, [REDACTED] dated 17 December 2019, mentioned above states that [REDACTED].²⁸⁶ It also includes a diagram showing its [REDACTED] with milestones.
- 4.123 We note that the internal document, [REDACTED] dated March 2019, indicates that the [REDACTED] and the [REDACTED] were not considered mutually exclusive opportunities within the supply of ATT.²⁸⁷
- 4.124 In relation to the [REDACTED], the Proposal to the Board of Directors of 6 September 2019 shows that, although [REDACTED] has [REDACTED], Konecranes had the capability to

²⁸² Konecranes internal document, [REDACTED].

²⁸³ Konecranes internal document, [REDACTED].

²⁸⁴ Konecranes internal document [REDACTED].

²⁸⁵ Konecranes internal document, [REDACTED].

²⁸⁶ Konecranes internal document [REDACTED].

²⁸⁷ Konecranes internal document, [REDACTED]

electrify and automate it in [REDACTED]. A footnote in the document notes that [REDACTED] are covered by funding for existing projects.²⁸⁸

- 4.125 Konecranes' internal document, 'Backup slide', dated 9 February 2020 sets out, amongst other business strategies, Konecranes' potential business plan for [REDACTED] in relation to, '[REDACTED]'. This document shows that Konecranes may be able to utilise its existing investment in supplying CHE, parts and servicing, including its distributor network, to make it easier to [REDACTED], as it was planning to do in relation to TT: '[REDACTED]'.²⁸⁹
- 4.126 We consider that this email also shows that Konecranes was closely monitoring the progress of its competitors and potential competitors in developing automation technology.
- 4.127 On 24 February 2020, Konecranes' Chief Executive Officer, [REDACTED], sent an email to Konecranes' Vice President of Technologies, [REDACTED],²⁹⁰ which states that: [REDACTED]. We note, in particular, that this document shows that Konecranes had a [REDACTED] in February 2020 and members of its senior leadership were directly involved in overseeing its development.²⁹¹ In response to being asked about where the [REDACTED] had been tested, Konecranes told us that it received a version of an [REDACTED] at its facilities in Dusseldorf for the purposes of developing [REDACTED]. However, on testing, Konecranes determined that the equipment was [REDACTED] and sent it back to [REDACTED].²⁹²
- 4.128 Konecranes' internal document, '[REDACTED]', dated [REDACTED] (shortly before the Parties entered into discussions regarding the Merger in [REDACTED])²⁹³ sets out the 'Process status' in relation to the [REDACTED].²⁹⁴ It records that [REDACTED] was well advanced and no major issues in the [REDACTED] had been identified. It also shows that Konecranes expected, in March 2020, that an agreement to [REDACTED] would be signed in [REDACTED] with completion in the [REDACTED].²⁹⁵

Conclusion on Konecranes' incentive to enter the supply of ATT

- 4.129 Our conclusion is that the internal documents referred to above show that Konecranes had a clear incentive to enter into the supply of ATT, given the business opportunity that the supply of this equipment represented in view of the expected automation of port terminals and new customer segments.

²⁸⁸ Konecranes internal document, [REDACTED]

²⁸⁹ Konecranes internal document, [REDACTED]

²⁹⁰ Konecranes internal document, [REDACTED]

²⁹¹ Konecranes internal document, [REDACTED]

²⁹² Konecranes submission, response to RFI 4, [REDACTED]

²⁹³ Merger Notice, [REDACTED]

²⁹⁴ Konecranes internal document, [REDACTED]

²⁹⁵ Konecranes internal document, [REDACTED]

These documents show that the entry in the supply of ATT was aligned with Konecranes commercial strategy and that Konecranes had taken steps towards supplying ATT by entering into the [REDACTED] with [REDACTED] and being on the cusp of [REDACTED].

Konecranes' ability to enter the supply of ATT

4.130 We consider below Konecranes' ability to enter into the supply of ATT.

4.131 Based on the internal documents considered below, and the context set out in paragraphs 4.88 to 4.92 regarding Konecranes' activities and automation capabilities, we consider that Konecranes already possessed several attributes that made it well-placed to enter the supply of ATT. In particular Konecranes has:

- (a) developed the ability [REDACTED] to service the [REDACTED] (an internal email from Konecranes' Chief Executive Officer dated February 2020 refers to a [REDACTED])²⁹⁶ and as has the '[REDACTED]';²⁹⁷
- (b) experience of customers' manual TT requirements from having acted as a distributor for [REDACTED];²⁹⁸
- (c) established a reputation and track record in the supply of CHE other than ATT in adjacent markets;²⁹⁹ and
- (d) developed automation technology and knowhow for other types of CHE through its subsidiary, TBA Group,³⁰⁰ and [REDACTED]³⁰¹ to the development of ATT, [REDACTED].³⁰²

4.132 We also note:

- (a) An internal document from Konecranes quotes an 'industry expert' saying: '[REDACTED]'.³⁰³
- (b) Another internal document dated 24 October 2019, states that [REDACTED].³⁰⁴

4.133 We consider that Konecranes is a large and well-resourced business that would have been readily able to make the investments required to develop a

²⁹⁶ Konecranes internal document, [REDACTED]

²⁹⁷ Konecranes internal document, [REDACTED]

²⁹⁸ Parties' submission response to CMA RFI 5, [REDACTED]

²⁹⁹ Merger Notice, pa[REDACTED]

³⁰⁰ Konecranes internal document[REDACTED]

³⁰¹ Konecranes internal document, [REDACTED]

³⁰² Konecranes internal document, [REDACTED]. These projects were due to be completed within two to three years.

³⁰³ Konecranes internal document, [REDACTED]

³⁰⁴ Konecranes internal document, [REDACTED]

credible ATT offering. For example, Konecranes held €378 million in cash as at 31 December 2019 (around four months before it abandoned [REDACTED]) and €592 million in cash as at 31 December 2020.³⁰⁵

- 4.134 Konecranes' pre-Merger and more recent ([REDACTED]) roadmaps [REDACTED] indicate that Konecranes has the ability to develop ATT in the near term.³⁰⁶
- 4.135 We also consider that internal documents³⁰⁷ show that Konecranes carefully considered the following costs and risks of [REDACTED] (amongst others) and made the decision to pursue [REDACTED] having made that assessment.
- 4.136 The [REDACTED] carried out by Konecranes³⁰⁸ on [REDACTED] in 2019-2020 shows that there were no obstacles to the [REDACTED]. We note that this evidence is difficult to reconcile with Konecranes' submission (as set out in paragraph 4.108(a) above) that [REDACTED].³⁰⁹

Conclusions on Konecranes' ability to enter the supply of ATT

- 4.137 We consider that Konecranes had the '[REDACTED]'. While it lacked some capabilities, there were credible ways in which it could have developed an ATT offering such as through its [REDACTED] with [REDACTED] and/or its potential [REDACTED].
- 4.138 Our conclusion is that Konecranes had the ability to enter the supply of ATT, absent the Merger.

The effect of the Coronavirus (COVID-19) pandemic on Konecranes' incentive and ability to enter the supply of ATT

- 4.139 In this section we look at whether the Coronavirus (COVID-19) pandemic would have changed Konecranes' incentive and ability to enter the supply of ATT absent the Merger.
- 4.140 We note the CMA's guidance on Merger assessment during the Coronavirus (COVID-19) pandemic,³¹⁰ which says '[a] merger control investigation typically looks beyond the short-term and considers what lasting structural impacts a merger might have on the markets at issue. Even significant short-term industry-wide economic shocks may not be sufficient, in themselves, to

³⁰⁵ Konecranes internal document, [REDACTED]

³⁰⁶ Parties' submission response to CMA RFI 5[REDACTED]

³⁰⁷ Konecranes internal document, [REDACTED]

³⁰⁸ It states that [REDACTED]

³⁰⁹ Konecranes internal document, [REDACTED]

³¹⁰ *Merger Assessment during the Coronavirus (COVID-19) pandemic (CMA 120)*, (https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/880570/Merger_assessments_during_the_Coronavirus__COVID-19__pandemic_.pdf), April 2020.

override competition concerns that a permanent structural change in the market brought about by a merger could raise'.³¹¹

- 4.141 We further note that the Merger Assessment Guidelines (CMA129) set out that '[t]he time horizon for considering the counterfactual will be consistent with the time horizon used in the CMA's competitive assessment'.³¹² Therefore, we take into account elements of scenarios which would have occurred after the immediate impact of the Coronavirus (COVID-19) pandemic in March 2020.

The effect of the Coronavirus (COVID-19) pandemic on the [X] and on the possible [X]

- 4.142 As noted above, Konecranes told us it 'jointly decided [with [X]] to [X] due to the impact of Coronavirus (COVID-19) and the limited progress described above'.
- 4.143 We have not seen any internal documents which refer to a 'joint decision' between Konecranes and [X]³¹³ [X]. Konecranes has not otherwise provided any contemporaneous evidence to support its position that this arrangement had been suspended for reasons unrelated to the Merger. We note that Konecranes' website still refers to its cooperation with Terberg in the supply of ATT.³¹⁴
- 4.144 We consider that the evidence³¹⁵ [X]. While the Coronavirus (COVID-19) pandemic may have affected the progress of the development of ATT in the short-term, the evidence considered in paragraphs 4.113 to 4.129 above shows that Konecranes' incentive, over the period of the counterfactual, to continue with the [X] was not materially affected by the Coronavirus (COVID-19) pandemic.
- 4.145 We consider the potential entry of Terberg and other potential entrants in Chapter 10, in which we also assess the effect of the [X] on the conditions of competition absent the Merger.³¹⁶

³¹¹ CMA120, paragraph 22.

³¹² CMA129, paragraph 3.15.

³¹³ Parties' submission response to RFI 5, [X]

³¹⁴ Konecranes website, Automated Terminal Tractor, 8 September 2021. The website states that Konecranes is 'pleased to announce that we now supply automated terminal tractors (A-TT). Terberg will be our partner in this effort, as a certified supplier of terminal tractors. Konecranes will supply the automation technology as part of turn-key automated container handling delivery' (see: <https://www.konecranes.com/equipment/container-handling-equipment/automated-terminal-tractor>). Konecranes stated that the reference on its website to ATT was published on 28 June 2017 and is outdated since it pre-dates [X]

³¹⁵ Terberg told us that: i) [X]; ii) [X]; and iii) [X]. Konecranes confirmed that it has jointly carried out [X] (Konecranes, response to RFI 4, [X].)

³¹⁶ CMA129, paragraph 3.7.

4.146 In relation to the effect of the Coronavirus (COVID-19) pandemic on the possible [REDACTED], the evidence mixed,³¹⁷ but even if Konecranes did abandon its intention to [REDACTED] at the beginning of the Coronavirus (COVID-19) pandemic, we cannot exclude that negotiations towards [REDACTED] might have recommenced absent the Merger.

The effect of the Coronavirus (COVID-19) pandemic on Konecranes' incentive to enter the supply of ATT

4.147 Based on the evidence we have received, the immediate effect of the Coronavirus (COVID-19) pandemic on Konecranes' incentive to enter the supply of ATT is unclear. In essence, we note the following:

- (a) Although Konecranes told us that it has decided to [REDACTED] with Terberg, it has carried out [REDACTED] and made [REDACTED] with [REDACTED] in Rotterdam in 2021.
- (b) Whereas Konecranes wrote to [REDACTED] stating that it has decided that it will [REDACTED], it retained the ability to restart negotiations when the Coronavirus (COVID-19) pandemic eased.
- (c) In determining the time horizon for considering the counterfactual, we are not limited to the specific point in time that Konecranes decided to abandon its [REDACTED].³¹⁸

4.148 The evidence shows that Konecranes had a strong incentive to enter the supply of ATT (as summarised at paragraphs 4.113 to 4.129) pre-Merger, and in the longer term once the short-term operational and financial challenges of from the Coronavirus (COVID-19) pandemic eased.

4.149 We have not seen any evidence which indicates that Konecranes' pre-Merger incentive to enter the supply of ATT was materially affected by the Coronavirus (COVID-19) pandemic.

³¹⁷ We note that Konecranes' decision to [REDACTED] was made around the same time as the possible impacts of the Coronavirus (COVID-19) pandemic were becoming apparent and the Parties first entered into discussions regarding the Merger. On [REDACTED], Konecranes sent a letter to [REDACTED] chairman and chief executive officer, [REDACTED], notifying them of Konecranes' intention to [REDACTED] ([REDACTED]). The letter states that '[REDACTED]' (Konecranes internal document, [REDACTED]). We note that this correspondence seems to broadly coincide with the beginning of the discussions between the Parties in relation to the Merger. The Parties told us that they 'first discussed entering into some form of commercial cooperation agreement with each other in [REDACTED], when Cargotec's board first approached Konecranes regarding a potential friendly combination' (Merger Notice, [REDACTED]). Konecranes claimed that, '[REDACTED]' (Konecranes submission, [REDACTED]). We note, however, that no evidence was submitted to support this assertion. We are therefore not in a position to conclude on the relative importance of each of these events on Konecranes' decision making.

³¹⁸ CMA129, paragraph 3.15.

The effect of the Coronavirus (COVID-19) pandemic on Konecranes' ability to enter the supply of ATT

- 4.150 We note that Konecranes reported an operating profit of €174 million for its 2020 financial year (2019: €149 million). This represents an increase of around 17%.³¹⁹
- 4.151 Konecranes' Annual Review states that, '[g]lobal container throughput recovered in the second half and ended 2020 above the year before. Despite the challenging market environment and hurdles to delivery execution caused by the Coronavirus (COVID-19) pandemic, Port Solutions finished 2020 by achieving new all-time high quarterly records for both order intake and sales'.³²⁰
- 4.152 We further observe that Konecranes' had net current assets of €539 million³²¹ at the end of its 2020 financial year (2019: €499 million).³²² This equates to an increase of around 8%. Konecranes held around €592 million cash and cash equivalents at the end of its 2020 financial year (2019: €378 million).
- 4.153 Moreover, we note that, on 11 May 2020 (around one month after Konecranes [§]), Konecranes' Board proposed to its Annual General Meeting that a dividend of €0.65 per share was paid.³²³
- 4.154 We recognise that the Coronavirus (COVID-19) pandemic created unprecedented uncertainty around April 2020. We cannot be certain about its short-term effect on Konecranes' ability to enter the supply of ATT. However, the impact of the Coronavirus (COVID-19) pandemic has subsided since April 2020, with the global economy and trade growing again. This is reflected in Konecranes' strong performance in 2020.³²⁴

³¹⁹ Konecranes Annual Review 2020, p 57 (see: <https://news.alertir.com/afw/files/press/konecranes/202103054145-1.pdf>).

³²⁰ Konecranes Annual Review 2020, p 18.

³²¹ €1.976 bn total current assets less €1.437 bn total current liabilities. Konecranes Annual Review 2020, p 58.

³²² €1.868 bn total current assets less €1.369 bn total current liabilities. Konecranes Annual Review 2020, p 58.

³²³ Konecranes Stock Exchange Release, Konecranes' Board of Directors changes its dividend proposal, 11 May 2020 (see: <https://www.konecranes.com/press/releases/2020/konecranes-board-of-directors-changes-its-dividend-proposal>).

³²⁴ Parties response to RFI 5, [§]

Conclusion on the effect of the Coronavirus (COVID-19) pandemic on Konecranes' incentive and ability to enter the supply of ATT

- 4.155 In view of the evidence above,³²⁵ we conclude that Konecranes' ability and incentive to ultimately enter the supply of ATT did not materially change as a result of the Coronavirus (COVID-19) pandemic.
- 4.156 As explained above, there is evidence that Konecranes had multiple plausible routes to enter into the supply of ATT. Konecranes submitted some evidence that suggests that the Coronavirus (COVID-19) pandemic may have affected its decision not to proceed with the [✂].
- 4.157 The evidence considered above is also consistent with Konecranes having the ability to enter into the supply of ATT, even considering the impact of the Coronavirus (COVID-19) pandemic. We note, in this respect, that Konecranes' financial performance in 2020 exceeded the prior year and it had a relatively strong balance sheet and cash position. Further, Konecranes' Board proposed a dividend on 11 May 2020.³²⁶
- 4.158 Our conclusion, therefore, is that the most likely scenario is that Konecranes would have continued or resumed its plans to enter the supply of ATT once the operational and financial challenges brought about by the Coronavirus (COVID-19) pandemic eased.

Conclusion on the likelihood of entry by Konecranes in the supply of ATT

- 4.159 Having considered the submissions above and the available evidence we conclude that, absent the Merger, Konecranes would have continued to make efforts to enter the supply of ATT because it had the incentive and ability to do so. We expect this entry to occur in the time period used in the competitive assessment for the supply of ATT.

Conclusion on the most likely counterfactual

- 4.160 For the reasons set out above, our conclusions are that the most likely counterfactuals and, thus, the most appropriate counterfactuals in this case is a scenario with:

³²⁵ Noting that, as provided for in [CMA129](#), 'Where internal documents support claims being made by merger firms or third parties that have an interest in the outcome of the CMA's investigation, the CMA may be likely to attach more evidentiary weight to such documents if they were generated prior to the period in which those firms were contemplating or aware of the merger, or if they are consistent with other evidence' (paragraph 2.29(a)).

³²⁶ [Konecranes Stock Exchange Release](#), Konecranes' Board of Directors changes its dividend proposal, 11 May 2020.

- (a) **Prevailing conditions of competition** in regard to the following types of CHE: yard cranes; HTE (excluding ATT); and MEQ.
- (b) **Conditions of competition involving stronger competition** than under the prevailing conditions of competition in relation to the supply of ATT, arising from Cargotec's and Konecranes' entry into the ATT market. In particular, having considered the submissions above and the available evidence we conclude that, absent the Merger, Konecranes would have continued to make efforts to enter the supply of ATT because it had the incentive and ability to do so. We expect this entry to occur in the time period used in the competitive assessment for the supply of ATT.

5. Market definition

- 5.1 Market definition provides a framework for assessing the competitive effects of a merger.³²⁷ Within that context, the assessment of the relevant market(s) is an analytical tool that forms part of the analysis of the competitive effects of a merger and should not be viewed as a separate exercise.³²⁸
- 5.2 While the boundaries of the relevant product market are generally determined by reference to demand-side substitution alone, the CMA may widen the scope of the market where there is evidence that firms routinely use their production assets to supply a range of products and where the conditions of competition for those products are similar.³²⁹
- 5.3 The boundaries of a market do not determine the outcome of the analysis of the competitive effects of a merger, as it is recognised that there can be constraints on merging parties from outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important than others. We take these factors into account in our competitive assessment.³³⁰

³²⁷ CMA129, Chapter 9.

³²⁸ CMA129, paragraph 9.1.

³²⁹ CMA129, paragraph 9.8.

³³⁰ CMA129, paragraph 9.4.

Gantry Cranes

Product market definition

Parties' views

- 5.4 The Parties submitted that all Gantry Cranes form one single relevant product market. The Parties stated that there is demand-side substitutability at the greenfield stage of a port's development, and supply-side substitutability between all Gantry Cranes.³³¹
- 5.5 The Parties submitted that all Gantry Cranes can be, and typically are, produced in the same manufacturing plants using the same equipment. The same manufacturing lines and the same technicians / engineers are employed for the manufacturing of the different Gantry Cranes. Further, there is a high degree of substitutability for the key components used for the manufacture of the various Gantry Cranes. Konecranes manufactures all of its Gantry Cranes in the same primary subcontractor manufacturing facilities located in China, Croatia, Finland and Poland. Similarly, Liebherr manufactures both RTGs and RMGs in the same facility located in Killarney (Republic of Ireland).³³²
- 5.6 In response to the working papers, the Parties further noted that in greenfield projects, there is a significant degree of cross-competition between different types of Gantry Cranes, especially at the conceptual stage when a new terminal is designed, and reiterated that there is considerable supply-side substitutability, noting that many suppliers offer a full suite or several types of Gantry Crane and that the Parties, as well as ZPMC, Sany and others, began supplying RTGs and then expanded into ASCs, and use the same sub-contracting network and internal organization for both type of Gantry Cranes.

Past decisional practice

- 5.7 In Konecranes/Terex, the European Commission considered whether there was any substitutability between ASC, RTG and RMG. The European Commission found that the choice of ASC or RTG depends on the layout and planned logistic flows of the container terminal and that any substitutability between different types of Gantry Crane may only be relevant

³³¹ Merger Notice, [REDACTED].

³³² Merger Notice, [REDACTED].

at the 'greenfield' stage of the terminal. The European Commission ultimately left the product market definition open.³³³

Our assessment

Demand-side substitution

- 5.8 As explained in Chapter 2, Gantry Cranes³³⁴ are used in the container yard and landside area for stacking containers and loading/unloading trucks and railcars. They have an overhead structure with hoisting machines mounted on a frame which is typically supported by four or more legs.³³⁵ RTGs are the most common yard handling system in large container terminals and specialised container storage yards. RTGs typically operate in a single stack location but can also be driven from stack to stack when required to reconfigure or better manage workload in a yard.³³⁶ ASCs are automated RMGs and, similarly to automated RTGs, they are not controlled individually onboard the crane by a human operator but via an ECS.³³⁷
- 5.9 The evidence that we have reviewed indicates that demand-side substitutability between different types of Gantry Crane is limited.
- 5.10 Figure 9, from a promotional brochure produced by Konecranes in 2016,³³⁸ indicates that different types of Gantry Crane have varying cost profiles depending on the volumes being handled, such that one type is unlikely to be a close substitute for another when it comes to handling a given volume of containers.

³³³ [European Commission case M.7792 Konecranes/Terex MHPS, 8 August 2016](#), paragraphs 60 and 61.

³³⁴ We are focusing our assessment on the demand-side and supply-side substitutability between different types of Gantry Cranes. Based on the different type of functions of STS and MHC (see 2.8 to 2.14), evidence from third parties and the different market structure between STS, MHC, and Gantry Cranes (see fn 576 and 577 and Chapter 7)), we consider that there is limited demand- and supply-side substitution between STS, MHC, and Gantry Cranes. For example, one third-party ([REDACTED]) told us that 'it is highly unlikely that a manufacturer of other cranes would be able to move production to build MHCs' and that 'A MHC is a product that has a great deal of technical know-how which would be difficult to replicate.' Call note, [REDACTED].

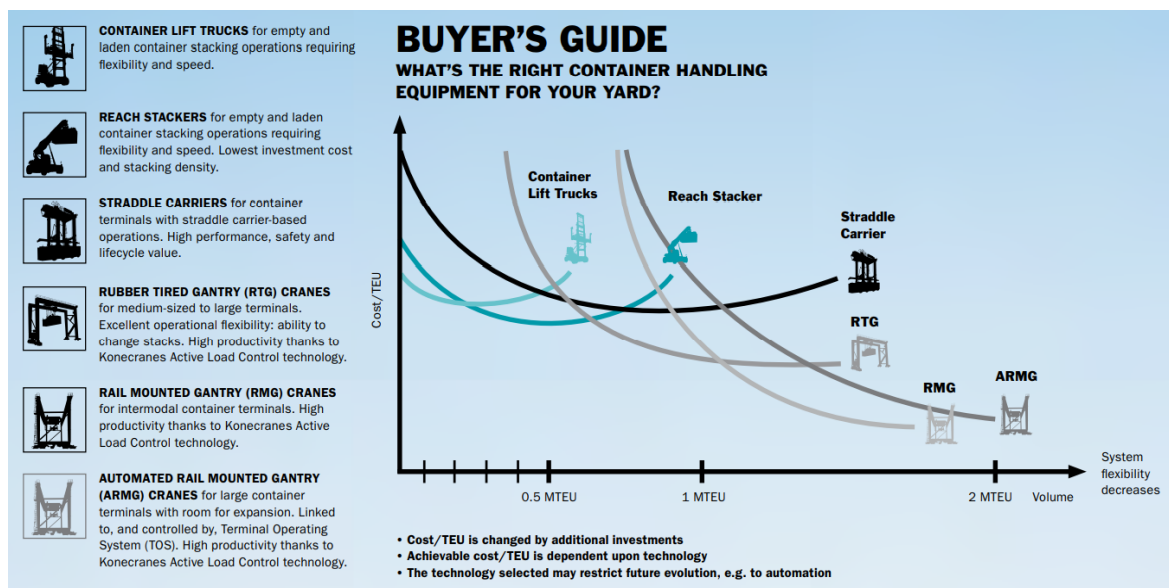
³³⁵ Merger Notice, [REDACTED].

³³⁶ Merger Notice, [REDACTED].

³³⁷ Merger Notice, [REDACTED].

³³⁸ We consider that the fact that this brochure is marketing material does not mean that it cannot be information relevant for product market definition. This document describes the functionality, use and cost profile of each type of equipment and these factors are relevant to the assessment of demand-side substitution.

Figure 9: Buyer’s guide for a container handling customer



Source: Konecranes internal document, [REDACTED].

5.11 Another internal document of Konecranes of October 2019 distinguishes different terminal systems (including RTG Terminal, RMG Terminal and ASC Terminal) based on different usage, characteristics and levels of automation (see Figure 10).³³⁹ We consider that, even at concept stage, the envisaged type of terminal determines the type of equipment that will be used and not vice versa.

Figure 10: [REDACTED]



Source: Konecranes internal document, [REDACTED].

5.12 There are also significant price differences between the various types of Gantry Crane, which limit demand-side substitutability.³⁴⁰ RTGs in particular, which are the most widespread Gantry Cranes in the market, are more affordable than the other types of Gantry Cranes. Evidence submitted by the Parties indicates that the average price of a RTG was €[REDACTED] million for Cargotec and €[REDACTED] million for Konecranes between 2018 and 2020, whereas the average price of an ASC was higher at €[REDACTED]million for Cargotec and €[REDACTED] million for Konecranes.³⁴¹ The average price of a RMG was higher still

³³⁹ Konecranes internal document, [REDACTED].

³⁴⁰ The Parties submitted, in response to the working papers, that a one-to-one price comparison is not an accurate metric and prices for the various types of Gantry Cranes would be relatively similar if compared on a total-cost-of-ownership basis. The Parties, however, have not provided evidence to support this statement. In any case, we consider that the difference in price is a factor that customers will take into account in their choice: customers will pay more for an ASC because of its different functionalities and features compared with a less expensive RTG.

³⁴¹ Merger Notice, [REDACTED].

at €[REDACTED]million for Cargotec.³⁴² The Parties also provided documents that support that there are material price differences between different types of Gantry Crane.^{343, 344}

5.13 [REDACTED].³⁴⁵

5.14 Third-party evidence is also consistent with limited demand-side substitution:

- (a) One customer [REDACTED] told us that RMG, RTG and ASC are all designed for specific purposes and therefore are not substitutable.³⁴⁶ This customer also told us that it considers that ASC are not a substitute for RTG because RTG give flexibility as they can move from one yard block to another yard block. ASC cannot be moved as freely.³⁴⁷
- (b) Another customer [REDACTED] told us that, due to the different shapes and sizes of the terminals, different container terminals use different equipment.³⁴⁸
- (c) Another customer [REDACTED] told us that there are significant differences between operating a port using RMG compared to RTG. RMG operate on rails that are built into the ground for the wheels, whilst RTG operate on runways. This means that RTG are significantly more flexible in terms of their usage compared to RMG. Additionally, an RTG operation will use fewer units than an RMG operation; as a consequence, there is less resilience built into a rail-based operation.³⁴⁹
- (d) Another customer [REDACTED] similarly highlighted that the fact that RMG use rails and RTG have tyres for transportation limits their substitutability.³⁵⁰
- (e) One competitor [REDACTED] told us that ASC are used in terminals in which trucks are loaded at the end of the stack of containers, whereas RTG are used in a more traditional set up where there is a truck lane parallel to the block. This competitor noted that customers are unlikely to convert RMG operations to RTG operations because making the change requires a big investment (eg construction and electrification).³⁵¹

³⁴² Merger Notice, [REDACTED].

³⁴³ A Konecranes document shows that the average unit price of a RTG was \$[REDACTED] million in 2019, whilst the average unit price of a RMG was \$[REDACTED] million in 2019 and the largest RTGs might exceed a unit price of \$[REDACTED] million (see Konecranes internal document, [REDACTED]).

³⁴⁴ A Cargotec document shows that the average unit price for ASCs was €[REDACTED] million in 2019. Source: Cargotec internal document, [REDACTED].

³⁴⁵ Parties' submission response to the European Commission PN RFI 4 [REDACTED].

³⁴⁶ Call note, [REDACTED].

³⁴⁷ Call note, [REDACTED].

³⁴⁸ Call note, [REDACTED].

³⁴⁹ Call note, [REDACTED].

³⁵⁰ Call note, [REDACTED].

³⁵¹ Call note, [REDACTED].

(f) Customers typically tender for a specific type of Gantry Crane rather than comparing bids for a range of different types. For example, [REDACTED].³⁵²

5.15 The evidence above indicates that there is limited demand side substitution between different types of Gantry Cranes, indicating that different types of Gantry Crane would constitute separate markets.

Supply-side substitution

5.16 The evidence that we have reviewed indicates that supply-side substitutability between different types of Gantry Crane is limited.

5.17 First, evidence indicates that not all major suppliers offer a full suite of Gantry Cranes, or that they have a much more limited presence in certain types of Gantry Cranes, which suggests that conditions of competition are different for different types of Gantry Crane:

(a) The Parties, ZPMC and Kuenz offer a full suite of Gantry Cranes, however Kuenz has a more material presence in the supply of ASC than it does for other Gantry Crane types.³⁵³

(b) Paceco supplies RTG but not ASC.³⁵⁴

(c) A number of Gantry Crane suppliers only, or primarily, supply RMG (eg DSD Hilgers).³⁵⁵

5.18 Second, in some internal documents,³⁵⁶ Cargotec separately assesses the competitive situation in relation to the supply of RTG and ASC, suggesting that these cranes are subject to different competitive conditions.

5.19 Third, evidence from third parties highlights that there are some factors that make it difficult for a supplier of RTG to start supplying ASC and vice versa.

(a) One RTG competitor [REDACTED] said that, even with a history of supplying one type of Gantry Crane, it can still be difficult to establish a track record in a different type of Gantry Crane. It told us that it has tried entering the ASC market but it considers that this is a difficult market to enter in terms of references and has been excluded from tenders ([REDACTED]) because it does not have references.³⁵⁷

³⁵² Third-party document, [REDACTED].

³⁵³ Based on the shares of supply and the tender data for 2016 to 2020 which is assessed in Chapter 7.

³⁵⁴ Call note, [REDACTED].

³⁵⁵ Merger Notice [REDACTED].

³⁵⁶ See, for example, Cargotec internal document, [REDACTED]; Cargotec internal document, [REDACTED].

³⁵⁷ Call note, [REDACTED].

- (b) Another competitor told us that the supply of ASC also requires a supplier to develop specific automation software or to team up with other suppliers eg Siemens and ABB who supply ECS.³⁵⁸ This suggests that there may be limited supply-side substitutability between ASC and other types of gantry crane.
- (c) One customer [REDACTED] told us that, based on its experience as a port that transitioned from using RMG to RTG, it viewed some suppliers as having a stronger position in producing one type of equipment rather than another.³⁵⁹

- 5.20 As discussed in Chapter 7, having previously supplied ASC, Kuenz started to offer RTG for the first time in 2018, selling 10 RTG in Europe (of which none were in the UK) over the subsequent three years. Kuenz submitted that its RTG offer has a new design and may take some time to take off.³⁶⁰ It said that references were a moderate barrier to entry and expansion in RTG and ASC and that the manufacturer's track record with the product is important for most customers.³⁶¹
- 5.21 As explained in more detail in Chapter 12, evidence from third parties suggests that it is necessary for a potential new entrant to establish a strong track record and reputation in order to satisfy customers' purchasing criteria. Internal documents from Cargotec also suggest that having a strong track record and reputation is an important advantage.
- 5.22 Overall, the evidence above indicates that the conditions of competition are not the same between RTG and ASC,³⁶² that it takes time to develop experience and a track record in a particular type of Gantry Crane, and that a supplier of one type of Gantry Crane cannot easily switch manufacturing capacity to another type of Gantry Crane. It would therefore not be appropriate to define a single Gantry Crane market on the basis of supply side substitution.

Manual versus automated Gantry Cranes

- 5.23 Evidence from customers³⁶³ and tender data also indicates that customers choose between a non-automated gantry crane or an automated gantry crane only when a terminal has not yet been automated, ie substitution

³⁵⁸ Call note, [REDACTED]

³⁵⁹ Call note, [REDACTED]

³⁶⁰ Response to P2 questionnaire, [REDACTED]; call note, [REDACTED]

³⁶¹ Response to P2 questionnaire [REDACTED].

³⁶² CMA129, paragraph 9.8 (b).

³⁶³ Call note, [REDACTED].

between automated Gantry Cranes and non-automated Gantry Cranes is one-sided. Once automation has been implemented in a given terminal, it makes limited sense from a cost perspective to switch back to non-automated operations. Therefore demand-side substitutability between automated and non-automated Gantry Cranes is likely to be limited once a terminal has undergone a shift to automation. Given that the main suppliers of RTG also offer automated RTG (A-RTG), we have not assessed the effects of the Merger in the supply of RTG and A-RTG separately. We have considered any relevant differences between RTG suppliers in terms of automation in the competition assessment.

Conclusion on the relevant product markets

- 5.24 Our conclusion is that there are separate product markets for the supply of RTG and ASC, due to limited demand and supply-side substitutability, as supported by evidence from third parties and evidence on the market structure which indicates that there are different competitive conditions in the supply of each type of crane.

Geographic market definition

Parties' views

- 5.25 The Parties submitted that there is clear evidence that the markets for RTG and ASC³⁶⁴ are worldwide rather than European.³⁶⁵ The Parties submitted that:
- (a) A lack of presence in all jurisdictions by some suppliers does not point to a narrower geographic market. The Parties submitted that the location of OEMs' production facilities generally has no bearing on customers' purchasing decisions. For example, ZPMC has successfully penetrated the market as a cranes supplier worldwide (including the UK) even though its activities are concentrated in China;
 - (b) There is no need for pre-existing regional servicing capabilities. Customers without in-house service capabilities can rely on a wide range of service providers, new entrants that wish to acquire servicing capabilities have numerous different straightforward ways of doing so, and the supply of spare parts is typically centralised so OEMs would not need to establish a network of regional warehouses;

³⁶⁴ The Parties say that this factors also apply to MEQ and SC and ShC, ie to all.

³⁶⁵ Parties' response to Issues Statement, paragraphs 2.1 to 2.13.

- (c) There is no need for an established regional track record. The Parties state that this is not a prerequisite for success in the markets for RTGs and ASCs. Customers of port cranes have terminals in several regions and countries and purchase globally or negotiate framework agreements centrally at group level. These customers expect the same quality requirements and technical specifications across the world; and
- (d) Transportation costs are relatively low compared to the overall upfront investment. The Parties estimate that on average transportation costs account for around 10% of the price of the product.
- 5.26 The Parties further submitted that there are no significant differences in regulatory, safety and environmental standards between Europe and the rest of the world.³⁶⁶
- 5.27 In their response to working papers, the Parties submitted that the market for Gantry Cranes is a global market and should be viewed against the backdrop of a number of key factors that apply across equipment types in the CHE industry.³⁶⁷
- 5.28 The Parties also stated that the use of shares of supply by the CMA to conclude on a narrower regional market is misplaced. They submitted that a 'share of supply' analysis is static and does not reflect the dynamic nature of competition and the geopolitical decisions that have been taken by 'Chinese nationals' to enter certain container handling segments.³⁶⁸
- 5.29 The Parties submitted that the evidence cited by the CMA with regard to the requirements for any local presence is at best mixed, for example a local after-sales service. A local presence is not a prerequisite and is not indicative of a narrower geographic scope of the gantry crane segment.³⁶⁹
- 5.30 Having an established track record is also not considered by the Parties to be a determining factor that could result in a narrower geographic market definition. The Parties submit that several non-European competitors have established global servicing networks, including in Europe.³⁷⁰
- 5.31 In addition, the Parties noted that they both use manufacturing facilities in China, which means that they face the same transportation obligations as their Chinese competitors. Both the Parties use sub-contractors for the manufacturing of their Gantry Cranes, which includes sub-contractors in

³⁶⁶ Parties' response to Issues Statement, paragraphs 2.1 to 2.13 and 3.12.

³⁶⁷ Parties' submission, [REDACTED].

³⁶⁸ Parties' submission, [REDACTED].

³⁶⁹ Parties' submission, [REDACTED].

³⁷⁰ Parties' submission, [REDACTED].

China.³⁷¹ Furthermore, they state that APM's strategic alliance with ZPMC refutes any suggestion that manufacturers active in the 'Far Eastern Market' are not capable of effectively competing in Europe and worldwide.³⁷²

Past decisional practice

5.32 In *Konecranes/Terex*, the European Commission considered that the geographic markets for CHE may be EEA wide or wider, but ultimately left the exact geographic definition open. This decision did not however address the Gantry Cranes markets specifically, but mobile harbour cranes and some types of horizontal and MEQ.³⁷³

Our assessment

5.33 We have assessed the appropriate geographic market for our assessment of the effects of the Merger in the supply of RTG and ASC, including by considering factors that influence the suppliers that UK customers would consider as an alternative (ie whether UK customers would consider suppliers based outside the UK or Europe). We have considered:

- (a) the market position of the suppliers of RTG and ASC in the different regions;
- (b) factors that may affect the ability of RTG and ASC supplier active in other areas of the world to supply customers in Europe; and
- (c) the importance of a sales and after-sales presence.

5.34 Most of the evidence considered below refers to both RTG and ASC.

The market position of the suppliers of RTG and ASC in the different regions

5.35 The market position of suppliers of RTG and ASC in Europe (including the UK) is different from the position of these suppliers in other regions in the world and a few of the suppliers of RTG and ASC that operate in other regions in the world are not present in Europe. This different structure of supply points at different conditions of competition between Europe and other regions. In particular, shares of supply (presented in Chapter 7) indicate that some Gantry Crane suppliers are less strong in certain regions compared with others. The Parties typically have significantly higher shares

³⁷¹ Parties' submission, [REDACTED].

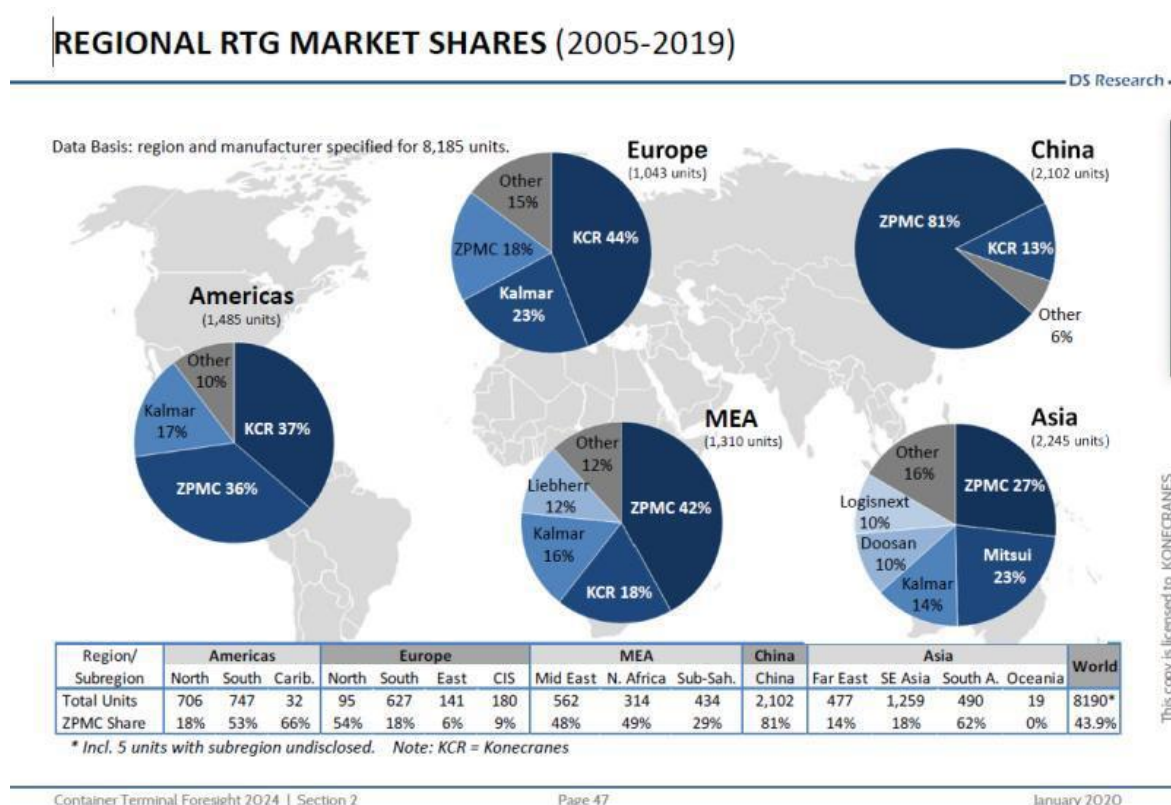
³⁷² Parties' submission, [REDACTED].

³⁷³ [European Commission case M.7792 Konecranes/Terex MHPS, 8 August 2016](#), paragraph 65.

of supply in Europe than in the rest of the world. Conversely, ZPMC typically has a significantly lower share of supply in Europe than in the rest of the world.

5.36 A third-party analyst report considers the competitive situation in different regions across the world, including Europe. It shows that, while major suppliers of RTG and ASC sell in different regions of the world, these suppliers do not have the same strength across the globe (see Figure 11 and Figure 12).³⁷⁴ We note that both Parties use reports by this analyst in their ordinary course of business.

Figure 11: Regional RTG shares



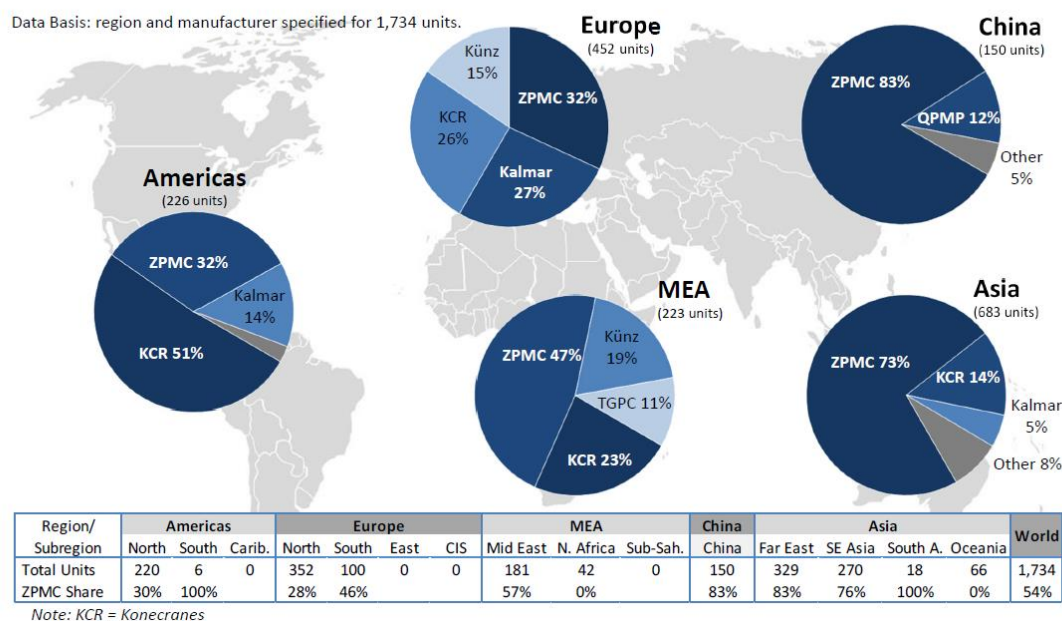
Source: DS Research (January 2020), [Container Terminal Foresight 2024](#), page 47.

³⁷⁴ DS Research (January 2020), [Container Terminal Foresight 2024](#), page 47.

Figure 12: Regional ASC shares

REGIONAL ASC MARKET SHARE (2005-2019)

DS Research



This copy is licensed to KONECRANES

Source: DS Research (January 2020), [Container Terminal Foresight 2024](#), page 61.

5.37 Internal documents from Cargotec also show that there are differences in the competitive landscape. For instance, [REDACTED].^{375,376}

5.38 We consider that the differences in the structure of supply are indicative of different market dynamics and demand patterns in Europe, since several RTG and ASC suppliers that are active in other regions do not compete in Europe.

Factors that may affect the ability of RTG and ASC suppliers active in other areas of the world to supply customers in Europe

5.39 We have considered whether different factors may affect the ability of RTG and ASC suppliers active in other areas of the world to supply customers in Europe, including: i) transportation costs; ii) the regulatory environment; and iii) risks associated to tariff escalation and trade tensions.

5.40 Evidence from third parties indicates that transportation costs affect the competitive strength of cranes suppliers in each region:

³⁷⁵ See, for instance, Cargotec internal document, [REDACTED].

³⁷⁶ The Parties submitted that these documents do not reflect its view on competitive dynamics. The CMA notes that these documents are, however, aimed to 'inform the board of directors on relevant issues and it is notable that in its reporting, Cargotec assesses the competitive situation separately for each region.

(a) One competitor [REDACTED] said that competitors based outside Europe face significant transportation costs that affect their ability to compete for tenders based in Europe. To cover the transportation costs, [REDACTED].³⁷⁷ This competitor noted that ‘The transport costs [from China] are affordable when clients purchase four, eight or twelve cranes but are not when transporting a single unit’ and that it ‘is stronger in the market for STS cranes than for yard cranes as the high transport cost factor matters much more for yard cranes (because their product value is less than that of an STS crane), which gives local players certain advantages’.³⁷⁸

(b) Another competitor [REDACTED] said [REDACTED].³⁷⁹

5.41 The Parties’ internal documents and [REDACTED]:

(a) The Parties submitted that they use manufacturing facilities in China and therefore face the same transportation obligations as their Chinese competitors.³⁸⁰ However [REDACTED].³⁸¹

(b) In one strategy document for Port Solutions, Konecranes recognises that transportation costs are the main reason for price differences across regions: ‘[REDACTED]’.³⁸²

(c) Cargotec submitted that ‘[REDACTED]’.³⁸³

5.42 The Parties submitted that [REDACTED].³⁸⁴

5.43 We recognise that Cargotec and Konecranes produce and assemble some yard cranes outside Europe (including through sub-contractors), and that ZPMC has significant sales to European customers while shipping from China. However, this does not mean that transportation costs have no bearing on competitive performance, or that the market is global. Rather, the evidence above (including Cargotec’s submissions) suggests that the location of suppliers’ facilities, and the transportation costs that they incur, is relevant to their competitive performance, pointing to regional markets.

5.44 We also note that while port cranes were exempt from the 25% tariffs imposed by the former US administration on goods produced in China,³⁸⁵

³⁷⁷ Call note, [REDACTED].

³⁷⁸ Call note, [REDACTED].

³⁷⁹ Call note, [REDACTED].

³⁸⁰ Parties submission, [REDACTED].

³⁸¹ Konecranes’ submission response to CMA’s RFI of 18 November. [REDACTED].

³⁸² Konecranes internal document, [REDACTED].

³⁸³ Cargotec submission, [REDACTED].

³⁸⁴ The Parties also submitted that: [REDACTED]. [Parties’ response to the Provisional Findings Report](#), paragraph 6.8.

³⁸⁵ Merger Notice, [REDACTED].

some internal documents show that Cargotec was mindful of the risk of escalating trade tensions between China and Western countries.³⁸⁶ In fact, the Parties noted, in the context of explaining the ‘shortcomings’ of Cargotec’s current assembly set-up for cranes in China, [REDACTED].³⁸⁷ This evidence supports that risks associated to tariff escalation and trade tensions may affect the trade of Gantry Cranes between Europe and the other regions of the world.

- 5.45 Finally, based on evidence from third parties, we also consider that the European regulatory environment may have an impact on the ability of non-European based suppliers to compete in Europe and points towards a European market.
- (a) One competitor [REDACTED] stated that ‘the European standard requirements are too different for some Japanese and Korean players to fulfil’.³⁸⁸
 - (b) Another competitor [REDACTED] stated that there are ‘many features that differ in supplying Europe and the rest of the world’, including the European regulations related to the CO₂ emission which are similar in the UK, Europe and the US, but differ in other parts of the world (eg Middle East and Africa).³⁸⁹
 - (c) One [REDACTED] of [REDACTED] said that Sany’s cranes are set-up for the Far Eastern market and, as such, [REDACTED] documentation is not suitable for the European market, which makes it difficult to get through the first stage of a tender process at present.³⁹⁰
- 5.46 In relation to European regulatory requirements, the Parties submitted that [REDACTED] ‘[REDACTED]’.³⁹¹ As set out at paragraph 6.26 below, the CMA is unable to place material weight on this evidence because it cannot verify how representative such views are of the third parties consulted by the European Commission. In any event, neither of these quotes appears to contradict that the European regulatory environment may have an impact on the ability of non-European based suppliers to compete in Europe.

³⁸⁶ Cargotec internal document [REDACTED]. Another Cargotec internal document - [REDACTED].

³⁸⁷ Cargotec submission, [REDACTED].

³⁸⁸ Call note, [REDACTED].

³⁸⁹ Call note, [REDACTED].

³⁹⁰ Call note, [REDACTED].

³⁹¹ [Parties’ response to the Provisional Findings Report](#), paragraph 6.8.

Importance of a sales and after-sales presence in Europe

- 5.47 Evidence from third parties highlights that local after-sales services are an important factor in competition for the supply of RTGs and ASC:
- (a) As set in Table 15 in Chapter 7, RTG and ASC customers have given a score of 4 or 5 to 'Differences in strength of local aftersales presence' as a purchasing criteria (in a scoring from 1-6, in which 6 is the highest in importance).
 - (b) One port customer [REDACTED] said it would be concerned about purchasing equipment from a supplier without a presence, or the intention to create a presence, in the UK or Europe, unless an alternative solution was proposed which could ensure the prompt delivery of people and parts necessary to ensure ongoing operation of assets. This customer also noted that it has a strong in-house engineering function which does support on a wide variety of maintenance tasks, but where specific specialism or knowledge is required or when warranties are in place, third-party (including from the OEM) support can be requested under the applicable contract.³⁹²
 - (c) One [REDACTED] competitor [REDACTED] said that, while some UK clients always do RTG and ASC maintenance in-house, the customer at 5.47 (a) above [REDACTED] to do some maintenance. The competitor said that its intention was to also supply other UK customers from this facility.³⁹³
 - (d) Regarding the importance of maintenance services for crane customers, we also note that Cargotec services a material proportion of the RTG that it sells in the UK.³⁹⁴
- 5.48 Contrary to the Parties' submission summarised in 5.29, we therefore consider that a regional presence (including for equipment servicing), is important at least for some customers, and that non-European suppliers may not be able to compete effectively unless they invest in local services.

³⁹² Call note, [REDACTED].

³⁹³ Call note, [REDACTED].

³⁹⁴ We note that the annual proportion of Cargotec's sales (by volume) where the arrangement was for Cargotec to service RTG under warranty was between [REDACTED]% in 2015 and [REDACTED]% in 2020 (Cargotec submission response to CMA's RFI of 12 November 2021). We note that data submitted by Cargotec indicating that [REDACTED] sold in UK in the last 10 years had been serviced in-house during the warranty period (ie were not serviced by Cargotec) (Cargotec submission response to CMA RFI [REDACTED]) does not appear consistent with DP World's (Cargotec's only customer of ASC in the UK) submission to the CMA that 'even though it does most of the maintenance on ASCs in-house, it still relies on support from the OEM'. In particular, DP World believes that, 'the higher the level of automation, the more likely it is that it will need support from the OEM when there is an issue with the interfaces between the equipment and the software or between different pieces of software.'

- 5.49 Having a track record of successfully supplying RTG and ASC to European customers also seems to be an important factor in customer choice and an obstacle to achieving sales for suppliers that have not previously supplied customers in Europe. One customer [REDACTED]³⁹⁵ told us that having an established track record in Europe was highly influential when deciding which supplier to use, alongside having a competitive offer and a product that is known to the customer. This was one [REDACTED].³⁹⁶
- 5.50 We note that the fact that ZPMC has succeeded in establishing a track record and gaining some business in Europe for RTG and ASC, as reflected in its recent alliance with APM, does not contradict that having a European sales and after-sales presence and track record is important. The obstacles set out above do not mean that a non-European supplier of RTG and ASC cannot compete in Europe, but that they will not be able to quickly and easily do so, given the different competition conditions in Europe and other regions. ZPMC is the only non-European supplier that has a material position in Europe and it had to set up regional operations to gain that position.

Conclusion on the relevant geographic market

- 5.51 Based on the evidence set out above, our conclusion is that the appropriate geographic market for the assessment of the effects of the Merger in the supply of both RTG and ASC is European (including the UK) due to the different competitive dynamics in Europe compared with different regions of the world.
- 5.52 While we conclude that the relevant markets for RTG and ASC are Europe-wide, we have also taken account of evidence relating to the impact of the Merger on UK customers specifically. In doing so, we have considered shares of supply to UK customers (including imports to the UK), tender data for UK contracts and evidence from UK customers on the alternatives available to them.
- 5.53 Furthermore, we have carefully taken into account and assessed the competitive constraints on the Parties, from both within and outside the relevant geographical market.

³⁹⁵ Call note, [REDACTED].

³⁹⁶ Call note, [REDACTED].

SC and ShC

Product market definition

Parties' views

- 5.54 The Parties submitted that there is generally 'limited demand-side substitutability' between SC and other types of HTE (including ShC) due to their versatility in being able to both transport and stack containers.³⁹⁷ However, the Parties submitted that, at the terminal design stage, SC and ShC face competition from other types of equipment (eg RS, Gantry Cranes, and TT) that could fulfil the same functions if the terminal was designed in an appropriate way.³⁹⁸
- 5.55 The Parties submitted that the question of whether ShC form part of the same market as SC can be left open given that ShC are a 'niche' product.³⁹⁹ Nevertheless, they submitted the following:
- (a) From a demand-side perspective, ShC are different from SC due to their lack of stacking functionality, so a customer using SC may not readily switch to ShC as they would lose the stacking functionality.⁴⁰⁰ The Parties also submitted that the prices of SC and ShC are broadly in the same range, but that SC are typically more expensive than ShC, such that a customer using ShC may not readily switch to SC due to the additional cost (unless the SC are also intended to replace the customer's existing stacking capabilities).⁴⁰¹
 - (b) From a supply-side perspective, ShC are almost identical to SC, with the main difference being that ShC have shorter legs.⁴⁰²
- 5.56 In response to the working papers, the Parties submitted that the distinction between greenfield and brownfield projects was not adequately recognised by the CMA. They argued that this is important as, particularly in greenfield projects, there is a significant degree of cross-competition between different equipment types at the conceptual stage when a new terminal is designed.⁴⁰³

³⁹⁷ Merger Notice, [REDACTED].

³⁹⁸ Merger Notice, [REDACTED].

³⁹⁹ Merger Notice, [REDACTED].

⁴⁰⁰ Merger Notice, [REDACTED].

⁴⁰¹ Merger Notice, [REDACTED].

⁴⁰² Merger Notice, [REDACTED].

⁴⁰³ Parties' submission, [REDACTED].

Past decisional practice

5.57 In *Konecranes/Terex*, the European Commission considered SC to constitute a separate product market from other types of container transport and/or stacking equipment, such as RS, TT, and Gantry Cranes, because of their versatility. ScH were neither explicitly included or excluded.⁴⁰⁴

Our assessment

5.58 HTE comprises SC, ShC, AGV and TT. AGVs are not relevant for the conclusions and will, therefore, not be considered further.

5.59 SC and ShC are both mounted on wheels and have a hoisting structure allowing them to lift containers. Both are used for stacking containers at the yard and for (horizontally) transporting containers to and from the yard. Both are also used for loading/unloading trucks and railcars.⁴⁰⁵ SC are able to lift containers and stack them up to four high (although they usually only stack three containers at a time and use the vertical space above the third container as working room, so-called '1-over-3 straddle carriers').⁴⁰⁶

5.60 ShC are largely identical to straddle carriers but they are built with shorter legs and are therefore not used for stacking but rather primarily to transport containers horizontally.⁴⁰⁷

Demand-side substitution between SC/ShC and other CHE

5.61 The evidence we reviewed indicates that demand-side substitutability between different types of HTE is limited.

(a) Evidence from customers indicates that different types of HTE are designed to fulfil different functions, and thus are not usually substitutable.

(i) One customer noted that it 'issues tenders for different equipment types separately', especially for the most 'technical' equipment, which includes SC and ShC.⁴⁰⁸

⁴⁰⁴ European Commission case M.7792 *Konecranes/Terex MHPS*, 8 August 2016.

⁴⁰⁵ Merger Notice, [REDACTED].

⁴⁰⁶ Merger Notice, [REDACTED].

⁴⁰⁷ Merger Notice, [REDACTED].

⁴⁰⁸ Call note, [REDACTED].

- (ii) Another customer stated that ‘typically, container handling equipment types are procured for specific purposes and are not seen as substitutable with other types of equipment’.⁴⁰⁹
- (b) Figure 9 above,⁴¹⁰ from a promotional brochure produced by Konecranes in 2016, shows that the function, use and cost profile of staddle carriers varies depending on the volumes being handled and differs compared to other types of equipment (eg reach stackers, Gantry Cranes), such that each type of equipment is unlikely to be a substitute for another to handle a given volume of containers.
- (c) For the reasons explained above in paragraph 5.11 (see Figure 10) SC Terminals are distinguished from other terminal systems (eg RTG Terminals and ASC Terminals) based on different usage, characteristics and levels of automation.⁴¹¹ We consider that, even at the conception stage, the envisaged type of terminal determines the type of equipment that will be used and not vice versa.
- 5.62 One competitor told us that SC and ShC would be substitutable with ASC for large customers that are ‘looking to increase their capacity’.⁴¹² We consider that this further demonstrates that different types of CHE are suitable for different volumes of container handling.
- 5.63 Furthermore, we have seen evidence suggesting that demand for SC and ShC is driven mostly by the replacement of existing equipment rather than new demand from greenfield sites or substantial expansions.
- (a) One competitor noted that ‘new ports would not use SC’.⁴¹³
- (b) The CTF Market Report noted that ‘few new terminal projects choose [SC and ShC] as yard equipment, resulting in [SC and ShC] sales mainly driven by replacement demand’. This report further noted that the number of operational SC and ShC globally has declined from over 4,000 in 2009 to 3,780 in 2019.⁴¹⁴
- 5.64 If the demand is driven by replacements, other types of CHE are unlikely to be an alternative to customers for that purpose.

⁴⁰⁹ Call note, [REDACTED].

⁴¹⁰ Konecranes internal document, [REDACTED].

⁴¹¹ Konecranes internal document, [REDACTED].

⁴¹² Call note, [REDACTED].

⁴¹³ Call note, [REDACTED].

⁴¹⁴ [DS Research \(January 2020\), Container Terminal Foresight 2024](#), pp 64 to 5.

5.65 Therefore, we conclude that there is limited degree of demand-side substitution between SC and ShC, on the one hand, and other types of CHE (including ASC), on the other hand.

Supply-side substitution between SC/ShC and other CHE

5.66 Some suppliers of other types of CHE (including other equipment used for stacking, such as ASC) differ from those active in SC and ShC (eg Kuenz does not supply SC or ShC), which suggest that the conditions of competition are different.

5.67 Furthermore, Cargotec's internal documents analyse competition for SC and ShC separately from other types of CHE, which suggests that the competitive conditions are not similar.⁴¹⁵ For example, a Cargotec market analysis document produced for Kalmar Automation Solutions in December 2019 analyses [REDACTED].⁴¹⁶ A similar document from 2018 also has [REDACTED].⁴¹⁷

5.68 For the reasons set out above, we conclude that SC and ShC are distinct from other types of CHE and should not be aggregated with other CHE based on supply-side substitution considerations.

Demand-side substitution between SC and ShC

5.69 Due to the similarity between SC and ShC in particular (see Chapter 3), we have considered whether there should be either a single product frame of reference for both types of equipment, or two separate frames of reference.

5.70 From a demand-side perspective, we understand that SC and ShC are not directly interchangeable because SC, unlike ShC, are able to stack containers as well as transport them.

(a) The CTF Market Report produced in 2020 notes that the average global price of a ShC in 2019 was \$0.81m, compared with a range of \$1.17m to \$1.3m for SC.⁴¹⁸ Therefore, we consider that a user of SC would be unlikely to switch to ShC because replacing the stacking capability of SC with an additional piece of equipment would likely outweigh the (upfront) cost saving from switching to ShC (for example, the same market research report notes that the average global price of reach stackers in

⁴¹⁵ The Parties submitted that the fact a presentation that been arranged by product is not indicative of the products concerned being separate markets. We consider, however, that the documents are organised to better inform about the competitive situation, and it is, therefore, notable that in its reporting, Cargotec assesses the competitive situation separately for each MEQ.

⁴¹⁶ Cargotec internal document, [REDACTED].

⁴¹⁷ Cargotec internal document, [REDACTED].

⁴¹⁸ [DS Research \(January 2020\), Container Terminal Foresight 2024](#), p 67.

2019 was around \$0.5m, and for rubber-tyred Gantry Cranes was around \$1.75m).⁴¹⁹

- (b) An earlier edition of the same report produced in 2017 suggests that SC are most often purchased to address replacement demand (brownfield projects), while ShC are purchased mostly for new terminals (greenfield projects).⁴²⁰ It states ‘In the years before 2008 delivery numbers [for SC] were higher, because the market was driven by both replacement demand and demand from capacity expansion projects. This has changed. Since 2009 demand was almost exclusively resulting from unit replacements, whereas very few new terminals were opting for [straddle carriers]. Shuttle carriers are an exception here; they are mainly ordered for new-built terminals.’
- (c) Similarly, a user of ShC would be unlikely to switch to SC as this equipment is more expensive (unless the SC were intended to replace existing stacking capabilities as well).
- (d) A competitor also told us that ‘SC can be differentiated following their functions. For instance, while one-over-three SC can stack containers, ShC only transport the containers horizontally.’⁴²¹

Supply-side substitution between ShC and SC

- 5.71 From a supply-side perspective, the Parties told us that there are [REDACTED] involved in switching production between SC and ShC.⁴²² Competitors [REDACTED] told us that it was easy to switch production. One competitor [REDACTED] told us that while ‘there are minor differences between manufacturing ShC and SC from an automation perspective’ it is ‘relatively easy to start producing ShC if a manufacturer produces SC.’⁴²³ Another competitor [REDACTED] told us that the differences between ShC and SC do not require different production capabilities.⁴²⁴
- 5.72 We further note that the major suppliers active in the supply of SC (the Parties and ZPMC) are the same as those active in the supply of ShC, such that the competitive dynamics are likely to be similar for both types of equipment.

⁴¹⁹ DS Research (January 2020), [Container Terminal Foresight 2024](#), pp 42 and 74.

⁴²⁰ DS Research (November 2017), [Container Terminal Foresight](#), page 4.

⁴²¹ Call note, [REDACTED].

⁴²² Parties’ submission Response to P2 RF11 [REDACTED].

⁴²³ Call note, [REDACTED].

⁴²⁴ Call note, [REDACTED].

- 5.73 We are aware of two suppliers (Mobicon and Combilift) that only produce ShC but note that neither has delivered a ShC in Europe since 2017. The CTF Market Report states that Mobicon and Combilift produce a 'lighter type of ShC, which is mainly used at small terminals or inland ports, warehouses or distribution centres, rather than maritime container terminals'.⁴²⁵
- 5.74 The evidence above suggests that there is some level of supply-side substitutability and similar competitive dynamics in the supply of both products.

Manual versus automated ShC and SC

- 5.75 We understand that automation is a small part of the SC and ShC market at present, with automated SC accounting for roughly 7% of global deliveries in 2017 to 2019. Within the UK and Europe, automation is almost non-existent in the SC and ShC market; there were no deliveries of automated SC or ShC between 2017 and 2019, although ZPMC has recently delivered automation-ready SC in Sweden.⁴²⁶ There is only one automated ShC terminal currently in operation (in Australia).⁴²⁷
- 5.76 The CTF Market Report notes that demand for SC and ShC is primarily driven by replacement needs at existing locations rather than new demand from greenfield sites. The report further notes that new terminals are more likely to choose automated SC and ShC than existing terminals.⁴²⁸ As such, we conclude that future demand for automated SC and ShC may be slow to increase.
- 5.77 As all three suppliers of SC and ShC – Cargotec, Konecranes and ZPMC - appear to offer both manual and automated SC and ShC, there is no evidence that the competitor set is likely to be distinct for manual and automated SC and ShC.⁴²⁹
- 5.78 Therefore, we have not assessed the effects of the Merger separately for manual and automated SC and ShC because this distinction does not seem to affect the conclusions of our competition assessment.

⁴²⁵ DS Research (January 2020), [Container Terminal Foresight 2024](#), p 63.

⁴²⁶ Merger Notice, [REDACTED].

⁴²⁷ Merger Notice, [REDACTED].

⁴²⁸ DS Research (January 2020), [Container Terminal Foresight 2024](#), pp 64 & 97.

⁴²⁹ We note that [REDACTED]. Response to P2 questionnaire, [REDACTED].

Conclusion on the relevant product market

- 5.79 Our conclusion is that SC and ShC is a separate market from other HTE, and that SC and ShC are part of the same product market, due to the significant degree of supply-side substitution.

Geographic market definition

Parties' views

- 5.80 The Parties submitted that the market for SC and ShC is global in scope. They noted that the major suppliers are active across the world, and that customer procurement tenders typically involve several international suppliers. The Parties noted that the expansion of China-based ZPMC into the supply of SC and ShC further demonstrates the global nature of the market.⁴³⁰ The Parties also submitted that transports costs for intercontinental shipping are not prohibitive.⁴³¹
- 5.81 In response to working papers, the Parties reiterated their position that the market for SC and ShC is global in nature and also disagreed with the CMA's approach to calculating shares of supply for SC and ShC. Both Parties generated revenue in China during the 2017 to 2019 period and both Parties (and their competitors) are present in China with assembly facilities. Therefore, the Parties argued that presenting the shares of supply on a 'worldwide excluding China' basis is mischaracterising the market in which the Parties operate.⁴³²
- 5.82 The Parties also submitted that customers do not require maintenance staff and spare parts to be physically located within a sufficiently close proximity. The Parties argued that the CMA's working paper made an unevidenced leap between the proximity of maintenance staff and a customer's preference for OEMs with at least a European presence.⁴³³ The Parties cited the example of Logisnext as having a global presence and not operating on a regional basis.⁴³⁴

Past decisional practice

- 5.83 In *Konecranes/Terex*, the European Commission considered that the geographic markets for CHE may be EEA wide or wider, but ultimately left

⁴³⁰ Merger Notice, [REDACTED].

⁴³¹ Merger Notice, [REDACTED].

⁴³² Parties' submission, [REDACTED].

⁴³³ Parties' submission, [REDACTED].

⁴³⁴ Parties' submission, [REDACTED].

the exact geographic definition open. This case considered mobile harbour cranes and some types of HTE and MEQ but did not consider SC and ShC markets specifically.⁴³⁵

Our assessment

- 5.84 There are three main suppliers of SC and ShC (the Parties and ZPMC) operating on a worldwide basis and their market positions do not differ significantly whether assessed on a Europe-wide or worldwide (excluding China) basis. There are also some smaller suppliers that operate in other regions of the world and not in Europe:
- (a) Logisnext operates predominantly in Taiwan and Japan and is not active in Europe.^{436,437}
 - (b) Suzhou Dafang appears to operate only in China and is not active in Europe.⁴³⁸
- 5.85 We have also reviewed evidence that suggests that there are some factors that affect the competitive dynamics and may prevent suppliers without a sufficient European presence from being an effective alternative for UK customers. Some third parties noted that transportation costs can affect the competitiveness of suppliers based outside Europe when competing for European customers:
- (a) One UK customer considered that ‘the cost of delivery is a factor when buying from China’ and that ‘buying six straddle carriers from China would be expensive in terms of delivery costs’.⁴³⁹
 - (b) [REDACTED].⁴⁴⁰
- 5.86 For the same reasons discussed in paragraph 5.44, the risks associated with tariff escalation and trade tensions may also affect the trade of SC and ShC between Europe and the other regions of the world.
- 5.87 We also note that the demand characteristics and customer preferences seem to be, to some extent, distinct in Europe compared with other regions. A market report by DS Research in 2017 suggests that SC and ShC are

⁴³⁵ European Commission case M.7792 *Konecranes/Terex MHPS*, 8 August 2016, paragraphs 64 and 65.

⁴³⁶ Merger Notice, [REDACTED]; *DS Research (January 2020), Container Terminal Foresight 2024*, p 68.

⁴³⁷ The Parties submitted that Logisnext has a broad global presence based its overall operations. We have not seen evidence, however, that Logisnext supplies SC or ShC in Europe.

⁴³⁸ Merger Notice, [REDACTED].

⁴³⁹ Call note, [REDACTED].

⁴⁴⁰ Call note, [REDACTED].

more prevalent in European terminal designs and that Europe is the main market for SC and Sch, mainly due to the size of terminals that favour the use of this equipment. This report states that 'The use of straddle carriers is exceptionally high in North Americas (13%), North Europe (41%) and Oceania (8%)' and that '[SC]-operating terminals are located mainly in world regions, which have achieved only moderate growth, as North Americas, North Europe and Oceania.'⁴⁴¹

- 5.88 Evidence from third parties highlights that having a sales and after-sales support presence in Europe is an important factor in competition for the supply of SC and Sch and appears to affect customer preferences.
- 5.89 Customers typically require maintenance staff and spare parts to be located within sufficiently close proximity to respond to any issues within a reasonable time, including during the warranty period. In practice, this means that a UK-based customer may prefer to use a supplier with at least a European presence.
- (a) One UK customer that uses SC told us that it would be concerned about purchasing cranes and SC from a supplier without a presence in Europe unless an alternative solution was proposed which could ensure the prompt delivery of people and parts necessary to ensure ongoing operation of assets.⁴⁴² As explained above, although this customer has a strong in-house engineering function which does support on a wide variety of maintenance tasks, where specific specialism or knowledge is required or when warranties are in place, third-party support (including from the OEM) can be requested under the applicable contract. The same customer suggested that a track record in Europe for equipment like SC and ShC is important for competitors to succeed in the supply of SC and ShC to the UK.⁴⁴³
- (b) [REDACTED] noted [REDACTED].⁴⁴⁴

Conclusion on geographic market definition

- 5.90 Our conclusion is that Europe is the appropriate geographic market for the assessment of the effects of the Merger on the supply of SC and ShC. Nevertheless, we note that the precise boundaries of the geographic market for the supply of SC and ShC do not affect the conclusions of our competition assessment. We note that shares of supply are broadly similar

⁴⁴¹ DS Research (November 2017), [Container Terminal Foresight](#), page 33.

⁴⁴² Call note, [REDACTED].

⁴⁴³ Call note, [REDACTED].

⁴⁴⁴ Call note, [REDACTED].

between the UK, Europe and worldwide (excluding China) (see below). Irrespective of our views on the scope of the geographic market, we have carefully taken into account and assessed the competitive constraints on the Parties, both within and outside the relevant geographical market.

MEQ

Product market definition

Parties' views

5.91 The Parties submitted that there is a certain degree of demand-side substitutability between MEQ types, but differences in application and price limit the extent to which customers would use one type of MEQ as an alternative to another.⁴⁴⁵ The Parties consider that:

- (a) RS may not be entirely substitutable with ECH and FLT trucks from a demand-side perspective (considering differences in price and applications) and may therefore need to be considered separately;⁴⁴⁶
- (b) Full and empty container handlers may form part of the same product market, due to a large degree of supply-side substitutability;^{447,448}
- (c) The market for FLT should not be segmented further based on lifting capacity (light and heavier models) or the type of engines. On the demand-side, customers can use different FLT for different industrial applications and may choose to substitute a light FLT with a heavier model (eg in order to increase flexibility in terms of materials lifted). FLT of various lifting capacity (especially heavier FLT) can be manufactured using the same facilities and design principles, so there is supply-side substitutability between the different sizes.⁴⁴⁹

5.92 In relation to FLT, the Parties rejected the distinction between FLT with a lifting capacity greater or less than 10 tonnes that was referred to in the Issues Statement.⁴⁵⁰ On the demand-side, the Parties noted that lighter FLT

⁴⁴⁵ Merger Notice, [REDACTED].

⁴⁴⁶ Merger Notice, [REDACTED].

⁴⁴⁷ Merger Notice, [REDACTED].

⁴⁴⁸ From a demand-side perspective, the Parties submitted that there is a certain degree of substitutability between full and empty container handlers (and reach stackers), but also acknowledged that 'empty container handlers cannot be used to handle full containers' and that 'while customers sometimes use full container handlers (and/or reach stackers) to handle empty containers, customers would usually not replace an empty container handler with a full container handler, given that there are significant differences in price'. Merger Notice, [REDACTED].

⁴⁴⁹ Merger Notice, [REDACTED].

⁴⁵⁰ Parties' response to Issues Statement, paragraph 7.17.

(less than 10 tonnes) are often used indoors (eg in warehouses), while heavier FLT are commonly used outdoors, in heavy industries, and for container handling.⁴⁵¹ However, they submitted that customers can use different types of FLT interchangeably — for example, a customer may choose to substitute a ‘light’ FLT with a heavier model that can lift multiple pieces of lighter cargo at the same time.⁴⁵²

- 5.93 On the supply-side, the Parties noted manufacturers could adjust their production to different types of FLT relatively easily, without having to invest in changes in production facilities (and a number of manufacturers produce FLT with a wide range of lifting capacities).⁴⁵³
- 5.94 In its response to the working papers, the Parties further noted there is no consistency across the industry in terms of how participants assess subsets of FLT.⁴⁵⁴

Past decisional practice

- 5.95 In *Konecranes/Terex*, the European Commission considered the relevant market for CHE, including reach stackers. It considered that each equipment type may form a separate market, but ultimately left the exact scope of the market open.⁴⁵⁵

Our assessment

- 5.96 MEQ is mainly used to transport and lift containers, other cargo and flat racks⁴⁵⁶ in terminals and by industrial and logistics companies. There are three main types of MEQ - RS, container handlers and FLT.
- 5.97 RS have a boom with a spreader that grips the container from above, allowing it to operate several rows deep (ie they are also able to reach containers located in the second or third row of a container stack).⁴⁵⁷
- 5.98 Container handlers are offered either as full container handlers or as ECH. Both are masted lift trucks able to stack containers only in the first row. ECH have a lower lifting capacity than full container handlers and are used to stack unladen containers, generally up to eight containers high. ECH exist in

⁴⁵¹ Parties' submission response to the CMA RFI 3, [REDACTED].

⁴⁵² Merger Notice, [REDACTED]; [Parties' response to Issues Statement](#), paragraph 7.17.

⁴⁵³ Parties' response to Issues Statement, [REDACTED].

⁴⁵⁴ Parties' submission, [REDACTED].

⁴⁵⁵ European Commission case M.7792 *Konecranes/Terex MHPS*, 8 August 2016, paragraph 65.

⁴⁵⁶ Flat rack containers are a type of specialized containers having walls only at the short end of the container.

⁴⁵⁷ Merger Notice, [REDACTED].

versions for single or double container handling.⁴⁵⁸ As the Parties do not overlap in the supply of full container handlers, our competition assessment will focus on ECH.

- 5.99 FLT are used to lift and move materials over short distances. They are equipped with a fork. FLT normally have a cabin for the driver. FLT differ in the weight of materials they can lift and move, ranging from lighter lifting capacity FLT which are used in various industries, to medium and heavy capacity FLT, which are used for container handling among other things.⁴⁵⁹
- 5.100 Whereas reach stackers are used mainly by port terminals, FLT are used both by port terminal and industrial customers.

Demand-side substitution between different types of MEQ

- 5.101 We have received evidence from customers that suggests that different types of MEQ are not substitutable from a demand-side perspective.
- 5.102 Customers indicated that typically they would not substitute one type of MEQ for another because each serves a different function. For example, a customer said that ‘reach stackers are generally not substitutable with other types of CHE, such as container handlers’.⁴⁶⁰ Another customer ‘considers that a reach stacker and ECH have unique functions and are not substitutable’.⁴⁶¹ Several customers noted that they usually tender for each type of equipment separately.⁴⁶²
- 5.103 A competitor to the Parties expressed a similar view, noting that ‘different types of machines are suitable for different tasks/applications’. This competitor further considered that ‘ECH cannot substitute a reach stacker’ and that ‘it is inefficient to use FLT for stacking containers’.⁴⁶³
- 5.104 Figure 9, in paragraph 5.10, from a promotional brochure produced by Konecranes in 2016, indicates that RS and container lift trucks have varying cost profiles depending on the volumes being handled, such that one type is unlikely to be a close substitute for another when it comes to handling a given volume of containers.

⁴⁵⁸ Merger Notice, [REDACTED].

⁴⁵⁹ Merger Notice, [REDACTED].

⁴⁶⁰ Briefing note, [REDACTED].

⁴⁶¹ Call note, [REDACTED].

⁴⁶² Call note, [REDACTED]; call note [REDACTED]; call note [REDACTED]; and call note [REDACTED].

⁴⁶³ Call note, [REDACTED].

5.105 We also note that Cargotec's internal documents [REDACTED]. For example, [REDACTED].⁴⁶⁴ This suggests that the competitive conditions are not similar for each type of MEQ.

Supply-side substitution between different types of MEQ

5.106 We note that, as set out in the CMA guidance, 'the boundaries of the relevant product market are generally determined by reference to demand-side substitution alone'.⁴⁶⁵ From a supply-side perspective, we do not consider that the different main types of MEQ should be aggregated, as the conditions of competition appear to be different. For example, Sany is a significantly smaller supplier (by share) of heavy-duty FLT (as defined below) than reach stackers and ECH, and a number of suppliers of heavy duty FLT (HDFLT) (such as Linde and Svetruck) either do not supply other types of MEQ at all, or supply small volumes.⁴⁶⁶

5.107 Overall, our conclusion is that there are separate product markets for RS, ECH and FLT because there is limited demand-side and supply-side substitution.

Segmentation between light and heavy FLT

- *Demand-side substitution between light and heavy FLT*

5.108 In relation to FLT, we have considered whether the market should be segmented according to the lifting capacity of the FLT.

5.109 From a demand-side perspective, the evidence set out below clearly shows FLT are generally divided into different categories according to their lifting capacity (although the exact threshold may vary) and is consistent with these different FLT with different lifting capacities fulfilling different functions and with the fact that customers tend to specify which broad category of FLT they wish to purchase.⁴⁶⁷

⁴⁶⁴ Cargotec internal document, [REDACTED]. Similar documents from previous years also include [REDACTED], for example: Cargotec internal document, [REDACTED].

⁴⁶⁵ CMA129, paragraph 9.8.

⁴⁶⁶ As discussed at paragraph 1(b) above, the Parties submitted that full and empty container handlers may form part of the same product market. However, we note that the Parties also submitted that 'in practice there is no market for FCH opportunities outside of the US and Australia' and that 'neither Party has made sales of full container handlers in the UK in the last three years' (Merger Notice, [REDACTED]). This is in contrast to ECH where, as shown in Chapter 9, both Parties are active in the UK and Europe more widely.

⁴⁶⁷ See tender data submitted by [REDACTED] and [REDACTED].

- 5.110 Several third parties told us that FLT are generally divided into different categories according to their lifting capacity:
- (a) One customer considered that FLT can be divided into heavy (lifting capacity greater than around 10 to 12 tonnes) and light (lifting capacity less than around 10 to 12 tonnes) segments.⁴⁶⁸
 - (b) One customer made a similar distinction at a slightly different threshold—heavy duty FLT were defined as those with a lifting capacity of above 8 tonnes, and FLT with lifting capacities below 8 tonnes were defined as light.⁴⁶⁹
 - (c) Another customer used three segments: light (lifting capacity up to 7 tonnes), medium (lifting capacity of 7 to 16 tonnes) and heavy (lifting capacity greater than 16 tonnes).⁴⁷⁰
 - (d) A competitor stated that it has internal segments for FLT with lifting capacities of 10 to 18 tonnes, 25 to 32 tonnes, and greater than 36 tonnes.⁴⁷¹
- 5.111 Competitors of the Parties also appear to distinguish in their public offering between the heavier-duty FLT and the lighter FLT. For example, Hyster-Yale Group (Hyster) advertises ‘high capacity forklift trucks’ separately from other types of FLT. In addition, Hyster also advertises only HDFLT (greater than 10 tonne capacity) to certain customer groups on its website, for example to ‘Ports & Terminals’.⁴⁷²
- 5.112 The Parties’ internal documents regularly consider a market for HDFLT, often starting with a minimum capacity of either 9 or 10 tonnes. When the Parties benchmark themselves against competitors in FLT, it appears that they do so in particular against competitors also active in FLT with a lifting capacity of more than 10 tonne capacity):
- (a) A Cargotec [REDACTED].⁴⁷³
 - (b) A Cargotec [REDACTED].⁴⁷⁴

⁴⁶⁸ Call note, [REDACTED].

⁴⁶⁹ Call note, [REDACTED].

⁴⁷⁰ Call note, [REDACTED].

⁴⁷¹ Call note, [REDACTED].

⁴⁷² See Hyster, Forklift Trucks and Materials Handling Solutions Tailored to Your Needs [online], available at <https://www.hyster.com/en-gb/europe/> [accessed 3/11/2021].

⁴⁷³ Cargotec internal document, [REDACTED], p 4.

⁴⁷⁴ Cargotec internal document, [REDACTED], p 14.

(c) In another internal document, Cargotec considers [REDACTED].⁴⁷⁵

(d) A presentation produced by [REDACTED].⁴⁷⁶

5.113 Some of the differences between heavy and light FLT are reflected in the type of FLT used by different types of customer (port customers and industrial customers):

(a) A competitor told us that ‘heavy forklift trucks tend to be sold to ports, heavy metal production and distribution companies, timber industry construction and utilities’. It further stated that lighter FLT (less than 10 tonnes) tend to be more interchangeable, while heavier FLT (10 to 18 tonnes) tend to be specialist equipment for a specific task.⁴⁷⁷

(b) A distributor told us that ports and terminals tend to purchase FLT with higher lifting capacity, whereas general industry would tend to purchase the 16 to 20 tonnes range. As the lifting capacity increases, the proportion of forklifts sold to general industry falls, with 32 tonne and 48 tonne FLT supplied mostly to ports and terminals.⁴⁷⁸

(c) Another distributor stated that ‘anything over 7 ton capacity is considered a distinct category of product due to the bespoke nature of the customer’s requirements’.⁴⁷⁹

(d) An internal document from Konecranes [REDACTED].⁴⁸⁰

5.114 Public tender notices for FLT often specify the lifting capacity (tonne) of the required FLT.⁴⁸¹

5.115 Internal documents produced by the Parties also segment FLT by lifting capacity:

(a) In a Cargotec internal document, [REDACTED].⁴⁸²

(b) A document produced in 2020 by Konecranes [REDACTED].⁴⁸³

⁴⁷⁵ Cargotec internal document, [REDACTED].

⁴⁷⁶ Parties’ submission Annex [REDACTED].

⁴⁷⁷ Call note, [REDACTED].

⁴⁷⁸ Call note, [REDACTED].

⁴⁷⁹ Call note, [REDACTED].

⁴⁸⁰ Konecranes internal document, [REDACTED].

⁴⁸¹ See, for example, Framework Agreement for the supply and delivery of 45 Tonne Magnet Compatible Forklift Trucks and 32 Tonne Forklift Trucks, available at <https://ted.europa.eu/udl?uri=TED:NOTICE:450524-2018:TEXT:EN:HTML> and <https://opentender.eu/uk/tender/9f53beb3-8a23-4288-91ab-46464a6a1d56>.

⁴⁸² Cargotec internal document, [REDACTED].

⁴⁸³ Konecranes internal document, [REDACTED].

(c) A Konecranes document [REDACTED].⁴⁸⁴

- *Supply-side substitution between light and heavy FLT*

5.116 From a supply-side perspective, some manufacturers of FLT with a lifting capacity of more than 10 tonnes are also active in the supply of lower capacity FLT. However, differences in market shares and the evidence below suggest that the market structure and conditions differ significantly in the supply of FLT with a higher lifting capacity and the supply of FLT with a lifting capacity of less than 10 tonnes.⁴⁸⁵

5.117 Third parties also noted differences in the range of suppliers of FLT with lighter and heavier lifting capacities:

(a) A distributor stated that for FLT with lifting capacity greater than 10 tonnes, there are fewer competitors and smaller volumes than in the segment of 'small' FLT with lifting capacities up to 5 tonnes,⁴⁸⁶ and further noted that 'the number of manufacturers [...] drops dramatically in FLT with lifting capacities above 16 tonnes'.⁴⁸⁷

(b) A distributor indicated that the competitor set for FLT with lighter lifting capacities is different, and wider, than that for FLT with heavier lifting capacities.⁴⁸⁸

(c) A customer considered that 'the heavier the FLT the more limited the selection of suppliers', noting that in 'heavy' FLT it 'has only a few options of suppliers'.⁴⁸⁹

(d) A customer stated that 'some suppliers do not offer FLT in heavier categories'.⁴⁹⁰

(e) A competitor stated that the Parties are 'competitors in the area of FLT with a lifting capacity of 10 to 18 tonnes' and that it 'does not consider the Parties as competitors in the area of FLT with a lifting capacity of up to 10 tonnes'. This competitor also noted that 'most of the players active in the 10 to 18 tonnes lifting capacity FLT segment are also active in the market for FLT with a lifting capacity above 18 tonnes' and that Cargotec and Konecranes 'have a similar position in the market for FLT with a

⁴⁸⁴ Konecranes internal document, [REDACTED].

⁴⁸⁵ [REDACTED] Parties Form CO, [REDACTED].

⁴⁸⁶ Call note, [REDACTED].

⁴⁸⁷ Call note, [REDACTED].

⁴⁸⁸ Call note, [REDACTED].

⁴⁸⁹ Call note, [REDACTED].

⁴⁹⁰ Call note, [REDACTED].

lifting capacity between 10 and 18 tonnes' as in the market for FLT with a lifting capacity greater than 18 tonnes.⁴⁹¹ This competitor noted that 'it is not active in the supply of FLT with a lifting capacity greater than 18 tonnes'.⁴⁹²

5.118 We also note that Konecranes does not produce FLT with a lifting capacity of less than 10 tonnes. Cargotec seems to concentrate its activities in FLT with a lifting capacity higher than 10 tonnes, as they account for around 63% of Cargotec's overall FLT activities by volume in Europe.⁴⁹³ This percentage is likely to be higher if calculated based on value of sales, given the higher price of FLT with higher lifting capacity.

5.119 Evidence from third parties is consistent with suppliers that are currently active only in lower capacity FLT not being able to easily start producing and supplying HDFLT:

(a) A distributor said that a manufacturer of FLT with lighter lifting capacities would find it very difficult to enter into the supply of FLT with heavier lifting capacities as the scale of production is different. This distributor explained that manufacturers build FLT on platforms (for example, all 8 to 16 ton trucks will be built on the same platform) and that starting production on FLT for which a manufacturer does not have a platform would be a huge investment.⁴⁹⁴

(b) Another distributor stated that FLT with a lifting capacity above 7 tonnes 'are constructed on a solution orientated approach, rather than a commoditised approach as seen in the smaller scale machines'. This distributor also noted that it faces 'a different set of competitors for forklift trucks above 7 tonnes to those below'.⁴⁹⁵

(c) A distributor explained that previously there was a 'sort of barrier' of 8 to 10 tonnes for small FLT manufacturers, such that these manufacturers would not be able to 'handle' FLT with a lifting capacity greater than 10 tonnes.⁴⁹⁶ The distributor considered that this barrier has now moved to around 16 tonnes.⁴⁹⁷

(d) A competitor noted that FLT with a lifting capacity of 10 to 18 tonnes use 20-inch tyres and that FLT with a lifting capacity above 18 tonnes need

⁴⁹¹ Call note, [REDACTED].

⁴⁹² Call note, [REDACTED].

⁴⁹³ [REDACTED] Parties' submission RFI PN2 [REDACTED].

⁴⁹⁴ Call note, [REDACTED].

⁴⁹⁵ Call note, [REDACTED].

⁴⁹⁶ Call note, [REDACTED].

⁴⁹⁷ Call note, [REDACTED].

bigger tyres, which also affects the required specifications of axles and other components.⁴⁹⁸

5.120 The evidence above does not support the Parties' assertion that manufacturers of lighter FLT are able to expand upwards from lighter ranges into producing heavier FLT.

- *Conclusion on substitution between light and heavy FLT*

5.121 Within FLT, our conclusion is that FLT with lighter and heavier lifting capacities may not be close substitutes. Product markets are not always defined by reference to bright lines.⁴⁹⁹ While there is some inconsistency in the industry about the classification of FLT into 'heavy' and 'light', there is broad agreement that heavy FLT are different from light FLT (in both customer usage and the range of suppliers). There is closer competition between suppliers of FLT at the medium and higher end of the spectrum than between these suppliers and suppliers of FLT at the light end of the spectrum.

5.122 For the purposes of our assessment, we took an inclusive approach and considered as HDFLT those with a lifting capacity of more than 10 tonnes. Evidence set out in our competitive assessment suggests that, if we were to define a market for even heavier FLT (for example, FLT with a lifting capacity greater than 25 tonnes), our conclusions would not change.

5.123 In our competition assessment, we have taken into account the constraints from suppliers that focus on the supply of FLT with lower lifting capacities, although we note that the evidence suggests that the Parties are constrained mainly by competitors that supply HDFLT.

Port and industrial customers

5.124 As mentioned above in paragraph 5.113, equipment with different lifting capacities tends to be used by different types of customer. Port terminals and some heavy industry customers tend to use FLT with higher lifting capacity, while general industry customers tend to use lighter FLT.

5.125 In relation to supply-side substitution between port and industrial customers, some third parties noted that the strengths and weaknesses of certain suppliers vary in relation to different types of customers:

⁴⁹⁸ Call note, [REDACTED].

⁴⁹⁹ Merger Notice, [REDACTED].

- (a) One competitor said that, while ports are on its 'target list', 'it has been unable to break into the market'; it elaborated that 'word of mouth' is important for ports and thus it can be 'difficult to break into' this segment.⁵⁰⁰
- (b) One distributor suggested that some competitors (eg Doosan) do better in relation to industrial customers than port customers and that some competitors, such as the Parties, specialise in port customers. This distributor also mentioned that some port customers tend to buy from suppliers focused on their sector of activity.⁵⁰¹

5.126 We have currently not considered separate customer segments for port terminals and industrial customers. We note that this distinction does not seem to affect the findings of our competition assessment. We have, however, when relevant, considered any differences between the competitive constraints in the supply to port terminals and industrial customers in the competition assessment.

Conclusion on the relevant product markets for MEQ

5.127 Overall, our conclusion is that there are separate product markets for RS, ECH and FLT because there is limited demand-side and supply-side substitution. We have also concluded that the supply of FLT can be segmented between light and heavy FLT, although the boundaries between these segments are fluid (as explained above). While we have concluded there are not separate segments for port and industrial customers, we have considered any differences between the competitive constraints in the supply to port terminals and industrial customers in the competition assessment.

Geographic market definition

Parties' views

5.128 The Parties submitted that all MEQ markets are worldwide in scope because customers are increasingly globalised and purchase from global suppliers.⁵⁰² They submitted that a local sales and/or service presence is not a prerequisite for selling in a given region because approximately 70% of maintenance work for MEQ is provided by in-house teams, and customers without this can rely on a wide range of third-party providers (such as

⁵⁰⁰ Call note, [REDACTED].

⁵⁰¹ Transcript of call, [REDACTED].

⁵⁰² Merger Notice, [REDACTED]; [Parties' response to Issues Statement](#), paragraph 2.2.

dealers and distributors).⁵⁰³ The Parties submitted that it is ‘straightforward’ for a supplier to provide servicing capabilities in this way.⁵⁰⁴

- 5.129 In this regard, the Parties explained that ‘[m]obile equipment is highly commoditised and often sold via external independent distribution partners’ and ‘suppliers will have plenty of alternatives when it comes to selecting dealers and distributors both in the UK and in Europe’. The Parties further explained that third-party providers often service equipment from several different brands and are generally not exclusively bound to particular OEMs by long-term contracts so are able to, and do, switch to supply equipment from other OEMs.⁵⁰⁵
- 5.130 The Parties further submitted that suppliers do not need an established regional track record, and that there are no significant differences in regulatory, safety and environmental standards across regions.⁵⁰⁶
- 5.131 In the Parties’ response to the CMA’s working paper on MEQ, the Parties submitted that the working paper conflated a four-hour servicing response time with the geographic market definition for OEM product supply and failed to understand that the maintenance and service sector are self-supplied by ports or by third-party specialist maintenance providers.⁵⁰⁷
- 5.132 The Parties stated that there is limited evidence that local engagement is important. They submitted that this was the case given:
- (a) GTOs make purchasing decisions at their global overseas headquarters. Therefore local relationships are not a determining factor in decision making.
 - (b) There are examples of UK ports using Chinese suppliers (for example, Sany is used by Peel Ports and ZPMC by Hutchison Port Holdings Limited (HPH)) for the first-time despite ‘lack of local relationship or track record’.
 - (c) Once a supplier has been introduced at HPH Felixstowe, other suppliers will follow its example.
 - (d) Distributors can build relationships and track records effectively.⁵⁰⁸

⁵⁰³ Parties’ response to Issues Statement, paragraph 2.5.

⁵⁰⁴ Parties’ response to Issues Statement, paragraph 2.7.

⁵⁰⁵ Parties’ submission response to RFI [REDACTED].

⁵⁰⁶ Parties’ response to Issues Statement, paragraphs 2.9 to 2.13.

⁵⁰⁷ Parties’ submission, [REDACTED].

⁵⁰⁸ Parties’ submission, [REDACTED].

- 5.133 The Parties stated that they submitted evidence which indicates that there are at least 90 distributors with MEQ experience in the UK in contrast to the CMA's statement that there are few available distributors in the UK. They also submit that there are examples of very successful distributor relationships and of OEMs switching distributors (for example, Sany/Cooper).⁵⁰⁹
- 5.134 The Parties also submitted that transportation costs are low as a proportion of overall equipment price and these costs are outweighed by the benefits of centralised production and economies of scale. The Parties also noted that 'Sany assembles mobile equipment in Germany, Hyster has manufacturing capacity in Netherlands and Liebherr has manufacturing capacity in the UK.'⁵¹⁰ The Parties claimed that they do not have any inherent advantage in the UK market compared to their competitors as they assemble MEQ outside of the UK.⁵¹¹
- 5.135 The Parties also stated that the internal documents cited in the working papers do not substantiate the CMA's proposition that the market is narrower than global.⁵¹²

Past decisional practice

- 5.136 In *Konecranes/Terex*, the European Commission considered that the geographic markets for CHE, including for some types of MEQ such as RS, may be EEA wide or global but it ultimately left the exact geographic definition open.⁵¹³

Our assessment

- 5.137 We have assessed the appropriate geographic market for our assessment of the effects of the Merger in the supply of each of RS, HDFLT and ECH by first considering:
- (a) Whether the market structure, including the positions of the different suppliers, varies between different geographic areas (ie differences in market structure);
 - (b) the role and local presence of the distributors;

⁵⁰⁹ Parties' submission, [REDACTED].

⁵¹⁰ We note, however, that Hyster and Sany are considered as part of the European market and Liebherr has a small presence in MEQ.

⁵¹¹ Parties' submission, [REDACTED].

⁵¹² Parties' submission, [REDACTED].

⁵¹³ European Commission case M.7792 *Konecranes/Terex MHPS*, 8 August 2016, paragraphs 62 – 65.

- (c) any factors that may affect the ability of OEMs active in other areas of the world to supply Europe; and
- (d) the importance of a local sales and after-sales presence and local customer relationships preferences (eg customer relationship).

Differences in market structure

- 5.138 The market positions of suppliers in Europe are distinct from their positions in other regions in the world. This different structure of supply points to different conditions of competition in Europe. Shares of supply (presented in Chapter 9) indicate that some MEQ suppliers are less strong in certain regions compared with others, suggesting that conditions of competition vary across regions.
- 5.139 In relation to RS, there are some suppliers that are not present in Europe, but supply RS in other regions of the world, including: Taylor (USA), ZPMC (China), XCMG (China), Load Star (India), Toyota/Hoist (USA) Mitsubishi (Japan), Hyundai / Doosan (S. Korea). The market positions of the Parties and their competitors also seem to be different in different regions, as illustrated in one monitoring and reporting document of Cargotec, which includes estimates of regional RS market shares. Cargotec's market shares in 2017 ranges from [REDACTED]⁵¹⁴ [REDACTED].⁵¹⁵
- 5.140 In relation to ECH, there are also some suppliers that are not present in Europe, but supply ECH in other regions of the world, including: Taylor (USA), ZPMC (China), Heli (China), Dalian Forklift (China), Clark (Australia), Komatsu (Japan), Mitsubishi (Japan), Hyundai, (South Korea), Doosan (South Korea). The market positions of the Parties and their competitors also seem to be different in different regions, as illustrated in the same Cargotec internal document. Cargotec's market share in 2017 ranges [REDACTED].⁵¹⁶
- 5.141 In relation to HDFLT, there are also some suppliers that are not present in Europe, but supply HDFLT in other regions of the world, including: Taylor (USA), ZPMC (China), XCMG (China), Heli (China), Dalian Forklift (China), Hangzhou-Hangcha Forklift (China), Toyota (Japan) LiuGong (China), Lonking (China). The market positions of the Parties and their competitors also seem to be different in different regions, as illustrated in the same

⁵¹⁴ This document distinguishes four regions within Europe.

⁵¹⁵ Parties' submission response to European Commission RFI 17, [REDACTED].

⁵¹⁶ Parties' submission response to European Commission RFI 17, [REDACTED].

Cargotec internal document.⁵¹⁷ According to this document, Cargotec's market share ranges [REDACTED].

5.142 Several other internal documents produced by the Parties also suggest that their market positions, and those of their competitors, vary from region to region.

(a) A Cargotec market analysis document [REDACTED].⁵¹⁸

(b) In a Cargotec strategy document [REDACTED].⁵¹⁹

(c) In a strategic internal document, [REDACTED].⁵²⁰

(d) An internal document of Cargotec also considers that the market for FLT is regional: '[REDACTED]'.⁵²¹

(e) A Konecranes internal document [REDACTED].⁵²²

5.143 The evidence above indicates that the competitive landscape in Europe is different from other regions of the world and suggests that conditions of competition vary between regions.

Factors that may affect the ability of OEMs active in other areas of the world to supply customers in Europe

5.144 We have considered whether different factors may affect the ability of MEQ suppliers active in other areas of the world to supply customers in Europe, including: i) transportation costs; ii) the regulatory environment; iii), risks associated with tariff escalation and trade tensions; and iv) the importance of a EU track-record.

5.145 Views from third parties highlight some factors that may affect the ability of OEMs active in other areas of the world to supply customers in Europe:

(a) Some third parties expressed the view that it can be difficult for an OEM without a local presence to effectively supply UK customers:

⁵¹⁷ Parties' submission response to European Commission RFI 17, [REDACTED].

⁵¹⁸ Cargotec internal document, [REDACTED].

⁵¹⁹ Cargotec internal document, [REDACTED].

⁵²⁰ Parties' P1 Submission [REDACTED].

⁵²¹ Cargotec internal document, [REDACTED].

⁵²² Konecranes internal document, [REDACTED].

- (i) One distributor told us that ‘shipping costs’ for products shipped from outside Europe puts non-European OEMs at a pricing disadvantage.⁵²³
 - (ii) One non-European OEM told us that ‘shipment costs’ together with the requirement for quick delivery times and local services puts non-European OEMs at a disadvantage.⁵²⁴
- (b) The views expressed by some third parties also suggest that regulatory differences, in particular in relation to safety and environmental considerations, appear to affect the ability of OEMs to supply in Europe:
- (i) One distributor [REDACTED] told us that ‘safety compliance’ is a key component of its service proposition. It explained that initially, ‘companies would make equipment to sell in the unregulated markets. Once the products have been proven, the company would move to try to supply the regulated markets such as the UK and Europe.’⁵²⁵
 - (ii) One supplier of MEQ [REDACTED] identified as a slight obstacle to entry in the UK (as part of Europe) the need to comply with UK law and validate products / contracts / documentation to ensure they are compliant;⁵²⁶
 - (iii) One supplier of FLT [REDACTED] stated that ‘European emission regulations regarding diesel engines deter them from entering the European market’;⁵²⁷ and
 - (iv) One customer [REDACTED] noted that: ‘as part of the overall running-cost and price component consideration, and – per regulatory / sector developments – environmental considerations and targets, consumption, efficiencies and environmental credentials are a key consideration’.⁵²⁸

5.146 For the same reasons discussed in paragraph 5.44 the risks associated with tariff escalation and trade tensions may also affect the trade of MEQ between Europe and the other regions of the world. We note, in this respect, that is supported in relation to MEQ by [REDACTED].⁵²⁹

⁵²³ Call note, [REDACTED].

⁵²⁴ Transcript of call, [REDACTED].

⁵²⁵ Call note, [REDACTED].

⁵²⁶ Response to P2 questionnaire, [REDACTED].

⁵²⁷ Call note, [REDACTED].

⁵²⁸ Response to P2 questionnaire, [REDACTED].

⁵²⁹ Konecranes internal document, [REDACTED]

- 5.147 In relation to spare parts, customers told us that they stock some spare parts,⁵³⁰ especially consumables, but that for complex and expensive parts (such as the gearbox) they rely on the OEM or its distributor for prompt delivery.⁵³¹ One customer told us that when sourcing spare parts, it typically requires the parts to be delivered within a 24-hour period, which can be fulfilled from mainland Europe.⁵³² Another customer highlighted that for a new entrant to be successful it would need to have warehouse that is stocked with the critical spare parts that are needed for the machines for delivery according with the agreed servicing level (in addition to the ability to provide high-quality and prompt servicing).⁵³³
- 5.148 As explained in more detail in Chapter 12, the importance of having a strong track record and reputation in Europe can make it difficult for a non-European supplier to start supplying MEQ in Europe.
- 5.149 Overall, the evidence above points towards markets for the supply of MEQ being no wider than Europe, rather than global. In summary:
- (a) The market structure and competition conditions in Europe are different as compared with other regions.
 - (b) Some factors such as transportation costs, regulatory requirements, and the need for a track record in Europe can make it difficult for a non-European supplier of MEQ in Europe.
 - (c) While some customers stock some of the spare parts that they require (eg mainly consumables or parts that need regular replacement), customers rely on the OEM or its distributor for the prompt delivery of more complex and expensive parts, and timely delivery (for UK customers) requires at least a European presence.

The role and local presence of the distributors

- 5.150 While the main MEQ suppliers compete both in the UK and in other countries in Europe, the shares of supply of some suppliers differ to some extent between UK and Europe (as a whole, including the UK), as explained in more detail in Chapter 9. We consider that the competitive position of the main suppliers in the UK is influenced, to some extent, by the different distributors that OEMs use in the UK as compared to other countries in Europe and the strength of their distributor in the UK, given the important

⁵³⁰ Call note, [REDACTED]; Call note, [REDACTED]; Transcript of call, PD [REDACTED].

⁵³¹ Transcript of call, [REDACTED].

⁵³² Call note, [REDACTED].

⁵³³ Call note, [REDACTED].

role of the distributor in the supply of after sales services establishing local customer relationships for some customers.⁵³⁴ The distributors have an important role in establishing the necessary customer relationships, building business opportunities, providing after-sales services (including stocking spare parts), and, sometimes, facilitating financing.⁵³⁵ As explained below, these are important factors in the competitive dynamics and are amongst the main factors that influence customer choice.

- 5.151 Both Parties have a sales and after-sales presence in the UK. Cargotec has a direct presence, whereas Konecranes operates primarily through its distributor, Impact Handling. Other major suppliers of MEQ in the UK also have a UK sales and after sales presence through distributors. Sany (RS and ECH) and Svetruck (HDFLT) products are distributed by Cooper Handling; Hyster products are distributed by Briggs. Impact and Cooper both operate only in the UK, while Briggs operates in the UK via an independent subsidiary. This means that all the main MEQ suppliers in the UK have sales and after-sales service networks in the UK and some of them use distributors to that effect.
- 5.152 The distributors used by OEMs (except for Cargotec) in the UK are different from those used by the OEMs in other regions in Europe. For example, Briggs told us that Briggs Equipment UK Ltd only distributes Hyster products within the UK and the Republic of Ireland.⁵³⁶
- 5.153 Contrary to the Parties' contention, as explained in Chapter 12, there are few distributors available in the UK with the necessary expertise for the effective distribution of RS, HDFLT and ECH.

The importance of a local sales and after-sales presence and local customer relationships preferences

- 5.154 Some third parties submitted that it is important for OEMs to have a servicing presence (either directly or through a distributor), at least in Europe but ideally in the UK, particularly for routine servicing and/or emergency breakdown assistance so that unscheduled downtime can be kept to a minimum:
- (a) One customer noted that there are no significant differences in quality and reliability between the various brands of MEQ, as different OEMs

⁵³⁴ This is consistent with Konecranes' statement at the Main Parties Hearing, explaining that the reason for its weaker position in the UK compared to Europe is, '[redacted]'.
⁵³⁵ See, overall, transcripts from calls with [redacted], [redacted] and [redacted].

⁵³⁶ Within the Briggs Group there are sister companies that distribute the Hyster and Yale products in North America and Mexico. All these companies are independent subsidiaries of Sammons Enterprises Inc.

tend to use similar components; hence, the quality of the service network is an important differentiator.⁵³⁷

- (b) Another customer submitted that ‘after-sales service levels are a key criterion when selecting suppliers [...] which makes suppliers without an EEA+UK presence and after-sales network simply not a credible option’.⁵³⁸
- (c) Several third parties mentioned that a standard expectation in relation to MEQ is a response time of no more than four hours in response to a breakdown, with some noting that it would be difficult for suppliers without engineers based in the UK to meet this requirement.
 - (i) One competitor stated that its ‘customers look for a typical response time of under four hours’ and considered that suppliers ‘would struggle to match this response time’ if its engineers were not ‘based around the UK’.⁵³⁹
 - (ii) One distributor noted that four working hours is the industry norm that it adheres to. It said that it did not believe a company would be able to deliver this service level unless engineers were based in the UK.⁵⁴⁰
 - (iii) Another distributor said that ‘in the service level agreement, the response time is typically about three hours, although customers will try to negotiate a faster response time’. It noted that a significant number of engineers is needed in the UK ‘in order to offer customers UK-wide coverage’.⁵⁴¹
 - (iv) A third distributor told us that ‘the industry practice is that customers want to see somebody within 4 hours’. It said that its average response time is around 2.5 hours because it has got ‘quite a big coverage’. This distributor added that ‘the bigger the machine, the more important it is for preventative and planned maintenance to take place’.⁵⁴²

5.155 A few UK customers noted that a national servicing presence (either directly or through a distributor) was less important as a tender criterion because

⁵³⁷ Call note, [REDACTED].

⁵³⁸ Call note, [REDACTED].

⁵³⁹ Call note, [REDACTED].

⁵⁴⁰ Call note, [REDACTED].

⁵⁴¹ Call note, [REDACTED].

⁵⁴² Call note, [REDACTED].

they had an in-house team to provide maintenance support.⁵⁴³ However, evidence indicates that even customers with in-house servicing capabilities require prompt servicing from manufacturers in at least some circumstances:

- (a) Some third parties indicated that, during the warranty period, they rely on spare parts and servicing provided by the OEM or its distributor.⁵⁴⁴ Consistent with this, data from Cargotec shows that, during the warranty period, Cargotec services a material proportion of the ECH, HDFLT and RS that it sells in the UK.⁵⁴⁵
- (b) One GTO [REDACTED] noted that the distributor/agent of the OEM is 'called upon to intervene when there are warranty issues with the equipment' and that 'it will sometimes need to call on the OEM's agent to have engineers carry out servicing on site during peak periods'.⁵⁴⁶
- (c) Some customers hire MEQ, which typically includes servicing provided by the OEM or its distributor.⁵⁴⁷

5.156 This third-party evidence indicates that access to timely after-sales support is important, even (to some extent) for large customers (eg GTOs) that may have in-house teams. This is consistent with the importance that Parties attribute to after-sales servicing in its internal documents:

- (a) [REDACTED].⁵⁴⁸ In the same document, [REDACTED].⁵⁴⁹
- (b) [REDACTED].⁵⁵⁰
- (c) [REDACTED].⁵⁵¹

5.157 As noted by the Parties, there are other factors that are important (or even more important) in tenders than after-sales services. It is notable, however, that most customers of MEQ have given a score of 4 or 5 to 'strength of local after-sales' as a purchasing criteria (in a scoring from 1 to 6, in which 6 is the highest in importance).⁵⁵² The importance of after-sales services for many

⁵⁴³ One customer noted that, following a pre-qualification round, it selected the successful supplier in a tender based almost exclusively on price (Call note, [REDACTED]). Another customer told us [REDACTED] that the 'ability to supply the maintenance services was a less important tender criterion than other criteria' and that it aims to be 'self-sufficient in servicing' (Call note, [REDACTED]).

⁵⁴⁴ Transcript of call, [REDACTED]; Call note, [REDACTED].

⁵⁴⁵ For example, [REDACTED] [REDACTED] (see Cargotec's response to CMA RFI [REDACTED]).

⁵⁴⁶ Call note, [REDACTED].

⁵⁴⁷ For instance, [REDACTED] [Call note, [REDACTED]].

⁵⁴⁸ Parties' submission, [REDACTED].

⁵⁴⁹ Parties' submission, [REDACTED].

⁵⁵⁰ Konecranes internal document, [REDACTED].

⁵⁵¹ Cargotec internal document, [REDACTED].

⁵⁵² See Chapter 9 for further information.

customers points towards the importance of a national presence (whether directly or through a distributor) as a material dimension of competition.

- 5.158 Evidence from third parties also emphasises the importance of having a national sales presence to establish a customer relationship. OEMs seem to establish that customer relationship through direct local presence or through distributors:
- (a) One distributor considered that it is better ‘to have a local engagement with the customer [in the UK] because that relationship is quite important [and] the retention of the customer is important’.⁵⁵³
 - (b) Another distributor told us that the customer relationship is the ‘core of this industry’.⁵⁵⁴
 - (c) Another customer told us that ‘an incumbent will put a great deal of effort into retaining customers and a new supplier would need to be very aggressive to oust an incumbent’. It further noted that ‘openings tend to be created when a supplier / customer relationship breaks down’.⁵⁵⁵
- 5.159 The third-party evidence summarised above indicates that it would be difficult for OEMs without a local presence in the UK (either directly or through a distributor), and the ability to promptly supply spare parts in the UK, to be an effective option for UK customers.
- 5.160 As discussed in Chapter 12, the evidence suggests that establishing a direct local presence and setting up such a network can be challenging, even when using a distributor.
- 5.161 The Parties’ submitted in response to the CMA’s MEQ working paper⁵⁵⁶ (see paragraph 5.132), that GTOs make purchasing decisions at their global overseas headquarters, therefore any local relationships or track record is not a determining factor for the ultimate decision makers. The evidence that we have received does not seem to support the Parties’ submission that GTOs make their purchasing decisions solely in overseas headquarters with little or no input from local terminals, such as in the UK.⁵⁵⁷ Purchasing decisions seem to be the result of a combination of both central and local considerations. Evidence from third parties indicates that local engagement is relevant for at least some customers.

⁵⁵³ Transcript of call, [REDACTED].

⁵⁵⁴ Transcript of call, [REDACTED].

⁵⁵⁵ Call note, [REDACTED].

⁵⁵⁶ Parties’ submission, [REDACTED].

⁵⁵⁷ For example, HPH’s tender committee [REDACTED] Transcript of call, [REDACTED].

- 5.162 The fact that non-European competitors, such as Sany, have succeeded in establishing a track record and gaining some business in Europe does not contradict the position that having a European track-record and European or UK after-sales presence is important. The obstacles set out above do not mean that a non-European supplier cannot compete in Europe, including in the UK, but that it will not be able to quickly and easily do so, without establishing directly or indirectly a national sales and after sales presence. Sany is the only Chinese MEQ supplier that has gained a material presence in the UK in the MEQ markets that we are considering.
- 5.163 We note that there are differences in the position of some suppliers in the UK compared with their position in Europe, which are, to some extent, a reflection of the strength of the national distributors and of the UK-specific aspects of competition highlighted above. This is not inconsistent with defining a European market, because there are important similarities between continental Europe and the UK, in terms of transport cost, regulatory environment and importance of a European track record. These are similarities not present when comparing Europe with the rest of the world.

Conclusion on the relevant geographic market definition

- 5.164 We conclude, on the basis of the evidence above, 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. In Chapter 9, in assessing the effects of the merger for UK customers, we therefore consider competition at a European level and take into account UK aspects of competition. Irrespective of our views on the scope of the geographic market, we have carefully taken into account and assessed the competitive constraints on the Parties, both within and outside the relevant geographical market.

Automated Terminal Tractors

Product market definition

Parties' views

- 5.165 The Parties considered that TT may constitute a distinct product market. Whilst their functionality is very similar to ShCs and AGVs, they tend to be cheaper than these equipment types, and have a wider scope of use than

AGVs (which are seldom deployed outside container terminals).⁵⁵⁸ The Parties submitted, however, that there may be some cross-competition between road trucks and TT in port/terminal applications.⁵⁵⁹

- 5.166 The Parties further submitted that ATT may constitute a separate market, highlighting the differences between AGV and ATT.^{560,561}

Our assessment

- 5.167 TT are vehicles for horizontal transport in container terminals and other environments (eg distribution centres). They pull a trailer upon which containers and other heavy loads can be placed. TT are not able to pick up and drop containers themselves (unlike, for example, SCs) but need to be loaded/unloaded using other equipment that is capable of vertically moving containers, such as cranes or RS. TT are not only used in container terminals: they are also widely deployed in warehouses, distribution centres and various industrial fields of application.⁵⁶²
- 5.168 ATT are essentially driverless TT that use advanced autonomous driving technology. There are no fully functioning ATT available in the market yet, but larger scale marketability is imminent.⁵⁶³

Demand-side and supply substitution between ATT and other CHE

- 5.169 In line with the Parties' submissions, we conclude that there is a separate product market for ATT from other CHE equipment (including AGV), given their different features and functions. In particular, views expressed by third parties support the Parties' submissions that there is limited demand-side substitutability between ATT and AGVs (ie because of pricing and scope of use).⁵⁶⁴ We also conclude that ATT should not be aggregated with other CHE given the limited degree of supply-side substitution. The evidence considered in Chapter 11 indicates that suppliers of TT need to make material investments in the development of ECS and ECS integration with their TT and/or establish partnerships to do so.

⁵⁵⁸ Merger Notice, [§].

⁵⁵⁹ Merger Notice, [§].

⁵⁶⁰ Parties considered that ATT differ from automated guided vehicles (AGVs). Merger Notice, [§].

⁵⁶¹ Merger Notice, [§].

⁵⁶² Merger Notice [§].

⁵⁶³ Merger Notice, [§].

⁵⁶⁴ Call note, [§]; call note, [§].

Demand-side substitution between TT and ATT

- 5.170 The evidence we have reviewed suggests that there may be limited demand-side substitutability between ATT and TT.
- 5.171 First, there are important differences in functionality between ATT and TT. Whereas TT are wholly controlled by a human operator, ATT have a higher level of software intervention provided by ECS which allows some or all of their functions to be automated:⁵⁶⁵
- (a) The Parties submitted that automation ‘is an industry trend driven by...customers’ need to conduct their operations more profitably (with a view to managing labour cost, better visibility on business processes and equipment performance) and more safely (with a view to reducing accidents)’.⁵⁶⁶
 - (b) ATT fit within this broader trend and are likely to share the same perceived advantages for customers as other automated equipment. Konecranes’ internal documents suggest that offering an ATT will be an important part of the automation process. For example, a Product Strategy [REDACTED] document states ‘[REDACTED]’.⁵⁶⁷ Another Konecranes internal document states, ‘[REDACTED]’.⁵⁶⁸
 - (c) Once automation has been implemented in a given terminal, it makes limited sense from a cost perspective to switch back to non-automated operations. This means demand-side substitutability between ATT and manual TT is likely to be limited once a terminal has undergone a shift to automation.
- 5.172 Second, evidence reviewed by the CMA suggests there is likely to be a significant cost difference between TT and ATT. For example, [REDACTED];⁵⁶⁹ whereas [REDACTED].
- 5.173 While the Parties have suggested that there is ‘currently no market’ for ATT, as explained in Chapters 4 and 10, evidence from internal documents and third parties indicates that ATT are being developed by a number of players, that ATT with some level of automation will be offered to customers in the near future and that ATT are likely to be an important part of suppliers’

⁵⁶⁵ As explained in Chapter 4, ‘[t]he term “automation is used to refer to a wide spectrum of functions, ranging from remote operation by a human operator to fully self-driving.’

⁵⁶⁶ Form CO, [REDACTED].

⁵⁶⁷ Konecranes internal document, [REDACTED].

⁵⁶⁸ Konecranes internal document, [REDACTED].

⁵⁶⁹ See paragraph 10.54

product offering in future. We have also seen no evidence to suggest that UK customers do not form part of the expected global demand for ATT that the Parties, and others, are preparing to address. Indeed, we understand that one UK port is considering the possible adoption of ATT in the future, as part of its planned expansion.⁵⁷⁰

Supply-side substitution between ATT and TT

5.174 We have seen evidence which suggests that there may be some degree of supply-side substitutability between ATT and TT. As discussed below, existing suppliers of TT, including Cargotec and Terberg, are developing ATT or are part of partnerships that are doing so. However, TT suppliers have to develop their own automation software or partner with a company that has the necessary automation software in order to develop an ATT offer. As such we do not consider that supply side substitution is likely to be sufficient to mean that ATT and TT are in the same market.

Conclusion on the relevant product markets

5.175 We conclude that there is a separate product market for ATT and that it is appropriate to assess the effects of the Merger in relation to ATT.

Geographic market definition

Parties' views

5.176 The Parties submitted that TT and ATT share many of the characteristics of other CHE which point towards global markets. The Parties noted, in particular that the market for TT differs from other HTE markets (and is more similar to MEQ markets) in that TT are relatively commoditized, high-volume products. In addition, while distributors and sales agents play a more prominent role in the supply of TT than for other heavy CHE, a local sales and service presence is by no means a prerequisite to successfully compete, be it in a given region such as Europe or on a global basis.⁵⁷¹

Our assessment

5.177 Suppliers of TT appear to have different shares of supply on different regional bases. For example, Terberg's share on a UK and EU basis is [50–60%] [REDACTED] and [60–70%] [REDACTED], respectively, whereas its share is [20–30%]

⁵⁷⁰ Call note, [REDACTED].

⁵⁷¹ Merger Notice, [REDACTED].

[REDACTED] on a worldwide basis. Mafi is only present in the UK/EU, and not the rest of the world, whereas Capacity, TICO, Autocar and Shaanxi are only present outside of Europe. This suggests that the conditions of competition are not homogenous across all regions.

5.178 As acknowledged by the Parties, although ATT are classified as horizontal equipment, there are some similarities to MEQ, including the more prominent role of distributors,⁵⁷² which points towards a market that is at most European. Furthermore, [REDACTED].⁵⁷³

Conclusion on the relevant geographic markets

5.179 Overall, we conclude that the appropriate geographic frame of reference for the assessment of the effects of the Merger in ATT is no wider than Europe-wide (including the UK) in scope.

6. Horizontal unilateral effects theories of harm

Approach to unilateral effects

6.1 We focused our inquiry on whether the Merger may be expected to result in an SLC within a market or markets in the United Kingdom, as a result of the following horizontal unilateral effects theories of harm:

- (a) in the supply of RTG;
- (b) in the supply of ASC;
- (c) in the supply of SC and ShC;
- (d) in the supply of RS;
- (e) in the supply of HDFLT;
- (f) in the supply of ECH; and
- (g) in the future supply of ATT (potential competition).

6.2 The Parties also overlap in the supply of STS and RMG. Konecranes also produces MHC.⁵⁷⁴

⁵⁷² Merger Notice, [REDACTED].

⁵⁷³ Call note, [REDACTED].

⁵⁷⁴ There is no overlap between the Parties in relation to MHC. We consider the vertical effects of the Merger in relation to the supply of spreaders to MHC in Chapter 11.

- 6.3 As set out in the Issues Statement,⁵⁷⁵ the evidence available to us in relation to RMG⁵⁷⁶ and STS,⁵⁷⁷ at the start of the phase 2 inquiry, indicated that no horizontal competition concerns should arise within those product markets. We have not actively investigated further at phase 2 the horizontal effects of the Merger in these markets and we have not received any additional evidence suggesting potential concerns in these markets during the phase 2 inquiry. Our conclusion is, therefore, that the Merger is not likely to result in SLCs in relation to the supply of this equipment.
- 6.4 Horizontal unilateral effects can arise in a merger where one firm merges with a competitor that provides and/or is expected to provide a competitive constraint. Through the merger, removing one party as a competitor might allow the merged entity profitably to increase prices, lower the quality of its products or customer service, reduce the range of their products/services, and/or reduce innovation.⁵⁷⁸
- 6.5 In order to assess the likelihood of the Merger resulting in horizontal unilateral effects, we considered the closeness of competition between the Parties and the (present and future) competitive constraints provided by competing suppliers. As set out in the CMA's guidance, we took a forward-looking approach to the assessment of any theories of harm, considering the effects of the Merger both now, and in the future.⁵⁷⁹

Conduct of the inquiry

- 6.6 The CMA is responsible for operating the CMA's merger control regime, as part of its duty to promote competition for the benefit of consumers both within and outside of the UK.⁵⁸⁰
- 6.7 Following the end of the Transition Period,⁵⁸¹ the CMA has jurisdiction over mergers which previously would have been exclusively within the remit of the European Commission's jurisdiction.⁵⁸²

⁵⁷⁵ Parties submission, [REDACTED].

⁵⁷⁶ For RMG, the Parties' shares are low (worldwide their combined share is [10-20%] [REDACTED], in Europe it is [10-20%] [REDACTED]). ZPMC is the largest supplier and there are seven other competitors active in the supply of RMG. No RMG have been delivered to the UK since 2015.

⁵⁷⁷ For STS cranes, the Parties' shares of supply are low (worldwide their combined market share is [0-5%] [REDACTED], in Europe it is [0-5%] [REDACTED]). ZPMC is the leading supplier (its share is [60-70%] [REDACTED]) and there are nine other competitors active in the supply of STS cranes in Europe.

⁵⁷⁸ CMA129, paragraph 4.1.

⁵⁷⁹ CMA129, paragraph 2.14.

⁵⁸⁰ Section 25(3) of the Enterprise and Regulatory Reform Act 2013. See also Mergers: [CMA2 Revised](#), paragraph 1.1.

⁵⁸¹ Defined as 11pm on 31 December 2020 in the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community.

⁵⁸² Pursuant to article 21(3) of the Council Regulation (European Commission) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings.

- 6.8 The Merger represents the first occasion on which the CMA and the European Commission's are reviewing, in parallel, the same transaction at phase 2. The Merger is also being, or has been, investigated by various other merger control authorities around the world.
- 6.9 We have during this inquiry engaged closely with a number of other authorities reviewing the Merger – including the European Commission, the US Department of Justice and the Australian Competition and Consumer Commission – both in relation to the substantive assessment of competitive effects and the assessment of potential remedies.

Parties' submissions

- 6.10 In response to our Provisional Findings Report, the Parties submitted that:
- (a) given the overlap between the CMA's and the European Commission's evidence gathering in this case, the Parties should have been given access to the CMA's file in order to enable them to reconcile the evidence obtained by both authorities;
 - (b) the CMA failed to take reasonable steps to align its process with the European Commission and could, for example, have sought waivers from third-party respondents to allow the CMA to review the European Commission's file; and
 - (c) it was incumbent on the CMA to pursue any disparities or gaps between its investigation and that of the European Commission.⁵⁸³
- 6.11 In this context, on 15 November 2021, Cargotec provided the CMA with a number of extracts, which it submitted were taken from submissions made by third parties to the European Commission in the course of the European Commission's investigation of the Merger. We understand that this information was obtained by Cargotec by way of the European Commission's confidential access to file process. In its submission to the CMA, Cargotec commented that '[...] the Parties are struggling to reconcile the CMA's interpretations of the comments made by third parties [as part of the CMA's inquiry] with the significant amount of feedback received which supports the Parties' submissions during the European Commission's market investigation' and submitted that the information provided is '[...] fully relevant to the CMA's assessment of the case.'

⁵⁸³ [Parties' response to the Provisional Findings](#), paragraph 3.31.

- 6.12 The Parties submitted that if the CMA is put on notice of a significant body of evidence that either contradicts the CMA's own views or the third-party responses it has itself received (or both), the CMA's duty of sufficient inquiry necessitates that the CMA informs itself of this evidence, either via the European Commission or from those third parties directly.⁵⁸⁴
- 6.13 In addition, the Parties submitted that their rights to procedural fairness were not respected because they were not, in respect of many of the product markets affected, made aware of what evidence had been given by third parties and what statements had been made affecting them. The Parties submitted that while it may sometimes be sufficient to provide merger parties with the 'gist' or 'essence' of the case against them, the key point is that those parties are given an opportunity 'effectively' to challenge the case against them.⁵⁸⁵ In particular, the Parties submitted that:
- (a) they should have been provided with unique identifiers for each third-party, at the very least, an indication of the category of third party providing the feedback, to ascertain potential bias or to consider the evidential weight of the quote and more effectively to challenge it if necessary, and that they should not be disadvantaged by the fact that the CMA only contacted a limited number of third parties, which meant that the CMA was unable to provide unique identifiers due to the risk that the Parties could identify the third parties;⁵⁸⁶
 - (b) the CMA failed to disclose how significant customers are when quoting individual customers;⁵⁸⁷ and
 - (c) the Parties' advisers should have been given access to the CMA's entire file by way of a confidentiality ring.⁵⁸⁸

Our assessment

- *Request for access to CMA file and alleged failure to provide gist of case*

- 6.14 As set out in our published guidance,⁵⁸⁹ the Act requires the CMA to balance its obligation to consult⁵⁹⁰ with its obligation to keep confidential information

⁵⁸⁴ Parties' submission [X].

⁵⁸⁵ [Parties' response to the Provisional Findings Report](#), paragraphs 3.16.

⁵⁸⁶ [Parties' response to the Provisional Findings Report](#), paragraphs 3.18 to 3.20 and 3.26.

⁵⁸⁷ [Parties' response to the Provisional Findings Report](#), paragraph 3.21.

⁵⁸⁸ [Parties' response to the Provisional Findings Report](#), paragraph 3.31.

⁵⁸⁹ [CMA2 Revised](#), paragraph 13.4-13.9.

⁵⁹⁰ Section 104 of the Act.

received from third parties.⁵⁹¹ It does so by only disclosing information that is ‘necessary’ to discharge its obligation to consult.⁵⁹² In accordance with settled precedent, the disclosure of confidential information will be deemed necessary where it forms part of the ‘gist of the case’ the merger parties have to answer. In other words, the merger parties need to be provided with sufficient information in order to be able to make informed submissions in response to the CMA’s provisional findings.⁵⁹³ What constitutes the ‘gist’ of a case is context-sensitive.⁵⁹⁴

- 6.15 It is settled case law that there is no general right of ‘access to file’ within CMA merger control proceedings,⁵⁹⁵ and the CMA is not, as a general principle, obliged to disclose all inculpatory or exculpatory material.⁵⁹⁶
- 6.16 The fact that other jurisdictions may provide for a different level of disclosure does not alter the legal framework to which the CMA is subject in respect of the evidence which it has gathered. In operating within the applicable legal framework, the CMA is not exercising discretion but is complying with the legal obligations owed to third parties under the Act. In other words, the legal framework within which the CMA operates in merger cases does not allow for the provision of ‘access to file’ in the manner suggested by the Parties. This position was conveyed to the Parties on multiple occasions.⁵⁹⁷
- 6.17 We are satisfied that we acted in keeping with our legal duties and disclosed the gist of the case to the Parties as part of the Provisional Findings Report. In particular, we note that:
- (a) it was not necessary to provide individual third-party identifiers for the Parties to understand the gist of the case against them. As was explained to the Parties during our inquiry, they were able to make submissions regarding potential bias from third parties (whether particular groups of third parties or specific third parties) without such identifiers. In addition, no material conclusions we have reached are based solely on the view of any individual third-party (noting in particular

⁵⁹¹ Sections 237 and 238 of the Act. The CMA also notes that section 104 of the Act refers to the need to protect confidentiality.

⁵⁹² Section 244 of the Act. See *CMA2 Revised*, paragraph 13.4.-13.6.

⁵⁹³ *R v Secretary of State for the Home Department, Ex parte Doody* [1993] UKHL 8, page 14. See *CMA2 Revised*, paragraph 13.7.

⁵⁹⁴ *BMI Healthcare Ltd v Competition Commission* [2013] CAT 24 (“BMI”), at paragraph 39(7). See *CMA2 Revised*, paragraph 13.8.

⁵⁹⁵ *BMI*, at paragraph 4.

⁵⁹⁶ *Groupe Eurotunnel SA v Competition Commission* [2013] CAT 30 at paragraph 221. See *CMA2 Revised*, paragraph 13.9.

⁵⁹⁷ We refer to the email from [§] to [§] on 15 October 2021 at 06:25, the email from [§] to [§] on 21 October 2021 at 08:03, the letter from [§] to [§] and [§] dated 5 November 2021 and the letter from [§] to [§] dated 21 February 2022.

that third-party evidence is only one source of evidence on which we have based our views);

- (b) the CMA's decision not to provide individual third-party identifiers was not, as the Parties suggest, linked to the number of third parties contacted by the CMA nor the risk of 'reverse-engineering' – as indicated above, it was based on the CMA's view that providing identifiers was not necessary to convey the gist of the case;⁵⁹⁸
 - (c) it was also not necessary to provide any further descriptors regarding the size or 'importance' of individual customers referred to in the CMA's third-party evidence for the Parties to have the gist of the case.⁵⁹⁹ As the CMA contacted the Parties' main UK customers,⁶⁰⁰ all such customers can be expected to be significant to one or the other of the Parties. In any event, we note that the views of customers are relevant to the CMA's assessment, regardless of their size or overall market significance. Further, the Parties were able, should they have wished, to make submissions as to potential bias of certain customers (or competitors) without such specification being given; and⁶⁰¹
 - (d) the disclosure of information into a confidentiality ring to the Parties' external advisers remains subject to Part 9 of the Act. The CMA will at all times seek to uphold its duty of maintaining confidentiality where possible, and the possibility of using a confidentiality ring to share confidential information will not result in the disclosure of confidential information beyond that necessary to provide the 'gist' of the case.⁶⁰²
- *Alleged failure to align processes with the European Commission*

6.18 In relation to mergers which qualify for review in more than one jurisdiction, the CMA's guidance makes clear that it may be beneficial for the CMA to be able to communicate and coordinate with other authorities in reaching decisions on the competition assessment and remedies.⁶⁰³

⁵⁹⁸ The basis for this decision was explained to the Parties in a letter from [redacted] to [redacted], [redacted] and [redacted] dated 24 November 2021, which stated that '[a]t the outset, the Inquiry Group notes that providing individual identifiers carries a significant risk of reverse engineering given market concentration and characteristics of different customers and competitors. *More importantly, the Inquiry Group does not consider that it is necessary to do so in order to inform the Parties of the gist of the case.*' (emphasis added)

⁵⁹⁹ As requested by the Parties in the [redacted].

⁶⁰⁰ Cargotec and Konecranes provided contact details of their respective top UK customers (Cargotec by revenue; Konecranes by volume).

⁶⁰¹ The Parties have also queried the robustness of the CMA's engagement with third parties. This is considered in paragraphs 6.34 to 6.85 below.

⁶⁰² [CMA2 Revised](#), paragraph 13.15.

⁶⁰³ [CMA2 Revised](#), paragraphs 18.1 to 18.7.

- 6.19 The CMA has in this case cooperated extensively with the European Commission and other authorities reviewing the Merger. In doing so, the CMA has taken reasonable steps to enable cooperation between itself and such authorities, having sought and obtained waivers from the Parties in order to enable communication with other authorities reviewing the Merger.
- 6.20 However, the CMA operates within the legal framework set out in the Act and its published guidance, which differs from the frameworks for assessment followed by other competition authorities. In carrying out its statutory functions, the CMA will in each case determine independently the nature and scope of the evidence it gathers, the weight to be attributed to such evidence and ultimately how to answer the statutory questions based on that evidence.⁶⁰⁴ In particular, there is no obligation on the CMA to take investigative steps identical to those taken by the European Commission or any other authority (and the CMA would not in any case be able, under the applicable legal framework, to follow all of the investigative steps taken by those authorities).
- *Alleged failure to make reasonable inquiries*
- 6.21 When conducting an investigation, it is for the CMA to evaluate what evidence is necessary to answer each statutory question' within the applicable statutory timetable. In so doing the CMA has a wide margin of appreciation.⁶⁰⁵
- 6.22 In the present case, while we have cooperated extensively with other competition authorities reviewing the Merger, we have carried out our investigation independently, including in determining what evidence to gather in order to discharge our duty to take reasonable steps to acquaint ourselves with the relevant information to enable us to answer the statutory questions.
- 6.23 As set out in detail in paragraphs 6.34 and 6.35, below, the CMA has gathered evidence from a wide range of different sources to inform our inquiry, including the Parties' submissions, evidence from internal documents, share of supply estimates, quantitative analysis and qualitative analysis and evidence provided by third parties. Third-party evidence is, therefore, only one category of evidence we have considered and it is for the CMA to decide with which third parties to engage and how such engagement takes place, provided that third-party feedback is sufficiently representative.

⁶⁰⁴ This reflects the fact that different jurisdictions apply different substantive legal tests and operate different procedures from the CMA. In particular, CMA investigations will focus, in accordance with the statutory question, on the impact of a merger on any markets *within the UK*.

⁶⁰⁵ *BAA Limited v Competition Commission*, [2012] CAT 3, ([BAA-CC](#)), paragraph 20(3).

Our approach to the collection of third-party evidence is set out in paragraphs 6.74 to 6.85 below.

- 6.24 As indicated above, Cargotec provided us with extracts, which it submitted were taken from submissions made by third parties to the European Commission in the course of the European Commission's investigation of the competitive effects of the Merger. We have considered this evidence but, as noted in our [Provisional Findings Report](#), this material contained isolated quotes from minutes of meetings between the European Commission and third parties or from responses provided by third parties to European Commission questionnaires. Without full access to the underlying documents, we are unable to verify, assess the context, and meaningfully interrogate the information provided.
- 6.25 Such evidence, which has been gathered from third parties by the European Commission, is subject to strict confidentiality obligations under European Union law.⁶⁰⁶ In the absence of waivers from third parties, there is no available mechanism for the CMA to access information provided by third parties to the European Commission.⁶⁰⁷
- 6.26 Accordingly, where excerpts of evidence from the European Commission's file have been selectively provided to the CMA, the CMA is unable to ascertain how representative the sample of views was of the wider views of third parties that have been gathered by the European Commission. We are also unable to ascertain whether or not the selected excerpts are corroborated by any underlying evidence provided by those specific third parties to the European Commission. Accordingly, it is not appropriate for the CMA to give material weight to any such excerpts save where the CMA is able to understand their representativeness, which has not been possible given the absence of a mechanism for the CMA to access the full body of evidence submitted by specific third parties or all of the third-party views relied upon by the European Commission.⁶⁰⁸
- 6.27 Notwithstanding the above, as described in paragraphs 6.29 to 6.33 below, we are not aware of material disparities in third-party views expressed to the CMA and the European Commission in relation to the substantive

⁶⁰⁶ Pursuant to Article 17 of the Council Regulation (European Commission) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings.

⁶⁰⁷ While we have obtained waivers from the Parties in order to enable the exchange of information confidential to the Parties with certain other authorities reviewing the Merger (including the European Commission), such waivers do not enable the sharing of information confidential to third parties.

⁶⁰⁸ While the CMA may be able to obtain waivers from third parties in relation to evidence submitted to the European Commission, there is no obligation on third parties to grant such waivers. As waivers need to be agreed by each individual third-party, it is not practicable for the CMA to seek to obtain such waivers from large numbers of third parties that may have responded to the European Commission.

assessment of the Merger. We also note that the European Commission reached broadly the same conclusions as the CMA in its substantive assessment of the Merger in respect of the vast majority of product markets affected.⁶⁰⁹

- 6.28 We discuss further submissions made by the Parties on the CMA's approach to third-party evidence-gathering from paragraph 6.72 below.

Incorporation of the Parties' responses to the European Commission

- 6.29 In their 39-page response to the [Provisional Findings Report](#), the Parties submitted that instead of addressing '[...] all of the errors contained in the [Provisional Findings Report] on a line-by-line basis [...], this response incorporates and adopts' the Parties' 51-page Response to the European Commission's Letter of Facts and their 396-page Response to the European Commission's Statement of Objections.⁶¹⁰
- 6.30 In this context, we note that the Parties' submissions contained in their responses to the European Commission's Letter of Facts and Statement of Objections were made to the European Commission in response to the European Commission's views under the legal framework pursuant to which the European Commission operates, as supported by the evidence which the European Commission has gathered.
- 6.31 We have reviewed the materials the Parties sought to incorporate and adopt into their response to the Provisional Findings Report and taken these into account, to the extent relevant, in reaching our final decision (while noting that the nature of some of this evidence limits the weight that it can be given – as explained, for example, in paragraph 6.26).
- 6.32 We do not, however, address the representations made by the Parties in those submissions in the same way as we address the representations made in their response to our Provisional Findings Report. Our provisional findings were based on the application of the legal framework to which the CMA is subject and the extensive evidence base that we have collated to enable us to answer the statutory questions. In some parts, representations made by the Parties in response to the European Commission's Letter of Facts and Statement of Objections are not relevant to our proceedings (or

⁶⁰⁹ Both the CMA and the European Commission found that the Merger may be expected to give rise to significant competition concerns as a result of horizontal unilateral effects in relation to the supply of each of: (i) RTG; (ii) SC and ShC; (iii) RS; (iv) HDFLT; and (v) ECH. The CMA also identified concerns in relation to ASC and ATT and the European Commission in relation to customer foreclosure in mobile equipment spreaders.

⁶¹⁰ [Parties' response to the Provisional Findings Report](#), paragraph 1.2. In addition, the Parties' response to the Provisional Findings Report sought to 'incorporate and adopt' the Parties' Responses to the CMA's Annotated Issues Statement and the CMA's Working Papers.

we are not in a position to assess the extent to which they might be supported by the available evidence given that we do not have access to the full body of evidence on the Commission's file, for the reasons explained above).

- 6.33 We consider that it is for the Parties to ensure that they respond to the CMA's evidence and provisional findings in a manner that is sufficiently clear and we have sought to address those submissions that do respond to our provisional findings, in keeping with our duty to give reasons, in this Final Report. Where Parties choose to submit submissions prepared for the purposes of other proceedings, we do not consider that we are required to address those submissions (which may be irrelevant for our proceedings) in the same way.

Approach to evidence

- 6.34 We have gathered and taken into account a range of evidence in our assessment. In particular, we have considered: a) the Parties' submissions; b) evidence from internal documents; c) share of supply estimates; d) quantitative analysis of the Parties' bidding data and qualitative analysis of some UK tenders ('case studies'); and e) evidence received from third parties (including customers, competitors, and distributors).⁶¹¹
- 6.35 In considering the weight to be placed on each piece of evidence, we have taken into account factors such as the robustness of the data/methodology adopted, the interests of the party providing the information or view, the age of the information or document, the context, author and recipient of a document, and the purpose for which it was produced. We have not relied on any one specific piece of evidence in isolation to inform our decisions as to whether the Merger may be expected to result in one or more SLCs; rather, we have assessed all of the evidence in the round in order to reach our decisions.⁶¹² As part of this, we have given due regard to the extent to which our view on the interpretation of a piece of evidence is corroborated (or not) by other evidence available to us.
- 6.36 We set out briefly below the different types of evidence we have considered and the weight that we consider can be given to it. The Parties have made a

⁶¹¹ Third-party evidence includes sales and tender data where available.

⁶¹² The approach followed by the CMA in relation to the assessment and weighting of the evidence is consistent with the framework for the CMA's assessment of the evidence set out in the Merger Assessment Guidelines (CMA129, paragraphs 2.19 – 2.25). In particular paragraph 2.23 states: 'The CMA does not normally consider specific pieces of evidence in isolation when considering the question of an SLC, although it is common for the CMA to weight pieces of evidence differently'.

number of submissions on specific factors that they consider should affect the weight given to certain categories of evidence. We include our assessment of these submissions in the discussion below.

Evidence from the Parties

6.37 We considered evidence from the Parties submitted during the phase 1 inquiry, responses to our requests for information and documents during phase 2, virtual 'site visits', formal hearings, and other phase 2 submissions. As in any inquiry, in assessing the views of the Parties, we have given due regard to a range of factors, including the extent to which the views were corroborated by evidence they submitted and/or by other evidence available to us.

Evidence from internal documents

6.38 Internal documents provide a useful source of evidence as they reflect how the Parties assess the market in the ordinary course of business, and when making commercial and strategic decisions. They provide insights into issues such as the Parties' perceptions of the competitive threat posed by each other and by third-party competitors.

6.39 We have received and reviewed a significant number of internal documents produced by or for the Parties' senior leadership teams and/or Boards. The Parties submitted approximately 3,000 documents as responsive to questions about the Parties' performance in UK or European tenders for CHE and monitoring or benchmarking of their competitive positioning or performance of their competitors. We also included in our assessment a significant number of further documents on the same topics submitted by the Parties to European Commission, which the Parties also submitted to the CMA.⁶¹³

6.40 Only a small sub-set of these documents provide useful insights in relation to the competitive positioning and performance of the Parties and their competitors in the UK or Europe in relation to each of the markets we investigated.⁶¹⁴ Many of the responsive documents were: i) industry reports; ii) legal tender documents and documents with technical specifications of the Parties' offer or of the customer's requirements; iii) documents that simply report the sales of each supplier within a certain period; and iv) duplicates of the same. Of the documents submitted by the Parties, only a relatively small

⁶¹³ The Parties submitted approximately one million documents, which were responsive to the European Commission's document requests, to the CMA.

⁶¹⁴ Many of these documents were industry reports or reports monitoring the sales of each supplier.

number provide commentary on the competitive positioning or overall performance of the suppliers of a particular type of equipment in the UK or Europe.

- 6.41 In our assessment of the internal documents, we placed more weight on recent documents that refer specifically to the competitive situation in Europe and/or the UK and that were created before the Merger was in contemplation.⁶¹⁵
- 6.42 The Parties submitted that the CMA cherry-picked adverse-only inferences from internal documents.⁶¹⁶ To support this assertion, the Parties noted that: i) only very few of the internal documents submitted by the Parties were cited by the CMA; and ii) the documents cited by the CMA were selectively quoted and considered out of context.⁶¹⁷
- 6.43 We have considered the Parties' comments in relation to particular documents quoted in the working papers and assessed the additional documents identified by the Parties in their response to the working papers and their response to the Provisional Findings Report (and other submissions 'incorporated' within that response).
- 6.44 More generally, we note the following:
- (a) In relation to the Parties' comment on the number of documents cited, the Parties only referred us to a relatively small number of documents in addition to the documents quoted in the Provisional Findings. We have taken these documents into account in this Final Report.
 - (b) Where evidence from internal documents is mixed, this was made clear in the Provisional Findings.⁶¹⁸
 - (c) The fact that a relatively small sub-set of the documents produced by the Parties provide useful insights for our analysis does not, by itself, limit the weight that should be given to the documents that are relevant. In practice, businesses often produce large volumes of documents that are responsive to information requests issued by competition authorities but are of limited relevance to competitive assessment.

⁶¹⁵ As stated in [CMA129](#), 'Where internal documents support claims being made by merger firms or third parties that have an interest in the outcome of the CMA's investigation, the CMA may be likely to attach more evidentiary weight to such documents if they were generated prior to the period in which those firms were contemplating or aware of the merger, or if they are consistent with other evidence' (paragraph 2.29(a)).

⁶¹⁶ Parties' response to the AIS, 7.1.

⁶¹⁷ [Parties' Response to the Provisional Findings Report](#), see paragraphs 5.14, 6.4, 6.15, 8.3 and 8.5.

⁶¹⁸ See for example, paragraph 9.87.

- (d) Overall, we consider that our assessment of the documents cited in the Provisional Findings Report takes into account the overall content and context of these documents. We have provided additional analysis in relation to some of these documents where appropriate in this Final Report to ensure that this is properly reflected.
- (e) In our assessment of internal documents, we placed less weight on older documents and more weight on documents from 2018 (inclusive) onward that pre-date the Merger. We also took into account the evolution of the Parties' views on their competitors, as set out in their internal documents, regarding the competitive strength and threat posed by some competitors.

Shares of supply

- 6.45 We have constructed estimates of shares of supply using data from the Parties and, where available, data provided by competing manufacturers (or their distributors).⁶¹⁹ Shares of supply can be useful evidence when assessing closeness of competition, particularly when there is persuasive evidence on demand- and supply-side substitution as to which potential substitutes should be included or excluded, and when the degree of differentiation between firms is more limited. In cases such as this, a firm with a higher share of supply is more likely to be a close competitor to its rivals, and therefore a merger that removes the competitive constraint such a firm exerts on its rivals would be more likely to raise competition concerns.⁶²⁰
- 6.46 In the markets we assessed, we considered that product differentiation is not so pronounced so as to mean that it would not be meaningful to consider shares of supply as a starting point for closeness of competition. In the case of HDFLT, evidence suggests that differentiation is more pronounced than in other markets considered (eg some suppliers only offer HDFLT with lifting capabilities towards the lower end of the greater than 10 tonne range), and as such we place slightly less weight on shares of supply in this market.
- 6.47 Overall, we place significant weight on our main share of supply estimates, which cover five years for MEQ and ten years for RTG and ASC. We used these time periods to smooth out 'lumpiness' in the data, which means that shares of supply for individual years (or aggregated over a smaller number of years) would be sensitive to the inclusion or exclusion of a small number of tenders. We note that, even when calculated on this multi-year basis,

⁶¹⁹ Where this third-party data was not available, we used the Parties' estimates of their competitors' sales. See Appendix B for further detail on our methodology.

⁶²⁰ [CMA129](#), paragraph 4.14.

some UK shares that we calculated (in particular ten-year shares in relation to the supply of RTG) are affected by low and lumpy sales and so required careful weighting.

- 6.48 We also calculated certain shares of supply over shorter time frames (five-years in relation to RTG and ASC) and considered some sales data on an annual basis (in relation to the supply of MEQ). These statistics are subject to greater volatility than our main shares. We primarily used these to check for any changes over time in the data.
- 6.49 We present shares on a UK-wide, Europe-wide (including the UK), and worldwide (excluding China) basis for each product. We excluded China from the worldwide shares because competitive conditions appear to be different in China, with the positions of Chinese suppliers in China being very much stronger, and those of non-Chinese suppliers being very much weaker, than seen in their shares elsewhere in the world.⁶²¹ Consistent with this, a Konecranes document states that Konecranes has a ‘very low market share of [REDACTED]% in large Chinese market ([REDACTED]% of global market value) due to dominance of local players’.⁶²²
- 6.50 While we present shares on each geographical basis for each product, the relevance of these shares differs between products depending on the nature of the competitive dynamics for the supply of each product. For example, in the case of RTG and ASC, we place most weight on European shares, as the evidence available indicates to us that these markets are Europe-wide (see paragraph 5.52). For MEQ, we consider that both UK shares and European shares provide important insights for our assessment given the evidence of some differences in the conditions of competition for UK customers.

Quantitative analysis of bidding data and qualitative tender case studies

- 6.51 We used bidding data submitted by the Parties in order to calculate loss ratios. Loss ratios identify the proportion of total opportunities lost by a Party that were lost to each competitor, and are an important measure of closeness of competition and third-party constraints, alongside other data.
- 6.52 For RTG, we also undertook an ‘overlap analysis’, for which we took the total opportunities that were won by a Party and used manual data matching to

⁶²¹ We note that one of the reasons for Cargotec to establish a joint venture with a Chinese company (Jiangsu Rainbow Heavy Industries Co. Ltd) was to gain ‘easier access to Chinese customers and hence an increased sales presence in China’ (see Cargotec submission, [REDACTED]).

⁶²² Konecranes internal document, [REDACTED]. This document was produced in July 2018 and provides a manufacturing strategy update for the CEO.

assess how many of these bids were won in opposition to a bid from the other Party.⁶²³ This provided an additional measure of closeness of competition.

- 6.53 We recognise that the Parties' bidding data does not capture all relevant variables (including the winning bidder) for all of the opportunities bid on by the Parties (and their distributors), with Konecranes' data in particular appearing to be less complete than that of Cargotec. However, as set out at Appendix C, the bidding data covers a significant proportion of total sales volumes in the different markets, and we have not seen evidence to suggest that any omissions would bias our results (for example, by systematically over or under-stating the true competitive constraint imposed by particular players).
- 6.54 As set out in Appendix C, we carried out a number of checks and adjustments in order to correct erroneous data. Overall, we consider that our quantitative bidding analysis provides useful evidence regarding the closeness of competition between the Parties and the third-party constraints that they face.
- 6.55 We also undertook a qualitative 'case study' analysis of a number of tender exercises. These case studies combine views and internal documents from customers with internal documents produced by the Parties at the time of the tender. We interpret these case studies qualitatively. They provide useful insights into how competition operated for these tenders and how the Parties themselves viewed the competitive threat posed by different suppliers and customers' views on the relative strengths and weaknesses of bidders.
- 6.56 While the RTG and ASC case studies relate to a small number of tenders in absolute terms, they are significant in the context of the total amount of RTG and ASC sales that take place in the UK.⁶²⁴ We do not place significant weight on the MEQ case studies as they are limited examples, but we take account of the insights that they provide on customer perceptions of the strengths and weaknesses of different suppliers.
- 6.57 The Parties made a number of submissions in relation to our bidding analysis in response to the Provisional Findings Report, suggesting that it

⁶²³ We also examined overlaps between the Parties in ASC, although this analysis was more limited than for RTG, in light of the small number of ASC bidding opportunities in the data. We did not undertake an overlap analysis for MEQ, due to difficulties associated with matching these larger datasets. See Appendix C for further detail on our methodology.

⁶²⁴ Our ASC case studies cover three customers and past or on-going sales of 90 units from 2011-present day. By comparison, [redacted] units were sold in the UK by all players combined over 2011 to 2020; ii) RTG case studies cover two customers and past or on-going sales of [around] 40 units from 2018-present day. By comparison, [redacted] units were sold in the UK by all players combined over 2011 to 2020.

‘cannot provide meaningful insights into the competitive dynamics of the markets under consideration’ and that the CMA’s claims that the Parties are close competitors ‘cannot be supported by the assessment of the Parties’ incomplete and limited set of bidding data’.⁶²⁵

- 6.58 We address the Parties’ main arguments below and discuss the Parties’ submissions in more detail in Appendix C.
- 6.59 The Parties submitted that loss ratio analysis based on the Parties’ bidding data is likely to be flawed because the Parties do not record all of their lost opportunities. They said this was particularly the case for Konecranes’ MEQ bidding data.⁶²⁶
- 6.60 The Parties further submitted that the CMA’s assessment that the Parties’ bidding data covers a significant proportion of the market is misleading as the data used in the CMA’s loss analysis actually covers a very small portion of the market.⁶²⁷
- 6.61 We do not agree that the loss ratios are likely to be flawed. First, in most of the markets that we considered, the loss ratios are based on a significant number of data points, both in absolute terms and relative to the size of the market in question. Second, to the extent that not all lost opportunities are recorded, the Parties have not provided evidence to support their contention that this likely leads to biased results, and we have no reason to believe that such a bias would exist.
- 6.62 In relation to Konecranes’ bidding data for MEQ, we recognise that this contains significantly fewer opportunities for which the winner was identified, as compared to the Cargotec data. We consider that, at least in part, this is likely to reflect less-complete record keeping by Konecranes and its distributors, as compared to Cargotec.⁶²⁸ However, Konecranes’ MEQ bidding data nonetheless covers a substantial number of opportunities in most cases, and we have not seen evidence to suggest that any omissions would bias the results of our analysis.⁶²⁹ As discussed in relevant chapters (Chapters 7 and 9), where the lost opportunity sample size is small (for example, Konecranes’ data contains [REDACTED] in the UK over 2016 to 2021), we

⁶²⁵ Parties’ response to the Provisional Findings Report, Annex 1, paragraph 6.3.

⁶²⁶ Parties’ submission Parties’ response to the AIS, paragraph 6.2.

⁶²⁷ Parties’ response to the Provisional Findings Report, Annex 1, paragraphs 2.17 and 2.18.

⁶²⁸ Konecranes confirmed to us that its bidding data for MEQ includes data sourced from Impact, its distributor in the UK. We also directly requested bidding data from, Impact, as a cross-check on the data we received from Konecranes. However, Impact’s response was very limited and hence we have based our loss analysis on the bidding data we obtained directly from Konecranes.

⁶²⁹ In Chapter 9, we present loss ratios for Konecranes based on the following number of lost opportunities: [REDACTED] for RS in Europe, [REDACTED] for RS in the UK; [REDACTED] for HDFLT in Europe, [REDACTED] for HDFLT in the UK, [REDACTED] for ECH in Europe, [REDACTED] for ECH in the UK.

do not place significant weight on the precise level of losses to particular competitors.

- 6.63 The Parties also submitted that the bidding data are particularly incomplete regarding information on other suppliers (other than the winner) competing for the same opportunities.⁶³⁰ The Parties further submitted that the CMA failed to undertake its own data collection exercise to remedy these limitations.⁶³¹ They said that the CMA should have gathered data that would have allowed it to undertake ‘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 (ie the runner up) when the other Party wins’ and the frequency with which the Parties compete against each other relative to third parties’.⁶³² The Parties submitted that ‘by analysing mainly the winners of the Parties’ lost opportunities and only performing a partial participation analysis for RTGs, the [Provisional Findings] analyses fail to capture a wider picture of the competitive dynamics of the MEQ and crane markets’.⁶³³
- 6.64 We agree that the Parties’ data did not support a quantitative analysis of the additional measures set out at paragraph 6.63. While additional data analysis is always possible (and bidding analysis of the sort outlined by the Parties could have provided additional insights), we disagree that it was necessary for the CMA to collect additional data and undertake such additional analysis in order to assess competitive dynamics. First, we note that the quantitative bidding analysis that we did undertake, primarily loss ratios, provides an important indication of the competitive constraints faced by the Parties. Loss ratios are particularly useful because, where a Party frequently loses to another player, that player is likely to have an important influence on the Party’s competitive decisions. Second, we considered the results of our analysis of the Parties’ bidding data in the round with other evidence in order to assess closeness of competition between the Parties and the competitive constraints faced. This wider evidence complements, and goes beyond, our quantitative analysis of who the Parties lose to most frequently. For example, our tender case studies discuss the full set of competitors faced by the Parties in certain tenders, and our customer questionnaires asked about the full set of alternatives that customers

[Parties’ Response to the Provisional Findings Report](#), Annex 1, paragraph 2.1.

⁶³¹ [Parties’ Response to the Provisional Findings Report](#), Annex 1, paragraph 3.5.

⁶³² [Parties’ Response to the Provisional Findings Report](#), Annex 1, paragraph 6.2.

⁶³³ [Parties’ Response to the Provisional Findings Report](#), Annex 1, paragraphs 1.5 and 1.6. The Parties submitted that these ‘wider issues’ include: a. the frequency with which the Parties compete against each other, relative to third parties (this is partially implemented for RTGs only); b. the number of competitors usually competing in tenders; and c. the ranking of competitors in tenders, and the frequency with which one Party is the second-best alternative (ie the runner-up) when the other Party wins.’

considered. We consider that this evidence is probative and that it was not necessary for us to gather additional data to inform additional quantitative bidding analysis.⁶³⁴

Third-party evidence

Third-party engagement before the Provisional Findings Report

- *Evidence from customers*

6.65 We gathered information from the Parties' CHE UK customers. This was primarily in the form of written questionnaires, supplemented by clarificatory calls. Our phase 2 questionnaire received 20 customer responses in total, including 13 from ports and intermodal terminal operators and seven from industrial customers. Consistent with our approach in other cases in which we have obtained comparable sample sizes, we have interpreted this evidence qualitatively, rather than drawing firm quantitative conclusions, and have assessed it alongside other evidence. We provide additional detail in Appendix D about the customers that we contacted and that provided views as part of our inquiry.

- *Evidence from competitors and other third parties*

6.66 We have gathered evidence and views on the competitive conditions faced by the Parties from a range of competitors and other third parties. We also gathered evidence about the entry and expansion plans of competitors. Our evidence comes mostly from written questionnaire responses and supplementary calls.

6.67 As explained further in Appendix D, before the Provisional Findings Report, we received responses from 16 competitors and three distributors, including the Parties' main crane and MEQ competitors in the UK and Europe.⁶³⁵

Third-party engagement after the Provisional Findings Reports

6.68 Between publishing the Provisional Findings Report and issuing the Remedies Working Paper, we contacted 19 third parties inviting them for response hearings. From the 19 third parties we contacted, we had response

⁶³⁴ As explained at paragraph 6.21, it is for the CMA to evaluate what evidence is necessary to collect in order to acquaint itself with the relevant information to enable it to answer each statutory questions. In so doing the CMA has a wide margin of appreciation.

⁶³⁵ We received written responses from and/or held calls with 17 manufacturers and three distributors: [REDACTED].

hearings with: 5 customers, five OEMs (two OEMs that supply Port Cranes and three OEMs that supply MEQ), and 2 distributors.

- 6.69 While the response hearings were focused on the effectiveness of possible remedies to address the provisional competition concerns identified in our Provisional Findings Report, we also asked third parties for any comments on the CMA's provisional findings about the effects of the Merger on competition. Where we had not engaged with third parties prior to the Provisional Findings Report, we asked them a few questions relevant to our competition assessment (for example, questions regarding their tendering activity in the UK and regarding their expansion plans in relation to the UK). Where third parties had responded to our questionnaire ahead of Provisional Findings, in some cases we asked some follow up clarification questions on their responses.
- 6.70 After issuing the Remedies Working Paper, we contacted 13 customers, operating container handling terminals of different sizes in the European Union and held response hearings with five European customers. We also contacted and held response hearings with two GTOs with UK operations⁶³⁶. We also held response hearings with four potential purchasers who submitted a non-bidding offer for the KAS Divestiture Business by the deadline of 4 March 2022, as well as one potential purchaser that expressed interest in the acquisition of the KAS Divestiture Business and submitted a non-binding offer for the MEQ Divestiture. These response hearings were also focused on the effectiveness of possible remedies. Some customers also made general comments about the effects of the Merger on competition. We provide more details about our third-party engagements throughout the investigation in Appendix D and in paragraphs 13.94 to 13.104 Chapter 13.
- 6.71 As in any merger inquiry, we recognise that some third parties may have an interest in its outcome. Therefore, when using third-party views as evidence, we have given due regard to a range of factors including: a) the incentives of the party giving that view; b) the extent to which the party had knowledge that was relevant to the subject areas being explored as part of our assessment; and c) the extent to which the view was corroborated by other evidence available to us.

⁶³⁶ One of these GTOs has been previously invited for a response hearing before the Remedies Working Paper was issued, but had refused the invitation.

Parties' submissions on third-party evidence

- 6.72 The Parties submitted that the third-party evidence considered by the CMA is based on very limited sample sizes and conclusions drawn from it are not representative or probative.⁶³⁷ In particular, the Parties submitted that:
- (a) the CMA has only surveyed the UK customers of the Parties, despite finding that the relevant markets are Europe-wide (or wider). As a result, the CMA received a partial picture (at-best) of competitive dynamics, and cannot claim to have obtained a representative sample of customer feedback in relevant markets;⁶³⁸
 - (b) the CMA's limited and UK-centric sample of customer feedback cannot form a credible basis for assessing these markets; this is particularly the case in ASC, where only two UK customers were contacted (none of which purchased ASC from Konecranes);⁶³⁹
 - (c) the limited absolute number of third-party responses gathered by the CMA means that it has not met its duty to take reasonable steps to gather evidence; the CMA has surveyed fewer third parties than the European Commission and a comparison of the number of respondents suggests that the CMA has not taken reasonable steps to obtain third-party evidence;⁶⁴⁰
 - (d) the CMA received responses from customers representing only 32% of Cargotec's FLT sales in the UK over 2017–2020 which 'cannot be considered representative of the UK segment of the FLT market as whole, let alone the overall Europe-wide FLT market'.⁶⁴¹
- 6.73 The Parties also submitted that despite being provided with the names of over 90 distributors active in the UK, the CMA only contacted a small sample, receiving feedback from three of these. They said that each of these three distributors would have had an interest in underplaying its rivals' strengths.⁶⁴² The Parties submitted that this led to unreasonable conclusions in the Provisional Findings Report on a number of material points, such as the conclusion that 'there are very few distributors available in the UK with

⁶³⁷ [Parties' response to the Provisional Findings Report](#), paragraph 3.7.

⁶³⁸ [Parties' response to the Provisional Findings Report](#), paragraphs 3.9 and 3.12.

⁶³⁹ [Parties' response to the Provisional Findings Report](#), paragraph 6.6.

⁶⁴⁰ [Parties' response to the Provisional Findings Report](#), paragraph 3.12.

⁶⁴¹ [Parties' response to the Provisional Findings Report](#), paragraph 7.6.

⁶⁴² [Parties' response to the Provisional Findings Report](#), paragraph 3.14.

“necessary coverage and expertise” for the effective distribution of mobile equipment’.⁶⁴³

Our assessment

6.74 Before addressing the submissions made by the Parties, we note that, as set out in paragraphs 6.34 and 6.35, the CMA has gathered evidence from a wide range of different sources as part of our inquiry, with third-party views being only one category of such evidence. Further, third-party views do not intrinsically carry more weight than other sources of evidence and, in informing our decision, we have not relied on any one specific piece of evidence in isolation; rather, we have assessed all of the evidence together and in the round.

6.75 We consider that the evidence we have obtained is, in the round, robust, and of probative value.⁶⁴⁴ As discussed above, it is for the CMA to decide upon the reasonable steps that should be pursued in any inquiry and, in so doing, it has a wide margin of appreciation.⁶⁴⁵ The CMA does not, in the vast majority of merger inquiries where merging parties have large numbers of customers, typically seek views from all of those customers but instead seeks to ensure that it has input from a sufficiently representative sample of customers.⁶⁴⁶

- *Surveying UK customers*

6.76 As the Parties accept,⁶⁴⁷ the CMA has an obligation to assess the impact of a merger on UK customers.⁶⁴⁸ We therefore consider that it is entirely appropriate in this inquiry for the CMA to primarily focus on seeking views from the Parties’ main UK customers. In particular, we do not agree that limiting our outreach to UK customers provides a partial view of competitive dynamics.

6.77 In this respect, we consider that the fact that some customers consulted by the European Commission may have expressed some form of support for the Merger does not alter this conclusion. Indeed, as described more fully in

⁶⁴³ Parties’ response to the Provisional Findings Report, paragraph 3.14.

⁶⁴⁴ Such that the CMA can rationally reach a conclusion on the basis of that evidence, in accordance with [BAA Ltd v Competition Commission](#) [2012] CAT 3, paragraph 20(4).

⁶⁴⁵ In [BAA Limited v Competition Commission](#), [2012] CAT 3, paragraph 20(3), the CAT confirmed that ‘[t]he extent to which it is necessary to carry out investigations to [answer each statutory question] will require evaluative assessments to be made by the CC, as to which it has a wide margin of appreciation’.
<https://www.catribunal.org.uk/index.php/judgments/11856811-baa-limited-judgment-2012-cat-3-1-feb-2012>.

⁶⁴⁶ We set out from paragraph 6.78 below our assessment of the sample that we obtained in this case.

⁶⁴⁷ Parties’ response to the Provisional Findings Report, paragraph 3.14., paragraph 3.9.

⁶⁴⁸ Pursuant to section 36(1)(b) of the Act.

paragraphs 6.25 to 6.28 above, we are not able to ascertain how representative this sample is and, in any event, such responses are not inconsistent in material respects with the feedback which we have ourselves received from third parties.⁶⁴⁹

- *Sufficiency of third-party responses, including from HDFLT customers*

6.78 We do not agree that the scope of the CMA's engagement with third parties was insufficient. As discussed in paragraph 6.75, we consider it appropriate to seek views of customers in the UK. Further, as explained in Appendix D, the 20 customer questionnaire responses that we received account for a substantial proportion of the Parties' UK sales from 2017 to 2020 in relevant product categories.

6.79 We note that there was some variation in response rates between different products (for example, response rates were higher for cranes, where the customer base is more concentrated, and lower for HDFLT, where the customer base is more fragmented). In the case of HDFLT, we received 13 responses from 25 questionnaires sent, covering at least 32% of Cargotec's HDFLT sales in the UK over 2017 to 2020. In the case of ASC, the two responses received covered the only two UK purchasers of ASC in the period 2011-21 in relation to which one or both Parties submitted bids.

6.80 Overall, we are satisfied that the responses received in each product category are sufficiently representative for us to draw inferences from them on a qualitative basis, in the round with other evidence.

6.81 We also gathered evidence from 16 competitors and three distributors. As explained further in Appendix D, these included responses from the Parties' main crane and MEQ competitors in the UK and Europe. Again, we have interpreted this evidence qualitatively, rather than drawing firm quantitative conclusions, and have assessed it alongside other evidence.⁶⁵⁰

- *Sample of distributors*

6.82 We do not agree that our conclusions on the extent to which effective distributors are available to support entry or expansion are unreasonable or based on an insufficient sample.

⁶⁴⁹ As indicated above, we also note that the European Commission reached broadly the same conclusions as the CMA in its substantive assessment of the Merger in respect of many of the product markets affected.

⁶⁵⁰ In our assessment of barriers to entry and expansion and the likelihood of sufficient and timely expansion by suppliers including ZPMC and Sany, we took into account not only evidence submitted by these OEMs but also evidence submitted by other third parties and evidence from internal documents.

- 6.83 As set out in Appendix D, we contacted six UK distributors: these were Impact (distributor for Konecranes), Briggs (distributor for Hyster), Cooper (distributor for Sany and Svetruck), Grant Handling (distributor for Heli), Shad Group (an all-brand service provider and a distributor for CES) and Premier Lift Trucks (an all-brand service provider and distributor for Goodsense forklifts). We also asked Linde to provide details of any third-party distributors that it uses in the UK. We note that, of the Parties' list of over 90 UK distributors, only Cooper, Briggs, Shad Group and WR Material Handling were listed as active in RS, FLT and ECH, with the others listed as being active in FLT only.⁶⁵¹
- 6.84 We received responses to our information requests from three distributors, [REDACTED], and held conference calls with each of these. The three other distributors that we contacted either did not respond to the questionnaire, or noted that it was not applicable to them. One competitor [REDACTED] submitted that it only supplied HDFLT to UK customers directly, rather than through third-party distributors.
- 6.85 As such, although we only received responses from a small number of distributors, these included the distributors of the Parties' main competing MEQ OEMs. Further, as set out in Chapters 9 and 12, in assessing the extent to which effective distributors are available to support entry or expansion, we considered evidence from other third-parties with relevant experience, as well as the views of these distributors.

Conclusion on third-party evidence

- 6.86 For the reasons set out above, we are therefore satisfied that that the lines of inquiry pursued in relation to gathering evidence from third parties are reasonable and appropriate in the circumstances of the case. That evidence forms part of the wider evidence base collated by the CMA for the purpose of enabling the us to answer the statutory questions.

Competitive dynamics in the supply of CHE products

- 6.87 As in any merger investigation, we primarily considered the impact of the Merger within specific markets. The Parties, however, made a number of submissions that were relevant to the assessment of several different theories of harm we investigated. In addition, some aspects of the Parties'

⁶⁵¹ Parties' response to RFI [REDACTED].

offerings, in particular their broad portfolios of CHE, are relevant to several of the theories of harm that we investigated.

- 6.88 Accordingly, before setting out our analysis of whether the Merger gives rise to competition concerns within the markets set out in paragraph 6.1, we set out our analysis of the following issues that cut across several product markets within the scope of our review:
- (a) The role of Chinese suppliers within the supply of CHE and the extent to which the Parties are able to compete against Chinese suppliers.
 - (b) The Parties' broad CHE portfolios and the implications for closeness of competition.
 - (c) The role of tender processes in producing competitive outcomes.

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

Parties' submissions

- 6.89 The Parties submitted that '[t]he container handling equipment (CHE) industry [...] is characterised by strong competitive forces from Chinese (and other) competitors'; and that '[th]e entry and expansion of Chinese competitors has significantly altered the competitive landscape in the UK and Europe'.⁶⁵²
- 6.90 The Parties told us that, 'there has been an expansion of state-owned Chinese competitors as part of China's "Belt and Road" initiative which is driving long-term, structural change to the competitive landscape in maritime transport, port terminals and container handling equipment industries'.⁶⁵³ The Parties noted that Chinese suppliers: a) benefit from subsidised manufacturing resources, including key raw materials such as steel and low-cost labour';⁶⁵⁴ b) are strongly supported by their favourable access to financing by Chinese state-controlled banks';⁶⁵⁵ c) are supported by cash funding, grants and tax incentives provided by the Chinese government.⁶⁵⁶
- 6.91 The Parties further submitted that Chinese CHE manufacturers such as 'ZPMC, [SANY], and XCMG, have in the last years rapidly developed

⁶⁵² Parties' response to Issues Statement, paragraphs 1.1 and 1.2.

⁶⁵³ Merger Notice [REDACTED].

⁶⁵⁴ Merger Notice [REDACTED].

⁶⁵⁵ Merger Notice [REDACTED].

⁶⁵⁶ Parties' site visit follow-up, [REDACTED].

innovative and high-quality products and aggressively expanded globally⁶⁵⁷ and that Chinese players can not only undercut the prices of their non-Chinese competitors – due to lower production costs and vast cost-effective transport networks – but also ‘participate in large flagship projects using automated solutions and advanced technologies’.⁶⁵⁸

- 6.92 In their response to the Issues Statement, the Parties submitted that ‘[t]he maritime sector has undergone significant structural changes as a result of China’s industrial policies, which have caused a significant shift in demand’ and that ‘as a result of the “Belt and Road” initiative, China has, in recent years, increasingly focused its efforts on expansionist construction, development, and operation of international ports and container terminals’, including in Europe, ‘along with the global expansion of its container handling equipment industry’.⁶⁵⁹ The Parties claimed that this leads to an ‘[i]ncreased use by Chinese GTOs of equipment manufactured by Chinese OEMs’.⁶⁶⁰
- 6.93 In addition to the advantages listed above, the Parties also noted that Chinese suppliers benefit from economies of scale and that Chinese container terminals (which are often State-owned) are amongst the largest container terminals in the world and ‘often purchase equipment from Chinese suppliers’.⁶⁶¹
- 6.94 Cargotec told us that it ‘[redacted]’,⁶⁶² [redacted].⁶⁶³
- 6.95 In response to the CMA’s working papers, the Parties reiterated that Chinese suppliers benefit from cost advantages in access to cheaper inputs that State-sponsorship affords to Chinese rivals and that the Parties are unable to compete on the merits against state-sponsored Chinese OEMs.⁶⁶⁴
- 6.96 The Parties considered that the CMA’s ‘static’ analysis of competition in the CHE industry in the working papers disregards the rapid expansion of state-sponsored Chinese OEMs.⁶⁶⁵ The Parties considered that the CMA should ‘ascribe a “plus” to the Chinese competitors in competitor set.’⁶⁶⁶

⁶⁵⁷ Merger Notice [redacted].

⁶⁵⁸ Merger Notice [redacted].

⁶⁵⁹ Parties’ response to Issues Statement, paragraphs 3.4 and 3.6.

⁶⁶⁰ Parties’ response to Issues Statement, paragraph 3.7.

⁶⁶¹ Cargotec submission, [redacted].

⁶⁶² Parties site visit follow-up, [redacted].

⁶⁶³ Parties site visit follow-up, [redacted].

⁶⁶⁴ Parties submission, [redacted].

⁶⁶⁵ Parties submission, [redacted].

⁶⁶⁶ Transcript of the Main Party Hearing, [redacted].

- 6.97 The Parties also reiterated that they are not currently able to be competitive on price [REDACTED]. They also noted that ZPMC has announced a long-term strategic alliance with APM Terminals (APM), a GTO that operates ports in different regions in the world, including in Europe (but not in the UK).⁶⁶⁷
- 6.98 The Parties further stated that they experience an unequal playing field when facing competition from Chinese suppliers. The consequence is that – while the Parties face a range of tough and successful competitors driven by ‘standard’ commercial imperatives – the entry of Chinese competitors has had a disproportionately greater impact on the relevant markets and the ability of the Parties to compete.⁶⁶⁸
- 6.99 In response to the Provisional Findings Report, the Parties submitted that the CMA’s provisional views on the Parties’ ability to compete against Chinese competitors were unreasonable, including because:
- (a) the CMA ignored the Parties’ internal documents which establish that the Parties do not see their Chinese rivals as ‘normal’ competitors, but rather as extensions of ‘China Inc.’ capable of exerting a disproportionate competitive constraint on the Parties;
 - (b) the CMA assessed the evidence about the displacement of the Parties in CHE markets other than STS against a higher standard than likelihood (ie whether the displacement of the Parties was inevitable);
 - (c) the CMA’s provisional view that the Parties can and do compete against Chinese suppliers on parameters of competition other than price was based on internal documents which identify aspirational strategies by which the Parties seek to compete, but do not comment on whether (and the likelihood that) these strategies will allow the Parties to compete on a level playing field with Chinese suppliers in the future.
- 6.100 Further, the Parties submitted that, even if they were able to compete against Chinese suppliers on parameters of competition other than price, Chinese rivals would have a competitive advantage over the Parties and their other rivals, in relation to customers, such as HPH, which make their procurement decisions primarily on price. The Parties state that the CMA has not taken into account relevant feedback from customers and the Parties’ Chinese rivals supporting the Parties’ position. The Parties note that:
- i) both Sany and ZPMC have recently demonstrated their ability to expand very quickly in the CHE sector;
 - ii) the mere threat of their proposed

⁶⁶⁷ Parties submission, [REDACTED].

⁶⁶⁸ Parties submission, [REDACTED].

expansion will be sufficient to constrain the Parties after the Merger given both the resources available to them and their track record in adjacent markets; and iii) it is in competitors' interests to underplay their expansion plans as much as possible.⁶⁶⁹

Our assessment

Forward-looking assessment of the competitive constraints posed by Chinese suppliers

- 6.101 As is usual in a CMA merger investigation,⁶⁷⁰ we conducted a forward-looking assessment of the competitive constraints that the Parties will face in the foreseeable future. While some evidence is historical, much of the evidence considered provides insight into how suppliers will compete in future. In particular, we have: i) assessed if any trends emerge when shares of supply and/or sales data are considered on a more granular basis than our main multi-year share of supply statistics; ii) questioned customers about the suppliers they expect to consider in future tenders; iii) questioned competitors about whether they expected the main competitors faced to change over the next two years, and iv) assessed the likelihood, timeliness and sufficiency of entry. We, therefore, do not agree that we conducted a static analysis of competition in the CHE industry, which does not appropriately take into account the future market presence of State-sponsored Chinese OEMs.⁶⁷¹
- 6.102 The constraint posed by Chinese suppliers is taken into account 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 ie, mainly ZPMC in relation to RTG and ASC, and Sany in relation to MEQ. 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..
- 6.103 In this regard, it is not appropriate to assume that other Chinese suppliers that are not yet present, or that have a very small presence in a particular market in Europe, are likely to enter or significantly expand into that market, unless this position is clearly supported by robust evidence.⁶⁷²

⁶⁶⁹ Parties' response to the Provisional Findings Report, paragraphs 4.8 and 4.9.

⁶⁷⁰ CMA129, paragraph 2.14.

⁶⁷¹ Parties' submission, [§].

⁶⁷² As set out in paragraph 8.30 of CMA129, 'The CMA will seek to ensure that the evidence is robust when confronted with claims of entry or expansion being timely, likely and sufficient to prevent an SLC from arising. It is

Any cost advantages that Chinese suppliers may have do not leave the Parties unable to compete against Chinese suppliers

6.104 In relation to the submission from the Parties that they experience an unequal playing field when facing competition from Chinese suppliers,⁶⁷³ we note that some internal documents of the Parties discuss the advantages of Chinese suppliers, in particular ZPMC and Sany, including cost advantages resulting from State-ownership and government support. We summarise below some of these internal documents:

(a) [REDACTED]. [REDACTED]. [REDACTED].

(b) Another Cargotec internal document, [REDACTED],⁶⁷⁶ [REDACTED]:

(i) [REDACTED].

(ii) [REDACTED].

(iii) [REDACTED].

(iv) [REDACTED].⁶⁷⁷

(c) [REDACTED].⁶⁷⁸

(d) [REDACTED].⁶⁷⁹

(e) In an internal performance review document dated January 2018, Cargotec notes that [REDACTED], referring to the growth of ZPMC and Sany. This document, in the same slide, also notes that [REDACTED]. This document does not refer specifically to the position of ZPMC and Sany in Europe.⁶⁸⁰

(f) Another Cargotec presentation of February 2019, titled [REDACTED] states: [REDACTED].⁶⁸¹

likely to place greater weight on detailed consideration of entry or expansion and previous experience of entry and expansion (including how frequent and recent it has been).

⁶⁷³ Parties submission, [REDACTED].

⁶⁷⁴ Cargotec internal document, [REDACTED].

⁶⁷⁵ Cargotec internal document, [REDACTED].

⁶⁷⁶ Cargotec internal document, [REDACTED].

⁶⁷⁷ Cargotec internal document, [REDACTED].

⁶⁷⁸ Cargotec internal document, [REDACTED].

⁶⁷⁹ Cargotec internal document, [REDACTED].

⁶⁸⁰ See Cargotec internal document, [REDACTED].

⁶⁸¹ Cargotec internal document, [REDACTED].

- (g) Another Cargotec presentation - says that [REDACTED]. We note, however that the companies listed under this heading are not present in Europe (with the exception of Sany).⁶⁸²
- (h) An email of 5 September 2020 from Cargotec's Director of Sales Support and Business Development to Cargotec's Senior Vice President Operations (amongst other) states: '[REDACTED]'.⁶⁸³ At the time of the email chain, the Merger was in contemplation and it is unclear whether the extract above refers to the European market.

6.105 Other internal documents from Cargotec also note [REDACTED]. For example:

- (a) [REDACTED].⁶⁸⁴
- (b) [REDACTED].⁶⁸⁵
- (c) [REDACTED].⁶⁸⁶
- (d) A Cargotec internal strategy document prepared in 2020 notes that '[REDACTED]'. The same document notes that '[REDACTED]'. The same document anticipates – not specifically in relation to Europe – that '[REDACTED]'.⁶⁸⁷

6.106 Similarly, a review of Konecranes' internal documents revealed a growing concern with regard to Chinese OEMs, in particular ZPMC and Sany, with increasing frequency in the last couple of years. For example:

- (a) An internal document from Konecranes, entitled '[REDACTED]' and dated 16 February 2018, assesses and ranks various competition risks. In this document, Konecranes assesses the likelihood of the risk of [REDACTED]. Konecranes assessed that the prospect of this risk was increasing.⁶⁸⁸
- (b) Konecranes' internal document, 'Port Solutions: Market and trends', dated November 2018, identifies five 'trends' where it considers ZPMC to have the 'edge':⁶⁸⁹ '[REDACTED]'; '[REDACTED]'; '[REDACTED]'; and '[REDACTED]'.⁶⁹⁰
- (c) A Konecranes presentation from November 2018 titled '[REDACTED]' notes an industry trend that '[REDACTED]', that '[REDACTED]', that '[REDACTED]' and that '[REDACTED]'. A separate slide compares how ZPMC is benefiting from industry trends [REDACTED]. It

⁶⁸² See Cargotec internal document, [REDACTED].

⁶⁸³ Cargotec internal document [REDACTED].

⁶⁸⁴ Cargotec internal document, [REDACTED].

⁶⁸⁵ Cargotec internal document, [REDACTED].

⁶⁸⁶ Cargotec internal document, [REDACTED].

⁶⁸⁷ Cargotec internal document, [REDACTED].

⁶⁸⁸ Konecranes internal document, [REDACTED].

⁶⁸⁹ Konecranes internal document, [REDACTED].

⁶⁹⁰ Konecranes internal document, [REDACTED].

shows that ZPMC is currently benefitting from some industry trends ([REDACTED]), whereas the Parties have [REDACTED]. We note that this document is not about the competitiveness and expansion of Chinese suppliers in Europe. In fact, this document notes that a '[REDACTED]'.^{691,692}

6.107 Some other internal documents of Konecranes also note that ZPMC and Sany are increasing their presence in Europe and investing in improving their offering. For example:

- (a) A [REDACTED] sets out a perceived 'change in our competitors' as '[REDACTED]'.⁶⁹³
- (b) A Konecranes strategy document - Revisiting P-3023 – prepared for a Konecranes's senior team meeting in Helsingborg in April 2021, states: '[REDACTED]. [REDACTED]. We note that this document was produced after the Merger was in contemplation and does not appear to be specific to the European market.'⁶⁹⁴
- (c) A Konecranes internal document with an overview of the 'sales and distribution' of MEQ in Europe notes the '[REDACTED]'.⁶⁹⁵
- (d) Another document setting out the context for the Konecranes's team meeting in April 2021 mentioned above, with an overview of Konecranes' strategy since 2019 and the market condition as at 2021, states: '[REDACTED]'.⁶⁹⁶
- (e) A presentation prepared in March 2021 by a consultant – [REDACTED]– to Konecranes, in the context of the assessment of the branding strategy for the Merged Entity, sets out quotes from interviews with Konecranes and Cargotec employees, including the following extract: '[REDACTED] '[REDACTED]' and that Chinese suppliers are '[REDACTED]' and '[REDACTED]'.⁶⁹⁷ We note that this document was produced after the Merger was in contemplation and does not refer specially to the European market.
- (f) In relation to ZPMC in particular, Konecranes' [REDACTED] 2021 annual plan produced in October 2021 describes ZPMC as [REDACTED] (as do Liebherr, Künz), as well as [REDACTED] (as do Kalmar, Sany).⁶⁹⁸ We note that this document was produced after the Merger was in contemplation.

⁶⁹¹ Konecranes internal document, [REDACTED].

⁶⁹² In the same line, the same document states that ZPMC has the '[REDACTED]'.
⁶⁹³ Konecranes internal document, [REDACTED].

⁶⁹⁴ Konecranes internal document, [REDACTED] Konecranes internal documents [REDACTED], and [REDACTED].

⁶⁹⁵ Konecranes internal document, [REDACTED].

⁶⁹⁶ Konecranes internal document, [REDACTED].

⁶⁹⁷ Konecranes internal document, [REDACTED].

⁶⁹⁸ Konecranes internal document, [REDACTED].

- 6.108 The internal documents described above are not an exhaustive list of all documents of this nature but are broadly representative of other documents in which the Parties discuss the advantages of Chinese suppliers, in particular ZPMC and Sany, and state that ZPMC and Sany are increasing their presence in Europe.⁶⁹⁹ These internal documents show that the Parties believe that Chinese suppliers benefit from cost advantages resulting from State-ownership and that the Parties perceive that this poses a risk to their market position.
- 6.109 We note that there are limits to the weight that should be placed on this evidence. In attributing probative value to specific internal documents, we have taken into account the timing, purpose and context in which they were prepared. In this regard, we note that some of the documents described above were produced when the Merger was in contemplation.⁷⁰⁰ As a general principle, we consider that internal documents prepared in the ordinary course of business before the Merger was in contemplation would typically have higher probative value than internal documents prepared since then. In addition, some of the documents do not refer specifically to the expansion of Chinese suppliers in Europe,⁷⁰¹ making it difficult for the CMA to ascertain to what extent they are relevant to the CHE sector in Europe.
- 6.110 More broadly, we do not believe that the evidence available to us supports the position that Chinese suppliers should, as a rule, be considered to have a disproportionately greater impact on the relevant markets and the ability of the Parties to compete, as compared to all other competitors. While we accept that the Parties' internal documents show that they are concerned about competition from Chinese suppliers (in particular Sany and ZPMC), we do not consider that they show that the Parties will not continue to compete with these suppliers in a way that can be considered within our forward-looking framework for assessment. In particular we note that:
- (a) ZPMC and Sany have had some success to date in certain markets covered by our review. However, this has not been the case across all types of CHE, and these suppliers (and other Chinese suppliers) face barriers to entry and expansion (see Chapter 12). Any potential cost advantages would have existed for some time and would be reflected in those companies' existing market positions. We do not expect that such advantages would result, in themselves, in further material expansion of Chinese suppliers. Further, although the Parties perceive the expansion

⁶⁹⁹ See the Parties' submission in paragraph 6.41.

⁷⁰⁰ See Cargotec internal document, [REDACTED].

⁷⁰¹ See Konecranes internal document [REDACTED] and Konecranes internal document '[REDACTED]'.

of ZPMC and Sany as a risk, that does not mean that such a threat is likely to sufficiently constrain the Parties after the Merger.

- (b) We have not seen evidence to support the Parties' claim that ZPMC's market penetration in STS means that the displacement of the Parties is likely in other CHE, including RTG and ASC. There is also limited evidence that the developments raised by the Parties (eg ZPMC's partnership with APM and ZPMC winning contracts with GTOs such as HPH)⁷⁰² will have a material influence on purchasing decisions of other customers, leading to the Parties' displacement.
- (c) Evidence shows that the Parties believe that they can compete against Chinese suppliers, especially based on parameters of competition other than price, and have successfully done so. In particular, the Parties' internal documents demonstrate that they have the ability to continue to compete against Chinese suppliers (including ZPMC), and clear plans to do so (see paragraph 6.120 to 6.122).

6.111 We discuss each of these three points in more detail below.

- *The entry and expansion of Chinese suppliers*

6.112 In relation to the expansion of ZPMC, as discussed in Chapter 7:

- (a) ZPMC's share of supply in RTG in Europe was not materially different in 2016-20 as compared to 2011-15 (and ZPMC's share of supply in RTG was lower in the UK in 2016-20 than in 2011-15, although we place limited weight on these UK shares). Therefore, we do not see a material upward growth trend in ZPMC's RTG share in UK or Europe over the last ten years.
- (b) ZPMC's share of supply in ASC was significantly higher in 2016-20 as compared to 2011-15, both in the UK and Europe as a whole. Therefore, there has been an upward trend in ZPMC's ASC share over this period. However, bidding analysis and third-party evidence indicate that ZPMC is not similarly competitive across all order volumes.
- (c) While ZPMC [REDACTED],⁷⁰³ the evidence consistently indicates that the Parties can compete against ZPMC,⁷⁰⁴ including based on parameters of

⁷⁰² Cargotec submission, [REDACTED].

⁷⁰³ [REDACTED].

⁷⁰⁴ See, for instance, recent award of the HPHUK tender for 17 electric RTG to the Felixstowe port.

competition other than price.⁷⁰⁵ (see paragraphs 7.104 and 7.105 below).

- (d) As explained in Chapter 12, there are significant barriers to expansion in each of the CHE markets that we considered. The evidence does not support that ZPMC has specific plans to materially expand its position in Gantry Cranes (or other type of CHE) beyond what it has already achieved in Europe in the last ten years.
- (e) As explained below, the evidence does not support the Parties' assertion that HPH or other GTOs are 'showroom windows' for the industry with material influence of other customers purchasing decisions, leading to the Parties' displacement.⁷⁰⁶

6.113 In relation to the expansion of Sany, as discussed in Chapter 9:

- (a) Sany has been more successful in the UK (where in 2015 it announced a partnership with the distributor Cooper, a former Konecranes distributor with experience in the UK CHE sector) than in the rest of Europe.
- (b) Over 2016-20, Sany has grown its RS sales in the UK, whereas we see no clear trend in Sany's ECH sales.
- (c) Overall, the evidence shows that Sany is now a material competitor in RS and ECH in the UK, however third-party evidence suggests that, despite Sany being a competitor on price, some customers may not be prepared to use Sany, given its perceived weaknesses and for being a 'Chinese' brand.
- (d) The evidence that we have reviewed does not show that the competitive constraint posed by Sany is likely to materially increase further in the foreseeable future.

6.114 In relation to the entry and expansion of Chinese suppliers (see paragraphs 12.216 and 12.220 and also paragraphs 7.116 to 7.123, 7.221 to 7.229, 8.43 to 8.48 and 9.274 to 9.281), we further note that ZPMC and Sany have been present in Europe in relevant products since at least 2010⁷⁰⁷ and have taken some years to achieve a material position in certain CHE markets. The

⁷⁰⁵ Parties submission, [REDACTED]. The Parties suggest that this led to Cargotec's decisions not to bid in certain tenders against ZPMC. We note that Cargotec has not submitted evidence in relation to the reasons for Cargotec's recent non-bid decisions or to which customers these tenders referred to.

⁷⁰⁶ Cargotec Main Party Hearing Transcript, [REDACTED].

⁷⁰⁷ Data submitted by the Parties (which goes back as far as 2010) shows that Sany has made RS deliveries in Europe as early as 2010 and that ZPMC has made RTG deliveries in the UK as early as 2010. Cargotec response to RFI PN2, [REDACTED]

factors which the Parties listed as creating an unequal playing field with Chinese suppliers have been present for some time.⁷⁰⁸ As such, we consider that any such advantages enjoyed by ZPMC and Sany are, at least to a large extent, reflected in their current market positions.

- 6.115 Overall, the evidence shows that ZPMC and Sany are material competitors in some CHE markets (in relation to some customers) but does not show that the competitive constraint posed by these suppliers is likely to materially increase further in the foreseeable future in Gantry Cranes or MEQ.
- 6.116 Further, we do not consider that the threat of expansion of ZPMC and Sany would sufficiently constrain the Merged Entity. As set out in the Merger Assessment Guidelines, 'entry or expansion should be of sufficient scope and effectiveness to prevent an SLC from arising as a result of the merger. Entry or expansion needs to be successful over a sustained period of time.'⁷⁰⁹
- 6.117 The Parties' claim that the threat posed by the expansion of ZPMC and Sany will be sufficient to constrain the Merged Entity,⁷¹⁰ including in CHE markets in which ZPMC and Sany do not have any material presence in Europe. However, as set out in Chapter 12, ZPMC and Sany face barriers to expansion that cannot be addressed solely by having significant financial resources and a low-cost base. The evidence available to us indicates, for example, that a supplier's track record is also an important consideration for customers. Having a track record in adjacent markets may not be sufficient to overcome this barrier, in light of the Parties' incumbency advantage and some customers' preference for having CHE from the same supplier (see paragraphs 12.125 to 12.151).
- 6.118 Even if the threat of expansion by ZPMC and Sany may constrain the Parties to some extent, for the reasons discussed in relation to each theory of harm (and in Chapter 12 (countervailing factors)), the constraint is not likely to be sufficient to prevent an SLC from arising in the different markets in which we found an SLC. The constraint that ZPMC and Sany currently exert on the Parties in the supply of RTG/ASC and MEQ, respectively, is taken into account as part of our forward-looking competition assessments in Chapters 7 and 9.

⁷⁰⁸ We note that one of the documents ([REDACTED]) is dated 2017 and that the 'One Belt One Road' initiative has been in place since 2013.

⁷⁰⁹ CMA129, paragraph 8.37.

⁷¹⁰ Parties' response to the Provisional Findings Report, paragraphs 4.8-4.9.

- *The Parties' claims about ZPMC's penetration in STS*

6.119 As set out at paragraph 6.110(b), the Parties submitted that ZPMC has displaced the Parties for the most part in the supply of STS and that this is happening across yard cranes and MEQ. We have not, however, seen evidence to support this position. In particular:

- (a) We note that ZPMC has supplied RTG and ASC for some years and has gained a material market share in the supply of STS, but the Parties have retained a significant share in the supply of both RTG and ASC.⁷¹¹ ZPMC is the only example of a Chinese supplier gaining a material position in RTG and ASC in Europe after gaining a very substantial share of supply in STS. Evidence from internal documents and third parties⁷¹² indicates that STS have some distinct features compared with RTG and ASC (STS has a higher steel content, smaller proportion of technology and demand for higher volumes) which means that ZPMC is particularly competitive in STS and that the Parties are better placed to face the competitive constraint from ZPMC in RTG and ASC than in STS. ZPMC's years of success in STS has not translated to ZPMC's material expansion into the supply of MEQ or SC and ShC.
- (b) We consider that the contracts won by ZPMC and recent partnerships with a GTO (APM) provide further evidence of the competitiveness of ZPMC in relation to some customers. We took into account ZPMC's successes over recent years and this recent partnership in our competitive assessment.⁷¹³ As discussed above, ZPMC has won contracts with HPH in the UK and started supplying RTG to HPH in 2010. We have not, however, seen an upward trend in ZPMC's market position in RTG in the UK. This suggests that not many other customers are following HPH's lead. Evidence from third parties indicates that, while port operators are generally aware of industry trends and steps taken by other port operators, ports can have very different operating models.⁷¹⁴ We also note that HPH appears to be one of the few (if not the only) customers whose purchasing decisions are mainly determined

⁷¹¹ We also note that Liebherr continues to compete with ZPMC in STS.

⁷¹² This finding is drawn from an internal Konecranes document ([REDACTED]) which states: 'Chinese competitors are on the rise, and in the ports business ZPMC already has a very strong position in some equipment types, [REDACTED] (e.g. large Ship-To-Shore cranes)' and third-party evidence from one competitor (Call note, [REDACTED]).

⁷¹³ We consider that the APM partnership is consistent with our assessment of ZPMC's competitiveness. We note that the partnership between ZPMC and APM establishes a framework for mutual collaboration, including in relation to automation[REDACTED], in which we consider ZPMC to be a competitor, [REDACTED]. The Memorandum of Understanding includes an order for STS and yard cranes across six terminals and the reservation of production slots for additional STS cranes and yard cranes in the future.

⁷¹⁴ Transcript of call [REDACTED].

by price (subject to suppliers satisfying minimum technical suitability criteria).⁷¹⁵

(c) We note that the internal documents set out in paragraphs 6.104 to 6.107 also indicate that the Parties are not likely to be displaced by ZPMC, as they demonstrate that the Parties have the ability to continue to compete against Chinese suppliers (including ZPMC) and clear plans to do so.

- *The Parties' ability to compete with Chinese suppliers*

6.120 We consider that the evidence does not support the Parties' submission that they do not have the ability to compete with Chinese suppliers (see 6.110(c)). In particular:

(a) Even if the Parties cannot be competitive on price (ie leading to Cargotec's non-bid decisions and low gross-margins in yard cranes, as explained in Chapter 7 in paragraphs 7.66 to 7.68), the evidence considered in the assessment of each theory of harm indicates that customers place significant weight on other purchasing criteria.

(b) The Parties' internal documents indicate that they have clear plans to continue to compete against Chinese suppliers based on parameters of competition other than price. For example:

(i) [REDACTED]⁷¹⁶ [REDACTED].⁷¹⁷

(ii) [REDACTED].⁷¹⁸ In order to mitigate the risks of 'Chinese disruptors', Cargotec lists the following actions: i) [REDACTED].⁷¹⁹

(iii) Another Cargotec strategy document - 'Kalmar Strategy 2019-2021'⁷²⁰ states that Cargotec's strategy in response to the 'China Inc.' trend was to: a) [REDACTED].

(iv) A Konecranes internal document, 'Consolidated Onboarding Q&A' for the 'Konecranes Leadership Team Members' sets out the following views: 'The Chinese players can compete [REDACTED]' and 'I think that our advantage is the [REDACTED]...Then we have the Chinese competition (e.g. ZPMC in Port) where we should have competitive

⁷¹⁵ Call note [REDACTED].

⁷¹⁶ Cargotec internal document, [REDACTED].

⁷¹⁷ Cargotec internal document, [REDACTED].

⁷¹⁸ Cargotec internal document, [REDACTED].

⁷¹⁹ Cargotec internal document, [REDACTED].

⁷²⁰ Konecranes internal document, [REDACTED].

advantage in areas where they are not yet strong - [REDACTED]. They are improving a lot in the quality and in some leadership product, thus a differentiator is important.⁷²¹

(c) Some internal documents produced by the Parties also suggest that the 'Made in China' label has negative connotations, [REDACTED]:

(i) A 2019 presentation, prepared by Konecranes, notes as one of Sany's 'weaknesses' in the European region: '[REDACTED]'.⁷²²

(ii) [REDACTED].⁷²³ This point is developed further, [REDACTED].⁷²⁴

6.121 We do not agree that the internal documents set out above merely 'identify aspirational strategies' of the Parties to compete with Chinese suppliers. In fact, these documents set out clear actions to successfully maintain their strong market position against Chinese suppliers and targets to be achieved as a result of these actions. For example, Cargotec's internal documents '[REDACTED]' and '[REDACTED]' outline clear action lists. The latter strategy document designates a senior executive responsible for the implementation of these actions and states that Cargotec's aim was [REDACTED], with 46% of 2021-2024 sales growth resulting from market growth and 54% resulting from strategic initiatives.

6.122 With regard to the success of these measures, we note that that, although Sany and ZPMC compete effectively with the Parties in relation to some customers, ZPMC and Sany are far from displacing the Parties in the supply of RTG and ASC and MEQ, respectively, and have not materially expanded in the supply of other relevant CHE.

6.123 Further, as set out below from paragraph 6.145, the Parties' ability to offer a wide CHE portfolio and automation and integration software is likely to be of increasing competitive significance as the extent of automation and digitalisation within CHE develops further. By contrast, the Parties' competitors (including ZPMC and Sany) do not offer similarly strong, broad and integrated ranges of CHE.

6.124 In response to the Provisional Findings Report, the Parties gave three examples of customer views received by the CMA as part of its market

⁷²¹ Konecranes internal document, [REDACTED].

⁷²² Konecranes internal document, [REDACTED].

⁷²³ Cargotec internal document, [REDACTED].

⁷²⁴ Cargotec internal document, [REDACTED].

testing exercise that they said highlighted ‘Chinese rivals’ disproportionate impact on the relevant markets’.⁷²⁵

- (a) The first example was [REDACTED], which said ‘it has built a very collaborative relationship with ZPMC over 20-plus years’ and believed that ZPMC has been trying to utilise this relationship to get a foothold in the UK.⁷²⁶ We note that this customer is a GTO [REDACTED]. This customer also told us that it had to spend ‘a significant amount of money with having [its own] technicians based in Shanghai, at Jiangnan Island, overseeing the design and the build and construction of the cranes, all the way through the commissioning phase’⁷²⁷ and noted that not all port terminals are ‘the same because we have a very different operating model’.⁷²⁸
- (b) The second example was [REDACTED], which said that it expects ZPMC to improve its offering.⁷²⁹ We note that the same customer also said that it expects that ZPMC would only be interested in opportunities that are a ‘bigger and more attractive proposition’ in terms of order size, given the shipping costs incurred when shipping equipment from China.
- (c) The third example was [REDACTED], which said it expects ZPMC to rank the highest in future tenders in relation to the supply of RTG.⁷³⁰ We note that ABP expressed concerns regarding the Merger in the short term.⁷³¹

6.125 We consider that these views are consistent with ZPMC being a significant competitor in relation to the supply of RTG (which we already recognise). However, as discussed in Chapter 7, third-party evidence also indicates that ZPMC may be at a disadvantage in relation to some RTG and ASC customers (in particular customers without a strong in-house maintenance team) in light of the service levels it can offer in Europe. As set out in Chapter 9, third-party evidence on Sany’s position in RS and ECH was mixed, with responses indicating that Sany offers low prices but does not have a positive reputation in relation to service and/or product quality. As such, third-party views suggest that ZPMC and Sany may not be competitive in relation to some customers in the markets mentioned above.

6.126 We also note the following customer views that relate to Chinese suppliers:

⁷²⁵ [Parties’ response to the Provisional Findings Report](#), paragraph 4.2.

⁷²⁶ Call note, [REDACTED].

⁷²⁷ Transcript of call, [REDACTED].

⁷²⁸ Transcript of call [REDACTED].

⁷²⁹ Call note, [REDACTED].

⁷³⁰ Response to P2 questionnaire, [REDACTED].

⁷³¹ Call note, [REDACTED].

- (a) An industry association [redacted] told us that ‘there is also the broader reflection about increased reliance on suppliers of key equipment for the UK’s largest gateways who are based in locations with whom the UK does not always have the easiest of strategic relationships’.⁷³²
- (b) Another customer, in its response hearing, told us that initially it was not very concerned with the Merger, given the ‘agreements [this customer] had in place and the ability for Chinese suppliers to provide some level of competition given the size of the contract and the frameworks that we go out with’. This customer, however, explained that it slightly changed its view after reading the Provisional Findings Report, because, from a sector perspective, there are ‘some smaller ports that are trust ports and different entities’ and there ‘there may well be less competition for them if you take one of the players out of the market’.⁷³³

6.127 Further, third-party evidence did not suggest that ZPMC and Sany are likely to become material competitors in other CHE categories in the near future. We consider third-party evidence, and the other evidence that we have gathered, in the round as part of our competitive assessments in Chapters 7 and 9.

6.128 Overall, we consider that, notwithstanding that Chinese suppliers might benefit from cost advantages,⁷³⁴ the available evidence clearly shows that the Parties are able to compete effectively against Chinese suppliers. The evidence⁷³⁵ indicates that the Parties have been vigorously competing against the Chinese suppliers for some years and can be expected to continue to do so absent the Merger, based on their strong offerings (as further described below).

The Parties have strong offerings and will continue to vigorously compete against Chinese suppliers

6.129 We recognise that some Chinese suppliers (eg ZPMC and Sany) are credible competitors in specific markets. However, the evidence available to the CMA is consistent in showing that the Parties have strong offerings and will continue to vigorously compete against Chinese suppliers, including based on parameters of competition other than price and especially in the

⁷³² Submission to the CMA, [redacted].

⁷³³ Transcript of call, [redacted].

⁷³⁴ We cannot exclude that Chinese suppliers, as ZPMC, may have access to comparatively cheap raw materials (especially steel) and may receive subsidies and other forms of governmental support from China. As mentioned above (paragraph 6.104 and 6.106) some of the Parties’ internal documents refer to the ‘One Belt, One Road’ and to the ‘Made in China 2025’ Industrial Policy’ initiative (see, for example, Cargotec’s internal document [redacted]).

⁷³⁵ See, for example, 6.120 to 6.123 and the evidence in Chapters 7, 8 and 9.

context of increased automation of CHE, proven track record and their broad portfolios.

6.130 We set out below evidence, mainly from the Parties' internal documents, on aspects of the Parties' offerings (some of which are cross-cutting) that make them strong competitors in each of the CHE categories they supply. The main strengths of the Parties include their proven track records, strong sales and after sales networks, wide portfolios and automation offerings.⁷³⁶ Chapters 7-11 then build on this by assessing the position of the Parties in the specific markets in which we have investigated the competitive effects of the Merger.

- *Yard cranes*

6.131 First, in relation to yard cranes, while the Parties submitted that Konecranes 'cannot be considered as a "main" supplier of RTGs in the UK'⁷³⁷ and that 'Konecranes has a very limited presence in ASCs',⁷³⁸ the evidence considered in Chapter 7 supports that both Konecranes and Cargotec are strong and close strong competitors in RTG and ASC.

6.132 Cargotec, through Kalmar, has supplied RTG, ASC and RMG in Europe since 1987.^{739,740} Konecranes also supplies RTG, RMG and ASC with a strong position in Europe⁷⁴¹ and has had a business division focused on cranes since 1988.⁷⁴² Both Parties have a proven record in relation to the quality of their products and ZPMC is perceived by some third parties, [REDACTED], to offer a lower quality product. See for example the following internal documents, which are broadly consistent with the other evidence considered in Chapter 7:

(a) An e-mail from a Cargotec [REDACTED].⁷⁴³

⁷³⁶ This evidence should be considered together with all the other evidence about the competitive strength of the Parties' and of their competitors that we present in relevant Chapters when assessing each theory of harm.

⁷³⁷ Parties' response to Issues Statement, paragraph 6.25.

⁷³⁸ Parties' response to Issues Statement, paragraph 6.38.

⁷³⁹ Cargotec internal document [REDACTED]. Although this document is from 2017, we note that Cargotec considers itself to be: 'One of the leading suppliers in the world', with 'Well established market position'.

⁷⁴⁰ As referred in paragraph 3.7 Cargotec assembles all of its Gantry Cranes at one location in China from where it supplies its customer base. Merger Notice, [REDACTED].

⁷⁴¹ Konecranes assembles Gantry Cranes in China and Europe (Croatia, Finland, and Poland), Merger Notice, [REDACTED].

⁷⁴² <https://www.konecranes.com/about/history>.

⁷⁴³ See Cargotec internal document, [REDACTED], even if ZPMC has improved its quality since then, the Parties have a strong proven track record regarding quality.

- (b) An internal document of Konecranes prepared for the onboarding of the leadership team states that Konecranes' port solution business 'should have the advantage' in areas in which [REDACTED].^{744,745}

6.133 We have seen evidence that shows that both Parties have continued to successfully win business in Europe in relation to RTG and ASC, in the last three years. For example:

- (a) In Europe, Kalmar announced that it has concluded an agreement with Dublin Ferryport Terminals (DFT) to extend the Kalmar AutoRTG system at the terminal with five new AutoRTG cranes over the next 2 years, with the delivery of the first machines scheduled to be completed during the first quarter of 2022.⁷⁴⁶
- (b) In January 2020, Konecranes signed contracts with Yilport for the delivery of Automated RTG systems to three of Yilport's European container terminals, two in Portugal and one in Sweden. The announcement of this contract states: 'Automated RTG operation is coming of age in Europe, driven by Konecranes'.⁷⁴⁷
- (c) In January 2021, it was announced that DP World Antwerp Gateway has ordered a fleet of 34 ASC to Konecranes for its container terminal in Antwerp, Belgium. The order was booked in December 2020: the first batch will be delivered in Q2 2022, the last batch by 2026. This announcement also states that 'As part of the project, TBA will extend the existing ECS used at the terminal'.⁷⁴⁸
- (d) In November 2021, HPH informed Konecranes that Konecranes had been awarded the contract for the supply of 17 remotely controlled electronic RTG (eRTG) to Felixstowe port in the UK.⁷⁴⁹

- *Mobile equipment*

6.134 Second, in relation to MEQ, in particular, the Parties both supply European demand at least in part, from their factories in Poland (Cargotec) and

⁷⁴⁴ Konecranes internal document, [REDACTED].

⁷⁴⁵ The Parties' self-assessment in the documents above is broadly in line with third-party evidence considered in Chapter 7.

⁷⁴⁶ https://www.kalmarglobal.com/news--insights/press_releases/2021/kalmar-receives-repeat-order-of2/ [accessed 23/11/2021].

⁷⁴⁷ Konecranes (January 2020), [Konecranes Automated RTGs to three European container terminals](https://www.konecranes.com/press/releases/2020/konecranes-automated-rtgs-to-three-european-container-terminals) [online], available at <https://www.konecranes.com/press/releases/2020/konecranes-automated-rtgs-to-three-european-container-terminals> [accessed 23/11/2021].

⁷⁴⁸ Sea Wanderer (January 2021), [DP World Antwerp Gateway orders fleet of Automated Stacking Cranes from Konecranes](https://seawanderer.org/dp-world-antwerp-gateway-orders-fleet-of-automated-stacking-cranes-from-konecranes/), available at <https://seawanderer.org/dp-world-antwerp-gateway-orders-fleet-of-automated-stacking-cranes-from-konecranes/>, [accessed 23/11/2021].

⁷⁴⁹ See email sent to the CMA, [REDACTED], dated 9 November 2021.

Sweden (Konecranes) and have strong European credentials. As shown below, the Parties also consider themselves to be market leaders based on their wide product range, brand and engineering capability that allows them to offer high level of customisation. Based on these factors, the Parties are well placed to compete against Chinese suppliers, especially on parameters other than price.

6.135 Cargotec's internal documents show that it considers itself to have '[redacted]'.⁷⁵⁰

(a) [redacted].⁷⁵¹

(b) [redacted].⁷⁵²

6.136 Konecranes' internal documents show that it considers itself to be 'one of the leaders'⁷⁵³ in the lift trucks industry and to have a 'premium product with high customization and brand awareness'.⁷⁵⁴ A Konecranes presentation about its market and the position of its competitors in the 'lift truck' industry (meaning MEQ) states that although Konecranes is not yet the biggest 'Konecranes is the best, in the things that matter the most' in being a 'leader' in lift trucks.⁷⁵⁵

6.137 The Parties' internal documents also indicate that they both consider that an important differentiating factor of their offering is having strong after-sales and distribution network.

(a) Konecranes' internal documents in relation to Europe (not specific to the UK) show that it considers itself to have a 'Strong Dealer Network'⁷⁵⁶ and '[g]ood spread over many countries and dealers' and '[s]trong dealers with [redacted] and solid reputation, [that] [redacted]'.⁷⁵⁷ Konecranes also notes as one of its advantages that they are 'Strong National Dealers [redacted] with the whole line-up of services. [redacted]'.⁷⁵⁸ With respect to Cargotec, Konecranes assesses internally that it has [redacted]', whereas Sany is seen to have '[redacted]' and Hyster is given the comment '[redacted]'.⁷⁵⁹

(b) One Cargotec internal document [redacted].⁷⁶⁰

⁷⁵⁰ See Cargotec internal document, [redacted].

⁷⁵¹ See Cargotec internal document, [redacted].

⁷⁵² Cargotec internal document, [redacted].

⁷⁵³ Emphasis in original. Cargotec internal document, [redacted].

⁷⁵⁴ Cargotec internal document, [redacted].

⁷⁵⁵ Cargotec internal document, [redacted].

⁷⁵⁶ Cargotec internal document, [redacted].

⁷⁵⁷ Konecranes internal document, [redacted].

⁷⁵⁸ Konecranes internal document, [redacted].

⁷⁵⁹ Konecranes internal document, [redacted].

⁷⁶⁰ Cargotec internal document, [redacted].

- 6.138 The Parties' self-assessment is broadly in line with the other evidence considered in Chapter 9.
- 6.139 Various internal documents from the Parties show that they have growth plans to increase their market positions in MEQ in the foreseeable future. This evidence is difficult to reconcile with the Parties' submissions that the Parties are not able to compete on the 'merits' with Chinese suppliers:
- (a) An internal strategy document of Konecranes of August 2018 sets out its plans to grow its market position in MEQ in the coming years, stating that Konecranes has the ambition to grow from its current position of '[REDACTED] in the Lift Trucks Business' to becoming 'The Big Global Leader in Lift Trucks by market share and revenue' in the timeframe 2021-2030, including based on its [REDACTED].⁷⁶¹
 - (b) A commercial internal document about the so-called Konecranes [REDACTED], sets out the aim for Konecranes' MEQ business of becoming: 'First in [lift] trucks. First in service. First in customer satisfaction'. Specifically, the aim was to grow the global market share to [REDACTED], generate [REDACTED] of revenue from services and to accomplish these aims by 2023.⁷⁶² In particular, the following objectives vis-à-vis competitors are listed: 'Global market share gains against [REDACTED]; regional gains against [REDACTED]'. This clearly shows that Konecranes wants to take away market share from Cargotec (Kalmar) and Hyster globally, ie also in Europe. Competitors Sany and Taylor are only seen as relevant targets in non-EEA regions like China and the USA. Its '3023' plan also puts an emphasis on innovation and formulates the plan to '[b]e one of the leaders in coming industry shifts to semi-automation and electrification'.⁷⁶³
 - (c) Konecranes' Lift Trucks business unit leadership continued with its '[REDACTED]' strategy efforts after the announcement of the Merger. In an internal presentation entitled '[REDACTED]' from April 2021, Konecranes continues to consider its growth strategy for lift trucks (of which RS are a part). Specifically, the document discusses a number of assumptions from 'where growth will come', including: [REDACTED].⁷⁶⁴ This document indicates that this is Konecranes' path to '[REDACTED]'.

⁷⁶¹ Konecranes internal document, [REDACTED].

⁷⁶² Konecranes internal document, [REDACTED].

⁷⁶³ Konecranes internal document, [REDACTED].

⁷⁶⁴ Konecranes internal document, [REDACTED].

(d) [REDACTED].⁷⁶⁵

(e) [REDACTED].⁷⁶⁶

(f) [REDACTED].⁷⁶⁷

(g) [REDACTED],[REDACTED],[REDACTED] again a strategy similar to one of Konecranes'.⁷⁶⁸

6.140 The Parties' growth plans also include taking active steps towards electrification of their product lines, especially in relation to MEQ. These clear plans for, and steps taken towards, electrification illustrate the Parties' plans for growth and emphasise that future competition will not only be fought on price but on technical innovations.⁷⁶⁹

- *Automation*

6.141 The Parties also have a strong position vis-à-vis many of their OEM competitors when it comes to terminal container automation. At present, this is particularly relevant to Gantry Cranes, SC and ShC, as these are among the CHE products where automation technologies are more widely used.

6.142 Both Cargotec and Kalmar appear to provide 'automated equipment systems and software' to the [REDACTED] of the 'highly automated' container terminals worldwide.⁷⁷⁰ As discussed from paragraph 6.145 below, as well as offering automated CHE, the Parties supply the ECS software that coordinates this equipment.⁷⁷¹ By contrast, of the Parties' OEM competitors, only ZPMC and Mitsui have their own ECS offer. Other suppliers of ECS that are not active in CHE include ABB, TMEIC and Siemens.

6.143 Cargotec offers an ECS called Kalmar One (a replacement of its previous software system called Kalmar TLS) while Konecranes offers TEAMS, an

⁷⁶⁵ Cargotec internal document, [REDACTED].

⁷⁶⁶ Cargotec internal document, [REDACTED].

⁷⁶⁷ See Cargotec internal document, [REDACTED].

⁷⁶⁸ Cargotec internal document, [REDACTED].

⁷⁶⁹ See the documents considered in Chapter 9 about the Parties' projections in relation to future competition.

⁷⁷⁰ We note that one comment in a Konecranes internal document – [REDACTED] – notes that: 'Globally there are +30 highly automated container terminals' and that 'Konecranes has supplied automated equipment systems and software to [REDACTED] of these highly automated sites' while 'Kalmar has [REDACTED] sites'. [REDACTED] is amongst the 'highly automated' container terminals supplied by Kalmar.

⁷⁷¹ ECS monitors and guides the automated equipment fleet to operate in safe and efficient manner (Merger Notice, [REDACTED]). ECS controls all events and processes at the equipment level and implements all necessary actions based on the job orders created by the TOS. The TOS is a software solution that controls the logistics in a terminal. For example, it manages the flows of containers, plans the optimal yard positioning/stacking, schedules inbound and outbound ship and rail traffic and creates job orders (Merger Notice, [REDACTED]). The ECS is therefore connected to the TOS and to the on-board control software system of the automated equipment. Automated equipment uses certain features that are built in the machine and are a prerequisite for automated operations. While these features vary between equipment types, they regularly encompass sensors, cameras, on-board control software systems (also known as Programmable Logic Controller or PLC) to implement commands from the ECS, equipment management information systems, etc.

ECS developed by its subsidiary TBA.⁷⁷² We note that one internal strategy document of Konecranes identifies '[REDACTED]' as one of the '[REDACTED]' areas of strategic focus for the 'Port Solutions' division and shows that Konecranes is considering selling a '[REDACTED]'; offering 'best-in-class software covering [REDACTED]'.⁷⁷³

6.144 We discuss further below (from paragraph 6.145) the competitive significance of the Parties' ability to offer automation and integration solutions alongside a wide portfolio of CHE.

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

6.145 The Parties both have broad portfolios of CHE including port cranes (including RTG and ASC), HTE (including SC and ShC) and MEQ (RS, HDFLT and ECH). In addition, they each offer automation and connectivity solutions for use with CHE:

(a) In relation to automation, Cargotec offers an ECS called Kalmar One (a replacement of its previous software system called Kalmar TLS) while Konecranes offers TEAMS, an ECS developed by its subsidiary TBA.⁷⁷⁴

(b) In relation to connectivity solutions, Cargotec offers Kalmar Insight and Konecranes' offers TRUCONNECT. These systems collect remote monitoring data from customers' CHE, providing customers with information on the performance and maintenance needs of their CHE fleets.⁷⁷⁵

6.146 This means that the Parties have a similar ability to offer and develop automated solution and connectivity solutions across their broad portfolio, which includes different categories of CHE.

6.147 By contrast, most of the Parties' competitors do not offer similarly broad and integrated ranges of CHE to customers in Europe. For example, Hyster and CVS Ferrari offer MEQ (including RS, HDFLT and ECH) but do not sell cranes, and Kuenz offers port cranes (including RTG and ASC) but does not sell HTE or MEQ. On this point, Cargotec stated at the Main Party Hearing that 'everybody else [other than the Parties and Chinese suppliers that are

⁷⁷² Merger Notice, [REDACTED].

⁷⁷³ See Konecranes internal document, [REDACTED].

⁷⁷⁴ Merger Notice, [REDACTED].

⁷⁷⁵ Kalmar Insight 'collects together data from your entire fleet and puts it onto a single platform' providing operators with 'a real-time, holistic view of their site and equipment performance'. Cargotec website, Kalmar Insight: https://www.kalmarglobal.com/news--insights/articles/2019/20190603_goodbye-data-chaos-hello-impactful-insights/. Konecranes' TRUCONNECT remote monitoring data is aggregated with inspection and maintenance at yourKONECRANES.com, providing customers with 'a comprehensive view of equipment maintenance needs and performance'. [TRUCONNECT information on yourKONECRANES | Konecranes](#).

trying to enter and become ‘fully-fledged’ OEMs] is then either the yard crane provider or mobile equipment provider or only one or two products within those groups’.⁷⁷⁶ Certain Chinese suppliers, in particular ZPMC and Sany, are active in multiple CHE categories, but do not have a significant presence in Europe in MEQ and cranes respectively.⁷⁷⁷

- 6.148 In addition, as set out above at paragraph 6.143, most of the Parties’ OEM competitors do not offer software solutions that are similar to those offered by the Parties; for example, only ZPMC and Mitsui offer their own ECS.
- 6.149 We have assessed whether the Parties have a competitive advantage and are particularly close competitors as a result of their portfolio breadth, together with their automation capabilities and the connectivity solutions they offer (see Chapter 13, paragraphs 13.246 to 13.386).
- 6.150 In particular, we assessed to what extent customers value: i) having the same automation software across different CHE categories to ensure that their equipment communicates and operates in conjunction with each other (interoperability); and ii) using the same connectivity solution in different types of CHE to ensure (inter alia) that a single digital platform records their information (including on usage data) (connectivity or digitalisation).
- 6.151 The evidence that we reviewed is mixed regarding the current impact of the Parties’ broad CHE portfolios on their competitiveness. There is some evidence suggesting that having a broad portfolio does not currently have a significant impact on the Parties’ competitiveness. In particular:
- (a) Some of the evidence from customers and internal documents suggests that having a wide portfolio is currently less relevant for the competitiveness of the Parties’ offering than factors such as price and quality.
 - (b) In practice, customers only rarely tender for different categories of CHE together.
 - (c) While Cargotec and Konecranes offer interconnectivity solutions (eg Kalmar’s Insight and Konecranes’ TRUCONNECT) their customers, at present these are predominantly used by their MEQ customers and very few customers use these tools across Port Cranes/HTE and MEQ.

⁷⁷⁶ Cargotec Response Hearing Transcript, [REDACTED].

⁷⁷⁷ As shown in Chapter 9, ZPMC only had small number of RS and ECH sales on a worldwide (excluding China) basis from 2016-20, and none in Europe. Further, ZPMC does not offer HDFLT. As shown in Chapter 7, Sany made only a small number of RTG sales in Europe and on a worldwide (excluding China) basis from 2016-20 and no ASC sales.

(d) Currently, OEMs that supply only one category of CHE (see paragraph 6.147) have, to differing degrees, been able to compete with the Parties.

6.152 On the other hand, some evidence indicates that having a broad portfolio is currently important in at least some competitive interactions, and that it can reasonably be expected to become more important in the future as automation becomes more widespread and digitalisation accelerates:

- (a) Konecranes' stated rationale for its business structure, and for previous acquisitions, suggests that there are benefits from having all CHE portfolio under the same business division, in particular because of the commonality of customers and functional connections between the different types of CHE.
- (b) The Parties' internal documents and third-party evidence clearly show that the Parties are positioning themselves to leverage their existing CHE portfolio and automation and digitalisation capabilities to offer CHE across different categories, with interoperable automation software and using the same connectivity solutions. In addition, the Parties' internal documents make clear that the impact of the trend towards automation and digitalisation on the CHE industry is likely to become more pronounced in the foreseeable future. On this basis, the CMA considers that the competitive benefits of being able to offer a broad CHE portfolio are likely to become more significant. This is also supported by some third parties who recognised that a broad CHE portfolio will become increasingly important, given the industry trends, to facilitate interoperability and connectivity across the whole CHE portfolio.
- (c) The evidence we have seen also demonstrates that the Parties currently benefit from certain organisational synergies (ie cross-selling, know-how sharing and cost savings) that arise from having a broad portfolio of CHE products, including in developing, deploying and supporting their connectivity solutions. In particular, there are some synergies and economies of scope in undertaking and deploying R&D across a broad CHE portfolio (eg the Parties make use of technology developed for one category of CHE in other product categories and apply data collected from the whole range of CHE installed across their customer base to further improve existing technology). KAS and Kamos have significant linkages such same brand, common customers, shared employees and common IT platforms. The interdependencies between the MEQ and the Port Cranes/Straddle Carriers businesses from each of the Parties are also reflected in the fact that these businesses present themselves to customers under the same umbrella and offer the same connectivity solutions. There are also a number of supply contracts and aftersales

service contracts that are shared between the Divestiture Businesses and the Parties' retained operation.

- (d) While third-party evidence and data submitted by the Parties indicate that different categories of CHE are currently rarely offered as part of the same bidding process (with the main exception being CHE tenders for greenfield sites), we found that a significant minority of customers have purchased both MEQ and Port Cranes or Straddle Carriers from one or other of the Parties in the past or have valuable combined contracts with one or other of the Parties for the maintenance of more than one category of CHE. This is consistent with evidence from third parties and internal documents which indicates that the Parties' ability to offer a 'one-stop' solution can be important for some customers that have a preference for a single CHE supplier, or for a single supplier of maintenance services, in order to achieve a better price or for operational efficiency.

6.153 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.⁷⁷⁸

6.154 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 (see Chapters 7, 8, 9 and 10).

The role of tender processes in producing competitive outcomes

6.155 The Parties submitted that 'broadly speaking, the Parties operate in traditional bidding markets with formal tendering the norm for many CHE product types' and that 'the nature of bidding markets guarantees intense competition'.⁷⁷⁹ The Parties also submitted that:

- (a) The supply of cranes and SC and ShC⁷⁸⁰ are classic bidding markets and that competition in markets such as these, where price is

⁷⁷⁸ As noted at paragraphs 6.144 to 6.147 above, ZPMC offers a relatively broad range of CHE, but does not currently have a significant presence in MEQ in Europe.

⁷⁷⁹ Parties' response to Issues Statement, paragraph 3.7.

⁷⁸⁰ Parties' response to Issues Statement, paragraph 8.15.

determined through a bidding process, can be expected to result in competitive outcomes even with only a few bidders.⁷⁸¹

- (b) Structured tender processes – such as the ones used in the sales for cranes and HTE – are utilised for larger MEQ projects or projects where public port operators acquire MEQ.⁷⁸²

6.156 We do not agree that the nature of bidding markets guarantees intense competition. As set out in an economic discussion paper commissioned by one of the CMA's predecessors, 'there is no reason to assume that because a bidding process is being used, competition is likely to be more intense and competition concerns less relevant'. Although there is a 'rough distinction between the forms of "conventional" competition and bidding processes', in both cases if a supplier raises its price or deteriorates the quality of its offering it may lose a customer who switches to an alternative supplier. In both cases what matters is that the customer has a number of possible suppliers.⁷⁸³

6.157 We note that, if certain conditions hold, where competitive bidding processes are akin to a second price auction, only the marginal bid (ie the bid of the supplier that was the runner-up) in a tender process would be expected to impose a constraint on the winning bidder, with any additional bidders not playing a role in constraining the winning bidder. However, where bidders face some uncertainty regarding the terms of the bids of their rivals (for example, in relation to price or quality) and/or in relation to how these will be scored by the customer, then bidders would be expected to account for the risk of losing to a wider set of bidders when setting the terms of their bids.

6.158 The evidence that we have reviewed confirms that the Parties' UK customers typically buy RTG and ASC cranes through competitive tender processes,⁷⁸⁴ whereas purchasing practices for MEQ are more varied.⁷⁸⁵ In any event, the evidence that we have reviewed does not support that purchasing processes in cranes, MEQ and SC and ShC are generally akin to second price auctions (for example, the tenders involved are typically sealed bids so the participants are uncertain about the offers of their rivals), or that only two bidders play a role in the competitive process.⁷⁸⁶

⁷⁸¹ [Parties' response to Issues Statement](#), paragraphs 6.26 and 6.37.

⁷⁸² [Parties' response to Issues Statement](#), paragraph 7.6.

⁷⁸³ Economic discussion paper commissioned by the OFT, [Markets with bidding processes](#), May 2007, paragraph 1.8.

⁷⁸⁴ For example, we discuss a number of case studies covering UK tenders in RTG and ASC in Chapter 7.

⁷⁸⁵ For example, Konecranes [redacted] ([redacted] response to CMA RFI 6). Cargotec [redacted] ([redacted] response to CMA RFI 4).

⁷⁸⁶ We note that, [redacted], it appears that more than two bidders typically influence outcomes in HPH's tenders.

6.159 In addition, although tenders may be infrequent in relation to the supply of RTG, ASC, SC and ShC, which can in principle create a strong incentive to compete, this may not in practice result in effective competition with a small number of bidders where there are factors such as incumbency advantages or the requirements of customers and the offers of competitors are differentiated.⁷⁸⁷

7. Horizontal effects: RTG and ASC

Horizontal unilateral effects in the supply of RTG

Framework and approach

- 7.1 In this Chapter, we assess horizontal unilateral effects of the Merger in the supply of RTG and ASC, following the approach set out in paragraphs 6.5 to 6.36.
- 7.2 In order to assess the likelihood of the Merger resulting in horizontal unilateral effects in the supply of RTG, we considered the closeness of competition between the Parties and the (present and future) competitive constraints provided by competing suppliers. We then considered whether there are any possible constraints on the Merged Entity arising from entry or expansion that would have occurred irrespective of the Merger.
- 7.3 We have gathered, and taken account of, a range of evidence in our assessment. In particular, we have considered:
- (a) The Parties' views;
 - (b) the shares in the supply of RTG and ASC in the UK, Europe and worldwide (excluding China);
 - (c) evidence from quantitative and qualitative bidding analysis;
 - (d) third-party evidence; and
 - (e) evidence from the Parties' internal documents.

⁷⁸⁷ See Economic discussion paper commissioned by the OFT, [Markets with bidding processes](#), May 2007, paragraphs 3.24 to 3.51.

Closeness of competition between the Parties and competitive constraints from alternative suppliers

Parties' views

- 7.4 The Parties submitted that the Merger does not raise competition concerns in the supply of RTG, mainly because:
- (a) after the Merger, the Merged Entity will continue to face several competitors including ZPMC and Liebherr;
 - (b) the Parties cannot be considered as close alternatives for UK customers and are not 'two of the main four suppliers of RTG' in the UK; and
 - (c) the tendering sales process drives competitive outcomes.⁷⁸⁸
- 7.5 The Parties submitted that they have a modest position in the supply of RTG on a global basis, with a combined share of approximately [REDACTED]% for 2018-2020. They noted that they compete with a number of well-established global suppliers, including ZPMC (the market leader), Mitsui, Liebherr, Sany, Kuenz and Baltkran, the latter two of which are newer entrants. In the Parties' view, these RTG suppliers are all credible alternatives to the Parties, and all are capable of bidding for UK sales opportunities.
- 7.6 In response to our working paper on horizontal unilateral effects in the supply of RTG and ASC and our Provisional Findings, the Parties made a number of additional submissions in relation to RTG.
- (a) The Parties claimed that the long time period used by the CMA in its shares of supply conceals more dynamic recent entry and expansion, with further expansion anticipated from suppliers such as Mitsui and Sany. They submitted that the Parties' historic shares of supply are not, therefore, indicative of future market power. The Parties submitted that shares of supply ought not to be considered a useful measure in relation to the RTG market because the Gantry Crane market is project-driven and sales are conducted through global tenders.⁷⁸⁹
 - (b) The Parties also stated that the CMA failed to appropriately take into account Konecranes' [REDACTED].⁷⁹⁰ The Parties submitted that this suggests that Konecranes is a weak competitive constraint insofar as sales to UK customers are concerned. They also submitted that, to the extent that

⁷⁸⁸ Parties' response to Issues Statement, paragraphs 6.17 to 6.26.

⁷⁸⁹ Response to the working paper [REDACTED].

⁷⁹⁰ The Parties submitted that this 2021 order was from [REDACTED], an intermodal rail terminal.

the CMA considers that a lack of sales to customers in the UK should not be taken into account, this should be equally applied in considering the position of competitors such as Mitsui.⁷⁹¹

- (c) The Parties stated that both Sany and Mitsui-Paceco have an established presence in Europe, [REDACTED]. They further stated that the PFs also fail to give any weight to recent entry from suppliers such as Kuenz in RTG, based simply on the fact that [REDACTED]. The Parties suggested that the CMA's position on Kuenz is 'somewhat of a non-sequitur, in that Kuenz has only just recently entered this segment'.⁷⁹²
- (d) The Parties submitted that our use of tender data is selective, and that this data shows a wider set of competitors than the Parties. They submitted that there will be a number of credible alternatives to the Parties post-Merger. The Parties stated that ZPMC, Liebherr and Sany are active to a material extent and that describing ZPMC, Liebherr and Sany as active to 'some extent' materially underplays the market position of these players.⁷⁹³
- (e) The Parties submitted that the Provisional Findings' bidding analysis fails to capture a wider picture of the competitive dynamics in yard cranes and, as a result, is insufficient and cannot be relied on to demonstrate that the Parties are close competitors.^{794,795}
- (f) In relation to our qualitative case studies, the Parties submitted that in the [REDACTED] tenders in which Konecranes competed against Cargotec, [REDACTED]. Further, in the [REDACTED], [REDACTED]. The Parties therefore said that they disagree that these case studies are 'broadly consistent' with the Parties competing closely for UK tenders.⁷⁹⁶
- (g) The Parties submitted that the contention from a customer that ZPMC did not bid on a certain UK tender because "Chinese suppliers do not typically submit bids for smaller tenders" is not consistent with the Parties' experience. They said that, based on global deliveries for the

⁷⁹¹ Parties' Response [REDACTED].

⁷⁹² Parties' response to the Provisional Findings Report, paragraph 6.6.

⁷⁹³ Parties' Response [REDACTED]. In particular, the Parties noted that: i) ZPMC has had recent successes in Europe, with deliveries to APMT (Spain), Genoa, and the Port of Piraeus and the fact that ZPMC has 'only' supplied UK customer (Felixstowe) does not change the fact that it is a significant competitor and ZPMC has had recent successes in Europe; ii) Liebherr has won three out of the eight RTG tenders in the UK since 2014 ([REDACTED]); iii) Kuenz will have an increasingly significant role as the industry moves towards increased automation; iv) Mitsui recently competed in tenders for ARTG (and STS) in other countries in Europe; and (v) Sany and Baltkran (with one sale in Brest) are recent new entrants that have each had successful tenders for their equipment.

⁷⁹⁴ Parties' response to the Provisional Findings Report, paragraph 6.5.

⁷⁹⁵ For the reasons set out in paragraphs 6.51 to 6.64, we do not agree that our bidding analysis is insufficient and fails to capture competitive dynamics in this market.

⁷⁹⁶ Parties' response to the Provisional Findings Report, paragraph 6.10.

2010-2020 period, ZPMC supplied as many RTG to small customers⁷⁹⁷ as both of the Parties did combined, and that ZPMC recently won a delivery for just 5 RTG to the Port of Pireaus.⁷⁹⁸

7.7 We take these comments into account in our overall assessment below. Some other submissions made by the Parties in relation to RTG are addressed in Chapter 6.

Shares of supply

7.8 Chapter 6 provides an overview of our approach to shares of supply and the weight that we place on this evidence. We have constructed our estimates of the shares of supply using data provided by the manufacturers themselves and, where this is not available, the Parties' estimates of their competitors' sales.⁷⁹⁹

7.9 Table 7 shows our estimates of the shares of supply based on delivery volumes for RTG over the period 2011 to 2020 for three different geographic areas: UK, Europe, and worldwide (excluding China).

- (a) Within Europe, the Parties were the two largest suppliers over the last ten years, such that the Merged Entity would have a combined share of supply of [70-80] [%]. The only other supplier with a share of supply greater than 10% was ZPMC ([10-20] [%]). Liebherr and Mitsui have much smaller shares of supply ([0-5] [%] each), while Kuenz and Paceco Espana have even smaller shares ([0-5] [%]).
- (b) Within the UK, the Merged Entity would have a combined share of supply of [30-40] [%]. This is slightly below the share of ZPMC ([40-50] [%]), which is the market leader in the UK. Only one other supplier made any deliveries in the UK during the relevant period: Liebherr ([10-20] [%]).
- (c) On a worldwide basis (excluding China), the Merged Entity would have a combined share of supply of [40-50] [%]. The next largest suppliers would be ZPMC (the market leader absent the Merger, with a share of [30-40] [%]) and Mitsui ([10-20] [%]).

⁷⁹⁷ Small customers are defined by the Parties as customers with an annual throughput of less than 500 TEUs.

⁷⁹⁸ Parties' Response [%].

⁷⁹⁹ See Appendix B for further detail on our methodology.

Table 7: Shares of supply of RTG based on number of deliveries, 2011–20

Volume in Units

Company	Geographic area					
	UK		Europe		Worldwide (excl. China)	
	Volume	Share	Volume	Share	Volume	Share
Cargotec	[x]	[30-40] [x]%	[x]	[30-40] [x]%	[x]	[10-20] [x]%
Konecranes	[x]	[5-10] [x]%	[x]	[40-50] [x]%	[x]	[20-30] [x]%
Combined	[x]	[30-40] [x]%	[x]	[70-80] [x]%	[x]	[40-50] [x]%
ZPMC	[x]	[40-50] [x]%	[x]	[10-20] [x]%	[x]	[30-40] [x]%
Liebherr	[x]	[10-20] [x]%	[x]	[0-5] [x]%	[x]	[5-10] [x]%
Mitsui	-	-	[x]	[0-5] [x]%	[x]	[10-20] [x]%
Paceco Espana	-	-	[x]	[0-5] [x]%	[x]	[0-5] [x]%
Sany	-	-	[x]	[0-5] [x]%	[x]	[0-5] [x]%
Kuenz	-	-	[x]	[0-5] [x]%	[x]	[0-5] [x]%
Others	-	-	-	-	[x]	[0-5] [x]%
Total	[x]	100%	[x]	100%	[x]	100%

Source: Parties and competitors' sales data.

7.10 Table 8 shows the same shares of supply based on revenue rather than delivery volumes. The shares are similar to those in Table 7—the Merged Entity would have [70-80] [x]% share of supply in Europe and [40-50] [x]% worldwide (excl. China).

Table 8: Shares of supply of RTG based on revenue, 2011–20

Revenue in €m

Company	Geographic area					
	UK		Europe		Worldwide (excl. China)	
	Revenue	Share	Revenue	Share	Revenue	Share
Cargotec	[x]	[30-40] [x]%	[x]	[20-30] [x]%	[x]	[10-20] [x]%
Konecranes	[x]	[10-20] [x]%	[x]	[40-50] [x]%	[x]	[20-30] [x]%
Combined	[x]	[40-50] [x]%	[x]	[70-80] [x]%	[x]	[40-50] [x]%
ZPMC	[x]	[30-40] [x]%	[x]	[10-20] [x]%	[x]	[20-30] [x]%
Liebherr	[x]	[20-30] [x]%	[x]	[0-5] [x]%	[x]	[5-10] [x]%
Mitsui	-	-	[x]	[0-5] [x]%	[x]	[10-20] [x]%
Paceco Espana	-	-	[x]	[0-5] [x]%	[x]	[0-5] [x]%
Sany	-	-	[x]	[0-5] [x]%	[x]	[0-5] [x]%
Kuenz	-	-	[x]	[0-5] [x]%	[x]	[0-5] [x]%
Others	-	-	-	-	[x]	[5-10] [x]%
Total	[x]	100%	[x]	100%	[x]	100%

Source: Parties and competitors' sales data.

- 7.11 Overall, the shares of supply indicate that the Parties are close competitors in the supply of RTG in Europe, given that they were by far the two largest suppliers over 2011 to 2020 (with a combined share of supply of [70-80] [%]). Shares of supply in Europe suggest that, post-Merger, the remaining competitive constraints will primarily come from ZPMC, Liebherr and Mitsui-Paceco.⁸⁰⁰
- 7.12 While Cargotec has nearly identical shares of supply in the UK and Europe, we note that Konecranes has a significantly lower share in the UK than it does in Europe (where it is the market leader). We also note that Liebherr and ZPMC have significantly higher shares in the UK than in Europe, and that Mitsui has a higher share worldwide (excl. China) than it does in Europe or in the UK. Despite the variations in shares between the UK and Europe as a whole, the market is highly concentrated on both geographic bases.
- 7.13 We place limited weight on UK shares of supply in RTG for two reasons. First, even on a ten-year basis, UK sales are small and lumpy so can be heavily influenced by a small number of orders. Second, our assessment is that RTG is a European market (see Chapter 5). In the case of ZPMC, the difference between its share in the UK compared with its share in Europe seems to be largely a reflection of the volatility of shares and of large orders by one UK port in the last three years, rather than as a result of any significant difference in competitive conditions.
- 7.14 As noted above, the Parties submitted that Konecranes has had limited success in RTG in the UK, which suggests that it is a weak competitive constraint insofar as sales to UK customers are concerned. They also submitted that, to the extent that we consider that a lack of sales to customers in the UK should not be taken into account, this should be equally applied in considering the position of competitors such as Mitsui.
- 7.15 We do not agree that a lack of sales by Konecranes to UK customers during 2011 to 2020 indicates that it is a weak competitive constraint in relation to UK customers. As noted above at paragraph 7.13, we put limited weight on UK shares of supply in RTG, and the other evidence that we review below (including bidding analysis and third-party evidence) indicates that Konecranes competes closely with Cargotec for UK customers. Further, we note that Konecranes won an order for 17 RTG from Felixstowe in October

⁸⁰⁰ Mitsui and Paceco-Espana both license technology from Paceco Corporation. Since Paceco Espana went bankrupt in 2017, European customers currently have the possibility of buying Mitsui RTG but not Paceco RTG. As set out in paragraph 7.121(d), Paceco Corporation would like to restart RTG production at Paceco Momentum (successor to Paceco Espana) but no plans at the moment (Source: [redacted] call transcript [redacted]). We present historical shares separately for Mitsui and Paceco-Espana but, where appropriate, consider the overall position of both of these Paceco Corporation licensees, defining these as 'Mitsui-Paceco'.

2021, clearly demonstrating that Konecranes can compete effectively for UK customers, including against ZPMC ([REDACTED]). Konecranes also won an order for one electric RTG to [REDACTED] in 2021 (the [REDACTED] million).⁸⁰¹

- 7.16 In relation to Mitsui-Paceco, while its lack of UK sales does not preclude it from imposing a constraint on the Parties, we note that it has a very low share of supply in Europe as well. Furthermore the other evidence that we reviewed below did not support a conclusion that Mitsui-Paceco imposes a material constraint in relation to UK sales.
- 7.17 As noted above, the Parties also submitted that the long time period used by the CMA conceals more dynamic market trends. They stated that limiting the shares of supply to the period 2011 to 2020 means that ZPMC's delivery of at least 22 RTG to Felixstowe in the UK in 2010 is excluded, and that this materially tempers the CMA's contention that the Parties were 'by far' the two largest suppliers in Europe. The Parties submit that the CMA provides no credible reason for choosing 2011–20 as opposed to other periods.⁸⁰²
- 7.18 As set out in Chapter 6, we consider it appropriate to focus on shares calculated over a ten-year period, as this reduces the volatility that derives from infrequent and lumpy purchasing in RTG. We also note that 2011 to 2020 is the most recent, full ten-year period for which data was available, and that any period chosen would necessarily exclude sales from all players (and not only ZPMC) that pre- or post-date the period selected.
- 7.19 In addition to our main ten-year period for RTG shares, we have also calculated volume-based shares for RTG in five-year periods (2011–15 and 2016–20) in order to consider any trends.

⁸⁰¹ Konecranes response to the CMA's questions [REDACTED].

⁸⁰² Parties Response [REDACTED].

Table 9: Shares of supply of RTG based on number of deliveries, 2011–15 & 2016–20

Company	Geographic area						Share
	UK		Europe		Worldwide (excl. China)		
	2011–15	2016–20	2011–15	2016–20	2011–15	2016–20	
Cargotec	[10-20] [%]	[40-50] [%]	[30-40] [%]	[20-30] [%]	[10-20] [%]	[10-20] [%]	
Konecranes	[20-30] [%]	[0-5] [%]	[40-50] [%]	[40-50] [%]	[20-30] [%]	[20-30] [%]	
Combined	[30-40] [%]	[40-50] [%]	[70-80] [%]	[60-70] [%]	[30-40] [%]	[40-50] [%]	
ZPMC	[60-70] [%]	[20-30] [%]	[10-20] [%]	[10-20] [%]	[30-40] [%]	[20-30] [%]	
Liebherr	[0-5] [%]	[20-30] [%]	[0-5] [%]	[0-5] [%]	[5-10] [%]	[5-10] [%]	
Mitsui	-	-	[0-5] [%]	[0-5] [%]	[10-20] [%]	[10-20] [%]	
Paceco Espana	-	-	[0-5] [%]	[0-5] [%]	[0-5] [%]	[0-5] [%]	
Sany	-	-	[0-5] [%]	[0-5] [%]	[0-5] [%]	[0-5] [%]	
Kuenz	-	-	[0-5] [%]	[0-5] [%]	[0-5] [%]	[0-5] [%]	
Others	-	-	-	-	[5-10] [%]	[0-5] [%]	

Source: Parties and competitors' sales data.

7.20 Table 9 above shows that calculating shares on this basis does not lead to materially different results in Europe. For example, the Parties' European share goes from [%] to [%] over the two periods and ZPMC's European share goes from [%] to [%].

7.21 We note that Kuenz only entered the RTG market in 2019. In light of this, we made an additional request to Kuenz for details of all RTG sales in Europe to date. In total, Kuenz has won four tenders for a total of 10 RTG in Europe from 2019-21.^{803,804} This suggests that Kuenz may become a more material competitor than its very low 2016-20 share of supply ([0-5] [%]) would suggest. However, we note that 2019-21 is a relatively short period of time and as such is susceptible to the volatility issues mentioned at paragraph 7.18. As such, it is not clear whether Kuenz's sales record over this three-year period is indicative of its likely competitive strength going forwards. Finally, we note that each of Kuenz's wins to date was in mainland Europe; Kuenz has not won, or bid for, any UK tenders since entering.⁸⁰⁵ We discuss below a range of other evidence regarding the competitive constraint from

⁸⁰³ Kuenz won its first RTG tender in 2019 (for four units), a further tender in 2020 (for one unit) and two further tenders in 2021 (for five units in total).

⁸⁰⁴ Of the 10 units of RTG sold by Kuenz to date, only 4 had been delivered by 2020 and hence the other 6 units fall outside of the 2016-20 share of supply statistics at Table 9 above. Source: Kuenz's response to follow up questions from the CMA, response dated 17 January 2022.

⁸⁰⁵ Source: [%] response to follow up questions from the CMA, [%].

Kuenz and then assess this evidence together in the round at paragraph 7.129(c).

Quantitative bidding analysis

- 7.22 Chapter 6 provides an overview of our approach to the bidding analysis and the weight that we place on this evidence.
- 7.23 We set out below the results of our analysis of the Parties' bidding data in relation to RTG.⁸⁰⁶ This includes loss ratios and an analysis of overlapping tender participation between the Parties. This analysis has been performed using the Parties' data on their participation in RTG bidding opportunities.⁸⁰⁷

Loss ratios

- 7.24 In this section we present 'loss ratios', which are the proportion of opportunities lost to each competitor as a percentage of all opportunities that the Party participated in and lost. As discussed in Chapter 6, these are an important measure of the closeness of competition between the Parties and their competitors.
- 7.25 We calculated loss ratios on three different measures: number of opportunities lost, total number of units lost, and total value (or revenue) lost. We note that the loss ratio analysis for Europe (the UK and the EEA) relates to [REDACTED] opportunities for Cargotec and [REDACTED] opportunities for Konecranes. The CMA uses caution when interpreting these relatively small sample sizes.
- 7.26 Table 10 below shows RTG loss ratios for Cargotec in Europe from 2016 to May 2021. This indicates that Konecranes is the competitor to which Cargotec lost most often, across all measures (loss ratios of [REDACTED]%). ZPMC was the next closest competitor to Cargotec based on the number of opportunities lost. We note that each of Cargotec's losses to ZPMC was for five units or more.⁸⁰⁸ This suggests that ZPMC may be a closer competitor to Cargotec for larger tenders than for smaller tenders. Liebherr and Kuenz were the only other suppliers to which Cargotec lost tenders in Europe during the relevant period; Cargotec lost [REDACTED] tenders to each of these suppliers, which were for a small number of units.

⁸⁰⁶ Including both RTG and ARTG tenders.

⁸⁰⁷ We discuss this data further in appendix C.

⁸⁰⁸ [REDACTED].

Table 10: RTG loss ratios, Europe (European Economic Area (EEA) + UK), Cargotec, 2016 to May 2021

Company	Europe (EEA + UK)					
	Number of opportunities		Number of units		Value (revenue in €m)	
	Number	Percentage	Number	Percentage	Number	Percentage
Konecranes	[X]	[X]%	[X]	[X]%	[X]	[X]
ZPMC	[X]	[X]%	[X]	[X]%	[X]	[X]
Kuenz	[X]	[X]%	[X]	[X]%	[X]†	[X]
Liebherr	[X]	[X]%	[X]	[X]%	[X]	[X]
Total	[X]	100%	[X]	100%	[X]	100%

Source: CMA analysis of Parties' data.

Notes:

† [X]. See further appendix C.

7.27 Table 11 below shows RTG loss ratios for Konecranes in Europe from 2016 to April 2021. This indicates that Cargotec was the competitor to which Konecranes lost most frequently when competing in opportunities for RTG (loss ratios of [X]%)⁸⁰⁹. We note that each of Konecranes's losses to ZPMC was for ten units or more.⁸¹⁰ The loss ratio to ZPMC was [X]% based on the number of opportunities lost, but [X]% when based on the number of units or value lost. These are higher than the loss ratios to Cargotec based on the same measures ([X]%) and may suggest that ZPMC is a closer competitor to Konecranes for larger opportunities than for smaller opportunities. Kuenz, Liebherr and Mitsui were the other competitors to which Konecranes lost RTG opportunities in Europe during the relevant period ([X] in total). These were all opportunities involving small volumes and values.

Table 11: RTG loss ratios, Europe (EEA + UK), Konecranes, 2016 to April 2021

Company	Europe (EEA + UK)					
	Number of opportunities		Number of units		Value (revenue in €m)	
	Number	Percentage	Number	Percentage	Number	Percentage
Cargotec	[X]	[X]%	[X]	[X]%	[X]	[X]%
ZPMC	[X]	[X]%	[X]	[X]%	[X]	[X]%
Kuenz	[X]	[X]%	[X]	[X]%	[X]	[X]%
Liebherr	[X]	[X]%	[X]	[X]%	[X]	[X]%
Mitsui ⁸¹¹	[X]	[X]%	[X]	[X]%	[X]	[X]%
Total	[X]	100%	[X]	100%	[X]	100%

Source: CMA analysis of Parties' data.

⁸⁰⁹ Konecranes' losses [X].

⁸¹⁰ [X] (source: [X]).

⁸¹¹ One of the losses to [X].

7.28 The Parties submitted that the CMA's use of bidding data in RTG is selective and that the bidding data shows a wider set of competitors than the Parties. In particular, they submitted that loss ratios also show that Cargotec and Konecranes lost a material number of tenders to ZPMC, Kuenz and Liebherr in Europe.⁸¹² We do not agree that our analysis is selective. As set out above, we recognise that both Parties also lost opportunities to ZPMC, Kuenz and Liebherr in Europe, while Konecranes lost two opportunities to Mitsui.

7.29 Table 12 below shows RTG opportunities lost by Cargotec in the UK from 2016 to May 2021 and Table 13 shows similar data for Konecranes. We have not calculated loss ratios for the UK because of the very small number of opportunities. We place very limited weight on this evidence for the same reason.

Table 12: RTG lost opportunities, UK, Cargotec, 2016 to May 2021

Company	Number of opportunities	UK	
		Number of units	Value (revenue in €m)
Liebherr	[REDACTED]	[REDACTED]	[REDACTED]
ZPMC	[REDACTED]	[REDACTED]	[REDACTED]
Total	[REDACTED]	[REDACTED]	[REDACTED]

Source: CMA analysis of Parties' data.

Table 13: RTG lost opportunities, UK, Konecranes, 2016 to April 2021

Company	Number of opportunities	UK	
		Number of units	Value (revenue in €m)
Cargotec	[REDACTED]	[REDACTED]	[REDACTED]
ZPMC	[REDACTED]	[REDACTED]	[REDACTED]
Liebherr	[REDACTED]	[REDACTED]	[REDACTED]
Total	[REDACTED]	[REDACTED]	[REDACTED]

Source: CMA analysis of Parties' data.

7.30 We note that the results show that, [REDACTED]. This does not imply that Konecranes did not impose a competitive constraint on Cargotec, for two reasons. First, competition for opportunities takes place when several credible bidders submit competing bids. Konecranes bid in [REDACTED] of the [REDACTED] UK tenders that Cargotec participated in.⁸¹³ If Konecranes' presence in these tenders drove Cargotec to offer a more competitive bid, then the loss of Konecranes would be the loss of a competitive constraint. Second, as noted

⁸¹² Parties' Response [REDACTED].

⁸¹³ Based on a comparison of Cargotec and Konecranes' bidding data.

above, we give limited weight to this evidence given that the number of UK opportunities is very small. The fact that Konecranes is the competitor to which Cargotec lost most frequently in Europe suggests that Konecranes could win opportunities in the UK in future. Indeed, as noted above, Konecranes has won two RTG orders in the UK in 2021, for 18 RTG in total.

- 7.31 The Parties submitted that, if the CMA takes this position in relation to Konecranes, 'the same must then also hold true for all other competitors' ie other competitors to which Cargotec did not lose any bidding opportunities between 2016 and May 2021 should not be disregarded as potential competitive constraints. We do not agree that we have been inconsistent in our assessment of Konecranes as compared with other competitors to Cargotec. Although Cargotec also lost to Kuenz in mainland Europe, but not in the UK, during the period considered, we note that these losses to Kuenz in Europe were significantly fewer and lower in value as compared with Cargotec's losses to Konecranes in Europe. Furthermore, the other evidence considered below indicates that Kuenz imposes only a limited competitive constraint on the Parties. Similarly, while Konecranes [X] in Europe, these losses were more limited as compared to its losses to Cargotec, and other evidence considered below indicates that Mitsui imposes only a limited competitive constraint.

Analysis of overlaps

- 7.32 We performed a manual matching exercise between Cargotec and Konecranes' bidding data and assessed the extent to which the Parties were bidding for the same opportunities. Table 14 shows the results.⁸¹⁴

⁸¹⁴ We do not present results of overlaps in the UK specifically due to a small sample size of opportunities. As we only have a complete list of opportunities participated in for the Parties we are not able to perform a similar exercise for other competitors.

Table 14: Overlapping bidding participation between the Merging Parties 2016 to April 2021, Europe (EEA + UK).

Opportunities	Cargotec participated in		Opportunities	Konecranes participated in	
	Number of opportunities	Value of opportunities		Number of opportunities	Value of opportunities
Cargotec opportunities, with Konecranes participation (%)	[X] ([60-70] [X]%)	€[X] [80-90] ([X]%)	Konecranes opportunities, with Cargotec participation (%)	[X] ([X] %) [60-70%]	€[X] ([X]) [70-80%]
Cargotec opportunities, without Konecranes participation (%)	[X] ([30-40] [X]%)	€[X] ([10-20] [X]%)	Konecranes opportunities, without Cargotec participation (%)	[X] ([30-40] [X]%)	€[X] ([20-30] [X]%)
Total	[X] (100%)	€ [X] (100%)	Total	[X] (100%)	€[X] (100%)

Source: CMA analysis of Parties' data.

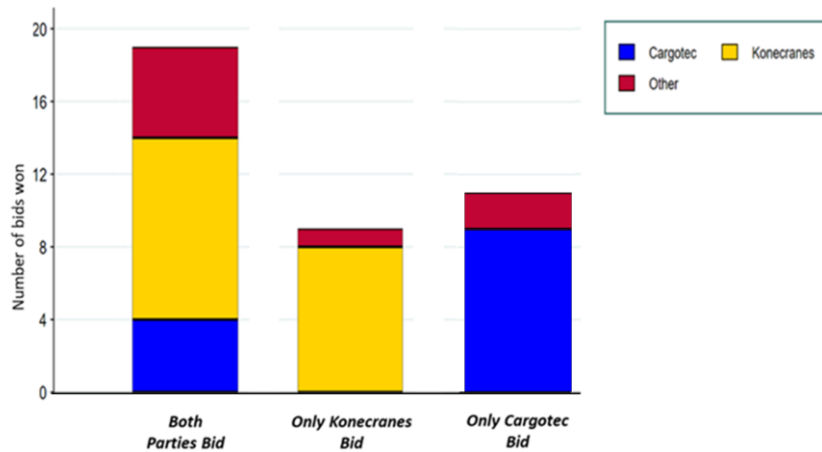
7.33 Table 14 shows that, of the opportunities that Cargotec participated in, Konecranes was a competing bidder in [60-70] [X]% (when weighted by value, this increases to [80-90] [X]%).⁸¹⁵ Similarly, for the opportunities that Konecranes participated in, Cargotec was a competing bidder in [60-70] [X]% of bids (when weighted by value, this increases to [70-80] [X]%). Again, these results are consistent with Cargotec and Konecranes being close competitors.

7.34 The Parties submitted that the CMA's overlap analysis shows that somewhere between [X]% and [X]% of tenders in which one Party participated did not involve the other Party. As stated above, we consider that the Parties competing in 60-70% of tenders in Europe is consistent with their being close competitors.

7.35 Figure 13 below shows the number of RTG opportunities that the Parties won, separated into opportunities where they faced each other and opportunities in which they did not. It shows that, in opportunities where only one Party bid, third-party bidders had limited success against the Party in question.

⁸¹⁵ The set of Konecranes opportunities with Cargotec participation excludes one cancelled tender, which accounts for a small proportion of bids when weighted by value and units. This tender has been excluded so that the total number of opportunities both parties bid on is consistent across both of the Parties' datasets.

Figure 13: [REDACTED]



[REDACTED]

Source: [REDACTED]

7.36 Overall, the quantitative bidding analysis shows that the Parties are close competitors. They compete against each other in the majority of the opportunities that they bid in and they lose a significant proportion of opportunities to each other. This analysis suggests that ZPMC represents the most significant competitive constraint on the Parties, although primarily for larger tenders. Liebherr, Kuenz and Mitsui impose weaker constraints.

Qualitative tender case studies

7.37 In addition to our quantitative bidding analysis, we have considered case studies of four recent RTG or ARTG tenders in the UK. These are:

- (a) Belfast Harbour Commissioners (BHC) tender in 2018, won by Cargotec;
- (b) HPH Felixstowe tender in 2018, won by ZPMC;
- (c) ABP Immingham tender in 2019, won by Cargotec; and
- (d) HPH Felixstowe tender in 2021, won by Konecranes.

7.38 As discussed in Chapter 6, while we interpret these case studies qualitatively, we note that they cover a significant proportion of UK RTG sales since 2011 (see paragraphs 6.51 to 6.64).

7.39 Konecranes bid in [REDACTED] of these tenders and Cargotec bid in [REDACTED] of them. These tenders cover the vast majority of the Parties' recent bidding activity in the UK (they represent [90-100] [REDACTED]⁸¹⁶ of the opportunities that Cargotec

⁸¹⁶ Calculations made using Cargotec response s.109 [REDACTED].

participated in and [90-100] [%] of the opportunities that Konecranes participated in from 2016 to May 2021 in the UK, when weighted by value).

- 7.40 In our assessment of these case studies, we considered information and views provided by the customer that ran the tender, alongside internal documents produced by the Parties:
- (a) BHC, ABP, and HPH provided data for their respective tenders. In most cases this included the ranking of each bidder that participated in UK tenders and the main tender assessment criteria. In addition, these customers were asked about the importance of various criteria in their purchasing decisions for RTG.
 - (b) We undertook a targeted internal document review in order to obtain insight into how the Parties set the terms of their offers (including prices) and how they took into account competition from other players when doing so.⁸¹⁸

BHC tender for RTG (2018)

- 7.41 BHC tendered for up to 9 electric semi-automated⁸¹⁹ RTG in 2018.⁸²⁰
- 7.42 BHC followed a tender process in line with the Utilities Contracts Regulations 2016. Before the main tender round, BHC used a prequalification round to ensure bidders were of a sufficient quality, [%].
- 7.43 Quality was the more important component of the tender and made up [%] of the award criteria, compared to [%] for price. Within quality, reliability, flexibility on delivery, and meeting technical specifications were all highly important.
- 7.44 Cargotec was the winning bidder. [%].⁸²¹
- 7.45 BHC had expected that ZPMC would participate in this tender. BHC believes that ZPMC did not bid, at least in part, because of the smaller scale of this tender compared with other tenders in which ZPMC participated.

⁸¹⁷ Calculations made using Konecranes response s.109 [%].

⁸¹⁸ The Parties were asked to identify staff with primary responsibility for signing off bids, to provide a chronology of the tender process and also to provide all internal documents produced or received to inform the bid. In response, Cargotec submitted 1,482 documents and Konecranes submitted 451 documents in relation to RTG and ASC tenders.

⁸¹⁹ BHC RTG are remotely controlled by an operator.

⁸²⁰ Response to P2 questionnaire [%].

⁸²¹ Response to P2 questionnaire & Call note [%].

- 7.46 BHC was asked how its ranking of suppliers may differ in the future. It noted that, [REDACTED].⁸²²
- 7.47 [REDACTED].⁸²³ [REDACTED].⁸²⁴ [REDACTED].
- 7.48 [REDACTED].⁸²⁵
- 7.49 [REDACTED].⁸²⁶
- 7.50 [REDACTED].⁸²⁷

HPH Felixstowe tender for RTG (2018)

- 7.51 HPH Felixstowe tendered for ten electric semi-automatic⁸²⁸ RTG in 2018. The tender also included upgrading and integrating twenty-two electric RTG. The introduction of these cranes and their integration to the terminal operating system was planned to be structured in two phases.⁸²⁹
- 7.52 This tender was run according to the standard tender procedures used [REDACTED]:
- (a) [REDACTED].
 - (b) [REDACTED].
 - (c) [REDACTED].
 - (d) [REDACTED].⁸³⁰
- 7.53 ZPMC was the winning bidder for this tender. [REDACTED].⁸³¹ [REDACTED].⁸³²
- 7.54 HPH was asked how its ranking of suppliers may differ in the future. HPH told us that it does not expect to change its process of selecting the winning bidders; it expects that the qualified supplier that offers the most competitive price will win its future tenders.⁸³³

⁸²² Response to P2 questionnaire & Call note [REDACTED].

⁸²³ Cargotec submission [REDACTED].

⁸²⁴ Cargotec submission [REDACTED].

⁸²⁵ Cargotec internal document [REDACTED].

⁸²⁶ Cargotec internal document [REDACTED].

⁸²⁷ Cargotec internal document [REDACTED].

⁸²⁸ The eRTG units utilise a remote-control system rather than operating on a fully automatic basis.

⁸²⁹ Cargotec internal document [REDACTED].

⁸³⁰ Call note [REDACTED].

⁸³¹ Cargotec submission [REDACTED].

⁸³² Call note [REDACTED].

⁸³³ Call note [REDACTED].

7.55 [REDACTED].⁸³⁴

7.56 [REDACTED],⁸³⁵ [REDACTED].

Figure 14: [REDACTED].

[REDACTED]

Source: [REDACTED]

ABP Immingham tender for RTG (2019)

7.57 In 2019, ABP tendered for the design, manufacture, delivery and commissioning of six electric RTG for the Immingham Container Terminal. ABP also tendered in separate lots for two RMG and STS, five TT, six ECH, and a further lot for five ECH.

7.58 The weight of the different evaluation criteria were the following:

(a) Essential Selection Criteria (Pass/Fail) [REDACTED]:

(i) Section A1: Eligibility – Specific Business Information

(ii) Section A2: Economic and Financial Standing

(b) Capability Selection Criteria (Pass/Fail) and Scored Criteria (Scored and Weighted):

(i) Section B: Company Policies – [REDACTED]%

(ii) Section C: Ability and Technical Capacity – [REDACTED]%.⁸³⁶

7.59 Cargotec was the winning bidder for this tender. [REDACTED].⁸³⁷ [REDACTED].⁸³⁸

7.60 ABP was asked how its ranking of suppliers may differ in the future. [REDACTED].⁸³⁹

7.61 [REDACTED].⁸⁴⁰

7.62 [REDACTED].⁸⁴¹ [REDACTED].

⁸³⁴ Cargotec submission [REDACTED].

⁸³⁵ Cargotec submission [REDACTED].

⁸³⁶ Konecranes submission [REDACTED].

⁸³⁷ Cargotec submission, [REDACTED].

⁸³⁸ Response to P2 questionnaire [REDACTED].

⁸³⁹ Response to P2 questionnaire [REDACTED].

⁸⁴⁰ Cargotec internal document [REDACTED].

⁸⁴¹ Cargotec internal document [REDACTED].

7.63 [REDACTED].⁸⁴²

HPH Felixstowe tender for RTG (2021)

7.64 HPH recently concluded a tender for 17 ARTG to the Felixstowe port. It told us [REDACTED].⁸⁴³

7.65 The Parties subsequently informed us that Konecranes was awarded this tender in October 2021. [REDACTED].⁸⁴⁴

7.66 [REDACTED].⁸⁴⁵

7.67 We note that Konecranes' success in this tender demonstrates its ability to compete in the supply of RTG in the UK, including against ZPMC. [REDACTED].

7.68 [REDACTED] suggests that some of the Parties' claims about their inability to compete against Chinese suppliers, particularly on price, may be exaggerated.

Conclusions from the case studies

7.69 Overall, the case studies are broadly consistent with the quantitative bidding analysis in suggesting that the Parties compete closely. In particular, the case studies show that the Parties regularly compete against each other (in tenders in which the total number of participants is limited) and that Cargotec perceived Konecranes as a competitive threat in at least two tenders (BHC and ABP Immingham). While Konecranes did not place in the top two in the first three case studies, it won the 2021 tender for HPH Felixstowe, which HPH had indicated [REDACTED]. Cargotec pre-qualified for this tender but subsequently chose not to bid.⁸⁴⁶

7.70 We note that the tender that ZPMC did not bid on (BHC 2018) was for a non-GTO customer and that BHC considered that the smaller scale of the tender was the reason why ZPMC did not bid.⁸⁴⁷ Liebherr was a stronger competitor in these particular tenders than its overall shares of supply suggest; [REDACTED].

⁸⁴² Cargotec internal document [REDACTED].

⁸⁴³ Call note [REDACTED].

⁸⁴⁴ Transcript of call [REDACTED].

⁸⁴⁵ [Parties' response to Issues Statement](#).

⁸⁴⁶ For the reasons set out in this paragraph, we disagree with the Parties' submission at paragraph 7.6(f).

⁸⁴⁷ Call note [REDACTED].

Third-party evidence

Customer evidence

- 7.71 We sent questionnaires to five of the Parties' customers in the UK and received responses from each of them [REDACTED].⁸⁴⁸
- 7.72 We asked these customers of the Parties to rate the importance of various criteria in their purchasing decisions for RTG (scores out of 5, where 5 is the most important).⁸⁴⁹ We summarise the four responses to this question in Table 15 below. These indicate that differences in equipment reliability, purchase price, efficiency/environmental performance and local aftersales presence were consistently seen as important criteria.

Table 15: Customer ratings of the importance of RTG purchasing criteria

Purchasing criteria	Customer rating of criteria importance			
	Customer A [REDACTED]	Customer B [REDACTED]	Customer C [REDACTED]	Customer D [REDACTED]
Differences in equipment reliability	5	5	5	5
Differences in automation/assistive features	3	3	4	4
Differences in purchase price	5	5	5	3
Differences in running costs	4	1	4	2
Differences in strength of local aftersales presence	4	4	4	4
Differences in efficiency/ environmental performance	5	5	4	2
Degree of interoperability with other equipment	3	3	5	2†
Already having installed base of equipment from a particular supplier	3	1	2	2‡

Source: P2 questionnaire responses.

† 2 at time of purchase. 5 for any future purchases.

‡ 2 at time of purchase, 5 for any future purchases.

Notes: We note that customer C [REDACTED] and customer D [REDACTED] submitted in their questionnaire responses that overall they did not feel well-informed about suppliers in the market and their strengths and weaknesses. Although [REDACTED] sent them a questionnaire in light of the relatively limited sample of recent UK customers of the Parties.

[REDACTED] explained in a virtual meeting that, as a terminal owner, its only expertise in the market came from tendering, whereas terminal operators would be more knowledgeable about the strengths and weaknesses of the suppliers ([REDACTED]). Overall we consider that the views of these customers are relevant to our investigation and we interpret these in the round with other evidence.

- 7.73 The fifth respondent [REDACTED] did not complete our phase 2 questionnaire in relation to RTG but instead referred us back to its response to our phase 1

⁸⁴⁸ See Appendix D for further detail on our methodology.

⁸⁴⁹ Question wording: *When thinking about purchasing RTG, please score the following factors according to how important they are to your choice of supplier. Please assign a score from 1-5 where 5 = very important and 1 = not important at all (more than one factor can have the same score).* The factors are listed in Table 15.

questionnaire.⁸⁵⁰ In response to a question regarding the strength of RTG suppliers,⁸⁵¹ this customer identified Cargotec as the strongest supplier of RTG, noting that it 'has most experience with Cargotec' and that it sees Cargotec as offering a 'good price/quality ratio'. It rated Konecranes as having the next strongest offer, followed by Kuenz and then Liebherr. It added that Konecranes' service and spare parts performance was 'lacking', but that otherwise Konecranes has a competitive offer (although with relatively high prices). It said that Kuenz was a relatively new and untested entrant, such that its viability as a supplier to this customer was uncertain. Finally, this customer stated that Liebherr offered good quality but was too expensive.

- 7.74 In addition to the evidence presented in the tender case studies above, some customers provided further evidence and views relevant to our assessment of competition in the supply of RTG.
- 7.75 In particular, [REDACTED] explained its recent RTG tender decisions and its views on the market:
- (a) [REDACTED].⁸⁵²
 - (b) [REDACTED].⁸⁵³
 - (c) [REDACTED].⁸⁵⁴
- 7.76 As set out in the tender case studies above, ZPMC was awarded an A-RTG tender by HPH in 2018. In relation to servicing, [REDACTED] told us that maintenance of equipment is, in the main, undertaken by [REDACTED] in-house teams. [REDACTED] has a full-time established team of engineering technicians and its engineering team is able to reengineer or change the design of existing products to make repairs.
- 7.77 Taken together, the responses of [REDACTED] suggest that the strength of constraint that ZPMC imposes on the Parties may vary according to the in-house servicing capability of the customer in question.
- 7.78 We note that evidence from customers does not seem to support the Parties' submission that 'Felixstowe has significant influence in the market, and this

⁸⁵⁰ Response to P1 questionnaire [REDACTED].

⁸⁵¹ Question wording: *Using the table below, please list: (i) your existing suppliers of Cranes for UK Terminals and (ii) all other suppliers that you consider could be a viable alternative for the supply of Cranes for UK Terminals. For each supplier, please assign a score from 1 to 5, where 5 = strongest offer and 1 = weakest offer. Please explain the reasons for your scores.*

⁸⁵² Response to P2 questionnaire [REDACTED].

⁸⁵³ Call note [REDACTED].

⁸⁵⁴ Call note [REDACTED].

will likely influence the decision of other suppliers'.⁸⁵⁵ In particular, a customer [X] told us that, while generally port operators are aware of what is happening in the industry and what port operators are doing, not all ports are the same and they can have very different operating models.⁸⁵⁶

- 7.79 We also note that a customer [X] told us that under the current tender rules, it does not have to notify Chinese suppliers, such as ZPMC, of the launch of a tender, or consider their offer.⁸⁵⁷ This is because China is not a government procurement contract country. All tenders above the statutory thresholds are publicised and ZPMC can potentially bid. It is then free to choose whether or not to consider ZPMC as a viable supplier, unlike offers from European suppliers which it is obliged to consider.⁸⁵⁸

Competitor evidence

- 7.80 We sent questionnaires to five RTG competitors of the Parties (of which one was a distributor).⁸⁵⁹ We received three substantive responses in written form or via a virtual meeting.⁸⁶⁰ In addition, two competitors provided partial responses in writing or via a virtual meeting.⁸⁶¹
- 7.81 We asked these competitors to rank the suppliers that they considered their closest competitors in the supply of RTG in the UK.⁸⁶² The responses that we received are summarised in Table 16 below.⁸⁶³

⁸⁵⁵ [Parties response to Issues Statement](#), paragraph 7.27.

⁸⁵⁶ Transcript of call [X].

⁸⁵⁷ Call note [X].

⁸⁵⁸ In this regard, we note that, according to the public tender regulatory framework (see the following paragraphs below) in Europe for contract utilities, ports do not have to consider the offer of Chinese suppliers, which can represent a competitive disadvantage (see [Utilities Contracts Regulations 2016/274, Regulation 85](#) (in place until 31 December 2021 in accordance with [Public Procurement \(Amendment Etc.\) \(EU Exit\) Regulations 2020](#)).

⁸⁵⁹ We also sent a more limited set of questions to a sixth supplier, [X]. See Appendix D for further detail on our methodology.

⁸⁶⁰ [X] provided written responses, while [X] provided a substantive response via a virtual meeting.

⁸⁶¹ [X] provided some information on its RTG activities and plans via a virtual meeting. [X], responded to our question about its main competitors in the RTG and provided some views on entry and expansion, but did not respond to most of our questions about the RTG market on the basis that, having not sold any RTG to date, or got beyond the prequalification stage in any tenders, it did not feel close enough to the market to provide useful feedback.

⁸⁶² Question wording: *Please list your main competitors in the supply of RTG to UK sites. Please rank these competitors according to how close a competitor they are to you (where 1 = closest competitor, 2 = next closest competitor, and so on).*

⁸⁶³ [X] also replied to this question.

Table 16: Competitor views on their closest competitors

Competitor	Suppliers that are considered as closest competitors in the supply of RTG
Competitor A† [REDACTED]	Konecranes Cargotec Liebherr ZPMC
Competitor B‡ [REDACTED]	Cargotec Konecranes ZPMC Sany Mitsui
Competitor C§ [REDACTED]	[REDACTED] [REDACTED] [REDACTED]
Competitor D* [REDACTED]	[REDACTED] [REDACTED] [REDACTED]

Source: P2 questionnaire responses.

Notes:

† Answers refer to non-UK markets since competitor A has not yet sold any RTG to the UK.

‡ Competitor B commented that there was little difference in the ranking of the top 3 competitors that it identified.

§ [REDACTED].

* [REDACTED].

7.82 Each of the four respondents to this question identified Cargotec and Konecranes as being among their closest competitors, with two respondents identifying the Parties as their top two competitors.

7.83 One respondent ranked ZPMC as its third closest competitor, while [REDACTED]. One respondent listed Sany and Mitsui as being among its competitors, while other competitors did not mention these players.

7.84 In our questionnaire, we also asked competitors if they expected the rankings above to differ in two years.⁸⁶⁴ Both respondents to this question indicated that, absent the Merger, they did not expect any significant changes in the rankings over the next two years.

7.85 The competitors that we heard from also provided qualitative views on the strengths, weaknesses and positioning of the different players in the market:

- (a) One competitor [REDACTED] noted that both Parties' strengths included price, sales and service network, product range, established brand, and having

⁸⁶⁴ Question wording: *To what extent do you expect the main competitors that you face and their strengths and weaknesses to change over the next two years? Please use the table below to list and rank the main competitors that you would expect to face in the supply of RTG to UK sites in two years' time.*

a market presence in manual, automatic and hybrid RTG. It identified Cargotec's standard rope system as a weakness and Konecranes' component count as a weakness.⁸⁶⁵ It said that automation is the future for RTGs and expected that Cargotec and Konecranes will be market leaders in automation, particularly in RTG.⁸⁶⁶

- (b) The same competitor [REDACTED] listed ZPMC's advantages as aggressive pricing, established brand, market presence in manual and automatic RTG and its large fleet in Felixstowe, and its weakness as perceived quality.⁸⁶⁷ It said that ZPMC is the leading supplier of RTGs on a worldwide basis, but not on a European basis.⁸⁶⁸
- (c) The same competitor [REDACTED] said that it is currently working on a remote-controlled RTG pilot project and that full automation is a strategic priority for it.⁸⁶⁹
- (d) Another competitor [REDACTED] noted that Konecranes and Cargotec offered 'standard products', that Liebherr offered 'European quality' and that ZPMC offered a 'low cost solution'.⁸⁷⁰
- (e) The same competitor [REDACTED] said that it entered in 2019⁸⁷¹ with a relatively new product that does not operate like a typical RTG and 'might take some time to take off'.⁸⁷² While it has not bid on any UK RTG tenders since entering the European market in 2019,⁸⁷³ it said it would do so in future, if it identified any tenders where [REDACTED] its offer 'can bring value added to a project'. It considered it could bring value to, and would bid for, customers / projects with a focus on total cost of ownership, rather than those focusing merely on low initial investment.⁸⁷⁴
- (f) The third competitor [REDACTED].⁸⁷⁵ [REDACTED].⁸⁷⁶ [REDACTED].⁸⁷⁷
- (g) The fourth competitor [REDACTED] said that, following the bankruptcy of Paceco Espana in 2017, Paceco Corp was currently offering Mitsui RTG in Europe, but not Paceco RTG. It said it had not recently participated in

⁸⁶⁵ Response to P2 questionnaire [REDACTED].

⁸⁶⁶ Call note [REDACTED].

⁸⁶⁷ Response to P2 questionnaire [REDACTED].

⁸⁶⁸ Call note [REDACTED].

⁸⁶⁹ Call note [REDACTED].

⁸⁷⁰ Response to P2 questionnaire [REDACTED].

⁸⁷¹ [REDACTED]. Call note [REDACTED].

⁸⁷² Call note [REDACTED].

⁸⁷³ [REDACTED]. Response to P2 follow-up questions [REDACTED].

⁸⁷⁴ Response to P2 follow-up questions [REDACTED].

⁸⁷⁵ Call note [REDACTED].

⁸⁷⁶ Transcript of call [REDACTED].

⁸⁷⁷ Transcript of call [REDACTED].

any UK RTG tenders, mainly due to the costs of shipping from the Mitsui site in Japan to the UK. It considered that it may be competitive for larger orders (6 units or more), but that it would still be less competitive than ZPMC, which has its own vessels. When asked why it had not participated in UK tenders recently, it said that it takes ‘time and energy and resources to put together a bid package ... but chances are we are not going to win so why do we put our efforts into that’.⁸⁷⁸

(h) The fifth competitor [REDACTED] said that Cargotec’s strengths were that it had a strong brand and was a ‘safe’ option, while Konecranes had an excellent product. On the other hand, it suggested that distribution was a relative weakness for both of the Parties, and that Konecranes was expensive. It said that Liebherr’s strengths were that it was locally built with low shipping costs, and its brand and customer references, and that it had few weaknesses.⁸⁷⁹

7.86 [REDACTED]. For example, a customer [REDACTED] that purchased RTG in the UK said that it believed that ZPMC did not bid because the order was for a small number of RTG.⁸⁸⁰ [REDACTED], as discussed at paragraph 7.190 below, [REDACTED] (which has bought STS cranes and ASC from ZPMC),⁸⁸¹ felt that the large order size was one of the main reasons why ZPMC may have tendered for, [REDACTED], the tender. It also said that ‘Chinese suppliers do not typically submit bids for smaller tenders’.⁸⁸²

7.87 Kuenz’s submissions at paragraph 7.85(d) suggest that it may be a close competitor to the Parties in respect of some customers but not others. In particular, Kuenz may not compete closely with the Parties for customers whose purchasing criteria place a high weight on purchase price, such as HPH. Consistent with this, our case studies show that Kuenz did not submit a bid for HPH’s Felixstowe tender in 2021,⁸⁸³ nor did it bid for ABP’s Immingham tender in 2019 (see paragraphs 7.57 and 7.64 above).

⁸⁷⁸ Transcript of call [REDACTED].

⁸⁷⁹ Response to P2 questionnaire [REDACTED]. We note that this respondent [REDACTED] also noted that it had not sold any RTG to date, or got beyond the prequalification stage in any tenders, and did not feel close to the market.

⁸⁸⁰ Call note [REDACTED].

⁸⁸¹ We also note that the partnership between ZPMC and APM refers to both STS and gantry cranes.

⁸⁸² Call note [REDACTED].

⁸⁸³ HPH told the CMA that tender awards are based on lowest tendered price, provided tenderers are able to comply with the specification. Source: Call note [REDACTED].

Merger impact

- 7.88 We asked third parties for their views on the impact of the Merger on the supply of RTG.⁸⁸⁴
- 7.89 Of four questionnaire responses from UK customers, two [REDACTED] thought that the Merger would have a negative impact overall, while two [REDACTED] thought that the impact would be neutral. In particular:
- (a) One customer [REDACTED] told us that the Merger would see the removal of competing brands of RTG equipment in an already narrow market which would remove competitive tension and see costs rise. It added that ‘the lack of competition would also remove the pressure to continually improve the RTG product’.⁸⁸⁵
 - (b) Another customer [REDACTED] said that the Merger would lead to ‘reduced competition in an already small market place’ for the supply of RTG.⁸⁸⁶
 - (c) A third customer [REDACTED] told us that the outcome of the Merger is uncertain but that the Merger would not be bad for its business, as long as the current products continue to be supported and that any additional RTG it might purchase in the future from the merged company would be compatible with the installed base. It also said that this response presumes that the Merged Entity will consider the size of order typically placed by regional ports to still be attractive.⁸⁸⁷
 - (d) A fourth customer [REDACTED] told us that there is always the potential for there to be an increase in prices as the number of suppliers in a market decreases. However, this customer said it was comfortable that this risk would be mitigated by its competitive tendering processes. It noted that it always gets sufficient responses to tenders to ensure competitive bidding.⁸⁸⁸
- 7.90 In addition, five of the CHE customers⁸⁸⁹ in mainland Europe that we spoke to in our remedy response hearings expressed general views on the

⁸⁸⁴ Question wording in customer questionnaire: *Cargotec and Konecranes are proposing to merge. What positive impacts (if any) would you expect the merger to have in relation to RTG? What negative impacts (if any) would you expect the merger to have in relation to RTG? Overall, would you expect the merger of Cargotec and Konecranes to have a good, bad or neutral impact on your business? Why do you think that?* The CMA asked this question to customers that had purchased RTG in the last ten years. Question wording in competitor questionnaire: *Cargotec and Konecranes are proposing to merge. Do you expect the merger to impact competition for the supply of RTG in relation to UK customers? If ‘yes’, please describe the impact(s) on competition that you would expect as a result of the merger and explain your reasoning.*

⁸⁸⁵ Response to P2 questionnaire [REDACTED].

⁸⁸⁶ Response to P2 questionnaire [REDACTED].

⁸⁸⁷ Response to P2 questionnaire [REDACTED].

⁸⁸⁸ Response to P2 questionnaire [REDACTED].

⁸⁸⁹ List of customers [REDACTED].

competitive effects of the Merger (not specifically about the effect of the Merger on competition in the supply of RTG or ASC in Europe).⁸⁹⁰ Overall, these views were mixed:

- (a) One customer [X] told us that the Parties are two of the main players in the port sector and that the Merger would reduce competition; this customer said that it would lose one of its main options. The customer noted that the Parties' merging of knowledge could lead to better technical solutions, but that the loss of competition would make procurement more difficult;
- (b) A second customer [X] told us that the Parties are direct competitors in relation to the quality of their products. The main focus of this customer has been on the effect of the Merger on aftersales service. It has some concerns in this regard, as it requires short response times for maintenance, repair and servicing and the Parties have distinguished themselves from other competitors in the after-sales support they can provide given their coverage in certain countries;
- (c) A third customer [X] told us that it does not, generally, oppose the Merger. It said that it has concerns that the Merger will weaken competition from a UK or European perspective, but that from a global perspective it will strengthen competition by allowing a Western company to 'stand up' against the Chinese companies;
- (d) A fourth customer [X] told us that there would still be sufficient choice in the market post-Merger. Although the Merger would combine two European companies, the customer said that the market is global and the Chinese companies are strong;
- (e) A fifth customer [X] told us that the Merger would not raise any significant competition concerns because it would have alternative viable solutions available.

⁸⁹⁰ In their response to the Consultation Paper issued by the CMA on 15 of March, which included the above evidence, the Parties submitted that 'The customer feedback on the merger's competitive effects is in fact overwhelmingly *positive* about the Proposed Transaction, despite being described as 'mixed' by the CMA' (paragraph 3.36). We note that we are not approaching third-party views from a purely quantitative perspective. We also note that three customers expressed some level of concern with the effects of the Merger in Europe and noted that the Parties either that the Parties are close competitors or the two main players in the port industry. Furthermore, the evidence of these five customers must be read alongside with evidence from other third parties and other sources of evidence (eg internal documents and tender data analysis).

7.91 Of three responses from competitors, two [X] thought that the Merger would have a negative impact on competition in the supply of RTG, while one [X] thought that the impact would be neutral.⁸⁹¹

(a) One competitor [X] told us that, based on the ‘strong position of Cargotec and Konecranes for RTG in Europe’, it expects the Merger to result in ‘less choice for European customers, including UK customers’, which will mean that these customers are ‘negatively affected as a result of the Merger’.⁸⁹²

(b) Another competitor [X] submitted that there is ‘already a very limited number of competitors’ and that the Merged Entity would have a ‘dominant position on both manual and automatic RTG’.⁸⁹³

(c) The competitor that had a neutral view [X] said that ‘it did not expect much change in its markets’.⁸⁹⁴

Conclusion regarding third-party evidence

7.92 Overall, the evidence from third parties consistently shows that the Parties are close competitors and that ZPMC and Liebherr are their main third-party competitors.

7.93 Third-party evidence does not indicate that Kuenz (or any suppliers other than ZPMC and Liebherr) is a significant competitor to the Parties in relation to UK customers. While we heard from a relatively small number of customers, one of which last bought RTG before Kuenz entered the market, we note that none of these mentioned Kuenz as a supplier that they would consider when they next tendered for RTG. In addition, the RTG competitors that we heard from did not list Kuenz as being among their closest competitors. This may reflect Kuenz’s strategy of targeting only certain customers and projects (all of which have been in mainland Europe to date) that do not place a high weight on purchase price, as well as Kuenz’s status as a relatively recent entrant.

7.94 Third-party evidence, [X], indicates that ZPMC in Europe (including the UK) is a stronger competitor for larger volume tenders (where it competes strongly on price), and for non-standard/more complex products, than for smaller volume tenders. We note the Parties’ submission that ZPMC recently

⁸⁹¹ We also received a response from [X] on this question. It said that the merger would impact competition for the supply of RTG for UK customers, but did not indicate whether it thought the impact would be positive or negative.

⁸⁹² Call note [X].

⁸⁹³ Response to P2 questionnaire [X].

⁸⁹⁴ Response to P2 questionnaire [X].

won a delivery for 5 RTG to the Port of Piraeus in Greece. We consider that this may reflect that this was seen as a strategically important purchase by a GTO.⁸⁹⁵ In any event, the fact that ZPMC has won some lower volume RTG orders does not exclude that it is overall a less strong competitor for smaller tenders.

- 7.95 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

- 7.96 The Parties submitted around 3,000 documents directly to the CMA in relation to the competitive positioning and performance of the Parties and their competitors in the UK or Europe. We also included in our assessment a significant number of further documents on the same topic submitted by the Parties to the European Commission and which the Parties shared with the CMA.
- 7.97 In our assessment of the internal documents, we placed more weight on recent documents that refer specifically to the competitive situation in Europe and/or the UK and that were created before the Merger was in contemplation (our approach to these documents is explained in more detail in Chapter 6).⁸⁹⁶
- 7.98 Of the significant number of documents submitted by the Parties, only a small portion provide insight into competitive conditions in Gantry Cranes, for example because many of the documents were general industry reports or reports that simply record sales achieved by each supplier. Of that small subset of relevant documents, many related to port cranes or the impact of automation on the Parties' port business in general, while only a few documents refer specifically to RTG or ARTG.

⁸⁹⁵ The port is owned by COSCO. See <https://www.porttechnology.org/news/piraeus-becomes-top-mediterranean-port/>.

⁸⁹⁶ As explained in Chapter 6, in attributing probative value to specific internal documents, we have taken into account the timing, purpose and context in which they were prepared. As a general principle, we consider that internal documents prepared in the ordinary course of business, for example before the Merger was in contemplation are likely to have higher probative value than internal documents prepared once the Merger was in contemplation of the Merger. This is consistent with paragraph 2.29(a) of [CMA129](#). Consequently, while we have considered their relevance to our assessment, we have treated internal documents prepared since the Merger was in contemplation with a degree of caution. In particular, we are more likely to assign weight to evidence contained in such documents where it is corroborated by other evidence.

7.99 We also note that the large majority of documents that were relevant to an assessment of competition in the supply of RTG and ASC assess the market either globally or on a Europe-wide basis.

7.100 Below, we first review documents that are mainly relevant to closeness of competition between the Parties. We then assess documents that relate to the constraints posed by other suppliers and the relative importance of purchasing criteria. Finally, we discuss documents that provide insight into the Parties' views on how competition will develop in future.

Closeness of competition between the Parties

7.101 The documents reviewed indicate that Cargotec and Konecranes perceive each other as strong competitors and take active steps to compete with one another. In particular, the documents summarised below show that each of the Parties closely monitor each other, produce strategy documents which focus specifically on beating each other, and produce assessments of their comparative strengths against each other. Internal documents set out in Chapter 6 show that the Parties have a strong offering overall, including in terms of quality and automation, and consider each other as leaders in the supply of RTG.

7.102 We set out below a relevant sample of Cargotec's internal documents that show that it competes closely with Konecranes, as explained above:

(a) A Cargotec internal document [REDACTED]⁸⁹⁷ states that '[REDACTED].'

(b) [REDACTED] and we did not see any similar documents that focused on a strategy to 'beat' ZPMC.⁸⁹⁸

(c) Another Cargotec internal document [REDACTED].⁸⁹⁹

(d) A Cargotec internal document [REDACTED].⁹⁰⁰ [REDACTED].

(e) [REDACTED] '[REDACTED]'.⁹⁰¹

7.103 We set out below a relevant sample of Konecranes' documents that show that it competes closely with Cargotec and has a strong offering:

⁸⁹⁷ Cargotec internal document [REDACTED].

⁸⁹⁸ Cargotec internal document [REDACTED].

⁸⁹⁹ Cargotec internal document [REDACTED].

⁹⁰⁰ Cargotec internal document [REDACTED].

⁹⁰¹ Cargotec internal document [REDACTED].

(a) [REDACTED].⁹⁰²

(b) [REDACTED].⁹⁰³ [REDACTED].

Figure 15: [REDACTED]

[REDACTED]

Source: [REDACTED].

(c) A presentation prepared by Konecranes [REDACTED]. It notes that '[REDACTED].'⁹⁰⁴

Other competitive constraints

7.104 The Parties' internal documents indicate that their main third-party competitor in this market is ZPMC, followed by Liebherr. The documents refer to Kuenz, Mitsui, and Sany as being present in the market at a global level, but they appear to be less significant competitors. It appears to us that Konecranes, ZPMC and Liebherr are the OEMs mentioned most often in relation to RTG in Europe.

7.105 Over a number of years, Cargotec produced competitor rankings which set out the perceived largest competitors to its operations. These documents indicate that, over time, Cargotec has faced its strongest competition from Konecranes and ZPMC. These rankings illustrate that, despite ZPMC's presence in the market over a number of years, it has not 'displaced' Konecranes as one of Cargotec's main competitors. The documents below also indicate that both Cargotec and Konecranes [REDACTED].

7.106 A Konecranes internal document suggests that [REDACTED].

7.107 Below we summarise some of the internal documents produced by Cargotec that relate to constraints it faces, in particular from ZPMC, Liebherr and Mitsui, at a global level:

(a) [REDACTED].⁹⁰⁵ This document notes that '[REDACTED]'.

(b) [REDACTED].⁹⁰⁶

(c) [REDACTED].⁹⁰⁷

⁹⁰² Konecranes internal document [REDACTED].

⁹⁰³ Konecranes internal document [REDACTED].

⁹⁰⁴ Konecranes internal document [REDACTED].

⁹⁰⁵ Cargotec internal document [REDACTED].

⁹⁰⁶ Cargotec internal document [REDACTED].

⁹⁰⁷ Cargotec internal document [REDACTED].

(d) [REDACTED]⁹⁰⁸ [REDACTED].⁹⁰⁹ [REDACTED]⁹¹⁰ [REDACTED].⁹¹¹ Within the document, [REDACTED].

(e) [REDACTED].⁹¹²

(f) In the Cargotec internal document [REDACTED]. No further commentary is provided in this document about these tenders. We note that [REDACTED].⁹¹³

(g) A Cargotec internal briefing, [REDACTED].⁹¹⁴ [REDACTED].

7.108 Konecranes' documents suggest that Konecranes considers Cargotec, ZPMC and, to some extent, Liebherr, as its main competitors. These documents also show that Konecranes considers itself to be a strong player in the market that is able to rise to the challenges presented by other players, including ZPMC.

(a) [REDACTED].⁹¹⁵

(b) Another Konecranes' document [REDACTED][REDACTED].⁹¹⁶

(c) A Konecranes internal document [REDACTED].⁹¹⁷ This comparison is repeated in other strategic documents in 2019 (for example, the [REDACTED].⁹¹⁸

(d) [REDACTED], it notes that:

(i) '[REDACTED]';

(ii) '[REDACTED]';

(iii) '[REDACTED]';

(iv) [REDACTED].⁹¹⁹

[REDACTED]:

⁹⁰⁸ Cargotec internal document [REDACTED].

⁹⁰⁹ Cargotec internal document [REDACTED]. See identical analysis, in the [REDACTED].

⁹¹⁰ Cargotec internal document [REDACTED].

⁹¹¹ Cargotec noted these market review documents are only prepared on relevant activities of a selection of main competitors over the prior 3 months and are not reflective of Cargotec's own analytical assessment of the competitors. We note, however, that these reports are prepared for Cargotec's senior team and are indicative of the suppliers that Cargotec consider to be its main competitors. With some differences in ranking, there is consistency on the competitors identified in these reports.

⁹¹² Cargotec internal document See for example, [REDACTED].

⁹¹³ Konecranes internal document [REDACTED].

⁹¹⁴ Cargotec internal document [REDACTED].

⁹¹⁵ Konecranes internal document [REDACTED].

⁹¹⁶ Konecranes internal document [REDACTED].

⁹¹⁷ Konecranes internal document [REDACTED].

⁹¹⁸ Konecranes internal document [REDACTED].

⁹¹⁹ Konecranes internal document [REDACTED].

Figure 16: [REDACTED]

[REDACTED]

Source: [REDACTED].

7.109 [REDACTED].

- (a) [REDACTED].⁹²⁰
- (b) The presentation [REDACTED].⁹²¹ [REDACTED].
- (c) A series of Konecranes' internal [REDACTED].⁹²² In another document, Konecranes [REDACTED].⁹²³
- (d) [REDACTED]. This document also explains that:
 - (i) '[REDACTED]';
 - (ii) [REDACTED];
 - (iii) [REDACTED].⁹²⁴
- (e) The [REDACTED] document discussed above also states [REDACTED].⁹²⁵

Purchasing criteria

7.110 We have also reviewed internal documents about the main relevant purchasing criteria for RTG:

- (a) Cargotec's [REDACTED], states that [REDACTED]. This indicates that there are many factors other than price that influence customers' purchasing decisions. [REDACTED].⁹²⁶
- (b) In 2018, in its final briefing [REDACTED].⁹²⁷
- (c) [REDACTED] – Konecranes lists as the main focus of customers [REDACTED]. Given the strengths of Konecranes in RTG identified in this document (ie Konecranes' '[REDACTED]') and the technology roadmap set out in this document, including in relation to [REDACTED].

⁹²⁰ Konecranes internal document [REDACTED].

⁹²¹ Konecranes internal document [REDACTED].

⁹²² Konecranes internal document [REDACTED].

⁹²³ Konecranes internal document [REDACTED].

⁹²⁴ Konecranes internal document [REDACTED].

⁹²⁵ Konecranes internal document [REDACTED].

⁹²⁶ Cargotec internal document [REDACTED].

⁹²⁷ Cargotec internal document [REDACTED].

7.111 These internal documents show that price is only one of several important purchasing criteria, with the Parties continuing to be competitive across a number of criteria.

The development of competition in the foreseeable future

7.112 Both Parties anticipate that automation will be an important part of competition in RTG in the future, with Konecranes describing automation as an ‘important megatrend’.⁹²⁸ There is an expectation, common to both Parties, that automation will create market opportunities, with Konecranes expecting that [REDACTED]⁹²⁹ and Cargotec anticipating that the [REDACTED].⁹³⁰ The Parties’ internal documents indicate that both of the Parties have strong automated offerings in RTG and have well-developed plans to expand their shares in this area. These expansion plans strongly suggest that the Parties perceive that they will remain competitive within the market for the foreseeable future.

7.113 We summarise below some of Cargotec’s internal documents that relate to automation of RTG:

(a) [REDACTED].⁹³¹

(b) In internal emails, ‘[REDACTED]’.⁹³²

(c) [REDACTED].⁹³³

(d) [REDACTED].⁹³⁴ [REDACTED].

(e) [REDACTED].⁹³⁵

7.114 We summarise below some of Konecranes’ internal documents that relate to automation of RTG:

(a) In a 2019 presentation entitled ‘Konecranes RTG: Automation-ready with active load control’, Konecranes asserts that its automation-ready’ RTG already has ‘[REDACTED] than conventional RTG’ and has ‘built-in readiness for automation, so that a terminal can move towards automation at its own

⁹²⁸ Konecranes internal document [REDACTED].

⁹²⁹ Konecranes internal document [REDACTED].

⁹³⁰ Cargotec internal document Cargotec expects [REDACTED].

⁹³¹ Cargotec internal document [REDACTED].

⁹³² Email produced by Konecranes, [REDACTED].

⁹³³ Cargotec internal document [REDACTED].

⁹³⁴ Cargotec internal document [REDACTED].

⁹³⁵ Cargotec internal document [REDACTED].

pace.⁹³⁶ This presentation was followed by another to the Konecranes Board of Directors which [REDACTED].⁹³⁷

- (b) In the 2020 presentation by Konecranes, 'Port Solutions Sales – Let's grow!!', it notes that [REDACTED]% of all the world's automated container terminals run with Konecranes, indicating significant market penetration by the company. A diagram shows that Konecranes established ARTG in Europe with ports in [REDACTED], and [REDACTED].⁹³⁸
- (c) In the same '[REDACTED]' discussed above, Konecranes discusses its '[REDACTED]strategic focus areas' for 2020, one of which is '[REDACTED]'. Konecranes lists: '[REDACTED]'.⁹³⁹

7.115 Although both Parties discuss developments and successful deliveries by ZPMC in relation to automated equipment, they also note various issues with its offering. In particular, Cargotec notes that [REDACTED].⁹⁴⁰ It appears from the internal documents that a crucial part of automation is the Terminal Operating System. As set out in Chapter 6, both Parties have established and effective equipment control systems. In fact, in Cargotec's '[REDACTED]'.⁹⁴¹ We consider that these documents indicate that the Parties are particularly competitive in relation to automation.

Entry and expansion of other alternative suppliers of RTG

7.116 In the sections above we considered the competitive constraints currently imposed by existing suppliers of RTG in Europe. As set out in our guidance, our assessment is generally forward-looking and will seek to account for the future evolution of competitive conditions, including constraints from rival entry or expansion.⁹⁴²

7.117 The CMA will seek to ensure that the evidence is robust when confronted with claims of entry or expansion being timely, likely and sufficient to prevent an SLC from arising. It is likely to place greater weight on detailed consideration of entry or expansion and previous experience of entry and expansion (including how frequent and recent it has been).⁹⁴³

⁹³⁶ Konecranes internal document [REDACTED].

⁹³⁷ Konecranes internal document [REDACTED].

⁹³⁸ Konecranes internal document [REDACTED].

⁹³⁹ Konecranes internal document [REDACTED].

⁹⁴⁰ Cargotec internal document [REDACTED].

⁹⁴¹ Cargotec [REDACTED].

⁹⁴² CMA129, paragraph 4.16.

⁹⁴³ CMA129, paragraph 8.30.

7.118 In this section, we consider the possible constraint on the Merged Entity arising from entry or expansion which would have occurred irrespective of the Merger.⁹⁴⁴ We considered whether the main potential sources of entry identified by the Parties have the necessary capabilities and intention to enter at scale or substantially expand their operations in relation to the supply of RTG in Europe. In our assessment of the likelihood of timely and sufficient entry, we have taken into account the conclusions on barriers to entry and expansion considered in the Chapter 12.

Parties' views

7.119 The Parties told us that 'new competitors have entered or innovated within the gantry crane product area in recent years. For example, Kuenz and Baltkran have entered the RTG segment in recent years.'⁹⁴⁵

7.120 In particular, the Parties submitted that:

- (a) 'ZPMC is expected to complete two major orders in 2021, delivering 22 [RTG] to Shanghai Yidong (China), plus 21 [RTG] under a contract with SCPA in Charleston (US).
- (b) Baltkran 'Launched its own [RTG] in 2019'.
- (c) In 2018, Kuenz 'launched an innovative RTG, styled the "Freerider" RTG, which features a unique, aerodynamic single girder and a new hoist system' 'and that [Kuenz] recently announced an order for six [RTG] for Norfolk Southern Railroad in the U.S. as well as another order to supply its "Freerider" [automated RTG] solution for the new East West Gate intermodal terminal in Hungary'.
- (d) Mitsui 'has emerged as a major force, and not just in its domestic Japanese market. In particular, 97 out of 151 of Mitsui's deliveries in 2020 were spread around the globe including to repeat customers in Malaysia, the US, Turkey and Ecuador'. The Parties also noted that '[REDACTED]'.⁹⁴⁶ They further submitted that 'Mitsui-Paceco has participated in bids for STS cranes and A-RTGs for two Yilport sites in Portugal and one in Sweden, where Mitsui-Paceco was ultimately awarded the STS cranes contract (which, as the Parties have explained in prior

⁹⁴⁴ CMA129, paragraph 4.16.

⁹⁴⁵ Merger Notice, [REDACTED].

⁹⁴⁶ Merger Notice, [REDACTED].

submissions, is often used as a stepping stone into other cranes segments).^{947,948}

Assessment of the evidence on specific entry or expansion

7.121 We investigated whether any third parties have the necessary capabilities and specific intention to enter or to substantially expand their operations in relation to RTG, in Europe (including the UK), in the near future:

- (a) A competitor [REDACTED].⁹⁴⁹ [REDACTED].⁹⁵⁰ [REDACTED].⁹⁵¹ [REDACTED].⁹⁵² [REDACTED].⁹⁵³
- (b) Another competitor [REDACTED] told us that it is working on a remote-controlled RTG pilot project and that automation is a priority.⁹⁵⁴ When asked about RTG expansion plans, it said that no UK specific plans were available.⁹⁵⁵
- (c) As set out at paragraph 7.85(d), a third competitor [REDACTED] told us that, while it has not bid on any UK RTG tenders since entering the European market in 2019, it would do so in future if it identified suitable opportunities.⁹⁵⁶ When asked to submit any available sales forecasts for RTG in the UK and supporting business plan documents, it responded that this was not applicable.⁹⁵⁷
- (d) Another competitor [REDACTED] said that, whereas its Mitsui site in Japan can produce 80 RTG per annum, its ‘plan or thinking’ was to adopt a hybrid approach for supplying Europe, with designs coming from Mitsui Japan, and crane structures being manufactured in Spain. [REDACTED],⁹⁵⁸ [REDACTED]. It said that supplying Spanish customers is its priority in Europe, and that ‘next year, or the year after that’ it should be able to get back into a position where it can offer bids in areas other than Spain.⁹⁵⁹
- (e) Another competitor [REDACTED] did not have detailed expansion plans.⁹⁶⁰
- (f) A distributor [REDACTED] told us that its intention is to ‘chip away’ at its competitor’s positions in markets including RTG and grow its business

⁹⁴⁷ Parties’ response to the Provisional Findings Report, paragraph 6.13.

⁹⁴⁸ Cargotec submission [REDACTED].

⁹⁴⁹ Call note [REDACTED].

⁹⁵⁰ Call note [REDACTED].

⁹⁵¹ Call note [REDACTED].

⁹⁵² Call note [REDACTED].

⁹⁵³ Response to P2 questionnaire [REDACTED].

⁹⁵⁴ Call note [REDACTED].

⁹⁵⁵ Response to P2 questionnaire [REDACTED].

⁹⁵⁶ Follow-up response [REDACTED].

⁹⁵⁷ Follow-up response [REDACTED].

⁹⁵⁸ Our understanding is that this is [REDACTED] total ambition for RTG and STS combined.

⁹⁵⁹ Transcript of call [REDACTED].

⁹⁶⁰ Response to P2 questionnaire [REDACTED].

slowly.⁹⁶¹ It noted that the RTG market is ‘difficult to break into’, that it had not been able to get past pre-qualification stage in any tenders, and as such had had ‘zero success to date’. When asked, [X] did not submit any business plans relating to expansion in these markets.⁹⁶²

- 7.122 Each of the players above [X] are, to different degrees, already active in the relevant market. Several of these players have an ambition to expand and intend to pursue business opportunities in the normal course of business. However, we have not seen any evidence to suggest that there will be a material change in the level of competitive constraint posed by these (or any other) competitors in the near future, nor have we seen any evidence that any entry or expansion would be sufficient in scope and magnitude, individually or jointly, to sufficiently constraint the merged entity to offset the loss of competition from the Merger.
- 7.123 Further, we note that no entry on a significant scale has occurred recently in Europe in RTG, after ZPMC’s entry more than ten years ago, although [X] has sold 10 units since entering in 2019. In Chapter 12, we consider whether barriers to entry and expansion are significant in RTG, and assess the likelihood of entry or expansion in response to the effects of the merger.

Our conclusion on the effect of the Merger on the supply of RTG

- 7.124 The Parties compete closely in the supply of RTG, with both having a strong offering (including on automation) and a proven track-record (see Chapter 6). 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) will remain in the market after the Merger.⁹⁶³ Other suppliers [X] do not impose a material constraint.
- 7.125 Further, the positioning of the remaining competitors means that some customers may have even fewer than three competitive offers after the Merger: while ZPMC is a strong competitor for larger volume RTG tenders (where it competes strongly on price), 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

⁹⁶¹ Response to P2 questionnaire [X].

⁹⁶² Response to P2 questionnaire [X].

⁹⁶³ We note that, although each merger is considered on its merits, one of the scenarios described in the CMA’s guidance, in which the CMA may be more likely to find an SLC, refers to a merger involving ‘the market leader and [where] the number of significant competitors is reduced from four to three’ (CMA129, paragraph 2.18). Based on the evidence that we have reviewed, we consider that the Merger involves the market leader in RTG (Konecranes); that there are fewer than four significant competitors in the market pre-Merger; and that a significant competitor would be removed by the Merger.

expected to result in a SLC in the supply of RTG in Europe (including the UK).

7.126 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 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 the UK in 2021 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.

7.127 In addition, as noted at paragraph 6.153, the Parties are likely to compete particularly closely for some customers as a result of their wide CHE portfolios (including MEQ, shuttle and straddle carriers, and port cranes), which enable them to offer an integrated, automated and comprehensive solution to ports. These capabilities are likely to become increasingly significant in future as the extent of automation and digitalisation within CHE develops further. By contrast, most of the Parties' RTG competitors do not offer similarly broad and integrated ranges of CHE, and so they are likely to compete less closely with the Parties for some customers in this regard.

7.128 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] [REDACTED]% by revenue, [10-20] [REDACTED]% 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] [REDACTED]% by both volume and value over 2011-20). Its share in the UK is higher (around [20-30] [REDACTED]% over 2011-20) although this derives from sales to two customers only.⁹⁶⁴ 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 offer 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.⁹⁶⁵ Sany was [REDACTED] and was mentioned in some of the Parties' internal documents (mainly at global level) and by some third parties, but, overall, the evidence does

⁹⁶⁴ [REDACTED].

⁹⁶⁵ We saw [REDACTED] in the Parties' bidding data for 2016-21 (this data records 'bidders faced' in relation to some tenders but not others). [REDACTED].

not indicate that Sany imposes a material constraint in relation to UK customers.

7.129 The evidence that we reviewed in relation to entry and expansion does not suggest 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

7.130 As mentioned above in paragraphs 7.1 and 7.2, in order to assess the likelihood of the Merger resulting in unilateral effects in the supply of ASC, we have considered closeness of competition between the Parties and the (present and future) competitive constraints provided by competing suppliers. We then considered whether there are any possible constraints on the Merged Entity arising from entry or expansion that would have occurred irrespective of the Merger.

7.131 We have gathered, and taken account of, a range of evidence in our assessment, in particular the type of evidence listed in paragraph 7.3.

Closeness of competition between the Parties and competitive constraints from alternative suppliers

Parties' views

7.132 The Parties submitted that the Merger does not raise competition concerns in the supply of ASC, mainly because the Merged Entity will continue to face several competitors, including ZPMC and Kuenz.⁹⁶⁶ The Parties submitted that, in relation to Europe, the bidding data clearly identifies Kuenz to be the most successful competitor in ASC. The Parties stated that four out of the five tenders that Kuenz has won were in Europe and that it has delivered a number of ASC.⁹⁶⁷

7.133 In relation to the UK, the Parties noted the following.

- (a) Whilst Cargotec has had some historical wins in ASC tenders, Konecranes [redacted] for ASC within the UK.⁹⁶⁸

⁹⁶⁶ Parties' response to Issues Statement, p 21.

⁹⁶⁷ Parties' response to Issues Statement, paragraph 6.30.

⁹⁶⁸ The Parties' submission applies specifically to the UK. Konecranes has won tenders in Europe.

- (b) ZPMC has participated in all tenders for ASC, it won the tender for Liverpool2 (Peel Ports) and was also recently directly awarded a contract for the supply of two ASC by Salford Rail Port.
- (c) Kuenz is a significant supplier in Europe and participated in the 2011 tender for London Gateway (DP World) alongside Cargotec and Konecranes and the Parties expect it to be a bidder in the ongoing tender at London Gateway.
- (d) There are other competitors that are well-placed to supply UK customers, including Sany, HHMC (owned by CSSC) and Liebherr, all of which have participated in ASC tenders or have delivered ASC worldwide.⁹⁶⁹

7.134 The Parties also submitted that the supply of ASC occurs through highly competitive tendering, which is expected to result in competitive outcomes even with only a few bidders.

7.135 In response to the working paper on horizontal unilateral effects in the supply of RTG and ASC and our Provisional Findings, the Parties made a number of submissions in relation to ASC.

- (a) The Parties submitted that shares of supply alone do not denote closeness of competition. They further submitted that the CMA's reliance on historical ten-year shares of supply fails to take into account underlying market trends and dynamic market conditions resulting from strong competition from Chinese competitors. The Parties argued that the bidding data for ASC cannot be used as the basis to conclude that the Parties are close competitors, because the CMA's data shows that in Europe, the Parties competed in [REDACTED] between 2016 and 2020.⁹⁷⁰
- (b) The Parties submitted that the small pool of four UK tender case studies cannot be representative of the European market and, in any event, that the case studies do not support the proposition that the Parties are close competitors.⁹⁷¹ In addition, the Parties submitted that any conclusion on incumbency advantage is not supported by the evidence resulting from these case studies (or other evidence) and further, that this cannot be applied to Konecranes [REDACTED].⁹⁷²

⁹⁶⁹ Parties' response to Issues Statement, paragraphs 6.30 to 6.34.

⁹⁷⁰ The Parties' Response [REDACTED].

⁹⁷¹ The Parties' Response [REDACTED].

⁹⁷² The Parties' Response [REDACTED].

- (c) The Parties submitted that the third-party evidence cited by the CMA shows that ZPMC is viewed by third parties as a strong competitor and is able to effectively compete for orders of any size, as demonstrated by the fact that it has supplied ASC to many small customers and has similar delivery sizes to the Parties.⁹⁷³
- (d) The Parties further submitted that the CMA's assessment that ZPMC is a stronger competitor for larger volume ASC tenders (where it competes strongly on price), than for smaller volume tenders is directly contradicted by the Commission's assessment.⁹⁷⁴ In particular they said that:
- (i) [REDACTED] did not identify an issue in ASC and found that 'all the ASCs customers of the Parties in the EEA are large terminals with a minimum throughput of 1.9 M TEU per year. [REDACTED]; and
 - (ii) the Commission's assessment is based on a much broader set of evidence than that of the CMA; and
 - (iii) the 'contradiction' between these assessments cannot be explained by any alleged UK-specificities, given that [REDACTED].

7.136 We take these comments into account in our overall assessment below. Some other submissions made by the Parties in relation to ASC are addressed in Chapter 6.

Shares of supply

7.137 Chapter 6 provides an overview of our approach to shares of supply and the weight that we place on this evidence. We have constructed our estimates of the shares of supply using data provided by the manufacturers (or their distributors) themselves and, where this is not available, the Parties' estimates of their competitors' sales.⁹⁷⁵

7.138 Table 17 shows our estimates of the shares of supply based on delivery volumes for ASC over the period 2011–20 for three different geographic areas: UK, Europe, and worldwide (excluding China).

- (a) Within Europe, the Parties were the two largest suppliers over the last ten years, such that the Merged Entity would have a combined share of

⁹⁷³ Small customers are defined by the Parties as customers with an annual throughput of less than 500 TEUs. The Parties' Response [REDACTED].

⁹⁷⁴ Parties' response to the Provisional Findings Report, paragraph 6.6.

⁹⁷⁵ See Appendix B for further detail on our methodology.

supply of [60-70] [%]. This is almost equally split between Cargotec and Konecranes. Kuenz ([20-30] [%]) and ZPMC ([10-20] [%]) were the only other suppliers to make deliveries of ASC in Europe during this time.

- (b) Within the UK, there were only two suppliers that made deliveries of ASC during the past ten years: Cargotec and ZPMC. Cargotec accounted for [80-90] [%] of the total number of deliveries in the UK.
- (c) On a worldwide basis (excluding China), the Merged Entity would have a combined share of supply of [40-50] [%]. ZPMC would be the second largest supplier with a share of [30-40] [%] (much larger than its shares in the UK and Europe) and Kuenz had a share of supply of [10-20] [%]. Two smaller Chinese competitors, CSSC and HDHM, had a combined share of supply of [0-5] [%].

Table 17: Shares of supply of ASC based on number of deliveries, 2011–20

Company	Volume in Units					
	Geographic area					
	UK		Europe		Worldwide (excl. China)	
Volume	Share	Volume	Share	Volume	Share	
Cargotec	[3]	[80-90] [%]	[3]	[30-40] [%]	[3]	[10-20] [%]
Konecranes	-	-	[3]	[30-40] [%]	[3]	[30-40] [%]
Combined	[3]	[80-90] [%]	[3]	[60-70] [%]	[3]	[40-50] [%]
ZPMC	[3]	[10-20] [%]	[3]	[10-20] [%]	[3]	[30-40] [%]
Kuenz	-	-	[3]	[20-30] [%]	[3]	[10-20] [%]
CSSC	-	-	-	-	[3]	[0-5] [%]
HDHM	-	-	-	-	[3]	[0-5] [%]
Total	[3]	100%	[3]	100%	[3]	100%

Source: Parties and competitors' data.

7.139 Table 18 shows the same shares of supply based on revenue rather than delivery volumes. The shares are broadly similar to those in Table 17—the Merged Entity would have [60-70] [%] share of supply in Europe and [40-50] [%] worldwide (excl. China). In the UK, Cargotec had a [60-70] [%] share of supply based on revenue, compared with [80-90] [%] based on delivery volumes.

Table 18: Shares of supply of ASC based on revenue, 2011–20

Company	Revenue €m					
	Geographic area					
	UK		Europe		Worldwide (excl. China)	
	Revenue	Share	Revenue	Share	Revenue	Share
Cargotec	[REDACTED]	[60-70] [REDACTED]%	[REDACTED]	[20-30] [REDACTED]%	[REDACTED]	[10-20] [REDACTED]%
Konecranes	-	-	[REDACTED]	[30-40] [REDACTED]%	[REDACTED]	[30-40] [REDACTED]%
Combined	[REDACTED]	[60-70] [REDACTED]%	[REDACTED]	[60-70] [REDACTED]%	[REDACTED]	[40-50] [REDACTED]%
ZPMC	[REDACTED]	[30-40] [REDACTED]%	[REDACTED]	[10-20] [REDACTED]%	[REDACTED]	[40-50] [REDACTED]%
Kuenz	-	-	[REDACTED]	[20-30] [REDACTED]%	[REDACTED]	[5-10] [REDACTED]%
CSSC	-	-	-	-	[REDACTED]	0-5] [REDACTED]%
HDHM	-	-	-	-	[REDACTED]	[0-5] [REDACTED]%
Total	[REDACTED]	100%	[REDACTED]	100%	[REDACTED]	100%

Source: Parties and competitors' data.

- 7.140 Overall, the shares of supply indicate that the Parties are close competitors in the supply of ASC in Europe, given that they were the two largest suppliers over the period 2011 to 2020. Although Konecranes did not deliver any ASC in the UK during the relevant period, this does not mean that it is not a competitive constraint on Cargotec in the UK, as shown by the bidding analysis below.
- 7.141 The shares of supply also indicate that there would be limited remaining competitive constraints. There are only two other suppliers in Europe, Kuenz and ZPMC, and only the latter has made sales in the UK. The higher share of ZPMC in the UK (based on revenue) and lower share of Kuenz in Europe seems to be largely a reflection of the volatility of shares, rather than as a result of any significant difference in competitive conditions.
- 7.142 As noted above, the Parties submitted that the long time period used by the CMA conceals dynamic market trends. Although we consider it appropriate to focus on shares calculated over a ten-year period, in order to reduce the volatility that derives from infrequent and lumpy purchasing in ASC (see Chapter 6), we have also calculated volume-based shares for ASC in five-year periods (2011-15 and 2016-20) in order to consider any trends.
- 7.143 Table 19 below shows that the Parties' combined share was significantly lower in the most recent period ([REDACTED]% in 2016-20, down from [REDACTED]% in 2011-15) while ZPMC's share was significantly higher ([REDACTED]% in 2016-20, up from [REDACTED]% in 2011-15). However, even for the most recent five-year period, shares of supply indicate that the market is concentrated pre-Merger. While the Parties' shares are lower in Europe for the most recent five-year period, we note that Cargotec still has a significant share ([REDACTED]%) over 2016 to 2020,

while Konecranes has a lower, but still material, share ([REDACTED]%) in the same period.

Table 19: Shares of supply of ASC based on number of deliveries, 2011–15 & 2016–20

Company	Geographic area					
	UK		Europe		Worldwide (excl. China)	
	2011–15	2016–20	2011–15	2016–20	2011–15	2016–20
Cargotec	[90-100] [REDACTED]%	[60-70] [REDACTED]%	[30-40] [REDACTED]%	[20-30] [REDACTED]%	[20-30] [REDACTED]%	[5-10] [REDACTED]%
Konecranes Combined	- [90-100] [REDACTED]%	- [60-70] [REDACTED]%	[40-50] [REDACTED]%, [70-80] [REDACTED]%	[10-20] [REDACTED]%, [40-50] [REDACTED]%	[40-50] [REDACTED]%, [60-70] [REDACTED]%	[20-30] [REDACTED]%, [30-40] [REDACTED]%
ZPMC	[0-5] [REDACTED]%	[30-40] [REDACTED]%	[0-5] [REDACTED]%	[20-30] [REDACTED]%	[20-30] [REDACTED]%	[40-50] [REDACTED]%
Kuenz	-	-	[20-30] [REDACTED]%	[20-30] [REDACTED]%	[10-20] [REDACTED]%	[10-20] [REDACTED]%
CSSC	-	-	-	-	[0-5] [REDACTED]%	[0-5] [REDACTED]%
HDHM	-	-	-	-	[0-5] [REDACTED]%	[0-5] [REDACTED]%
Total	100%	100%	100%	100%	100%	100%

Source: Parties and competitors' sales data.

Quantitative bidding analysis

- 7.144 Chapter 6 provides an overview of our approach to the bidding analysis and the weight that we place on this evidence.⁹⁷⁶
- 7.145 For ASC, only very limited analysis of the Parties' data was possible, given that the number of European bidding opportunities that the Parties have participated in is very small due to infrequent sales. We therefore present some qualitative analysis on the Parties' bidding participation and losses.
- 7.146 Konecranes participated in [REDACTED] ASC opportunities in Europe between 2016 and 2020 and won [REDACTED]. Cargotec bid in [REDACTED] of these [REDACTED]. The opportunity in which both Parties participated was much larger (as shown in Table 20 below, €[REDACTED] million) than the opportunity in which Cargotec did not bid (€[REDACTED] million). As [REDACTED], we are unable to calculate loss ratios for Konecranes.⁹⁷⁷
- 7.147 Cargotec participated in [REDACTED] ASC opportunities in Europe between 2016 and May 2021, of which it won [REDACTED] and lost [REDACTED]. Table 20 below shows details of the [REDACTED] ASC opportunities that Cargotec lost. This shows that Konecranes and Kuenz are the only competitors to which Cargotec lost. While Cargotec lost a greater number of opportunities to Kuenz ([REDACTED]), the volumes involved

⁹⁷⁶ As discussed further in Appendix D, We note that these case studies cover a significant proportion of UK sales of ASC since 2011.

⁹⁷⁷ Whereas our analysis of the Parties' bidding data covered the period since 2016, in the following section we also consider several case studies for ASC tenders in the UK that pre-date this period. Two of these case studies relate to [REDACTED].

were small. The [REDACTED] lost to Konecranes [REDACTED]; this accounts for the majority of Cargotec's total losses in terms of volume and value.⁹⁷⁸

Table 20: Cargotec's lost ASC opportunities in Europe (EEA + UK), 2016 to May 2021

Company	Number of opportunities	Number of units	Value (revenue in €m)
Konecranes	[REDACTED]	[REDACTED]	[REDACTED]
Kuenz†	[REDACTED]	[REDACTED]	[REDACTED]
Total	[REDACTED]	[REDACTED]	[REDACTED]

Source: CMA analysis of Parties' data.

† One tender identified as being for RTG in Cargotec's data, was reclassified as an ASC tender based on a submission from Kuenz (the supplier that won this tender).

7.148 Overall, the bidding analysis above shows that the Parties have both been active bidders to supply ASC and have competed against each other in recent bidding opportunities. Cargotec lost a greater number of opportunities to Kuenz than to Konecranes between 2016 and May 2021, [REDACTED]. [REDACTED] (although, as discussed below, the Parties did lose an opportunity to ZPMC in 2013).

Qualitative tender case studies

7.149 In addition to the quantitative analysis, we have considered case studies in relation to four ASC tenders:

- (a) DP World London Gateway (2011-2012), won by Cargotec;
- (b) Peel Ports Mersey Docks (2013),⁹⁷⁹ won by ZPMC;
- (c) DP World London Gateway (2014), won by Cargotec; and
- (d) DP World London Gateway (started in 2019 and is yet to complete).

7.150 As discussed in Chapter 6, while we interpret these case studies qualitatively, we note that they cover a significant proportion of UK ASC sales since 2011.⁹⁸⁰

7.151 [REDACTED].⁹⁸¹

7.152 As with the RTG case studies, the ASC case studies are based on information and views provided by customers (DP World and Peel Ports), as well as internal documents produced by the Parties. In particular, customers

⁹⁷⁸ CMA analysis of Parties' data [REDACTED].

⁹⁷⁹ This tender was for Automatic Cantilevered Rail Mounted Gantry cranes, a type of ASC.

⁹⁸⁰ Chapter 6, paragraph 6.55.

⁹⁸¹ Whereas our analysis of the Parties' bidding data covered the period since 2016, three of these case studies pre-date that period. Hence, whereas [REDACTED].

were asked for the ranking of each bidder that participated and about the importance of various criteria in their ASC purchasing decisions.

DP World London Gateway tender for ASC (2011)

7.153 Our first ASC case study is DP World's 2011 tender for 40 ASC.

7.154 [REDACTED].

7.155 DP World submitted that, in this tender, Cargotec was the winning bidder and ZPMC was the runner up, followed by Konecranes. We do not have views from DP World explaining why Cargotec was chosen over its competitors, or on what the relative strengths and weaknesses of the different bidders for this tender were. [REDACTED].⁹⁸²

7.156 [REDACTED].⁹⁸³

7.157 We have not identified any other relevant documents about this tender.

Peel Ports Mersey Dock tender for ASC (2013)

7.158 We also considered a tender run by Peel Ports in 2013 for ten ASC and five STS.⁹⁸⁴

7.159 The following weightings were attributed to each section of the Request for Quotation: Quality [REDACTED]%, Environmental [REDACTED]%, Price [REDACTED]%, Life Cycle Cost [REDACTED]%, Funding [REDACTED]%.⁹⁸⁵ Peel Ports told us that, as a collective of Statutory Harbour Authorities, it must follow the Utilities Contracts Regulations and award on a most economically advantageous tender basis, which is in effect a balance of time, cost, quality and safety. It said that all of the above criteria are important to Peel Ports to ensure long term value for money.⁹⁸⁶

7.160 The winner of this tender was ZPMC, [REDACTED].

7.161 Peel Ports explained that the [REDACTED].⁹⁸⁷

7.162 Peel Ports explained that as part of the tender, ZPMC offered to set up a base in Liverpool from which it could provide prompt responses to maintenance requests and storage of spare parts. Peel Ports stated that:

⁹⁸² Call note [REDACTED].

⁹⁸³ Konecranes internal document [REDACTED].

⁹⁸⁴ Peel Ports said that these were tendered for separately ie suppliers could bid for one or both lots.

⁹⁸⁵ Cargotec submission Annex 03.iii.01, CRMG RFQ Rev 5, p 12.

⁹⁸⁶ Call note [REDACTED].

⁹⁸⁷ Call note [REDACTED].

- (a) It would be ‘concerned about purchasing equipment’ from a supplier without a presence, or the intention to create a presence, in the UK or Europe, unless an alternative solution was proposed which could ensure the prompt delivery of the people and parts necessary to ensure the ongoing operation of assets.⁹⁸⁸
- (b) A wide variety of maintenance tasks are supported through Peel Ports’ in-house engineers. However, where specialised knowledge is required, or when warranties are in place, third-party (including ZPMC) support is requested. Currently, ZPMC addresses ‘minor issues’ in a ‘few days’ and often ‘brings in labour/parts from other sites’.⁹⁸⁹

7.163 Peel Ports stated that the reason that Konecranes was unsuccessful was that [REDACTED].⁹⁹⁰ [REDACTED].⁹⁹¹ [REDACTED].⁹⁹²

7.164 An internal document from [REDACTED],⁹⁹³ [REDACTED].⁹⁹⁴

7.165 Peel Ports said that [REDACTED] ZPMC’s [REDACTED] specialised knowledge and parts are located in China. Peel Ports said it understood that ZPMC’s intention may be to use its base in Liverpool to serve other UK customers, but did not know if ZPMC is currently doing so.⁹⁹⁵

7.166 We consider that, while Peel Ports ran separate tenders for its ASC and STS requirements, ZPMC’s strength in STS may also have contributed to its interest in the ASC tender and its ability to compete for it effectively.⁹⁹⁶

DP World London Gateway tender for ASC (2014)

7.167 We also considered a tender run by DP World in 2014 for 20 ASC. Cargotec (the incumbent) won the tender. [REDACTED].

7.168 [REDACTED].⁹⁹⁷

7.169 DP World explained that, if it had awarded a contract to [REDACTED], it would have resulted in it running a mixed fleet, which would have been very complicated. For example, each of the different elements of the mixed fleet would need to

⁹⁸⁸ Call note [REDACTED].

⁹⁸⁹ Call note [REDACTED].

⁹⁹⁰ Konecranes internal document [REDACTED].

⁹⁹¹ Konecranes internal document [REDACTED].

⁹⁹² Konecranes internal document, [REDACTED].

⁹⁹³ The tender was for cantilevered RMG (CRMG), an automatic RMG that is a type of ASC.

⁹⁹⁴ Cargotec internal document, [REDACTED].

⁹⁹⁵ Call note [REDACTED].

⁹⁹⁶ See Chapter 6, paragraph 6.119 regarding ZPMS’s position in STS. We also note that the partnership between ZPMC and APM [REDACTED].

⁹⁹⁷ Response to P2 questionnaire [REDACTED].

interface with each other, which is more difficult for vehicles from different companies. DP World also noted that [REDACTED] ASC offer had slightly worse service levels than the offer made by Kalmar (Cargotec).⁹⁹⁸

7.170 DP World told us that Konecranes [REDACTED]. DP World believes that [REDACTED].⁹⁹⁹

7.171 Konecranes confirmed that [REDACTED].

7.172 [REDACTED].¹⁰⁰⁰

DP World London Gateway tender for ASC (2019)

7.173 Finally, we considered a tender for 20 ASC which was started by DP World in 2019. The tender related to additional units to be provided to London Gateway, which are linked to its expansion. This tender was put on hold in 2020 and subsequently restarted in 2021. As of February 2022, [REDACTED].¹⁰⁰¹

7.174 [REDACTED].¹⁰⁰² [REDACTED].¹⁰⁰³

7.175 Cargotec's internal documents noted [REDACTED].¹⁰⁰⁴

7.176 [REDACTED].¹⁰⁰⁵ [REDACTED].¹⁰⁰⁶

7.177 [REDACTED].¹⁰⁰⁷

7.178 [REDACTED].¹⁰⁰⁸

Conclusion from tender case studies

7.179 DP World has run three ASC tenders in the UK since 2011. The case studies show that the Parties are two of only three suppliers (along with ZPMC) who have previously bid for DP World tenders for ASC. Although Konecranes did not win (or place second) in these tenders, its presence is seen as a substantial competitive threat by Cargotec. The DP World case studies also show the importance of interoperability with existing equipment of the incumbent supplier, which contributes to repeat orders.

⁹⁹⁸ Call note [REDACTED].

⁹⁹⁹ Call note [REDACTED].

¹⁰⁰⁰ Response to P2 questionnaire [REDACTED].

¹⁰⁰¹ Call note [REDACTED].

¹⁰⁰² Konecranes internal document [REDACTED].

¹⁰⁰³ Call note [REDACTED].

¹⁰⁰⁴ Cargotec's internal document [REDACTED].

¹⁰⁰⁵ Cargotec's internal document [REDACTED].

¹⁰⁰⁶ Cargotec's internal document [REDACTED].

¹⁰⁰⁷ Cargotec's internal document [REDACTED].

¹⁰⁰⁸ Konecranes internal document [REDACTED].

7.180 The Peel Ports tender was won by ZPMC, in opposition to bids from Liebherr and Konecranes. The customer mainly attributed [redacted].¹⁰⁰⁹ [redacted].¹⁰¹⁰

Third-party evidence

Customer evidence

7.181 Relatively few customers have recently made ASC purchases in the UK. We sent questionnaires to two ASC customers in the UK [redacted] and received responses from both of them. One of these customers purchased ASC from Cargotec and the other purchased ASC from ZPMC.¹⁰¹¹

7.182 We asked these customers to rate the importance of various criteria in their purchasing decisions for ASC (scores out of 5, where 5 is the most important).¹⁰¹² Their responses to this question are summarised in Table 21 below. These indicate that criteria related to cost and reliability were seen as important by both customers. Having an installed base of equipment from a particular supplier was scored slightly lower. The customers differed in their views on the importance of the strength of a supplier's local aftersales presence (one scoring it 5, the other scoring it 3). The ASC customer that considered aftersales to be more important [redacted] said that even though it does most of the maintenance on ASC in-house, it still relies on support from the OEM. It said that the higher the level of automation, the more likely it is that it will need support from the OEM when there is an issue with the interfaces between the equipment and the software or between different pieces of software.¹⁰¹³

¹⁰⁰⁹ Call note [redacted].

¹⁰¹⁰ CMA data [redacted].

¹⁰¹¹ See Appendix D for further detail on our methodology.

¹⁰¹² Question wording: *When thinking about purchasing ASC, please score the following factors according to how important they are to your choice of supplier. Please assign a score from 1-5 where 5 = very important and 1 = not important at all (more than one factor can have the same score).* The factors are listed in Table 21.

¹⁰¹³ Call note [redacted].

Table 21: Customer ratings of the importance of ASC purchasing criteria

<i>Purchasing criteria</i>	<i>Customer A [REDACTED]</i>	<i>Customer B [REDACTED]</i>
Differences in equipment reliability	4	5
Differences in automation/assistive features	5	3
Differences in purchase price	4	5
Differences in running costs	5	5
Differences in strength of local aftersales presence	5	3
Differences in efficiency/ environmental performance	4	5
Degree of interoperability with other equipment	5	4
Already having installed base of equipment from a particular supplier	4	3

Source: P2 questionnaire responses.

7.183 We asked both customers to list the suppliers that they expected to participate in a hypothetical purchase of ASC within the next year.¹⁰¹⁴ Both customers responded that they expected to consider ZPMC and Konecranes. One customer would also consider Liebherr while the other would also consider Cargotec.¹⁰¹⁵ We note that the [REDACTED] (see paragraph 7.164).

7.184 We have incorporated the views of these customers on the strengths of different suppliers in the case studies above.

Competitor evidence

7.185 We sent questionnaires to 4 ASC competitors of the Parties.¹⁰¹⁶ Two provided written responses [REDACTED] and a third provided its views in a virtual meeting [REDACTED]. The fourth [REDACTED] did not respond to our questionnaire, but [REDACTED] confirmed separately that [REDACTED] do not supply ASC in Europe.¹⁰¹⁷

7.186 We asked the three competitors that provided views to rank the suppliers that they considered their closest competitors in the supply of ASC in the UK.¹⁰¹⁸ Their responses are summarised in Table 22 below.

¹⁰¹⁴ Question wording: *Suppose that you were planning to purchase ASC in the UK within the next year. What suppliers would you expect to consider? Please list the full set of suppliers that you would expect to consider (including [Party] if applicable) and provide your expected ranking of the suppliers (where 1 = the winner, 2 = the best alternative and so on).*

¹⁰¹⁵ Response to P2 questionnaire [REDACTED].

¹⁰¹⁶ See Appendix D for further detail on our methodology.

¹⁰¹⁷ Call transcript [REDACTED].

¹⁰¹⁸ Question wording: *Please list your main competitors in the supply of ASC to UK sites. Please rank these competitors according to how close a competitor they are to you (where 1 = closest competitor, 2 = next closest competitor, and so on).*

Table 22: Competitor views on their closest competitors

Competitor	Suppliers that are considered as closest competitors in the supply of ASC
Competitor A† [REDACTED]	<ol style="list-style-type: none"> 1. Konecranes 2. ZPMC 3. Cargotec
Competitor B‡ [REDACTED]	<ol style="list-style-type: none"> 1. Cargotec 2. Konecranes 3. ZPMC 4. Kuenz
Competitor C§ [REDACTED]	<ol style="list-style-type: none"> 1. [REDACTED] 2. [REDACTED] 3. [REDACTED]

Source: P2 questionnaire responses.

Notes:

† Answers refer to non-UK markets since competitor A has not yet sold any ASC to the UK.

‡ Competitor B has not sold any ASC to date but has made attempts to sell ASC; in particular, it was an active bidder in the Peel Ports 2013 tender.

§ Competitor C did not provide a ranking of the suppliers that it considered its closest competitors.

7.187 None of the respondents mentioned Liebherr, or any competitors other than those that have made sales in Europe, as being one of their close competitors in ASC.

7.188 In our questionnaire, we also asked competitors if they expected the rankings above to differ in two years.¹⁰¹⁹ Both respondents indicated that, absent the Merger, they did not expect any significant changes in the rankings above over the next two years.

7.189 The competitors that we heard from also provided qualitative views on the strengths and weaknesses of the different players in the market:

- (a) One competitor [REDACTED] listed Cargotec's strengths as being able to provide UK references, being able to offer a package of ECS and HTE, having an established brand, and its after sales service. It said that Konecranes had the same strengths, except that its references were said to be for the EEA rather than UK.¹⁰²⁰ This competitor noted that the supply of ASC is not a major focus for it and it tends to be excluded from tenders because it does not have references [REDACTED].¹⁰²¹

¹⁰¹⁹ Question wording: *To what extent do you expect the main competitors that you face and their strengths and weaknesses to change over the next two years? Please use the table below to list and rank the main competitors that you would expect to face in the supply of ASC to UK sites in two years' time.*

¹⁰²⁰ Response to P2 questionnaire [REDACTED].

¹⁰²¹ Call note [REDACTED].

(b) Another competitor [redacted] noted that Konecranes' strength in the supply of ASC was its 'solid product', Cargotec's strength was its 'well-known brand' and that ZPMC's strength was its 'low cost solution'.¹⁰²² This competitor also noted that it competes on the basis of a combination of Western technology and components and a competitive price, and [redacted] on the basis of price alone.¹⁰²³ In addition, this competitor said that 'it is unusual that any supplier other than the winning bidder gets a follow-up order'¹⁰²⁴ and that it plans to participate in future ASC tenders where it feels its offer 'can bring value added to a project'.¹⁰²⁵

(c) The third competitor [redacted] submitted that [redacted].¹⁰²⁶ [redacted].¹⁰²⁷ [redacted].¹⁰²⁸

7.190 [redacted] assessment of how its competitiveness varies according to order volume is supported by other third-party views. In particular, [redacted] (which has [redacted]), noted that the large order size was one of the main reasons for ZPMC's success [redacted]. It also said that 'Chinese suppliers do not typically submit bids for smaller tenders'.¹⁰²⁹

Merger impact

7.191 We asked third parties¹⁰³⁰ for their views on the impact of the Merger on the supply of ASC.¹⁰³¹

7.192 Of two responses from UK customers, one [redacted] thought that the Merger would have a negative impact overall, while one [redacted] thought that the impact would be neutral for its own business but may be negative for smaller customers.¹⁰³²

(a) The customer that submitted that the Merger would have a negative impact on competition in the supply of ASC told us that: i) the Merger would result in one less competitor, not only at the equipment level but

¹⁰²² Response to P2 questionnaire [redacted].

¹⁰²³ Call note [redacted].

¹⁰²⁴ Call note [redacted].

¹⁰²⁵ Response to P2 questionnaire [redacted].

¹⁰²⁶ Call note [redacted].

¹⁰²⁷ Transcript of call [redacted].

¹⁰²⁸ Transcript of call [redacted].

¹⁰²⁹ Call note [redacted].

¹⁰³⁰ The CMA asked this question to customers that had purchased ASC in the last ten years.

¹⁰³¹ Question wording for customers: *Cargotec and Konecranes are proposing to merge. What positive impacts (if any) would you expect the merger to have in relation to ASC? What negative impacts (if any) would you expect the merger to have in relation to ASC?*

¹⁰³² In addition, as discussed at paragraph 7.90 above, five of the customers in mainland Europe that we spoke to in our remedy response hearings expressed general views on the competitive effects of the Merger. Overall, these views were mixed; some of these customers were in favour of the merger or did not have concerns about it, while others said that they did have concerns or that the merger would have both positive and negative impacts.

also for ECS; ii) it would expect prices for equipment, spare parts and services to rise; and iii) it would expect Terms and Conditions and Warranty clauses to get stricter, a trend which it is already observing. The same customer also noted that potential positive impacts of the Merger are an expanded service network, and pooling of Konecranes and Cargotec's automation competence.¹⁰³³

- (b) The other customer submitted that the Merger would overall have a neutral impact on competition, in that it would lead to fewer bidders in procurement exercises, but could bring potential innovation through combining expertise and experience to bring new products to market.¹⁰³⁴ This customer subsequently said that, having read the CMA's Provisional Findings report, its view had changed slightly. It said that its previous assessment of Merger impact reflected its own situation as a group with scale, whereas it now considered that 'from a sector perspective...there may well be less competition' for smaller port customers.¹⁰³⁵

7.193 Of three responses from competitors, two [X] thought that the Merger would have a negative impact on competition in the supply of ASC, while one [X] thought that the impact would be neutral.¹⁰³⁶

- (a) One competitor [X] expected that, based on the strong position of Cargotec and Konecranes for ASC in Europe, the Merger would result in less choice for European customers (including UK customers) and that these ASC customers would be negatively affected as a result of the Merger.¹⁰³⁷
- (b) Another competitor [X] stated that the Merger would reduce the number of competitors in the market and that the Merged Entity would have a dominant position in terms of market sales and existing fleets of ASC cranes. It noted that the Merged Entity would have the strongest package in terms of offering a full range of port equipment, ECS and software, and that it could also offer a large number of UK/EEA references.¹⁰³⁸

¹⁰³³ Response to P2 questionnaire [X].

¹⁰³⁴ Response to P2 questionnaire [X].

¹⁰³⁵ Transcript of call [X].

¹⁰³⁶ Question wording for competitors: *Cargotec and Konecranes are proposing to merge. Do you expect the merger to impact competition for the supply of ASC in relation to UK customers? If 'yes', please describe the impact(s) on competition that you would expect as a result of the merger and explain your reasoning.*

¹⁰³⁷ Response to P2 questionnaire [X].

¹⁰³⁸ Response to P2 questionnaire [X].

(c) The competitor that had a neutral view [REDACTED] said that ‘it did not expect much change in its markets’.

Conclusion regarding third-party evidence

- 7.194 Overall, we conclude that the evidence from third parties shows that the Parties are close competitors and that ZPMC is their main competitor.
- 7.195 Third-party evidence, [REDACTED], indicates that, in Europe (including the UK), ZPMC may be a stronger competitor for larger volume tenders (where it competes strongly on price), and for non-standard/more complex products, than for smaller volume tenders. We further note that third-party evidence 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.
- 7.196 The Parties submitted that, based on their estimates, for the period 2010-2020, ZPMC has supplied almost three times as many ASCs to small customers as both Parties combined, and that averaging the delivery data of ZPMC, Konecranes and Cargotec suggests that delivery sizes are similar.¹⁰³⁹
- 7.197 The Parties also submitted that the European Commission found that ‘all the ASCs customers of the Parties in the EEA are large terminals with a minimum throughput of 1.9 M TEU per year. This largely reflects that the conditions of competition in ASCs, where ZPMC is an important European supplier, are significantly different from RTG’ and argued that that this ‘directly contradicts’ the CMA’s assessment that ZPMC is a stronger competitor for larger volume tenders than for smaller volume tenders.¹⁰⁴⁰
- 7.198 The Parties further submitted that the Commission’s assessment is based on a much broader set of evidence than that of the CMA and that the ‘contradiction’ between these assessments cannot be explained by any alleged UK-specificities, given that Konecranes does not supply ASC to the UK.
- 7.199 In relation to the size of ASC orders, we recognise that the limited number of recent ASC tenders in the UK have been for a relatively high number of ASC units (ie 10 or more units) and that the Parties (and not only ZPMC) have won large ASC orders in Europe. However this does not exclude that there

¹⁰³⁹ The Parties’ response [REDACTED].

¹⁰⁴⁰ [Parties’ response to the Provisional Findings Report](#), paragraph 6.6.

may be smaller ASC tenders in the UK in future,¹⁰⁴¹ nor that ZPMC is overall a less strong competitor for smaller tenders.

- 7.200 In relation to customer size, to the extent that ASC are typically purchased by terminals with large throughputs, we have not seen evidence indicating that ZPMC is a consistently close competitor to the Parties for such customers (regardless of order size). For example, as noted at paragraph 7.148, based on the Parties' bidding data for Europe from 2016-20, neither Party [redacted] in this period (although this data set is very small, and the Parties did lose an opportunity to ZPMC in 2013).
- 7.201 In relation to the breadth of the Commission's evidence base as compared to that of the CMA, as discussed from paragraph 6.26, we do not have full access to the evidence gathered by the Commission.¹⁰⁴² We consider that the evidence that we have gathered is sufficient in order to assess the competitive effects of the merger in ASC (see further paragraphs 6.35 and 6.36). We consider all of this evidence in the round in reaching our overall assessment of the competitive effects of the merger in the supply of ASC, as set out from paragraphs 7.230 to 7.234.¹⁰⁴³
- 7.202 Third-party evidence suggests that Kuenz may impose a limited constraint on the Parties; it was identified as a competitor by some suppliers, but the two UK customers that we heard from did not identify it as an option that they would consider. Liebherr was mentioned as an option by one customer, but the third-party evidence that we reviewed does not suggest that it imposes a material constraint.

Internal documents

- 7.203 As explained in paragraph 7.96, of the significant number of documents submitted by the Parties, only a small portion provide insight into competitive conditions of Gantry Cranes, for example because many of the documents were general industry reports or reports that simply record sales achieved by each supplier. Of the documents that are relevant to the assessment of competition, many relate to port cranes or the impact of automation of the Parties' port business in general. Only a few documents refer specifically to ASC. The documents set out below in relation to ASC should be read

¹⁰⁴¹ We note that there have been a number of smaller tenders in mainland Europe in recent years. For example, the Parties' bidding data shows that Konecranes won a 6 unit tender in Spain in 2018 and Cargotec won a 1 unit tender in Norway in 2018.

¹⁰⁴² For example, see further paragraphs 6.25-6.27.

¹⁰⁴³ We disagree that Konecranes does not 'supply' ASC in the UK. As discussed at paragraph 7.231, although Konecranes did not deliver any ASC in the UK from 2011-20, it has been consistently competing in the limited number of ASC tenders in the UK.

together with and are consistent with the internal documents described in Chapter 6 and in paragraphs 7.100 to 7.115 about Gantry Cranes in general.

- 7.204 In our assessment of the internal documents, we placed more weight on recent documents that refer specifically to the competitive situation in Europe and/or the UK and that were generated before the Merger was in contemplation.¹⁰⁴⁴
- 7.205 We start with documents that are mainly relevant to closeness of competition between the Parties. We then assess documents that relate to the constraints posed by other suppliers and the relative importance of purchasing criteria. Finally, we discuss documents that provide insight into the Parties' views on how competition will develop in future.

Closeness of competition and strength of the Parties' offer

- 7.206 The documents described above in Chapter 6 and at paragraphs 7.102 to 7.104, indicating how the Parties compete closely in relation to Gantry Cranes and port equipment in general, are also relevant to understand how the Parties compete closely in ASC specifically.
- 7.207 More generally, internal documents of both Parties show that the Parties consider themselves to be leaders in the ASC market (with ZPMC and Kuenz as their only main competitors as discussed below), with broadly similar strengths.
- (a) The [REDACTED] sets out sales argumentations against Konecranes, illustrating the closeness of competition between the Parties. This document [REDACTED]. In particular, '[REDACTED]'.¹⁰⁴⁵
- (b) [REDACTED] - 'Automatic Stacking Crane Application' - produced in 2021, when the Merger was already in contemplation, describes the qualities of Cargotec's ASC offering, including that its ASC are '[REDACTED]', [REDACTED].¹⁰⁴⁶
- (c) A Cargotec internal document of 2018 states that [REDACTED].¹⁰⁴⁷

¹⁰⁴⁴ As explained in Chapter 6, in attributing probative value to specific internal documents, we have taken into account the timing, purpose and context in which they were prepared. As a general principle, we consider that internal documents prepared in the ordinary course of business, for example before the Merger was in contemplation are likely to have higher probative value than internal documents prepared once the Merger was in contemplation of the Merger. This is consistent with paragraph 2.29(a) of [CMA129](#). Consequently, while we have considered their relevance to our assessment, we have treated internal documents prepared since the Merger was in contemplation with a degree of caution. In particular, we are more likely to assign weight to evidence contained in such documents where it is corroborated by other evidence.

¹⁰⁴⁵ Cargotec internal document [REDACTED].

¹⁰⁴⁶ Cargotec internal document [REDACTED].

¹⁰⁴⁷ Cargotec internal document [REDACTED].

- (d) A further Cargotec internal document [REDACTED]. A separate customer sets out that [REDACTED] [REDACTED].¹⁰⁴⁸
- (e) [REDACTED].¹⁰⁴⁹
- (f) A presentation prepared by Konecranes [REDACTED] - Port Solutions: Product and Technology Roadmap (which is mentioned above and was prepared when the Merger was already in contemplation - [REDACTED]).¹⁰⁵⁰

Other competitive constraints

- 7.208 The Parties' internal documents indicate that their main competitor in this market is ZPMC and, to a lesser extent, Kuenz. These documents refer to a couple of other Asian competitors, but in a global context; there is no indication that these suppliers of ASC compete with the Parties to any extent in Europe.
- 7.209 In relation to ASC, Cargotec produced competitor rankings which set out the perceived next largest competitors to its operations. These documents indicate that, over a number of years, Cargotec has faced its strongest competition from Konecranes and ZPMC. These rankings also show that ZPMC has not consistently 'displaced' Konecranes as Cargotec's main competitor. The documents below also indicate that both Cargotec and Konecranes have a strong ASC offer. These documents should be read together with the Parties' internal documents described in paragraph 7.105, [REDACTED].
- 7.210 We summarise below some of these internal documents produced by Cargotec:
- (a) [REDACTED].¹⁰⁵¹
 - (b) [REDACTED].¹⁰⁵²
 - (c) In a presentation [REDACTED].¹⁰⁵³
 - (d) [REDACTED], when the Merger was already in contemplation, [REDACTED].¹⁰⁵⁴

¹⁰⁴⁸ Cargotec internal document, [REDACTED].

¹⁰⁴⁹ Cargotec internal document [REDACTED].

¹⁰⁵⁰ Konecranes internal document [REDACTED].

¹⁰⁵¹ Cargotec internal document [REDACTED].

¹⁰⁵² Cargotec internal document [REDACTED].

¹⁰⁵³ Cargotec internal document [REDACTED].

¹⁰⁵⁴ Cargotec internal document [REDACTED]. See identical analysis, in the document [REDACTED].

(e) [REDACTED], also produced when the Merger was already in contemplation, [REDACTED].¹⁰⁵⁵

(f) [REDACTED].¹⁰⁵⁶

7.211 We summarise below some of the internal documents produced by Konecranes in relation to its competitors:

(a) A briefing [REDACTED].¹⁰⁵⁷

(b) [REDACTED].¹⁰⁵⁸

(c) [REDACTED], when the Merger was in contemplation, [REDACTED].¹⁰⁵⁹

(d) The Konecranes' presentation [REDACTED] 'Port Solutions: Product and Technology Roadmap' mentioned above states [REDACTED] 'Competitors' actions', [REDACTED].

7.212 We also note that a third-party analyst report (DS Research) points to the different positions of the main suppliers of ASC in different regions when it states that 'ZPMC holds a dominant position in the Asian and Chinese market and is therefore the leading manufacturer for ASC', while 'outside of Asia & China the track record of Konecranes is nearly equal to that of ZPMC'.¹⁰⁶⁰

Purchasing criteria

7.213 We have also reviewed internal documents about the main relevant purchasing criteria for ASC, which provide insight on how the strengths and weaknesses of each competitor relate to these criteria.

7.214 In a 2019 - 2024 market analysis document, Cargotec set out that the [REDACTED] there are many factors other than price that influence customers' purchasing decisions. [REDACTED].¹⁰⁶¹

¹⁰⁵⁵ Cargotec internal document [REDACTED].

¹⁰⁵⁶ Cargotec internal document See for example, [REDACTED]

¹⁰⁵⁷ Konecranes internal document [REDACTED].

¹⁰⁵⁸ Konecranes internal document [REDACTED]. See also [REDACTED].

¹⁰⁵⁹ Konecranes internal document [REDACTED].

¹⁰⁶⁰ Cargotec internal document [REDACTED].

¹⁰⁶¹ Cargotec internal document [REDACTED].

The development of competition in the foreseeable future

7.215 The Parties' internal documents indicate that both have clear plans to continue to improve their products, which suggests that the Parties will remain competitive within the market for the foreseeable future.

(a) [REDACTED].¹⁰⁶² We note that this document was produced when the Merger was already in contemplation.

(b) [REDACTED].¹⁰⁶³

Evidence on future demand for ASC in the UK

7.216 Given the small number of sales of ASC in Europe and in the UK, we considered whether the demand for ASC is expected to grow.

7.217 Third-party evidence indicates that the demand for ASC in the UK is not materially different from ASC demand in the rest of Europe, and is likely to increase.

(a) One competitor [REDACTED] does not believe that there is less demand for ASC in the UK than in Europe. While there are years when there are no ASC tenders, when they are tendered, the number required tends to be higher than for other cranes (a double-digit number). It also noted that ASC tenders typically include an option for additional units in later phases and it is unusual for any supplier other than the initial winning bidder to get a follow-up order.¹⁰⁶⁴

(b) Another competitor [REDACTED] considers that future port expansions will be driven by ASC and (potentially automatic) SC or ShC. It told us that big ports using SC (ie Southampton, Tilbury, Liverpool, Grangemouth), would use ASC when looking to increase their capacity, suggesting that Antwerp and ports in Germany demonstrate that this is an efficient way of doing so. This competitor considers that labour (lack of drivers) could become an issue for future port expansions. It said that, at the moment, there are not many RTG projects being launched in Europe as ports have recognised that it will be difficult to retrofit RTG with automation technology so most newly opened terminals will look to purchase automatic systems (ASC or ARMG) instead.¹⁰⁶⁵

¹⁰⁶² Cargotec internal document [REDACTED].

¹⁰⁶³ Konecranes, [BU Solutions Annual Plan 2020](#), October 2019, page 12.

¹⁰⁶⁴ Call note [REDACTED].

¹⁰⁶⁵ Call note [REDACTED].

7.218 Internal documents produced by the Parties also indicate that the ASC market is likely to grow.

(a) A Konecranes document [REDACTED].¹⁰⁶⁶

Figure 17: [REDACTED]

[REDACTED]

Source: [REDACTED]

(b) A Cargotec internal document – [REDACTED] – ‘[REDACTED]’.¹⁰⁶⁷

(c) An internal document [REDACTED].¹⁰⁶⁸

7.219 Given the expected future demand for ASC, the evidence considered above indicates that a reduction in competition for ASC in Europe would harm UK customers purchasing ASC in the future.

Entry and expansion of other alternative suppliers of ASC

7.220 In the sections above we considered the competitive constraints currently imposed by existing suppliers of ASC in Europe. As noted in paragraph 7.116 above, our assessment seeks to account for the future evolution of competitive conditions, including constraints from rival entry or expansion.¹⁰⁶⁹

7.221 In this section, we consider the possible constraint on the Merged Entity arising from entry or expansion which would have occurred irrespective of the Merger,¹⁰⁷⁰ following the approach set out in paragraph 7.117.

7.222 We considered whether the main potential sources of entry identified by the Parties have the necessary capabilities and intention to enter at scale or to substantially expand their operations in the supply of ASC in Europe, in the near future. In our assessment of the likelihood of timely and sufficient entry, we have taken into account the conclusions on barriers to entry and expansion considered in Chapter 12.

¹⁰⁶⁶ Konecranes internal document [REDACTED].

¹⁰⁶⁷ Cargotec internal document, [REDACTED].

¹⁰⁶⁸ Konecranes internal document [REDACTED].

¹⁰⁶⁹ CMA129, paragraph 4.16.

¹⁰⁷⁰ CMA129, paragraph 4.16.

Parties' views

7.223 As noted in paragraph 7.119 above, the Parties told us that 'new competitors have entered or innovated within the gantry crane product area in recent years'.¹⁰⁷¹

7.224 In particular, the Parties told us that:

(a) ZPMC has recently launched an 'automation breakthrough' and 'global first' technology to be delivered to Beibu Gulf Port Qinzhou (China).¹⁰⁷²

(b) 'Sany and CSSC have both entered the ASC segment in recent years'.¹⁰⁷³

(c) 'CSSC has delivered [ASC] to the Busan New Port Container Terminal (South Korea)'.^{1074, 1075}

(d) Sany has developed an ASC described as overcoming 'many obstacles in key automation technologies, and achieved the targets of remote control, intelligent identification, precise alignment, automatic loading and unloading, which greatly improved port operation efficiency and reduced operating costs'.¹⁰⁷⁶ Sany is scheduled to deliver 16 [ASC] in 2020 and ten in 2021'.^{1077, 1078}

7.225 The Parties also submitted that:

(a) market feedback does not support the contention that there are no specific plans by suppliers to enter ASC;¹⁰⁷⁹

(b) they expect ASC demand in Europe will remain healthy and that such demand will be met by many well-established competitors, such as ZPMC and Kuenz, and will help drive expansion by other suppliers such as Sany and Mitsui;¹⁰⁸⁰

¹⁰⁷¹ Merger Notice, [REDACTED].

¹⁰⁷² Merger Notice, [REDACTED].

¹⁰⁷³ Merger Notice, [REDACTED].

¹⁰⁷⁴ Merger Notice, [REDACTED].

¹⁰⁷⁵ We note that CSSC did not supply any ASC in Europe in the period 2011-20 and only has a very low share of supply on a global basis (see Table 9: Shares of supply of RTG based on number of deliveries, 2011-15 & 2016-20).

¹⁰⁷⁶ Merger Notice, [REDACTED].

¹⁰⁷⁷ <https://www.worldcargonews.com/in-depth/yard-crane-market-on-the-rise>.

¹⁰⁷⁸ We note that Sany did not supply any ASC in Europe or globally in the period 2011-20 (see Table 9: Shares of supply of RTG based on number of deliveries, 2011-15 & 2016-20).

¹⁰⁷⁹ The Parties' Response [REDACTED].

¹⁰⁸⁰ The Parties' Response [REDACTED].

- (c) both Sany and Mitsui-Paceco have an established presence in Europe, [REDACTED].¹⁰⁸¹

Assessment of the evidence on specific entry or expansion

- 7.226 We investigated whether any third parties have the necessary capabilities and specific intention to enter or to substantially expand their operations in relation to ASC, in Europe (including the UK), in the near future.
- 7.227 We set out below the evidence that we received from third parties in relation to specific entry or expansion:
- (a) ZPMC told us that its [REDACTED].¹⁰⁸² [REDACTED].¹⁰⁸³ [REDACTED].¹⁰⁸⁴
 - (b) A competitor [REDACTED] told us that where it feels that its offer can bring value added to a UK ASC project, it intended to participate in those tenders.¹⁰⁸⁵ It explained that customers and projects where it feels it could add value would be those 'looking for equipment with high productivity, high availability and reliability, low operating and maintenance cost, ie with a focus on total cost of ownership, rather than the mere initial investment'. When asked to submit any available sales forecasts for ASC in the UK and supporting business plan documents, it responded that this was not applicable.¹⁰⁸⁶
 - (c) As noted at paragraph 7.189 above, A competitor [REDACTED] told us that it has plans to expand into the supply of ASC, [REDACTED].¹⁰⁸⁷ [REDACTED].¹⁰⁸⁸
 - (d) Another competitor [REDACTED] submitted that 'we do not really supply ASC cranes anywhere [in] the World, including the UK'. When asked about the possibility of supplying ASC in future, it said it did not have the 'manpower' to do so. It explained that ASC requires more resources than RTG, given that RTG can be fully assembled at the factory, whereas ASC requires a team to undertake assembly and commissioning at the customer's site.¹⁰⁸⁹
- 7.228 We note that ZPMC and Kuenz (and, to some extent, Liebherr) are already active in the relevant market (which is reflected in the analysis above), and

¹⁰⁸¹ Parties' response to the Provisional Findings Report, paragraph 6.6.

¹⁰⁸² Call note [REDACTED].

¹⁰⁸³ Call note [REDACTED].

¹⁰⁸⁴ Response to P2 questionnaire [REDACTED].

¹⁰⁸⁵ Response to P2 questionnaire [REDACTED].

¹⁰⁸⁶ Response to supplementary CMA questions [REDACTED].

¹⁰⁸⁷ Call note [REDACTED].

¹⁰⁸⁸ Call note [REDACTED].

¹⁰⁸⁹ Transcript of call [REDACTED].

have an ambition to expand and/or intend to pursue business opportunities in the normal course of business. However, we have not seen any evidence to suggest that there will be a material change in the level of competitive constraint posed by these (or any other) competitors in the near future, nor have we seen any evidence that any entry or expansion would be sufficient in scope and magnitude to sufficiently constraint the Merged Entity to offset the loss of competition from the Merger.

- 7.229 Further, we note that no entry on a significant scale has occurred recently in Europe in ASC, after ZPMC and Kuenz entered more than ten years ago.¹⁰⁹⁰ In Chapter 12 we consider whether barriers to entry and expansion are significant in ASC, and assess the likelihood of entry or expansion in response to the effects of the merger.

Our conclusion on the effect of the Merger on the supply of ASC

- 7.230 The Parties compete closely in the supply of ASC, with both having a strong offering (including on automation) and a proven track-record (see Chapter 6), 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) will remain in the market after the Merger.¹⁰⁹¹ 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 a SLC in the supply of ASC in Europe (including the UK).
- 7.231 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 (see below). The Parties' combined share of supply in Europe was significantly lower in the most recent five-year period ([40 – 50] [%]), however both

¹⁰⁹⁰ Call note [%].

¹⁰⁹¹ We note that, although each merger is considered on its merits, one of the scenarios described in the CMA's guidance, in which the CMA may be more likely to find an SLC, refers to a merger involving 'the market leader and [where] the number of significant competitors is reduced from four to three' (CMA129, paragraph 2.18). Based on the evidence that we have reviewed, we consider that the Merger involves the market leader in ASC; that there are fewer than four significant competitors in the market pre-Merger; and that a significant competitor would be removed by the Merger.

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.

7.232 In addition, as noted at paragraph 6.153, the Parties are likely to compete particularly closely for some customers as a result of their wide CHE portfolios (including MEQ, SC, ShC, and port cranes), which enable them to offer an integrated, automated and comprehensive solution to ports. These capabilities are likely to become increasingly significant in future as the extent of automation and digitalisation within CHE develops further. By contrast, most of the Parties' competitors do not offer similarly broad and integrated ranges of CHE, and so they are likely to compete less closely with the Parties for some customers in this regard.

7.233 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. ZPMC [%], winning the Peel Ports tender in 2013. 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 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 in certain parameters.

- (b) Kuenz has the third largest share of supply in Europe (and in mainland Europe it has won some opportunities in opposition to Cargotec) but did not make any sales in the UK over 2011 to 2020. It participated in [REDACTED], which appears to reflect its view that the incumbent ASC supplier has an advantage when it comes to further ASC tenders run by the same customer. 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.

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

8. Horizontal effects: SC and ShC

Framework and approach

- 8.1 In this Chapter, we assess horizontal unilateral effects of the Merger in the supply of SC and ShC.
- 8.2 In order to assess the likelihood of the Merger resulting in horizontal unilateral effects in the supply of SC and ShC, we considered the closeness of competition between the Parties and the (present and future) competitive constraints provided by competing suppliers. We then considered whether there are any possible constraints on the Merged Entity arising from entry or expansion that would have occurred irrespective of the Merger.
- 8.3 We have gathered, and taken account of, a range of evidence in our assessment. In particular, we have considered:
 - (a) the Parties' views;

- (b) the shares of supply of SC and ShC in the UK, Europe and worldwide (excluding China);
- (c) evidence from quantitative and qualitative bidding analysis;
- (d) third-party evidence; and
- (e) evidence from the Parties' internal documents.

Closeness of competition between the Parties and competitive constraints from alternative suppliers

Parties' views

- 8.4 The Parties submitted that the shares of supply indicate the historical successes of the Parties and do not reflect the dynamic competition provided by Chinese competitors (such as ZPMC) that are rapidly expanding.¹⁰⁹²
- 8.5 The Parties submitted that ZPMC has won multiple tenders for SC and ShC around the world, including some in Europe, demonstrating that ZPMC is already a constraint on the Parties and that it could develop into a major supplier (including in the UK) in the near future.¹⁰⁹³ The Parties further submitted that ZPMC has built up production capacity of between 100 and 200 SC per year, which covers a substantial proportion of global demand.¹⁰⁹⁴ The Parties submitted that ZPMC has rapidly expanded to become the market leader in the supply of cranes in the UK, and that it is 'not plausible' to assume that ZPMC will not achieve similar scale in the supply of SC and ShC in the UK.¹⁰⁹⁵ The Parties also considered that ZPMC's growth may be faster as a result of the Merger because customers will seek alternative suppliers.¹⁰⁹⁶
- 8.6 The Parties submitted that the historical market structure, comprising two major suppliers that constrained each other in competitive bidding processes, led to competitive outcomes in the supply of SC and that this structure will be maintained post-Merger due to the constraint provided by ZPMC.¹⁰⁹⁷

¹⁰⁹² [Parties' response to Issues Statement](#), paragraph 8.15.

¹⁰⁹³ [Parties' response to Issues Statement](#), paragraphs 8.16–8.17.

¹⁰⁹⁴ [Parties' response to Issues Statement](#), paragraph 8.20.

¹⁰⁹⁵ [Parties' response to Issues Statement](#), paragraph 8.19.

¹⁰⁹⁶ [Parties' response to Issues Statement](#), paragraph 8.22.

¹⁰⁹⁷ [Parties' response to Issues Statement](#), paragraph 8.22.

- 8.7 In response to the CMA’s working paper on horizontal unilateral effects in the supply of SC and ShC, the Parties made a number of submissions:
- (a) The working paper failed to acknowledge their submissions that there are other credible players that are active in the market. For instance, the Parties stated that ZPMC is a significant competitor rather than a weak competitive constraint¹⁰⁹⁸ and that Liebherr is an actual or potential competitor of the Parties in SC.¹⁰⁹⁹
 - (b) The working paper does not recognise the significance of [X] as a customer (both globally, and in the UK). The Parties stated that [X] acts as an effective ‘shop window’ for suppliers seeking orders in the UK and that large customers procure on a global basis.¹¹⁰⁰
 - (c) The working paper inaccurately characterised and failed to acknowledge information in the Parties’ internal documents; for example, evidence that the Parties consider it worthwhile to invest time in monitoring numerous competitors.¹¹⁰¹

Shares of supply

- 8.8 Chapter 6 provides an overview of our approach to shares of supply and the weight that we place on this evidence.
- 8.9 Table 23 below shows the Parties’ estimates of the shares of supply based on delivery volumes for SC and ShC over the period 2017 to 2020 for three different geographic areas: UK, Europe, and worldwide (excluding China).¹¹⁰²
- 8.10 Within Europe, the Parties were by far the two largest suppliers over the relevant period such that the Merged Entity would have a combined share of supply of [90–100%] [X]. ZPMC and Liebherr were the only other suppliers to make deliveries during 2017 to 2020, with ZPMC accounting for the majority of the remaining share of supply ([X] out of [X] deliveries). As discussed in more detail below, [X].
- 8.11 Within the UK, the Merged Entity would have a combined share of supply of [90–100%] [X]. On a worldwide (excluding China) basis, the Merged Entity would have a combined share of supply of [90–100%] [X]. ZPMC, Liebherr

¹⁰⁹⁸ The Parties’ Response [X].

¹⁰⁹⁹ The Parties’ Response [X].

¹¹⁰⁰ The Parties’ Response [X].

¹¹⁰¹ The Parties’ Response [X].

¹¹⁰² See Appendix B for further detail on the Parties’ methodology.

and Mobicon were the only other suppliers to make deliveries during 2017–20.

Table 23: Shares of supply of SC and ShC based on number of deliveries, 2017 to 2020

Company	UK		Europe		Worldwide (excl. China)	
	Volume	Share	Volume	Share	Volume	Share
Cargotec	[REDACTED]	[80–90%] [REDACTED]	[REDACTED]	[50–60%] [REDACTED]	[REDACTED]	[50–60%] [REDACTED]
Konecranes	[REDACTED]	[10–20%] [REDACTED]	[REDACTED]	[40–50%] [REDACTED]	[REDACTED]	[30–40%] [REDACTED]
Combined	[REDACTED]	[90–100%] [REDACTED]	[REDACTED]	[90–100%] [REDACTED]	[REDACTED]	[90–100%] [REDACTED]
ZPMC	[REDACTED]	[0–5%] [REDACTED]	[REDACTED]	[0–5%] [REDACTED]	[REDACTED]	[0–5%] [REDACTED]
Liebherr	[REDACTED]	[0–5%] [REDACTED]	[REDACTED]	[0–5%] [REDACTED]	[REDACTED]	[0–5%] [REDACTED]
Mobicon	[REDACTED]	[0–5%] [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[0–5%] [REDACTED]
Total	[REDACTED]	100%	[REDACTED]	100%	[REDACTED]	100%

Source: Parties' submission The Parties (Response to P2 RFI 2, Annex 4.1).

Note: [REDACTED].

8.12 Overall, the shares of supply indicate that the Parties are close competitors in the supply of SC and ShC on any geographic basis, accounting for almost the whole market between them. There appear to be no other material competitors. ZPMC is [REDACTED], but only accounts for [0–5%] [REDACTED] of the market.

Bidding analysis

8.13 The Parties provided data that detailed bidding opportunities for SC and ShC in the UK that they had competed in since 2017. This included completed opportunities that had been delivered, completed opportunities that had not been delivered, and ongoing opportunities that had not completed as of 31 July 2021. This data was extracted from the Parties' respective customer relationship management (CRM) systems. One of the main limitations of this data is that, whilst the Parties observe whom they lose to, they do not observe the rankings of the suppliers.

8.14 We have supplemented the Parties' bidding data with data from customers, which has been used to fill in missing information regarding the suppliers that were involved in SC and ShC opportunities. Thus, we believe that the bidding data for SC and ShC in the UK provides a reliable and comprehensive overview of UK bidding opportunities over this period.

8.15 Table 24 shows that there have been seven opportunities for SC in the UK since 2017, and one opportunity for ShC. [REDACTED] was the only participant in three of these opportunities, and in another three the only participants were [REDACTED]. In the most recent opportunity, in 2021, [REDACTED] was a third participant.

Table 24: UK bidding opportunities for SC and ShC since 2017

<i>Customer</i>	<i>Year closed</i>	<i>Number of units</i>	<i>Winning bidder</i>	<i>Second bidder</i>	<i>Third bidder</i>
<i>SC</i>					
DPW (Southampton)	2018	[REDACTED]†	[REDACTED]	[REDACTED]	
Maritime (Tilbury)	2018	[REDACTED]	[REDACTED]		
Peel Ports	2019	[REDACTED]‡	[REDACTED]	[REDACTED]	
Forth Ports	2019	[REDACTED]	[REDACTED]		
Maritime (Tamworth)	2019	[REDACTED]	[REDACTED]	[REDACTED]	
Maritime (Tamworth)	2020	[REDACTED]	[REDACTED]	[REDACTED]	
DPW (Southampton)	2021	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
<i>ShC</i>					
DPW (London Gateway)	2017	[REDACTED]	[REDACTED]		

Source: CMA RFI 3, Annex 34.1 & Annex 35.1; DP World questionnaire response; Peel Ports questionnaire response.

Notes:

† Original tender was for [REDACTED] units with an option for an additional [REDACTED] units the following year; this option was exercised.

‡ [REDACTED].

8.16 Konecranes said that, to the best of its knowledge, it did not participate in the [REDACTED] opportunities in the table above in which it is not listed as a bidder and was not invited to participate by the customers in question.¹¹⁰³ It also said that it did not find reference to these opportunities in its CRM system and does not hold documents discussing a decision by Konecranes not to participate in these opportunities.¹¹⁰⁴

8.17 Two customers provided additional detail on recent SC tenders.

(a) In relation to Maritime’s 2020 tender for Tamworth, [REDACTED].¹¹⁰⁵

(b) In relation to DP World’s 2021 tender, [REDACTED].¹¹⁰⁶

8.18 Overall, the evidence above indicates that the Parties are close competitors in the supply of SC and ShC in the UK – they are often the only competitors in SC and ShC bidding opportunities in the UK, and in the single opportunity with a third participant, the [REDACTED].

8.19 The Parties submitted that ZPMC has won tenders for SC and ShC outside of the UK in recent years, some of which are not captured in the shares of supply due to not yet being delivered.¹¹⁰⁷

¹¹⁰³ These are [REDACTED].

¹¹⁰⁴ Konecranes’ response [REDACTED].

¹¹⁰⁵ Response to P2 questionnaire [REDACTED].

¹¹⁰⁶ Response to P2 questionnaire [REDACTED].

¹¹⁰⁷ [Parties’ response to Issues Statement](#), paragraph 8.16.

- (a) one ShC in China in 2017 (Xiamen Songyu Terminal);
- (b) eight SC in Sweden in 2018 (for a port operated by HPH);
- (c) two ShC in Spain in 2019 (HPH);
- (d) four SC in Ghana in 2019 (Port of Tema);
- (e) 22 SC, with an option for 66 more, in South Africa in 2020 (TPT);
- (f) five SC in the Bahamas (HPH) in 2021;¹¹⁰⁸ and
- (g) two ShC in South Korea (Busan Port Authority).

8.20 The Parties also indicated that, in 2020, Combilift won two tenders in the Americas for four ShC. These are yet to be delivered and thus do not appear in the shares of supply.¹¹⁰⁹

8.21 We note that only two of the awards to ZPMC were in Europe and both of these were to ports operated by HPH.¹¹¹⁰ We understand that [REDACTED].¹¹¹¹ As noted above, the Parties submitted that [REDACTED] acts as a ‘shop window’ for suppliers seeking orders in the UK.¹¹¹² However, HPH does not use SC or ShC at any of its UK ports and, as explained in Chapter 6, evidence does not support the claim that HPH has material influence on other customers’ purchasing decisions.

8.22 Therefore, we consider that the bidding evidence indicates that there are no strong competitors to the Parties in the supply of SC and ShC in the UK and Europe.

Third-party evidence

Customers

8.23 We engaged with four customers identified by the Parties as using SC in the UK [REDACTED], one of which [REDACTED] also uses ShC.¹¹¹³ We asked these customers to list all suppliers that they considered viable alternatives in the supply of SC

¹¹⁰⁸ Parties submission [REDACTED].

¹¹⁰⁹ Merger Notice, [REDACTED].

¹¹¹⁰ The CMA understands a test unit has also been delivered to Aarhus Port in Denmark.

¹¹¹¹ Transcript of call [REDACTED].

¹¹¹² The Parties’ Response [REDACTED].

¹¹¹³ See Appendix D for more detail on our methodology.

and ShC, and, for each supplier, to score its offering from one to five, where five is the strongest offer.¹¹¹⁴

- (a) The first customer [REDACTED] uses, or has used, both Cargotec and Konecranes SC and scored both Parties' offerings five. This customer noted that it had recently started using Cargotec SC due to its 'new range of equipment for eco efficient operation'. This customer did not provide a score for any other suppliers but noted Liebherr as a supplier that may enter or expand in the future.¹¹¹⁵
- (b) The second customer [REDACTED] only uses Konecranes SC and scored Konecranes five. This customer did not provide a score for any other supplier.¹¹¹⁶
- (c) The third customer [REDACTED] only uses Cargotec SC and scored Cargotec five. This customer also identified Konecranes as a viable alternative and scored it four.¹¹¹⁷
- (d) The fourth customer [REDACTED] uses, or has used, SC and ShC from both Parties and scored Konecranes four and Cargotec five. This customer also mentioned ZPMC as a viable alternative and scored it two, noting that it is 'new to market' and 'will have to be analysed'.¹¹¹⁸

8.24 These responses indicate that UK customers consider the Parties as close competitors, and mostly do not consider ZPMC (or any other suppliers) as viable alternatives to the Parties.

8.25 In relation to the above evidence, the Parties submitted that the CMA is not entitled to draw inferences from blank entries or omissions.¹¹¹⁹ We note that the question asked customers to list *all* suppliers that they considered viable alternatives; as such, we consider it reasonable to interpret an omission of a supplier (such as ZPMC) as evidence that the customer does not consider that supplier to be a viable alternative.

¹¹¹⁴ The exact question wording was: 'Please list: (i) your existing suppliers of Horizontal Transport Equipment for UK Terminals and (ii) all other suppliers that you consider could be a viable alternative for the supply of Horizontal Transport Equipment for UK Terminals. For each supplier, please assign a score from 1 to 5, where 5 = strongest offer and 1 = weakest offer.'

¹¹¹⁵ Response to P1 questionnaire [REDACTED].

¹¹¹⁶ Response to P1 questionnaire [REDACTED].

¹¹¹⁷ Response to P1 questionnaire [REDACTED].

¹¹¹⁸ Response to P1 questionnaire [REDACTED].

¹¹¹⁹ The Parties' response [REDACTED].

8.26 We also received qualitative comments from customers relating to the closeness of competition between the Parties and the strength of other suppliers in the supply of SC and ShC in the UK.

(a) One customer [REDACTED] told us that it would only expect the Parties to participate in future tenders for SC and ShC. This customer considered that ZPMC has the ‘technical capability’ to compete in a future tender for SC and ShC and might have the incentive to bid [REDACTED]. However, it did not expect ZPMC to ‘provide much competition’ in such a tender because of ZPMC’s ‘lack of track record in Europe’.¹¹²⁰

(b) Another customer [REDACTED] considered that ‘ZPMC is still behind’ the Parties because they ‘are experienced in straddle and shuttle carriers as they have built around 10,000 carriers combined’.¹¹²¹

(c) A third customer [REDACTED] ‘is not aware of whether Chinese straddle carriers are marketed in Europe’.¹¹²²

8.27 These comments further suggest that UK customers consider the Parties to be close competitors and do not consider ZPMC as a viable competitor to the Parties now or in the near future.

Competitors

8.28 We also received evidence from Liebherr and ZPMC as competitors to the Parties in the supply of SC and ShC.

(a) Liebherr told us that [REDACTED].¹¹²³ [REDACTED].¹¹²⁴

(b) ZPMC told us that [REDACTED].¹¹²⁵ [REDACTED].¹¹²⁶

8.29 Overall, this evidence further supports the position that the Parties compete closely. It also indicates that Liebherr is no longer a competitor to the Parties and that ZPMC does not expect to be a strong competitor to the Parties in the supply of SC and ShC in the UK and Europe in the near future.

¹¹²⁰ Call note [REDACTED].

¹¹²¹ Call note [REDACTED].

¹¹²² Call note [REDACTED].

¹¹²³ Call note [REDACTED].

¹¹²⁴ Call note [REDACTED].

¹¹²⁵ CMA analysis [REDACTED].

¹¹²⁶ Call note [REDACTED].

Merger impact

- 8.30 We received views from several third parties indicating that they expect the Merger to have a negative impact on the supply of SC and ShC, largely due to the existing strong positions of the Parties.¹¹²⁷
- (a) One UK customer [X] stated that the Parties would ‘have dominance and be very strong’ in the supply of SC post-Merger¹¹²⁸ and that ‘the reduction in competition’ resulting from the Merger ‘may be an issue in any future tender.’¹¹²⁹
 - (b) Another UK customer [X] told us that the Merged Entity would ‘have a monopoly in the supply of [SC and ShC] for many years’ and, more generally, that the Merger could lead to worse terms and conditions (such as shorter warranties) and increased prices for spare parts and services.¹¹³⁰
 - (c) One of the competitors in the supply of SC and ShC [X] considered that the Merger would have a negative impact on competition as it would result in less choice for SC and ShC customers.¹¹³¹
 - (d) One competitor [X] that is not active in the supply of SC and ShC, but competes with the Parties in the supply of other CHE, noted that a ‘problem with the merger is the elimination of a straddle carrier manufacturer’.¹¹³²
- 8.31 On the other hand, one UK customer [X] noted a potential benefit of the Merger: ‘Konecranes has good features in straddle carriers’ and the Merged Entity ‘could combine the technologies of both companies to develop better products’.¹¹³³

Internal documents

- 8.32 The Parties submitted around 3,000 documents directly to the CMA in relation to the competitive positioning and performance of the Parties and their competitors in the UK or Europe. We also included in our assessment a

¹¹²⁷ In addition, as described at paragraph 7.90 above, five of the customers in mainland Europe that we spoke to in our remedy response hearings expressed general views on the competitive effects of the Merger (that were not specific to SC/ShC). Overall, these views were mixed; some of these customers were in favour of the merger or did not have concerns about it, while others said that they did have concerns, or that the merger would have both positive and negative impacts.

¹¹²⁸ Call note [X].

¹¹²⁹ Call note [X].

¹¹³⁰ Call note [X].

¹¹³¹ Call note [X].

¹¹³² Response to P2 questionnaire [X].

¹¹³³ Call note [X].

significant number of further documents on the same topic submitted by the Parties to the European Commission, which the Parties also provided with the CMA.

- 8.33 In our assessment of the internal documents, we placed more weight on recent documents that refer specifically to the competitive situation in Europe and/or the UK and that were created before the Merger was in contemplation (our approach to these documents is explained in more detail in Chapter 6).¹¹³⁴
- 8.34 Of the significant number of documents submitted by the Parties, only a small portion provide insight into competitive conditions in the CHE industry. Of the documents that were relevant to competitive assessment, relatively few related to SC or ShC, and even fewer to each of those products in isolation.
- 8.35 In our assessment of the relevant documents below, we start with the documents that are mainly relevant to understanding whether the Parties are close competitors in the supply of SC and ShC and then assess the documents that are also relevant to understanding the constraints posed by other suppliers and the relative importance of the criteria taken into account in purchasing decisions. We then touch briefly upon the emerging trends within the market which the Parties see as affecting how competition will develop in the future.

Closeness of competition between the Parties

- 8.36 Overall, the documents that we reviewed in relation to SC and ShC indicate that the Parties perceive each other as their closest competitor. The internal documents also indicate that both Parties actively participate in competition with the other, tracking the other's success and analysing both global and regional shares of supply.
- (a) The Cargotec presentation entitled '[REDACTED]', produced in February 2018, notes that Cargotec should '[REDACTED]', and that this can be done by '[REDACTED]'. This document compares '[REDACTED]'.¹¹³⁵

¹¹³⁴ As explained in Chapter 6, in attributing probative value to specific internal documents, we have taken into account the timing, purpose and context in which they were prepared. As a general principle, we consider that internal documents prepared in the ordinary course of business, for example before the Merger was in contemplation, are likely to have higher probative value than internal documents prepared once the Merger was in contemplation. This is consistent with [CMA129](#), paragraph 2.29(a). Consequently, while we have considered their relevance to our assessment, we have treated internal documents prepared since the Merger was in contemplation with a degree of caution. In particular, we are more likely to assign weight to evidence contained in such documents where it is corroborated by other evidence.

¹¹³⁵ Cargotec internal document '[REDACTED]'.

- (b) A Cargotec market analysis document produced in December 2019 shows that it considered itself to be the market leader for SC. Konecranes is ranked second, [REDACTED], and ZPMC ranked last [REDACTED]. Under ‘competitive advantage’ Cargotec states that its [REDACTED]. The same rankings and observations are made under the ShC analysis.¹¹³⁶ We note that these appear to be global analyses.
- (c) A presentation, prepared by Konecranes in May 2020 and relating to the ‘Market and Competition’ for SC, compared Konecranes SC [REDACTED] with those of [REDACTED]. In its [REDACTED], Konecranes noted its [REDACTED] and [REDACTED]. Within this document, Konecranes sets out the perceived [REDACTED] implemented by Cargotec and itself, noting that [REDACTED] whereas Cargotec offers [REDACTED] and sometimes offers a [REDACTED] that is recovered [REDACTED].¹¹³⁷ The use of the word [REDACTED] indicates that Konecranes continues to perceive its only real competitor to be Cargotec.
- (d) Another Konecranes internal document titled ‘Port Cranes Competition and Market’ (May 2020) positions Cargotec and Konecranes in the same higher quadrant in terms of quality/performance and relative price.¹¹³⁸
- (e) A Konecranes market update document produced in November 2018 for the Port Solutions division notes, in relation to Port Cranes (which covers SC and ShC along with other HTE and cranes), that Cargotec is [REDACTED],¹¹³⁹ indicating that price competition between the two is strong.

8.37 The CTF Market Report notes that ‘the SC market is a duopoly with the two dominating manufacturers Kalmar and Konecranes (Noell) capturing close to 95% of the market’. This assessment of the market is consistent with the internal documents produced by the Parties. The report further notes that for ‘new entrants it is difficult to capture a “critical mass” of the market’.¹¹⁴⁰

Competitive constraints

8.38 The Parties’ internal documents show that ZPMC, which the Parties begin to track from 2019, appears to be the only other constraint on the Parties (aside from each other), but also that ZPMC is a materially weaker competitive presence than both of the Parties.¹¹⁴¹ In particular, whilst the Parties’ documents attest to ZPMC’s entry and production capacity, they also reflect

¹¹³⁶ Cargotec internal document [REDACTED].

¹¹³⁷ Konecranes internal document [REDACTED].

¹¹³⁸ Konecranes internal document [REDACTED].

¹¹³⁹ Konecranes internal document [REDACTED].

¹¹⁴⁰ DS Research (January 2020). [Container Terminal Foresight 2024](#), p 68.

¹¹⁴¹ Some documents mention Liebherr as a competitor, but as noted above, Liebherr [REDACTED].

that the Parties continue to be, by far, the two largest suppliers of SC and ShC, and that customers do not yet see ZPMC as an equal alternative to the Parties' SC and ShC offers. The documents that discuss the competitive constraint from ZPMC do not assess competition specifically in the UK or Europe.

- (a) A Konecranes internal document produced in relation to an [REDACTED] in March 2019 identifies ZPMC as one of only three active suppliers of automated SC and ShC (alongside the Parties).¹¹⁴²
- (b) Another Konecranes document, produced in March 2020 – 'BA Port Solutions Deep Dive' presentation – lists only three competitors in SC and ShC at a global level: Cargotec (first), Konecranes (second) and ZPMC (third).¹¹⁴³
- (c) A Cargotec competitor review for [REDACTED] 2020, produced in September 2020, when the Merger was in contemplation, provides commentary regarding [REDACTED].¹¹⁴⁴ The document also tracks ZPMC's entry into the SC market. It notes that, within two years, ZPMC had received orders for 33 units globally¹¹⁴⁵ and now claimed [REDACTED], which accounts for more than half of the annual global market. In response to this development, Cargotec stated that '[REDACTED]', suggesting that Cargotec considered that it could be more competitive in aspects other than price.¹¹⁴⁶ We note, however, that this internal document, which was produced when the Merger was in contemplation, does not indicate whether ZPMC's additional capacity will be used to supply the European market (and that, as described further in paragraph 8.45(a) below, ZPMC [REDACTED]).
- (d) In May 2020, when the Merger was in contemplation, Konecranes prepared the internal document entitled 'Port Cranes Competition and Market' mentioned above. This document sets out the comparative positioning of each of Konecranes' perceived competitors. Cargotec and Konecranes are ranked as [REDACTED], with the highest relative performance/quality, as well as the [REDACTED] (along with Liebherr). Notes made on the diagram indicate that Liebherr [REDACTED]. ZPMC is mentioned as being 'the Chinese Leader' in STS, RTG and RMG, but is positioned as having lower performance/quality, as well as lower price, than the

¹¹⁴² Liebherr is also listed as having 'no known case'. [REDACTED].

¹¹⁴³ Konecranes internal document [REDACTED].

¹¹⁴⁴ Cargotec internal document [REDACTED].

¹¹⁴⁵ We note that 22 of these units were ordered by TPT in South Africa; this contract included the option for an additional 66 units.

¹¹⁴⁶ Cargotec internal document [REDACTED].

Parties in relation to its SC offer.¹¹⁴⁷ The positioning of these competitors is set out in Figure 18 below.

Figure 18 [REDACTED]

[REDACTED]

Source: [REDACTED].

- (e) The relative positioning of competitors is also explained in the 2020 'Market and Competition' for SC document (which is also mentioned above). This states that ZPMC is '[r]elatively new in the market' and notes a view from two third parties that ZPMC is '[REDACTED]' in SC. The two other manufacturers in Figure 18, [REDACTED], are noted as being present only in Australia and Japan respectively.¹¹⁴⁸
- (f) Konecranes received at least one email from a customer [REDACTED] after the Merger as a result of the Merged Entity [REDACTED]. This customer [REDACTED].¹¹⁴⁹

Purchasing criteria

- 8.39 We have also reviewed internal documents regarding the main relevant purchasing criteria for SC, which provide insight on how the strengths and weaknesses of each competitor relate to these criteria.
- 8.40 Cargotec's 2019-2024 Market Analysis, also discussed above, lists the 'key purchasing criteria' for both SC and ShC as 'references, sustainability, relationships, lead time, price', which indicates that there are many factors other than price that influence customers' purchasing decisions. In the same document, Cargotec assesses itself to be in a strong position in this market, listing as its own competitive advantages in SC: (i) '[REDACTED]'; and ii) '[REDACTED]'. The obstacles to growth that Cargotec lists are: i) the fact that the market for manual SC '[REDACTED]'; and ii) '[REDACTED]'.¹¹⁵⁰ In this regard, Cargotec does not identify the competition it faces as an obstacle to growth.

The development of competition in the foreseeable future

- 8.41 The Parties' internal documents indicate that both of the Parties have strong SC and ShC and expect to remain competitive within the market for the foreseeable future.

¹¹⁴⁷ Konecranes internal document [REDACTED].

¹¹⁴⁸ Konecranes internal document [REDACTED].

¹¹⁴⁹ Email produced by Konecranes, [REDACTED].

¹¹⁵⁰ Cargotec internal document [REDACTED].

- (a) A Cargotec internal document from [REDACTED], discusses under the heading ‘top risks’ in relation to ‘China Inc’ that [REDACTED]. Under the heading ‘mitigation plans’ in relation to ‘China Inc.’, it is noted that in response Cargotec should [REDACTED].¹¹⁵¹
- (b) A Konecranes market update document, produced in November 2018, noted that the [REDACTED] and that [REDACTED].¹¹⁵² The document notes that one of Konecranes’ strengths is that it is [REDACTED] and was [REDACTED]. It noted that one of its weaknesses was that [REDACTED] but saw the connection of those lines as a business opportunity; the document noted that [REDACTED].¹¹⁵³

Entry and expansion of other suppliers of SC and ShC

- 8.42 In the sections above, we considered the competitive constraints currently imposed by existing suppliers of SC and ShC in Europe. As set out in our guidance, our assessment is generally forward-looking and will seek to account for the future evolution of competitive conditions, including constraints from rival entry or expansion.¹¹⁵⁴
- 8.43 In this section, we consider the possible constraint on the Merged Entity arising from entry or expansion that would have occurred irrespective of the Merger. We considered whether the main potential sources of entry identified by the Parties have the necessary capabilities and intention to enter at scale or substantially expand their operations in relation to the supply of SC and ShC in Europe (including the UK), in the near future. In our assessment of the likelihood of timely and sufficient entry and expansion, we have taken into account the conclusions in Chapter 12.

Parties’ views

- 8.44 The Parties submitted that there are other suppliers of SC and ShC that are actual or potential competitors to the Parties, including Mobicon, TCM/Logisnext, Suzhou Dafang and Combilift.¹¹⁵⁵ The Parties further noted that the European Commission has identified a potential new entrant in the supply of SC and ShC.¹¹⁵⁶

¹¹⁵¹ Cargotec internal document [REDACTED].

¹¹⁵² Konecranes internal document [REDACTED].

¹¹⁵³ Konecranes internal document [REDACTED].

¹¹⁵⁴ [CMA129](#), paragraph 4.16.

¹¹⁵⁵ Merger Notice, [REDACTED].

¹¹⁵⁶ [Parties’ response to Issues Statement](#), paragraph 8.23.

Assessment of evidence on specific entry or expansion

8.45 We investigated whether any third parties have the necessary capabilities and specific intention to enter or to substantially expand their operations in relation to SC and ShC, in Europe (including the UK), in the near future:

(a) [REDACTED].¹¹⁵⁷ [REDACTED].¹¹⁵⁸ [REDACTED].¹¹⁵⁹ [REDACTED].¹¹⁶⁰

(b) [REDACTED].¹¹⁶¹ [REDACTED].

(c) [REDACTED].¹¹⁶²

8.46 We note that ZPMC is already active (to a very limited extent) in the supply of SC and ShC. Even if its performance was in line with [REDACTED] for the next two years (see paragraph 8.45 above), it would achieve only a very small share of supply in the UK. Therefore, the evidence that we have seen does not suggest that there will be a material change in the level of competitive constraint posed by ZPMC (or any other) competitors in the near future. Further, we have not seen any evidence to suggest that any entry or expansion would be sufficient in scope and magnitude to sufficiently constrain the Merged Entity to offset the loss of competition from the Merger.

8.47 Further, we note that no entry on a significant scale has occurred recently in Europe in SC and ShC (with ZPMC not having achieved a significant position since entering). In Chapter 12, we consider whether barriers to entry and expansion are significant in SC and ShC, and assess the likelihood of entry or expansion in response to the effects of the merger.

Our conclusion

8.48 Our conclusion is that the Merger may be expected to result in a SLC in the supply of SC and ShC in Europe (including the UK), 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.

8.49 The evidence clearly shows that the Parties compete closely in the supply of SC and ShC:

¹¹⁵⁷ Call note [REDACTED].

¹¹⁵⁸ Call note [REDACTED].

¹¹⁵⁹ Transcript of call [REDACTED].

¹¹⁶⁰ Response to P2 questionnaire [REDACTED].

¹¹⁶¹ Call note [REDACTED].

¹¹⁶² Call note [REDACTED].

- (a) The Parties currently have close to [90–100%] [redacted] 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.¹¹⁶³
- (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, [redacted].
- (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.

8.50 In addition, as noted at paragraph 6.153, the Parties are likely to compete particularly closely for some customers as a result of their wide CHE portfolios (including MEQ, SC, ShC, and port cranes), which enable them to offer an integrated, automated and comprehensive solution to ports. These capabilities are likely to become increasingly significant in future as the extent of automation and digitalisation within CHE develops further.

8.51 Based on the evidence that we have reviewed in the round, we conclude that there are 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 had [0–5%] [redacted] share of supply in the UK and [0–5%] [redacted] share of supply in Europe over the period 2017 to 2020, reflecting its limited success in UK and European tenders so far. In the [redacted] in which ZPMC participated, [redacted], and HPH seems to be its only customer in Europe. 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 recognised that ZPMC has entered this market, but also reflected the Parties' awareness [redacted]. We have not received any evidence that ZPMC will

¹¹⁶³ CMA129, paragraph 4.10.

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. Liebherr [X], so we do not consider it as a competitor to the Parties, despite it being mentioned by some customers as a potential alternative and it being mentioned in the Parties' internal documents. All the other suppliers are either small suppliers that focus on ShC or do not operate in Europe.

8.52 We have not seen any evidence indicating that any other suppliers will enter or materially expand in the supply of SC and ShC in Europe (including the UK).

9. Horizontal effects: MEQ

Framework and approach

- 9.1 In this Chapter, we assess horizontal unilateral effects of the Merger in the supply of RS, HDFLT and ECH.
- 9.2 In order to assess the likelihood of the Merger resulting in unilateral effects, we considered the closeness of competition between the Parties and the (present and future) competitive constraints provided by competing suppliers in each of the three types of MEQ for which we are considering whether the overlap in the Parties' activities could give rise to competition concerns – RS, HDFLT and ECH. We then consider whether there are any possible constraints on the Merged Entity arising from entry or expansion that would have occurred irrespective of the Merger.
- 9.3 We have gathered, and taken account of, a range of evidence in our assessment. In particular, we have considered:
 - (a) the Parties' views;
 - (b) the shares in the supply of each type of MEQ in the UK, Europe and worldwide (excluding China);
 - (c) evidence from quantitative and qualitative bidding analysis;
 - (d) third-party evidence; and
 - (e) evidence from the Parties' internal documents, in relation to MEQ in general and each of the three types of MEQ we are considering.

Parties' general views on MEQ markets

- 9.4 The Parties submitted that the markets for MEQ are characterised by intense competition, which is promoted through distributors that provide both intra- and inter-brand competition between OEMs, as well as lowering the barriers to entry for new entrants from other regions.¹¹⁶⁴ As such, the Merged Entity would continue to compete with a large number of viable competitors, including both global CHE suppliers and smaller, specialised suppliers of particular MEQ.¹¹⁶⁵
- 9.5 Cargotec submitted that 'mobile equipment is highly commoditised and often sold via external independent distribution partners and dealers'. Both Parties stated that the lack of a local direct distribution and after-sales network does not affect the ability of a supplier to compete effectively and is not a prerequisite to being a successful supplier in the UK. The Parties consider that non-UK and non-European suppliers have a number of options to enter and gain immediate market presence in the UK through a distributor relationship or dealer without any need for a local presence.¹¹⁶⁶
- 9.6 The Parties submitted that the vast majority of MEQ customers are sophisticated purchasers (such as GTOs and large industrial customers) that exert significant buyer power on suppliers.¹¹⁶⁷ They also noted that the purchasing processes employed by MEQ customers, such as structured tender processes and negotiated sales processes, lead to competitive outcomes.¹¹⁶⁸
- 9.7 The Parties further submitted that recent and expected entry by Chinese suppliers will ensure that the Merged Entity faces significant competitive constraints, highlighting several internal documents from the Parties that demonstrate the competitive threat posed by suppliers such as Sany, ZPMC, and XCMG.¹¹⁶⁹
- 9.8 In response to the working paper on the supply of MEQ, the Parties made a number of further submissions.¹¹⁷⁰
- 9.9 In particular, the Parties made submissions about the CMA overestimating the importance of after-sales service and track record. These are addressed

¹¹⁶⁴ [Parties' response to Issues Statement](#), paragraph 7.1.

¹¹⁶⁵ Merger Notice, [REDACTED].

¹¹⁶⁶ Cargotec's and Konecranes' Responses [REDACTED].

¹¹⁶⁷ [Parties' response to Issues Statement](#), paragraph 7.1.

¹¹⁶⁸ [Parties' response to Issues Statement](#), paragraphs 7.6 to 7.8.

¹¹⁶⁹ [Parties' response to Issues Statement](#), paragraphs 7.3 and 7.9.

¹¹⁷⁰ Certain of the Parties' submissions relate to the CMA's approach to evidence and other cross-cutting topics; these are addressed in Chapter 6.

in Chapter 5 and in the assessment of the evidence regarding each type of equipment below.

- 9.10 The Parties also submitted that the CMA has failed to consider the factual evidence that they provided regarding the entry and expansion of competitors, such as:
- (a) Sany's recent growth in ECH;
 - (b) ZPMC's recent sales of RS globally;
 - (c) XCMG's entry into the MEQ market and partnership with ZPMC;
 - (d) Camblift AB's imminent entry into the RS market; and
 - (e) Heli's FLT development.¹¹⁷¹
- 9.11 In response to our Provisional Findings, the Parties also submitted that the CMA's market testing failed to investigate and assess the competitive constraints which may be imposed on the Merged Entity by a substantial number of other suppliers present in the UK and/or Europe (eg in respect of FLTs, Hyundai, Svetruck, Sany, and others). The Parties said that the CMA unjustifiably limited its inquiry and assessment to whether other suppliers currently exert a material competitive constraint on the Parties in the UK but did not consider whether these other suppliers may impose a sufficient post-Merger competitive constraint by acting as an available option for customers. The Parties said that there is no rational basis for ignoring the presence of these suppliers as potential competitive constraints on the Merged Entity, even if assessing the impact of the Merger on UK customers only. Indeed, the Parties stated that 'what matters is that the customer has a number of possible suppliers'.¹¹⁷²

Response to Parties' general views on MEQ markets

- 9.12 We set out our approach to gathering third-party evidence in Chapter 6, including our assessment of the sufficiency of the sample of competitors that we engaged with.
- 9.13 We disagree with the Parties' view that we have not investigated and assessed the constraint from suppliers such as Hyundai, Svetruck, Sany, nor that we have failed to consider the potential constraint that they may impose post-Merger; we investigate competitive constraints from these suppliers and

¹¹⁷¹ The Parties' Response [§].

¹¹⁷² [Parties' Response to the Provisional Findings Report](#) paragraph 7.6.

others in this Chapter and consider whether these constraints may change post-Merger in Chapter 12.

Horizontal unilateral effects in the supply of RS

Parties' views

- 9.14 The Parties submitted that Sany had seen strong recent growth in the UK, achieved through its relationship with its distributor Cooper and by offering low prices (Cargotec estimates that Sany offers prices 5-10% lower than its own). They also submitted that other Chinese competitors, in particular ZPMC and XCMG, could enter the market and achieve success in the same way that Sany has.¹¹⁷³
- 9.15 The Parties submitted that Chinese suppliers are also well-placed to capitalise on the trends towards electrification and automation due to their substantial investments in R&D. They note that both Sany and XCMG currently offer electric RS, while the Parties are still in the development stages.¹¹⁷⁴
- 9.16 In response to the CMA's working paper on the supply of MEQ and the CMA's Provisional Findings, the Parties made a number of submissions:
- (a) The shares of supply analysis in the working paper shows that, in addition to Cargotec, both Sany and Hyster have a larger share of supply than Konecranes in the UK. The Parties emphasised the entry of Chinese suppliers into the UK market, stating that, not only Sany, but also ZPMC have a material share of the RS market and they expect both to be competitive in future tenders.¹¹⁷⁵
 - (b) The working paper ignored clear evidence of Sany's rapidly growing presence in RS, for example because shares of supply are based on an average of the period between 2016 and 2020. The Parties considered that the first years of these shares are likely to underestimate Sany's current market position because Sany and Cooper only announced their relationship in 2015.¹¹⁷⁶
 - (c) The evidence set out in the Provisional Findings, including third-party views and internal documents, does not support a conclusion that Sany imposes a lesser constraint on the Parties for RS and ECH in the UK

¹¹⁷³ [Parties' response to Issues Statement](#), paragraph 7.11.

¹¹⁷⁴ [Parties' response to Issues Statement](#), paragraphs 7.12 to 7.14.

¹¹⁷⁵ The Parties' Response [🔗].

¹¹⁷⁶ The Parties' Response [🔗].

because of quality concerns. Rather, the Parties argue that Sany's sales in 2019 and 2020, and customer responses, show that Sany is growing rapidly in the UK. In relation [REDACTED].¹¹⁷⁷

- (d) The CMA's bidding analysis is based on incomplete data, and it does not consistently support the position that Cargotec and Konecranes are close competitors. When lost units are looked at, both Hyster and Sany are closer competitors to Cargotec than Konecranes is in the UK.¹¹⁷⁸
- (e) It is inappropriate to discount CVS as a constraint on the basis that it does not operate in the UK, as it accounts for 20% of Cargotec's losses in Europe (including the UK) and is one of the largest competitors in Europe.¹¹⁷⁹

Shares of supply

9.17 Chapter 6 provides an overview of our approach to shares of supply and the weight that we place on this evidence. We have constructed our estimates of the shares of supply using data provided by the manufacturers (or their distributors) themselves and, where this is not available, the Parties' estimates of their competitors' sales.¹¹⁸⁰

9.18 Table 25 shows our estimates of the shares of supply based on the volumes sold by each supplier (either directly to a customer or to a distributor) for RS over the period 2016 to 2020 for three different geographic areas: UK, Europe, and worldwide (excluding China). As set out in Chapter 5, we conclude that the relevant geographic market is no wider than Europe-wide, with some important UK-specific aspects of competition that affect the strength of competitors for some UK customers. As such, we consider that shares of supply in both the UK and Europe as a whole are relevant to our competitive assessment.

- (a) Within the UK, the Merged Entity would have a combined share of supply of [50 – 60]% [REDACTED]. Only two other suppliers made a significant number of deliveries in the relevant period: Hyster [20 – 30]% ([REDACTED]) and Sany [20 – 30]% ([REDACTED]). Some of the suppliers that are active in Europe are not present in the UK. For example, CVS does not currently have a

¹¹⁷⁷ Parties' Response to the Provisional Findings Report paragraphs 7.8 to 7.10.

¹¹⁷⁸ The Parties' Response [REDACTED].

¹¹⁷⁹ The Parties' Response [REDACTED].

¹¹⁸⁰ See Appendix B for further detail on our methodology.

UK-based distributor and did not make any sales of RS in the UK in the period 2016 to 2020.¹¹⁸¹

- (b) Within Europe, the Parties were the two largest suppliers over the last five years, such that the Merged Entity would have a combined share of supply of [60 – 70]% [REDACTED]. The next largest suppliers were Hyster [10 – 20]% ([REDACTED]) and CVS [5 – 10]% ([REDACTED]). Sany and Liebherr were smaller suppliers, each with less than 5% share.
- (c) On a worldwide basis (excluding China), the Merged Entity would have a combined share of supply of [50 – 60]% [REDACTED]. Taylor is a supplier that operates only in North America and has a [0 – 5]% [REDACTED] share of supply on a worldwide basis (excl. China). ZPMC also made a small number of sales outside of Europe during 2016 to 2020.

Table 25: Shares of supply of RS based on sales volumes, 2016–20

Company	Volume in Units					
	Geographic area					
	UK		Europe		Worldwide (excl. China)	
Volume	Share	Volume	Share	Volume	Share	
Cargotec	[REDACTED]	[30 – 40]% [REDACTED]	[REDACTED]	[40 – 50]% [REDACTED]	[REDACTED]	[30 – 40]% [REDACTED]
Konecranes	[REDACTED]	[10 – 20]% [REDACTED]	[REDACTED]	[20 – 30%] [REDACTED]	[REDACTED]	[20 – 30%] [REDACTED]
Combined	[REDACTED]	[50 – 60]% [REDACTED]	[REDACTED]	[60 – 70]% [REDACTED]	[REDACTED]	[50 – 60]% [REDACTED]
Hyster	[REDACTED]	[20 – 30%] [REDACTED]	[REDACTED]	[10 – 20%] [REDACTED]	[REDACTED]	[10 – 20%] [REDACTED]
Sany	[REDACTED]	[20 – 30%] [REDACTED]	[REDACTED]	[0 – 5]% [REDACTED]	[REDACTED]	[5 – 10]% [REDACTED]
Liebherr	[REDACTED]	[0 – 5]% [REDACTED]	[REDACTED]	[0 – 5]% [REDACTED]	[REDACTED]	[0 – 5]% [REDACTED]
CVS	-	-	[REDACTED]	[5 – 10]% [REDACTED]	[REDACTED]	[5 – 10]% [REDACTED]
Taylor	-	-	-	-	[REDACTED]	[0 – 5]% [REDACTED]
ZPMC	-	-	-	-	[REDACTED]	[0 – 5]% [REDACTED]
Others	-	-	[REDACTED]	[0 – 5]% [REDACTED]	[REDACTED]	[10 – 20%] [REDACTED]
Total	[REDACTED]	100%	[REDACTED]	100%	[REDACTED]	100%

Source: Parties, [REDACTED]; Competitors' RFI responses.

9.19 Table 26 shows the same shares of supply based on revenue rather than sales volumes. The shares are similar to those in Table 25—the Merged

¹¹⁸¹ Response to P2 questionnaire [REDACTED] response to the CMA's P2 questionnaire, [REDACTED].

Entity would have [50 – 60] % [REDACTED] share of supply in the UK and [70 – 80] % [REDACTED] in Europe.

Table 26: Shares of supply of RS based on revenue, 2016–20

Company	Revenue in €m					
	Geographic area					
	UK		Europe		Worldwide (excl. China)	
Revenue	Share	Revenue	Share	Revenue	Share	
Cargotec	[REDACTED]	[40 – 50] % [REDACTED]	[REDACTED]	[40 – 50] % [REDACTED]	[REDACTED]	[30 – 40] % [REDACTED]
Konecranes	[REDACTED]	[10 – 20] % [REDACTED]	[REDACTED]	[20 – 30] % [REDACTED]	[REDACTED]	[20 – 30] % [REDACTED]
Combined	[REDACTED]	[50 – 60] % [REDACTED]	[REDACTED]	[70 – 80] % [REDACTED]	[REDACTED]	[50 – 60] % [REDACTED]
Hyster	[REDACTED]	[20 – 30] % [REDACTED]	[REDACTED]	[10 – 20] % [REDACTED]	[REDACTED]	[10 – 20] % [REDACTED]
Sany	[REDACTED]	[20 – 30] % [REDACTED]	[REDACTED]	[0 – 5] % [REDACTED]	[REDACTED]	[5 – 10] % [REDACTED]
Liebherr	[REDACTED]	[0 – 5] % [REDACTED]	[REDACTED]	[0 – 5] % [REDACTED]	[REDACTED]	[0 – 5] % [REDACTED]
CVS	-	-	[REDACTED]	[5 – 10] % [REDACTED]	[REDACTED]	[5 – 10] % [REDACTED]
Taylor	-	-	-	-	[REDACTED]	[0 – 5] % [REDACTED]
ZPMC	-	-	-	-	[REDACTED]	[0 – 5] % [REDACTED]
Others	-	-	[REDACTED]	[0 – 5] % [REDACTED]	[REDACTED]	[10 – 20] % [REDACTED]
Total	[REDACTED]	100%	[REDACTED]	100%	[REDACTED]	100%

Source: Parties, [REDACTED]; Competitors' RFI responses.

9.20 Overall, the shares of supply indicate that the Parties are close competitors in the supply of RS in both the UK and Europe, being the two largest suppliers in Europe by some distance and two of only four significant suppliers in the UK. The Merged Entity would have a combined share of supply of [50 – 60] % [REDACTED] in the UK and around [70 – 80] % [REDACTED] in Europe.

9.21 Whereas Cargotec has broadly similar shares in the UK and Europe, Konecranes' share of supply is lower in the UK (where it is around [10 – 20] % [REDACTED]) than it is in Europe as a whole (where it is around [20 – 30] % [REDACTED]). We consider that this is likely to reflect the role that national distributors play in the competitive process in MEQ (see Chapter 5) and, in particular, both Konecranes' difficulties in fine-tuning its operations since its switch to its current UK distributor, Impact, and Sany's relative success with its UK distributor, Cooper.¹¹⁸² Nonetheless, Konecranes has a material share in the

¹¹⁸² In the Main Party Hearing, Konecranes said that 'I think...why we are weaker in the UK is that we have not yet got our act together to enable us to provide an offering the customer really appreciates. Then...Sany has

UK (above 10%) and other evidence (see below and Chapter 6) indicates that Konecranes is a close competitor to Cargotec for UK customers.

- 9.22 The position of Hyster is the reverse of Konecranes - its share of supply is larger in the UK than in Europe as a whole. As noted above, we consider that this is likely to reflect the role of its national distributor (Briggs). The 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. Therefore, we consider that the shares of supply are consistent with Hyster being a strong competitor to the Parties in both the UK and Europe.
- 9.23 The shares of supply indicate that Sany is a material competitor in the UK, with around [20 – 30] [%] share of supply, but is much smaller in Europe ([0 – 5] [%] share). As with Konecranes and Hyster, we consider that this difference is likely to reflect the role of its national distributor (Cooper).
- 9.24 In relation to Sany, the Parties submitted that presenting shares over the five-year period from 2016 to 2020 was misleading given that Sany only announced its relationship with Cooper in 2015 and that it has recently grown rapidly.¹¹⁸³
- 9.25 We note that Sany had much higher UK sales in 2019 ([] units) and 2020 ([] units) as compared with previous years (it sold between [] units in each of the previous three years). Cooper (the UK distributor for Sany) explained that 2019 was an exceptionally good year ([]).¹¹⁸⁴ It said that it expects sales to be more in line with [].¹¹⁸⁵ This suggests that Sany is now a more significant competitor in the UK than its share of supply over 2016 to 2020 ([20 – 30][]%) would suggest.
- 9.26 The Parties further submitted that Sany plans to expand in Europe, leveraging its strong presence in the UK.¹¹⁸⁶ We note that, according to data provided by the Parties, Sany has been delivering RS in the EEA (excluding the UK) since at least 2010.¹¹⁸⁷ Despite this, Sany has a share of supply of only [0 – 5][]% in Europe as a whole over 2016 to 2020. While Sany has higher sales in the UK and worldwide (excluding China), we do not consider that this necessarily means that Sany's track record in those regions will lead

taken quite a big part of the market in the UK already... I think we are not []...that is the main one [and] we have not been able to [] in the UK yet. We are still growing it with Impact. Maybe if you have heard, [], for example, in the UK so there has been some changes there'. [].

¹¹⁸³ The Parties' Response [].

¹¹⁸⁴ Call note [].

¹¹⁸⁵ Call note [].

¹¹⁸⁶ Merger Notice, [].

¹¹⁸⁷ The Parties response, [].

to growth for Sany in Europe. Further, as discussed below, we have not seen any evidence that Sany has specific expansion plans within Europe (including the UK).

- 9.27 The shares of supply show that CVS and Liebherr are the other two suppliers that are active in Europe (with shares of [5 – 10] [%] and [0 – 5] [%] respectively on a European basis). CVS did not make any sales in the UK in the period 2016 to 2020 while Liebherr made a very small number of sales ([] units). We consider that the limited sales in the UK by these suppliers does not in itself rule out that they could compete for UK customers. However, in the round, the other evidence that we review below is consistent with these suppliers not competing closely with the Parties in relation to UK customers.

Bidding analysis

- 9.28 Chapter 6 provides an overview of our approach to the bidding analysis and the weight that we place on this evidence.

Quantitative analysis of Parties' data

- 9.29 In this section, we present the results of our quantitative analysis of the bidding data provided by the Parties.¹¹⁸⁸
- 9.30 Our analysis considers 'loss ratios', which are the proportion of bidding opportunities lost to each competitor as a percentage of all opportunities that the Party participated in and lost. As discussed in Chapter 6, these are an important measure of the closeness of competition between the Parties and their competitors.
- 9.31 We calculated loss ratios on three different measures: number of opportunities lost, total number of units lost, and total value (or revenue) lost.
- 9.32 As set out in Chapter 5, we conclude that the relevant geographic market is no wider than Europe-wide, with some important UK-specific aspects of competition that affect the strength of competitors for some UK customers. As such, we consider that loss ratios in both the UK and Europe as a whole are relevant to our competitive assessment. We treat the precise levels of the UK loss ratios with caution due to the small sample sizes.¹¹⁸⁹

¹¹⁸⁸ We discuss this data further in appendix C.

¹¹⁸⁹ The data comprises [] opportunities in total lost by Cargotec in the UK, and [] lost by Konecranes in the UK.

9.33 Table 27 below shows RS loss ratios for Cargotec in the UK from 2016 to May 2021. This indicates that Cargotec lost the same number of opportunities to each of Hyster, Konecranes and Sany in the UK. However, based on the number of units and value lost in these opportunities, Hyster was the closest competitor to Cargotec (with loss ratios of [REDACTED]%), followed by Sany ([REDACTED]%) and then Konecranes ([REDACTED]%). Cargotec lost fewer than [REDACTED]% of opportunities to any other individual competitor.

Table 27: RS loss ratios, UK, Cargotec, 2016 to May 2021

Company	UK					
	Number of opportunities		Number of units		Value (revenue in €m)	
	Number	Percentage	Number	Percentage	€m	Percentage
Hyster	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	v
Konecranes	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Sany	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Liebherr	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Other	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Unknown	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Total	[REDACTED]	100%	[REDACTED]	100%	[REDACTED]	100%

Source: CMA analysis of Parties' data.

Note: As explained in Appendix C we have made adjustments to the recorded values of a small number of opportunities that we consider outliers based on their high implied unit prices.

9.34 Table 28 below shows RS loss ratios for Cargotec in Europe from 2016 to May 2021. This indicates that approximately [REDACTED]% of opportunities lost by Cargotec in Europe were awarded to Konecranes. The loss ratios show that Hyster and CVS were also material competitors to Cargotec in Europe, accounting for [REDACTED]% of lost opportunities. Cargotec lost fewer than [REDACTED]% of opportunities to any other individual competitor, including Sany.

Table 28: RS loss ratios, Europe (EEA + UK), Cargotec, 2016 to May 2021

Company	Europe (EEA + UK)					
	Number of opportunities		Number of units		Value (revenue in €m)	
	Number	Percentage	Number	Percentage	€m	Percentage
Konecranes	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Hyster	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
CVS	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Sany	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Liebherr	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Linde	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Other	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Unknown	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Total	[REDACTED]	100%	[REDACTED]	100%	[REDACTED]	100%

Source: CMA analysis of Parties' data.

Note: As explained in Appendix C we have made adjustments to the recorded values of a small number of opportunities that we consider outliers based on their high implied unit prices.

9.35 Table 29 below shows RS loss ratios for Konecranes in the UK from 2016 to May 2021. This indicates that Cargotec was the competitor to which Konecranes lost most opportunities in the UK, followed by Sany and then Hyster. By value, the majority of losses were to Hyster followed by Cargotec and then Sany. We note that around two thirds of losses to Hyster by value came from a single, high value mixed tender for RS and ECH.¹¹⁹⁰

Table 29: RS loss ratios, UK, Konecranes, 2016 to May 2021

Company	UK			
	Number of opportunities		Value (revenue in €m)	
	Number	Percentage	€m	Percentage
Cargotec	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Sany	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Hyster	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Other	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Unknown	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Total	[REDACTED]	100%	[REDACTED]	100%

Source: CMA analysis of Parties' data.

Notes: [REDACTED].

As explained in Appendix C, we have made adjustments to the recorded values of a small number of opportunities that we consider outliers based on their high implied unit prices. [REDACTED].

9.36 Table 30 below shows RS loss ratios for Konecranes in Europe from 2016 to May 2021. This indicates that Cargotec accounted for [REDACTED]% of opportunities lost by Konecranes in Europe. Hyster was the next closest competitor to

¹¹⁹⁰ The total value of this RS and ECH tender was €[REDACTED]. For the purposes of our analysis, we apportioned this value equally between the RS and ECH components of the tender.

Konecranes based on loss ratios, followed by CVS and Sany. We note that Konecranes lost proportionately fewer opportunities to Sany in Europe than it did in the UK. Again, a material proportion (around [X]%) of losses to Hyster by value came from the tender for RS and ECH referred to in paragraph 9.35.

Table 30: RS loss ratios, Europe (EEA + UK), Konecranes, 2016 to May 2021

Company	Europe (EEA + UK)			
	Number of opportunities		Value (revenue in €m)	
	Number	Percentage	€m	Percentage
Cargotec	[X]	[X]	[X]	[X]
Hyster	[X]	[X]	[X]	[X]
CVS	[X]	[X]	[X]	[X]
Sany	[X]	[X]	[X]	[X]
Liebherr	[X]	[X]	[X]	[X]
Other	[X]	[X]	[X]	[X]
Unknown	[X]	[X]	[X]	[X]
Total	[X]	100%	[X]	100%

Source: CMA analysis of Parties' data.

Notes: [X]. As explained in Appendix C, we have made adjustments to the recorded values of a small number of opportunities that we consider outliers based on their high implied unit prices. [X].

9.37 Overall, our bidding analysis indicates that the Parties compete closely in both Europe and the UK. Konecranes lost more opportunities to Cargotec ([X]%) than any other competitor in Europe, while Cargotec lost approximately [X]% of its opportunities to Konecranes in Europe (more than to any other supplier). Sample sizes in the UK are small, but we note that Konecranes lost [X] opportunities to Cargotec out of [X] opportunities lost in total during the period considered and Cargotec lost [X] opportunities to Konecranes out of [X] opportunities lost in total.

9.38 The loss ratios show that Hyster is the strongest third-party constraint on the Parties in Europe and one of the two strongest constraints on the Parties in the UK, alongside Sany. Sany is a weaker constraint in Europe as a whole, accounting for fewer than [X]% of the number of lost opportunities for both Parties. The loss ratios indicate that CVS is a material competitor in Europe, but [X] CVS in the UK over the period considered. No other suppliers accounted for more than [X]% of lost opportunities for either Party. These results are broadly consistent with the shares of supply presented above.

Qualitative tender case studies

9.39 We have reviewed documents provided by customers that detail the participants and outcomes of two recent RS tenders. We place limited weight

on the outcomes of these specific tenders (this information is better considered as part of the shares of supply and bidding data considered above), but we have taken account of the insights that these case studies provide on customer perceptions of the strengths and weaknesses of different suppliers.

- 9.40 One customer of the Parties (a port operator) [REDACTED] provided contemporaneous tender evaluation documents for a tender that it ran in 2021 for seven RS and two ECH. This tender was awarded to Briggs (distributor for Hyster), [REDACTED].
- 9.41 [REDACTED].
- 9.42 [REDACTED].
- 9.43 [REDACTED].
- 9.44 Another port customer [REDACTED] provided a tender evaluation summary document related to a tender for the hire and maintenance (over five years) of 4 RS and 12 ECH in 2018.¹¹⁹¹ There were [REDACTED] participants in this tender ([REDACTED]) and it was awarded to Cargotec.¹¹⁹²
- 9.45 In the pre-qualification round, [REDACTED].
- 9.46 [REDACTED].¹¹⁹³ [REDACTED].
- 9.47 The examples above indicate that Hyster is a strong competitor, at least in part due to its high product quality. [REDACTED] Konecranes submitted [REDACTED].
- 9.48 [REDACTED]. In the second tender, [REDACTED].

Third-party evidence

Customer questionnaire

- 9.49 We sent questionnaires to 22 of the Parties' RS customers and received responses from eight customers [REDACTED].¹¹⁹⁴

¹¹⁹¹ Response to P2 questionnaire [REDACTED].

¹¹⁹² Response to P2 questionnaire [REDACTED].

¹¹⁹³ CMA assessment [REDACTED].

¹¹⁹⁴ See Appendix D for further detail on our methodology.

- 9.50 We asked customers of the Parties to rate the importance of various criteria in their purchasing decisions for RS (scores out of 5, where 5 is the most important).¹¹⁹⁵ The responses indicated that:
- (a) Equipment reliability was considered very important, with all respondents scoring it a 5.
 - (b) Purchase price, running costs, and efficiency were also very important for most respondents, with seven out of eight scoring these criteria as either 4 or 5.
 - (c) The strength of local after-sales presence was the next most important criterion, with all respondents scoring this criterion at least 3 and six out of eight respondents scoring this criterion 4 or above.
 - (d) Automation and interoperability were generally not scored as important criteria - for each criterion, at least five out of eight respondents scored it 3 or below.
- 9.51 We asked customers of the Parties to rank the alternative suppliers that were considered in their most recent purchase of RS in the UK.¹¹⁹⁶ We received responses to this question from six customers of the Parties, and all of these had most recently purchased from Cargotec. Five of the respondents had made these purchases in 2018 or later, while one respondent (customer D) had not purchased from Cargotec since 2012. These responses are summarised in the second column of Table 31 below.

¹¹⁹⁵ Question wording: *When thinking about purchasing reach stackers, please score the following factors according to how important they are to your choice of supplier. Please assign a score from 1-5 where 5 = very important and 1 = not important at all (more than one factor can have the same score). The factors listed were: differences in equipment reliability, differences in automation/assistive technology features, differences in purchase price, differences in running costs, differences in strength of local aftersales presence (servicing, maintenance, spare parts), differences in efficiency/environmental performance, degree of interoperability with other equipment, and already having installed base of equipment from a particular supplier.*

¹¹⁹⁶ Question wording: *Thinking about when you most recently purchased reach stackers from [Party] in the UK, what were the main alternative suppliers that you considered? Please list the main alternatives and confirm how you ranked these alternative suppliers (where 1 = the best alternative, 2 = the next best alternative and so on).*

Table 31: Customer questionnaire responses, RS

Customer	Alternative suppliers at most recent purchase	Expected ranking in future purchase
Customer A [REDACTED]	1. Konecranes 2. Hyster	1. Sany 2. Konecranes 3. Cargotec
Customer B [REDACTED]	1. Konecranes 2. Hyster 3. Liebherr	1. Cargotec 2. Konecranes 3. Liebherr 4. Hyster
Customer C [REDACTED]	1. Konecranes 2. Liebherr	1. Cargotec 2. Liebherr 3. Konecranes
Customer D† [REDACTED]	• Konecranes • Hyster • Linde	• Cargotec • Konecranes • Hyster • Liebherr • ZPMC
Customer E [REDACTED]	1. Hyster 2. Konecranes	1. Cargotec 2. Hyster 3. Konecranes 4. Liebherr 5. Sany 6. ZPMC
Customer F [REDACTED]	N/A §	1. Cargotec 1. Sany
Customer G [REDACTED]	1. Linde 2. Hyster 3. Terex (now part of Konecranes)	1. Hyster 2. Cargotec 3. Linde 4. Konecranes 5. Sany
Customer H‡ [REDACTED]	N/A	• Hyster • Konecranes • Liebherr • Cargotec

Source: P2 questionnaire responses.

Notes:

Where the customer named a distributor, we have recorded the name of the OEM that supplies the products to the distributor. Some customers ranked suppliers as equally close alternatives.

† Customer D did not provide any rankings for the suppliers that it listed. It last purchased RS from Cargotec in 2012.

‡ Customer H did not provide any rankings for the suppliers that it listed.

§ Customer F [REDACTED] did not respond to this question because [REDACTED].

9.52 Three customers ranked Konecranes as the next closest alternative, one ranked it as the second closest alternative, one ranked it third closest (the lowest of the alternatives given), and another listed Konecranes without providing a ranking. Regarding other suppliers, Hyster was ranked as either the first or second alternative by four respondents and listed without a ranking by another respondent. Linde and Liebherr were the only other suppliers named, each by two customers.

9.53 We also asked customers of the Parties to provide an expected ranking of suppliers if they were to purchase RS in the UK within the next year.¹¹⁹⁷ We

¹¹⁹⁷ Question wording: *Suppose that you were planning to purchase reach stackers in the UK within the next year. What suppliers would you expect to consider? Please list the full set of suppliers that you would expect to consider (including [Party] if applicable) and provide your expected ranking of the suppliers (where 1 = the winner, 2 = the best alternative and so on).*

received responses to this question from eight customers of the Parties and these responses are summarised in the third column of Table 31 above. All respondents indicated that they felt well informed about the market.¹¹⁹⁸

- 9.54 Four of the eight customers that responded to this question expected Cargotec to be the leading supplier in a future hypothetical purchase, one expected it to rank second, one expected it to rank third, and two listed it without providing a ranking. Konecranes was named by seven respondents, of which two ranked it second, three ranked it third or below (it was not considered by any customer as a likely winner of the purchase), and two did not provide a ranking.
- 9.55 Regarding other suppliers, four customers expected Sany to compete for the purchase, of which two expected it to rank first (either outright or joint) and two expected it to rank fifth. This is in contrast to the ranking of suppliers in recent purchases, where Sany was not mentioned by any respondent, which is in line with the fact that Sany had very limited UK sales prior to 2019. Both Hyster and Liebherr were mentioned by five customers with a range of expected rankings.
- 9.56 Overall, the responses above indicate that the Parties are among each other's close competitors and will remain so in the near future—Konecranes was commonly listed as one of the main alternatives to Cargotec in recent purchases and both Parties were named by most customers as two of the main suppliers that they would consider in a future purchase. Of the other suppliers, Hyster was commonly mentioned as a viable competitor in both recent and future purchases. Sany was not considered by the respondents as an alternative in recent purchases, but was expected by several respondents to compete in future purchases. Liebherr, Linde, and ZPMC were not generally regarded by UK customers as strong competitors for either past or future purchases.

Competitor questionnaire

- 9.57 We sent questionnaires to nine RS competitors (including distributors) of the Parties and received responses from five competitors [redacted].¹¹⁹⁹ We note that two of these responses covered the same brand of equipment (ie, we heard from the manufacturer and its distributor).

¹¹⁹⁸ Question wording: *Have you recently monitored and/or tested the market for reach stackers and to what extent do you feel well-informed about suppliers' strengths and weaknesses as they exist today?*

¹¹⁹⁹ See Appendix D for further detail on our methodology.

9.58 We asked these competitors to rank the suppliers that they considered their closest competitors in the supply of RS in the UK.¹²⁰⁰ These responses are summarised in Table 32 below.

Table 32: Competitor questionnaire responses, RS

Competitor	Suppliers that are considered as closest competitors in the supply of RS
Competitor A [X]	<ol style="list-style-type: none"> 1. Cargotec 2. Konecranes 3. Sany 4. Liebherr 5. CVS
Competitor B [X]	<ol style="list-style-type: none"> 1. Cargotec 2. Konecranes 3. Sany 4. CVS
Competitor C [X]	<ol style="list-style-type: none"> 1. Cargotec 2. Hyster 3. Konecranes 4. Sany
Competitor D [X]	<ol style="list-style-type: none"> 1. Cargotec 2. Hyster 3. Konecranes 4. CVS 5. FTMH
Competitor E [X]	<ol style="list-style-type: none"> 1. Cargotec 2. Konecranes 3. Hyster 4. Sany 5. CVS

Source: P2 questionnaire responses.

9.59 All respondents listed Cargotec as their closest competitor and Konecranes as either their second or third closest competitor. Hyster, Sany, and CVS were the most commonly mentioned suppliers other than the Parties, although CVS was not considered as a particularly close competitor by any respondent. Liebherr and FTMH were each mentioned once.

9.60 We also asked competitors if they expected the rankings to differ in two years.¹²⁰¹ The responses indicated that competitors do not expect any changes from the rankings described above.

¹²⁰⁰ Question wording: *Please list your main competitors in the supply of reach stackers to UK sites. Please rank these competitors according to how close a competitor they are to you (where 1 = closest competitor, 2 = next closest competitor, and so on).*

¹²⁰¹ Question wording: *To what extent do you expect the main competitors that you face and their strengths and weaknesses to change over the next two years? Please use the table below to list and rank the main competitors that you would expect to face in the supply of reach stackers to UK sites in two years' time.*

- 9.61 [REDACTED], the UK distributor for [REDACTED], also responded to our questionnaire. It considered that Cargotec was its closest competitor, followed by Hyster and then Sany. It did not expect this ordering to change in two years.
- 9.62 Overall, the responses from competitors (and Impact) suggest that the Parties are close competitors. Of the other suppliers, Hyster and Sany were generally considered as the next closest competitors to the respondents after the Parties. Liebherr, CVS, and FTMH were not considered as close competitors to the respondents.

Qualitative comments

- 9.63 We received a number of qualitative comments from third parties in relation to the closeness of competition between the Parties, which consistently indicate that the Parties are close competitors in the supply of RS.
- (a) One competitor [REDACTED] considered that, in relation to the supply of MEQ, 'Cargotec and Konecranes are very similar to each other'.¹²⁰² This competitor added that a strength for both Parties was that they offer a 'full line' of RS.¹²⁰³
 - (b) Another competitor [REDACTED] said of both Parties (and Hyster) that one of their main strengths was their distribution network. It also listed product range as a strength of Cargotec.¹²⁰⁴
 - (c) One customer [REDACTED] submitted that the Parties were each other's closest competitors in the supply of RS across all the most important purchasing criteria (price, quality, vehicle lifetime, and after-sales service).¹²⁰⁵ This customer further submitted that the Parties are 'currently constrained in their pricing behaviour primarily by the competitive pressure they impose on each other'.¹²⁰⁶
 - (d) One distributor [REDACTED] considered that both Parties have strong brands and wide product ranges, and that Cargotec is the market leader in the UK.¹²⁰⁷
- 9.64 Several comments noted, in particular, that the quality of the Parties' equipment set them apart from other competitors.

¹²⁰² Call note [REDACTED].

¹²⁰³ Response to P2 questionnaire [REDACTED].

¹²⁰⁴ Response to P2 questionnaire [REDACTED].

¹²⁰⁵ Response to P2 questionnaire [REDACTED].

¹²⁰⁶ Response to P2 questionnaire [REDACTED].

¹²⁰⁷ Response to P2 questionnaire [REDACTED].

- (a) One customer [REDACTED] believed that the ‘combination of pricing and quality makes Cargotec and Konecranes somewhat far off from competitors in reach stackers’.¹²⁰⁸
- (b) Another customer [REDACTED] considered that ‘Konecranes and Cargotec have the best reach stackers’.¹²⁰⁹
- (c) [REDACTED], the UK distributor for [REDACTED], considered that, in relation to MEQ generally, the Parties’ products were higher quality than those of other competitors and stated that [REDACTED].¹²¹⁰ It listed Cargotec’s strengths as price and quality and its weakness as its direct to market distribution model.¹²¹¹

9.65 However, some third parties commented that the quality of the Parties’ equipment had declined relative to competitors.

- (a) One distributor [REDACTED] that considered both Parties to have strong brands and wide product ranges also noted that [REDACTED].¹²¹²
- (b) One customer [REDACTED] did not consider Konecranes as a viable supplier of RS.¹²¹³

9.66 One customer [REDACTED] felt that Cargotec had ‘rested on [its] laurels and not developed the machine to a great degree’, and thus had fallen behind competitors in terms of quality (especially Hyster).¹²¹⁴

9.67 Overall, these views support the evidence from the customer and competitor questionnaires in suggesting that the Parties are close competitors in the supply of RS.

9.68 We also received qualitative comments from third parties in relation to the competitive constraints faced by the Parties. In general, Hyster was considered a strong competitor, despite suggestions that its product quality is lower than that of its rivals.

- (a) One distributor [REDACTED] considered that Hyster is the second-placed supplier in the market and is especially strong in the rental market, where it can

¹²⁰⁸ Call note [REDACTED].

¹²⁰⁹ Call note [REDACTED].

¹²¹⁰ Call note [REDACTED].

¹²¹¹ Response to P2 questionnaire [REDACTED].

¹²¹² Call note [REDACTED].

¹²¹³ Call note [REDACTED].

¹²¹⁴ Transcript of call [REDACTED].

offer very competitive deals.¹²¹⁵ However, it also noted that Hyster products tend to be poorer quality.¹²¹⁶

- (b) Another distributor [X] stated that Hyster is one of the 'major competitors for reach stackers' and that Hyster MEQ in general is lower quality than that offered by the Parties but is also much cheaper.¹²¹⁷
- (c) One customer [X] considered that Hyster is the only credible competitor to the Parties.¹²¹⁸
- (d) Another customer [X] submitted that Hyster would be one of the next most credible competitors to the Parties, but that it lacks the necessary product quality to impose a significant constraint.¹²¹⁹
- (e) Another customer [X] noted that Hyster makes 'credible competitive reach stackers'.¹²²⁰ This customer noted that, in relation to a [X], Briggs (a distributor for Hyster) scored highly against all the tender criteria, especially pricing. The customer stated that pricing was particularly important for this tender given that the framework covered a 10-year period. This customer further noted that suppliers with a wide range of MEQ (such as Briggs) are favoured in tenders as the customer finds it easier to manage a single contract rather than multiple contracts with different suppliers.¹²²¹

9.69 The views from third parties on Sany were mixed. Some noted strengths including low prices and a willingness to develop innovative machines, whereas others highlighted perceptions of poor product and/or service quality.

- (a) [X], the UK distributor for [X], noted in relation to MEQ in general that it 'believes that some customers will not purchase Sany products simply because they are a Chinese product [...] in spite of most of the parts being built in Europe and shipped over to China for assembly'. It explained that Sany 'will always have problems with some customers with anti-Chinese rhetoric' and that 'most of it comes back down to the local support'.¹²²²

¹²¹⁵ Call note [X].

¹²¹⁶ Response to P2 questionnaire [X].

¹²¹⁷ Call note [X].

¹²¹⁸ Call note [X].

¹²¹⁹ Response to P2 questionnaire [X].

¹²²⁰ Call note [X].

¹²²¹ Call note [X].

¹²²² Call note [X].

- (b) Another distributor [REDACTED] submitted that Sany has an ‘aggressive pricing’ strategy, but also considered that Sany had ‘narrower service coverage’ in the UK (through its distributor Cooper) than this distributor, which could make customers ‘wary of switching’ to Sany.¹²²³ It listed Sany’s ‘unknown product quality’ as a weakness.¹²²⁴
- (c) A third distributor [REDACTED] noted that ‘Sany is a minor competitor’ and that it does not support the machines sufficiently well.¹²²⁵ It said that price was a strength for Sany, whereas quality and aftermarket support were weaknesses. It also said that Chinese suppliers (including Sany) do not get much repeat business and that the Parties’ equipment is better in terms of quality.¹²²⁶
- (d) One competitor [REDACTED] stated that Sany’s ‘main strength’ is its price.¹²²⁷
- (e) The customer that had tendered in [REDACTED] [REDACTED] was aware of Cooper (a distributor for Sany) but considered that Cooper would be less likely to meet its requirements.¹²²⁸
- (f) Another customer [REDACTED] was not aware of Sany.¹²²⁹
- (g) Another customer [REDACTED] noted that Sany was ‘not established in the UK market’ and said it had ‘no recognised service support agents appointed in the East Anglia region’.¹²³⁰
- (h) Another customer [REDACTED] said it believed that Sany struggles with a number of quality issues (such as leaking hydraulic cylinders) across all mobile equipment. It said that Sany is usually invited to tender but is often not chosen due to concerns over the quality of its products and a lack of an extensive servicing network in the UK. This customer said that it always contracts directly with OEMs rather than distributors.¹²³¹
- (i) Another customer [REDACTED] felt that Sany ‘has become a serious market contender’.¹²³² This customer considered that Sany had ‘very competitive pricing’ and ‘good UK aftersales’.¹²³³

¹²²³ Call note [REDACTED].

¹²²⁴ Response to P2 questionnaire [REDACTED].

¹²²⁵ Call note [REDACTED].

¹²²⁶ Call note [REDACTED].

¹²²⁷ Response to P2 questionnaire [REDACTED].

¹²²⁸ Call note [REDACTED].

¹²²⁹ Call note [REDACTED].

¹²³⁰ Response to P2 questionnaire [REDACTED].

¹²³¹ Call note [REDACTED].

¹²³² Call note [REDACTED].

¹²³³ Response to P2 questionnaire [REDACTED].

(j) Another customer [redacted] said that some Sany machines '[redacted]' in the market but '[redacted]'. It said that both Sany and Kalmar supply machines that '[redacted]'.¹²³⁴ It said that after initial issues with early models, Sany had been responsive to its needs and had worked with it to develop an RS that is very effective for rail-side applications. This customer also said that [redacted] offered an eco-RS that is a better all-round machine for mixed applications (ie it can work rail-side when needed and also on the stack-side). The customer already uses both Sany and Kalmar RS models at the same rail terminal, [redacted]. On the other hand, this customer noted that the 'resale value of a Sany machine could potentially realise the same resale value of a Kalmar or Kone, but it was an ever changing market place due to supply and demand, but their reputation is growing, certainly not a Kalmar and not a Kone, but their reputation is growing'.¹²³⁵

9.70 With regards to other competitors, we received mixed comments on the ability of Liebherr to compete with the Parties and one view that a reputation for poor service hinders the ability of CVS and FTMH to compete in the UK:

- (a) One customer [redacted] submitted that Liebherr (alongside Hyster) would be one of the next most credible competitors to the Parties, but that it lacks the necessary product range to impose a significant constraint.¹²³⁶ However, this customer expected Liebherr to expand its product range in 2021 and noted that it would evaluate whether this improved offering could meet its requirements.¹²³⁷
- (b) The customer that had tendered in [redacted] [redacted] noted that Liebherr makes 'credible competitive reach stackers'.¹²³⁸
- (c) One of the distributors above [redacted] noted that Liebherr has a well-known brand for CHE generally, but is less well-known for RS in particular.¹²³⁹
- (d) Another distributor [redacted] noted that Italian suppliers, such as CVS and FTMH, have a 'poor reputation' for service which makes it difficult for them to 'break in' to the UK market.¹²⁴⁰

¹²³⁴ Response to P2 questionnaire [redacted].

¹²³⁵ Call note [redacted].

¹²³⁶ Response to P2 questionnaire [redacted].

¹²³⁷ Response to P2 questionnaire [redacted].

¹²³⁸ Call note [redacted].

¹²³⁹ Response to P2 questionnaire [redacted].

¹²⁴⁰ Response to P2 questionnaire [redacted].

- 9.71 The Parties submitted that Sany is one of the leading suppliers in respect of the development of an electric RS.¹²⁴¹ [REDACTED].¹²⁴²
- 9.72 Overall, the qualitative comments from third parties indicate that Hyster is generally seen as a strong competitor to the Parties in the UK, supporting the evidence from the questionnaire responses. The views of third-parties were mixed regarding the strength of Sany as a competitor. Third-parties consistently indicated that Sany offered low prices, whereas views on Sany's aftersales service and perceived quality levels were mixed. Several customers mentioned Liebherr as a viable competitor, although Liebherr only delivered [REDACTED] RS to UK customers between 2016 and 2020 (see Table 25).

Merger impact

- 9.73 In our questionnaire, we asked UK customers¹²⁴³ for their views on any positive or negative impacts of the Merger on the supply of RS.¹²⁴⁴ Most respondents identified both positive and negative impacts.^{1245, 1246} One customer was generally supportive of the impacts of the Merger across product markets.¹²⁴⁷
- 9.74 The positive impacts mostly focussed on the potential for increased innovation and the benefits that would accrue from the sharing of technical knowledge and expertise. Two customers also expected the Merged Entity to provide improved after-sales service.¹²⁴⁸
- 9.75 The negative impacts primarily related to the loss of competition and the potential negative effects that this could have on prices, innovation, and purchase terms. One customer considered that such effects are 'mitigated by our competitive tendering processes'.¹²⁴⁹

¹²⁴¹ The Parties' Response [REDACTED].

¹²⁴² Call note [REDACTED].

¹²⁴³ UK customers [REDACTED].

¹²⁴⁴ Question wording: *Cargotec and Konecranes are proposing to merge. What positive impacts (if any) would you expect the merger to have in relation to reach stackers? What negative impacts (if any) would you expect the merger to have in relation to reach stackers?*

¹²⁴⁵ [REDACTED]. One customer that had previously identified positive and negative impacts subsequently said that, having read the CMA's Provisional Findings report, its overall view had changed slightly. It said that its previous assessment of the Merger impact reflected its own situation as a group with scale, whereas it now considered that 'from a sector perspective...there may well be less competition' for smaller port customers (Transcript of call [REDACTED]).

¹²⁴⁶ In addition, as described at paragraph 7.90 above, five of the customers in mainland Europe that we spoke to in our remedy response hearings expressed general views on the competitive effects of the Merger. Overall, these views were mixed; some of these customers were in favour of the merger or did not have concerns about it, while others said that they did have concerns, or that the merger would have both positive and negative impacts.

¹²⁴⁷ Transcript of call [REDACTED].

¹²⁴⁸ Response to P2 questionnaire [REDACTED].

¹²⁴⁹ Response to P2 questionnaire [REDACTED].

- 9.76 We asked competitors¹²⁵⁰ whether they expected the Merger to impact competition for the supply of RS in the UK.¹²⁵¹ Of the six responses from competitors, one considered that the Merger would not impact competition and four considered that the Merger would have a negative impact, one of which noted that the extent of any impact will ‘depend on the new company’s strategy’.¹²⁵² The other competitor considered that any impact depended on ‘how the merged portfolio is arranged and distributed’.¹²⁵³
- 9.77 We also received some more detailed comments regarding the impact of the Merger in the supply of RS. A number of customers suggested that the Parties would have market dominance post-Merger, with some noting the negative impact that this would have on the market.
- (a) One customer [REDACTED] stated that the Merged Entity would ‘have dominance and be very strong in reach stackers’.¹²⁵⁴
 - (b) Another customer [REDACTED] submitted that ‘the transaction will give the Merged Entity a dominant position in reach stackers, which will result in significant price increases in the EEA+UK, as well as a loss of innovation’.¹²⁵⁵
 - (c) One competitor [REDACTED] considered that, globally, the Merged Entity would be ‘dominant in [...] reach stackers’.¹²⁵⁶
 - (d) Another competitor [REDACTED] expects a ‘negative impact’ from the Merger as the Merged Entity will have ‘dominance in market penetration and [a] strengthened position against component suppliers [...] which will weaken all other competitors in the market’.¹²⁵⁷
 - (e) One distributor [REDACTED] submitted that the Parties both have a ‘strong product offering’ that the Merged Entity could use ‘to offer a one stop shop’. This has the potential to provide the Merged Entity with ‘a dominant offering in the marketplace’. This distributor further noted that ‘competition has also been recently reduced with Linde and Konecranes

¹²⁵⁰ Competitors [REDACTED].

¹²⁵¹ Question wording: *Cargotec and Konecranes are proposing to merge. Do you expect the merger to impact competition for the supply of reach stackers in relation to UK customers? If ‘yes’, please describe the impact(s) on competition that you would expect as a result of the merger and explain your reasoning.*

¹²⁵² Competitor responses [REDACTED]; Response to P2 questionnaire [REDACTED]; Transcript of call [REDACTED].

¹²⁵³ Response to P2 questionnaire [REDACTED].

¹²⁵⁴ Call note [REDACTED].

¹²⁵⁵ Response to P2 questionnaire [REDACTED].

¹²⁵⁶ Call note [REDACTED].

¹²⁵⁷ Response to P2 questionnaire [REDACTED].

joining forces', which means that '3 [suppliers] will effectively become 1 if this merger takes place'.¹²⁵⁸

- 9.78 One competitor [X] submitted that 'unless the merger will free access to [a] distribution network to other brands, the alternative options for customers will become restricted'.¹²⁵⁹
- 9.79 Two third parties noted that the weakness of Konecranes could limit any impacts of the Merger.
- (a) One competitor [X] that considered that the Merged Entity would be dominant globally noted that the impact in the UK would be smaller due to the 'weak position of Konecranes'.¹²⁶⁰
- (b) One distributor [X] considered that the merger would not impact it much, as the number of suppliers has already reduced significantly from many years ago, and Konecranes is currently a weak competitor.¹²⁶¹
- 9.80 One terminal operator that operated a port terminal under concession in the UK told us, in a response hearing, that it only has input in relation to the purchases of MEQ to that port terminal (not in relation to other types of CHE) [X]. This customer stated that it was in favour of the Merger in general, as it considered that it would create a stronger business.
- 9.81 Overall, these responses indicate that several third parties expect some negative impact to result from the Merger in the supply of RS due to the strong position that the Merged Entity will have. Some customers also noted the potential for positive impacts resulting from the Merger, such as increased innovation. Several of the third parties that expressed fewer concerns regarding the Merger considered that Konecranes was not a strong competitor in the supply of RS.

Internal documents

- 9.82 The Parties submitted directly to the CMA around 3,000 documents from both Parties in relation to the competitive positioning and performance of the Parties and their competitors in the UK or Europe. We also included in our assessment a significant number of further documents on the same topic

¹²⁵⁸ Response to P2 questionnaire [X].

¹²⁵⁹ Response to P2 questionnaire [X].

¹²⁶⁰ Call note [X].

¹²⁶¹ Call note [X].

submitted by the Parties to the European Commission and which the Parties shared with the CMA.

- 9.83 In our assessment of the internal documents, we placed more weight on recent documents that refer specifically to the competitive situation in Europe and/or the UK and that were created before the Merger was in contemplation (our approach to these documents is explained in more detail in Chapter 6).¹²⁶²
- 9.84 Of the significant number of documents submitted by the Parties, only a small portion provide insight into competitive conditions, for example because many of the documents were general industry reports or reports that simply record sales achieved by each supplier. Of the documents that are relevant to the assessment of competition, many relate to MEQ in general, and are therefore relevant to multiple MEQ product markets, whereas relatively few relate to specific types of MEQ. We also note that the large majority of documents that were relevant to an assessment of competition in the supply of MEQ assess the market either globally or on a Europe-wide basis and only a few are specific to the UK.
- 9.85 Below, we first review documents that are relevant to multiple MEQ product markets. We then review documents that specifically relate to RS. In each case, we start with documents that are mainly relevant to closeness of competition between the Parties. We then assess documents that relate to the constraints posed by other suppliers. Finally, we discuss documents that provide insight into the Parties' views on how competition will develop in future.

Internal documents relating to MEQ in general

Closeness of competition between the Parties

- 9.86 Overall, the documents that we reviewed in relation to MEQ in general indicate that Cargotec and Konecranes perceive each other as strong competitors and take active steps to compete with one another.

¹²⁶² As explained in Chapter 6, in attributing probative value to specific internal documents, we have taken into account the timing, purpose and context in which they were prepared. As a general principle, we consider that internal documents prepared in the ordinary course of business, for example before the Merger was in contemplation are likely to have higher probative value than internal documents prepared once the Merger was in contemplation of the Merger. This is consistent with CMA129, paragraph 2.29(a). Consequently, while we have considered their relevance to our assessment, we have treated internal documents prepared since the Merger was in contemplation with a degree of caution. In particular, we are more likely to assign weight to evidence contained in such documents where it is corroborated by other evidence.

- (a) In a 2019 document entitled ‘KAMOS Technology’, Cargotec assessed Konecranes and itself as having the most complete offering, marking the Parties out to be each other’s main rival in MEQ software.¹²⁶³
- (b) A number of the Parties’ internal documents show that they have wide and overlapping MEQ product ranges, competing closely across the lower and higher value parts of their ranges.
 - (i) A Konecranes’ presentation (2017) about the comparative positioning of its competitors in the ‘lift truck’ industry (meaning MEQ) shows a [REDACTED] of Konecranes’ essential (value) and premium product lines against competitors present in each of these segments (Cargotec, Hyster, Sany, CVS, Taylor). Only Konecranes and Kalmar are perceived to be active in both of these segments as well as at the intersection of both (see Figure 19). Figure 20 sets out the differences in value propositions between the two Konecranes’ product lines: the [REDACTED] ‘Konecranes Liftace’ and the [REDACTED] ‘Konecranes Blue’.

Figure 19: [REDACTED]

[REDACTED]

Source: [REDACTED].

Figure 20: [REDACTED]

[REDACTED]

Source: [REDACTED]

- (ii) A Cargotec internal document produced in October 2019 predicted that future global volumes would demand [REDACTED] (emphasis in original). In response to this predicted demand, Cargotec [REDACTED].¹²⁶⁴
 - (iii) Konecranes’ review of its action plan 2019 shows that one of its goals was to use its [REDACTED] MEQ range to compete specifically with Kalmar’s [REDACTED] product range and with Sany.¹²⁶⁵
- (c) [REDACTED].¹²⁶⁶
 - (d) [REDACTED].¹²⁶⁷ [REDACTED].¹²⁶⁸

¹²⁶³ Cargotec internal document [REDACTED].

¹²⁶⁴ Cargotec internal document [REDACTED].

¹²⁶⁵ Konecranes internal document [REDACTED].

¹²⁶⁶ Cargotec internal document [REDACTED].

¹²⁶⁷ Cargotec internal document [REDACTED].

¹²⁶⁸ Cargotec internal document [REDACTED].

- (e) In an email from February 2018, described by one of the recipients as '[REDACTED]', the Senior Vice President of Kalmar MEQ advised '[REDACTED]', noting '[REDACTED]'.¹²⁶⁹
- (f) In another Cargotec document, entitled 'Kalmar Mobile Solutions Strategy 2021-2024', presented to Cargotec's board in June 2021, Cargotec summarises in a table its assessment of [REDACTED].¹²⁷⁰
- (g) In a strategy document ('Revisiting P-3023'), produced in April 2021, just before or at the same time the Merger started being contemplated, Konecranes describes Cargotec as having '[REDACTED]' and states that '[REDACTED]'. This document flags that Kalmar has launched a '[REDACTED]', showing that Konecranes monitored closely Cargotec's launching of a [REDACTED] line, which would compete with Konecranes [REDACTED].¹²⁷¹
- (h) A Konecranes' report produced in 2019 about the results of a distributor survey, conducted in different regions across the world, found that [REDACTED] and '[REDACTED]'. As suggestions for improvement, this document lists, amongst others: '[REDACTED]'. This document indicates that Konecranes compares its offer with Cargotec's and Hyster's offer and takes actions to become more competitive and reacts to Cargotec pricing (and other competitors) to become more competitive.¹²⁷²
- (i) [REDACTED].¹²⁷³
- (j) [REDACTED].¹²⁷⁴

9.87 The internal documents set out in Chapter 6 further show that the Parties have a strong offering overall, including in terms of quality and automation, and consider each other as leaders in the supply of MEQ.

Other competitive constraints

9.88 We reviewed internal documents assessing the strengths and weaknesses of the Parties' competitors in MEQ. Overall, the Parties' internal documents that we reviewed generally indicate that their main competitors in Europe in MEQ are Hyster and, to some extent, Sany. We note that the evidence from internal documents concerning Sany is mixed. While some documents note the increased presence of Sany in Europe, and the fact that it is very

¹²⁶⁹ Cargotec internal document [REDACTED].

¹²⁷⁰ Cargotec internal document [REDACTED].

¹²⁷¹ Konecranes internal document [REDACTED].

¹²⁷² Konecranes internal document [REDACTED].

¹²⁷³ Konecranes internal document [REDACTED].

¹²⁷⁴ Konecranes internal document [REDACTED].

competitive on price, others highlight significant weaknesses of Sany. For example, some documents indicate that these weaknesses include [REDACTED]. We note that, in contrast to the Parties, Hyster and Sany seem to mainly offer products in the essential/value to medium range. Other competitors mentioned in these documents are not present, or have a very small presence, in the Europe and/or the UK.

9.89 Within the documents that relate to competition from one or more third parties in relation to MEQ in Europe:

(a) [REDACTED].¹²⁷⁵ [REDACTED].

(b) [REDACTED],¹²⁷⁶ [REDACTED].

(c) [REDACTED].¹²⁷⁷ [REDACTED]:

(i) [REDACTED].

(ii) [REDACTED].¹²⁷⁸

[REDACTED].

(d) Cargotec's views on increased competition were also reflected in a presentation entitled '[REDACTED]'.¹²⁷⁹ [REDACTED].

(e) [REDACTED]:¹²⁸⁰

(i) [REDACTED].

(ii) [REDACTED].

(iii) [REDACTED].

(iv) [REDACTED].

(f) [REDACTED].¹²⁸¹

(g) [REDACTED].¹²⁸² [REDACTED]. We note that more recent documents, that were produced while the merger was in contemplation, such as those at paragraphs

¹²⁷⁵ Cargotec internal document [REDACTED].

¹²⁷⁶ Cargotec internal document [REDACTED].

¹²⁷⁷ Cargotec internal document [REDACTED].

¹²⁷⁸ Cargotec internal document [REDACTED].

¹²⁷⁹ Cargotec internal document [REDACTED].

¹²⁸⁰ Konecranes internal document [REDACTED].

¹²⁸¹ Konecranes internal document [REDACTED].

¹²⁸² Konecranes internal document [REDACTED].

9.89 (b) and (e), indicate that Sany continues to have weaknesses regarding parameters of competition including servicing.

Figure 21: [REDACTED]

[REDACTED]

Source: [REDACTED].

(h) A more recent document from Konecranes [REDACTED].¹²⁸³ [REDACTED].

9.90 A number of other documents relate to Sany's strengths and weaknesses. The documents below suggest that Sany is growing its position in MEQ (including in Europe) and highlight Sany's investment in technology and perceived strength in electrification:

(a) [REDACTED] identifies as a risk the rising competition from Sany and other Chinese MEQ suppliers [REDACTED].¹²⁸⁴ We note that this document was produced after the Merger was in contemplation.

(b) [REDACTED].¹²⁸⁵

(c) Konecranes seems to regularly track Sany's supplies of ECH and RS throughout Europe (at least since 2019) and in one of its reports of July 2019 flags that Sany had plans to introduce an electric ECH.¹²⁸⁶

9.91 On the other hand, the documents below highlight weaknesses in Sany's MEQ offering, [REDACTED]:

(a) [REDACTED]: i) [REDACTED].¹²⁸⁷ Chinese brand with State support; and ii) [REDACTED].

(b) [REDACTED].¹²⁸⁸

(c) In a Cargotec presentation from 2020 about the market outlook and competitive situation at a global level, [REDACTED].¹²⁸⁹

(d) A Konecranes report from January 2021 notes that Sany is [REDACTED]¹²⁹⁰ which suggests that Sany does not have an established network of dealers within Europe yet, but it is trying to expand it.

¹²⁸³ Konecranes internal document [REDACTED].

¹²⁸⁴ Cargotec internal document [REDACTED].

¹²⁸⁵ Cargotec internal document [REDACTED].

¹²⁸⁶ Konecranes internal document [REDACTED].

¹²⁸⁷ Cargotec internal document [REDACTED].

¹²⁸⁸ Cargotec internal document [REDACTED].

¹²⁸⁹ Cargotec internal document [REDACTED].

¹²⁹⁰ Konecranes internal document [REDACTED].

- (e) [REDACTED] described above at paragraph 9.99(g) [REDACTED], can access customers who do not value driver comfort and high uptime [REDACTED].¹²⁹¹
- (f) [REDACTED].¹²⁹² [REDACTED].

Figure 22: [REDACTED].

[REDACTED]

Source: [REDACTED].

The development of competition in the foreseeable future

9.92 The internal documents of the Parties also discuss the future trends that they see emerging in the MEQ market which will, in their view, dictate future competition. The common themes are electrification/sustainability and automation. Some of these documents discuss the position of the Parties and their competitors in the context of these trends.

9.93 The documents indicate that the Parties are important forces in the development of electric and hybrid MEQ, taking active steps to develop in line with projected competition and competing closely against each other, as evidenced in particular by the monitoring of each other's developing offering. Sany is also perceived as being well positioned to compete in this sphere. In these documents, as well in the documents considered in Chapter 6, the Parties set out their plans to increase their market position in MEQ in the future and each considers itself to be well-placed to do so.

(a) In February 2019, Cargotec produced an internal report on [REDACTED] which noted that [REDACTED]. The report included the following:

(i) Cargotec aimed to have a [REDACTED];

(ii) CCH: [REDACTED].¹²⁹³

(b) In its CCH 'Strategy Round 2021-2024', Cargotec sets out a plan to [REDACTED]. The document states that [REDACTED]. The presentation also notes that [REDACTED].¹²⁹⁴

(c) Cargotec produced a 'Strategy Book' in April 2021, just before or at the same time the Merger started being contemplated, which set out its goal [REDACTED]. Cargotec set out a number of strategic goals within its 2021-2024

¹²⁹¹ Konecranes internal document [REDACTED].

¹²⁹² Konecranes internal document [REDACTED].

¹²⁹³ Cargotec internal document [REDACTED].

¹²⁹⁴ Cargotec internal document [REDACTED]. Based on information of Cargotec's [website](#) (accessed on 16 December 2021) Cargotec has recently launched 100% electrically powered RS, HFLT and TT products.

goals but reinforced that its '[REDACTED]'.¹²⁹⁵ Cargotec noted that in 2021 they would be holding [REDACTED]. Within this document, Cargotec [REDACTED].¹²⁹⁶

- (d) In its '[REDACTED]' strategy (mentioned above), Konecranes expresses the desire to become 'one of the leaders in coming industry shifts [REDACTED]'.¹²⁹⁷ In its '[REDACTED]', the company sets out the future anticipated trends in the market. Konecranes lists: 'momentum towards [REDACTED]', the disruption of [REDACTED] and the resultant destabilisation of '[REDACTED]', equipment needing to be [REDACTED]', semi-automation and sustainability.¹²⁹⁸ Finally, in '[REDACTED]', Konecranes re-emphasises the importance of being '[REDACTED]', describing some industries as being 'at a tipping point'.¹²⁹⁹ To meet these challenges Konecranes planned to launch [REDACTED].
- (e) In September 2020, Konecranes compared its electric MEQ offering, such as FLT, with that of Cargotec, noting that Konecranes' [REDACTED] results in a [REDACTED].¹³⁰⁰
- (f) In May 2021, Konecranes identified [REDACTED] as 'one of the great trends' in a competitor analysis presentation. In this presentation it identified Sany, Hyster, Cargotec, and Taylor as competitors in this sphere.¹³⁰¹ It notes that Sany has been the most successful in commercialising Lithium-Ion batteries and that Cargotec appears to have kept its promise to launch an all-electric portfolio in 2021. We note that this document was produced after the Merger was in contemplation.
- (g) Konecranes also actively monitors Cargotec's progression towards electric MEQ:
 - (i) A September 2020 Competitor Network Meeting, notes that Cargotec has confirmed plans for an electric RS to be released in 2021.¹³⁰²
 - (ii) In January 2021, Konecranes noted that Cargotec would be launching a fully electric RS at the beginning of Q2, 2021.¹³⁰³

¹²⁹⁵ The plan also referenced ambitions to create more circularity in their products and to decarbonise their supply chain.

¹²⁹⁶ Cargotec internal document [REDACTED].

¹²⁹⁷ Konecranes internal document [REDACTED].

¹²⁹⁸ Konecranes internal document [REDACTED].

¹²⁹⁹ Konecranes internal document [REDACTED].

¹³⁰⁰ Konecranes internal document [REDACTED].

¹³⁰¹ Konecranes internal document [REDACTED].

¹³⁰² Konecranes internal document [REDACTED].

¹³⁰³ Konecranes internal document [REDACTED].

9.94 The documents considered above relate to MEQ in general and provide relevant background for the assessment of the competitive constraints in each of the relevant markets. They are consistent with the Parties being close competitors in MEQ markets.

Internal documents relating to RS

9.95 Some of the internal documents submitted by the Parties provide insight into the Parties' views of their competitive positions, and those of their competitors, specifically in relation to RS. We start with the documents that are mainly relevant to understanding whether the Parties are close competitors in the supply of RS and then assess the documents that are also relevant to understanding the constraints posed by other suppliers and the relative importance of purchasing criteria. We then touch briefly upon the emerging trends within the market which the Parties see as affecting how competition will develop in the future.

Closeness of competition between the Parties

9.96 The documents set out below in relation to RS, consistent with the internal documents described in Chapter 6 and in paragraphs 9.85 and 9.86 about MEQ in general, indicate that Cargotec and Konecranes perceive each other as strong competitors in RS, because of capabilities such as their extensive and strong distribution and after-sales networks, and monitor each other's offerings closely. The Parties also appear to compete against each other across the entire RS product range (Essential, Premium, ECO). Konecranes offers the [REDACTED] 'Konecranes Blue' or SMV branded RS, as well as the [REDACTED] 'Konecranes Liftace' brand. Kalmar offers the 'Premium' and 'Eco' lines, as well as the cheaper 'Essential' line.

(a) A Cargotec presentation, produced in September 2020 ('Reachstacker Overview'), includes a competitive overview of the market (extracted in Figure 23 below) which sets out [REDACTED]¹³⁰⁴ [REDACTED].¹³⁰⁵

Figure 23: [REDACTED]

[REDACTED]

Source: [REDACTED].

¹³⁰⁴ It is unclear from the figure whether Sany offers an ECO product line because there is a question mark in its 'bubble'.

¹³⁰⁵ Cargotec internal document [REDACTED].

- (b) In a Cargotec ‘Product Briefing’ produced in quarter 2 of 2018, Cargotec stated that it was [REDACTED].¹³⁰⁶
- (c) [REDACTED].¹³⁰⁷ It appears from the note that only those two competitors were mentioned in the meeting.

Other competitive constraints

9.97 In relation to other competitors, and consistent with the documents described above about MEQ in general, the Parties seem to consider Hyster as a strong competitor in the supply of RS, in both Europe and in the UK. The Parties monitor Sany and perceive it as a threat, but the evidence on the competitive strength of Sany is mixed. While some documents recognise its existing strength in the UK (through its relationship with Cooper) and its competitive price, other documents highlight weaknesses in Sany’s RS offering, [REDACTED]. Other competitors, such as CVS, are not frequently assessed in the Parties’ internal documents.

- (a) [REDACTED].¹³⁰⁸ [REDACTED].¹³⁰⁹
- (b) [REDACTED]. In Cargotec’s view, its strengths [REDACTED]. Cargotec considered that [REDACTED]. [REDACTED].¹³¹⁰
- (c) Cargotec’s presentation ‘Reachstacker Overview’ (2020), mentioned above, compares Cargotec’s offering with that of [REDACTED].¹³¹¹
- (d) A Cargotec strategy document produced in 2020 for the KAMOS leadership team, [REDACTED].¹³¹²
- (e) Other internal documents from the Parties highlight the weaknesses of some aspects of Sany’s offering, [REDACTED]:
- (i) A Cargotec document, produced in May 2021, when the Merger was in contemplation, [REDACTED]¹³¹³ [REDACTED].¹³¹⁴ In the same document, Cargotec states [REDACTED].¹³¹⁵ [REDACTED].

¹³⁰⁶ Cargotec internal document [REDACTED].

¹³⁰⁷ Konecranes internal document [REDACTED].

¹³⁰⁸ Cargotec internal document, [REDACTED], internal document from Cargotec [REDACTED].

¹³⁰⁹ Cargotec internal document [REDACTED], Cargotec internal document [REDACTED].

¹³¹⁰ Cargotec internal document [REDACTED].

¹³¹¹ Cargotec internal document [REDACTED].

¹³¹² Cargotec internal document [REDACTED].

¹³¹³ Total cost of ownership.

¹³¹⁴ Cargotec internal document [REDACTED].

¹³¹⁵ Cargotec internal document [REDACTED].

- (ii) In a spreadsheet produced by Cargotec to the European Commission, [REDACTED].¹³¹⁶
- (iii) [REDACTED].¹³¹⁷
- (iv) In the same vein, an email from Konecranes' Regional Sales Director Europe) to Konecranes' Director Sales and Distribution, on 8 January 2021 states: [REDACTED]¹³¹⁸ This comment is in reaction to an email chain between Maritime's National Plant Manager and Impact's¹³¹⁹ Division Sales Manager, in which Maritime states that, in order to consider purchasing RS and ECH from [REDACTED] from Konecranes. Maritime notes that '[REDACTED]'.¹³²⁰ [REDACTED].
- (v) In an email chain between Impact's Divisional Sales Manager and Konecranes' Global Sales Manager, relating to the award of two RS to Sany, Konecranes' Global Sales Manager questions: 'What is the market saying about the Sany Reach stacker? All we hear from others is that the [REDACTED]. Does Coopers customer accept that, because I doubt that he is stocking to much... or have Sany improved?'.¹³²¹ This question is consistent with third-party evidence described above, which indicates that some customers have concerns about Sany's after-sales support. In the same email chain, Impact's Divisional Sales Manager argues that [REDACTED]. This meant that Sany [REDACTED] such that the customer did not see the 'benefit in a premium brand', having had previous problems with both Konecranes and Cargotec equipment.¹³²²
- (f) A [REDACTED] produced by Konecranes in March 2021, noted that [REDACTED].¹³²³

Purchasing criteria

9.98 We have also reviewed internal documents about the main relevant purchasing criteria of RS, which provide insight on how the strengths and weaknesses of each competitor relate to these criteria:

- (a) [REDACTED].¹³²⁴ [REDACTED].

¹³¹⁶ Cargotec internal document [REDACTED].

¹³¹⁷ Konecranes internal document [REDACTED].

¹³¹⁸ Convenience translation by the CMA from Swedish.

¹³¹⁹ Impact is Konecranes' distributor in the UK.

¹³²⁰ Konecranes internal document [REDACTED].

¹³²¹ Konecranes internal document [REDACTED].

¹³²² Konecranes' Response [REDACTED].

¹³²³ Konecranes internal document [REDACTED].

¹³²⁴ Cargotec internal document, [REDACTED].

- (b) In an October 2019 email from Impact (Konecranes UK distributor), to members of the Konecranes team, Impact states that a UK [REDACTED] opportunity [REDACTED]. The reasons cited for this were [REDACTED].¹³²⁵ This indicates that the customer places importance on a number of purchasing criteria other than upfront price.
- (c) An unsolicited business development report produced by Bain and provided to Konecranes in November 2020 sets out Bain's view that 'local dealer support [was the] most critical purchase criteria' in the supply of RS. The report quotes from a number of former heads of port operations who support that conclusion, with one stating 'local presence is by far the most critical KPC – it lays the foundation for a deal in the first place, by enabling rapid service of broken equipment to ensure 24/7 operations'.¹³²⁶ Noting that this was a report prepared by an external consultant, we place less weight upon the conclusions presented than we might if a similar document had been produced by the senior managers of Konecranes, but note that this document is broadly consistent with third-party evidence which suggests that dealer support is an important factor.

The development of competition in the foreseeable future

9.99 Some internal documents also provide insight into the Parties' views on how competition in the supply of RS will develop in future. As with other types of MEQ, the Parties predict an increasing trend towards electrification, a trend in which they believe they are well placed to succeed.

- (a) [REDACTED].¹³²⁷
- (b) [REDACTED].¹³²⁸
- (c) The following documents relate to the electrification of RS:
- (i) The Cargotec document referred to above at (b) [REDACTED].¹³²⁹
 - (ii) [REDACTED].¹³³⁰
 - (iii) [REDACTED].¹³³¹

¹³²⁵ Konecranes internal document [REDACTED].

¹³²⁶ Cargotec internal document [REDACTED].

¹³²⁷ Cargotec internal document [REDACTED].

¹³²⁸ Konecranes internal document [REDACTED].

¹³²⁹ Cargotec internal document [REDACTED].

¹³³⁰ Cargotec internal document [REDACTED].

¹³³¹ Cargotec internal document [REDACTED].

- (iv) A table produced to the European Commission in 2021, sets out Cargotec's plans to [REDACTED]. The table shows plans to [REDACTED].¹³³²
- (v) An email chain within Konecranes shows that Konecranes favourably compares its electric offer against Cargotec. On 28 May 2020, [REDACTED], Senior Vice-President in Lift Trucks reacted to a summary of Cargotec's plans by stating 'We still stay ahead. Remember – at the moment we have BETTER Eco-lifting options than Kalmar has'.¹³³³
- (vi) [REDACTED] a modular electric reach stacker (46 ton lifting capacity) that can be configured as either a battery electric (BEV), plug-in hybrid electric (PHEV) or fuel cell electric version (FCEV)', which will be commercialised between 2024 and 2026.¹³³⁴

9.100 As above, the internal documents reviewed indicate that the Parties consider one another to be close competitors, in the present market as well as in the future market for electric vehicles.

CMA's conclusion

- 9.101 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 a wide range of products) and a proven track-record.
- 9.102 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.¹³³⁵ 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 a SLC in the supply of RS in Europe (including the UK).
- 9.103 The following evidence, in particular, demonstrates that the Parties compete closely in the supply of RS:

¹³³² Cargotec internal document [REDACTED].

¹³³³ Konecranes internal document [REDACTED].

¹³³⁴ internal document [REDACTED].

¹³³⁵ We note that, although each merger is considered on its merits, one of the scenarios described in the CMA's guidance, in which the CMA may be more likely to find an SLC, refers to a merger involving 'the market leader and [where] the number of significant competitors is reduced from four to three' (CMA129, paragraph 2.18). Based on the evidence that we have reviewed, we consider that the Merger involves the market leader in RS (Cargotec); that there are fewer than four significant competitors in the market pre-Merger; and that a significant competitor would be removed by the Merger.

- (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,¹³³⁶ this share is nonetheless material ([10 – 20] [%]).
- (b) Our bidding analysis shows that the Parties lost more opportunities to each other than to any other supplier in Europe. Sample sizes in the UK are small, but we note that the Parties lost a significant number of opportunities to each other over the period considered.
- (c) Evidence from third parties consistently shows that the Parties are close competitors, and several third parties raised concerns about the loss of competition that would result from the Merger. Qualitative comments from third parties and the qualitative tender documents mostly suggested that both Parties have high quality products, although some third parties commented that the quality of the Parties' equipment had declined relative to competitors.
- (d) Internal documents show that the 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. Both Parties have plans to increase their market shares in MEQ in the foreseeable future. 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).

9.104 In addition, as noted at paragraph 6.153, the Parties are likely to compete particularly closely for some customers as a result of their wide CHE portfolios (including MEQ, SC, ShC and port cranes), which enable them to offer an integrated, automated and comprehensive solution to ports. These capabilities are likely to become increasingly significant in future as the extent of automation and digitalisation within CHE develops further. By contrast, most of the Parties' competitors do not offer similarly broad and

¹³³⁶ As discussed at paragraph 9.21 above, we consider that this is likely to reflect the role that national distributors play in the competitive process in MEQ and, in particular, Konecranes' issues with its UK distributor Impact and Sany's relative success with its UK distributor Cooper.

integrated ranges of CHE in Europe, and so they are likely to compete less closely with the Parties for some customers in this regard.

- 9.105 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 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 evidence and the qualitative tender documents that we reviewed 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 that the Parties consider Hyster as one of their closest competitors in MEQ generally and in RS specifically. Both Parties' documents noted that Hyster is price competitive and offered a wide product range, although we note that it does not offer the full product range (as both Parties do) and Cargotec [REDACTED].
- 9.106 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 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] [REDACTED]% share of supply in the UK over 2016 to 2020, but is much smaller in Europe ([0 – 5] [REDACTED]% share).¹³³⁷ Sany had much higher UK sales in 2019 and 2020 as compared with previous years, although we note that 2019 was an exceptionally good year for Sany. Nonetheless, Sany seems to now be a more significant competitor in the UK than its share of [20 – 30] [REDACTED]% over 2016 to 2020 would suggest.

¹³³⁷ We consider that this difference is likely to reflect the role of its national distributor (Cooper).

- (b) While UK sample sizes are small, UK bidding data is consistent with shares of supply in suggesting that Sany is a material competitor to the Parties in the UK. Our bidding analysis confirms that Sany is not a strong competitor in Europe as a whole.
- (c) Third-party views on the strength of Sany as a competitor to the Parties were mixed. Third-parties were positive about Sany's low prices, whereas third-party views on Sany's aftersales service and quality levels were mixed. This is consistent with the qualitative tender documents that we reviewed. This third-party evidence suggests that Sany may not be a strong constraint on the Parties in relation to some customers that place less weight on price and more on equipment and service quality.
- (d) Internal documents relating to MEQ in general show that the Parties consider Sany as a material competitor on a global basis, while also suggesting that Sany has not yet established itself in MEQ in Europe. Internal documents show that the Parties perceive Sany as a threat in RS (including in the UK, through its relationship with Cooper) and recognise Sany's competitive prices. However, consistent with third-party evidence, internal documents (including documents relating to Europe and the UK) also highlight weaknesses in Sany's offer, [REDACTED].
- (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. We note that Sany has been active in Europe since at least 2010 without gaining a significant share of supply in Europe (see paragraph 9.26).

9.107 The evidence indicates that no other suppliers compete closely with the Parties for UK customers:

- (a) CVS has a [5 – 10] [REDACTED]% share of supply in Europe, and was a material competitor to the Parties in Europe based on bidding data, but it did not make any sales in the UK in the period 2016 to 2020.¹³³⁸ The lack of sales by CVS in the UK does not in itself rule out that it could compete for UK customers, but other evidence (including from third parties and internal documents) consistently indicates that it does not impose a material constraint in relation to UK customers
- (b) Other suppliers in the market (Liebherr, FTMH, and Linde) exert, at most, a limited competitive constraint on the Parties in the UK and Europe. Shares of supply show that these suppliers made no, or very

¹³³⁸ We note that CVS does not have a UK-based distributor.

limited, sales in Europe (including the UK) during 2016 to 2020, while our bidding analysis shows that the Parties did not lose many opportunities to these suppliers. Third-party evidence and internal documents indicate that these are not material competitors to the Parties.

- 9.108 As discussed below (from paragraph 9.267), the evidence that we reviewed in relation to entry and expansion does not suggest 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

Parties' views

- 9.109 The Parties submitted that they currently compete against multiple global competitors (such as Sany, Taylor and Svetruck) that offer a wide range of HDFLT with different lifting capacities. They also submitted that there are a large number of well-established suppliers that could easily expand their presence in the UK (such as Heli, Hangzhou-Hangcha Forklift, Hyundai and Doosan), and a long 'tail' of smaller competitors that will constrain the Merged Entity.¹³³⁹
- 9.110 The Parties further submitted that barriers to entry and expansion in HDFLT are low due to the large number of distributors that can facilitate market access (the Parties are aware of at least 17 'all-brand' distributors) and the relative ease with which production capacity can be switched between different types of FLT.¹³⁴⁰
- 9.111 The Parties submitted that the large number of OEMs and distributors, combined with the commoditised nature of FLT, leads to low barriers to switching for customers. As evidence of this, the Parties cited various examples of their customers recently switching to rival suppliers.¹³⁴¹
- 9.112 In response to the CMA's working paper, the Parties made a number of further submissions in relation to HDFLT:

¹³³⁹ [Parties' response to Issues Statement](#), paragraph 7.18.

¹³⁴⁰ [Parties' response to Issues Statement](#), paragraphs 7.19–7.20.

¹³⁴¹ [Parties' response to Issues Statement](#), paragraph 7.19.

- (a) If Konecranes is considered a credible competitor based on UK share of supply estimates, Linde and Svertruck must also be considered credible constraints.¹³⁴²
- (b) Third-party evidence indicates that a number of other competitors are ranked as close alternatives; for example, Sany was ranked as a close alternative by one quarter of respondents.¹³⁴³
- (c) Third-party evidence does not support the position that Hyster is the Parties' only meaningful competitor.¹³⁴⁴

9.113 In response to the Provisional Findings, the Parties submitted that:

- (a) the CMA was inconsistent in discounting the competitive constraint from suppliers (such as Linde, Hyundai and Doosan) that are present in the market for greater than 10t FLT's, but are not present or competitive in relation to heavier lifting capacities (ie above 18 or 20 tonnes);
- (b) that concluding that Linde is less of a constraint on the Parties on this basis contradicts the CMA's bidding analysis (since this shows that [REDACTED]); and
- (c) the CMA should have further investigated:
 - (i) the significance of the greater than 18t FLT segment; competitive conditions in this segment; and
 - (ii) the extent to which suppliers in different segments exert competitive pressure on those in other segments.¹³⁴⁵

Shares of supply

9.114 Chapter 6 provides an overview of our approach to shares of supply and the weight that we place on this evidence. We note that product differentiation is more pronounced in HDFLT (with some suppliers only offering HDFLT with lifting capabilities towards the lower end of the greater than 10 tonne range) as compared with other MEQ markets. Therefore, although still useful as an initial indicator of closeness of competition, we place slightly less weight on

¹³⁴² The Parties' Response [REDACTED].

¹³⁴³ The Parties' Response [REDACTED].

¹³⁴⁴ The Parties' Response [REDACTED].

¹³⁴⁵ Specifically, the Parties submitted that the CMA should have investigated: (i) the significance of the >18t FLT segment relative to the overall market for >10t FLT's (e.g. the proportion of sales this segment accounts for), (ii) the competitive conditions in the >18t FLT segment and whether this has any impact on the overall market for >10t FLT's, and (iii) the extent to which suppliers in one sub-segment can exert competitive pressure on those in other sub-segments. Source: [Parties' Response to the Provisional Findings Report](#) paragraph 7.13.

shares of supply (and more weight on other evidence, including the bidding analysis below) in HDFLT as compared with other MEQ markets.

- 9.115 We have constructed our estimates of the shares of supply using data provided by the manufacturers (or their distributors) themselves and, where this is not available, the Parties' estimates of their competitors' sales.¹³⁴⁶
- 9.116 Table 33 shows our estimates of the shares of supply based on the volumes sold by each supplier (either directly to a customer or to a distributor) for HDFLT over the period 2016 to 2020 for three different geographic areas: UK, Europe, and worldwide (excluding China). As set out in Chapter 5, we conclude that the relevant geographic market is no wider than Europe-wide, with some important UK-specific aspects of competition that affect the strength of competitors for some UK customers. As such, we consider that shares of supply in both the UK and Europe as a whole are relevant to our competitive assessment.
- (a) Within the UK, the Parties were two of the three largest suppliers, and the Merged Entity would have a combined share of supply of [30 – 40]% [X]%. Hyster ([20 – 30]% [X]%) is currently the largest supplier in the market and Linde is the fourth largest with a share of [10 – 20]% [X]%. There are many smaller suppliers operating in the market; in addition to Hyundai (with a share of [0 – 5]% [X]), Svetruck ([0 – 5]% [X]), and Sany ([0 – 5]% [X]), other suppliers accounted for a combined [10 – 20]% [X] share of supply.
- (b) Within Europe, the Parties were two of the three largest suppliers over the last five years, and the Merged Entity would have a combined share of supply of [40 – 50]% [X]. Hyster was the second largest supplier ([10 – 20]% [X]) behind Cargotec, and Svetruck was fourth with a [10 – 20]% [X] share. In addition to Linde ([5 – 10]% [X]), the other smaller suppliers (including Hyundai, Sany and CVS) accounted for a combined [10 – 20]% [X] share of supply.
- (c) On a worldwide basis (excluding China), the Merged Entity would have a combined share of supply of [20 – 30]% [X]. The Parties' combined share of worldwide (excluding China) sales is much lower than their share of UK and European sales primarily because of the presence of other competitors. In particular Taylor, a supplier that operates in North America, has a [5 – 10]% [X] share of supply on a worldwide (excluding China) basis.

¹³⁴⁶ See Appendix B for further detail on our methodology.

Table 33: Shares of supply of HDFLT based on sales volumes, 2016–20

Company	Volume in Units					
	Geographic area					
	UK		Europe		Worldwide (excl. China)	
Volume	Share	Volume	Share	Volume	Share	
Cargotec	[X]	[20 – 30]%	[X]	[30 – 40]%	[X]	[10 – 20]%
Konecranes	[X]	[10 – 20]%	[X]	[10 – 20]%	[X]	[5 - 10]%
Combined	[X]	[30 – 40]%	[X]	[40 – 50]%	[X]	[20 – 30]%
Hyster	[X]	[20 – 30]%	[X]	[10 – 20]%	[X]	[20 – 30]%
Linde	[X]	[10 – 20]%	[X]	[5 - 10]%	[X]	[0 – 5]%
Hyundai	[X]	[0 – 5]%	[X]	[0 – 5]%	[X]	[5 – 10]%
Svetruck	[X]	[0 – 5]%	[X]	[10 – 20]%	[X]	[0 – 5]%
Sany	[X]	[0 – 5]%	[X]	[0 – 5]%	[X]	[0 – 5]%
CVS	-	-	[X]	[0 – 5]%	[X]	[0 – 5]%
Taylor	-	-	-	-	[X]	[5 - 10]%
Others	[X]	[10 – 20]%	[X]	[10 – 20]%	[X]	[30 – 40]%
Total	[X]	[X]	[X]	[X]	[X]	[X]

Source: Parties, Response to P2 RFI 1, Annex 8.1; Competitors' RFI responses.

9.117 Table 34 shows the same shares of supply based on revenue rather than delivery volumes. The shares are similar to those in Table 33—the Merged Entity would have a [30 – 40]%

Table 34: Shares of supply of HDFLT based on revenue, 2016–20

Revenue in €m

Company	Geographic area					
	UK		Europe		Worldwide (excl. China)	
	Revenue	Share	Revenue	Share	Revenue	Share
Cargotec	[REDACTED]	[20 – 30]% [REDACTED]	[REDACTED]	[30 – 40]% [REDACTED]	[REDACTED]	[10 – 20]% [REDACTED]
Konecranes	[REDACTED]	[10 – 20]% [REDACTED]	[REDACTED]	[10 – 20]% [REDACTED]	[REDACTED]	[5 – 10]% [REDACTED]
Combined	[REDACTED]	[30 – 40]% [REDACTED]	[REDACTED]	[50 – 60]% [REDACTED]	[REDACTED]	[20 – 30]% [REDACTED]
Hyster	[REDACTED]	[20 – 30]% [REDACTED]	[REDACTED]	[10 – 20]% [REDACTED]	[REDACTED]	[10 – 20]% [REDACTED]
Linde	[REDACTED]	[10 – 20]% [REDACTED]	[REDACTED]	[5 – 10]% [REDACTED]	[REDACTED]	[0 – 5]% [REDACTED]
Hyundai	[REDACTED]	[0 – 5]% [REDACTED]	[REDACTED]	[0 – 5]% [REDACTED]	[REDACTED]	[5 – 10]% [REDACTED]
Svetruck	[REDACTED]	[0 – 5]% [REDACTED]	[REDACTED]	[10 – 20]% [REDACTED]	[REDACTED]	[0 – 5]% [REDACTED]
Sany	[REDACTED]	[0 – 5]% [REDACTED]	[REDACTED]	[0 – 5]% [REDACTED]	[REDACTED]	[0 – 5]% [REDACTED]
CVS	-	-	[REDACTED]	[0 – 5]% [REDACTED]	[REDACTED]	[0 – 5]% [REDACTED]
Taylor	-	-	-	-	[REDACTED]	[10 – 20]% [REDACTED]
Others	[REDACTED]	[10 – 20]% [REDACTED]	[REDACTED]	[10 – 20]% [REDACTED]	[REDACTED]	[30 – 40]% [REDACTED]
Total	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Source: Parties, Response to P2 RFI 1, Annex 8.1; Competitors' RFI responses.

9.118 Overall, the shares of supply indicate that the Parties are close competitors in the supply of HDFLT in both the UK and Europe, being two of the four largest suppliers. The Merged Entity would have a combined share of supply of [30 – 40]% [REDACTED] in the UK and [40 – 50]% [REDACTED] in Europe, on a volume basis. The shares of supply also suggest that Hyster is a strong competitor to the Parties in the UK, where it has a share of [20 – 30]% [REDACTED], and Europe, where it has a share of [10 – 20]% [REDACTED]. Svetruck has [10 – 20]% [REDACTED] share of supply in Europe, but is much smaller in the UK ([0 – 5]% [REDACTED]), while for Linde it is the opposite – it has a share of supply of [REDACTED] [10 – 20]% in the UK compared with [REDACTED] [5 – 10]% in Europe).

9.119 There are a number of other suppliers of HDFLT (including Hyundai) that together account for a sizeable share of the market but have low individual shares. We consider that the limited sales by these suppliers does not in itself mean that they could not effectively compete with the Parties. However, in the round, the other evidence that we review below is consistent with these suppliers not competing closely with the Parties.

9.120 Consistent with the market definition set out in Chapter 5, the shares of supply above relate to HDFLT (ie FLT with lifting capacities greater than 10 tonnes). However, based on data submitted by the Parties, their shares are

higher still when considering the heavier end of the HDFLT market. In particular, on a volume basis, the Parties' combined share of supply for HDFLT with lifting capacities of greater than 25 tonnes is [40 – 50%] [redacted] and [60 – 70%] [redacted] for the UK and Europe respectively over 2016 to 2020; as discussed at paragraph 9.118, their combined share of supply for all HDFLT is [30 – 40%] [redacted] in the UK and [40 – 50%] [redacted] in Europe.

- 9.121 We note that Linde only sells HDFLT with lifting capacities between 10 and 18 tonnes,¹³⁴⁷ so does not compete with the Parties at higher lifting capacities. In addition, the third-parties that we heard from did not identify Hyundai and Doosan as being competitive at lifting capacities greater than 20 tonnes (see paragraph 9.166).
- 9.122 Further, we note that considering the strength of different suppliers in relation to different lifting capacities (within the greater than 10 tonne HDFLT market) is not inconsistent with our approach to market definition. In defining a HDFLT market for greater than 10 tonne forklifts (see Chapter 5), we noted that there is some inconsistency in the industry about the classification of FLT's by lifting capacity and that product markets are not always defined by reference to bright lines. Further, as stated in the CMA's guidance, market definition can be a useful tool but does not determine the outcome of the CMA's analysis of competitive effects in any mechanistic way.¹³⁴⁸
- 9.123 We have not discounted the competitive constraint from suppliers such as Linde, Hyundai and Doosan, rather, we consider a range of evidence below on the overall competitive significance of these suppliers as rivals to the Parties. It is relevant to our competitive assessment that these suppliers do not appear to be close competitors to the Parties' in relation to customers that require HDFLT in order to lift greater than 18 tonne loads. In relation to the significance of the heavier end of the HDFLT market, we do not have data for the subset of sales that were for machines with a greater than 18 or 20 tonne lifting capacity, however data from the Parties shows that [redacted] forklifts with greater than 25 tonne lifting capacity were sold in Europe over 2016-20.¹³⁴⁹ This represents around 11% of all greater than 10 tonne forklifts sold over the period.¹³⁵⁰ Therefore a material number of HDFLT sales are for machines with a greater than 25 tonne lifting capacity, and we would expect

¹³⁴⁷ Call note [redacted].

¹³⁴⁸ CMA129, paragraph 9.4.

¹³⁴⁹ Parties' Response to CMA P2 RFI 3, Updated Annex 8.1

¹³⁵⁰ Total HDFLT sales in the period are taken from our SoS data as presented at Table 33: Shares of supply of HDFLT based on sales volumes, 2016–20

this number to be higher still when considering all machines with a greater than 18 tonne lifting capacity.¹³⁵¹

Bidding analysis

9.124 Chapter 6 provides an overview of our approach to the bidding analysis and the weight that we place on this evidence.

Quantitative analysis of Parties' data

9.125 In this section, we present the results of our quantitative analysis of the bidding data provided by the Parties.¹³⁵² As explained above, our analysis considers loss ratios, which we consider as a useful measure of the closeness of competition between the Parties and their competitors (see paragraph 7.24).

9.126 As set out in Chapter 5 we conclude that the relevant geographic market is no wider than Europe-wide, with some important UK-specific aspects of competition that affect the strength of competitors for some UK customers. As such, we consider that loss ratios in both the UK and Europe as a whole are relevant to our competitive assessment.

9.127 Table 35 below shows HDFLT loss ratios for Cargotec in the UK from 2016 to May 2021. This indicates that Cargotec lost the most opportunities to Konecranes in the UK based on the number of opportunities and value of the opportunities lost, closely followed by Hyster. Based on the number of units lost, Cargotec lost the most opportunities to Hyster followed by Konecranes. The loss ratios show that Linde was the next closest competitor to Cargotec in the UK, with loss ratios around [X]%. Svetruck, Sany and Doosan were the other known competitors to which Cargotec lost opportunities in the UK, each with loss ratios in the region of [X]%.

¹³⁵¹ We quantitatively assessed the number of greater than 25 tonne HDFLT, rather than the number of greater than 18 tonne HDFLT, due to data availability.

¹³⁵² We discuss this data further in appendix C.

Table 35: HDFLT loss ratios, UK, Cargotec, 2016 to May 2021

UK						
Company	Number of opportunities		Number of units		Value (revenue in €m)	
	Number	Percentage	Number	Percentage	Number	Percentage
Konecranes	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Hyster	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Linde	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Svetruck	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Sany	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Doosan	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Unknown	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Total	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Source: CMA analysis of Parties' data

Note: As explained in Appendix C, we have made adjustments to the recorded values of a small number of opportunities that we consider outliers based on their high implied unit prices.

9.128 Table 36 below shows HDFLT loss ratios for Cargotec in Europe from 2016 to May 2021. This indicates that around [REDACTED]% of the opportunities lost by Cargotec in Europe were awarded to Konecranes and around [REDACTED]% were awarded to Hyster (across all measures). Linde and Svetruck were the next closest competitors to Cargotec according to the loss ratios, accounting for around [REDACTED]% of lost opportunities. There were no other competitors that individually accounted for more than [REDACTED]% of the opportunities that Cargotec lost.¹³⁵³

¹³⁵³ Note that for [REDACTED]% of the HDFLT tenders lost by Cargotec in Europe between 2016 and May 2021 (accounting for around [REDACTED]% of units and value) the winner was unknown.

Table 36: HDFLT loss ratios, Europe (EEA + UK), Cargotec, 2016 to May 2021

Company	Europe (EEA + UK)					
	Number of opportunities		Number of units		Value (revenue in €m)	
	Number	Percentage	Number	Percentage	€m	Percentage
Konecranes	[X]	[X]	[X]	[X]	[X]	[X]
Hyster	[X]	[X]	[X]	[X]	[X]	[X]
Linde	[X]	[X]	[X]	[X]	[X]	[X]
Svetruck	[X]	[X]	[X]	[X]	[X]	[X]
Doosan	[X]	[X]	[X]	[X]	[X]	[X]
CVS	[X]	[X]	[X]	[X]	[X]	[X]
Sany	[X]	[X]	[X]	[X]	[X]	[X]
Unknown	[X]	[X]	[X]	[X]	[X]	[X]
Other	[X]	[X]	[X]	[X]	[X]	[X]
Total	[X]	[X]	[X]	[X]	[X]	[X]

Source: CMA analysis of Parties' data

Note: As explained in Appendix C, we have made adjustments to the recorded values of a small number of opportunities that we consider outliers based on their high implied unit prices.

9.129 Table 37 below shows HDFLT loss ratios for Konecranes in the UK from 2016 to May 2021. This indicates that Cargotec was the competitor to which Konecranes lost most opportunities in the UK (loss ratios of around [X]%), followed by Svetruck and Hyster with loss ratios of [X]% and [X]% respectively based on the number of opportunities lost. Linde and Sany each accounted for [X]% of the number of opportunities lost by Konecranes, but Linde accounted for [X]% of the total value lost (the highest proportion based on value) compared with [X]% for Sany.

Table 37: HDFLT loss ratios, UK, Konecranes, 2016 to May 2021

Company	UK			
	Number of opportunities		Value (revenue in €m)	
	Number	Percentage	€m	Percentage
Cargotec	[X]	[X]	[X]	[X]
Svetruck	[X]	[X]	[X]	[X]
Hyster	[X]	[X]	[X]	[X]
Sany	[X]	[X]	[X]	[X]
Linde	[X]	[X]	[X]	[X]
Doosan	[X]	[X]	[X]	[X]
Unknown	[X]	[X]	[X]	[X]
Total	[X]	[X]	[X]	[X]

Source: CMA analysis of Parties' data.

Notes: [X].

As explained in Appendix C, we have made adjustments to the recorded values of a small number of opportunities that we consider outliers based on their high implied unit prices.

9.130 Table 38 below shows HDFLT loss ratios for Konecranes in Europe from 2016 to May 2021. This indicates that Cargotec is the competitor to which Konecranes lost the most opportunities in Europe, with loss ratios of [X]%. Hyster was the only other competitor to account for more than 10% of lost opportunities. The loss ratios show that Svetruck and Linde were the next closest competitors to Konecranes in Europe, with loss ratios of [X]% each. There were no other competitors that individually accounted for more than [X]% of the opportunities that Konecranes lost (except Doosan on the basis of value).

Table 38: HDFLT loss ratios, Europe (EEA + UK), Konecranes, 2016 to May 2021

Company	Europe (EEA + UK)			
	Number of opportunities		Value (revenue in €m)	
	Number	Percentage	€m	Percentage
Cargotec	[X]	[X]	[X]	[X]
Hyster	[X]	[X]	[X]	[X]
Svetruck	[X]	[X]	[X]	[X]
Linde	[X]	[X]	[X]	[X]
CVS	[X]	[X]	[X]	[X]
Sany	[X]	[X]	[X]	[X]
Doosan	[X]	[X]	[X]	[X]
Hyundai	[X]	[X]	[X]	[X]
Unknown	[X]	[X]	[X]	[X]
Other	[X]	[X]	[X]	[X]
Total	[X]	[X]	[X]	[X]

Source: CMA analysis of Parties' data.

Notes: [X].

As explained in Appendix C we have made adjustments to the recorded values of a small number of opportunities that we consider outliers based on their high implied unit prices. [X].

9.131 Overall, our bidding analysis indicates that the Parties compete closely; in both Europe and the UK, Konecranes lost more opportunities to Cargotec (around [X]%) than any other competitor, and Cargotec lost more opportunities to Konecranes (around [X]%) than any other competitor.

9.132 The loss ratios show that Hyster is the strongest third-party constraint on the Parties in Europe and in the UK it is an equally strong constraint on Cargotec as Konecranes is. Svetruck and Linde are the only other material constraints on a European basis according to the loss ratios. They are also material constraints in the UK (Konecranes lost more opportunities in the UK to Svetruck than to Hyster, and it lost more opportunities by value to Linde than to any other supplier, although this was based on three lost tenders only). Sany and Doosan impose some constraint on the Parties in the UK, but less so in Europe.

9.133 Overall, these findings are broadly consistent with the shares of supply presented above.

Qualitative tender case studies

9.134 We have reviewed documents provided by customers that detail the participants and outcomes of two recent HDFLT tenders. We place limited weight on the analysis of these specific tenders (which are better considered as part of the shares of supply and bidding data considered above), but we have taken account of the insights that they provide on customer perceptions of the strengths and weaknesses of different suppliers.

9.135 One industrial customer [REDACTED] provided a document that summarises the scoring and pricing of participants in a tender for 10 tonne and 12 tonne FLT in 2019.¹³⁵⁴ There were [REDACTED] participants in this tender ([REDACTED]) and it was awarded to Cargotec.

9.136 [REDACTED].

9.137 [REDACTED].

9.138 [REDACTED].

9.139 A port customer [REDACTED] provided a tender evaluation summary related to a tender for one 12 tonne FLT and one 16 tonne FLT in 2019.¹³⁵⁵ There were [REDACTED] participants in this tender ([REDACTED],¹³⁵⁶ [REDACTED]), and it was awarded to Cargotec.

9.140 [REDACTED].¹³⁵⁷

9.141 The summary indicates that all three participants passed the technical and contractual assessments. [REDACTED].

9.142 In both tenders [REDACTED] was the closest competitor to Cargotec. Price was also an important criterion in both tenders, but more so in the latter example. Service quality was a relevant criterion in the first example but did not appear to be a factor in the second example.

¹³⁵⁴ Response to P2 questionnaire [REDACTED].

¹³⁵⁵ Response to P2 questionnaire [REDACTED].

¹³⁵⁶ Response to P2 questionnaire [REDACTED].

¹³⁵⁷ Response to P2 questionnaire [REDACTED].

Third-party evidence

Customer questionnaire

- 9.143 We sent questionnaires to 25 of the Parties' HDFLT customers and received responses from 13 customers [§].¹³⁵⁸
- 9.144 We asked customers of the Parties to rate the importance of various criteria in their purchasing decisions for HDFLT (scores out of 5, where 5 is the most important).¹³⁵⁹ The responses indicated that:
- (a) Equipment reliability was considered very important, with the twelve respondents to this question all scoring it either 4 or 5.
 - (b) Purchase price, running costs, and efficiency were also very important for most respondents - for each criterion, eleven out of the twelve respondents scored these either 4 or 5.
 - (c) The strength of local after-sales presence was also important, with ten out of twelve respondents scoring it either 4 or 5 (the other two scored this criterion a 3).
 - (d) Automation and interoperability were generally not scored as important criteria - for each criterion, at least eight out of twelve respondents scored it 3 or below.
- 9.145 We asked customers of the Parties to rank the alternative suppliers that were considered in their most recent purchase of HDFLT in the UK.¹³⁶⁰ We received responses to this question from seven customers of the Parties and all of these had most recently purchased from Cargotec. Five of the respondents had most recently purchased from Cargotec in 2018 or after, and one respondent (customer F) had not recently purchased from Cargotec.¹³⁶¹ These responses are summarised in the second column of Table 39 below.

¹³⁵⁸ See Appendix D for further detail on our methodology.

¹³⁵⁹ Question wording: *When thinking about purchasing HDFLT, please score the following factors according to how important they are to your choice of supplier. Please assign a score from 1-5 where 5 = very important and 1 = not important at all (more than one factor can have the same score). The factors listed were: differences in equipment reliability, differences in automation/assistive technology features, differences in purchase price, differences in running costs, differences in strength of local aftersales presence (servicing, maintenance, spare parts), differences in efficiency/environmental performance, degree of interoperability with other equipment, and already having installed base of equipment from a particular supplier.*

¹³⁶⁰ Question wording: *Thinking about when you most recently purchased HDFLT from [Party] in the UK, what were the main alternative suppliers that you considered? Please list the main alternatives and confirm how you ranked these alternative suppliers (where 1 = the best alternative, 2 = the next best alternative and so on).*

¹³⁶¹ The remaining respondent confirmed that it leased HDFLT from Cargotec but did not provide the date on which this lease started.

Table 39: Customer questionnaire responses, HDFLT

Customer	Alternative suppliers at most recent purchase		Expected ranking in future purchase	
			1.	
Customer A [X]	1.	Konecranes	2.	Cargotec
	2.	Linde	3.	Sany
	3.	Hyster	4.	Linde
			5.	Hyster
Customer B [X]	No other suppliers considered due to existing relationship		1.	Cargotec
			2.	TCM
			3.	Linde
Customer C [X]	N/A		1.	Cargotec
			2.	Linde
			3.	HLT
Customer D [X]	1.	Konecranes	2.	Konecranes
			2.	Svetruck
			2.	Linde
Customer E [X]	1.	Linde	1.	Linde
	2.	Konecranes	1.	Konecranes
	3.	Hyster	1.	Hyster
			1.	Cargotec
Customer F† [X]	•	Konecranes	•	Cargotec
	•	Hyster	•	Konecranes
	•	CVS	•	Hyster
			•	CVS
Customer G [X]	1.	Linde	1.	Cargotec
	2.	Konecranes	2.	Linde
	3.	Hyster	3.	Hyster
			4.	Konecranes
			4.	Liebherr
			6.	ZPMC
Customer H [X]	N/A		1.	Cargotec
			2.	Sany
			3.	Konecranes
Customer I‡ [X]	N/A		•	Hyster
			•	Konecranes
			•	Linde
			•	Cargotec
Customer J [X]	1.	Linde	N/A	
	1.	Hyster		
	3.	STILL		

Source: P2 questionnaire responses.

Notes: Where the customer named a distributor, we have recorded the name of the OEM that supplies the products to the distributor. Some customers ranked suppliers as equally close alternatives.

† Customer F did not provide any rankings for the suppliers that it listed. It has not recently purchased HDFLT from Cargotec.

‡Customer I did not provide any rankings for the suppliers that it listed.

9.146 Five out of the six respondents that considered other suppliers at their most recent purchase named Konecranes - four ranked it as either the first or second closest alternative, while the other did not provide a ranking. Regarding other suppliers, Linde was also ranked as either the first or

second alternative by four respondents. Hyster was ranked as the third alternative by three respondents (which was the lowest alternative given by all of these customers), the joint first alternative by one respondent, and listed without a ranking by another. STILL and CVS were the only other suppliers mentioned, each by one respondent.

- 9.147 We also asked customers of the Parties to provide an expected ranking of suppliers if they were to purchase HDFLT in the UK within the next year.¹³⁶² We received responses to this question from nine customers of the Parties and these responses are summarised in the third column of Table 39 above. All respondents indicated that they felt well informed about the market.¹³⁶³
- 9.148 Six of the nine respondents expected Cargotec to be the leading supplier (either individually or jointly) in a future hypothetical purchase, one expected Cargotec to rank second, and the other two did not provide rankings. Konecranes was named by seven respondents, of which two ranked Konecranes first (either individually or jointly), one ranked it joint second, one ranked it third, one ranked it joint fourth, and two did not provide a ranking.
- 9.149 Regarding other suppliers, seven customers expected Linde to compete for the purchase, although only one expected it be the (joint) winning supplier. Hyster and Sany were mentioned by five and two customers respectively, with a range of expected rankings. Svetruck, TCM, HLT, CVS and ZPMC each received one mention as non-leading suppliers.
- 9.150 Overall, the responses above indicate that the Parties are among each other's close competitors and will remain so in the near future. Konecranes was commonly listed as one of the main alternatives to Cargotec in recent purchases and both Parties were named by most customers as two of the main suppliers that they would consider in a future purchase. Of the other suppliers, Linde was the most frequently mentioned as a strong competitor in both recent and future purchases. Hyster was also commonly mentioned as a viable competitor in both recent and future purchases, although it was not always ranked highly. A range of other suppliers (including Sany, Svetruck and ZPMC) were not generally regarded by UK customers as strong competitors for either past or future purchases. Hyundai and Doosan were not listed by the respondents to either question.

¹³⁶² Question wording: *Suppose that you were planning to purchase HDFLT in the UK within the next year. What suppliers would you expect to consider? Please list the full set of suppliers that you would expect to consider (including [Party] if applicable) and provide your expected ranking of the suppliers (where 1 = the winner, 2 = the best alternative and so on).*

¹³⁶³ Question wording: *Have you recently monitored and/or tested the market for HDFLT and to what extent do you feel well-informed about suppliers' strengths and weaknesses as they exist today?*

Competitor questionnaire

9.151 We sent questionnaires to 13 HDFLT competitors (including distributors) of the Parties and received responses from five competitors [REDACTED].¹³⁶⁴ We note that two of these responses covered the same brand of equipment (ie, we heard from the manufacturer and its distributor).

9.152 We asked these competitors to list the suppliers that they considered their closest competitors in the supply of HDFLT in the UK.¹³⁶⁵ The responses are summarised in Table 40 below.

Table 40: Competitor questionnaire responses, HDFLT

Competitor	Suppliers that are considered as closest competitors in the supply of HDFLT
Competitor A [REDACTED]	<ol style="list-style-type: none">1. Cargotec2. Konecranes3. Svetruck4. Hyundai5. Sany
Competitor B [REDACTED]	<ol style="list-style-type: none">1. Cargotec2. Hyundai3. Konecranes4. Svetruck5. Linde
Competitor C [REDACTED]	<ol style="list-style-type: none">1. Hyster2. Cargotec3. Konecranes4. Svetruck
Competitor D [REDACTED]	<ol style="list-style-type: none">1. Cargotec2. Konecranes2. Hyster4. Doosan4. Hyundai6. Mitsubishi
Competitor E [REDACTED]	<ol style="list-style-type: none">1. Hyster2. Cargotec

Source: P2 questionnaire responses.

Note: Competitors sometimes listed two or more suppliers as being equally close competitors to themselves.

9.153 All respondents listed Cargotec as one of their two closest competitors and most respondents listed Konecranes as either their second or third closest competitor. Hyster, Svetruck, and Hyundai were the most commonly mentioned suppliers other than the Parties, with Hyster generally considered

¹³⁶⁴ See Appendix D for further detail on our methodology.

¹³⁶⁵ Question wording: *Please list your main competitors in the supply of HDFLT to UK sites. Please rank these competitors according to how close a competitor they are to you (where 1 = closest competitor, 2 = next closest competitor, and so on).*

as a closer competitor than Svetruck and Hyundai by the respondents. Sany, Linde, Doosan, and Mitsubishi were each mentioned once.

- 9.154 We also asked competitors if they expected the rankings to differ in two years.¹³⁶⁶ The responses indicated that four competitors do not expect any changes from the rankings described above; however, competitor A expected Sany to become its second closest competitor (behind the Merged Entity), followed by Hyundai and Svetruck.
- 9.155 [X], the UK distributor for [X] also responded to our questionnaire. It considered that Cargotec was its closest competitor, followed by Hyster and then Svetruck. It did not expect this ordering to change in two years.
- 9.156 In response to a question from the CMA, Hyundai said that it offers HDFLT with lifting capacities of greater than 20 tonnes in the UK and Europe, [X].¹³⁶⁷ This suggests that Hyundai is more focused on the lighter end of the HDFLT market, as compared with the Parties (the Parties' data shows that [X]% of Cargotec's and [X]% of Konecranes' HDFLT sales in Europe (including the UK) over 2016 to 2020 came from HDFLT with a lifting capacity of at least 25 tonnes).¹³⁶⁸
- 9.157 Overall, the responses from competitors (and Impact) suggest that the Parties are close competitors. Of the other suppliers, Hyster was consistently ranked as a close competitor to the respondents. Svetruck and Hyundai were the other most commonly listed suppliers. Sany, Doosan, and Linde were not considered as close competitors to the respondents. For Linde, this is in contrast to the responses from customers, who generally considered it a strong competitor.

Qualitative comments

- 9.158 We received qualitative comments from third parties in relation to the closeness of competition between the Parties in the supply of HDFLT. Most of these noted that the Parties' offerings are broadly similar, including in terms of the types of customer that they supply.

¹³⁶⁶ Question wording: *To what extent do you expect the main competitors that you face and their strengths and weaknesses to change over the next two years? Please use the table below to list and rank the main competitors that you would expect to face in the supply of HDFLT to UK sites in two years' time.*

¹³⁶⁷ Question wording: *Do you supply FLT with a lifting capacity of at least 20 tonnes to the UK and Europe? If so, approximately, what proportion of your sales of HDFLT in the UK and Europe are FLT with a lifting capacity of at least 20 tonnes?*

¹³⁶⁸ Calculations based on Parties' response to CMA P2 RFI 1, Annex 8.1.

- (a) One customer [REDACTED] stated that the ‘combination of pricing and quality makes Cargotec and Konecranes somewhat far off from competitors in [...] heavy FLT’.¹³⁶⁹
- (b) Another customer [REDACTED] noted that it in a recent purchase of HDFLT ‘Konecranes made an offer comparable to Cargotec’.¹³⁷⁰
- (c) [REDACTED], the UK distributor for [REDACTED], considered that, in relation to MEQ generally, the Parties’ products were higher quality than those of other competitors and stated that [REDACTED].¹³⁷¹ This distributor further considered that the Parties are among the ‘main three FLT manufacturers for terminals in the UK’, stating that the products offered by the Parties are ‘high-value, high-performance, and high-quality’.¹³⁷²
- (d) A distributor [REDACTED] considered that Cargotec was the ‘market leader’ in all MEQ markets, noting that it is ‘aggressive on price’ and that its ‘product is very good’.¹³⁷³ This distributor also submitted that the Parties ‘are very similar in terms of design, technical content and price’ in relation to HDFLT specifically.¹³⁷⁴
- (e) A distributor [REDACTED] said that Konecranes and Cargotec have focused on the heavy end of the market (lifting capacities greater than 20 tonnes) and noted that there are fewer competitors at this end of the market compared with the lighter end.¹³⁷⁵

9.159 However, one competitor [REDACTED] noted that it ‘competes mainly with Cargotec’ and that, while it still considers Konecranes as a competitor, Konecranes has lost share following its change of distributor (from Cooper to Impact) such that it is now ‘not present as much in FLT in the UK’.¹³⁷⁶

9.160 Overall, these views are supportive of the evidence from the customer and competitor questionnaires in suggesting that the Parties are close competitors in the supply of HDFLT.

9.161 We also received qualitative comments from third parties in relation to the competitive constraints faced by the Parties. In general, Hyster was considered as a strong competitor.

¹³⁶⁹ Call note [REDACTED].

¹³⁷⁰ Response to P2 questionnaire [REDACTED].

¹³⁷¹ Call note [REDACTED].

¹³⁷² Call note [REDACTED].

¹³⁷³ Transcript of call [REDACTED].

¹³⁷⁴ Response to P2 questionnaire [REDACTED].

¹³⁷⁵ Call note [REDACTED].

¹³⁷⁶ Call note [REDACTED].

- (a) One customer [redacted] considered that Hyster is one of the ‘credible alternatives to Konecranes and Cargotec in heavy FLT’ but did not consider Hyster’s ‘pricing to be competitive’.¹³⁷⁷
- (b) Another customer [redacted] noted that, in relation to a [redacted], Briggs (a distributor for Hyster) scored highly against all the tender criteria, especially pricing. The customer stated that pricing was particularly important for this tender given that the framework covered a 10-year period. This customer further noted that suppliers with a wide range of MEQ (such as Briggs) are favoured in tenders as the customer finds it easier to manage a single contract rather than multiple contracts with different suppliers.¹³⁷⁸
- (c) [redacted], the UK distributor for [redacted], considered that the main three FLT manufacturers for terminals in the UK are Cargotec, Konecranes and Hyster, and noted that Hyster offers ‘high-value, high-performance, and high-quality’ products.¹³⁷⁹
- (d) One competitor [redacted] that ranked Hyster as its closest competitor in its questionnaire response stated that Hyster’s ‘main strengths are the distribution network and the price’.¹³⁸⁰

9.162 On the other hand, one customer [redacted] stated in relation to Hyster HDFLT that there were ‘questions about quality and reliability’.¹³⁸¹

9.163 One of the customers above [redacted] also considered Linde as one of the ‘credible alternatives to Konecranes and Cargotec in heavy FLT’.¹³⁸² However, [redacted] noted that it has so far struggled to supply HDFLT to UK ports due to the reliance on ‘word of mouth’ and a preference to use suppliers that also supply other CHE to the port (such as the Parties).¹³⁸³

9.164 We also received a range of comments in relation to Asian suppliers of HDFLT (Hyundai, Doosan, and Sany). Views on Hyundai and Doosan were mostly positive with regards to their ability to compete for HDFLT with a lifting capacity between 10 and 20 tonnes, whereas these players were not identified as being competitive at heavier lifting capacities. Views on Sany were mixed; qualitative comments suggest that Sany often has a

¹³⁷⁷ Call note [redacted].

¹³⁷⁸ Call note [redacted].

¹³⁷⁹ Call note [redacted].

¹³⁸⁰ Response to P2 questionnaire [redacted].

¹³⁸¹ Response to P2 questionnaire [redacted].

¹³⁸² Call note [redacted].

¹³⁸³ Call note [redacted].

commercially attractive offering but can have lower product and/or service quality than other suppliers in the market.

- (a) The customer that had tendered in [X] was aware of Cooper (a distributor for Sany) but considered that Cooper would be less likely to meet its requirements.¹³⁸⁴
- (b) [X], the UK distributor for [X] said that Chinese suppliers (including Sany) do not get much repeat business and that the Parties' equipment is better in terms of quality.¹³⁸⁵
- (c) One competitor [X] noted Hyundai as a strong competitor for FLT with a lifting capacity of less than 20 tonnes. It further noted that Sany has been able to gain share (largely at the expense of Konecranes) since starting to use Cooper as a distributor.¹³⁸⁶
- (d) Another distributor [X] noted that the 10 to 16 tonnes segment is quite competitive, and that it has been priced out of this segment due to strong competition from the Parties and new suppliers from Asia.¹³⁸⁷ Such suppliers include Hyundai and Doosan, which this distributor considered had strong brands and good dealer coverage. It noted that Sany offers attractive pricing but has a 'lower quality' product.¹³⁸⁸
- (e) A third distributor [X] submitted that Sany and Hyundai offer 'commercially attractive' products, but also noted that Sany has a 'limited product offering' while Hyundai has a 'low service representation'.¹³⁸⁹ It added that Hyundai is a competitor for HDFLT with lifting capacities of 16 to 20 tonnes but not at heavier lifting capacities.¹³⁹⁰

9.165 Third-party comments suggested that Svetruck is only suitable for customers with specialised requirements and/or willing to pay a high price.

- (a) A distributor [X] noted that Svetruck has a strong brand and high-quality product but is 'commercially unattractive'.¹³⁹¹
- (b) [X], the UK distributor for [X], listed Svetruck's strength as quality of build and its weaknesses as long delivery times and its price.¹³⁹²

¹³⁸⁴ Call note [X].

¹³⁸⁵ Call note [X].

¹³⁸⁶ Call note [X].

¹³⁸⁷ Call note [X].

¹³⁸⁸ Response to P2 questionnaire [X].

¹³⁸⁹ Response to P2 questionnaire [X].

¹³⁹⁰ Call note [X].

¹³⁹¹ Response to P2 questionnaire [X].

¹³⁹² Response to P2 questionnaire [X].

- (c) A competitor [redacted] noted that Svetruck focusses on ‘specialised heavy FLT’.¹³⁹³
- (d) Another competitor [redacted] said that the ‘fidelity’ of its customer base was Svetruck’s main strength.¹³⁹⁴
- (e) A customer [redacted] noted in its questionnaire response that Svetruck ‘likely [had the] best quality and functionality’ but with a ‘higher price’.¹³⁹⁵
- (f) Another customer [redacted] said it considered that ‘issues with Svetruck were more to do with a unknown servicing network in the UK (and Europe) than the quality of its product’.¹³⁹⁶

9.166 Overall, the comments from third parties indicate that Hyster is generally seen as a strong competitor to the Parties in the UK, supporting the evidence from the questionnaire responses. Among other suppliers, Hyundai and Doosan received several positive mentions (but were not identified as being competitive at lifting capacities greater than 20 tonnes), while third-party views on Sany were mixed. One customer considered Linde as a strong competitor to the Parties. Svetruck was not often mentioned, and responses indicated that it may not be suitable for all customers.

Merger impact

- 9.167 In our questionnaire, we asked UK customers¹³⁹⁷ for their views on any positive or negative impacts of the Merger on the supply of HDFLT.¹³⁹⁸ Seven of the thirteen respondents identified both positive and negative impacts, three only identified positive impacts, and three did not identify any specific impacts (either positive or negative).^{1399,1400}
- 9.168 The positive impacts mostly focussed on the potential for increased innovation and the benefits that would accrue from the sharing of technical knowledge and expertise. Several customers also expected the Merger to

¹³⁹³ Call note [redacted].

¹³⁹⁴ Response to P2 questionnaire [redacted].

¹³⁹⁵ Response to P2 questionnaire [redacted].

¹³⁹⁶ Call note [redacted].

¹³⁹⁷ UK customers [redacted].

¹³⁹⁸ Question wording: *Cargotec and Konecranes are proposing to merge. What positive impacts (if any) would you expect the merger to have in relation to HDFLT? What negative impacts (if any) would you expect the merger to have in relation to HDFLT?*

¹³⁹⁹ Customer views [redacted].

¹⁴⁰⁰ In addition, as described at paragraph 7.90 above, five of the customers in mainland Europe that we spoke to in our remedy response hearings expressed general views on the competitive effects of the Merger. Overall, these views were mixed; some of these customers were in favour of the merger or did not have concerns about it, while others said that they did have concerns, or that the merger would have both positive and negative impacts.

result in wider product offerings, and one noted an ‘expanded service network’ as a positive impact.¹⁴⁰¹

- 9.169 The negative impacts primarily related to the loss of competition and the potential negative effects that this could have on prices, innovation, and purchase terms. One customer considered that such effects are ‘mitigated by our competitive tendering processes’.¹⁴⁰²
- 9.170 We asked competitors¹⁴⁰³ whether they expected the Merger to impact competition for the supply of HDFLT in the UK.¹⁴⁰⁴ Of the seven responses from competitors, two considered that the Merger would have no impact on competition and four considered that the Merger would have an impact.¹⁴⁰⁵ One of these respondents noted that the impact would be less than for RS and ECH due to more choice for HDLFT.¹⁴⁰⁶ The other competitor considered that the Merger would not have an impact for FLT with lifting capacities lower than 25 tonnes due to the competition provided by ‘cheap Korean and Japanese producers such as Doosan and Hyundai’, but could have an impact for FLT with lifting capacities greater than 25 tonnes due to a more limited number of suppliers.¹⁴⁰⁷
- 9.171 We also received some more detailed comments regarding the impact of the Merger on the supply of HDFLT. Two of these third parties thought that the Merger would have a negative impact.
- (a) One competitor [redacted] submitted that ‘unless the merger will free access to [a] distribution network to other brands, the alternative options for customers will become restricted’.¹⁴⁰⁸
- (b) One distributor [redacted] submitted that the Merged Entity could have ‘a dominant offering in the marketplace’. This distributor further noted that the Parties both have a ‘strong product offering’ that the Merged Entity could use ‘to offer a one stop shop’.¹⁴⁰⁹
- 9.172 Another two thought that the Merger would have limited impact in the supply of HDFLT.

¹⁴⁰¹ Response to P2 questionnaire [redacted].

¹⁴⁰² Response to P2 questionnaire [redacted].

¹⁴⁰³ Competitors [redacted].

¹⁴⁰⁴ Question wording: *Cargotec and Konecranes are proposing to merge. Do you expect the merger to impact competition for the supply of HDFLT in relation to UK customers? If ‘yes’, please describe the impact(s) on competition that you would expect as a result of the merger and explain your reasoning.*

¹⁴⁰⁵ Responses from competitors [redacted].

¹⁴⁰⁶ Response to P2 questionnaire [redacted].

¹⁴⁰⁷ Response to P2 questionnaire [redacted].

¹⁴⁰⁸ Response to P2 questionnaire [redacted].

¹⁴⁰⁹ Response to P2 questionnaire [redacted].

- (a) One competitor [REDACTED] did not think that the Merger would have an impact on it as it operates in a different ('premium') segment, explaining that its HDFLT could be considered 'premium' due to their long lifespan and greater reliability.¹⁴¹⁰
- (b) Another competitor [REDACTED] considered that the Merged Entity would be generally strong in the supply of CHE to terminals and ports but thought that this would not apply to HDFLT.¹⁴¹¹

9.173 Overall, these responses indicate that third parties have mixed views on the impact of the Merger in the supply of HDFLT. Several third parties indicated that the wider choice of suppliers available for HDFLT relative to other MEQ influenced their views that the Merger would have a limited impact on competition in the supply of HDFLT.

Internal documents

9.174 Internal documents submitted by the Parties (discussed at paragraphs 9.82 to 9.84) provide insight into how the Parties perceive their own competitive positions in HDFLT and those of their competitors.

9.175 We start with documents that are mainly relevant to closeness of competition between the Parties in HDFLT. We then assess documents that relate to the constraints posed by other suppliers, and the importance of different purchasing criteria, for HDFLT. Finally, we discuss documents that provide insight into the Parties' views on how competition in the supply of HDFLT will develop in future.

Closeness of competition between the Parties

9.176 The documents set out below are consistent with the internal documents described in Chapter 6 and in paragraphs 9.85 and 9.86 about MEQ in general and, read together with those documents, they indicate that Cargotec and Konecranes perceive each other as strong and aggressive competitors in HDFLT. These documents also show that Parties compete closely with each other, monitoring closely each other's offering and trying to 'beat' each other. Both Parties distinguish themselves from their competitors by their wide range of HDFLT, possibility of customisation, and extensive and strong distribution and after-sales networks. The Parties also appear to

¹⁴¹⁰ Call note [REDACTED].

¹⁴¹¹ Call note [REDACTED].

be the only competitors that compete against each other in both the 'premium' and 'essential' segments of the market for HDFLT.

9.177 We reviewed a number of documents in which the Parties refer to their wide range as an advantage of their offering, suggesting that the Parties are close competitors in this respect. These documents show that the Parties consider themselves (and each other) to offer HDFLT products across different value proposition segments. The Parties do not consider third-party competitors to be similarly active across all segments:

- (a) A Cargotec internal document, produced in June 2020, lists as one of Kalmar's advantages that it has a [REDACTED].¹⁴¹² This advantage is also highlighted in another document, produced in May 2018, in which Kalmar is said to have a [REDACTED].¹⁴¹³
- (b) Another Cargotec internal document, produced in July 2018, attributes to Kalmar a [REDACTED].¹⁴¹⁴ Cargotec acknowledges in another presentation, from October 2019, that Konecranes FLT are [REDACTED].¹⁴¹⁵
- (c) In a Cargotec internal document, from November 2017, [REDACTED].¹⁴¹⁶
- (d) Similarly, we note that the Konecranes internal document discussed in paragraph 9.86(a)(i) above (which relates to MEQ in general rather than HDFLT specifically), benchmarks Konecranes' [REDACTED] (Konecranes Blue) and Konecranes' [REDACTED] (Liftace) product lines against their competitors' presence in these segments. Only Kalmar is shown as being active in both these segments as well as at the intersection of both.¹⁴¹⁷
- (e) In an internal email, from June 2019, Konecranes considers its FLT product range to be comprehensive. In relation to a potential research initiative for [REDACTED], the email notes '[a]lready with our current product range we should be able to offer a more comprehensive and complete "solution" offering [REDACTED] than Kalmar and other forklift competitors'.¹⁴¹⁸

9.178 We also reviewed a number of further documents that show that the Parties compete closely:

- (a) A Cargotec presentation entitled [REDACTED], from October 2018, sets out a detailed plan on how Cargotec should approach the Konecranes heavy

¹⁴¹² Cargotec internal document [REDACTED].

¹⁴¹³ Cargotec internal document [REDACTED].

¹⁴¹⁴ Cargotec internal document [REDACTED].

¹⁴¹⁵ Cargotec internal document [REDACTED].

¹⁴¹⁶ Cargotec internal document [REDACTED].

¹⁴¹⁷ Konecranes internal document [REDACTED].

¹⁴¹⁸ Konecranes internal document [REDACTED].

and light FLT offerings. The presentation notes that Cargotec should be [REDACTED].¹⁴¹⁹ Cargotec highlights its full electric offering as a competitive advantage. Such a presentation indicates that Cargotec considered Konecranes as one of its principal competitors.

- (b) A Cargotec market analysis document produced in 2020, '[REDACTED]' shows that it considers itself to be the market leader for HDFLT. [REDACTED].¹⁴²⁰ This document identifies Cargotec's main competitors at a global level as Hyster, Taylor, Konecranes (as its third-largest competitor) and then Svetruck. In last place, under the category 'others' are listed 'Hyundai, Sany, MCFE, Omega, etc'.¹⁴²¹
- (c) Such a position is also reflected in Konecranes documents that highlight, over a number of years, the fact that Cargotec is its key competitor. For example, in March 2017 the 'Business Unit Lift Trucks' presentation set out that [REDACTED].¹⁴²² While we acknowledge that this document dates from four years ago, it is consistent with more recent examples that are discussed below.

Other competitive constraints

9.179 In relation to other competitors, and consistent with the documents described above about MEQ in general, the Parties seem to consider Hyster and Svetruck as material competitors in the supply of HDFLT in Europe. Linde, Doosan, Hyundai seem to compete with the Parties but impose a much less significant competitive constraint. Sany is considered to be a weak competitor in HDFLT. Overall, the smaller suppliers tended to be discussed in a global context, such that it is unclear how much of a constraint they impose in Europe (including the UK) in particular.

9.180 Within the documents that refer to competitive constraints in the UK or Europe (including the UK):

- (a) [REDACTED].¹⁴²³ [REDACTED].¹⁴²⁴
- (b) [REDACTED].¹⁴²⁵ [REDACTED].

¹⁴¹⁹ Cargotec internal document [REDACTED].

¹⁴²⁰ Cargotec internal document [REDACTED].

¹⁴²¹ Cargotec internal document [REDACTED].

¹⁴²² Konecranes internal document [REDACTED].

¹⁴²³ Cargotec internal document [REDACTED].

¹⁴²⁴ Cargotec internal document [REDACTED].

¹⁴²⁵ Cargotec internal document [REDACTED].

- (c) The above assessment is reinforced in an assessment of competitors produced in 2020, entitled [REDACTED], which sets out only Kalmar, Sany and Hyster as competitors in the region. The report notes that Sany has [REDACTED] and that it has [REDACTED] market share and not increasing'. With regard to Hyster, the presentation stated that it is 'not as strong [in] [REDACTED] and that its 'dealer network [is] weaker!'.¹⁴²⁶

9.181 We have also considered the following internal documents in which the Parties assess their competitors at global level:

- (a) A Cargotec presentation on [REDACTED] sets out that Sany is among Cargotec's main competitors. However, [REDACTED].¹⁴²⁷ This is consistent with the [REDACTED].¹⁴²⁸
- (b) A Cargotec [REDACTED].¹⁴²⁹ [REDACTED].
- (c) In the Cargotec strategy document described above [REDACTED], it is noted that Konecranes [REDACTED].¹⁴³⁰ This is again reflected in the [REDACTED].¹⁴³¹ [REDACTED].
- (d) [REDACTED],¹⁴³² [REDACTED].
- (e) Several documents produced by Konecranes in 2016 show detailed technical comparisons between Konecranes' HDFLT and equivalent machines from Sany and Svertruck¹⁴³³ suggesting some competition between the three companies.
- (f) [REDACTED].¹⁴³⁴
- (g) This global assessment is followed by Konecranes' 'competitor overview' produced in January 2021 that also assesses the position of a number of FLT suppliers on a global basis. Hyster, Taylor and Sany appear to be considered as relatively strong competitors, with the document noting that Sany has experienced 'rapid growth'. The document notes that Heli is the 'biggest Chinese FLT manufacturer' and offers prices at least [REDACTED] lower than Konecranes, but there is no mention of its presence in Europe. CVS and Svertruck are also assessed, but it is noted that CVS lacks '[REDACTED]' and that Svertruck is a '[REDACTED]'. Toyota is assessed in relation to 3.5 to 8 tonne FLT but there is no evidence of it being present in heavier

¹⁴²⁶ Konecranes internal document [REDACTED].

¹⁴²⁷ Cargotec internal document [REDACTED].

¹⁴²⁸ Cargotec internal document [REDACTED].

¹⁴²⁹ Cargotec internal document [REDACTED].

¹⁴³⁰ Cargotec internal document [REDACTED].

¹⁴³¹ Cargotec internal document [REDACTED].

¹⁴³² Konecranes internal document [REDACTED].

¹⁴³³ Konecranes internal document [REDACTED].

¹⁴³⁴ Konecranes internal document [REDACTED].

FLT. The document notes that there is ‘no information on any FLT’ for ZPMC and XCMG.¹⁴³⁵

- (h) [REDACTED].¹⁴³⁶ We note that, while some of the smaller suppliers continue to operate to date, this document conveys Konecranes’ perception that at least some of these smaller competitors are not financially sound.

Purchasing criteria

9.182 We have also reviewed internal documents outlining Cargotec’s assessment of customers’ main purchasing criteria that are relevant to HDFLT. This assessment can provide insight on how the strengths and weaknesses of each competitor relate to these criteria.

9.183 [REDACTED].¹⁴³⁷ [REDACTED].

The development of competition in the foreseeable future

9.184 Some internal documents also provide insight into the Parties’ views on how competition in the supply of HDFLT will develop in future. As with other types of MEQ, the Parties predict an increasing trend towards electrification, within which they believe they are well-placed to succeed.

(a) [REDACTED].¹⁴³⁸

(b) [REDACTED].¹⁴³⁹

(c) A Cargotec document from October 2020 sets out its expectation that [REDACTED].¹⁴⁴⁰

(d) Konecranes internal documents discuss the growing need to provide environmentally-friendly solutions in all markets and how the next competitive step is electrification. In order to meet this challenge, Konecranes has developed the ‘next step within eco lifting’ through the introduction of [REDACTED], which were the first of that type to market.¹⁴⁴¹ The need to provide electric options is reinforced throughout the P-3023

¹⁴³⁵ Konecranes internal document [REDACTED].

¹⁴³⁶ Konecranes internal document [REDACTED].

¹⁴³⁷ Cargotec internal document [REDACTED].

¹⁴³⁸ Cargotec internal document [REDACTED].

¹⁴³⁹ Cargotec internal document [REDACTED].

¹⁴⁴⁰ Cargotec internal document [REDACTED].

¹⁴⁴¹ Konecranes internal document [REDACTED].

planning documents, with a 'pillar action' in the Konecranes '[REDACTED] Masterplan' listed as '[REDACTED]'.¹⁴⁴²

(e) In '[REDACTED]'.¹⁴⁴³

CMA's conclusion

- 9.185 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 a wide range of products) and a proven track-record.
- 9.186 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.¹⁴⁴⁴ Our conclusion is therefore that the Merger may be expected to result in a SLC in the supply of HDFLT in Europe (including the UK).
- 9.187 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] [REDACTED] % in the UK and around [50 – 60] [REDACTED] % in Europe. The Parties' combined share is higher still at the heavier end of the HDFLT market.
 - (b) Our bidding analysis confirms that the Parties compete closely in HDFLT; the Parties lost more opportunities to each other than to any other supplier in both the UK and Europe as a whole.

¹⁴⁴² Konecranes internal document [REDACTED].

¹⁴⁴³ Cargotec internal document [REDACTED].

¹⁴⁴⁴ As shown at paragraph 9.123, while most HDFLT sold are at lighter lifting capacities, a significant minority of sales are for machines with a greater-than 25 tonne lifting capacity.

- (c) Evidence from third parties consistently shows that the Parties are close competitors, particularly at the heavier end of the HDFLT market (which is consistent with shares of supply). Qualitative comments from third parties and the qualitative tender documents that we reviewed mostly suggested 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.¹⁴⁴⁵
- (d) Internal documents are also consistent with the Parties competing closely. Documents relating to HDFLT specifically indicate that the Parties perceive each other as being strong competitors and having an advantage over other competitors by offering a full range of HDFLT, from 'value' to 'premium'. Documents relating to MEQ in general are consistent with this and show that both Parties are taking active steps to develop electrified MEQ and are monitoring each other's progress in this area.
- (e) As discussed at paragraphs 9.103(d) and 9.176, a range of evidence outlined in Chapter 6 supports that the Parties have similar strengths in CHE, and plan to increase their market shares in MEQ in the foreseeable future.

9.188 In addition, as noted at paragraph 6.153, the Parties are likely to compete particularly closely for some customers as a result of their wide CHE portfolios (including MEQ, SC, ShC, and port cranes), which enable them to offer an integrated, automated and comprehensive solution to ports. These capabilities are likely to become increasingly significant in future as the extent of automation and digitalisation within CHE develops further. By contrast, most of the Parties' competitors do not offer similarly broad and integrated ranges of CHE, and so they are likely to compete less closely with the Parties for some customers in this regard.

9.189 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.

¹⁴⁴⁵ 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.

- (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 (it tended to be ranked more highly by competitors than customers). 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 (Cargotec noted this as a challenge in the UK specifically) and offered a wide product range.

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

- (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 indicates that Linde is a closer competitor to the Parties than suggested by the shares of supply, as both Parties lost a significant number of opportunities to Linde in both the UK and Europe as a whole.
- (c) Third-party views on the strength of Linde as a competitor to the Parties were mixed, with UK customers ranking Linde more highly than competitors. Qualitative comments from third parties and the qualitative tender documents that we reviewed 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.

9.191 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 Svetruck is a closer competitor to the Parties than suggested by the shares of supply, as both Parties lost a significant number of opportunities to Svetruck in both the UK and Europe as a whole.
- (c) Third-party views on the strength of Svetruck as a competitor to the Parties were mixed, with competitors that responded to our questionnaire ranking Svetruck more highly than UK customers that responded to our questionnaire. Qualitative comments from third parties suggested 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 (ie in relation to 'premium' HDFLT).
- (d) Svetruck is present in the Parties' documents related to HDFLT and is considered as a credible competitor, although sometimes only in relation to [REDACTED]. It is not often mentioned in documents related to MEQ in general.

9.192 The evidence indicates that no other suppliers compete closely with the Parties for UK customers:

- (a) Hyundai had less than [0 – 5] [REDACTED] % share of supply in both Europe and the UK over 2016 to 2020 and the Parties lost very few opportunities to Hyundai during the period considered. Third parties suggested that Hyundai was not seen as a competitor for HDFLT with lifting capacities greater than 20 tonnes. Hyundai was not mentioned by any of the UK customers that responded to our questionnaire but was considered as a close competitor by some of the competitors that responded to our questionnaire.¹⁴⁴⁶ Hyundai is present in the Parties' documents related to HDFLT but it is not considered as a strong competitor in these documents; it is rarely mentioned in documents related to MEQ in general.
- (b) Other suppliers in the market (Sany, Doosan, ZPMC and a number of other smaller suppliers) exert, at most, a limited competitive constraint on the Parties in Europe and the UK. Shares of supply and our bidding analysis show that, individually, these suppliers do not have a significant presence in either the UK or Europe. Third parties did not generally consider these suppliers as strong competitors.¹⁴⁴⁷ With the exception of Sany, other smaller suppliers in HDFLT (including Doosan and ZPMC)

¹⁴⁴⁶ However, given the differentiation within HDFLT, this does not necessarily mean that Hyundai is a close competitor to the Parties.

¹⁴⁴⁷ Some third parties suggested that Doosan was competitive for HDFLT with lifting capacities between 10 and 20 tonnes. Third-party views on Sany were mixed; it was noted that Sany often has a commercially attractive offering but can have lower product and/or service quality than other suppliers in the market.

are rarely mentioned in the internal documents that we reviewed. Although Sany is discussed extensively in documents relating to MEQ in general, in documents related to HDFLT specifically the Parties appear to consider Sany as a weak competitor at present.

9.193 As discussed below (from paragraph 9.267), the evidence that we reviewed in relation to entry and expansion does not suggest 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

Parties' views

9.194 The Parties submitted that Hyster will arguably remain the market leader in the UK and Europe post-Merger, and is well-placed to expand as it is at the 'forefront of innovation' and offers competitive prices [REDACTED].¹⁴⁴⁸

9.195 The Parties further submitted that the Merged Entity would be constrained by Chinese suppliers, especially Sany. They note that Sany has grown its global share of supply from roughly [5 – 10]% [REDACTED] to [20 – 30]% [REDACTED] in the last five years, and Cargotec estimates that [REDACTED]. The Parties submitted that Sany is also highly innovative, being the first supplier to develop a fully electric ECH.¹⁴⁴⁹

9.196 The Parties submitted that there are also a number of other emerging global competitors that will constrain the Merged Entity, such as Svetruck, CVS, Taylor, ZPMC and XCMG.¹⁴⁵⁰

9.197 In response to the CMA's working papers and Provisional Findings, the Parties made a number of further submissions in relation to ECH:

- (a) Hyster is the closest competitor to Cargotec as loss ratios show that Hyster accounted for 75% of tenders lost by Cargotec in the UK. The Parties submitted that there is no basis to conclude that Konecranes is a particularly close competitor of Cargotec.¹⁴⁵¹

¹⁴⁴⁸ Parties' response to Issues Statement, paragraphs 7.25 and 7.26.

¹⁴⁴⁹ Parties' response to Issues Statement, paragraphs 7.27–7.28.

¹⁴⁵⁰ Parties' response to Issues Statement, paragraph 7.30.

¹⁴⁵¹ Parties Response [REDACTED].

- (b) The CMA's 2016 to 2020 timeframe underestimates Sany's market position because Sany entered the UK in 2015.¹⁴⁵²
- (c) Third-party evidence indicates that 60% of respondents ranked Sany for future purchases and 75% considered Sany as a close competitor.¹⁴⁵³
- (d) The evidence set out in the Provisional Findings, including third-party views and internal documents, does not support a conclusion that Sany imposes a lesser constraint on the Parties for RS and ECH in the UK because of quality concerns. Rather, the Parties argue that Sany's sales in 2019 and 2020, and customer responses, show that Sany is growing rapidly in the UK. [REDACTED].¹⁴⁵⁴

Shares of supply

- 9.198 Chapter 6 provides an overview of our approach to shares of supply and the weight that we place on this evidence. We have constructed our estimates of the shares of supply using data provided by the manufacturers (or their distributors) themselves and, where this is not available, the Parties' estimates of their competitors' sales.¹⁴⁵⁵
- 9.199 Table 41 shows our estimates of shares of supply based on the volumes sold by each supplier (either directly to a customer or to a distributor) for ECH over the period 2016 to 2020 for three different geographic areas: UK, Europe, and worldwide (excluding China). As set out in Chapter 5, we conclude that the relevant geographic market is no wider than Europe-wide, with some important UK-specific aspects of competition that affect the strength of competitors for some UK customers. As such, we consider that shares of supply in both the UK and Europe as a whole are relevant to our competitive assessment.
- (a) Within the UK, the Merged Entity would have a combined share of supply of [30 – 40]% [REDACTED] %, while Hyster, with a share of [50 – 60]% [REDACTED] %, would remain the market leader. Sany was the only other supplier that made deliveries in the relevant period in the UK, with a [10 – 20]% [REDACTED] % share of supply.
 - (b) Within Europe, the Merged Entity would have a combined share of supply of [30 – 40]% [REDACTED] %, ahead of Hyster ([30 – 40]% [REDACTED] % share),

¹⁴⁵² Parties Response [REDACTED].

¹⁴⁵³ Parties' Response [REDACTED].

¹⁴⁵⁴ Parties' Response to the Provisional Findings Report, paragraphs 7.8-7.10.

¹⁴⁵⁵ See Appendix B for further detail on our methodology.

which is currently the largest supplier. Svetruck is the fourth largest supplier with a [5 – 10]% [REDACTED] % share of supply.

- (c) On a worldwide basis (excluding China), the Merged Entity would have a combined share of supply of [40 – 50]% [REDACTED] %. This compares with [20 – 30]% [REDACTED] % for Hyster, which is currently the joint market leader (together with Cargotec). Taylor is a supplier that operates in North America and has a [5 – 10]% [REDACTED] % share of supply on a worldwide basis (excluding China).

Table 41: Shares of supply of ECH based on sales volumes, 2016–20

Company	Volume in Units					
	Geographic area					
	UK		Europe		Worldwide (excl. China)	
	Volume	Share	Volume	Share	Volume	Share
Cargotec	[REDACTED]	[20 – 30]% [REDACTED]	[REDACTED]	[20 – 30]% [REDACTED]	[REDACTED]	[20 – 30]% [REDACTED]
Konecranes	[REDACTED]	[5 – 10]% [REDACTED]	[REDACTED]	[10 – 20]% [REDACTED]	[REDACTED]	[10 – 20]% [REDACTED]
Combined	[REDACTED]	[30 – 40]% [REDACTED]	[REDACTED]	[30 – 40]% [REDACTED]	[REDACTED]	[40 – 50]% [REDACTED]
Hyster	[REDACTED]	[50 – 60]% [REDACTED]	[REDACTED]	[30 – 40]% [REDACTED]	[REDACTED]	[20 – 30]% [REDACTED]
Sany	[REDACTED]	[10 – 20]% [REDACTED]	[REDACTED]	[0 – 5]% [REDACTED]	[REDACTED]	[5 – 10]% [REDACTED]
Svetruck	-	-	[REDACTED]	[5 – 10]% [REDACTED]	[REDACTED]	[5 – 10]% [REDACTED]
CVS	-	-	[REDACTED]	[5 – 10]% [REDACTED]	[REDACTED]	[0 – 5]% [REDACTED]
FTMH	-	-	[REDACTED]	[0 – 5]% [REDACTED]	[REDACTED]	[0 – 5]% [REDACTED]
Taylor	-	-	-	-	[REDACTED]	[5 – 10]% [REDACTED]
ZPMC	-	-	-	-	[REDACTED]	[0 – 5]% [REDACTED]
Others	-	-	[REDACTED]	[5 – 10]% [REDACTED]	[REDACTED]	[5 – 10]% [REDACTED]
Total	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Source: Parties, Response to P2 RFI 1, Annex 8.1; Competitors' RFI responses.

9.200 Table 42 shows the same shares of supply based on revenue rather than delivery volumes. The shares are similar to those in Table 41—the Merged Entity would have [30 – 40]% [REDACTED] % share of supply in the UK and [40 – 50]% [REDACTED] % in Europe.

Table 42: Shares of supply ECH based on revenue, 2016–20

Revenue in €m

Company	Geographic area					
	UK		Europe		Worldwide (excl. China)	
	Revenue	Share	Revenue	Share	Revenue	Share
Cargotec	[REDACTED]	[10 – 20] % [REDACTED]	[REDACTED]	[20 – 30] % [REDACTED]	[REDACTED]	[30 – 40] % [REDACTED]
Konecranes	[REDACTED]	[10 – 20] % [REDACTED]	[REDACTED]	[10 – 20] % [REDACTED]	[REDACTED]	[10 – 20] % [REDACTED]
Combined	[REDACTED]	[30 – 40] % [REDACTED]	[REDACTED]	[40 – 50] % [REDACTED]	[REDACTED]	[40 – 50] % [REDACTED]
Hyster	[REDACTED]	[50 – 60] % [REDACTED]	[REDACTED]	[30 – 40] % [REDACTED]	[REDACTED]	[20 – 30] % [REDACTED]
Sany	[REDACTED]	[10 – 20] % [REDACTED]	[REDACTED]	[0 – 5] % [REDACTED]	[REDACTED]	[5 – 10] % [REDACTED]
Svetruck	-	-	[REDACTED]	[5 – 10] % [REDACTED]	[REDACTED]	[5 – 10] % [REDACTED]
CVS	-	-	[REDACTED]	[5 – 10] % [REDACTED]	[REDACTED]	[0 – 5] % [REDACTED]
FTMH	-	-	[REDACTED]	[0 – 5] % [REDACTED]	[REDACTED]	[0 – 5] % [REDACTED]
Taylor	-	-	-	-	[REDACTED]	[5 – 10] % [REDACTED]
ZPMC	-	-	-	-	[REDACTED]	[0 – 5] % [REDACTED]
Others	-	-	[REDACTED]	[5 – 10] % [REDACTED]	[REDACTED]	[5 – 10] % [REDACTED]
Total	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Source: Parties, Response to P2 RFI 1, Annex 8.1; Competitors' RFI responses.

9.201 Overall, the shares of supply indicate that the Parties are close competitors in the supply of ECH in both the UK and Europe, being two of the four largest suppliers in these regions over 2016 to 2020. The Merged Entity would have a combined share of supply of around [30 – 40] [REDACTED] % in the UK and around [40 – 50] [REDACTED] % in Europe.

9.202 Whereas Cargotec has broadly similar shares in the UK and Europe, Konecranes' share of supply is lower in the UK (where it is [5 – 10] [REDACTED] % on a volume basis and [10 – 20] [REDACTED] % on a revenue basis) than it is in Europe as a whole (where it is [10 – 20] [REDACTED] % on a volume basis and [10 – 20] [REDACTED] % on a revenue basis). We consider that this is likely to reflect the role that national distributors play in the competitive process in MEQ (see Chapter 5) and, in particular, Konecranes' difficulties in fine-tuning its operations [REDACTED] and Sany's relative success with its UK distributor, Cooper.¹⁴⁵⁶ Nonetheless, Konecranes has a material share in the UK ([REDACTED] %) and other evidence (see

¹⁴⁵⁶ In the Main Party Hearing, Konecranes said that 'I think...why we are weaker in the UK is that we have not yet [REDACTED] to enable us to provide an offering the customer really appreciates. Then...Sany has taken quite a big part of the market in the UK already... I think we are not [REDACTED]...that is the main one [and] we have not been able to [REDACTED] in the UK yet. We are still growing it with Impact. Maybe if you have heard, Impact just changed their ownership, for example, in the UK so there has been some changes there'. Konecranes, [REDACTED].

below and Chapter 6) indicates that Konecranes is a close competitor to and important constraint on Cargotec.

- 9.203 The shares of supply above are consistent with Hyster being a strong competitor to the Parties in the UK and Europe; Hyster was the market leader both in the UK and Europe over 2016 to 2020. It would be the largest player in the UK post-Merger and the second largest player in Europe as a whole.
- 9.204 The shares of supply also show that Sany is the only other material competitor in the UK with a [10 – 20] [%] share of supply but is much smaller in Europe ([0 – 5] [%] share). As with Konecranes, we consider that this difference is likely to reflect the role of its national distributor (Cooper).
- 9.205 In relation to Sany, the Parties submitted that presenting shares over the five-year period 2016 to 2020 was misleading given that Sany only announced its relationship with Cooper in 2015 and that it has recently grown rapidly. The Parties also submitted that Sany's European share can be expected to increase as it will be able to leverage its strong presence in the UK and rely on its growing global track record - Sany's global share of supply has increased from [%] to [%] in the past five years.¹⁴⁵⁷
- 9.206 We reviewed Sany's annual UK sales and found no clear trend. Sany sold much higher volumes in the UK in 2019 ([] units) compared with each of the previous three years (between [] units). However, Cooper (the UK distributor for Sany) explained that 2019 was an exceptionally good year [], and that it sold only [] Sany ECH in the UK in 2020.¹⁴⁵⁸
- 9.207 In relation to Sany's position in Europe more widely, we note that, according to our shares of supply, Sany did not sell any ECH in Europe outside of the UK during 2016 to 2020. While Sany has higher sales in the UK and worldwide (excluding China), we do not consider that this necessarily means that Sany's track record in those regions will lead to growth for Sany in Europe. Further, as discussed below, [].
- 9.208 The shares of supply show that Svetruck, CVS, and FTMH are all active in Europe (with shares of supply less than 10% on a European basis) but have not made sales in the UK in the period 2016 to 2020. We consider that the lack of UK sales by these suppliers does not in itself rule out that they could compete effectively for UK customers. However, in the round, the other

¹⁴⁵⁷ Merger Notice, [].

¹⁴⁵⁸ Call note [].

evidence that we review below is consistent with these players not competing closely with the Parties in relation to UK customers.

Bidding analysis

9.209 Chapter 6 provides an overview of our approach to the bidding analysis and the weight that we place on this evidence.

Quantitative analysis of Parties' data

9.210 In this section, we present the results of our quantitative analysis of the bidding data provided by the Parties.¹⁴⁵⁹ As explained above, our analysis considers loss ratios, which we consider as a useful measure of the closeness of competition between the Parties and their competitors (see paragraph 7.22).

9.211 As set out in Chapter 5, we conclude that the relevant geographic market is no wider than Europe-wide, with some important UK-specific aspects of competition that affect the strength of competitors for some UK customers. As such, we consider that loss ratios in both the UK and Europe as a whole are relevant to our competitive assessment. We treat the precise levels of the UK loss ratios with caution due to the small sample sizes.¹⁴⁶⁰

9.212 Table 43 below shows ECH loss ratios for Cargotec in the UK from 2016 to May 2021. This indicates that Hyster accounted for [REDACTED] of the [REDACTED] opportunities lost by Cargotec in the UK. Cargotec also lost [REDACTED] opportunities to Sany and [REDACTED] each to Konecranes and MOL.¹⁴⁶¹ The [REDACTED] opportunity lost to Konecranes accounted for more units and revenue than the [REDACTED] opportunities lost to Sany and MOL combined.

¹⁴⁵⁹ We discuss this data further in appendix C.

¹⁴⁶⁰ The data comprises [REDACTED] opportunities in total lost by Cargotec in the UK, and [REDACTED] lost by Konecranes in the UK.

¹⁴⁶¹ We note that MOL was not mentioned in the other evidence that we reviewed and its [website](#) suggests that it is a shipping business. Therefore, we have concerns over the accuracy of this tender, however we include here for completeness.

Table 43: ECH loss ratios, UK, Cargotec, 2016 to May 2021

Company	UK					
	Number of opportunities		Number of units		Value (revenue in €m)	
	Number	Percentage	Number	Percentage	Number	Percentage
Hyster	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Sany	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Konecranes	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
MOL	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Total	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Source: CMA analysis of Parties' data

Note: As explained in Appendix C, we have made adjustments to the recorded values of a small number of tenders that we consider outliers based on their high implied unit prices.

9.213 Table 44 below shows ECH loss ratios for Cargotec in Europe as a whole from 2016 to May 2021. This shows that Hyster was the competitor to which Cargotec lost most opportunities in Europe as a whole (accounting for approximately [REDACTED] % of lost opportunities). The loss ratios indicate that Konecranes was the only other significant competitor of Cargotec in Europe, accounting for [REDACTED] % of lost opportunities; Cargotec lost fewer than [REDACTED] % of opportunities to any other individual competitor.

Table 44: ECH loss ratios, Europe (EEA + UK), Cargotec, 2016 to May 2021

Company	Europe (EEA + UK)					
	Number of opportunities		Number of units		Value (revenue in €m)	
	Number	Percentage	Number	Percentage	Number	Percentage
Hyster	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Konecranes	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
CVS	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Sany	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Other	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Unknown	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Total	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Source: CMA analysis of Parties' data.

Note: As explained in Appendix C, we have made adjustments to the recorded values of a small number of tenders that we consider outliers based on their high implied unit prices.

9.214 Table 45 below shows ECH loss ratios for Konecranes in the UK from 2016 to May 2021. This shows that Konecranes lost a similar number of opportunities to each of Cargotec, Sany and Hyster in the UK. Based on tender value, Konecranes lost most business to Hyster (this largely reflects a single, high value mixed tender for RS and ECH that was lost to Hyster, see also paragraph 9.35), followed by Cargotec, and then Sany.

Table 45: ECH loss ratios, UK, Konecranes 2016 to May 2021

Company	UK			
	Number of opportunities		Value (revenue in €m)	
	Number	Percentage	Number	Percentage
Hyster	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Cargotec	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Sany	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Unknown	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Total	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Source: CMA analysis of Parties' data.

Notes: [REDACTED].

As explained in Appendix C, we have made adjustments to the recorded values of a small number of tenders that we consider outliers based on their high implied unit prices.

9.215 Table 46 below shows ECH loss ratios for Konecranes in Europe as a whole from 2016 to May 2021. This shows that Cargotec accounted for [REDACTED]% of opportunities lost by Konecranes in Europe. The loss ratios indicate that Hyster was the only other significant competitor of Konecranes in Europe, accounting for [REDACTED]% of lost opportunities; Konecranes lost fewer than [REDACTED]% of opportunities to any other individual competitor. The high value mixed tender win for Hyster mentioned at paragraph 9.35 means that, by value, the majority of losses were to Hyster, followed by Cargotec.

Table 46: ECH loss ratios, Europe (EEA + UK), Konecranes, 2016 to May 2021

Company	Europe (EEA + UK)			
	Number of opportunities		Value (revenue in €m)	
	Number	Percentage	Number	Percentage
Cargotec	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Hyster	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
CVS	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Sany	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Other	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Unknown	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Total	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Source: CMA analysis of Parties' data.

Notes: [REDACTED].

As explained in Appendix C, we have made adjustments to the recorded values of a small number of tenders that we consider outliers based on their high implied unit prices.

9.216 Overall, our bidding analysis indicates that the Parties compete closely in both Europe and the UK. Konecranes lost more opportunities to Cargotec ([REDACTED]%) than any other competitor in Europe, while Cargotec lost [REDACTED]% of its opportunities to Konecranes in Europe. Sample sizes in the UK are small,

but we note that Konecranes lost [REDACTED] opportunities to Cargotec out of [REDACTED] opportunities lost in total during the period considered and Cargotec lost [REDACTED] opportunity to Konecranes out of [REDACTED] opportunities lost in total.

9.217 The loss ratios show that Hyster is generally the strongest third-party constraint on the Parties and, in particular, the main constraint on Cargotec (ie, Cargotec loses significantly more opportunities, on all metrics, to Hyster than to Konecranes). They further show that Sany is the only other material competitor in the UK, although it appears that it only won low-value opportunities from the Parties. In Europe as a whole, Sany accounted for fewer than [REDACTED]% of lost opportunities for both Parties. These results are consistent with the shares of supply, where Hyster is the leading supplier in the UK and Europe and Sany is a less significant competitor in Europe as a whole than in the UK.

Qualitative tender case studies

9.218 We have reviewed documents provided by customers that detail the participants and outcomes of four recent ECH tenders. We place limited weight on the analysis of these specific tenders (which are better considered as part of the shares of supply and bidding data considered above), but we have taken account of the insights that they provide on customer perceptions of the strengths and weaknesses of different suppliers.

9.219 As noted in paragraph 9.40 above, one port customer [REDACTED] provided contemporaneous tender evaluation documents for a tender that it concluded in 2021 for seven RS and two ECH.¹⁴⁶² There were [REDACTED] participants in this tender ([REDACTED]) and it was awarded to Briggs (UK distributor for Hyster). These documents show that:

(a) [REDACTED].

(b) [REDACTED].

9.220 Another port customer [REDACTED] provided an executive summary for a tender that it ran during [REDACTED].¹⁴⁶³ [REDACTED]. These documents show that:

(a) [REDACTED].

(b) [REDACTED].

¹⁴⁶² Response to P2 questionnaire [REDACTED].

¹⁴⁶³ Response to P2 questionnaire [REDACTED].

(c) [REDACTED].

9.221 A third port customer [REDACTED] provided a tender evaluation summary document related to a tender for the hire and maintenance (over four years) of three ECH in 2018.¹⁴⁶⁴ There were [REDACTED] participants in this tender ([REDACTED]) and it was awarded to Cargotec. This document shows that:

(a) [REDACTED].¹⁴⁶⁵ [REDACTED].

(b) [REDACTED].

9.222 The same customer [REDACTED] also ran a tender for the hire and maintenance (over five years) of four RS and 12 ECH in 2018. As discussed at paragraph 9.44 above, Cargotec was awarded this tender [REDACTED].

9.223 In each of the examples above, Hyster was a strong competitor, primarily due to its high product quality. It appears that Hyster also benefitted from an incumbency advantage in the [REDACTED] example. Sany performed less well on quality than on price, failing to qualify for two tenders due to issues related to quality, and being outscored by Hyster on quality in a third tender. In each of these tenders, Konecranes submitted [REDACTED].

9.224 Price was an important factor in all tenders, but particularly in the [REDACTED]. In the first example, [REDACTED], demonstrating that quality is an important factor for some customers. In the second example, [REDACTED].

Third-party evidence

Customer questionnaire

9.225 We sent questionnaires to 17 of the Parties' ECH customers and received responses from seven customers [REDACTED].¹⁴⁶⁶

9.226 We asked customers of the Parties to rate the importance of various criteria in their purchasing decisions for ECH (scores out of 5, where 5 is the most important).¹⁴⁶⁷ The responses indicated that:

¹⁴⁶⁴ Response to P2 questionnaire [REDACTED].

¹⁴⁶⁵ Response to P2 questionnaire [REDACTED].

¹⁴⁶⁶ See Appendix D for further detail on our methodology.

¹⁴⁶⁷ Question wording: *When thinking about purchasing ECH, please score the following factors according to how important they are to your choice of supplier. Please assign a score from 1-5 where 5 = very important and 1 = not important at all (more than one factor can have the same score). The factors listed were: differences in equipment reliability, differences in automation/assistive technology features, differences in purchase price, differences in running costs, differences in strength of local aftersales presence (servicing, maintenance, spare parts), differences in efficiency/environmental performance, degree of interoperability with other equipment, and already having installed base of equipment from a particular supplier.*

- (a) Equipment reliability was considered very important, with all six respondents to this question [redacted] scoring it a 5.
- (b) Purchase price, running costs, and efficiency were also very important for most respondents, with five out of six scoring all three of these criteria as either 4 or 5 (the other respondent scored purchase price as 3 and the other two criteria as 5).
- (c) The strength of local after-sales presence was the next most important criterion, with all respondents scoring this criterion at least 3 and five out of six respondents scoring this criterion 4 or above.
- (d) Automation and interoperability were generally not scored as important criteria—for each criterion, at least three out of six respondents scored it 3 or below.

9.227 We asked customers of the Parties to rank the alternative suppliers that were considered in their most recent purchase of ECH in the UK.¹⁴⁶⁸ We received responses to this question from three customers of the Parties, and all of these had most recently purchased from Cargotec. Two of the respondents had most recently purchased from Cargotec in 2018 or after, while one respondent (customer F) did not provide the date of its last purchase. These responses are summarised in the second column of Table 47 below.

¹⁴⁶⁸ Question wording: *Thinking about when you most recently purchased ECH from [Party] in the UK, what were the main alternative suppliers that you considered? Please list the main alternatives and confirm how you ranked these alternative suppliers (where 1 = the best alternative, 2 = the next best alternative and so on).*

Table 47: Customer questionnaire responses, ECH

Customer	Alternative suppliers at most recent purchase	Expected ranking in future purchase
Customer A [REDACTED]	<ol style="list-style-type: none"> 1. ZPMC 2. Liebherr 3. Konecranes 4. Sany 	<ol style="list-style-type: none"> 1. ZPMC 2. Cargotec 3. Konecranes 4. Sany 5. Liebherr 6. Hyster
Customer B [†] [REDACTED]	N/A	<ul style="list-style-type: none"> • Cargotec • Konecranes • Hyster • CVS
Customer C [REDACTED]	<ol style="list-style-type: none"> 1. Hyster 2. Konecranes 	<ol style="list-style-type: none"> 1. Cargotec 2. Hyster 3. Konecranes 4. Liebherr 5. Sany 6. ZPMC
Customer D [REDACTED]	N/A	<ol style="list-style-type: none"> 1. Cargotec 1. Sany
Customer E [‡] [REDACTED]	N/A	<p>Hyster Konecranes Cargotec</p>
Customer F [REDACTED]	<ol style="list-style-type: none"> 1. WRS Hull 2. Hyster 	<ol style="list-style-type: none"> 1. WRS Hull 2. Hyster 3. Cargotec

Source: P2 questionnaire responses.

Notes: Where the customer named a distributor, we have recorded the name of the OEM that supplies the products to the distributor. Some customers ranked suppliers as equally close alternatives.

[†] Customer B did not provide any rankings for the suppliers that it listed.

[‡] Customer E did not provide any rankings for the suppliers that it listed.

9.228 One customer ranked Konecranes as the second closest alternative, one ranked it as the third closest alternative, and the other did not mention Konecranes. Regarding Hyster, one customer ranked it as the first alternative, another ranked it as the second alternative (behind WRS Hull, a dealer that focuses on used equipment), and the third customer did not include Hyster in its rankings. ZPMC, Liebherr and Sany were all mentioned once by the same respondent.¹⁴⁶⁹

9.229 We also asked customers of the Parties to provide an expected ranking of suppliers if they were to purchase ECH in the UK within the next year.¹⁴⁷⁰ We received responses to this question from six customers of the Parties

¹⁴⁶⁹ We note that this respondent indicated that its most recent purchase of ECH was part of a wider package that also included STS and RTG (Response to P2 questionnaire [REDACTED]).

¹⁴⁷⁰ Question wording: *Suppose that you were planning to purchase ECH in the UK within the next year. What suppliers would you expect to consider? Please list the full set of suppliers that you would expect to consider (including [Party] if applicable) and provide your expected ranking of the suppliers (where 1 = the winner, 2 = the best alternative and so on).*

and these responses are summarised in the third column of Table 47 above. All respondents indicated that they felt well informed about the market.¹⁴⁷¹

- 9.230 Two of the six respondents expected Cargotec to be the leading supplier (either individually or jointly) in a future hypothetical purchase, one expected it to rank second, one expected it to rank third (lowest of the alternatives given), and two did not provide a ranking. Konecranes was named by four respondents, of which two ranked it third and two did not provide a ranking.
- 9.231 Regarding Hyster, five customers expected it to compete for the purchase, of which two expected it to rank second, one expected it to rank last, and two did not provide a ranking. Sany was mentioned by three respondents, only one of which expected it to rank in the top three suppliers. Liebherr was mentioned twice as a low-ranking supplier. ZPMC was also mentioned twice, once as a winning supplier and another time as the lowest-ranked supplier. CVS was mentioned once without a ranking. We note that CVS does not currently have a UK-based distributor.¹⁴⁷²
- 9.232 Overall, the small number of respondents to the question regarding a customer's most recent purchase makes it difficult to draw firm conclusions from this evidence. We received more responses to the question regarding future purchases. Customers' expected rankings of suppliers in a future purchase point towards the Parties being among each other's close competitors in the future, with both Parties being named by most customers as two of the main suppliers that they would consider. Of the other suppliers, Hyster and Sany were most commonly mentioned, with a range of expected rankings. Liebherr, ZPMC, and CVS were not generally expected by UK customers to be strong competitors in a future purchase.

Competitor questionnaire

- 9.233 We sent questionnaires to nine ECH competitors (including distributors) of the Parties and received responses from four of these [REDACTED].¹⁴⁷³ We note that two of these responses covered the same brand of equipment (ie, we heard from the manufacturer and its distributor).

¹⁴⁷¹ Question wording: *Have you recently monitored and/or tested the market for ECH and to what extent do you feel well-informed about suppliers' strengths and weaknesses as they exist today?*

¹⁴⁷² Response to P2 questionnaire [REDACTED].

¹⁴⁷³ See Appendix D for further detail on our methodology.

9.234 We asked these competitors to list the suppliers that they considered their closest competitors in the supply of ECH in the UK.¹⁴⁷⁴ The responses are summarised in Table 48 below.

Table 48: Competitor questionnaire responses, ECH

Competitor	Suppliers that are considered as closest competitors in the supply of ECH
Competitor A [X]	<ol style="list-style-type: none"> 1. Cargotec 2. Konecranes 3. Sany 4. Liebherr 5. CVS
Competitor B [X]	<ol style="list-style-type: none"> 1. Cargotec 2. Konecranes 3. Sany 4. CVS
Competitor C [X]	<ol style="list-style-type: none"> 1. Hyster 2. Cargotec 3. Sany 4. Konecranes
Competitor D [X]	<ol style="list-style-type: none"> 1. Cargotec 2. Hyster 3. Konecranes 4. CVS 4. FTMH

Source: P2 questionnaire responses

Note: Competitors sometimes listed two or more suppliers as being equally close competitors to themselves.

9.235 All respondents listed Cargotec as one of their two closest competitors and most respondents listed Konecranes as either their second or third closest competitor. Hyster, Sany, and CVS were the most commonly mentioned suppliers other than the Parties, although CVS was not considered as a particularly close competitor by any respondent. Liebherr and FTMH were each mentioned once.

9.236 We also asked competitors if they expected the rankings to differ in two years.¹⁴⁷⁵ One competitor (competitor D) expected that Konecranes would be its second closest competitor rather than third closest, switching positions with Hyster, which it attributed to the ‘advanced electrification strategy’ of Konecranes compared with the ‘confused electrification strategy’ of Hyster.¹⁴⁷⁶ There were no other changes from the rankings described above.

¹⁴⁷⁴ Question wording: *Please list your main competitors in the supply of ECH to UK sites. Please rank these competitors according to how close a competitor they are to you (where 1 = closest competitor, 2 = next closest competitor, and so on).*

¹⁴⁷⁵ Question wording: *To what extent do you expect the main competitors that you face and their strengths and weaknesses to change over the next two years? Please use the table below to list and rank the main competitors that you would expect to face in the supply of ECH to UK sites in two years’ time.*

¹⁴⁷⁶ Response to P2 questionnaire [X].

9.237 The UK distributor for [REDACTED], also responded to our questionnaire. It considered that Cargotec was its closest competitor, followed by Hyster. It did not list Sany (or any other suppliers) as being among its main competitors in ECH. It did not expect the main competitors that it faces to change over the next two years.¹⁴⁷⁷

9.238 Overall, the responses from competitors (and [REDACTED]) suggest that the Parties are close competitors. Of the other suppliers, Hyster and Sany were generally considered as the next closest competitors to the respondents after the Parties. Liebherr, CVS, and FTMH were not considered as close competitors to the respondents.

Qualitative comments

9.239 We received qualitative comments from third parties in relation to the closeness of competition between the Parties, some of which indicated that the Parties are close competitors in the supply of ECH.

(a) The UK distributor for [REDACTED], stated that the Parties (alongside Hyster) are among the three 'main alternatives for empty container handlers' and noted that [REDACTED].¹⁴⁷⁸ This distributor further considered that, in relation to MEQ generally, the Parties' products were higher quality than those of other competitors.¹⁴⁷⁹

(b) Another distributor [REDACTED] submitted that both Parties have strong brands, high quality products, and comprehensive product ranges.¹⁴⁸⁰

(c) One competitor [REDACTED] noted in its questionnaire response that a strength for both Parties was that they offer a 'full line' of RS.¹⁴⁸¹ This strength was not listed for any other supplier.

(d) Another competitor [REDACTED] said of both Parties (and Hyster) that one of their main strengths was their distribution network. It also listed price as a strength of Cargotec.¹⁴⁸²

(e) A customer [REDACTED] identified both Parties (as well as several other suppliers) as having a 'mature product', but said that there were

¹⁴⁷⁷ Call note [REDACTED].

¹⁴⁷⁸ Call note [REDACTED].

¹⁴⁷⁹ Call note [REDACTED].

¹⁴⁸⁰ Response to P2 questionnaire [REDACTED].

¹⁴⁸¹ Response to P2 questionnaire [REDACTED].

¹⁴⁸² Response to P2 questionnaire [REDACTED].

questions about Cargotec 'offshoring' manufacturing to 'an immature Chinese manufacturer and supply chain'.¹⁴⁸³

- (f) A third distributor [REDACTED] did not consider the Parties as particularly close competitors, noting that Konecranes MEQ is generally lower quality.¹⁴⁸⁴ In relation to ECH specifically, this distributor noted that Cargotec has a strong brand and a 'technically strong' product, but that Konecranes suffers from a 'poor quality reputation'.¹⁴⁸⁵

9.240 Overall, these views support the evidence from the questionnaires in suggesting that the Parties compete closely.

9.241 We also received qualitative comments from third parties in relation to the competitive constraints faced by the Parties. In general, Hyster was considered as a strong competitor that offers competitive prices but with lower product quality its rivals.

- (a) One customer [REDACTED] considered that Hyster makes 'credible competitive' ECH.¹⁴⁸⁶ The same customer noted that, [REDACTED], Briggs (a distributor for Hyster) scored highly against all the tender criteria, especially pricing. The customer stated that pricing was particularly important for this tender [REDACTED]. This customer further noted that suppliers with a wide range of MEQ (such as Briggs) are favoured in tenders as the customer finds it easier to manage a single contract rather than multiple contracts with different suppliers.¹⁴⁸⁷
- (b) A second customer [REDACTED] that has recently purchased four Cargotec ECH [REDACTED] noted that its 'only other options [were] Mitsubishi (CAT) and Hyster'.¹⁴⁸⁸
- (c) A third customer [REDACTED] considered that Hyster offers prices that are 'generally competitive in comparison [with] alternative tenderers'.¹⁴⁸⁹
- (d) A fourth customer [REDACTED] stated that Hyster was commercially competitive with a mature product, but that there were 'questions about [the] quality and reliability' of Hyster's ECH.¹⁴⁹⁰

¹⁴⁸³ Response to P2 questionnaire [REDACTED].

¹⁴⁸⁴ Call note [REDACTED].

¹⁴⁸⁵ Response to P2 questionnaire [REDACTED].

¹⁴⁸⁶ Call note [REDACTED].

¹⁴⁸⁷ Call note [REDACTED].

¹⁴⁸⁸ Response to P2 questionnaire [REDACTED].

¹⁴⁸⁹ Response to P2 questionnaire [REDACTED].

¹⁴⁹⁰ Response to P2 questionnaire [REDACTED].

- (e) One distributor [REDACTED] named Hyster (alongside the Parties) as one of the three 'main alternatives for empty container handlers' and noted that Hyster MEQ in general is lower quality than that offered by the Parties but is also much cheaper.¹⁴⁹¹
- (f) Another distributor [REDACTED] considered that Hyster has a strong brand and dealer network, and offers the 'lowest cost' products. However, it further considered that the Hyster ECH was the 'worst of all available'.¹⁴⁹²

9.242 The views from third parties on Sany were mixed, with responses indicating that Sany offers low prices, but lacks a good reputation in relation to service and/or product quality.

- (a) The UK distributor for [REDACTED], noted in relation to MEQ in general that it 'believes that some customers will not purchase Sany products simply because they are a Chinese product [...] in spite of most of the parts being built in Europe and shipped over to China for assembly'. It explained that Sany 'will always have problems with some customers with anti-Chinese rhetoric' and that 'most of it comes back down to the local support'.¹⁴⁹³
- (b) Another distributor [REDACTED] submitted that Sany has an 'aggressive pricing' strategy, but that a weakness was its 'unknown product quality'.¹⁴⁹⁴
- (c) A third distributor [REDACTED] said that Chinese suppliers (including Sany) do not get much repeat business and that the Parties' equipment is better in terms of quality.¹⁴⁹⁵
- (d) A competitor stated that Sany's 'main strength' is its price.¹⁴⁹⁶
- (e) The customer that had tendered in [REDACTED] was aware of Cooper (a distributor for Sany) [REDACTED].¹⁴⁹⁷
- (f) Another customer [REDACTED] noted that Sany was 'not established in the UK market' and said it had 'no recognised service support agents appointed in the [REDACTED] region'.¹⁴⁹⁸

¹⁴⁹¹ Call note [REDACTED].

¹⁴⁹² Response to P2 questionnaire [REDACTED].

¹⁴⁹³ Call note [REDACTED].

¹⁴⁹⁴ Response to P2 questionnaire [REDACTED].

¹⁴⁹⁵ Call note [REDACTED].

¹⁴⁹⁶ Response to P2 questionnaire [REDACTED].

¹⁴⁹⁷ Call note [REDACTED].

¹⁴⁹⁸ Response to P2 questionnaire [REDACTED].

(g) Another customer [REDACTED] said it believed that Sany struggles with a number of quality issues (such as leaking hydraulic cylinders) across all MEQ. It said that Sany is usually invited to tender but is often not chosen due to concerns over the quality of its products and a lack of an extensive servicing network in the UK. This customer said that it always contracts directly with OEMs rather than distributors.¹⁴⁹⁹

(h) Another customer [REDACTED] stated that Sany is 'commercially competitive' but has an 'immature product'.¹⁵⁰⁰

9.243 We received several comments that offered mixed views on Liebherr.

(a) The customer that had tendered in [REDACTED] considered that 'Liebherr make credible competitive [...] ECH'.¹⁵⁰¹

(b) Another customer [REDACTED] considered that Liebherr had a 'limited' range of ECH in its offering.¹⁵⁰²

(c) One of the distributors above [REDACTED] noted that Liebherr has a well-known brand for CHE generally, but is less well-known for ECH in particular.¹⁵⁰³

9.244 The Parties submitted that Sany is one of the leading suppliers in respect of the development of an electric ECH.¹⁵⁰⁴ Sany's distributor in the UK (Cooper) told us that Sany's electric ECH is available in Asia but not yet in Europe. Cooper does not expect to sell electric ECH in the UK until 2023 at the earliest. Cooper considered that there would not be a significant advantage for the first OEM to launch an electric ECH, as customers can be reluctant to be the first to purchase new products (similar to Cooper's experience in selling Sany equipment).¹⁵⁰⁵

9.245 Overall, the comments from third parties indicate that Hyster is generally seen as a strong competitor to the Parties in the UK, supporting the evidence from the questionnaire responses. Several third parties commented on Sany, but the views expressed were mixed regarding the strength of Sany as a competitor. Two customers mentioned Liebherr as a viable competitor, although Liebherr did not deliver any ECH to UK customers between 2016 and 2020 (see Table 41).

¹⁴⁹⁹ Call note [REDACTED].

¹⁵⁰⁰ Response to P2 questionnaire [REDACTED].

¹⁵⁰¹ Call note [REDACTED].

¹⁵⁰² Response to P2 questionnaire [REDACTED].

¹⁵⁰³ Response to P2 questionnaire [REDACTED].

¹⁵⁰⁴ Parties response [REDACTED].

¹⁵⁰⁵ Call note [REDACTED].

Merger impact

- 9.246 In our questionnaire, we asked UK customers¹⁵⁰⁶ for their views on any positive or negative impacts of the Merger on the supply of ECH.¹⁵⁰⁷ Five of the seven respondents identified both positive and negative impacts, and two only identified positive impacts.^{1508,1509}
- 9.247 The positive impacts mostly focussed on the potential for increased innovation and the benefits that would accrue from the sharing of technical knowledge and expertise, including a wider or improved product range. Two customers also expected the Merged Entity to provide improved after-sales service.¹⁵¹⁰
- 9.248 The negative impacts primarily related to the loss of competition and the potential negative effects that this could have on prices, innovation, and purchase terms. One of the five customers identifying negative impacts considered that such effects are ‘mitigated by our competitive tendering processes’.¹⁵¹¹
- 9.249 We asked competitors¹⁵¹² whether they expected the Merger to impact competition for the supply of ECH in the UK.¹⁵¹³ Of the five responses from competitors, one considered that the Merger would have no impact on competition and three considered that the Merger would have some impact, one of which noted that the extent of any impact will ‘depend on the new company’s strategy’.¹⁵¹⁴ The other competitor considered that any impact depended on ‘how the merged portfolio is arranged and distributed’.¹⁵¹⁵
- 9.250 We also received some more detailed comments regarding the impact of the Merger on the supply of ECH. Several customers suggested that the Parties

¹⁵⁰⁶ UK customers [REDACTED].

¹⁵⁰⁷ Question wording: *Cargotec and Konecranes are proposing to merge. What positive impacts (if any) would you expect the merger to have in relation to ECH? What negative impacts (if any) would you expect the merger to have in relation to ECH?*

¹⁵⁰⁸ Views of respondents [REDACTED].

¹⁵⁰⁹ In addition, as described at paragraph 7.90 above, five of the customers in mainland Europe that we spoke to in our remedy response hearings expressed general views on the competitive effects of the Merger. Overall, these views were mixed; some of these customers were in favour of the merger or did not have concerns about it, while others said that they did have concerns, or that the merger would have both positive and negative impacts.

¹⁵¹⁰ Response to P2 questionnaire [REDACTED].

¹⁵¹¹ Response to P2 questionnaire [REDACTED].

¹⁵¹² Competitors [REDACTED].

¹⁵¹³ Question wording: *Cargotec and Konecranes are proposing to merge. Do you expect the merger to impact competition for the supply of ECH in relation to UK customers? If ‘yes’, please describe the impact(s) on competition that you would expect as a result of the merger and explain your reasoning.*

¹⁵¹⁴ Responses [REDACTED].

¹⁵¹⁵ Response to P2 questionnaire [REDACTED].

would have market dominance post-Merger, with some noting the negative impact that this would have on the market.

- (a) One competitor [X] considered that, globally, the Merged Entity would be 'dominant in ECH'.¹⁵¹⁶
- (b) Another competitor [X] submitted that 'unless the merger will free access to [a] distribution network to other brands, the alternative options for customers will become restricted'.¹⁵¹⁷
- (c) One customer [X] stated that the Merged Entity would 'have dominance and be very strong in [...] ECH'.¹⁵¹⁸
- (d) One distributor [X] submitted that the Merged Entity could have 'a dominant offering in the marketplace'. This distributor further noted that the Parties both have a 'strong product offering' that the Merged Entity could use 'to offer a one stop shop'.¹⁵¹⁹

9.251 Two third parties noted that the weakness of Konecranes could limit any impacts of the Merger.

- (a) One distributor [X] felt that the merger would not impact it much as the number of suppliers has already reduced significantly from many years ago, and it felt that Konecranes is currently a weak competitor.¹⁵²⁰
- (b) One competitor that considered that the Merged Entity would be dominant globally. This competitor [X] noted that the impact in the UK would be smaller due to the 'weak position of Konecranes'.¹⁵²¹

9.252 Overall, these responses indicate that several third parties expect some negative impact to result from the Merger in the supply of ECH due to the strong position that the Merged Entity will have. Some customers also noted the potential for positive impacts resulting from the Merger, such as increased innovation. The third parties that expressed fewer concerns regarding the Merger noted that Konecranes was not a strong competitor in the supply of ECH.

¹⁵¹⁶ Call note [X].

¹⁵¹⁷ Response to P2 questionnaire [X].

¹⁵¹⁸ Call note [X].

¹⁵¹⁹ Response to P2 questionnaire [X].

¹⁵²⁰ Call note [X].

¹⁵²¹ Call note [X].

Internal documents

- 9.253 Internal documents submitted by the Parties (discussed at paragraphs 9.82 to 9.84) provide insight into how the Parties perceive their own competitive positions in ECH and those of their competitors.
- 9.254 We start with documents that are mainly relevant to closeness of competition between the Parties in ECH. We then assess documents that relate to the constraints posed by other suppliers, and the importance of different purchasing criteria, for ECH. Finally, we discuss documents that provide insight into the Parties' views on how competition in the supply of ECH will develop in future.

Closeness of competition

- 9.255 The documents set out below in relation to ECH are consistent with the internal documents described in Chapter 6 and in paragraphs 9.85 and 9.86 about MEQ in general and, read together with those documents, they indicate that Cargotec and Konecranes perceive each other as strong and aggressive competitors in ECH, for reasons including their extensive and strong distribution and after-sales networks. These documents also show that the Parties compete closely with each other, comparing the other's offering and discussing how they can have the edge over each other. The Parties also appear to be the only competitors that compete against each other across the entire ECH product range (see Figure 24).
- (a) The internal documents of the Parties show that they have an overlapping offering across the differentiated ECH value product ranges, competing closely in all ranges.
- (i) An internal Konecranes' document (see paragraph 9.86(b)), shows a benchmarking of Konecranes' essential (value) and premium product lines against competitors' presence in these segments. Only Kalmar is perceived to be active in both these segments as well as at the intersection of both.¹⁵²²
- (ii) Another Konecranes' document, in which it reports on the results of a distributors survey conducted in different regions across the world in 2019 states: [REDACTED]. This document shows that Konecranes was considering to expand its portfolio of ECH to better compete with Kalmar and it considered Kalmar's electric offering as a benchmark. We note that in this document Konecranes also considered to

¹⁵²² Konecranes, internal document [REDACTED].

expand its portfolio to better compete with Hyster, which considered to dominate the ECH market.¹⁵²³

- (iii) In an internal document from Cargotec entitled [REDACTED], Cargotec provides a competitive overview of different value categories of ECH (essential and premium) supplied by Konecranes and Cargotec. [REDACTED] Figure 24 [REDACTED]. It appears that across the differentiated value product ranges, the Parties have overlapping ECH products.¹⁵²⁴

Figure 24: [REDACTED]

[REDACTED]

Source: [REDACTED].

- (iv) In the same document Cargotec also [REDACTED].¹⁵²⁵

Constraints on the Parties

9.256 The documents below indicate that the main supplier in the market and the Parties' closest competitor is Hyster. While the internal documents reflect a growing competitive threat from Sany, especially regarding electrification, we note that this is on a global basis; it is unclear from internal documents whether the Parties perceive Sany as a significant threat in Europe and the UK specifically.

- (a) [REDACTED].¹⁵²⁶
- (b) A Cargotec assessment of Western European competition, in the presentation '[REDACTED]' and that it was the [REDACTED].¹⁵²⁷ [REDACTED].
- (c) A Cargotec document from 2021 provides an 'Empty Container Handler overview' on [REDACTED]. In this document, Cargotec sets out [REDACTED].¹⁵²⁸ [REDACTED].
- (d) A Cargotec strategy document produced in 2020 for the KAMOS leadership team, which is not specific to Europe, notes that Sany is offering an '[REDACTED]'.¹⁵²⁹ In the same document it is noted in relation to CCH

¹⁵²³ Distributor survey 2019 – Summary, Konecranes Lift Trucks, 2019.

¹⁵²⁴ Cargotec internal document, [REDACTED].

¹⁵²⁵ Cargotec internal document [REDACTED].

¹⁵²⁶ Cargotec internal document, [REDACTED].

¹⁵²⁷ Cargotec internal document, [REDACTED].

¹⁵²⁸ Cargotec internal document, [REDACTED].

¹⁵²⁹ Cargotec internal document, [REDACTED].

markets (RS and ECH) that '[REDACTED]'. A key risk highlighted in this document is '[REDACTED]'.¹⁵³⁰ This is also reflected in the [REDACTED].¹⁵³¹ [REDACTED].

- (e) Internal documents from Konecranes [REDACTED].¹⁵³² [REDACTED].¹⁵³³
- (f) A December 2020 email between a Sales Director and a Sales Manager at Konecranes shows that Konecranes [REDACTED]. The customer is reported to have said [REDACTED].¹⁵³⁴

Main Purchasing Criteria

9.257 [REDACTED].¹⁵³⁵ [REDACTED].

Competition dynamic in the foreseeable future

9.258 Some internal documents also provide insight into the Parties' views on how competition in the supply of ECH will develop in future. As with other types of MEQ, the Parties predict an increasing trend towards electrification, within which they believe they are well-placed to succeed.

- (a) The Parties appear to monitor each other's potential development of electric ECH. For example, in an internal Cargotec document, prepared in October 2018, [REDACTED]¹⁵³⁶ [REDACTED].¹⁵³⁷
- (b) A Cargotec [REDACTED].¹⁵³⁸ The document goes on to [REDACTED], stating the following:
 - (i) [REDACTED]. The document notes that [REDACTED];
 - (ii) [REDACTED]. The document also notes that '[REDACTED]'; and
 - (iii) Under a [REDACTED].¹⁵³⁹
- (c) In a strategic document entitled '[REDACTED]' produced in April 2021 (ie, just before or at the same time the Merger started being contemplated), [REDACTED].¹⁵⁴⁰

¹⁵³⁰ Cargotec internal document, [REDACTED].

¹⁵³¹ Cargotec internal document, [REDACTED].

¹⁵³² Konecranes internal document [REDACTED].

¹⁵³³ Konecranes internal document [REDACTED].

¹⁵³⁴ Konecranes internal document [REDACTED].

¹⁵³⁵ Cargotec internal document, [REDACTED].

¹⁵³⁶ Cargotec internal document, [REDACTED].

¹⁵³⁷ Cargotec internal document, [REDACTED].

¹⁵³⁸ Cargotec internal document, [REDACTED].

¹⁵³⁹ Cargotec internal document, [REDACTED].

¹⁵⁴⁰ Cargotec internal document, [REDACTED].

CMA's conclusion

- 9.259 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.
- 9.260 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 a SLC in the supply of ECH in Europe (including the UK).
- 9.261 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,¹⁵⁴¹ its UK share is nonetheless material ([5 – 20] [%]).
 - (b) Our bidding analysis confirms that the Parties compete closely in ECH. 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. Sample sizes in the UK are small, but we note that the Parties lost significant volumes to each other over the period considered.
 - (c) Evidence from third parties consistently shows that the Parties are close competitors, and several third parties raised concerns about the loss of competition that would result from the Merger.¹⁵⁴² Qualitative comments from third parties and qualitative tender documents mostly suggested

¹⁵⁴¹ As discussed at paragraph 9.202 above, we consider that this is likely to reflect the role that national distributors play in the competitive process in MEQ and, in particular, Konecranes' issues with its UK distributor Impact and Sany's relative success with its UK distributor Cooper.

¹⁵⁴² The third parties that expressed fewer concerns regarding the Merger noted that Konecranes was not a strong competitor in the supply of ECH.

that both Parties have high quality products, although some third parties considered that Konecranes offered a lower quality product.

- (d) Internal documents are also consistent with the Parties competing closely. Documents relating to ECH specifically indicate 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). The documents relating to MEQ in general are consistent with this and show that both Parties are taking active steps to develop electrified MEQ and are monitoring each other's progress in this area.
- (e) As discussed at paragraphs 9.103(d) and 9.255, a range of evidence outlined in Chapter 6 supports that the Parties have similar strengths in CHE, and plan to increase their market shares in MEQ in the foreseeable future.

9.262 In addition, as noted at paragraph 6.153, the Parties are likely to compete particularly closely for some customers as a result of their wide CHE portfolios (including MEQ, SC, ShC, and port cranes), which enable them to offer an integrated, automated and comprehensive solution to ports. These capabilities are likely to become increasingly significant in future as the extent of automation and digitalisation within CHE develops further. By contrast, most of the Parties' competitors do not offer similarly broad and integrated ranges of CHE, and so they are likely to compete less closely with the Parties for some customers in this regard.

9.263 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 that we reviewed 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 that the Parties consider Hyster as one of their closest competitors in MEQ generally and in ECH specifically. Both Parties' documents noted that Hyster is price competitive (Cargotec noted [REDACTED]), especially so for ECH, although Cargotec considered [REDACTED].

9.264 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] [REDACTED] % share of supply in the UK over 2016 to 2020 but is much smaller in Europe ([0 – 5] [REDACTED] % share).¹⁵⁴³
- (b) While UK sample sizes are small, UK bidding data is consistent with shares of supply in suggesting that Sany is a material constraint on the Parties in the UK.¹⁵⁴⁴ Our bidding analysis confirms that Sany is not a strong constraint in Europe as a whole, where it accounted for fewer than [REDACTED]% of lost opportunities for both Parties over 2016 to May 2021.
- (c) Third-party views on the strength of Sany as a competitor to the Parties were mixed, with responses indicating that Sany offers low prices, but does not have a positive reputation in relation to service and/or product quality. This is consistent with the qualitative tender documents that we reviewed. This evidence 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) The Parties' documents reflect a growing competitive threat from Sany in ECH on a global basis, especially regarding electrification, but it is unclear from internal documents whether the Parties perceive Sany as a significant threat in the supply of ECH in Europe and the UK specifically. Documents relating to MEQ in general show that the Parties consider Sany as a material competitor on a global basis, while also suggesting that Sany has not yet established itself in MEQ in Europe.
- (e) We found no clear trend in Sany's annual sales of ECH in the UK over the last five years and the evidence available to us does not support that

¹⁵⁴³ We consider that this difference is likely to reflect the role of its national distributor (Cooper).

¹⁵⁴⁴ Sample sizes in the UK were small, but we note that Sany only won low-value opportunities from the Parties.

there will be material future additional growth for Sany in the UK or in Europe.

- 9.265 The evidence indicates that no other suppliers compete closely with the Parties for UK customers. Svetruck, CVS and FTMH are all active in Europe (with shares of supply of less than 10%) but did not make sales in the UK over 2016 to 2020, while Liebherr did not make any sales in Europe over this period.¹⁵⁴⁵ According to our bidding analysis, the Parties did not lose many opportunities to these suppliers in Europe. Third-party evidence and internal documents indicate that these are not material competitors to the Parties.
- 9.266 As discussed below (from paragraph 9.267), the evidence that we reviewed in relation to entry and expansion does not suggest that the constraint imposed by these third parties (or any other third parties) will change materially in the foreseeable future.

Entry and expansion of alternative suppliers of MEQ

- 9.267 As set out in our guidance, the CMA's assessment is generally forward-looking and will seek to account for the future evolution of competitive conditions, including constraints from rival entry or expansion,¹⁵⁴⁶ following the approach set out in Chapter 6.
- 9.268 In this section, we consider the possible constraint on the Merged Entity arising from entry or expansion that would have occurred irrespective of the Merger.¹⁵⁴⁷ We considered whether the main potential sources of entry identified by the Parties have the necessary capabilities and intention to enter at scale or to substantially expand their operations in the supply of MEQ in Europe (including the UK).
- 9.269 In our assessment of the likelihood of entry and expansion, we have taken into account the conclusions in Chapter 12.

Parties' views

- 9.270 The Parties told us that they are, 'expecting a number of companies, including Chinese players such as ZPMC and XCMG (which have already entered in the market), to drastically change the market structure in the coming years and disrupt any hypothetical coordination'.¹⁵⁴⁸

¹⁵⁴⁵ We note that CVS does not have a UK-based distributor.

¹⁵⁴⁶ CMA129, paragraph 4.16.

¹⁵⁴⁷ CMA129, paragraph 4.16.

¹⁵⁴⁸ Merger Notice, [38].

9.271 In particular, the Parties submitted that:

- (a) 'Chinese players ZPMC and XCMG also offer competitive prices and are expected to expand quickly in the market for reach stackers going forward, similarly to Sany'.¹⁵⁴⁹
- (b) Heli 'has mainly made sales [of HDFLT] in China thus far, [but] the significant sales it has made allowed it to gain a track record and improve quality, which it will be able to leverage on in its expansion outside China going forward'.¹⁵⁵⁰
- (c) Hyundai 'is a recent market entrant', but which 'clearly has expansion plans in this market [HDFLT]'. The Parties expect Hyundai to become a strong competitor in the supply of HDFLT going forward on account of its recognised quality in other machinery and equipment and established customer relations.¹⁵⁵¹
- (d) Toyota has 'expanded into the forklift trucks market (focusing currently on lighter forklift trucks)'. The Parties expect it to be able to quickly expand into heavier FLT as well given its recognised quality in other related machinery and equipment, and an established distribution network.¹⁵⁵²

9.272 The Parties submitted that the cost of investing in direct supply would not be a significant barrier to entry, and the cost of outsourcing to distributors would not be a barrier to entry. Furthermore, they submitted that there are a number of distributors with the expertise and coverage to supply customers across the UK¹⁵⁵³

9.273 In response to our Provisional Findings, the Parties said that, in asserting that it 'did not find evidence that any of the existing alternative suppliers [...] have the necessary capabilities or intention to enter at scale or to substantially expand into the supply of RS, HDFLT or ECH in Europe (including the UK), in the near future', the CMA failed to have due regard to evidence submitted by, among others, ZPMC. In particular, the Parties said that our Provisional Findings fail to give due regard to [REDACTED].¹⁵⁵⁴

¹⁵⁴⁹ Merger Notice, [REDACTED].

¹⁵⁵⁰ Merger Notice, [REDACTED].

¹⁵⁵¹ Merger Notice, [REDACTED].

¹⁵⁵² Merger Notice, [REDACTED].

¹⁵⁵³ Parties Response to the working paper on countervailing factors: entry and expansion and other market conditions ('Countervailing Factors Working Paper') [REDACTED].

¹⁵⁵⁴ Parties' Response to the Provisional Findings Report paras 7.8-7.10.

Assessment of evidence on specific entry or expansion

9.274 We investigated whether any third parties have the necessary capabilities or specific intention to enter or to substantially expand their operations in relation to the supply of MEQ in Europe (including the UK), in the near future.

9.275 We set out below the evidence that we received from third parties:

(a) A Competitor [REDACTED] told us that:

(i) [REDACTED].¹⁵⁵⁵ [REDACTED].¹⁵⁵⁶

(ii) [REDACTED].

(iii) [REDACTED].¹⁵⁵⁷ [REDACTED].¹⁵⁵⁸

(b) Another competitor [REDACTED] told us that [REDACTED].¹⁵⁵⁹

(c) A distributor [REDACTED] told us that [REDACTED].^{1560,1561} In relation to [REDACTED].¹⁵⁶²

(d) A further competitor [REDACTED] told us [REDACTED].¹⁵⁶³

(e) Another distributor [REDACTED] said [REDACTED].¹⁵⁶⁴

(f) Another competitor [REDACTED] said that its plan was to sell 50 units (or 5.9 million Euros) of HDFLT to UK customers over the period 2021-2026, with the majority of these sales taking place from 2024-2026.¹⁵⁶⁵

9.276 We note that Sany had some recent successes in the supply of RS and ECH in the UK, which is reflected in the analysis of horizontal unilateral effects above.

9.277 In regard to RS, we consider that:

¹⁵⁵⁵ Transcript of call [REDACTED].

¹⁵⁵⁶ Transcript of call [REDACTED].

¹⁵⁵⁷ Response to P2 questionnaire [REDACTED].

¹⁵⁵⁸ Response to P2 questionnaire [REDACTED].

¹⁵⁵⁹ Response to P2 questionnaire [REDACTED].

¹⁵⁶⁰ Cooper's response to CMA questionnaire.

¹⁵⁶¹ As discussed at paragraph 9.25, Cooper told us that it [REDACTED] of RS in the UK, which would be around the level of sales that it achieved in 2019 and 2020.

¹⁵⁶² Response to P2 questionnaire [REDACTED].

¹⁵⁶³ Response to P2 questionnaire [REDACTED].

¹⁵⁶⁴ Response to P2 questionnaire [REDACTED].

¹⁵⁶⁵ Response to P2 questionnaire [REDACTED].

- (a) Sany [REDACTED]. For example, Sany told us [REDACTED].¹⁵⁶⁶ Cooper, as the UK distributor of Sany, has a general ambition to slowly grow its sales of Sany RS (see paragraph 9.275 (c)).
- (b) Hyster is [REDACTED] which may help it to expand. [REDACTED].
- (c) ZPMC would [REDACTED].

9.278 In regard to HDFLT, we consider that:

- (a) Sany has a [REDACTED], as noted above.
- (b) Hyster is [REDACTED] HDFLT which may help it to expand. [REDACTED].
- (c) Hyundai intends to [REDACTED].
- (d) [REDACTED].

9.279 In regard to ECH, we consider that:

- (a) Sany has a [REDACTED], and Cooper, as Sany's UK distributor, has a general ambition to slowly grow its sales of Sany's ECH, as noted above.
- (b) Hyster is [REDACTED] ECH which may help it to expand. [REDACTED].
- (c) ZPMC [REDACTED].

9.280 Overall, we note that a number of existing competitors have an ambition to expand in mobile equipment markets, and intend to pursue business opportunities in the normal course of business, while one competitor, ZPMC [REDACTED]. However, we have not seen any evidence to suggest that there will be a material change in the level of competitive constraint posed by these (or any other) competitors in the near future, nor have we seen any evidence that any entry or expansion would be sufficient in scope and magnitude to sufficiently constraint the Merged Entity to offset the loss of competition from the Merger.¹⁵⁶⁷

9.281 Further, we note that no entry on a significant scale has occurred in the past ten years in Europe (or in the past 5 years in the UK, after Sany's entry). In Chapter 12, we consider whether barriers to entry and expansion are

¹⁵⁶⁶ Response to P2 questionnaire [REDACTED].

¹⁵⁶⁷ We disagree with the Parties submission (see paragraph 9.273) that we have failed to have due regard to evidence submitted by, among others, ZPMC. Even if ZPMC succeeds in entering in the next two to three years (see paragraph 9.475(a)), we have not seen any evidence that such entry would be sufficient to offset the loss of competition from the Merger.

significant in MEQ markets, and assess the likelihood of entry or expansion in response to the effects of the merger.

10. Horizontal effects: ATT

The CMA's analytical framework

- 10.1 Horizontal mergers combine firms that are currently active or, absent the merger, would be active in the future at the same level of the supply chain, and compete to supply products that are substitutable for each other.¹⁵⁶⁸ Unilateral effects relate to the merged entity being able to profitably and unilaterally¹⁵⁶⁹ raise its prices, worsen its quality or service and non-price factors of competition, or reduce innovation efforts at one or more of the pre-merger businesses.¹⁵⁷⁰
- 10.2 An assessment of horizontal unilateral effects arising from a merger essentially relates to the weakening or elimination of a competitive constraint. The competitive constraint eliminated by a merger may be an existing constraint, or a potential or future constraint.¹⁵⁷¹
- 10.3 Mergers where one or both parties are potential entrants can lessen potential competition, for example, the merger may imply a loss of future competition (for example, over price, service, quality or innovation) between the merger firms that would have occurred, had the potential entrant entered or expanded.¹⁵⁷²
- 10.4 The evidence available to us indicates that the ATT offerings of Cargotec and some other suppliers are already relatively close to market, with pilots underway and commercial sales projected in the next few years. As set out in Chapter 4, we also found that, absent the Merger, Konecranes had strong incentives and the ability to enter into the supply of ATT [✂], once any operational or financial challenges of coronavirus (COVID-19) eased.¹⁵⁷³

¹⁵⁶⁸ CMA129, paragraph 2.15.

¹⁵⁶⁹ As distinct from acting in coordination with other firms in the market.

¹⁵⁷⁰ CMA129, paragraph 2.17.

¹⁵⁷¹ CMA129, paragraph 4.2.

¹⁵⁷² It is a well-established principle that competition law protects not only actual competition, but also potential competition between undertakings. (See CMA129, section 5) This is because there is competitive interaction between a firm that has the potential to enter or expand in competition with other firms (CMA129, paragraph 5.1). A potential competitor may exert competitive pressure on the firms in the market 'by reason merely that it exists' (C-307/18 Generics (UK) Ltd and Others v CMA, EU:C:2020:28, paragraph 42, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62018CC0307&qid=1640275612750>).

¹⁵⁷³ As set out in paragraph 5.7 of CMA129, a merger involving a potential entrant leads to a loss of future competition between the merger firms. The CMA will consider evidence on whether either merger firm would have entered or expanded absent the merger. In some cases, evidence relevant to the counterfactual and evidence relevant to the competitive assessment will be overlapping (paragraph 5.9).

- 10.5 We assessed whether the Merger would give rise to a substantial loss of future competition in the supply of ATT.
- 10.6 As set out in the Merger Assessment Guidelines ([CMA129](#)), in assessing whether a merger involving a potential entrant leads to a loss of future competition between the merger firms, we consider evidence on:
- (a) Whether either merger firm would have entered or expanded absent the merger; and
 - (b) whether the loss of future competition brought about by the merger would give rise to an SLC, taking into account other constraints and potential entrants.¹⁵⁷⁴
- 10.7 As set out in the Merger Assessment Guidelines,¹⁵⁷⁵ our assessment of competitive effects from the loss of future competition between the merger firms is similar to the assessment when the merger firms are existing suppliers, except that the assessment will reflect the future competitive conditions expected after entry or expansion by the merger firms has taken place.
- 10.8 In response to the Parties' submission that there is currently no 'market' for ATT, in the sense of customer demand at commercial scale (see paragraph 10.11), we note that ATT offerings are being developed by a number of firms and that ATT with some level of automation are likely to be offered to customers in the foreseeable future.^{1576,1577} We further note that ATT are likely to be an important part of suppliers' equipment offerings in the foreseeable future and already appear to be an important focus for several firms. 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 (see internal documents set out in paragraphs 10.27 to 10.31 and other evidence from third parties and public sources considered below), with competitors often monitoring each other's developments closely. These developments have a global focus and the evidence available to us does not suggest any reason why ATT will not be supplied to UK customers in the future.
- 10.9 The remainder of this Chapter is structured as follows:

¹⁵⁷⁴ [CMA129](#), paragraph 5.7.

¹⁵⁷⁵ [CMA129](#), paragraph 5.14.

¹⁵⁷⁶ See also 5.173 Chapter 5.

¹⁵⁷⁷ See Parties' internal documents [redacted].

- (a) The Parties' views.
- (b) Konecranes' position absent the Merger.
- (c) Competitive dynamics in the supply of ATT, including:
 - (i) Shares of supply in TT;
 - (ii) Internal documents;
 - (iii) Third-party evidence; and
 - (iv) Other evidence relating to ATT development by other potential suppliers.
- (d) Closeness of competition and competitive constraints.
- (e) Conclusion on the effect of the Merger on potential competition in the supply of ATT.

Parties' views

- 10.10 In relation to future competition in ATT, the Parties submitted that, to the best of their knowledge, there are no fully functioning ATT available. As noted above, the Parties also submitted that the demand for ATT is uncertain to materialise,¹⁵⁷⁸ and 'there is currently no "market" in the sense of customer demand for ATT at commercial scale.'¹⁵⁷⁹
- 10.11 Notwithstanding this position, the Parties also submitted that many suppliers – including not only 'traditional' TT suppliers, but also major automotive and tech / automation companies – are making advances with ATT offerings, with large-scale marketability being imminent.¹⁵⁸⁰
- 10.12 As discussed in Chapter 4, the Parties submitted that Cargotec currently supplies TT [REDACTED] whereas Konecranes does not supply TT and is [REDACTED].
- 10.13 In relation to Cargotec's position in ATT, the Parties submitted that:
- (a) [REDACTED].¹⁵⁸¹

¹⁵⁷⁸ Parties submissions, [REDACTED].

¹⁵⁷⁹ Parties submissions, [REDACTED].

¹⁵⁸⁰ Merger Notice, [REDACTED].

¹⁵⁸¹ Cargotec further submitted that it [REDACTED]. Parties submissions, [REDACTED].

(b) '[REDACTED]'.¹⁵⁸²

10.14 In relation to Konecranes' position in ATT, the Parties submitted that:

- (a) 'Konecranes [REDACTED] in ATT within a reasonable timeframe absent the Merger.'¹⁵⁸³ The Parties submitted, in this regard, that Konecranes is not active in manufacturing TT and that there is no evidence that Konecranes was [REDACTED] TT.¹⁵⁸⁴
- (b) 'Konecranes [REDACTED], would not be able to do so within a relatively short timeframe (i.e., in the next two to three years), and would [REDACTED] project without customer demand. Konecranes did not acquire and would not have acquired any [REDACTED]. Further, the [REDACTED] was a loose agreement with no obligation on either party to supply the relevant equipment until a project contract was agreed in the future.'¹⁵⁸⁵ The Parties also submitted that '[REDACTED].'¹⁵⁸⁶ [REDACTED].
- (c) Konecranes submitted that the acquisition of [REDACTED] would have related to a business active in [REDACTED] and was primarily of interest to Konecranes for its TT services business. Konecranes also submitted that, in any case '[REDACTED].'¹⁵⁸⁷
- (d) 'Although Konecranes has some existing technologies and capabilities in automation, developing these specifically for ATT would take [REDACTED]¹⁵⁸⁸ and '[w]hilst Konecranes is an experienced supplier of different types of ECH, its experience with [REDACTED] is very limited'.¹⁵⁸⁹
- (e) 'As such, Konecranes cannot be considered a significant competitive constraint in ATT'.¹⁵⁹⁰

10.15 In relation to the position of third-party ATT suppliers, the Parties submitted that:

- (a) 'Terberg is the clear leading supplier of TT in Europe'. The Parties further submitted that Terberg is currently partnering with other suppliers to develop ATT, such as ZF and Easysmile, both of which are at the forefront of automation, citing several press releases to support this

¹⁵⁸² Cargotech submissions, [REDACTED].

¹⁵⁸³ Parties submissions, [REDACTED].

¹⁵⁸⁴ Parties submissions, [REDACTED].

¹⁵⁸⁵ Parties submissions, [REDACTED].

¹⁵⁸⁶ Parties submissions, [REDACTED].

¹⁵⁸⁷ Parties submissions, [REDACTED].

¹⁵⁸⁸ Parties submissions, [REDACTED].

¹⁵⁸⁹ Parties submissions, [REDACTED].

¹⁵⁹⁰ Parties submissions, [REDACTED].

position.¹⁵⁹¹ The Parties also said that Terberg plans to bring to market its own ATT (AutoTUG), which they considered shows that Terberg is clearly contemplating entry as an individual company (ie independent of Konecranes) to this nascent market.¹⁵⁹²

- (b) There are numerous companies that are developing ATT, such as Westwell Lab,¹⁵⁹³ Terberg, Einride and Sinotruk, major suppliers in the automotive industry (eg, Volvo,¹⁵⁹⁴ Volvo, Daimler, MAN etc.) and tech companies (including Waymo (a company controlled by Alphabet), Microsoft and Amazon).¹⁵⁹⁵

10.16 Finally, the Parties submitted that ‘it is not clear that the post-Merger position would be any less competitive than the CMA’s most likely counterfactual – there are the same number of potential competitors in ATT pre- and post-Merger.’¹⁵⁹⁶

10.17 In response to the Provisional Findings Report, the Parties submitted that:

- (a) The CMA’s provisional findings were based on limited evidence of uncertain probative value, because its analysis relies primarily on the CMA’s (selective) interpretation of the Parties’ internal documents and competitor comments, in particular because all of the customers that responded to the CMA confirmed that they did not envisage purchasing ATT in the next five years and seven of the 13 did not feel well informed about ATT.
- (b) The CMA’s provisional findings were selective in the use of market feedback to find that Cargotec is well placed to compete in ATT in the future. For example, the CMA’s provisional findings placed weight on the integration capabilities of Konecranes and Cargotec referred to in their internal documents, although customers placed limited weight on the

¹⁵⁹¹ Royal Terberg Group, an Autonomous Tractor Partnership [online], available at <https://newsmedia.terberggroup.com/en/special-vehicles/overview/press-releases/special-vehicles/an-autonomous-tractorpartnership/> and Terberg (July 2021), ‘Terberg and EasyMile work together on Autonomous Terminal Tractor’ [online], available at <https://www.royalterberggroup.com/en/news/news-template-page/41086> [accessed 24/11/2021].

¹⁵⁹² Parties’ response to Issues Statement, paragraph 8.7 to 8.9.

¹⁵⁹³ In relation to Westwell Lab/Q-Trucks, the Parties consider the Chinese tech company Westwell Lab to be ‘the frontrunner in full TT automation globally’. They said that Westwell Labs has developed the so-called Q-Truck (or Qomolo-Truck), ‘a wirelessly charging, fully ATT, using cutting edge technology’. ‘Both technologically and commercially, the Parties consider the Q-Truck to be the most advanced ATT product available’ and ‘Westwell Lab may already be capable of mass production’. Parties’ response to Issues Statement, p 50.

¹⁵⁹⁴ In relation to Volvo, the Parties submitted that Volvo has developed the ATT “Vera”...Vera has already been deployed at APMT’s port facility in Gothenburg, Sweden but, to the best of the Parties’ knowledge the product is not yet fully operational’. The Parties said that the full and final rollout of this product is expected to happen within a few years. Parties’ response to Issues Statement, p 51.

¹⁵⁹⁵ Parties’ response to Issues Statement, paragraph 810 and footnote 161. Parties submissions, [REDACTED].

¹⁵⁹⁶ Parties submissions, [REDACTED].

importance of interoperability or already having an installed base of equipment from a particular supplier when choosing ATT.

- (c) The CMA's provisional findings attached excessive significance to the impact of the [REDACTED] due to certain factual errors, such as: i) ignoring the fact that the [REDACTED] and the fact that the Parties are free to promote and market other alternatives, including competing ATT systems; and ii) not taking into account the limited progress made under the [REDACTED].¹⁵⁹⁷

Evidence on competitive dynamics in the supply of ATT

- 10.18 In the section below, we summarise our conclusions regarding competition faced by Cargotec from Konecranes and from other third-party competitors in the supply of ATT. In reaching our conclusions, we have taken into account the Parties' submissions, shares of supply in TT, the Parties' internal documents, and evidence received from third parties.
- 10.19 [REDACTED] (and pursuant to this partnership the Merged Entity would have a contractual link with Terberg) [REDACTED]. We are not required to reach a view on exactly how Terberg is likely to develop its offering in future and therefore have taken into account this range of possibilities in our competitive assessment.

Shares of supply

- 10.20 As noted above, current TT suppliers are among those that are actively developing ATT offers. We consider that shares of supply for TT providers (see Table 49) are an initial point of reference for our assessment, in that players with strong sales in TT are likely to hold important capabilities required for a successful ATT offering. However, we recognise that a strong share of supply in TT may not in itself be determinative of success in ATT. We therefore consider a wider range of players (including those from outside of the TT sector) in the remainder of this Chapter.

¹⁵⁹⁷ Parties' Response to the Provisional Findings Report, paragraph 8.3.

Table 49: Shares of supply for TT, based on number of deliveries, 2017–19

Volume in units

Company	Geographic area					
	UK		Europe		Worldwide	
	Volume	Share	Volume	Share	Volume	Share
Cargotec	[REDACTED]	[30-40]% [REDACTED]	[REDACTED]	[10-20]% [REDACTED]	[REDACTED]	[30 - 40]% [REDACTED]
Konecranes	[REDACTED]	[0 - 5]% [REDACTED]	[REDACTED]	[0 - 5]% [REDACTED]	[REDACTED]	[0 - 5]% [REDACTED]
Combined	[REDACTED]	[30-40]% [REDACTED]	[REDACTED]	[10-20] % [REDACTED]	[REDACTED]	[30-40] % [REDACTED]
Terberg	[REDACTED]	[50-60] % [REDACTED]	[REDACTED]	[50-60] % [REDACTED]	[REDACTED]	[20-30] % [REDACTED]
Mafi	[REDACTED]	[0-5] % [REDACTED]	[REDACTED]	[5-10] % [REDACTED]	[REDACTED]	[REDACTED]
Capacity	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
TICO	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Autocar	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Shaanxi	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Sinotruk	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Others	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Total	[REDACTED]	100%	[REDACTED]	100%	[REDACTED]	100%

Source: Parties, Response to P1 RFI 3, [REDACTED]

Note: These shares of supply were submitted by the Parties. The CMA is not producing its own shares of supply for TT using third-party data.

- 10.21 We note that the Parties' estimates of shares (see Table 49) of supply are broadly consistent with an estimate of Cargotec's share of supply in a Cargotec internal document in relation to North Europe and at global level, prepared before the Merger was in contemplation.¹⁵⁹⁸ As explained below in paragraph 10.28, the same internal document shows that [REDACTED].
- 10.22 The shares set out in Table 49 above suggest that the supply of TT in the UK is effectively a duopoly, with Cargotec and Terberg accounting for essentially the entirety of supply. The position appears to be similar within Europe, albeit that Cargotec's share is lower and Mafi (and other smaller suppliers) account for a marginally larger share of supply.
- 10.23 The share data show that Terberg was the largest TT supplier in the UK and Europe over this period by a significant margin (with the fact that Terberg is regarded as the leading TT supplier being supported by the Parties' submissions, paragraph 10.15 above), while Cargotec was the second largest supplier. On a global basis, Cargotec is the largest supplier, followed

¹⁵⁹⁸ Cargotec internal document, [REDACTED].

by Terberg, with the two suppliers accounting for the majority of the market and holding significantly higher shares than any other supplier.

10.24 Mafi (a German company specialising in developing and producing heavy-duty vehicles for ports and industry)¹⁵⁹⁹ was the only other player to sell a material volume of units in the UK or Europe over this period.

10.25 While the shares of supply indicate that Konecranes has sold some TT over this period, Konecranes submitted that these sales occurred during the short period after it acquired MHPS's TT business in 2017, as part of the broader acquisition of MHPS, before ceasing TT production that same year. Konecranes submitted that, today, it only re-sells [REDACTED].¹⁶⁰⁰

Internal documents

10.26 We have reviewed a range of internal documents submitted by the Parties relating to ATT. The documents that we placed weight on as the most relevant to our competitive assessment are considered further below.

Internal documents relating to Cargotec's position in ATT

10.27 Cargotec's internal documents show [REDACTED]:

(a) [REDACTED].¹⁶⁰¹

(b) [REDACTED].¹⁶⁰²

Figure 25: [REDACTED].

[REDACTED]

Source: Cargotec internal document, [REDACTED].

10.28 We also reviewed several Cargotec internal documents that showed that Cargotec considers its TT division (including TT, electric TT and ATT) to be in a strong position, with ATT seen as a source of growth:

(a) [REDACTED].^{1603,1604}

(b) [REDACTED].¹⁶⁰⁵

¹⁵⁹⁹ <https://www.mafi.de/en/company/about-us/>. Accessed on 6 September 2021.

¹⁶⁰⁰ Parties response to CMA RFI 5, [REDACTED].

¹⁶⁰¹ Cargotec internal document, [REDACTED].

¹⁶⁰² Cargotec internal document, [REDACTED].

¹⁶⁰³ The scope of the Cargotec internal document, [REDACTED].

¹⁶⁰⁴ Cargotec internal document, [REDACTED].

¹⁶⁰⁵ Cargotec internal document, [REDACTED].

(c) [REDACTED].¹⁶⁰⁶

10.29 Konecranes' internal documents show that it is aware of Cargotec's ATT progress and considers that Cargotec is well-positioned to have a strong ATT offering. For example:

(a) Konecranes's [REDACTED] to Board of Directors document, produced by [REDACTED], Executive Vice President, Port Solutions, Konecranes, in September 2019 concludes that [REDACTED].¹⁶⁰⁷ The document assesses the [REDACTED] of a number of players. [REDACTED] receive the highest score in relation to both of these factors.¹⁶⁰⁸

(b) Konecranes '[REDACTED]' document, produced by [REDACTED], Executive Vice President, Port Solutions, Konecranes, in March 2019 (discussed above), also comments on [REDACTED] including Cargotec (Kalmar). In relation to Cargotec, the document notes that 'Kalmar has announced launch of automated TT for 2020 with lithium technology' and also notes 'Competition news - Kalmar automated terminal tractor (introduced 2019)'.¹⁶⁰⁹

(c) Konecranes' [REDACTED] for 2019-2025 (dated 17 December 2019) notes that 'traditional OEMs of manual TT like Kalmar [Cargotec]... have [REDACTED] and [REDACTED]. They have [REDACTED] and [REDACTED]...they want to keep up with coming market demands to secure their existing business'.¹⁶¹⁰

Internal documents relating to Konecranes' position in ATT

10.30 [REDACTED]:

(a) Konecranes [REDACTED], [REDACTED] document (dated 28 June 2017) includes a number of Q&A in relation to Konecranes and [REDACTED]. The document says that, when Konecranes and [REDACTED] team up, 'the customer gets [REDACTED] combined with Konecranes' long experience of automated horizontal transport. The customers receive turn-key automated solutions that not only include equipment but also yard process automation and full system integration. All of the automated operations run smoothly with the equipment control system TEAMS provided by TBA [Konecranes subsidiary]'. The document states that Konecranes 'is capable of delivering [REDACTED]' and that Konecranes has 'the largest fleet of automated

¹⁶⁰⁶ Cargotec internal document, [REDACTED].

¹⁶⁰⁷ Konecranes internal document, [REDACTED].

¹⁶⁰⁸ We note that this document [REDACTED].

¹⁶⁰⁹ Konecranes internal documents [REDACTED].

¹⁶¹⁰ Konecranes internal document, [REDACTED].

equipment out there and our approach allows us to fully commit to performance'.¹⁶¹¹

(b) In September 2020, an internal memorandum on the rationale of [REDACTED], noted that '[REDACTED]'.¹⁶¹²

(c) Konecranes' [REDACTED] (dated 17 December 2019) presents a SWOT (strengths, weaknesses, opportunities, threats) analysis of Konecranes' [REDACTED] and TBA. Strengths relating to [REDACTED] include its '[REDACTED]'. Strengths that appear to relate to Konecranes include [REDACTED]. A comment on the page notes that the analysis is not aligned with the BL/BU [ie business unit] analysis 'up to now'. As weaknesses of the [REDACTED], this document identifies the lack of [REDACTED], as well as [REDACTED], which can make new inventions [REDACTED].¹⁶¹³

(d) Konecranes' [REDACTED] (dated 17 December 2019) outlines Konecranes' view that there is 'large potential in container terminals' for [REDACTED]¹⁶¹⁴ and that target customer groups will include [REDACTED].¹⁶¹⁵ It assesses three scenarios, including one in which '[REDACTED]'. The other scenarios are: [REDACTED], in which Konecranes' share would be [REDACTED]% and [REDACTED], in which Konecranes' share would be [REDACTED].¹⁶¹⁶ The document notes that a combined Konecranes' solution of [REDACTED]. This suggests that Konecranes sees its wider position in other CHE (in particular A-RTG) as contributing to the strength of its ATT offer.¹⁶¹⁷

10.31 We consider that the documents described above broadly show that Konecranes has strong ambitions in the supply of ATT and sees its technological capabilities as well as its broader experience in HTE as among its relevant strengths.

10.32 In addition, as noted above in relation to Cargotec, a Konecranes internal document, produced in September 2019, concludes that '[REDACTED]'.¹⁶¹⁸ The document assesses the [REDACTED] and '[REDACTED] receive the highest score in relation to both of these factors.¹⁶¹⁹

10.33 In our review of Cargotec's internal documents, we found several references to Konecranes' ATT activity:

¹⁶¹¹ Konecranes internal document, [REDACTED].

¹⁶¹² Konecranes internal document, [REDACTED].

¹⁶¹³ Konecranes internal document, [REDACTED].

¹⁶¹⁴ Konecranes internal document, [REDACTED].

¹⁶¹⁵ Konecranes internal document, [REDACTED].

¹⁶¹⁶ Konecranes internal document, [REDACTED].

¹⁶¹⁷ Konecranes internal document, [REDACTED].

¹⁶¹⁸ Konecranes internal document [REDACTED].

¹⁶¹⁹ We note that this document [REDACTED].

(a) [REDACTED].¹⁶²⁰

(b) [REDACTED].¹⁶²¹

(c) [REDACTED].¹⁶²²

10.34 The internal documents discussed above in paragraph 10.30 also show that Konecranes has [REDACTED] broader experience in HTE, as being among key relevant strengths. Although Konecranes does not currently have all the capabilities to supply a complete ATT offering, for example because it does not currently produce a TT product, [REDACTED]. In this regard, as set out in Chapter 4, Konecranes had, in particular, both [REDACTED].

Internal documents relating to third-party competitors in ATT

10.35 We reviewed a number of Cargotec internal documents in which it monitors and assesses third-party ATT developments.

10.36 [REDACTED].¹⁶²³

10.37 [REDACTED].¹⁶²⁴

10.38 [REDACTED].¹⁶²⁵

10.39 [REDACTED]:

(a) [REDACTED].^{1626,1627}

Figure 26: [REDACTED].

[REDACTED].

Source: [REDACTED].

(b) [REDACTED].¹⁶²⁸

Figure 27: [REDACTED].

[REDACTED].

Source: [REDACTED].

¹⁶²⁰ Cargotec internal document, [REDACTED].

¹⁶²¹ Cargotec internal document, [REDACTED].

¹⁶²² Cargotec internal document, [REDACTED].

¹⁶²³ Cargotec internal document, [REDACTED].

¹⁶²⁴ Cargotec internal document, [REDACTED].

¹⁶²⁵ Cargotec internal document, [REDACTED].

¹⁶²⁶ Cargotec internal document, [REDACTED].

¹⁶²⁷ We note that [REDACTED].

¹⁶²⁸ Cargotec internal document, [REDACTED].

(c) [REDACTED].¹⁶²⁹

(d) [REDACTED].¹⁶³⁰

(e) [REDACTED].¹⁶³¹

10.40 We also reviewed a [REDACTED]:

(a) [REDACTED].

(b) [REDACTED].¹⁶³²

10.41 [REDACTED]:

(a) [REDACTED].

(b) [REDACTED].

(c) [REDACTED].

(d) [REDACTED].¹⁶³³

10.42 As set out below, we also reviewed a number of Konecranes' internal documents in which it comments on third-party ATT developments.

10.43 Konecranes's [REDACTED] to Board of Directors document, produced by [REDACTED], Executive Vice President, Port Solutions, Konecranes, in September 2019 (also discussed above), assesses the [REDACTED]. The third-party players assessed against these criteria are [REDACTED]). Each of these players receives a lower score than [REDACTED] on both criteria. These third parties are assessed as being [REDACTED] in relation to [REDACTED] (see Figure 28).^{1634,1635}

Figure 28: [REDACTED]

[REDACTED]

Source: Konecranes internal document, [REDACTED].

10.44 Konecranes '[REDACTED]' document, produced by [REDACTED], Executive Vice President, Port Solutions, Konecranes in March 2019 also discussed above), comments on ATT developers including [REDACTED]. In particular:

¹⁶²⁹ Cargotec internal document, [REDACTED].

¹⁶³⁰ Cargotec internal document, [REDACTED].

¹⁶³¹ Cargotec internal document, [REDACTED].

¹⁶³² Cargotec internal document, [REDACTED].

¹⁶³³ Cargotec internal document, [REDACTED].

¹⁶³⁴ Konecranes internal document, [REDACTED].

¹⁶³⁵ We note that this Konecranes internal document [REDACTED].

(a) In relation to [REDACTED], the document refers to [REDACTED] with one of the leading TT manufacturer [REDACTED] for container handling terminals. [REDACTED] and refers to [REDACTED] position in the TT market.

(b) The document comments on a possible [REDACTED]. It says that [REDACTED].¹⁶³⁶

10.45 We also reviewed Konecranes' [REDACTED] for 2019-2025 dated 17 December 2019 (also discussed above). This document assesses different groups of potential competitors. These include [REDACTED].

10.46 Overall, the document appears to rate the first group ([REDACTED]) as being the strongest competitors, noting that [REDACTED]. The document appears to include ZPMC in this first group and comments that ZPMC's 'expansion into automated Terminal Tractors is very likely and should be monitored closely'.

10.47 In relation to the second group ([REDACTED]), the document comments that the big players like [REDACTED] have [REDACTED] and have [REDACTED]', while adding that 'they are [REDACTED]'.

10.48 The document notes that it is unclear if the third group ([REDACTED]) have a long-term interest in ports or industrial applications, but notes that as [REDACTED].¹⁶³⁷

10.49 Overall, in our view, these documents demonstrate that the Parties consider that there are a wide range of suppliers that could be active within the supply of ATT, with Cargotec in particular monitoring announcements about electric and automated vehicle pilots and other developments in relation to a wide range of third parties.

10.50 Some of the documents that we reviewed included more detailed analysis. In particular, we note that a Cargotec document rated [REDACTED].¹⁶³⁸ We note that Konecranes' documents comment on the strength of [REDACTED], while more broadly suggesting that traditional TT OEMs have a [REDACTED].

Third-party evidence

Competitor views

10.51 In relation to its own ATT offering, Terberg told us that:

(a) Its [REDACTED].¹⁶³⁹

¹⁶³⁶ Konecranes internal document, [REDACTED].

¹⁶³⁷ Konecranes internal document, [REDACTED].

¹⁶³⁸ Cargotec internal document, [REDACTED].

¹⁶³⁹ Call note, [REDACTED].

(b) Terberg [REDACTED].¹⁶⁴⁰ However, [REDACTED].¹⁶⁴¹

(c) In this regard, Terberg noted that it has recently announced a co-operation with EasyMile.¹⁶⁴² Terberg told us that this was to develop a 'proof of concept' autonomous tractor in Benschop (Netherlands). [REDACTED].

(d) Terberg [REDACTED].¹⁶⁴³

10.52 In relation to other ATT players, Terberg said that it sees a number of companies who are looking to develop autonomous driving trucks in Europe, Asia and America, including Cargotec, other CHE suppliers, truck manufacturers and technology companies.¹⁶⁴⁴

10.53 Terberg referred to Cargotec tests of an ATT three years ago.¹⁶⁴⁵ Terberg understands that the American companies, such as Waymo, are not developing the TTs themselves but rather are approaching manufacturers in the market, [REDACTED], to supply these vehicles. Terberg expect that the Chinese companies will develop the TTs (or their equivalent) themselves.¹⁶⁴⁶

10.54 Terberg noted [REDACTED].¹⁶⁴⁷

10.55 Terberg also mentioned that Aidrivers (UK) focuses on automated equipment, but not ATT.¹⁶⁴⁸

10.56 Terberg said that it was too early to say which of the ATT offers being developed would be strongest.¹⁶⁴⁹

10.57 In relation to [REDACTED].¹⁶⁵⁰

Other competitor views

10.58 In relation to its own ATT offer, Westwell Lab said that:

(a) Westwell's Q-Truck ATT has been 'released commercially for about 3 years' and are in operation in terminals such as Terminal D of Laem

¹⁶⁴⁰ Call note, [REDACTED].

¹⁶⁴¹ Call note, [REDACTED].

¹⁶⁴² News template page (royalterberggroup.com). See <https://www.royalterberggroup.com/en/news/news-template-page/41086>.

¹⁶⁴³ Call note, [REDACTED]. See https://www.kalmarglobal.com/news--insights/articles/2018/20180710_the-worlds-first-terminal-tractor-test-track/.

¹⁶⁴⁴ Call note, Call note, [REDACTED].

¹⁶⁴⁵ Call note, [REDACTED].

¹⁶⁴⁶ Call note, [REDACTED].

¹⁶⁴⁷ Call note, [REDACTED].

¹⁶⁴⁸ Call note, [REDACTED].

¹⁶⁴⁹ Call note, [REDACTED].

¹⁶⁵⁰ Call note, [REDACTED].

Chabang in Thailand, CSP in Abu Dhabi, and Terminal C of Tianjin Port in China.¹⁶⁵¹ In a call with the CMA, [REDACTED].

(b) In Terminal D of Laem Chabang (operated by HPH), six ATT have been working together with manual trucks in the past year. This operation will [REDACTED].¹⁶⁵² In a call with the CMA, [REDACTED].¹⁶⁵³

(c) In relation to [REDACTED].¹⁶⁵⁴

10.59 Westwell also highlighted the differences between autonomous road vehicles (where responding to unexpected hazards is important) and container handling autonomous trucks (where having a high tolerance – ie the ability to make very precise movements – is very important). Westwell considers Q-Truck's precise vehicle control to be one of its strengths.¹⁶⁵⁵

10.60 In response to the CMA questionnaire, [REDACTED].¹⁶⁵⁶ Westwell made the following comments [REDACTED]:

(a) Westwell said [REDACTED].¹⁶⁵⁷ However, in a call with the CMA, [REDACTED].¹⁶⁵⁸

(b) Westwell said that [REDACTED].¹⁶⁵⁹

(c) Westwell noted [REDACTED].¹⁶⁶⁰

10.61 In relation to its own ATT offer, [REDACTED] said that:

(a) It has entered a partnership with US TT manufacturer [REDACTED] to develop zero emissions TTs for the UK and European markets. It said these vehicles will form the basis for a global ATT [REDACTED].

(b) Production of zero emission TTs is planned for early 2023, with an ATT offering following shortly afterwards, on a bespoke per-customer project basis. [REDACTED] confirmed that it plans to enter the UK market with this ATT offer.¹⁶⁶¹

10.62 In relation to competitors' ATT offers, [REDACTED] said that:

¹⁶⁵¹ Response to P2 questionnaire [REDACTED].

¹⁶⁵² Response to P2 questionnaire [REDACTED].

¹⁶⁵³ Call note, [REDACTED].

¹⁶⁵⁴ Response to questionnaire [REDACTED].

¹⁶⁵⁵ Call note, [REDACTED].

¹⁶⁵⁶ Response to P2 questionnaire, [REDACTED].

¹⁶⁵⁷ Response to P2 questionnaire, [REDACTED].

¹⁶⁵⁸ Call note, [REDACTED].

¹⁶⁵⁹ Response to P2 questionnaire, [REDACTED].

¹⁶⁶⁰ Call note, [REDACTED].

¹⁶⁶¹ Response to ATT questionnaire, [REDACTED].

- (a) The only potential competitors that could currently or in the future have an ATT offering in the UK market are Terberg (using a Konecranes system) and Gaussin.
- (b) In addition, Kalmar (Cargotec) could potentially expand into this market post-Merger using Konecranes technology and that the Merged Entity 'would have the machines and all of the required system technology to do so...this would present a serious challenge to other market participants and new entrants'.
- (c) While it monitors public announcements about the ATT sector and tries to keep informed about developments in the field, 'there is a limited amount of information on active projects available in the public domain'.¹⁶⁶²

10.63 In relation to how UK customers would choose which ATT supplier to use, [X] said that 'the most important factors are not the type or brand of the physical gantry crane, but instead (1) the fleet management system and (2) the terminal operating system used by the terminal. This is because the Automated Terminal Tractors need to be linked with both systems effectively in order for the automation to function correctly. This is critical for the success of the automation project and is a challenge to achieve. Technology lock-in and supplier lock-in of these technologies are possible'.¹⁶⁶³

10.64 [X] said that the Merger will have a significant impact on the market for the supply of ATT to UK customers. It said that:

- (a) Kalmar (Cargotec) is the global market leader in TT. Both Kalmar and Konecranes have a strong position in container terminal automation. Konecranes has already worked on ATT projects but has not previously had a TT offering.
- (b) The combination of these companies will produce the global market leader for TT, and most likely the global market leader in (installed) terminal automation systems also.¹⁶⁶⁴

10.65 [X] also noted the market shares of Terberg and Kalmar as the strengths of those players.¹⁶⁶⁵ It said that Terberg and now Konecranes/Kalmar (Cargotec) 'controls' [sic] the European ATT market.

¹⁶⁶² Response to ATT questionnaire, [X].

¹⁶⁶³ Response to ATT questionnaire, [X].

¹⁶⁶⁴ Response to ATT questionnaire, [X].

¹⁶⁶⁵ The CMA's [X].

10.66 [REDACTED] said [REDACTED].¹⁶⁶⁶

10.67 The [REDACTED] said that it does not currently supply ATT in the UK (or elsewhere) [REDACTED]. As a result, it said it was not in a position to respond to the CMA's other questions regarding ATT.¹⁶⁶⁷

10.68 [REDACTED] told us that it currently does not have a very clear road map for the development of ATT and that there is a lot of uncertainty and it cannot say when it will be in a position to market an ATT.¹⁶⁶⁸

Customer questionnaire evidence on ATT

10.69 We asked a sample of the Parties' UK CHE customers about their intentions in relation to purchasing ATT in the UK, with 13 customers responding to at least one of our questions regarding ATT. Of these 13 respondents:

(a) 11 said that they had not considered purchasing ATT for any existing or planned UK sites, whereas two customers had considered doing so.¹⁶⁶⁹

(b) None of these 13 customers said that they expected to purchase ATT for UK sites in the next five years (one said 'TBC' and the others said 'no' or did not respond).¹⁶⁷⁰

10.70 While these responses indicate that customers in the UK are not purchasing ATT at present (and do not have any specific plans to purchase ATT in the near future), we consider, for the reasons set out in paragraph 10.8 above, that various suppliers are already in the process of competing to supply ATT in the UK in future. For example, while [REDACTED] told us that it is considering options for future investment, including for ATT, it does not currently have any plans use ATT,¹⁶⁷¹ two third parties, [REDACTED].¹⁶⁷²

10.71 We asked customers of the Parties to rate the importance of various criteria in future purchasing decisions for ATT (scores out of 5, where 5 is the most important).¹⁶⁷³ The eight responses to this question indicated that:

¹⁶⁶⁶ Response to ATT questionnaire [REDACTED].

¹⁶⁶⁷ Response to P2 questionnaire, [REDACTED].

¹⁶⁶⁸ Transcript of call [REDACTED].

¹⁶⁶⁹ Questionnaire question, '[h]ave you considered purchasing Automated Terminal Tractors for any of your existing or planned UK sites?'

¹⁶⁷⁰ Questionnaire question, '[d]o you expect to purchase ATT for UK sites within the next five years?'

¹⁶⁷¹ Transcript of call [REDACTED].

¹⁶⁷² Call note, [REDACTED].

¹⁶⁷³ Questionnaire question, '[w]hen thinking about purchasing ATT in the UK, please score the following factors according to how important they are to your choice of supplier: (i) differences in equipment reliability, (ii) differences in automation/assistive technology features, (iii) differences in purchase price, (iv) differences in running costs, (v) differences in strength of aftersales presence (servicing, maintenance, spare parts), (vi)

- (a) Differences in equipment reliability were considered very important, with all eight respondents to this question scoring reliability at 5;
- (b) Differences in automation/assistive technology features, purchase price, running costs, aftersales services, efficiency/environmental performance were also considered relatively important by most respondents (each of these criteria received a mix of scores between 3 and 5 from each customer, except for efficiency/environmental performance (which received a score of 2 from one customer), and running costs (which received a score of 1 from one customer));
- (c) Views were more mixed in relation to the importance of the degree of interoperability with other equipment (four customers gave it a score of 3, one gave it a score of 4, one scored it as 1 and two scored it as 5); and
- (d) Already having an installed base of equipment from a particular supplier was generally rated as being least important of the criteria that we asked about (three customers gave it a score of 2 or lower, one scored it between 2 and 3, two did not score this criterion, and only three scored it 3 or more).

10.72 We asked these customers about the extent to which they had recently monitored and/or tested the market for ATT and felt well-informed about suppliers' strengths and weaknesses.¹⁶⁷⁴ Given that the knowledge of customers about the details of potential ATT suppliers' development plans is by nature limited, we place relatively limited weight on this evidence. The 11 responses to this question were as follows:

differences in efficiency/environmental performance, (vii) degree of interoperability with other equipment, (viii) already having an installed base of equipment from a particular supplier, (ix) other.'

¹⁶⁷⁴ Questionnaire question, '[h]ave you recently monitored and/or tested the market for ATT and to what extent do you feel well-informed about suppliers' strengths and weaknesses?'

Table 50: CHE customer assessments of whether they have recently monitored/tested the ATT market and feel well-informed about suppliers

<i>Response option</i>	Number of responses
(i) Have recently monitored and/or tested the market, and overall feel well-informed about suppliers in the market and their strengths and weaknesses	1
(ii) Have not recently monitored and/or tested the market, and overall feel well-informed about suppliers in the market and their strengths and weaknesses	3
(iii) Have recently monitored and/or tested the market, and overall do not feel well-informed about suppliers in the market and their strengths and weaknesses	1
(iv) Have not recently monitored and/or tested the market, and overall do not feel well-informed about suppliers in the market and their strengths and weaknesses	6

Source: Responses to CMA questionnaire.

10.73 Finally, we asked customers of the Parties which ATT suppliers they would expect to consider as viable options, supposing that they were planning to purchase ATT in the UK within the next five years.¹⁶⁷⁵ Among the four respondents that identified themselves as feeling well-informed about ATT suppliers (response options (i) and (ii) above):¹⁶⁷⁶

- (a) Three mentioned Terberg, three mentioned Cargotec, one mentioned Konecranes and one did not list any suppliers; and
- (b) No other providers were mentioned.

10.74 As set out at paragraph 10.17(a), the Parties submitted that our provisional findings were based on limited evidence of uncertain probative value, in particular because customers did not envisage purchasing ATT in the next five years and seven of the 13 did not feel well informed about ATT. We do not agree with this assessment. First, it is not surprising that these customers do not have specific plans to acquire ATT in the near future, given the emerging nature of this market. Second, our assessment is not only based on evidence from customers. While we have (as noted above and in our provisional findings) placed limited weight on evidence from customers (for the reasons set out above), evidence from the Parties' internal documents and from competitors is broadly consistent in indicating that

¹⁶⁷⁵ Questionnaire question, '[s]uppose that you were planning to purchase ATT in the UK within the next five years. What suppliers would you expect to consider?'

¹⁶⁷⁶ We do not present here the responses of three further respondents; this is because they identified themselves as not feeling well-informed about ATT suppliers (response options (iii) and (iv) above).

Terberg and Cargotec will be among the main future suppliers of ATT in Europe.

10.75 As set out in paragraph 10.17(b), the Parties submitted that our provisional findings were selective in placing weight on the integration capabilities of Konecranes and Cargotec, even though customers responding to the CMA questionnaire placed limited weight on the importance of interoperability or already having an installed base of equipment from a particular supplier when choosing ATT. We note that Cargotec's integration capability is only one of the factors that makes it likely to become one of the main future suppliers of ATT in Europe. Our assessment is based on the consideration of a range of factors (taken together), including: Cargotec's significant market share in TT, its sales and servicing network, and its in-depth knowledge and customer relationships in the CHE industry. In addition, we note that two customers out of eight that responded to our question about purchasing criteria (see paragraph 10.71) this question scored the importance of the degree of interoperability with other equipment as 5 (very important). The first said that: 'Automation [sic] requires close interaction of systems and other equipment'¹⁶⁷⁷ and the second said that 'The degree of interoperability is important for ATT due to the specific / specialist nature of the deployment application and systems.'¹⁶⁷⁸ One customer of the Parties also stated that: 'All the knowledge and experience they [Cargotec] gain[s] from automated stacking cranes or automated straddles or tractors, can be applied to the automation of the tractors' and this customer also noted that interoperability was important between ATT and automated SC.¹⁶⁷⁹

Other evidence relating to ATT development by potential alternative suppliers

10.76 We also note a range of other announcements, and media commentary, about possible developments in relation to the supply of ATT. In particular:

- (a) Gaussin has announced on its website that it has developed a fully autonomous ATT (APM 75T). A news article from UPS, dated November 2020, states that it is testing 'electronic shifters' developed in cooperation with Gaussin in its London hub.¹⁶⁸⁰
- (b) A news article describes the trial of Volvo's Vera (an electronic, connected and autonomous vehicle) at APMT's port facility in

¹⁶⁷⁷ Response to P2 questionnaire [redacted].

¹⁶⁷⁸ Response to P2 questionnaire [redacted].

¹⁶⁷⁹ Transcript of call with [redacted].

¹⁶⁸⁰ UPS Press release (November 2020), UPS To Test Gaussin Autonomous-Enabled EV's To Move Trailers At Its London Hub [online] available at <https://about.ups.com/us/en/newsroom/press-releases/innovation-driven/ups-to-test-gaussin-autonomous-enabled-ev-s-to-move-trailers-at-its-london-hub.html> [accessed 24 November 2021].

Gothenburg (with the headline ‘Volvo Trucks presents an autonomous transport between a logistics centre and port’). The article suggests that Vera seems to have been trialled in a port context and that Volvo is working with Nvidia to develop AI for autonomous trucks.¹⁶⁸¹

(c) A news article from May 2021 describes how MAN is testing self-driving trucks for use in hub-to-hub container traffic, with practice tests carried out with a self-driving truck in regular traffic at HHLA Container Terminal Altenwerder in Germany.¹⁶⁸² The article goes on to describe that HHLA and MAN ‘are developing and testing self-driving trucks for use in hub-to-hub container traffic.’ Another article (dated 27 July 2021) describes a project in Ulm, Germany to ‘automate transshipment between transport modes’ (ie between the rail and container hubs).

(d) Scania is engaged in a multi-year project involving autonomous trucks which will be platooned on public roads in Singapore.¹⁶⁸³

10.77 We consider that these news articles and press releases are broadly consistent with the position that a range of firms, with differing capabilities, are developing technologies that could be deployed in automated CHE. While some of the pilots referred to above are in automated vehicles that would transport containers in a terminal context (eg lift trucks or driverless trucks), it is not clear whether these firms will develop products that will be close alternatives to the Parties’ ATT offers. In particular, Scania, MAN and Volvo’s innovations appear to focus on hub-to-hub (as opposed to within-terminal) driverless trucks, whereas Gaussin’s ‘electronic shifter’ has been developed for a warehouse application (for UPS). It is therefore not clear whether vehicles developed by these players will be a close alternative to the parties’ ATT.

¹⁶⁸¹ Volvo Group (June 2019), ‘Vera’s first assignment: Volvo Trucks presents an autonomous transport between a logistics centre and port’ [online], available at <https://www.volvogroup.com/en/news-and-media/news/2019/jun/news-3336083.html> [accessed 24 November 2021].

¹⁶⁸² ShipInsight (June 2021), ‘Successful trial of automated trucks in the Port of Hamburg’ [online], available at <https://shipinsight.com/articles/successful-trial-of-automated-trucks-in-the-port-of-hamburg/> [accessed 24 November 2021].

¹⁶⁸³ Scania, ‘Autonomous truck platoon in Singapore’ [online], available at <https://www.scania.com/sg/en/home/experience-scania/features/autonomous-truck-platoon-in-singapore.html> [accessed 24 November 2021].

Overall assessment of closeness of competition and potential competitive constraints in the supply of ATT

10.78 Based on the evidence set out above, we have assessed the competitive position of the Parties and the potential constraints that they would face, absent the Merger, in the supply of ATT.

The Parties

10.79 Based on the evidence set out above, [REDACTED].

10.80 Cargotec has a strong existing position in TT (being one of only two main players), with a share of [REDACTED][30-40]% within the UK, and its internal documents show [REDACTED], in-depth knowledge and customer relationships) [REDACTED]¹⁶⁸⁴. The prospective competitors and customers that we heard from (customers that consider themselves to be 'well informed' but do not have access to confidential information about ATT suppliers' development plans) generally expect Cargotec to be a main player in ATT. Internal documents set out above, clearly show that Cargotec (as well as Konecranes) have strong integration capabilities. We agree with (and have taken into account) the Parties' submission that other suppliers may have strengths in relation to integration and other capabilities relevant for the supply of ATT, although the evidence indicates that this is an important strength of Cargotec's and Konecranes' offer.

10.81 Konecranes also has a strong incentive [REDACTED] to become an important player in the supply of ATT. In particular, Konecranes had [REDACTED]. The internal documents set out above in paragraph 10.30 and 10.31 also show that Konecranes possesses a number of attributes to be a significant competitive presence.

10.82 We also note, however, that Konecranes currently has some gaps in the capabilities required to provide a compelling ATT offering (most notably the lack of a TT offer). While Konecranes was taking steps to address these limitations (eg [REDACTED]), the evidence available to us does not suggest that it was as well-placed as Cargotec (and some other suppliers) as a supplier of ATT. In this regard, we consider that Konecranes should be considered as one of the other suppliers that also possess or are developing similar capabilities, but not among the strongest competitors in the supply of ATT.

¹⁶⁸⁴ While the Parties told us that integration capability may become obsolete as a requirement in the future, because of the potential development of fully autonomous rather than automated vehicles, we have seen limited evidence to support this assertion (see Parties submission, [REDACTED]).

Terberg

- 10.83 Based on the evidence summarised above, we consider that Terberg (like Cargotec) is likely to become one of the main competitors in the supply of ATT in Europe.
- 10.84 In particular, Terberg has a very strong established position in the supply of conventional TT, holding a share of [50-60] [%] in the UK for example, which we consider is likely to be a material competitive advantage in the supply of ATT. It has advanced plans in relation to the supply of ATT, is already working with a number of technology partners (including Konecranes and others), and appears to possess the capabilities to be a material competitor to the Parties in ATT. We note, in particular, that Konecranes considered [%] to be 'one of the leading TT manufacturer(s)'.¹⁶⁸⁵
- 10.85 We note that [%] currently has a [%] as a result of a change of control over Konecranes and therefore would only be [%], following the Merger, if either [%].¹⁶⁸⁶ [%].¹⁶⁸⁷
- 10.86 On completion of the Merger, all assets and liabilities of Konecranes transfer to Cargotec.¹⁶⁸⁸ Such assets and liabilities include [%], meaning that the Merged Entity (including the Cargotec business) will succeed Konecranes [%].¹⁶⁸⁹ of ATT [%].
- 10.87 [%] in relation to the supply of ATT.
- 10.88 Earlier in the investigation, [%].¹⁶⁹⁰ [%].
- 10.89 [%].¹⁶⁹¹ [%]:
- (a) [%];¹⁶⁹²
 - (b) [%];¹⁶⁹³

¹⁶⁸⁵ Konecranes internal document, [%].

¹⁶⁸⁶ Konecranes internal document, [%].

¹⁶⁸⁷ Konecranes internal document, [%].

¹⁶⁸⁸ See Chapter 3 and Merger Notice, [%].

¹⁶⁸⁹ See Chapter 4 for details.

¹⁶⁹⁰ Call notes, [%].

¹⁶⁹¹ We note in relation to the Parties' submissions that the [%], is a 'loose' agreement that (see paragraph 10.14. above) the purpose of the [%] with [%] was clearly to develop and market the ATT developed by [%] and Konecranes. The [%] envisages the parties working closely to develop a strong ATT offering and promoting it jointly and separately. Notably, as set out in Chapter 4, the parties to the [%]. It can reasonably be expected that they intended to bid for contracts jointly [%].

¹⁶⁹² Konecranes internal document, [%].

¹⁶⁹³ Konecranes internal document, [%].

(c) [REDACTED];¹⁶⁹⁴

(d) [REDACTED];¹⁶⁹⁵ and

(e) [REDACTED].¹⁶⁹⁶

10.90 In response to the Parties' submission that our provisional findings attached excessive significance to the impact of the [REDACTED] (see (c)), our view is not that the [REDACTED] would eliminate competition between the Merged Entity and Terberg, but that it would soften competition between these parties. As is clear from the provisions summarised above, the parties to the [REDACTED] will [REDACTED] and [REDACTED]. Konecranes has also [REDACTED]. Further, to the extent that 'limited progress' has been made under the [REDACTED] (see the Parties' submission at (c)), this may reflect that this is an emerging market and, in any case, does not provide a basis to conclude that the [REDACTED] would no longer bind the Merged Entity and Terberg (in the ways outlined above) in relation to potential current and future projects.

10.91 Therefore, although Terberg would be a very strong potential ATT supplier and impose a significant constraint on Cargotec absent the Merger, the competitive constraint that Terberg would impose is likely to be substantially softened as a result of the contractual link that the Merger will establish between the Merged Entity and Terberg.

Other potential suppliers of ATT

10.92 There are a number of other players that are developing ATT solutions. The level of constraint that each of these potential competitors would likely impose on the Merged Entity varies.

10.93 The evidence that we have reviewed suggests that Westwell Lab/Q-Truck and the Hyster-Capacity-VDL partnership are likely to provide a material constraint on the Merged Entity. [REDACTED]. On the other hand, third parties did not list Q-Truck as a main competitor or as an option they would consider if buying ATT in the UK in future (although that may be justified by the lack of detailed knowledge of potential ATT suppliers' development plans). In keeping with evidence in relation to other product areas, we consider that a significant possible weakness for Westwell Lab/Q-Truck (and similar players) could be its limited track record in Europe.

¹⁶⁹⁴ Konecranes internal document, [REDACTED].

¹⁶⁹⁵ Konecranes internal document, [REDACTED].

¹⁶⁹⁶ Konecranes internal document, [REDACTED].

- 10.94 Another material potential competitor is the Hyster-Capacity-VDL partnership. This partnership would benefit from Capacity's TT position, VDL's technology (highlighted in internal docs) and Hyster's position in CHE. Capacity has a 10% share of TT worldwide [REDACTED] (although the third parties that we heard from did not list Hyster, Capacity or VDL as a main competitor or as an option they would consider if buying ATT in the UK in future).
- 10.95 We have seen some evidence that ZPMC/Shaanxi, Sany and Sinotruk are also developing ATT. The Parties' internal documents considered above refer to these suppliers, but these documents and other evidence suggest that these players may not be as well advanced in ATT as the likes of Terberg and Q-Truck. In addition, it is not clear whether these players would have the sales and servicing capabilities to be a material constraint in ATT in Europe in the early stages of this market.¹⁶⁹⁷ Although ZPMC is present in Europe in the supply of cranes and, to a limited extent, HTE, it does not currently supply TT or MEQ in Europe.¹⁶⁹⁸ As noted in paragraph 10.20, Shaanxi and Sinotruk sell TT in some regions but did not sell TT in Europe during the period 2017-19 and so do not appear to have an established presence in Europe. Sany sells certain MEQ in Europe, but not TT. Overall, we consider that this group of suppliers is likely to impose a materially weaker competitive constraint on the Merged Entity than suppliers such as Westwell Lab/Q-Truck and the Hyster-Capacity-VDL partnership.
- 10.96 We consider that other potential suppliers of ATT in future (individually or in partnerships with others) include Einride, Volvo, MAN and Gaussin. These potential suppliers do not appear to have experience of, and a track record in, the supply of CHE to port terminals and we have heard that ATT for container handling terminals requires different capabilities as compared to autonomous vehicles for road applications.¹⁶⁹⁹ These suppliers therefore appear to face very material barriers in providing a close alternative to the Merged Entity. We therefore consider that these players would likely impose a weaker competitive constraint on the Merged Entity than both the most significant competitors to the Merged Entity (ie Westwell Lab/Q-Truck and the Hyster-Capacity-VDL) or the secondary constraints (ie ZPMC/Shaanxi, Sany and Sinotruk).
- 10.97 The Parties also suggested that competition would come from other players including technology companies (such as Waymo/Alphabet, Microsoft and

¹⁶⁹⁷ See paragraph 10.68 about Terberg's development and marketing plans.

¹⁶⁹⁸ As noted by the Parties, 'the structure of supply for terminal tractors, which are relatively commoditised high-volume products, differs from other horizontal transport equipment markets (and is more similar to mobile equipment markets)'. Source: Merger Notice, [REDACTED].

¹⁶⁹⁹ See Konecranes' internal document [REDACTED] and the third-party evidence set out in paragraph 10.59.

Amazon). However, most of the evidence available to us does not suggest that these players will impose a material constraint on the Merged Entity. The Parties undertake some monitoring of these players in their internal documents but appear to generally consider these players to be less well-placed in ATT, as compared to players that are actively developing ATT in a container handling terminal setting. We therefore do not consider that these suppliers will be a material competitive presence in the supply of ATT.

10.98 Overall, Westwell Lab/Q-Truck and the Hyster-Capacity-VDL partnership seem to be well placed to compete with the Merged Entity in ATT. While there are other potential suppliers of ATT that may compete with the Parties in future, there are doubts as to whether these players will provide a close alternative to the Merged Entity's ATT offer, especially in the early stages of the ATT market.

Conclusion on the effect of the Merger on potential competition in the supply of ATT

10.99 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.

10.100 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.

10.101 As noted above, 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.

10.102 Other than Terberg 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 the supply of ATT.

10.103 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.

11. Vertical effects

Framework and approach

- 11.1 In this Chapter, we assess two main types of vertical theories of harm: input foreclosure and customer foreclosure.
- 11.2 In relation to input foreclosure, we considered whether the Merged Entity would have the ability and incentive to stop supplying spreaders for cranes ('crane spreaders'), or worsen the terms of spreader supply, in order to foreclose downstream rivals of the Merged Entity in MHC.¹⁷⁰⁰ While the Merged Entity would also have a vertical position in relation to RTG and ASC, since we have found SLCs as a result of horizontal unilateral effects in each of these markets (see Chapter 7), we have not considered it necessary to assess the potential for any additional vertical effects of the Merger in these two markets.
- 11.3 In relation to customer foreclosure, we considered whether the Merged Entity would have the ability and incentive to switch purchases of spreaders for MEQ ('mobile spreaders') from one of its rivals to itself, foreclosing this competitor in the mobile spreader market.
- 11.4 In assessing vertical theories of harm, the CMA considers whether three cumulative conditions are met: whether the merged entity would have the ability to foreclose its rival (downstream rivals in the case of input foreclosure

¹⁷⁰⁰ We note that, for MHC, as only Konecranes is active in the supply of MHCs, the Merger creates a new vertical link. For RTG and ASC, the Merger combines Cargotec and Konecranes' downstream businesses in these markets.

and upstream rivals in the case of customer foreclosure), whether it would have the incentive to do so, and whether the effects of such foreclosure would substantially lessen overall competition.¹⁷⁰¹ The CMA's guidance state that the CMA is likely to apply the ability, incentive, effect framework flexibly and consider these as overlapping analyses.¹⁷⁰²

Input foreclosure

- 11.5 The CMA's guidance states that '[t]he CMA may consider a wide range of mechanisms through which the merged entity could potentially harm its rivals when supplying inputs. These may include, for example: refusing or restricting supply, increasing prices, reducing quality or service levels, deteriorating product interoperability, slowing the rollout of upgrades, restricting licensing of intellectual property, shutting down APIs [Application Programming Interfaces], reprioritising R&D spending, or limiting access to data. The CMA's focus will be on understanding if, collectively, these would allow the merged entity to foreclose its rivals, not on predicting the precise actions it would take'.¹⁷⁰³
- 11.6 In relation to ability, the CMA's guidance adds that when assessing whether the merged entity will have the ability to foreclose its rivals, the CMA will typically focus on two issues - market power upstream and the importance of the input.¹⁷⁰⁴
- 11.7 In relation to incentive, the CMA's guidance states that even where a merged entity would have the ability to foreclose its rivals, it may not have the incentive to do so. This is because while foreclosure may result in additional profits downstream, it may also result in costs such as a loss of sales upstream. If these costs are greater than the benefits, the merged entity will not have the incentive to engage in input foreclosure. The CMA therefore considers whether a merged entity would have the incentive to pursue a foreclosure strategy, in particular through a consideration of the magnitude and likelihood of the costs and benefits.¹⁷⁰⁵ The CMA's assessment of incentives may consider, for example, gain in downstream sales, loss of upstream sales, relative profit margins, other costs and benefits and business strategy considerations).¹⁷⁰⁶

¹⁷⁰¹ [CMA129](#), paragraphs 7.9-7.10 and 7.23-7.25.

¹⁷⁰² [CMA129](#), fn 119.

¹⁷⁰³ [CMA129](#), paragraph 7.13.

¹⁷⁰⁴ [CMA129](#), paragraph 7.14.

¹⁷⁰⁵ [CMA129](#), paragraph 7.16.

¹⁷⁰⁶ [CMA129](#), paragraph 7.19.

- 11.8 In relation to effect, the CMA's guidance states that the CMA will consider whether the harm to competitors it has identified will result in substantial harm to overall competition in the downstream market.¹⁷⁰⁷
- 11.9 The CMA has used this framework to consider input foreclosure in relation to Cargotec's supply of crane spreaders for MHC.

Customer foreclosure

- 11.10 The concern with a customer foreclosure theory of harm is that the merged entity may use its control of a downstream firm to switch purchases from rivals to itself, and thereby restrict its competitors' access to customers. While a loss of sales by competitors is not problematic in and of itself, and a firm using its own inputs can result in efficiencies, this may be a concern if it would result in these rival suppliers becoming less effective competitors for other customers. The merged entity would then face less competition in the upstream market, resulting in higher prices and lower quality.¹⁷⁰⁸
- 11.11 Like input foreclosure, customer foreclosure is assessed based on ability, incentive and effect. In the case of customer foreclosure, the ability assessment typically focuses on the size of the customer and the importance of scale upstream.¹⁷⁰⁹ Incentive is considered in relation to the benefit of additional sales upstream and the potential cost of losing sales downstream.¹⁷¹⁰ In relation to effect, the CMA will consider whether the harm to competitors it has identified will result in substantial harm to overall competition in the upstream market.¹⁷¹¹

Market definition

Spreaders

Product market definition

- 11.12 The Parties submitted that there was limited demand-side substitutability between crane spreaders and mobile spreaders, as they may have a different size, shape or lifting capacity. They explained that crane spreaders often have a 'twin-lift' mode that allows them to grip two containers at once,

¹⁷⁰⁷ CMA129, paragraph 7.20.

¹⁷⁰⁸ CMA129, paragraph 7.23.

¹⁷⁰⁹ CMA129, paragraph 7.26.

¹⁷¹⁰ CMA129, paragraph 7.27.

¹⁷¹¹ CMA129, paragraph 7.28.

while mobile spreaders are ‘single-lift’.¹⁷¹² Cargotec’s internal documents support this. For example, a document [REDACTED].¹⁷¹³

- 11.13 Overall, we consider that there is limited demand-side substitutability between crane spreaders and mobile spreaders.
- 11.14 The Parties submitted that there was a high degree of supply-side substitutability between crane spreaders and mobile spreaders. They submitted that all suppliers of mobile spreaders are active in the supply of crane spreaders and that suppliers representing around [REDACTED]% of the global share of supply of crane spreaders are active in the supply of mobile spreaders.¹⁷¹⁴ They added that suppliers active in the supply of one type of spreader could easily, and with minimal additional cost and time, expand or switch their production to other types of spreader.¹⁷¹⁵
- 11.15 We note that, while many suppliers are active in both Crane and mobile spreaders, some focus on supplying only one of these (such as RAM and VDL for crane spreaders and Elme for mobile spreaders). We also note that a large manufacturer of crane spreaders [REDACTED] is not active in the supply of mobile spreaders.¹⁷¹⁶
- 11.16 We heard from a spreader manufacturer [REDACTED] that it would be ‘difficult for a supplier of crane spreaders to expand into the supply of mobile spreaders’ because it requires ‘scale’, ‘experience’ and ‘a good reputation with customers’ to be competitive. This manufacturer added that the market is ‘conservative’, which makes it ‘difficult to convince a customer to switch spreader supplier’ and noted that crane spreaders are more bespoke than mobile spreaders, with major components differing between these.^{1717,1718}
- 11.17 Overall, we consider that there is some supply-side substitutability between Crane and mobile spreaders, but not to the extent claimed by the Parties.
- 11.18 Our conclusion is that crane spreaders and mobile spreaders are not part of the same product market.

¹⁷¹² Parties’ response to Issues Statement, paragraph 9.7.

¹⁷¹³ Cargotec internal document, [REDACTED]. See also a similar Cargotec internal document [REDACTED].

¹⁷¹⁴ Parties submission, [REDACTED].

¹⁷¹⁵ Parties’ response to Issues Statement, paragraph 9.8.

¹⁷¹⁶ E-mail from third-party, [REDACTED].

¹⁷¹⁷ Call note, [REDACTED].

¹⁷¹⁸ Call note, [REDACTED].

Geographic market definition

- 11.19 The Parties submitted that the spreader market is worldwide in scope.
- 11.20 We note that, for both crane spreaders and mobile spreaders, the structure of supply is similar when considered on a European-wide basis and on a worldwide basis.¹⁷¹⁹
- 11.21 For the purposes of our competitive assessment, it was not necessary to conclude on the precise geographic scope of these product markets. We therefore do not consider geographic market definition further.

MHC

Product market definition

- 11.22 The Parties did not submit any views regarding the appropriate product market in relation to MHC.
- 11.23 We note that the Parties' classified MHC as a 'quay crane' and noted several differences between different types of quay crane.¹⁷²⁰ For example, they explained that STS 'are usually found in medium to large sized terminals' whereas MHC 'are typically only used in lower-volume ports and in bulk and general cargo areas of large container terminals'.¹⁷²¹
- 11.24 These points were supported by the views of a third-party [REDACTED], which also noted some differences between MHC and other Quay Cranes from a demand-side perspective. In particular, it stated that STS are 'not very moveable' and are 'usually used for container handling', while MHC are 'much more mobile' and 'can be used for bulk handling and heavy lifting as well as container handling'. It also said that STS cost around 'twice the price of a similarly sized MHC' but typically have 'twice the productivity'.¹⁷²²
- 11.25 Overall, the evidence that we have reviewed indicates that demand-side substitutability between MHC and other types of crane is limited.
- 11.26 In relation to supply-side substitution, we note that there are significant differences in the competitor set for MHC as compared with other cranes. For example, Cargotec is not active in the supply of MHC, despite supplying

¹⁷¹⁹ For example, for crane spreaders, Bromma's share was [50–60] [REDACTED]% in Europe and [50–60] [REDACTED]% worldwide over 2017 to 2019 on the basis of volumes; for mobile spreaders, Elme's share was [60–70] [REDACTED]% in both Europe and worldwide over the same period. Source: Parties' response to P1 RFI 3, [REDACTED].

¹⁷²⁰ Merger Notice, [REDACTED].

¹⁷²¹ Merger Notice, [REDACTED].

¹⁷²² Call note, [REDACTED].

a wide range of other types of crane. Also, a third-party [REDACTED] said that it is 'highly unlikely' that a manufacturer of other cranes would be able to switch production to MHC due to 'technical know-how' that would be 'difficult to replicate'.¹⁷²³

- 11.27 Overall, the evidence that we have reviewed indicates that supply-side substitutability between MHC and other types of crane is limited.
- 11.28 Our conclusion is that MHC are in a separate product market from other types of crane.

Geographic market definition

- 11.29 The Parties did not submit any views regarding the appropriate geographic market definition in relation to MHC.
- 11.30 We note that the structure of supply for MHC is similar when considered on a European-wide basis and on a worldwide (excluding China) basis.¹⁷²⁴
- 11.31 For the purposes of our competitive assessment, it was not necessary to conclude on the precise geographic scope of the MHC product market. We therefore do not consider geographic market definition further.

Input foreclosure in the supply of crane spreaders to MHC suppliers

Parties' views

- 11.32 The Parties submitted that the Merged Entity would have no ability to engage in a foreclosure strategy in MHC and that it would not be plausible for it to do so:
- (a) Crane spreaders are not a significant input (they account for only [REDACTED]% of the crane price),¹⁷²⁵ so increasing spreader prices would not be a plausible foreclosure mechanism. In addition, the Parties estimated that just under half of MHC are used for bulk rather than container handling and use 'grabbers' instead of spreaders.¹⁷²⁶

¹⁷²³ Call note, [REDACTED].

¹⁷²⁴ Konecranes and Liebherr have high shares, and a combined share of over [REDACTED]%, both in Europe and worldwide (excluding China) over 2017-19 on a volume basis. Source: Parties' response to P1 RFI 3, [REDACTED].

¹⁷²⁵ Parties' response to Issues Statement, paragraph 9.11.

¹⁷²⁶ Parties submission, [REDACTED].

- (b) There is significant competition in the supply of spreaders, with standalone spreader suppliers already accounting for around [40 – 50] [%] of crane spreader sales worldwide.¹⁷²⁷
- (c) Crane spreader customers may be expected to switch in response to any hypothetical foreclosure strategy. This behaviour would be facilitated by the fact that some manufacturers of MHC multi-source spreaders ([%]).¹⁷²⁸ End customers (such as ports) could also directly source Bromma spreaders post-Merger.¹⁷²⁹

11.33 Overall, the Parties submitted that there is no evidence to suggest that the Merged Entity would have the ability and the incentive to engage in input foreclosure.¹⁷³⁰

Our assessment

11.34 We have considered whether, as a result of this Merger, the Merged Entity may attempt to restrict rivals' access to Bromma crane spreaders, or offer spreaders on worse terms (such as offering inferior delivery slots), directly harming the rivals' competitiveness and therefore competition in the downstream market for MHC.

11.35 Together, Konecranes and Liebherr account for over [%] of the downstream MHC market.¹⁷³¹ [%] expressed concerns that the Merged Entity could 'increase the price it charges to [%] [for Bromma spreaders] or reduce their current delivery slots'.¹⁷³²

11.36 In relation to ability to foreclose, we note that spreaders represent a small proportion of the cost of a crane,¹⁷³³ but can have a significant impact on crane reliability.¹⁷³⁴ We also note that Bromma has a significant position upstream in the supply of crane spreaders:

- (a) The Parties' data shows that Bromma had a [50–60] [%] share in the supply of crane spreaders to third parties worldwide from 2017 to 2019 (volume based), followed by RAM with [20–25] [%], Stinis with [10–20]

¹⁷²⁷ Parties' response to Issues Statement, paragraph 9.12.

¹⁷²⁸ Parties' response to Issues Statement, paragraph 9.11.

¹⁷²⁹ Parties' response to Issues Statement, paragraph 9.14.

¹⁷³⁰ Parties submission, [%].

¹⁷³¹ Parties response to RFI [%].

¹⁷³² Call note, [%].

¹⁷³³ Parties submission [%].

¹⁷³⁴ Parties Response to RFI [%].

[REDACTED]%, ZPMC with [0–5] [REDACTED]% and Elme with [0–5] [REDACTED]%. Others accounted for [5–10] [REDACTED]%.¹⁷³⁵

- (b) An internal document from 2020 suggests that Bromma has a higher share in relation to MHC spreaders; it states that Bromma has around '[REDACTED]'.¹⁷³⁶
- (c) [REDACTED] said that 70% of its spreader purchases for MHC are from Bromma and that this is primarily driven by customer choice, as customers see Bromma as an established brand in the market and most customers insist on Bromma spreaders.¹⁷³⁷

11.37 However, most MHC are not supplied with spreaders. Spreaders are required for MHC that are used for container handling, but not for MHC that are used for bulk cargo handling.¹⁷³⁸ Around 85% of the [REDACTED] MHC sold by Liebherr in Europe over 2018-20,¹⁷³⁹ and around 55% of the [REDACTED]MHC sold by Konecranes in Europe over the same period, were not supplied with spreaders.¹⁷⁴⁰

11.38 Where MHC are supplied with spreaders, the evidence available to us suggests that end-users specify the spreader brand required and have a firm preference for Bromma in only a minority of cases:

- (a) Data submitted by Konecranes shows that, of [REDACTED] MHC tenders in Europe that it participated in over 2018 to 2020 that included a spreader, only [REDACTED] specified a spreader brand. In most of those tenders ([REDACTED]) the brand specified was Bromma.¹⁷⁴¹
- (b) Evidence from third parties also suggests that some MHC end-users requiring spreaders have a specific preference for Bromma, or prescribe another specific spreader brand, whereas others do not.¹⁷⁴²

11.39 Bromma also sells crane spreaders directly to end users ([REDACTED]). Cargotec said that, to the best of Bromma's knowledge, [REDACTED] ([REDACTED]).¹⁷⁴³ However, we received some third-party evidence suggesting that, while there may be added convenience to purchasing cranes and spreaders as a package,

¹⁷³⁵ Parties Response to RFI [REDACTED].

¹⁷³⁶ Cargotec internal document, [REDACTED]

¹⁷³⁷ Call note, [REDACTED].

¹⁷³⁸ Call note, [REDACTED].

¹⁷³⁹ Response to CMA RFI, [REDACTED].

¹⁷⁴⁰ Konecranes' submitted that, of [REDACTED] MHC sold in Europe over 2018-20, [REDACTED] were supplied with no spreader, whereas [REDACTED] were supplied with a spreader. Source: Konecranes response to CMA RFI 6 [REDACTED].

¹⁷⁴¹ Konecranes response to CMA RFI 6 [REDACTED].

¹⁷⁴² Call note, [REDACTED].

¹⁷⁴³ Cargotec response to CMA RFI 4 [REDACTED].

customers buying new cranes may be able to source and fit their preferred spreaders directly (rather than through their crane supplier).¹⁷⁴⁴

- 11.40 Overall, the evidence above suggests that the number of MHC sales opportunities where the Merged Entity may have the ability to reduce Liebherr's competitiveness (for example, by raising prices on Bromma spreaders or offering inferior delivery slots) in MHC is relatively small.
- 11.41 We therefore conclude that the Merged Entity would not have the ability to successfully engage in input foreclosure in the supply of crane spreaders to MHC suppliers. As we are concluding that the Merged Entity would lack the ability to foreclose rivals in the supply of crane spreaders to MHC suppliers, we have not considered in further detail whether the Merged Entity would have the incentive to pursue such a strategy or the overall effect of a foreclosure strategy on competition.
- 11.42 Our conclusion is that the Merger is not likely 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 in the supply of mobile spreaders

Parties' views

- 11.43 The Parties submitted that the Merged Entity would have no ability or incentive to engage in customer foreclosure strategies by diverting Konecranes' demand for mobile spreaders from its current supplier, Elme,¹⁷⁴⁵ to the Merged Entity, Bromma, and therefore foreclosing access by Elme to a sufficient customer base.¹⁷⁴⁶
- 11.44 The Parties submitted that Konecranes is not an essential customer for Elme. Konecranes estimated that it accounted for [X]% of Elme's total spreader sales for MEQ over the period 2018 to 2020. The Parties further submitted that Konecranes accounted for only [X]% of all externally supplied mobile spreaders over the same period. As such, the Parties submitted that Elme would still have a sufficiently large customer base in the

¹⁷⁴⁴ [X] said that 'end-users normally prefer a combined package' of MHC and spreader, because in that case they do not have to worry about interface issues between the crane and the spreader. However, [X] also said that it is 'not difficult' for end users buying new MHC to source and fit the spreader themselves and that '[X] is able to ensure proper communication with all types of cranes and to support the customer with the commissioning of the spreader under the crane'. [X] response to CMA RFI [X].

¹⁷⁴⁵ Konecranes currently purchases all of its spreaders for MEQ from Elme. Merger Notice, [X].

¹⁷⁴⁶ Merger Notice, [X].

downstream market to compete for, even if it lost some or all of its sales to Konecranes.¹⁷⁴⁷

- 11.45 The Parties further submitted that, in response to hypothetical foreclosure, Elme could switch its production capacity from mobile spreaders to crane spreaders without incurring significantly higher costs, thus limiting any potential loss of efficiency.¹⁷⁴⁸
- 11.46 The Parties submitted that Bromma's internal customers (ie, Cargotec) currently do not enjoy preferential prices in comparison to Bromma's external customers and there is no reason why this would change post-Merger.¹⁷⁴⁹
- 11.47 The Parties submitted that a customer foreclosure strategy would not affect the competitiveness of rivals to the Merged Entity that are vertically integrated with their own spreader production because these rivals could easily shift capacity towards producing mobile spreaders in-house.¹⁷⁵⁰

Our assessment

- 11.48 We have considered whether, as a result of this Merger, the Merged Entity may attempt to harm its rivals' competitiveness in the mobile spreader market by reducing its demand for Elme's mobile spreaders, and therefore harm competition in this market.
- 11.49 In relation to ability to foreclose, the evidence that we have reviewed shows that Konecranes is an important customer of mobile spreaders for Elme and that scale brings cost efficiencies in the manufacture of these spreaders:
- (a) In relation to Konecranes' significance as a customer, Elme submitted that, between 2016 and 2020, the value of sales of mobile spreaders to Konecranes accounted for [30–40] [%] of its total sales of mobile spreaders.¹⁷⁵¹ Elme's other mobile spreader customers include Hyster (which buys all of its spreaders from Elme) and Sany (which buys some of the spreaders that it requires from Elme).¹⁷⁵²
- (b) In relation to the importance of scale, Elme submitted that 'it is more cost efficient to manufacture bigger volumes of spreaders'.¹⁷⁵³ This is supported by [%], which told the CMA that 'to be competitive you need

¹⁷⁴⁷ Parties' response to Issues Statement, paragraphs 10.3–10.4.

¹⁷⁴⁸ Parties' response to Issues Statement, paragraph 10.5.

¹⁷⁴⁹ Parties submission [%].

¹⁷⁵⁰ Parties' response to Issues Statement, paragraph 10.6.

¹⁷⁵¹ Konecranes internal document, [%].

¹⁷⁵² Response to P1 questionnaire [%].

¹⁷⁵³ Call note [%].

volume' in the supply of spreaders.¹⁷⁵⁴ A Cargotec internal document also states that [REDACTED].¹⁷⁵⁵

11.50 However, it is not clear whether the potential reduction in scale for Elme (due to the Merged Entity favouring Bromma) and any consequent rise in its prices would have a significant impact on demand for Elme's spreaders. This is because of the following factors:

- (a) First, we note that Elme offers a wider portfolio range of mobile spreaders than Bromma, with non-standard and specialised spreaders accounting for around [30 - 40]% of Elme's sales, which may make it difficult for some purchases to be switched to Bromma.¹⁷⁵⁶
- (b) Second, the evidence available to us indicates that purchasers of mobile spreaders do not like being reliant on a manufacturer of spreaders that is a competitor in downstream MEQ markets. For example, Cargotec states in an internal document that [REDACTED].¹⁷⁵⁷
- (c) Third, the scale of the potential rise in price of Elme's mobile spreaders is unlikely to lead to a significant increase in the price that downstream suppliers would need to charge for their MEQ. Elme estimated that a direct price increase of at least 10% would be necessary to maintain its current profit level if it were to lose Konecranes as a customer.¹⁷⁵⁸ Since spreaders represent around [REDACTED]% of the price of MEQ, a 10% increase in spreader price would be equivalent to around [REDACTED]% of the price of a unit of MEQ.¹⁷⁵⁹ Given that price is only one of several important purchasing criteria for end users, MEQ manufacturers that continue to buy from Elme may not lose many sales in downstream MEQ markets.

11.51 The potential for Elme to be able to retain customers was reflected in [REDACTED] comments on the potential impact of the Merger. While it expressed concerns that it could be forced to buy Bromma spreaders to stay competitive, it also noted that switching spreader supplier was difficult and involved high costs, and listed reasons including Elme's quality and 'full line' as reasons for currently buying from Elme.¹⁷⁶⁰

¹⁷⁵⁴ Response to P1 questionnaire [REDACTED].

¹⁷⁵⁵ Cargotec internal document, [REDACTED].

¹⁷⁵⁶ Transcript of call, [REDACTED].

¹⁷⁵⁷ Parties Annex 18.2, [REDACTED].

¹⁷⁵⁸ Response to CMA s 109, [REDACTED].

¹⁷⁵⁹ ECH spreaders bought by Konecranes had an average unit price of £[REDACTED], and ECH sold for an average unit price of £[REDACTED]. Response to RFI [REDACTED]. RS spreaders bought by Konecranes had an average unit price of £[REDACTED] and RS sold for an average unit price of £[REDACTED] to £[REDACTED].

¹⁷⁶⁰ Response to P1 questionnaire, [REDACTED].

- 11.52 In terms of alternative sales channels that are available to Elme, we consider that self-supply of mobile spreaders by other MEQ manufacturers (in respect of standard mobile spreaders) may limit the scope for Elme to grow its demand from other sources. However, to the extent that the Merger may lead to a small number of end users of MEQ switching their purchases away from the Merged Entity and towards competitors such as Hyster that favour Elme spreaders (for example, due to the Merged Entity increasing its prices), this could lead to a small increase in the demand for Elme mobile spreaders. We also note Elme's submission that, if the Merged Entity decided to phase out Konecranes MEQ and thereby reduce its demand for Elme spreaders, this would take 3 to 5 years.¹⁷⁶¹ This suggests that Elme would have some time to explore alternative sources of demand.
- 11.53 Overall, for the reasons above, we conclude that the Merged Entity may not have the ability to foreclose Elme in the mobile spreader market.
- 11.54 For completeness, even if the Merged Entity were to be considered to have the ability to engage in customer foreclosure (which we do not consider to be the case), we believe that such a strategy would not have a material effect on competition. In this regard, we considered whether, by reducing its demand for Elme mobile spreaders, the Merged Entity could weaken Elme's competitiveness and, in turn, lead to a loss of competition in downstream MEQ markets. We believe, however, that an increase in the price of Elme spreaders would not have a significant adverse effect on the competitiveness of MEQ suppliers that currently favour Elme (for the reasons set out in paragraph 11.51(c) above), and therefore would not have a significant adverse effect on competition in these downstream MEQ markets.
- 11.55 Our conclusion is therefore that the Merger may not be expected to result in an SLC as a result of customer foreclosure in relation to the supply of mobile spreaders.

12. Countervailing Factors

- 12.1 When considering whether a merger may be expected to result in an SLC, we consider countervailing factors that may mitigate the effect of a merger on competition (often known as countervailing factors) which in some cases may mean there is no SLC.
- 12.2 There are two main countervailing factors:

¹⁷⁶¹ Transcript of call, [REDACTED].

- (a) the entry and/or expansion of third parties in reaction to the effects of a merger; and
- (b) merger efficiencies.¹⁷⁶²

Countervailing factors: entry and expansion

- 12.3 As set out in the Merger Assessment Guidelines, any analysis of a possible SLC includes consideration of the direct responses to the merger by rivals, potential rivals, and customers. If effective entry and/or expansion occurs as a result of the merger and any consequent adverse effect (for example, a price rise), the effect of the merger on competition may be mitigated. In these situations, the CMA might conclude that no SLC arises as a result of the merger.¹⁷⁶³
- 12.4 The CMA considers that entry and/or expansion preventing an SLC from arising would be rare.¹⁷⁶⁴
- 12.5 The CMA will seek to ensure that the evidence is robust when confronted with claims of entry or expansion being timely, likely, and sufficient to prevent an SLC from arising. It is likely to place greater weight on detailed consideration of entry or expansion and previous experience of entry and expansion (including how frequent and recent it has been).¹⁷⁶⁵
- 12.6 In the Chapters about each theory of harm, we take account of evidence relating to entry and expansion in each of the relevant markets that would have occurred irrespective of the Merger.
- 12.7 In this Chapter, we assess any barriers to entry or expansion in the relevant markets affected by the Merger and whether any actual or potential competitor is likely to enter or expand in the relevant markets as a result of the Merger, in a timely and sufficient manner to offset the adverse effects of the Merger.
- 12.8 This Chapter is structured as follows:
 - (a) We set out the CMA's framework for assessing entry and expansion.
 - (b) We discuss barriers to entry and / or expansion and other market conditions, including the views of the Parties and evidence from third

¹⁷⁶² CMA129, paragraph 8.1.

¹⁷⁶³ CMA129, paragraph 8.28.

¹⁷⁶⁴ CMA129, paragraph 8.29.

¹⁷⁶⁵ CMA129, paragraph 8.30.

party and internal documents, that may affect the extent, timing and likelihood of entry following the Merger.

- (c) We identify potential sources of entry and expansion in the relevant markets, looking both at examples of recent entry and at any evidence of specific entry plans as a result of the Merger.

12.9 The Parties have suggested that the entry and expansion of Chinese competitors has already significantly altered the competitive landscape in the UK and Europe, which we consider within our competitive assessment. For the most part, the Parties' submissions appear to focus on developments that would occur irrespective of the Merger. By contrast, this assessment of entry and expansion as a countervailing factor considers how rivals, potential rivals and customers might respond to the Merger.

CMA framework for assessing entry and expansion

12.10 The Merger Assessment Guidelines state that in determining whether entry or expansion as a result of the Merger would prevent an SLC, we will consider whether such entry or expansion would be: (a) timely;¹⁷⁶⁶ (b) likely;¹⁷⁶⁷ and (c) sufficient.^{1768,1769}

12.11 These conditions are cumulative and must be satisfied simultaneously.¹⁷⁷⁰

12.12 The Merger Assessment Guidelines also state that potential or actual competitors may encounter barriers which reduce or even severely hamper their ability to enter or expand in the market.¹⁷⁷¹

12.13 Barriers to entry and/or expansion are specific features of a market that give incumbent firms advantages over potential competitors. Where such barriers are low, the merged entity is more likely to be constrained by entry; conversely, this is less likely where barriers are high.¹⁷⁷² The Merger Assessment Guidelines identify the following common barriers to entry and expansion, relevant for the assessment below:

¹⁷⁶⁶ CMA129, paragraphs 8.33-8.34.

¹⁷⁶⁷ CMA129, paragraph 8.35.

¹⁷⁶⁸ CMA129, paragraph 8.37.

¹⁷⁶⁹ CMA129, paragraph 8.31.

¹⁷⁷⁰ CMA129, paragraph 8.32.

¹⁷⁷¹ CMA129, paragraph 8.40.

¹⁷⁷² CMA129, paragraph 8.5.

- (a) Initial set-up costs: Initial set-up costs and costs associated with investment in specific assets are more likely to deter entry or expansion where a significant proportion of them are sunk.^{1773,1774}
- (b) Reputation: Customers may place a high value on the reputation and strong track record and reputation of suppliers.¹⁷⁷⁵ This might be especially true where the product or service being provided is important for the customer, and where the quality of the product is difficult to ascertain in advance.
- (c) Brand loyalty: Consumers may demonstrate a high level of brand loyalty, be tied into long contracts or exclusivity agreements, or face other significant switching costs, which may make entry or expansion more difficult and require investment.¹⁷⁷⁶
- (d) Economies of scale: Economies of scale may be present.¹⁷⁷⁷ These may prevent small-scale entry from acting as an effective competitive constraint in the market. Further, in the presence of economies of scale, large-scale entry or expansion will generally be successful only if it expands the total market significantly, or substantially replaces one or more existing firm; and if the entrant can afford the risk that such investment will involve, especially in terms of sunk costs.¹⁷⁷⁸
- (e) Technology: Technology and production methods used in the market may need to be taken into account by entrants (for example, intellectual property rights of rivals and interoperability requirements).¹⁷⁷⁹
- (f) Early mover advantages: Incumbents may have early mover advantages as a result of branding or creating switching costs. The data held by many digital market firms allow them to hone, improve and personalise their products and services, and this may be difficult for an entrant to replicate in a timely manner. Early mover advantages may be strengthened by the combination of the merger firms.¹⁷⁸⁰

12.14 Barriers to entry and expansion might be particularly high if some of these factors are present in combination.¹⁷⁸¹

¹⁷⁷³ In this context, 'sunk' costs refers to costs which cannot be recovered when exiting from the market.

¹⁷⁷⁴ CMA129, paragraph 8.41(a).

¹⁷⁷⁵ CMA129, paragraph 8.41(b).

¹⁷⁷⁶ CMA129, paragraph 8.41(c).

¹⁷⁷⁷ These arise where average costs fall as the level of output rises over a range of output volume.

¹⁷⁷⁸ CMA129, paragraph 8.41(d).

¹⁷⁷⁹ CMA129, paragraph 8.41(f).

¹⁷⁸⁰ CMA129, paragraph 8.41(g).

¹⁷⁸¹ CMA129, paragraph 8.42.

12.15 When considering the likelihood of successful entry by third parties, we may consider the strategic behaviour of the merged entity or other incumbents which itself might create or strengthen a barrier to entry or limit the ability of a new entrant to gain a foothold in the market.¹⁷⁸²

Parties' views on entry or expansion

12.16 The Parties told us that, in their view, barriers to entry are 'generally low'. The Parties provided two main reasons for this opinion:

(a) '[C]ontainer handling equipment manufacturing is largely an assembly business with widespread outsourcing of component production. Heavy CHE (cranes and horizontal transport equipment) is often assembled in the same versatile facilities and the same is true for different types of mobile equipment. This reduces the investment costs of entry or expansion'.

(b) '[T]here are no significant impediments in terms of intellectual property rights or know-how that would constitute significant barriers to entry'.¹⁷⁸³

12.17 The Parties told us that 'there may be certain customary barriers to entry and expansion to the CHE industry (similar to other industries), such as product development costs or the need for proven references. However, the Parties submitted that these barriers, are 'by no means insurmountable, as demonstrated by successful recent entrants, such as ZPMC in the area of straddle and shuttle carriers'.¹⁷⁸⁴

12.18 In response to the CMA's Provisional Findings Report, the Parties told us that, 'potential competition is an important competitive constraint on the Parties and will continue to be so post-Merger'.¹⁷⁸⁵ The Parties also submitted that:

(a) The [CMA's] assessment of the costs of entry is unreasonable, and is premised on serious logical and methodological errors.¹⁷⁸⁶

(b) The CMA's provisional view that significant levels of investment, over a long period of time, are necessary to enter the market relies on 'material

¹⁷⁸² CMA129, paragraph 8.43.

¹⁷⁸³ Merger Notice [redacted].

¹⁷⁸⁴ Merger Notice [redacted].

¹⁷⁸⁵ Parties' Response to the Provisional Findings Report, paragraph 5.1.

¹⁷⁸⁶ Parties' Response to the Provisional Findings Report, paragraph 5.2.

of little to no probative value’ and fails to take account of relevant evidence.¹⁷⁸⁷

- (c) Major suppliers commonly use sub-contractors to design and manufacture components that are common to multiple types of yard cranes, including to RTGs. These subcontractors typically work with several manufacturers and, under this business model, the costs are significantly lower than indicated in the Provisional Findings Report, as no upfront investment is required to develop manufacturing capacity.¹⁷⁸⁸
- (d) The Provisional Findings report unreasonably fails to take account of the specific considerations that would apply to Chinese State-backed or State-owned rivals, or established competitors in adjacent markets.¹⁷⁸⁹
- (e) Chinese suppliers: ‘(i) are not necessarily driven by “standard” commercial drivers, but often by wider geopolitical considerations; and (ii) have greater access to financial resources than “independent” companies.’ The Parties consider that even if there were “significant” costs of entry, these ‘are highly unlikely to deter Chinese rivals given their access to capital and the broader strategic imperatives of the Chinese State in this sector’.¹⁷⁹⁰
- (f) The CMA fails to consider whether the barriers to entry that the CMA alleges exist would deter entry or expansion by the Parties’ actual and potential Chinese rivals.¹⁷⁹¹
- (g) ‘[T]he clear evidence of the growth in supply by Chinese competitors to UK customers in particular clearly refutes any notion that Chinese rivals are inhibited by barriers to entry or otherwise deterred from entering. Key examples include ZPMC’s success in supplying STS cranes globally (including the UK), ZPMC’s success in supplying RTG in the UK, Sany’s entry and significant growth in RS (accounting for [X]) as well as its growth in ECH, and Shacman in conjunction with ZPMC winning a very significant order for electronic TTs from HPH Felixstowe in 2021’.¹⁷⁹²

¹⁷⁸⁷ Parties’ Response to the Provisional Findings Report, paragraph 5.2.

¹⁷⁸⁸ Parties’ Response to the Provisional Findings Report, paragraph 5.3.

¹⁷⁸⁹ Parties’ Response to the Provisional Findings Report, paragraph 5.4.

¹⁷⁹⁰ Parties’ Response to the Provisional Findings Report, paragraph 5.5.

¹⁷⁹¹ Parties’ Response to the Provisional Findings Report, paragraph 5.6.

¹⁷⁹² Parties’ Response to the Provisional Findings Report, paragraph 5.7.

- (h) Many customers (particularly port customers) seek to purchase equipment from different suppliers so as not to be dependent on any one OEM.¹⁷⁹³
- (i) '[A]s Cargotec's position in STS cranes [✂] (see section 2 above) demonstrate, it is possible for new entrants to rapidly take over a market over a relatively short period of time, particularly where the new entrants are able to undercut incumbents on price'.¹⁷⁹⁴

12.19 Further, the Parties told us that, in their opinion, the evidence base referred to in the Provisional Findings report was insufficient. In particular, the Parties submitted that:

- (a) '[T]he third-party evidence relied upon in the [Provisional Findings report] across each of the markets is inconsistent and suggests a lack of clarity regarding the question being asked';¹⁷⁹⁵
- (b) '[T]he CMA has not received sufficient feedback from customers to be able to claim that the views it cites are representative of the overall market. In both yard cranes and mobile equipment, the CMA appears to have received feedback on interoperability from just three customers, whereas in SC/ShC the PFs do not appear to have received any customer feedback at all (instead seemingly basing its conclusions purely on competitor feedback)';¹⁷⁹⁶
- (c) 'Where the CMA has received customer feedback, it does not give an indication of the importance of the customers concerned on the relevant purchasing markets or indeed their experience in assessing interoperability of products. This omission prevents the Parties from assessing the evidential weight of the feedback and, if necessary, effectively challenging the PFs' reliance on it. For example, if the customers that are averse to multi-sourcing account for only a small proportion of potential sales, their preference will not be a barrier to entry or expansion on the relevant markets';¹⁷⁹⁷
- (d) '[T]he third-party feedback is mixed, rather than negative'.¹⁷⁹⁸
- (e) '[T]he PFs conclude that having a strong and local track record is an important competitive advantage, which represents a barrier to entry for

¹⁷⁹³ Parties' Response to the Provisional Findings Report, paragraph 5.10.

¹⁷⁹⁴ Parties' Response to the Provisional Findings Report, paragraph 5.11.

¹⁷⁹⁵ Parties' Response to the Provisional Findings Report, paragraph 5.3.

¹⁷⁹⁶ Parties' Response to the Provisional Findings Report, paragraph 5.9.

¹⁷⁹⁷ Parties' Response to the Provisional Findings Report, paragraph 5.9.

¹⁷⁹⁸ Parties' Response to the Provisional Findings Report, paragraph 5.9.

both non-European rivals and for potential rivals. This assessment relies on third party feedback that is, at best, mixed, as well as documents that are of little to no probative value.¹⁷⁹⁹

12.20 In relation to this last set of submissions from the Parties about the evidence relied upon by the CMA within its assessment, we note the following:

- (a) We do not consider that the evidence received from third parties in relation to the scale of barriers to entry and expansion in each market points in materially different directions. In any case, to the extent that the views submitted may differ to some extent, we do not agree that this suggests a 'lack of clarity' in the questions that were posed to third parties, but are more likely explained by distinct features of each of the relevant markets or differing views among market participants. The set of competitors that responded to our questions in relation to each of the markets are not always the same, because some competitors are only present in some of the relevant markets. It is also not uncommon to receive mixed views from third parties, even within the same relevant market. Where we observe that the evidence from third parties is mixed, we take this into account in our assessment.
- (b) As explained in Chapter 6 (see paragraphs 6.74 to 6.86), we consider that we received responses from a sufficiently representative sample of customers. We are also of the view that the evidence on which we reached our provisional findings in the Provisional Findings Report, including in relation to barriers to entry and expansion, was sufficiently robust. We note the Parties' submission that the evidence base referred to in the Provisional Findings Report was insufficient (set out in paragraph 12.19). We have included additional evidence in this Chapter. Some of that evidence was gathered before the Provisional Findings Report (eg a few qualitative statements made by some third parties in their response to the CMA's questionnaires about specific barriers to entry). Other evidence, such as evidence related to the availability of effective distributors in the UK, was gathered through questionnaires or in response hearings following the Provisional Findings Report. The additional evidence on the importance of having interoperable connectivity solutions was collected in response hearings and the Parties made representations on such evidence in response to the Remedies Working Paper. Overall, the additional evidence included in this report further supports the provisional views set out in the Provisional Findings Report. As such, it does not change the gist of our

¹⁷⁹⁹ Parties' Response to the Provisional Findings Report, paragraph 5.12.

provisional views on barriers and expansion as set out in the Provisional Findings Report.

- (c) We address the Parties' submission set out in paragraph 12.19(c) above in paragraph 6.17(c) of Chapter 6.
- (d) In relation to paragraphs 12.19 (d) and (e), we note that the CMA's assessment of third party views is qualitative rather than quantitative and forms only part of the broad evidence base on which the CMA has reached its conclusions. The CMA does not consider specific pieces of evidence in isolation when considering the question of an SLC, although it is common for the CMA to weight pieces of evidence differently.¹⁸⁰⁰ In making our assessment, we consider the evidence from the Parties and third parties on barriers to entry and/or expansion in the round together with the evidence set out in other chapters of this report.

Barriers to entry and/or expansion

- 12.21 We consider below whether there are barriers to entry or expansion in each of the markets where we have found an SLC.
- 12.22 We have focused our assessment on four main barriers to entry and expansion:
 - (a) The investment and time required to enter and/or expand;
 - (b) The importance of having a strong track record and reputation;
 - (c) The importance of having established customer relationships; and
 - (d) The importance of having interoperable connectivity solutions.
- 12.23 Based on our understanding of the industry (as set out in Chapter 2) we consider that the barriers to entry and expansion listed above can, for the purposes of our assessment, be grouped into three broad categories of types of CHE:
 - (a) Gantry Cranes, (which includes RTG and ASC)

¹⁸⁰⁰ CMA129, paragraphs 2.19 – 2.25.

(b) Horizontal Transport Equipment (which includes SC, ShC and ATT¹⁸⁰¹);
and

(c) Mobile Equipment (which includes RS, HDFL and ECH).

12.24 We consider that some barriers to entry and/or expansion, such as the importance of having established customer relationships and having interoperable connectivity solutions, are not specific to particular markets, so we assess them across multiple markets.

The investment and time required to enter and/or expand

12.25 Suppliers must invest in facilities and staff in order to be able to develop CHE products, manufacture or assemble CHE, market CHE, and provide customers with maintenance and repair services. We assessed whether the investment needed to be able to offer the necessary production facilities and aftersales capability may be a barrier to entry. We also considered whether these initial set-up costs are likely to deter entry or expansion where a significant proportion of them are sunk.

Gantry Cranes

Parties' views with regard to the supply of Gantry Cranes

12.26 In relation to the investment in facilities needed to produce Gantry Cranes, the Parties told us that '[b]arriers to entry and expansion in gantry cranes are modest, and with adequate resources, suppliers of industrial equipment can and do enter this product area with relative ease. The resources and equipment required to manufacture gantry cranes does not materially differ from other types of port or industrial cranes'.¹⁸⁰²

12.27 The Parties also submitted that:

(a) 'All types of heavy container handling equipment, like quay cranes, gantry cranes and straddle carriers, are produced/assembled in versatile manufacturing facilities and manufacturers can relatively easily divert capacity to produce other types of heavy equipment. For example, a

¹⁸⁰¹ We note that, in relation to ATT, entry or expansion by rivals of the Parties and the barriers to entry that they would face was considered as part of the assessment of the loss of potential competition in the future supply of ATT in Chapter 10 (see [CMA129](#), paragraph 5.15).

¹⁸⁰² Merger Notice [redacted].

company active in the production of gantry cranes could generally start producing straddle carriers without significant additional investments'.¹⁸⁰³

- (b) 'The Parties are of the view that any large scale manufacturing facility can be used to construct or assemble the legs and beams associated with, for example, gantry cranes, and the finished product can be erected using commonly available crane equipment at a customer's site'. Most technical solutions are based on commercially available solutions.
- (c) In terms of time and cost, the Parties estimate that it would take an industrial manufacturer (ie one not active in port equipment):
 - (i) '[Around] one to two years and less than EUR 1 million (GBP 868,000) to bring a new [RMG or ASC] product to market'.¹⁸⁰⁴
 - (ii) '[Around] one to two years and approx. EUR 2-3 million (GBP 1.7-2.6 million) to bring a new A-RTG product to market'.¹⁸⁰⁵
- (d) 'Major suppliers commonly use sub-contractors to design and manufacture crane components that are common to multiple types of gantry cranes, including to [RTG and ASC]'. None of these relationships are exclusive, and as far as the Parties are aware, these subcontractors typically work with several manufacturers.¹⁸⁰⁶ The Parties submitted that, under this business model, 'no upfront investment is required to develop manufacturing capacity'.¹⁸⁰⁷

12.28 In relation to economies of scale for the supply of Gantry Cranes, the Parties submitted that:

- (a) From a supplier perspective, it is generally more beneficial to centralise production in order to achieve economies of scale, rather than having a dispersed production set-up to save transport costs. The Parties also told us that transportation costs typically do not exceed 5-10% of the total purchase price, and so are not an obstacle to inter-continental shipments.¹⁸⁰⁸

¹⁸⁰³ Merger Notice [REDACTED].

¹⁸⁰⁴ Merger Notice [REDACTED].

¹⁸⁰⁵ Merger Notice [REDACTED].

¹⁸⁰⁶ Merger Notice [REDACTED].

¹⁸⁰⁷ Cargotec submission [REDACTED].

¹⁸⁰⁸ Merger Notice [REDACTED].

- (b) 'The necessary investment should be considered in the appropriate context ... including in relation to the value of the equipment and resources of potential entrants'.¹⁸⁰⁹
- (c) 'Economies of scale can be achieved on a global rather than national or even regional basis'.¹⁸¹⁰

12.29 The Parties also submitted that the costs for an existing supplier planning to enter the UK are likely to be lower and there are a number of suppliers globally with existing facilities that could supply the UK.¹⁸¹¹ Further, the Parties told us that, '[p]articipating in tenders in the UK would not require any additional investments' for competitors that already participate in tenders worldwide.¹⁸¹²

12.30 In relation to the investment and time required for servicing facilities and capabilities for the supply of Gantry Cranes, the Parties told us that:

- (a) '[A] local manufacturing, servicing and/or sales capability is not a necessity (or a barrier) for a supplier to compete successfully in the UK'.¹⁸¹³
- (b) '[T]he absence of a local after-sales presence is not a barrier to entry for a cranes [supplier]'.¹⁸¹⁴
- (c) 'Customers often have in-house stand-by repair capacity, and extensive stocks of spare parts for these types of equipment'.¹⁸¹⁵
- (d) 'After-sales services are usually performed by a wide range of players, including independent service providers, spare part trading companies, OEMs and, as mentioned above, by the customers themselves'.¹⁸¹⁶
- (e) 'ZPMC was able to win contracts with UK customers before establishing [a] local presence'.¹⁸¹⁷

12.31 As mentioned above, in response to the Provisional Findings Report, the Parties submitted that major suppliers commonly use sub-contractors to design and manufacture crane components that are common to multiple types of yard cranes, including to RTGs. The Parties claimed that, under this

¹⁸⁰⁹ Cargotec submission [REDACTED].

¹⁸¹⁰ Cargotec submission [REDACTED].

¹⁸¹¹ Cargotec submission [REDACTED].

¹⁸¹² Cargotec submission [REDACTED].

¹⁸¹³ Merger Notice [REDACTED].

¹⁸¹⁴ Cargotec submission [REDACTED].

¹⁸¹⁵ Cargotec submission [REDACTED].

¹⁸¹⁶ Cargotec submission [REDACTED].

¹⁸¹⁷ Cargotec submission [REDACTED].

business model, costs are significantly lower than indicated in the Provisional Findings Report, as no upfront investment is required to develop manufacturing capacity. The Parties also stated that 'each crane sold is worth more than EUR 1 million, therefore several million euros would not be a disproportionate investment to enter the market'.¹⁸¹⁸

Third-party evidence with regard to the supply of Gantry Cranes

12.32 In relation to the investment in facilities needed to produce Gantry Cranes:

(a) A competitor [REDACTED] told us that,

- (i) In relation to RTG and RMG, it is difficult to achieve an acceptable return on investment, because of the prolonged development/ramp up time and the technical skills required to achieve a competitive quality product. Following entry, this competitor assessed that it would take at least two to three years to convince the customer of product reliability and service quality in the field. The competitor noted that, given the current and potential market in the UK/EU, it was hard to justify the required investment to enter with the necessary scale; and without scale a new entrant would find it difficult to achieve an acceptable return on investment, especially if using western manufacturing facilities with a high-cost base.
- (ii) In relation to ASC, this competitor noted that it took it three to four years to develop design, gain reference projects and gather product market experience. This competitor said that to show customers the added value of a new product could take additional years.¹⁸¹⁹
- (iii) It estimated that it would take around three to four years to achieve a five per cent market share in the supply of Gantry Cranes in the UK.¹⁸²⁰

(b) A competitor told us that:

- (i) It is essential to have a very high standard of manufacturing facilities and engineering experience to produce high quality cranes. This requires a high degree of know-how as there is a lot of technical detail and intellectual property the company would need to develop

¹⁸¹⁸ Parties' Response to the Provisional Findings Report, paragraph 5.3

¹⁸¹⁹ Response to P1 questionnaire [REDACTED].

¹⁸²⁰ Response to P2 questionnaire [REDACTED].

or acquire. It would not be straightforward for a new company to replicate the current designs in the market.¹⁸²¹

- (ii) As the production of Gantry Cranes uses many components that are manufactured by European suppliers, many customers will choose to buy spare parts directly from the European component manufacturers.¹⁸²²
 - (iii) For new non-European entrants it is only competitive to offer a large number of units because of high transportation costs.¹⁸²³
 - (iv) While it would be difficult for a new company to enter the market for the supply of cranes, a company active in a similar market, such as shipbuilding, could have transferrable skills and equipment. Despite this, it would still take around three to five years to enter, maybe even longer.¹⁸²⁴
- (c) A competitor [X] highlighted as a high barrier to entry and expansion the need to have access to 'sufficient production capacities' to produce large volumes and the need to have a sufficient volume of sales 'to achieve low unit cost'. This competitor [X] also noted that it may be difficult to achieve material scale in a timely fashion in markets which are characterised by 'very little activity followed by years with very strong demand'.¹⁸²⁵ This competitor [X] estimated that it would take around three to five years and between £5 million and £10 million to achieve a five per cent market share in the supply of Gantry Cranes in the UK.¹⁸²⁶
- (d) A competitor [X] told us that it is important to have a 'strong balance sheet'. It explained that 'You are carrying a lot of financial burden because most of the components of that crane have to be purchased upfront, just because of lead times. You have a huge outlay of money, and you are not going to get that back really until you handover and commission and finally get those last payments from the customer. Already you have a financial burden and then on top of that, the customers will add liquidated damages, if you do not meet by this date then every day or day thereafter maybe it is like \$4,000 a day. It is typically capped to 10 per cent of the contract price, but if it is a \$10

¹⁸²¹ Call note [X].

¹⁸²² Call note [X].

¹⁸²³ Call note [X].

¹⁸²⁴ Call note [X].

¹⁸²⁵ Response to P2 questionnaire [X].

¹⁸²⁶ Response to P2 questionnaire [X].

million contract then you could be liable for up to \$1 million in liquidated damages if you are not successful'.¹⁸²⁷

(e) A customer [REDACTED] told us that:

- (i) '[I]n choosing a partner, we are choosing the people we deem to be deep pocket, a very long time in the industry, with very good views of what our goals are.'
- (ii) It selected Cargotec as its supplier because, 'They have an excellent balance sheet. They are really strong. They have made a major investment building offices, hundreds of people, put cranes down on the floor, and you are going, I think we are backing the right horse here'.¹⁸²⁸

12.33 In relation to servicing facilities and capabilities, we note that customers consider this to be an important factor in their purchasing criteria for RTG and ASC, as set out in the Chapter 7. This is supported by third-party evidence, which also indicates that a potential new entrant would be required to make a significant investment to be able to offer a local servicing capability.

(a) A competitor [REDACTED] told us that:

- (i) It considers that it is important for it to have a local presence in the UK in order to be competitive in UK RTG tenders.¹⁸²⁹
- (ii) Terminals 'usually stock an inventory of spare parts to ensure the continuity of port operations'.¹⁸³⁰
- (iii) [REDACTED].¹⁸³¹

(b) A customer [REDACTED] told us that:

- (i) It 'would be concerned about purchasing equipment from a supplier without [a] presence in the UK or Europe'.¹⁸³²

¹⁸²⁷ Call note [REDACTED].

¹⁸²⁸ Call note [REDACTED].

¹⁸²⁹ Call note [REDACTED].

¹⁸³⁰ Call note [REDACTED].

¹⁸³¹ Call note [REDACTED].

¹⁸³² Call note [REDACTED].

- (ii) 'Generally, in order to win a service contract, the customer [X] requires a supplier to have a certain amount of stock holding in the UK'.¹⁸³³
 - (iii) 'There is a tendency to use a manufacturer for specialist services, but it is possible to procure them from other third parties'.¹⁸³⁴
- (c) Another customer, [X], told us that, when buying spare parts, it would look for parts to be delivered to the UK from mainland Europe within 24 hours.¹⁸³⁵

Assessment with regard to the supply of Gantry Cranes

- 12.34 Whilst the Parties estimate that it would take around one to two years to enter the supply of Gantry Cranes, the evidence from competitors suggests that it would take at least three years to achieve a five per cent market share. We estimate that this is the minimum market share which would be required in order for a competitor to pose a material constraint on the Merged Entity. We do not consider that entry or expansion over this timeframe would be effective in order to prevent or mitigate the adverse effects of the Merger.
- 12.35 We note that the Parties estimate that it is possible to enter the supply of RMG or ASC with an investment of €1 million, or the supply of A-RTG with an investment of €2 million to €3 million.¹⁸³⁶ This is not consistent with the evidence we obtained from third parties which indicated that considerable investment would be needed to enter these markets. Further, we understand that suppliers may potentially be liable for substantial liquidated damages in the event of their failure or delay to deliver CHE.¹⁸³⁷
- 12.36 While some activities may be outsourced to sub-contractors, we note that significant investment would still be needed to enter and/or expand,¹⁸³⁸ for example, costs of researching and developing the CHE (including the necessary technology), costs of complying with local laws and regulations, working capital,¹⁸³⁹ costs of demonstrating that the business is of sound

¹⁸³³ Call note [X].

¹⁸³⁴ Call note [X].

¹⁸³⁵ Call note [X].

¹⁸³⁶ Merger Notice [X].

¹⁸³⁷ Call note [X].

¹⁸³⁸ As noted at 12.27(d), the Parties told us that major suppliers commonly use sub-contractors to design and manufacture crane components and, under this business model, the costs are significantly lower than indicated in the CMA's Provisional Findings report.

¹⁸³⁹ Call note [X].

financial standing,¹⁸⁴⁰ and costs of marketing, spare parts¹⁸⁴¹ and submitting tenders.

- 12.37 Whilst many of these initial set up costs are ‘sunk’, existing market players wishing to expand further would require to invest further in building additional production capacity and/or rely upon subcontractors having spare capacity.
- 12.38 We take into account the Parties’ submission that the investment needed to enter should be seen in the context of each crane possibly being sold for more than €1 million, so ‘several million euros would not be a disproportionate investment to enter the market’.¹⁸⁴² However, we do not consider that this proposition is supported by the evidence we obtained. Firstly, the Parties estimate of the amount of investment needed is not supported by other evidence we have obtained.^{1843,1844} Secondly, industry players characterised the cost of entering as significant (even within the context of the potential sales revenue).
- 12.39 In relation to servicing facilities and capabilities, our assessment is that some customers require suppliers to have a local presence in order to provide the standard of maintenance and repair services which are expected in the industry, and that establishing this local presence would require significant investment. For example, we note that ZPMC won some contracts in the UK because, as part of the tender, ZPMC offered to set up a base in Liverpool.¹⁸⁴⁵ This required considerable initial investment [redacted].¹⁸⁴⁶ The evidence indicates that suppliers do not currently use UK distributors to provide servicing capabilities in relation to the supply of large CHE such as Gantry Cranes, as set out in Chapter 7. Some of the costs relate to the importance of having facilities and capabilities which are close to customers in a particular region, which means that a new entrant would need to achieve geographic economies of scale.
- 12.40 Our assessment is that these initial set-up costs are likely to raise barriers to entry and/or expansion by potential new entrants. Whilst the ability of potential or actual competitors to make these investments may differ, especially when they are State-owned, the investment needed to enter and/or expand is a specific feature of the relevant markets. We note, in

¹⁸⁴⁰ Call note [redacted].

¹⁸⁴¹ Call note [redacted].

¹⁸⁴² [Parties’ Response to the Provisional Findings Report](#), paragraph 5.3

¹⁸⁴³ Response to P2 questionnaire [redacted].

¹⁸⁴⁴ Response to P2 questionnaire [redacted].

¹⁸⁴⁵ Call note [redacted].

¹⁸⁴⁶ Call note [redacted].

particular, that these are largely sunk costs which give incumbent firms advantages over potential competitors.

- 12.41 Further, we consider that the combination of the initial investment and time needed to set up production and servicing facilities, in combination, constitute a high barrier to entry.

Horizontal Transport Equipment

Parties' views with regard to the supply of HTE

- 12.42 In relation to the investment in facilities needed to produce Horizontal Transport Equipment, the Parties told us that, '[i]t is generally easy for horizontal transport equipment suppliers to expand their portfolio ..., not least because most equipment can be (and is) produced in the same facilities'.¹⁸⁴⁷
- 12.43 The Parties also submitted that:
- (a) 'Key components needed for the production/assembly of horizontal transport equipment are widely available in the market. Access to these input products does not constitute a barrier to entry or expansion in horizontal transport equipment markets'.¹⁸⁴⁸
 - (b) 'Most of the critical components used to produce straddle carriers are readily available and commonly sourced from third parties. For example, the Parties subcontract the manufacture of large parts of the steel structures required for straddle carriers to third-party suppliers'.¹⁸⁴⁹
 - (c) 'Barriers to entry to the market for terminal tractors are generally low. Terminal tractors are commoditized products and there are generally no specific customer preferences or regulatory hurdles that could hinder upcoming suppliers from entering the market'.¹⁸⁵⁰
 - (d) '[T]here are no insurmountable barriers to entry into automated horizontal transport equipment markets'.¹⁸⁵¹ 'It is generally easy and common for OEMs to team up with tech companies and jointly develop automated solutions. Thus, also from this perspective, there are no

¹⁸⁴⁷ Merger Notice [REDACTED].

¹⁸⁴⁸ Merger Notice [REDACTED].

¹⁸⁴⁹ Merger Notice [REDACTED].

¹⁸⁵⁰ Merger Notice [REDACTED].

¹⁸⁵¹ Merger Notice [REDACTED].

insurmountable hurdles to entry into production of automated straddle carriers'.¹⁸⁵²

- (e) It 'estimated that SC product development costs may be around €1 million, and the development time could be approximately one to two years, which would not be insurmountable barriers to entry'.¹⁸⁵³

12.44 The Parties also told us that 'the introduction of a new straddle carrier indeed involves product development costs (even if the supplier is already active in the supply of gantry cranes), but, in [their] view, certain development costs are always involved when a new product line is introduced and certainly do not constitute an insurmountable barrier to market entry'.¹⁸⁵⁴

12.45 In relation to economies of scale, the Parties submitted that:

- (a) '[C]osts (and relatedly, considerations regarding economies of scale) are unlikely to be a deterrent to entry for Chinese SOEs'.¹⁸⁵⁵
- (b) '[E]conomies of scale can be achieved on a global rather than national or even regional basis'.¹⁸⁵⁶
- (c) '[I]n order to profitably supply straddle carriers, it is important to achieve sufficient economies of scale, which can be difficult in a market as small as the potential market for straddle carriers'.¹⁸⁵⁷

12.46 In relation to servicing facilities and capabilities, the Parties told us that:

- (a) '[E]ntrants can in any event avoid the costs of both setting up and providing a direct sales and after-sales network by instead relying on distributors'.¹⁸⁵⁸
- (b) '[S]uppliers could decide not to supply after-sales services except for spare parts. Indeed, ZPMC and Liebherr operate on this basis. [...] Customers can instead either service HTE products in-house [...] or pick from a wide range of alternative service providers'.¹⁸⁵⁹

12.47 The Parties also submitted that, in respect of potential competitors in adjacent markets, the initial investment and time needed to set up production

¹⁸⁵² Merger Notice [REDACTED].

¹⁸⁵³ Parties submission [REDACTED].

¹⁸⁵⁴ Merger Notice [REDACTED].

¹⁸⁵⁵ Parties submission [REDACTED].

¹⁸⁵⁶ Parties submission [REDACTED].

¹⁸⁵⁷ Merger Notice [REDACTED].

¹⁸⁵⁸ Parties submission [REDACTED].

¹⁸⁵⁹ Parties submission [REDACTED].

and servicing facilities, and economies of scale, ‘would not apply, because they already have the distribution network, service network and the brand recognition to facilitate a quick entry’, as exemplified by ZPMC’s entry into straddle carriers.^{1860,1861}

- 12.48 In relation to the supply of ATT, the Parties told us that ‘there is currently no “market” in the sense of customer demand for ATT at commercial scale.’¹⁸⁶²
- 12.49 Cargotec told us that the development and sale of an ATT [REDACTED].¹⁸⁶³
- 12.50 Konecranes told us that [REDACTED].¹⁸⁶⁴ Further, it considers that developing technologies and capabilities in automation for ATT [REDACTED].¹⁸⁶⁵
- 12.51 Given the Parties’ submissions in relation to time and investment required to enter into ATT, we have not considered the extent of barriers to entry and expansion into with the same level of detail as in relation to other CHE. We have assessed the likelihood of entry and expansion of the potential competitors identified by the Parties in Chapter 10.

Third-party evidence with regard to the supply of HTE

- 12.52 In relation to the investment in facilities needed to produce Horizontal Transport Equipment:
- (a) A competitor [REDACTED] explained that a new entrant in the supply of straddle carriers needs more than five years to gather product market experience, develop prototype series, and set up a sales and service network. This competitor [REDACTED] told us that [REDACTED].¹⁸⁶⁶ This competitor [REDACTED] also stated that not having a hybrid design or automation capabilities was a major barrier for the future.¹⁸⁶⁷
- (b) A competitor [REDACTED] told us that the prices it has tendered for the supply of straddle and shuttle carriers [REDACTED] because the cost of transporting this equipment from its manufacturing facilities in [REDACTED] is higher than its competitors.¹⁸⁶⁸ It told us that ‘it had proved to be easier to enter the market and prove the reliability of its products in RTG and ASC than in

¹⁸⁶⁰ Parties submission [REDACTED].

¹⁸⁶¹ Parties submission [REDACTED].

¹⁸⁶² Parties submission [REDACTED].

¹⁸⁶³ Cargotec further submitted that it [REDACTED]. Cargotec Submission [REDACTED].

¹⁸⁶⁴ Konecranes submission [REDACTED].

¹⁸⁶⁵ Konecranes submission [REDACTED].

¹⁸⁶⁶ Call note [REDACTED].

¹⁸⁶⁷ Response to P2 questionnaire [REDACTED].

¹⁸⁶⁸ Call note [REDACTED].

relation to straddle and shuttle carriers'. It believes that a significant reason for this is that, in general, 'the shipping costs for RTG and ASC – as a proportion of the total cost of the contract – is much lower for them than for straddle and shuttle carriers'.¹⁸⁶⁹

12.53 In relation to required servicing facilities and capabilities, third-party evidence suggests that significant investment is necessary to meet customer requirements in relation to the supply of SC and ShC:

- (a) A competitor [X] told us that:
 - (i) aftersales service is 'quite important, especially as the complexity of equipment increases'.¹⁸⁷⁰ It stated that its competitors are 'trying to sell customers lifetime aftersales services ("life cycle management")'.¹⁸⁷¹
 - (ii) '[s]traddle carriers require a large amount of spare parts for stock which some ports are already heavily invested in'.¹⁸⁷²
- (b) A competitor [X] told us that it is important for it to have a local presence in the UK in order to be competitive.¹⁸⁷³
- (c) A distributor [X] told us that 'Chinese suppliers often suffer from long delays in providing spare parts which makes them relatively unattractive both to end customers and probably distributors'.¹⁸⁷⁴ This distributor [X] told us that 'it is expensive to set up and provide a direct sales and aftersales network, which is a factor in some [suppliers] choice to rely on distributors'.¹⁸⁷⁵

12.54 In relation to economies of scale, [X].¹⁸⁷⁶

12.55 Several competitors estimated how much it would cost, and how long it would take, to enter:

- (a) A competitor [X] estimated that it would require between £5 million and £10 million, and three to five years to achieve a five percent market share in the supply of HTE.¹⁸⁷⁷

¹⁸⁶⁹ Call note [X].

¹⁸⁷⁰ Call note [X].

¹⁸⁷¹ Call note [X].

¹⁸⁷² Call note [X].

¹⁸⁷³ Call note [X].

¹⁸⁷⁴ Call note [X].

¹⁸⁷⁵ Call note [X].

¹⁸⁷⁶ Call note [X].

¹⁸⁷⁷ Response to P2 questionnaire [X].

(b) A competitor [REDACTED] estimated that it would take longer than five years.¹⁸⁷⁸

(c) A competitor [REDACTED] estimated that it would take longer than ten years.¹⁸⁷⁹

Assessment with regard to the supply of HTE

- 12.56 Whilst the Parties told us that HTE product development costs may be around €1 million and take between one and two years,¹⁸⁸⁰ third party competitors told us that that it would cost significantly more and take at least three years.
- 12.57 Based on the evidence we have received, [REDACTED], we consider that a timeframe of more than three years would be needed in order to achieve a market share of at least five percent in the supply of SC or ShC.
- 12.58 In relation to the investment in facilities needed to produce Horizontal Transport Equipment, our assessment is that significant investment is needed, and a long period of time is required, to develop SC, ShC and ATT, and to set up the necessary production facilities.
- 12.59 We note that evidence from third parties indicates that there are relatively high transportation costs, and also a relatively small size of the market for SC. This suggests that the commercial potential for a new entrant may be limited.
- 12.60 In relation to servicing facilities and capabilities, our assessment is that some customers require a local presence in order to provide the standard of maintenance and repair services which is expected in the industry, and that establishing this local presence would require significant investment. The evidence in Chapter 8 indicates that OEM suppliers do not currently use UK distributors to provide servicing capabilities in relation to the supply of SC or ShC. This means that a potential or actual competitor would need to invest in setting up a direct servicing presence.
- 12.61 In any case, for the reasons explained in relation to MEQ below (paragraphs 12.76 12.74 to 12.81), entering into a distribution agreement with a suitable distributor is likely to be difficult. Further, some of the setup costs mentioned in paragraph 12.72 in relation to servicing facilities and capabilities relate to the cost of entering and expanding in a certain region, which means that a new entrant would need to achieve certain scale at a regional level.

¹⁸⁷⁸ Response to P2 questionnaire [REDACTED].

¹⁸⁷⁹ Call note [REDACTED].

¹⁸⁸⁰ Parties submission [REDACTED].

- 12.62 We also note ZPMC only has a very small presence in SC and ShC and, therefore, the evidence does not support the Parties' claim that a supplier present in other markets can use its distribution network and brand recognition to achieve timely entry. Our assessment is that these initial set-up costs are likely to raise barriers to entry and/or expansion by potential new entrants because, in the case of incumbent firms, they are sunk costs.
- 12.63 Our assessment is that the combination of the initial investment and time needed to set up production and servicing facilities, and economies of scale, in aggregate, constitute a high barrier to entry in the supply of HTE.

Mobile Equipment

Parties' views with regard to the supply of MEQ

- 12.64 In relation to the investment in facilities needed to produce MEQ, the Parties submitted that:
- (a) 'The barriers to entry and expansion are relatively low for all types of mobile equipment'.¹⁸⁸¹
 - (b) '[M]anufacturers can easily divert capacity to produce other types of mobile equipment'.¹⁸⁸²
 - (c) Most of the critical components used to produce RS are readily available and commonly sourced from third parties. ECH are relatively commoditised and ECH's 'safety and regulatory standards [...] can be met without difficulties'.¹⁸⁸³
- 12.65 In relation to economies of scale, the Parties submitted that this 'can be achieved on a global rather than national or even regional basis, and in any event is (together with investment costs) a less important consideration for Chinese [State-owned entities], such as ZPMC, who are now targeting UK customers with some success'.¹⁸⁸⁴
- 12.66 In relation to servicing facilities and capabilities, the Parties told us that:
- (a) '[t]he cost of investing in direct supply would not be a significant barrier to entry'.¹⁸⁸⁵

¹⁸⁸¹ Merger Notice [REDACTED].

¹⁸⁸² Merger Notice [REDACTED].

¹⁸⁸³ Merger Notice [REDACTED].

¹⁸⁸⁴ Parties submission [REDACTED].

¹⁸⁸⁵ Parties submission [REDACTED].

- (b) To the extent deemed necessary by a potential new entrant, a distributor could be set up to provide local aftersales services at a relatively low cost.¹⁸⁸⁶ '[W]hether investment may be needed for suppliers to set up a distribution network needs to be set in the context of the expected return on the investment'.¹⁸⁸⁷
- (c) There are a number of distributors with the expertise and coverage to supply customers across the UK, and multi-sourcing is common.¹⁸⁸⁸ [REDACTED].¹⁸⁸⁹

12.67 In response to the Provisional Findings Report, the Parties submitted that

- (a) The [REDACTED] competing suppliers of HDFLT's which are present in the UK via dealers use [REDACTED] different dealers. According to the Parties, this demonstrates that competitors are able to partner with suitable distributors without, for the most part, having to use the same distributors as their competitors.¹⁸⁹⁰
- (b) Mobile equipment OEMs can enter into successful partnerships with dealers with no (or less) experience in container handling equipment. In particular, Impact did not specialise in heavy port handling equipment prior to distributing Konecranes' products. There is similarly also evidence of distributors switching OEMs, such as Cooper Handling which currently distributes Sany products but used to be Konecranes' distributor.¹⁸⁹¹
- (c) '[S]ales and marketing materials for the dealers are typically made available online so sales and marketing support costs are very low [REDACTED].'¹⁸⁹²

¹⁸⁸⁶ Parties submission [REDACTED].

¹⁸⁸⁷ Parties submission [REDACTED].

¹⁸⁸⁸ Parties submission [REDACTED].

¹⁸⁸⁹ Konecranes submission [REDACTED].

¹⁸⁹⁰ Parties' Response to the Provisional Findings Report, paragraph 7.15.

¹⁸⁹¹ Parties' Response to the Provisional Findings Report, paragraph 7.15.

¹⁸⁹² Cargotec submission [REDACTED].

Third-party evidence with regard to the supply of MEQ

- *Investment in production facilities*

12.68 Two competitors [redacted] and [redacted] estimated that it would take between three and five years to achieve a five percent market share.¹⁸⁹³ A competitor [redacted] estimated that it would cost between £5 million and £10 million.¹⁸⁹⁴

12.69 A customer [redacted] told us that the regulations which CHE must comply with are sometimes different across regions, ‘Even in regions where they share common regulation or require voltage levels, frequently in terms of mobile equipment you have emission standards that are applicable to the region. You could not standardise Canada and South America because Canada works with Stage 5 emission diesel engines, where South America is still on Stage 3.’¹⁸⁹⁵

- *Investment in servicing facilities and capabilities*

12.70 In relation to servicing facilities and capabilities, we found that it is important to have a local servicing presence in order to be able to compete effectively.¹⁸⁹⁶ For example, a distributor, [redacted], told us that, ‘one of the [key performance indicators] for a contract is generally providing a specified level of uptime for the product – usually around 98% uptime. It relies on its team of engineers to maintain this level of uptime.’¹⁸⁹⁷ This distributor [redacted] told us that it is difficult to attract high-caliber staff, especially mobile engineers.¹⁸⁹⁸

12.71 Third parties told us that suppliers of MEQ broadly have two routes to market, which both require time and investment:

(a) Direct supply, where the OEM supplier sells CHE directly to customers and can meet their servicing requirements.

(b) Indirect supply using a distributor, where an intermediary sells CHE to customers and meets their servicing requirements.

¹⁸⁹³ Response to P2 questionnaire [redacted]; Response to P2 questionnaire [redacted].

¹⁸⁹⁴ Response to P2 questionnaire [redacted].

¹⁸⁹⁵ Call note [redacted].

¹⁸⁹⁶ See Chapter 9.

¹⁸⁹⁷ Call note [redacted].

¹⁸⁹⁸ Response to P2 questionnaire [redacted].

- *Direct supply of MEQ*

12.72 Third parties told us that the investment needed for an OEM to establish its own servicing facilities and capabilities was a barrier to entry in the supply of MEQ:

- (a) A competitor [REDACTED] told us that it struggles to match local suppliers' delivery times, shipment costs and service costs. It said that local engineers are not very familiar with its products and this is likely to prevent it from entering the market for the supply of MEQ.¹⁸⁹⁹
- (b) A competitor [REDACTED] stated that '[f]ast and appropriate service are customer critical for this capital intensive/specialized equipment' and that 'building a proper service network takes effort'. It told us that '[s]elling a critical mass of equipment to a particular customer allows it to offer better servicing'.¹⁹⁰⁰
- (c) A competitor [REDACTED] told us that '[t]here are very few to no companies which are currently in the UK today that would be interested in investing in the development of a meaningful presence in the local market and that have no brand to represent'.¹⁹⁰¹
- (d) A distributor [REDACTED] told us that:
 - (i) 'One way [to start distributing a brand of MEQ that does not currently have a UK distributor] is to place demonstration units into the market but that is very costly and brings massive risk'.¹⁹⁰²
 - (ii) It estimates that it would take a distributor entering the market around two to three years to achieve break even and five years 'before all of its losses are reversed – this assumes OEM is taking demo costs'.¹⁹⁰³ It clarified that its cost of entry estimate of £200,000 refers only to 'local distribution costs, A salesperson, an after-sales person, and some marketing budget to launch'. We note that this is an estimate of the cost of entering as a distributor and does not take account any of the machinery costs and other costs borne by OEM suppliers.¹⁹⁰⁴

¹⁸⁹⁹ Call note [REDACTED].

¹⁹⁰⁰ Call note [REDACTED].

¹⁹⁰¹ Response to P2 questionnaire [REDACTED].

¹⁹⁰² Response to P2 questionnaire [REDACTED].

¹⁹⁰³ Email [REDACTED].

¹⁹⁰⁴ Email [REDACTED].

(e) Another third party, [REDACTED], told us that ‘new entrants can set up their own servicing divisions. This is something that many of the Chinese companies have done in countries across Europe’. It said that an initial start-up operation could be as little as €200,000 to €300,000.¹⁹⁰⁵ We note that this amount only refers to the initial investment and further investment may be needed in order to achieve economies of scale.¹⁹⁰⁶

12.73 Overall, we consider that this evidence indicates that significant investment and effort is required for an OEM supplier to establish its own servicing network for the supply of MEQ.

- *Indirect supply of MEQ using a distributor*

12.74 Third parties told us that the investment needed in servicing facilities and capabilities was lower if the OEM supplier appointed a distributor. For example:

(a) A distributor [REDACTED] told us that, ‘[w]hereas] it would need a very significant level of investment for a company (eg an OEM) to set up a new distribution network for mobile equipment, it is more feasible to leverage an existing service chain and use this as the way to enter and expand in the market, as Sany appears to be trying to do with the Cooper team’.¹⁹⁰⁷

(b) Another distributor [REDACTED] estimated that it would take around two years and cost around £500,000 to enter as a distributor.¹⁹⁰⁸

(c) Similarly, a competitor [REDACTED] told us that, ‘[i]t is difficult to sell, even with a competitive container handling offering, without distributors providing 24/7 support’ and that it considers aftersales support to be a ‘key factor’ for customers.¹⁹⁰⁹

12.75 We note, however, that OEM suppliers will typically lose the opportunity to generate additional revenue by providing aftersales support to customers if they appoint a distributor to supply their MEQ.

12.76 Further, as set out, the evidence that we have reviewed does not support the Parties’ position that there are many effective distributors that are available in the UK to support entry or expansion by OEMs that are not currently significant players in MEQ.

¹⁹⁰⁵ Call note [REDACTED].

¹⁹⁰⁶ We note that Sany has made a strategic decision to use a distributor in the UK. [REDACTED].

¹⁹⁰⁷ Call note [REDACTED].

¹⁹⁰⁸ Response to P2 questionnaire [REDACTED].

¹⁹⁰⁹ Call note [REDACTED].

12.77 First, we observe that, while many distributors exist in the UK, the evidence from third parties indicates that only a small number of them have been used in the UK by the main OEM suppliers. For example:

- (a) Cooper was Konecranes' distributor until 2014 and is now a distributor for Sany and Svetruck.
- (b) Impact Handling was Cargotec's distributor for CHE up to [REDACTED] tonnes¹⁹¹⁰ and is now a distributor for Konecranes.
- (c) Briggs is the UK distributor for Hyster.

12.78 Second, on the whole, evidence from third parties indicates that there are few effective distributors available in the UK:

- (a) An OEM [REDACTED] identified 'access to distribution network' as a high barrier to entry/expansion.¹⁹¹¹ It submitted that 'as of today, there is no strong enough, credible enough distributor that we could access with whom we could build up a position in the market'.¹⁹¹² As such, it said that there was little hope that it [REDACTED] would return to UK MEQ markets, unless the merger freed up one of the sales channels currently used by the Parties and the distributor was interested in partnering with it [REDACTED].¹⁹¹³
- (b) A distributor [REDACTED] noted that there is no other distributor available to which a new entrant can 'attach' to 'give it the success it needs'¹⁹¹⁴ and that 'Specialised dedicated distributors are extremely rare - both in UK and EU'.¹⁹¹⁵ This third party told us that it has a 'ready made database to go to the customer' and that 'somebody [that] starts from afresh, they don't have that database, they don't have that experience, they don't have that relationship'.¹⁹¹⁶
- (c) Another distributor [REDACTED] told us that there are few distributors in the UK that can offer a distribution infrastructure with the 'size and spread' [REDACTED].¹⁹¹⁷
- (d) A customer that has purchased RS from Cargotec and Sany [REDACTED] considered that MEQ OEMs wanting to enter or expand in the UK would be able to find distribution partners, including companies that are not

¹⁹¹⁰ Call note [REDACTED].

¹⁹¹¹ Response to P2 questionnaire [REDACTED].

¹⁹¹² Transcript of call [REDACTED].

¹⁹¹³ Response to P2 questionnaire [REDACTED].

¹⁹¹⁴ Transcript of call [REDACTED].

¹⁹¹⁵ Response to P2 questionnaire [REDACTED].

¹⁹¹⁶ Transcript of call [REDACTED].

¹⁹¹⁷ Recording of call [REDACTED].

ordinarily engaged in this part of the industry. On the other hand, this customer [X] said that it would not buy RS from an OEM that was offering support through a distributor that has had no or very little previous experience with RS support and maintenance. For example, it said it did not believe that a distributor ‘that specialises in small forklifts would be straight away au fait and understand the complexities of a reach stacker or an empty container handler’. Rather, it would require such a distributor to first gain experience elsewhere. It also said that financial stability is one factor that it looks for in a distributor.¹⁹¹⁸

12.79 Third, evidence from third parties suggests that it would be difficult for OEMs wishing to enter or expand to persuade one of the main incumbent MEQ distributors to take on another brand:

- (a) An OEM [X] said that the distributors used by Konecranes, Hyster and Sany respectively would not be willing to also stock its MEQ products alongside those brands.¹⁹¹⁹
- (b) A distributor [X] submitted that it is difficult for distributors to serve another OEM [supplier] or to switch OEM [supplier], and this is partly as a result of the duration of their agreements or exclusivity obligations. This distributor noted that the distribution agreement it has with the CHE OEM does not allow it to distribute competing products.¹⁹²⁰ This distributor further noted that changing OEM partner is a significant change for a distributor.¹⁹²¹
- (c) Similarly, a distributor [X] told us that it would have more to lose than win if it were to switch to another OEM [supplier]. While it supplies equipment from multiple OEMs, these OEMs do not supply competing products, with the exception of two OEM in relation to ECH ([X]).¹⁹²²

12.80 We note that while the Parties submitted a list of over 90 UK distributors, only four of these (of which Cooper and Briggs were two, with the other two being Shad Group and WRMH) were classified as being active in RS, ECH and FLT, with the remainder classified as FLT only. This suggests that the number of distributors with a track record in RS and ECH may be particularly limited.¹⁹²³

¹⁹¹⁸ Transcript of call [X].

¹⁹¹⁹ Transcript of call [X].

¹⁹²⁰ Call note [X].

¹⁹²¹ Call note [X].

¹⁹²² Transcript of call [X]. Transcript of call [X].

¹⁹²³ Cargotec submission [X].

- 12.81 Accordingly, competitors wishing to expand, or potential new entrants, may not be able to easily enter into a selling arrangement with a distributor.
- 12.82 As mentioned before, Konecranes currently uses Impact Handling as its MEQ distributor in the UK. We investigated whether a new entrant could enter or expand in the supply of MEQ using Impact Handling as its distributor if, after the Merger, Konecranes stopped using Impact Handling as its distributor.
- 12.83 We consider that the evidence is unclear on what route to market the Merged Entity would use in the UK for the supply of MEQ. It is possible that the Merged Entity would not use Impact Handling as its distributor of MEQ:
- (a) Konecranes provided an internal document prepared by McKinsey & Company dated 16 June 2020 (around three months after the Parties first entered into discussions regarding the Merger) which refers to a [REDACTED].¹⁹²⁴ We observe that Konecranes has identified [REDACTED] in relation to its servicing business, but do not consider this to be determinative evidence that the Merged Entity would no [REDACTED].
 - (b) A distributor [REDACTED] told us [REDACTED].¹⁹²⁵
- 12.84 Although the OEM referred to in paragraph 12.79 [REDACTED] raised the possibility that the Merger could free up one of the sales channels currently used by the Parties, it did not comment about the likelihood of this scenario.¹⁹²⁶
- *Economies of scale*
- 12.85 Third parties told us that economies of scale are important in order for the supply of MEQ to be profitable. For example:
- (a) A distributor [REDACTED] told us that, 'it needed to maintain a certain volume of activity to enable it to generate a profit whilst maintaining its service levels (such as its three-hour response time) across the whole of the UK. Its service operation only becomes cost effective with a high volume of business. More than 90 engineers are needed in order to offer customers UK wide coverage. It is important to have a large scale of operation across the whole of the UK.'¹⁹²⁷

¹⁹²⁴ Konecranes, internal document [REDACTED].

¹⁹²⁵ Call transcript [REDACTED].

¹⁹²⁶ Response to P2 questionnaire [REDACTED].

¹⁹²⁷ Call note [REDACTED].

- (b) A distributor [X] told us that, in addition to the initial cost of entering, ‘an engineer will cost roughly £60,000 to £70,000 per year to keep them on the road. National coverage, requires at least six engineers, so, with all the support services, a new startup would need to invest £0.5m to £0.75m a year to provide a minimum level of after-sales service.’¹⁹²⁸
- (c) A distributor [X] told us that, ‘[m]anufacturers appear determined to feed factories at [the] expense of profits driving [the] market in a downward spiral. It is a policy of favouring volume over profit’.¹⁹²⁹

Assessment with regard to the supply of MEQ

- 12.86 We note that the Parties told us that barriers to entry and expansion are relatively low for the supply of all types of MEQ. However, our assessment is that the combination of the initial investment and time needed to set up production and servicing capabilities, and economies of scale, in aggregate, constitute a high barrier to entry which is likely to materially reduce the extent, timing and likelihood of entry following the Merger.
- 12.87 In relation to the investment in facilities to produce MEQ, the evidence is mixed. Even if it is (as submitted by the Parties) relatively easy for suppliers to switch between the production of different types of MEQ, we consider that this does not mean that a supplier which does not currently supply MEQ would not need to make a significant investment. At a minimum, tooling and training would be required.
- 12.88 We consider that the initial investment needed to be able to provide the standard of servicing which is expected in the industry, and have engineers available on an ongoing basis (either directly or through a distributor), constitutes a barrier to entry and expansion. These initial set-up costs are likely to deter entry or expansion by potential new entrants.
- 12.89 Furthermore, there are significant differences in regulations between geographic regions and this is likely to add cost and complexity to the production process. For example, a press release from a supplier of components to Cargotec, Volvo Penta, includes the following quote from the Director of Global Sourcing at Cargotec’s Kalmar division: ‘Stage V [emission standards] is a challenge for manufacturers. With previous

¹⁹²⁸ Call note [X].

¹⁹²⁹ Response to P2 questionnaire [X].

emissions levels, Europe and the US have stayed more or less the same, so it's going to be quite an effort to make the change.¹⁹³⁰

12.90 We consider that OEM suppliers can outsource their servicing to distributors as an alternative to setting up their own facilities and capabilities, however, some investment would still be needed to support the distributor. In any case, we note that:

(a) There are not many specialised distributors with necessary expertise in the UK that can support entry or expansion. Overall, our view is that MEQ OEMs that do not currently have a significant incumbent position in relation to UK customers may not be able to easily enter into a selling arrangement with an effective distributor.

(b) Even if a competitor or potential entrant was able to identify a suitable distributor, it would still need to invest some time and resources in order to facilitate the distribution of its products through that distributor¹⁹³¹, and would continue to face the other barriers detailed in this chapter. We further note the evidence from distributors that two years may be needed to achieve a five percent market share (which we estimate is the minimum required to pose a material constraint on the Merged Entity).

12.91 Some of the set-up costs in relation to servicing relate to the cost of entering and expanding in a certain region, which mean that a new entrant would need to achieve certain scale at the regional level. We consider that the cost of achieving this scale would be significant.

12.92 We therefore consider that the considerable costs of entering the supply of MEQ, with or without a distributor, constitutes a high barrier to entry.

The importance of having a strong track record and reputation

12.93 The evidence received from customers indicates that they place a high value on CHE being reliable and fully operational in order to maintain throughput at container ports. We assessed whether it is important for suppliers to be able to demonstrate that they have a strong track record and reputation, and if so, the extent to which this may constitute a barrier to entry.

¹⁹³⁰ Volvo Penta press release, Kalmar selects Volvo Penta for Stage V, 8 March 2017

¹⁹³¹ A distributor [REDACTED] notes that it is a long and difficult process for a distributor to start distributing the products of new Mobile Equipment supplier (Transcript of call [REDACTED]).

Parties' views with regard to the supply of Gantry Cranes

- 12.94 The Parties told us that, 'there may be certain customary barriers to entry and expansion to the container handling equipment industry (similar to other industries), such as product development costs or the need for proven references'.¹⁹³²
- 12.95 In relation to the importance of having a strong track record and reputation, the Parties submitted that:
- (a) Chinese suppliers like ZPMC (in the context of Cranes, in particular), Sany (in the context of MEQ) and Shacman (in the context of HTE) have been able to enter the UK market, despite their lack of prior track record.¹⁹³³
 - (b) GTOs do not make their procurement decisions locally in the UK but centrally in their overseas headquarters. Suppliers can obtain references by supplying GTOs in different regions of the world.¹⁹³⁴
 - (c) The entry of ZPMC is an example that '[T]o the extent that having a strong track record is one of several considerations that a tendering party may take into account, there is no need to have a strong track record in the UK, or even in Europe to win new tenders'.¹⁹³⁵

Third-party evidence with regard to the supply of Gantry Cranes

- 12.96 Evidence from third parties suggests that it is necessary for a potential new entrant to establish a strong track record and reputation in order to satisfy customers' purchasing criteria:
- (a) A competitor [X] told us that it is difficult to enter the ASC market because references are needed. It stated that it 'tends to be excluded from tenders because it does not have references' and, by way of an example, it referred to its attempt to bid in a recent tender [X].¹⁹³⁶ This competitor [X] told us that '[it is a] difficult market to break into due to lack of reference projects and competitive design offering. Distinct

¹⁹³² Merger Notice [X].

¹⁹³³ Cargotec submission [X].

¹⁹³⁴ Cargotec submission [X].

¹⁹³⁵ Cargotec submission [X].

¹⁹³⁶ Call note [X].

advantage for existing suppliers named above with market references of multiple projects'.¹⁹³⁷

- (b) A customer [REDACTED] told us that a supplier's track record and reputation is 'extremely important'.¹⁹³⁸ This customer [REDACTED] states that it carries out a lot of due diligence in order to identify suppliers of reliable CHE.¹⁹³⁹

Internal documents with regard to the supply of Gantry Cranes

- 12.97 The Parties provided a [REDACTED] document by [REDACTED], dated 17 November 2020¹⁹⁴⁰ (around seven months after the Parties first entered into discussions regarding the Merger).¹⁹⁴¹ It identifies barriers to entry and states that the [REDACTED].¹⁹⁴²
- 12.98 With regard to the evidential weight which should be placed on this [REDACTED] document, the Parties submitted that:
- (a) [REDACTED];
- (b) [REDACTED].¹⁹⁴³
- 12.99 We consider that the context for the Parties receiving this pitch document is [REDACTED]. We note that the statements in the pitch document are those of Bain & Company, rather than the Parties. We also observe that Bain & Company [REDACTED].¹⁹⁴⁴ We further note that the evidence in the pitch document is largely consistent with the evidence we obtained from third parties.
- 12.100 Internal documents from Cargotec also suggest that having a strong track record and reputation is an important advantage for Cargotec. For example, Cargotec lists one of the key purchasing criteria for ASC as [REDACTED]¹⁹⁴⁵ and considers that its [REDACTED].¹⁹⁴⁶

¹⁹³⁷ Response to P2 questionnaire [REDACTED].

¹⁹³⁸ Transcript of call [REDACTED].

¹⁹³⁹ Transcript of call [REDACTED]. Call note [REDACTED].

¹⁹⁴⁰ Parties submission [REDACTED].

¹⁹⁴¹ Cargotec submission [REDACTED].

¹⁹⁴² Parties submission [REDACTED].

¹⁹⁴³ [Parties' Response to the Provisional Findings Report](#), paragraph 5.14.

¹⁹⁴⁴ Cargotec submission [REDACTED].

¹⁹⁴⁵ Cargotec submission [REDACTED].

¹⁹⁴⁶ Cargotec submission [REDACTED].

Assessment with regard to the supply of Gantry Cranes

- 12.101 The evidence from the Parties and third parties is consistent in stating that customers take into account whether a supplier has an established track record (or proven references) in their purchasing decisions.
- 12.102 Whereas the Parties submit that GTOs typically make their procurement decisions centrally, so there is no need to have a strong track record in the UK or Europe in order to win tenders, the evidence from third parties and the Parties' internal documents suggest that these customers do take into account input from their regional offices.
- 12.103 Further, many customers of CHE are not large GTOs. Based on the evidence in relation the appropriate geographic market for the supply of RTG and ASC (summarised in Chapter 5) and the additional evidence set out above, we consider that customer references and a strong track record at the regional level are particularly important for these customers. We therefore consider that suppliers with an established track record in the UK or Europe have an advantage.
- 12.104 We note that the Parties submitted that ZPMC has managed to enter the European cranes market without having a previous track record,¹⁹⁴⁷ although, as noted in Chapter 6, it has taken several years to achieve this. Further, there has not been a material upward growth trend in ZPMC's RTG share in UK or Europe over the last ten years. ZPMC has increased its share of supply in ASC over this period, but bidding analysis and third-party evidence indicate that ZPMC is not similarly competitive across all order volumes. We therefore consider that ZPMC's positions across the markets in which it is present do not suggest that it has obtained a material presence without building a track record in Europe.
- 12.105 We therefore consider that potential entrants would be required to establish a strong track record and reputation in the supply of Gantry Cranes, and this is likely to constitute a high barrier to entry.

Horizontal Transport Equipment

Parties' views with regard to the supply of HTE

- 12.106 The Parties told us that:

¹⁹⁴⁷ Parties' Response to the Provisional Findings Report, paragraph 5.15.

- (a) '[w]hile horizontal transport equipment from non-Western (especially Chinese) suppliers may have been perceived as lower-quality in the past by some customers, this certainly no longer applies today (not least evidenced by the global success of Chinese companies like ZPMC across equipment types)'.¹⁹⁴⁸
- (b) 'It is important for suppliers to have references proving their capability to supply reliable equipment. However, new entrants can always supply test units to customers, as ZPMC is currently doing, to convince customers and secure future business with these customers'.¹⁹⁴⁹
- (c) 'The top five ports in the UK are owned by GTOs (DP World / HPH) or major port operators (Peel Ports, ABP).' They 'operate sophisticated procurement processes and are essentially indifferent to local track records'.¹⁹⁵⁰
- (d) '[T]o the extent that having a strong track record is one of several considerations that a tendering party may take into account, there is no need to have a strong track record in the UK, or even in Europe, to win new tenders'.¹⁹⁵¹
- (e) GTOs purchase equipment globally and have established relationships and experience with suppliers globally, including many who have not yet supplied product in the UK'.¹⁹⁵²

Third-party evidence with regard to the supply of HTE

12.107 Evidence from third parties suggests that it is necessary for a new entrant to establish a strong track record and reputation in order to satisfy customers' purchasing criteria:

- (a) A competitor [REDACTED] told us that it does '[REDACTED]' as it requires time to prove to customers the reliability and performance of the products'.¹⁹⁵³ This competitor [REDACTED] told us that it [REDACTED].¹⁹⁵⁴
- (b) A Customer [REDACTED] told us that it considers that ZPMC is still behind Konecranes and Kalmar [Cargotec] in terms of experience. This customer [REDACTED] said that, in order for it to be comfortable awarding a

¹⁹⁴⁸ Merger Notice [REDACTED].

¹⁹⁴⁹ Merger Notice [REDACTED].

¹⁹⁵⁰ Parties submission [REDACTED].

¹⁹⁵¹ Parties submission [REDACTED].

¹⁹⁵² Parties submission [REDACTED].

¹⁹⁵³ Call note [REDACTED].

¹⁹⁵⁴ Transcript of call [REDACTED].

contract to ZPMC, it would need to see a 'proof of concept'. This customer [REDACTED] considers that ZPMC has delivered thousands of straddle carriers and shuttle carriers around the world, but it has information suggesting that these products suffer from reliability issues. This customer [REDACTED] believes that ZPMC still has a long way to go before it can be considered as a potential supplier.¹⁹⁵⁵

(c) A customer [REDACTED] told us that it is, 'constantly reviewing the market but considers that it is a big business decision to change to another supplier'. It considered that 'it is possible to use other suppliers, but it would need to be confident that [the] safety and specifications of the equipment are good'.¹⁹⁵⁶

(d) A customer [REDACTED] told us that:

(i) 'it would only expect the Parties to participate in future tenders for SC and ShC. This customer considered that ZPMC has the 'technical capability' to compete in a future tender for SC and ShC and might have the incentive to bid [REDACTED]. However, it did not expect ZPMC to 'provide much competition' in such a tender because of ZPMC's 'lack of track record in Europe'.¹⁹⁵⁷

(ii) Its prequalification stage involves consideration of the following questions: 'Are they financially secure? Are they technically capable? Are they safe? Have they got the necessary technical expertise, capability and track record to provide whatever it is you want. They have to be prequalified to then get to tender stage'.¹⁹⁵⁸

(e) A customer [REDACTED] told us that it is bound by public procurement rules because it is a State-owned business. As part of this process, it considers the track record of prospective suppliers.¹⁹⁵⁹

12.108 As noted in Chapter 8, the shares of supply in relation to SC and ShC indicate that the Parties are close competitors in the supply of SC and ShC on any geographic basis, accounting for almost the whole market between them. There appear to be no other material competitors. ZPMC is [REDACTED], but only accounts for [0–5%] [REDACTED]% of the market.

¹⁹⁵⁵ Call note [REDACTED].

¹⁹⁵⁶ Call note [REDACTED].

¹⁹⁵⁷ Call note [REDACTED].

¹⁹⁵⁸ Call note [REDACTED].

¹⁹⁵⁹ Call note [REDACTED].

Internal documents with regard to the supply of HTE

12.109 A presentation, prepared by Konecranes in May 2020 and relating to the 'Market and Competition' for SC, compared Konecranes SC [REDACTED] with those of [REDACTED]. In its [REDACTED], Konecranes noted its [REDACTED].¹⁹⁶⁰

Assessment with regard to the supply of HTE

12.110 The evidence from third parties shows that a track record is important in the supply of HTE.

12.111 Further, providing test units to customers is not a substitute to having an established track record. We consider that suppliers with an established track record in the UK or Europe have an advantage.

12.112 OEM suppliers do not currently use UK distributors in relation to SC and ShC and, as explained in paragraphs 12.78 to 12.81 and 12.151) it is difficult to replicate customer relationships by appointing a distributor and there are few (if any) distributors with pre-existing customer relationships available for potential or actual competitors to appoint for the distribution of. SC and/or ShC. As a result, there are very few distributors with the necessary market knowledge and pre-existing customer relationships to help an OEM overcome this barrier to entry.

12.113 In addition, the evidence from third parties and the Parties' internal documents indicates that customers take into account the track record and reputation of suppliers, even where they are using tender processes or following public procurement rules.¹⁹⁶¹

12.114 We note that the Parties are dominant in the supply of SC and ShC. ZPMC has tried to enter but only accounts for around [REDACTED].

12.115 Based on the above evidence, we consider that potential entrants in the supply of HTE would be required to establish a strong track record and reputation and this is likely to constitute a high barrier to entry.

Mobile Equipment

Parties' views with regard to the supply of MEQ

12.116 The Parties told us that:

¹⁹⁶⁰ Konecranes submission [REDACTED].

¹⁹⁶¹ Call note [REDACTED], Call note [REDACTED].

- (a) 'The top five ports in the UK [...] operate sophisticated procurement processes and are essentially indifferent to local track records [...] In particular, three of the five largest terminals in the UK are owned by GTOs (London Gateway, Felixstowe and Southampton) and together account for c. 70% of UK container throughput. The GTOs do not make their procurement decisions locally in the UK but centrally in their overseas headquarters.'¹⁹⁶²
- (b) '[N]ew entrants can always supply test units to customers, as [Sany] did with the global port operator PSA in 2011, thereby winning its recognition and securing PSA as a long-standing customer'.¹⁹⁶³

12.117 In relation to the role of distributors, the Parties submitted that:

- (a) '[Reach stackers, empty container handlers and forklift trucks] are often sold through knowledgeable dealer networks, which work together with suppliers to demonstrate the quality of their offering'.¹⁹⁶⁴
- (b) The fact that a supplier has concluded a distribution agreement with a distributor already demonstrates that its products have a sufficiently high quality from the perspective of knowledgeable distributors who expect to be able to resell it'.¹⁹⁶⁵

Third-party evidence with regard to the supply of MEQ

12.118 Evidence from third parties suggests that current market players may have a strategic advantage from having established a strong track record. This evidence suggests that a potential competitor may be deterred from entering or expanding in the relevant market due to the cost and difficulty of establishing these relationships and knowledge, and uncertainty over the return from it through future sales:

- (a) A competitor [X] told us that building up relationships with decision makers in the industry helps it to 'open the door', but it does not help it to win contracts. It needs to demonstrate the product and establish its credentials in financing and servicing.¹⁹⁶⁶ This competitor [X] further explained that the container handling industry 'is a capital intensive industry and having products on the ground is very important. Future potential customers will want to see proof of the product's performance

¹⁹⁶² Parties submission [X].

¹⁹⁶³ Merger Notice [X].

¹⁹⁶⁴ Merger Notice [X].

¹⁹⁶⁵ Merger Notice [X].

¹⁹⁶⁶ Call note [X].

in real life conditions'. This competitor also stated that it has so far struggled to supply HDFLT to UK ports due to the reliance on 'word of mouth' and a preference to use suppliers that also supply other CHE to the port (such as the Parties).

- (b) A competitor [X] told us that customers consider how long it has been in business when deciding whether to select it as a supplier, 'And in our case, we've been in business for [X] years. So I mean, our reputation has been there. But if it is a new customer that is not familiar with us, it is a concern to [them]'.¹⁹⁶⁷
- (c) A customer [X] told us that its 'preferred supplier' of MEQ is [X] and it had not purchased MEQ from any other supplier since 2016.¹⁹⁶⁸
- (d) A distributor [X]¹⁹⁶⁹ told us that it 'found that breaking into the market was difficult' when it was a new entrant', but was now able to demonstrate its capability to potential customers.¹⁹⁷⁰ This distributor believes 'that an operator of a machine prefers either Cargotec's or Konecranes' equipment'.¹⁹⁷¹
- (e) A distributor [X] told us that:
 - (i) 'The largest challenge for any new entrant would be acceptance. No customer will wish to be the first to buy an unknown and untested product. They want someone else to try and they will then use that reference as comfort. The reality is you really need 3 or 4 strong reference sites before you can be taken as a serious challenger and you also need a USP as a differentiator from mainstream competitors. This involves placing a demonstration machine in a user for a year or multiple users and move the machine around. If you are launching multiple products, you will need a demo of each machine type (RS, FL, ECH). This will cost in the initial machine placement / depreciation, transport, and maintenance. This would be an OEM cost. This represents the biggest challenge to gain acceptance and indeed, some have tried and failed.'¹⁹⁷²
 - (ii) 'It is incredibly hard and expensive to bring new products into the market and brings great expense and huge risk. It is also a relationship business – you need to be known and have a strong

¹⁹⁶⁷ Call note [X].

¹⁹⁶⁸ Call note [X].

¹⁹⁶⁹ Call note [X].

¹⁹⁷⁰ Call note [X].

¹⁹⁷¹ Call note [X].

¹⁹⁷² Email [X].

reputation to form a base to sell from. These are simply just not available with a nominal ‘presence’. Customers take comfort in seeing how machines perform elsewhere and require reference sites. That first delivery is hard and, if the machine doesn’t perform well, it can kill any future marketing’.¹⁹⁷³

12.119 As noted in paragraph 12.72, third parties told us that it is necessary to invest in building an established brand and track record.

12.120 We note that one non-European supplier, Sany, has managed to overcome this barrier and has managed to enter Europe in the supply of RS and ECH without itself having a previous track record, having done so with support from an established distributor, Cooper. As noted in paragraph 12.72(d), [REDACTED] told us that it is ‘very costly and brings massive risk’ to place demonstration units into the market in order to establish a track record.¹⁹⁷⁴ Accordingly, we do not consider that this entry diminishes the importance of having a track record.

Assessment with regard to the supply of MEQ

12.121 We note that the Parties made similar submissions in relation to the supply of MEQ as they did in relation to HTE (as set out in paragraphs 12.94 and 12.95). In summary, the Parties submitted that, to the extent that customers take into account whether a supplier has a strong track record in their purchasing decisions, it is not necessary for that track record to be in the UK, or in Europe.¹⁹⁷⁵ They claimed that GTOs purchase equipment globally and have established relationships and experience with suppliers globally.¹⁹⁷⁶

12.122 The evidence we obtained from both the Parties and third parties shows that having a strong track record and established reputation is a very important part of generating sales as a supplier of MEQ. This is consistent with customers requiring a high level of reliability from MEQ. Further, the evidence from third parties largely indicates that the track record must be established in the UK or Europe. We therefore consider that potential entrants would be required to establish a strong track record and reputation, and this is likely to constitute a high barrier to entry.

12.123 We note that it is possible to try to overcome the need to have a strong track and reputation by using a distributor. However, as set out in paragraphs 12.76 to 12.81, the evidence suggests that few, if any, suitable

¹⁹⁷³ Response to P2 questionnaire [REDACTED].

¹⁹⁷⁴ Response to P2 questionnaire [REDACTED].

¹⁹⁷⁵ Parties submission [REDACTED].

¹⁹⁷⁶ Parties submission [REDACTED].

MEQ distributors would be available, so there are likely to be few (if any) available distributors which can fulfil this role for a new entrant.

12.124 In summary, our view is that the requirement for a strong track record and reputation represents a high barrier to entry for potential suppliers of MEQ.

The importance of having established customer relationships

12.125 Incumbent firms may have built up relationships with customers over time which act as a barrier to customers switching. These relationships may give incumbent firms early mover advantages as a result of having greater knowledge and understanding of their customers' needs than actual or potential competitors. The firms may be able to hone, improve and personalise their products and services, thereby becoming more effective. This may act as a barrier to entry or expansion. Customers may also be more likely to choose a supplier that it already has a relationship with. This may constitute a barrier to entry or expansion.

Parties' views

12.126 The Parties told us that customer relationships are not important in the industry.

12.127 The Parties submitted that tender processes used by State-owned terminals and private customers 'are designed to, and in fact do, systematically eliminate any advantage that one supplier might have over another on the strength of individual relationships'.¹⁹⁷⁷

12.128 The Parties explained that they consider that there is no material incumbency advantage from having knowledge of customers' existing CHE requirements, and almost all equipment is tendered, including for brownfield terminals. They also claimed that there are many examples of brownfield terminals purchasing equipment from a different supplier to the incumbent.¹⁹⁷⁸

12.129 Konecranes' told us that, '[redacted]'.¹⁹⁷⁹

12.130 With regard to the supply of MEQ, specifically, the Parties told us that '[w]here no prior relationship with a customer exists, OEMs can also use

¹⁹⁷⁷ Parties submission [redacted].

¹⁹⁷⁸ Parties submission [redacted].

¹⁹⁷⁹ Parties submission [redacted].

distributors whose broad market knowledge and pre-existing customer relationships may facilitate entry'.¹⁹⁸⁰

12.131 The Parties submitted that, 'As ZPMC's recent rapid expansion in, and ultimately domination of, the STS cranes market vividly demonstrates, the container handling equipment sector is characterised by dynamic competition and little customer loyalty'.¹⁹⁸¹

Third-party evidence on the importance of customer relationships

12.132 Several competitors told us that it would be difficult to enter or expand without having built-up customer relationships.

12.133 With regard to the supply of Gantry Cranes, specifically:

(a) A competitor [REDACTED] told us that if a terminal is already using cranes from an OEM, it is incentivised to replenish its stock from the same OEM, so that all its cranes use the same components and to reduce the stock of spare parts needed.

(b) A competitor [REDACTED] told us that, 'it is unusual that any supplier other than the winning bidder [of an ASC tender] gets a follow-up order'.¹⁹⁸²

(c) A competitor [REDACTED] said that there are many barriers to entering the automated RTG market, including difficulty in convincing customers to change from their existing supplier.¹⁹⁸³ This competitor [REDACTED] stated that 'existing suppliers have a distinct advantage'.¹⁹⁸⁴

(d) A competitor [REDACTED] told us that, 'it is better to go step-by-step, get some wins where we know we can get wins in [REDACTED] because of our brand, the customer's willingness to work with us and wanting to have [REDACTED] products, than trying to go to a terminal that maybe we don't have any relationship with and trying to get that bid'.¹⁹⁸⁵

12.134 With regard to the supply of HTE, specifically:

¹⁹⁸⁰ Parties submission [REDACTED].

¹⁹⁸¹ Parties' Response to the Provisional Findings Report, paragraph 5.17.

¹⁹⁸² Call note [REDACTED].

¹⁹⁸³ Call note [REDACTED].

¹⁹⁸⁴ Call note [REDACTED].

¹⁹⁸⁵ Call note [REDACTED].

- (a) A competitor [redacted] told us that it is currently tendering for [redacted], however, it believed that the [redacted] because, in its view, [redacted] is more familiar with its competitors' products.¹⁹⁸⁶
- (b) A competitor [redacted] told us that it very difficult to achieve market penetration in the supply of straddle carriers because of the domination of the existing players.¹⁹⁸⁷ We note [redacted] suppliers.¹⁹⁸⁸

12.135 With regard to the supply of MEQ specifically, third party distributors told us that customer relationships were very important in the industry:

- (a) A distributor [redacted] told us that 'the mobile equipment market is a relationship business. Suppliers or distributors have to build up relationships with customers over years before gaining contracts from those customers.'¹⁹⁸⁹ It also explained that the time spent building up relationships with potential new customers is 'often speculative as [they] are essentially waiting for the incumbent [supplier or distributor] to "fail" before [they] will be given a chance'.¹⁹⁹⁰
- (b) A distributor [redacted]¹⁹⁹¹ told us that 'a local presence helps with customer retention as the relationship with the customer is important'.¹⁹⁹²
- (c) Another distributor [redacted] told us that it 'would see a potential supplier building up a relationship through supply of products in an adjacent market (such as cranes) as a potential threat, as the supplier would be building up a trust relationship with the customer [which] could transfer across to heavy machines'.¹⁹⁹³

12.136 With regard to the importance of customer relationships common to each of the relevant markets:

- (a) A competitor [redacted] noted that brownfield terminal customers will usually choose the same brand and specification as they did previously when replacing their handling equipment, which makes it more difficult for new entrants to win those contracts.
- (b) A customer [redacted] told us that:

¹⁹⁸⁶ Call note [redacted].

¹⁹⁸⁷ Call note [redacted].

¹⁹⁸⁸ Response to P2 questionnaire [redacted].

¹⁹⁸⁹ Call note [redacted].

¹⁹⁹⁰ Call note [redacted].

¹⁹⁹¹ Call note [redacted].

¹⁹⁹² Call note [redacted].

¹⁹⁹³ Call note [redacted].

- (i) '[R]elationships do play a part in [the selection of a supplier of CHE] because that's what's building your confidence around whether they're going to be there in the future, how transparent they are, what your experience is with them'.¹⁹⁹⁴
- (ii) '[Y]ou build a confidence over a period of time. For example, we've got a very large number of Volvo diesel engines and some of the decisions around staying with Volvo as opposed to other engine manufacturers is that they've been very reliant over a long period of parts supply. You can get parts from Sweden within 24 hours. As the terminal operating system, your paramount concern is that you're going to keep these assets operating. Maintaining those relationships, understanding the supply chain for those parts, what are your options?'.¹⁹⁹⁵
- (c) A customer [X] told us that it selected a supplier of CHE which it, 'believed, firstly, could deliver, because it was cutting edge and you had to mind up who was going to work with it, and would they be there for the long term. We went with [X]. We had a [X] year relationship. We had an open book policy with these guys. We knew the risks that they were taking on, that we were taking on, in moving forward'.¹⁹⁹⁶
- (d) A customer [X] told us that, from a general perspective, the more business a port or a terminal operator has with a supplier, the more they engage with the supplier to solve problems that occur along the way. As a result of that, the relationship with the supplier will naturally grow stronger over time, provided that problems are resolved and that both sides generally view the relationship as mutually beneficial. This also leads to both companies enjoying much more leverage to cross-solve problems, since relationships are give and take, and successful relationships will work towards a position where problems are traded and smoothed and significant compensation sums are not the preferred conflict resolution between the companies.¹⁹⁹⁷
- (e) A customer [X] told us it has built up strong relationships with existing suppliers, such as Cargotec and Konecranes. As a result, they have a detailed knowledge of the port, which it described as critical.¹⁹⁹⁸

¹⁹⁹⁴ Call note [X].

¹⁹⁹⁵ Call note [X].

¹⁹⁹⁶ Call note [X].

¹⁹⁹⁷ Call note [X].

¹⁹⁹⁸ Call note [X].

12.137 We also note that the evidence we have received does not seem to support the Parties' submission that GTOs make their purchasing decisions solely in overseas headquarters with little or no input from local terminals, such as in the UK. Purchasing decisions seem to be the result of a combination of both central and local considerations. For example:

- (a) A GTO customer's [REDACTED] tender committee includes [REDACTED].¹⁹⁹⁹
- (b) A GTO customer [REDACTED] told us that it takes into account the views of its local container terminals when making purchasing decisions.²⁰⁰⁰
- (c) A GTO customer [REDACTED] told us that, 'Every single business unit is part of the procurement exercise. They are actively involved in the procurement exercise. They have input in the technical aspect and the commercial aspect because the budget for the procurement of the equipment sits on the business unit not in head office'.²⁰⁰¹

12.138 We set out more evidence from third parties on whether there are strategic advantages from having established customer relationships across multiple types of CHE in Chapter 13 (paragraphs 13.346 to 13.347). That third party evidence shows that one of the advantages of the Parties' fully integrated CHE offer arises from the relationship they build and develop with some customers through multiple interactions across their portfolio.

12.139 While the Parties' submitted that '[m]any customers (particularly port customers) seek to purchase equipment from different suppliers so as not to be dependent on any one OEM',²⁰⁰² the evidence from third parties set out above and in Chapter 13, indicates, overall, that: i) the relationship they build over time with an OEM of CHE is an important factor for some customers and may influence, to some extent, their procurement decision; and that ii) some customer have a preference for not having a high number of CHE suppliers.

Internal documents

12.140 The pitch document by Bain & Company referred to in paragraph 12.97, when referring to several barriers to entry in the industry, states that, '[g]eographical expansion requires dealer relationships'.²⁰⁰³ As noted in paragraph 12.99, we took into account when evaluating how much weight

¹⁹⁹⁹ Call note [REDACTED].

²⁰⁰⁰ Call note [REDACTED].

²⁰⁰¹ Call note [REDACTED].

²⁰⁰² Parties' Response to the Provisional Findings Report, paragraph 5.19

²⁰⁰³ Parties submission [REDACTED].

should be given to this document the Parties submission that it represents the views of a management consultant, rather than their own views. We also noted that the evidence in this document is corroborated by the Parties' internal documents and third party evidence. Further, we had regard to the fact that Bain & Company [REDACTED]. Accordingly, we considered the views set out in this internal document to be relevant to our assessment.

12.141 Cargotec's internal documents suggest that having a strong track record and reputation gives it an important advantage:

(a) In a review of the 'port automation market', produced in 2018, Cargotec set out that [REDACTED].²⁰⁰⁴

(b) [REDACTED].²⁰⁰⁵

(c) A recent market analysis document produced by Cargotec states that [REDACTED].²⁰⁰⁶

12.142 Cargotec's internal document related to its [REDACTED] notes that:

(a) [REDACTED].²⁰⁰⁷

(b) [REDACTED].²⁰⁰⁸

12.143 Internal documents from Konecranes also indicate that having an established customer relationship gives it an important advantage. In its '[REDACTED]' strategy, the company dedicates 5 of the 19 slides to customer and partner relationships. The document states 'Customers. Strength in customer satisfaction.... Customer confidence that we are a trustworthy partner is the key to winning new customers'.²⁰⁰⁹

12.144 With regard to the supply of MEQ:

(a) An internal document from Konecranes notes that one of its strengths in relation to the supply of MEQ is [REDACTED]. It notes that an ongoing threat to the company is [REDACTED].²⁰¹⁰

²⁰⁰⁴ Cargotec submission [REDACTED] [bold in original]

²⁰⁰⁵ Cargotec submission [REDACTED].

²⁰⁰⁶ Cargotec submission [REDACTED].

²⁰⁰⁷ Cargotec submission [REDACTED].

²⁰⁰⁸ Cargotec submission [REDACTED].

²⁰⁰⁹ Konecranes submission [REDACTED].

²⁰¹⁰ Konecranes submission [REDACTED].

(b) Another internal document from Konecranes, prepared by McKinsey & Company dated 16 June 2020 (around three months after the Parties first entered into discussions regarding the Merger), refers to a [REDACTED].²⁰¹¹

12.145 We set out further evidence from Cargotec's internal documents on the benefits of cooperation between its KAS and KAMOS business units arising from having established customer relationships in 13.313 to 13.322)

Assessment

12.146 We note that the Parties claim that customer relationships are not important in the industry, but the majority of third parties told us that the likelihood of successful entry and/or expansion without established customer relationships is low.

12.147 [REDACTED].

12.148 Whereas the Parties submitted that the CHE sector is 'characterised by dynamic competition and little customer loyalty', the evidence shows that many customers prefer to only purchase from a few suppliers with whom they have established relationships.^{2012,2013,2014}

12.149 The evidence shows that having established customer relationships (amongst 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. We found that incumbent suppliers are in a stronger position than their potential competitors to use their existing customer relationships to hone, improve and personalise their products and services to meet their customers' requirements. This includes having additional cross-selling and internal knowledge sharing opportunities. This manifests itself as a barrier to customers switching and ultimately, a deterrent to potential competitors entering the market and/or competitors wishing to expand.

12.150 This barrier is made greater where incumbent suppliers have a broad portfolio of CHE if, as a consequence of supplying this range of CHE, as their existing customer relationships may be even stronger from supplying a

²⁰¹¹ Konecranes submission [REDACTED].

²⁰¹² Call note [REDACTED].

²⁰¹³ Call note [REDACTED].

²⁰¹⁴ Call note [REDACTED].

range of CHE equipment and, in so doing, have more frequent and deeper contact with customers (as set out at paragraph 13.346).²⁰¹⁵

- 12.151 Accordingly, the importance of customer relationships is a high barrier to entry and/or expansion.
- 12.152 The Parties submitted that it was possible to replicate customer relationships by appointing a distributor. Even if this was possible, we consider that there are few (if any) distributors with pre-existing customer relationships available for potential or actual competitors to appoint for the distribution of MEQ, in light of the evidence set out in paragraphs 12.76 to 12.80.
- 12.153 During the course of our investigation, the Parties did not claim that other types of CHE (such as Gantry Cranes or HTE) are sold via distributors. We did not obtain any other evidence that distributors have established customer relationships in those markets.

The importance of having interoperable connectivity solutions

- 12.154 We assessed whether the Parties, as incumbent firms for many customers, may have an advantage resulting from the offer of connectivity solutions which are interoperable, or have the potential to be interoperable, with other CHE (whether of the same or different types).²⁰¹⁶ These connectivity solutions may create switching costs for customers which act as a barrier to actual or potential competitors from entering or expanding.
- 12.155 We note that there are different layers of technology used by container handling terminals, such as TOS, ECS, and remote monitoring systems (such as Konecranes' TRUCONNECT and Cargotec's Kalmar Insight). As noted in Chapter 2, one of the main industry trends is the digitalisation, automation, and electrification of CHE. We therefore expect the depth of integration and level of interoperability between these systems to increase in relation to all types of CHE in the future.

²⁰¹⁵ Call note [redacted].

²⁰¹⁶ The Parties offer connectivity solutions which can be integrated across CHE in multiple relevant markets. For example, Konecranes' TRUCONNECT: [TRUCONNECT information on your KONECRANES | Konecranes](#), and Kalmar Insight: [Kalmar Insight | Kalmarglobal](#).

Interoperability within individual markets

Parties' views

12.156 The Parties made the following statements in relation to the supply of HTE, specifically:

- (a) [T]here are no significant technical, IP related or other legal barriers to entry that could have hindered competitors from entering the potential straddle carrier market or expanding their existing straddle carrier business in the past'.²⁰¹⁷
- (b) 'Even if interoperability were a key consideration for a customer's procurement decisions, suppliers' HTE offerings would not be the primary driver of their decision'.²⁰¹⁸
- (c) '[T]he Parties do hold certain IP rights in relation to straddle carriers. By way of example, [X]. Konecranes' basic straddle carrier product is decades old. In Konecranes' view, [X]. The Parties maintain that none of their IP rights in relation to straddle carriers can be perceived as necessary to enter or expand in the straddle carrier area'.²⁰¹⁹

12.157 The Parties made the following statements in relation to the supply of MEQ, specifically:

- (a) 'The technological and connectivity solutions for cranes and HTE are largely different than those in use for MEQ'.
- (b) '[i]nteroperability is not yet an important consideration for [MEQ]'.²⁰²⁰
- (c) '[MEQ] are still manually operated. They are not (yet) automated, but rather are commodity products with no proprietary technology (other than in relation to the control system, which does not need to be maintained in connection with servicing the equipment). In reality many operators are happy to operate a mixed fleet of [MEQ] without interoperability concerns'.²⁰²¹
- (d) '[MEQ] are a commoditised product with a faster replacement cycle than the rest of CHE, therefore interoperability is not an issue for customers,

²⁰¹⁷ Merger Notice [X].

²⁰¹⁸ Parties submission [X].

²⁰¹⁹ Merger Notice [X].

²⁰²⁰ Parties submission [X].

²⁰²¹ Parties submission [X].

and this also gives the opportunity to new entrants to penetrate the market.²⁰²²

- (e) 'While automation is well-advanced for cranes and HTE (although it still only accounts for a small proportion of total equipment sales in these areas), it is absent or at most a nascent technology for MEQ and therefore the fact that the Parties also offer equipment control systems (ECS) (e.g. Kalmar One) is not relevant for MEQ currently'.

12.158 In response to the Remedies Working Paper and in the context of the assessment of the effectiveness of possible remedies solution, the Parties submitted, amongst other submissions that are considered in Chapter 13, that 'Equipment [across MEQ, HTE and Gantry Cranes] is almost never sold together, and all ECSs are interoperable'.²⁰²³ Konecranes, in particular, told us that:

- (a) '[It] does not supply automated mobile equipment, therefore there are no relevant protocols for the exchange or transmission of data between Konecranes mobile equipment and third-party ECS'.²⁰²⁴
- (b) '[Its] connectivity solutions are primarily used by industrial customers'²⁰²⁵ and 'less than 1% of active TRUCONNECT users use TRUCONNECT for both Konecranes MEQ and cranes or HTE'.²⁰²⁶

Third-party evidence

12.159 In relation to the supply of Gantry Cranes, specifically, we obtained the following views from third parties:

- (a) A competitor [X] considers that integration makes it harder to get a new crane by another supplier as all equipment needs to 'talk' to each other.²⁰²⁷ It also explained that '[i]nteroperability is currently possible if a customer has a highly experienced technical team at the port, but if a customer does not have a technical team, lock-in can occur'.²⁰²⁸ This competitor [X] told us that customers already made substantial investments in spare parts inventory so it's costly for them to switch'.²⁰²⁹

²⁰²² Parties submission [X].

²⁰²³ Parties submission [X].

²⁰²⁴ Konecranes submission [X].

²⁰²⁵ Parties submission [X].

²⁰²⁶ Parties submission [X].

²⁰²⁷ Call note [X].

²⁰²⁸ Call note [X].

²⁰²⁹ Response to P2 questionnaire [X].

- (b) A competitor [redacted] noted that, usually, customers want to integrate new cranes into their existing systems, so they will be incentivised to purchase all of their cranes from the same manufacturers to ensure all of their cranes use the same components and to reduce the stock of spare parts which are needed.²⁰³⁰
- (c) A competitor [redacted] told us that, 'it is unusual that any supplier other than the winning bidder [of an ASC tender] gets a follow-up order'.²⁰³¹
- (d) A customer [redacted] told us that:
 - (i) 'The degree of interoperability is important for [RTG] due to the specific / specialist nature of the deployment application and systems'.²⁰³²
 - (ii) 'If you tackle it purely from an asset management point of view, it is perfect if you can buy all of your equipment from one vendor because it minimises the amount of spare parts variation, the technical training that you need to undertake and you end up with your incumbent technicians very familiar with the equipment and your ability to maintain it and keep it working at its optimum is much easier because your team become very familiar with it'.²⁰³³
- (e) A customer [redacted] told us that the degree of interoperability with other equipment and already having an installed base of equipment from a particular supplier will be rated 5 in future tenders and that Cargotec would have an advantage in the future as it has an established installed base of RTGs, and it expects that new CHE from an alternative supplier would not be as interoperable with it as new CHE from Cargotec.²⁰³⁴
- (f) A customer [redacted] told us that there is an 'advantage to having a single brand supplier for a specific equipment type', and it does not typically operate a 'mixed-fleet'.²⁰³⁵

12.160 Some customers also told us that, in addition to perceiving an advantage from purchasing CHE from no more than a few suppliers, they had a preference not to source all of their CHE from a single supplier:

²⁰³⁰ Call note [redacted].

²⁰³¹ Call note [redacted].

²⁰³² Response to P2 questionnaire [redacted].

²⁰³³ Transcript of call [redacted].

²⁰³⁴ Response to P2 questionnaire [redacted].

²⁰³⁵ Call note [redacted].

- (a) A customer [REDACTED] told us that '[it] works mainly with ZPMC, Kalmar and Konecranes, [since] these are the big three suppliers. Historically, [it] worked with five main suppliers, but following consolidation, this is down to three (and may fall to two following the merger)'.²⁰³⁶
- (b) A customer [REDACTED] told us that it doesn't want to be reliant on a third party. It elaborated to say that 'you're making a decision based on risk, your own technical capability and, of course, the costs'.²⁰³⁷

12.161 We note that customers' ratings of the importance of different purchasing criteria for RTG and ASC show that interoperability tends to be an important factor for customers of ASC and for some customers of RTG, especially in relation to future sales.

12.162 In relation to the supply of MEQ, specifically:

- (a) A competitor [REDACTED] told us that it believes that customers take into account their operators' level of familiarity with the system of controls when making purchasing decisions.²⁰³⁸ This competitor [REDACTED] also said, 'Chinese competitors' products are less developed, but also less expensive'. It considers that, 'a driver in Europe would not drive a Chinese competitors' machine'.²⁰³⁹
- (b) A customer [REDACTED] told us that Reach Stacker CHE 'is standalone, however, familiarity with service requirements and commonality of spare parts is a consideration'.²⁰⁴⁰
- (c) A customer [REDACTED] told us that it likes 'to keep all [ECH] of the same brand where possible'.²⁰⁴¹
- (d) One customer [REDACTED] told us that, 'the degree of interoperability is important for [HDFLT] due to the specific / specialist nature of the deployment application and systems'.²⁰⁴²
- (e) A distributor [REDACTED] told us that it considers 'that an operator of a machine prefers either Cargotec's or Konecranes' equipment'.²⁰⁴³

²⁰³⁶ Call note, [REDACTED]

²⁰³⁷ Transcript of call, [REDACTED].

²⁰³⁸ Call note [REDACTED].

²⁰³⁹ Call note [REDACTED].

²⁰⁴⁰ Response to P2 questionnaire [REDACTED].

²⁰⁴¹ Response to P2 questionnaire [REDACTED].

²⁰⁴² Response to P2 questionnaire [REDACTED].

²⁰⁴³ Call note [REDACTED].

Internal documents

- 12.163 An internal document from Konecranes highlights that Kalmar [REDACTED].²⁰⁴⁴
- 12.164 Another Konecranes' internal document about an [REDACTED], refers to a discussion with [REDACTED] and states that, '[Konecranes]' [REDACTED].²⁰⁴⁵ We consider that this document highlights the importance some customers place on the interoperability of their CHE.
- 12.165 A report prepared by Cargotec identifies one of its advantages in the supply of reach stackers as being [REDACTED].²⁰⁴⁶

Assessment

- 12.166 We note that the Parties submitted that there are no significant technical, IP related or other legal barriers to entry.²⁰⁴⁷ However, this view is not supported by the third-party evidence we obtained or the Parties' internal documents.
- 12.167 Many customers told us that interoperability was an important factor in their purchasing decisions, that CHE from different suppliers was often not interoperable, and this made it less likely that they would switch.
- 12.168 Even if CHE from different suppliers was technically interoperable (and a few customers may perceive connectivity solutions from different suppliers to be interoperable), many customers told us that this did not match their perception of the industry, or at least they considered that there would be compatibility risks from multi-sourcing.
- 12.169 We consider that customers' familiarity with one solution over another and general preference to limit the number of suppliers they purchase from gives incumbent suppliers an advantage over actual or potential competitors. This is supported by the evidence in relation to MEQ in paragraph 12.162.
- 12.170 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 (explained in paragraphs 13.171 and 12.199 and paragraphs 13.338 to 13.345. In Chapter 13).

²⁰⁴⁴ Konecranes submission [REDACTED].

²⁰⁴⁵ Konecranes submission [REDACTED].

²⁰⁴⁶ Cargotec submission [REDACTED].

²⁰⁴⁷ Merger Notice [REDACTED].

Interoperability across multiple CHE markets

Parties' views

12.171 The Parties told us that there is no evidence for the proposition that connectivity across a portfolio of different CHE products is important to customers.²⁰⁴⁸

12.172 In particular, the Parties submitted that:

- (a) 'There are many terminal operators using automated equipment from different suppliers'.²⁰⁴⁹
- (b) ECS are not specific to a particular OEM's CHE and can be used with a variety of ECS solutions (mix and matching is possible).²⁰⁵⁰

12.173 Cargotec told us that many of its systems are interoperable:

- (a) '[I]ts equipment control systems (ECS) are [REDACTED]'.²⁰⁵¹
- (b) [REDACTED].²⁰⁵²
- (c) [REDACTED].²⁰⁵³

12.174 Konecranes told us that:

- (a) 'Konecranes' ECS TEAMS is designed for interoperability with third-party equipment and TOS. TEAMS' open application programming interface facilitates seamless and modular integration. Konecranes has [REDACTED]. Konecranes uses [REDACTED]. Konecranes has [REDACTED].²⁰⁵⁴
- (b) [REDACTED].²⁰⁵⁵

12.175 In response to the Remedies Working Paper, Cargotec stated that around [REDACTED] of its customers in Europe (including the UK) accessed its Kalmar Insight platform in the last quarter of 2021. Of these customers, around [REDACTED] used it exclusively for Cargotec MEQ.²⁰⁵⁶ Konecranes also stated that 'its connectivity solutions are primarily used by industrial customers' and 'less

²⁰⁴⁸ Parties submission [REDACTED].

²⁰⁴⁹ Cargotec submission [REDACTED].

²⁰⁵⁰ Parties submission [REDACTED].

²⁰⁵¹ Cargotec submission [REDACTED].

²⁰⁵² Cargotec submission [REDACTED].

²⁰⁵³ Cargotec submission [REDACTED].

²⁰⁵⁴ Konecranes submission [REDACTED].

²⁰⁵⁵ Konecranes submission [REDACTED].

²⁰⁵⁶ Parties submission [REDACTED].

than 1% of active TRUCONNECT users use TRUCONNECT for both Konecranes MEQ and cranes or HTE’.

Third-party evidence

12.176 Competitors told us that there is a strategic advantage from having connectivity solutions which are interoperable across multiple categories of CHE or layers of container terminal systems.

12.177 A competitor [REDACTED] told us that:

- (a) ‘Several different equipment types need to work together to make a port productive. Post-Merger, the Merged Entity can supply every single type of equipment for the port which gives it a distinct advantage against smaller competitors in terms of costs and integration.
- (b) It believes that [the Merger] would push other suppliers out of the market’.²⁰⁵⁷
- (c) It considers that ‘for port productivity, there is a need for a symbiotic relationship which in turn locks in customers to a single supplier’.²⁰⁵⁸
- (d) ‘The [customer’s] choice of supplier of automated RTG or ASCs does not determine the supplier of horizontal transport equipment. However, it gives the supplier a distinct advantage’.²⁰⁵⁹

12.178 A competitor [REDACTED] told us that ‘issues with interoperability are different depending on whether the terminal is already operating as a brownfield site, or if it is a greenfield site: for a brownfield site, which already has its own systems and also existing handling equipment. It will be difficult for a new supplier to make its equipment interoperable with that control system’.²⁰⁶⁰ This competitor [REDACTED] explained that it is aware of port terminals trying a combination of products from different suppliers, but usually only on a trial basis to see if the equipment of these suppliers is interoperable. As handling equipment from different suppliers is usually not interoperable, this competitor [REDACTED] noted it can be very difficult for a new supplier to win a contract.²⁰⁶¹

12.179 A competitor [REDACTED] told us that, ‘[i]t is always a challenge for the ASC’s software to interoperate with other equipment-level software and ECS (as

²⁰⁵⁷ Call note [REDACTED].

²⁰⁵⁸ Call note [REDACTED].

²⁰⁵⁹ Call note [REDACTED].

²⁰⁶⁰ Call note [REDACTED].

²⁰⁶¹ Call note [REDACTED].

applicable). It is a topic to consider at the tender stage, especially in brownfield projects with existing equipment from another manufacturer, and this has sometimes been a hurdle for this competitor [X] to overcome in order to convince a customer'.²⁰⁶² This competitor [X] believed that the consideration of interoperability was a reason why its bid in [X] was unsuccessful.²⁰⁶³

12.180 A competitor [X] identified high barriers to entry in RTG, such as the need to have an interface with existing terminal operation system.²⁰⁶⁴

12.181 With regard to evidence from customers:

(a) A customer [X] told us that:

- (i) It considers that practically the only possibility for it is to use the equipment supplier's ECS.
- (ii) It considers that 'the technical challenges of using another automation [system] are not usually offset by price benefits of purchasing equipment from another equipment supplier'. However, this is technically feasible to implement though at additional cost and time.²⁰⁶⁵
- (iii) It is advantageous for all of the equipment at a site to be from the same OEM. This gives an OEM which has already provided equipment to a port an advantage over its competitors.
- (iv) It strives to achieve standardisation of its equipment at its ports but recognises that this will not always be possible.²⁰⁶⁶
- (v) It is possible to connect a supplier's connectivity solution to another supplier's CHE, however, 'you need to install modems, chips, sensors [and a protocol interface] in order to connect another supplier's reach stacker to a Kalmar Insight ... [but] no one is doing [that] because they are interested in keeping their equipment connected to system [of the supplier which supplied it].²⁰⁶⁷
- (vi) Kalmar Insight can be used across all the different platforms from ECH to RS or ASC.²⁰⁶⁸ In this respect, this customer noted that: 'we

²⁰⁶² Call note [X].

²⁰⁶³ Call note [X].

²⁰⁶⁴ Response to P2 questionnaire [X].

²⁰⁶⁵ Call note [X].

²⁰⁶⁶ Call note [X].

²⁰⁶⁷ Transcript of call [X].

²⁰⁶⁸ Call note [X].

operate Kalmar shuttles, and you have Kalmar Insight for that. We also operate Konecranes empty handlers, and you are connected to TRUCONNECT, so you have two platforms. If the original merger, as proposed, would retain one platform, the chances to have a single platform to connect the shuttles and the empty handlers were better'.²⁰⁶⁹

- (b) A customer [REDACTED] told us that [REDACTED] considers that there is a concern in the industry about the dominant suppliers, however if the integrated package enables a customer to operate more efficiently and quicker it could be attractive in comparison to buying equipment types individually.²⁰⁷⁰
- (c) A customer [REDACTED], told us that, '[I]t is possible to combine one manufacturer's ECS with software from other manufacturers'. However, it also said that it tends to 'shy away from having a number of different operations systems and management systems. Once you have a certain system or infrastructure in place, it can be disproportionate to move away from it from an operation or cost perspective'.²⁰⁷¹ This customer [REDACTED] told if you need to liaise with several different suppliers this can cause complexity, so suppliers provide an end to end, or turnkey solution can provide a compelling offer/alternative'²⁰⁷²
- (d) A customer [REDACTED] told us that Kalmar currently has a 'distinct advantage' given its ability to offer MEQ alongside Port Cranes and automation, as it allows 'one-stop shop' solutions to multi-faceted problems.
- (e) A customer [REDACTED] told us that:
 - (i) It selects suppliers based on the lowest competitive bid price received. This means that it can have 'multiple vendor equipment in the same operation' and it is generally able to 'mix and match' CHE from different suppliers, but it is still 'coming to grips with' software interoperability.²⁰⁷³
 - (ii) Different suppliers offer their own ECS 'and the purpose of that is to try and lock [the customer] in. So if [the customer buys] the first system from company A, and then [goes] back to the market to buy

²⁰⁶⁹ Transcript of call [REDACTED].

²⁰⁷⁰ Call note [REDACTED].

²⁰⁷¹ Transcript of call [REDACTED].

²⁰⁷² Transcript of call [REDACTED].

²⁰⁷³ Transcript of call [REDACTED].

additional equipment, [the customer has] got the complication of [interfacing] the two together'.²⁰⁷⁴

(iii) '[I]f you don't interact with a piece of software on a regular basis, you get a bit rusty. You may not remember quite exactly how it's functioning and how it works and so on, so on that basis we've already tried to stipulate two or three main platforms that we use. That's based purely on the training requirement and the maintenance of those training capabilities as well'.²⁰⁷⁵

(f) A customer [REDACTED] told us that OEMs' equipment will always, likely, interface better with their own equipment. It may be possible to integrate other suppliers equipment, but there will likely be a cost to carrying out this integration. Suppliers argue that the safest, and cheapest, solution would be to go with their own platform equipment of the platform provider. If a port has, for example, a Kalmar automated platform and Kalmar automated straddle carriers, then there is an incentive, when looking to purchase ATT, to buy these from Kalmar as well.

12.182 We set out more evidence obtained from third parties regarding the importance of interoperability and interconnectivity in paragraphs 13.338 to 13.345. In Chapter 13, we also note that each of the Parties owns proprietary IPR supported by R&D teams which would require significant investment to replicate (for example Kalmar Cloud, Kalmar Cloud Gateway, Kalmar Insight, Maintenance Remote Support, Kalmar One application monitoring, MyParts, MyKalmar and Smart Trucks).²⁰⁷⁶

Internal documents

12.183 We note that Cargotec's Kalmar Insight connectivity solution is designed to work across a broad range of CHE types and this functionality has been promoted in its marketing.²⁰⁷⁷

12.184 Similarly, Konecranes' TRUCONNECT connectivity solution is a remote fleet monitoring tool. Its Business Development Manager has stated that, 'In highly competitive environments driver responsibility, operational safety and cost efficiency can often only be improved with real-time, and continuous

²⁰⁷⁴ Transcript of call [REDACTED].

²⁰⁷⁵ Call note [REDACTED].

²⁰⁷⁶ Cargotec submission [REDACTED].

²⁰⁷⁷ Cargotec website, Kalmar Insight: https://www.kalmarglobal.com/news--insights/articles/2019/20190603_goodbye-data-chaos-hello-impactful-insights/.

fleet management tools that deliver detailed, trustworthy and granular information'.²⁰⁷⁸

12.185 Furthermore, Konecranes' website states that its Autostore TOS provides 'real-time container-handling equipment and container tracking/location information'. Further, '[i]t is suitable for all types of equipment, including: rail mounted gantry cranes, reach trucks, rubber-tyred gantry cranes, straddle carriers, wide-span gantry cranes and can be easily installed on new and existing container handling equipment'.²⁰⁷⁹

12.186 With regard to the importance of interoperable connectivity solutions across a range of CHE types in the future, we note the following evidence from the Cargotec's internal documents:

- (a) A presentation about the 'Direction of Kamos Automation' refers to a plan to sell [REDACTED].²⁰⁸⁰
- (b) In an internal study commissioned by Cargotec, the company found that while the market for automation is crowded, with many players offering partial solutions, 'Kalmar differentiates by [REDACTED]'.²⁰⁸¹

12.187 Similarly, Konecranes' internal documents indicate that it believes that having interoperable connectivity solutions is important to its future commercial strategy:

- (a) A strategy document prepared by Konecranes' senior team notes that [REDACTED], as illustrated in Figure 29.²⁰⁸²

Figure 29: [REDACTED]

[REDACTED]

Source: [REDACTED]

- (b) Konecranes' internal document regarding a 'Proposal to Board of Directors' on ATT, dated September 2019, quotes an 'industry expert' as saying, '[REDACTED]'.²⁰⁸³

A briefing and Q&A document used by Konecranes in the onboarding of Leadership Team Members states '[REDACTED]

²⁰⁷⁸ Konecranes website, it's about smart, connected lift trucks: [It's about smart, connected lift trucks | Corporate press releases | Konecranes](#)

²⁰⁷⁹ Konecranes website, Autostore TOS: [Autostore Terminal Operating System | TBA Group](#)

²⁰⁸⁰ Cargotec submission [REDACTED].

²⁰⁸¹ Cargotec submission [REDACTED].

²⁰⁸² Konecranes submission [REDACTED].

²⁰⁸³ Konecranes submission [REDACTED].

- (c) .²⁰⁸⁴ It also states that [REDACTED].²⁰⁸⁵
- (d) A Konecranes presentation with the title [REDACTED] states: '[REDACTED].²⁰⁸⁶ We consider that this indicates that customers have a preference for using equipment with features they are familiar with.
- (e) A letter to a Konecranes customer dated May 2019 states that it can offer, [REDACTED].²⁰⁸⁷
- (f) Konecranes' 2018 annual review states that 'We see the future of our offering in terms of its readiness for Industry 4.0 and its strong potential for integration into the wider ecosystem of our customers' operations.'²⁰⁸⁸ In particular, it states that Konecranes 'will enjoy economies of scale due to [its] ability to capitalise on introducing common technologies across the entire portfolio'.²⁰⁸⁹
- (g) Konecranes' internal documents refer to the ability of equipment to connect to a surrounding machine ecosystem, such as a cloud-based information network, as being one of the emerging trends within the market.²⁰⁹⁰

12.188 Cargotec's Kalmar division has the automation of MEQ on its 2019-2021 product roadmap.²⁰⁹¹ We consider that this is evidence of Cargotec's ability and intention to develop automated MEQ (and the necessary interoperability for this functionality) in the near future.

12.189 We set out the main trends affecting the industry and the Parties' strategy in view of them in paragraphs 13.265 to 13.276.

12.190 We summarise evidence from the Parties' internal documents relating to the competitive advantages associated with an integrated CHE offer in terms of interoperability and connectivity across different types of CHE in Chapter 13, paragraphs 13.290 to 13.312.

12.191 We summarise evidence from the Parties' public marketing in relation to the advantages of developing and offering a single integrated connectivity solution to be used across all CHE in paragraphs 13.329 to 13.333.

²⁰⁸⁴ Konecranes submission [REDACTED].

²⁰⁸⁵ Konecranes submission [REDACTED].

²⁰⁸⁶ Konecranes submission [REDACTED].

²⁰⁸⁷ Konecranes submission [REDACTED].

²⁰⁸⁸ Konecranes submission [REDACTED].

²⁰⁸⁹ Konecranes Annual Review 2018: <https://www.konecranes.com/sites/default/files/2019-03/Konecranes-Annual-Review-2018.pdf>.

²⁰⁹⁰ Konecranes submission [REDACTED].

²⁰⁹¹ Cargotec submission [REDACTED].

Assessment

- 12.192 We note that the Parties told us that there is no evidence for the proposition that connectivity across a portfolio of different CHE products is important to customers.²⁰⁹² In particular, the Parties claim that interoperability is not yet an important consideration for MEQ.²⁰⁹³
- 12.193 The evidence we obtained from third parties on whether interoperability between different types of CHE is a key factor in customers' purchasing decisions is mixed, but we consider that interoperability is becoming increasingly important to customers.
- 12.194 As noted in paragraphs 12.156 to 12.169, we found that customers place significant importance on the interoperability of Gantry Cranes, and this is partly driven by the automation of this type of CHE. We also note that Cargotec's Kalmar division has the automation of MEQ on its roadmap.²⁰⁹⁴ This is consistent with the industry trend towards greater automation across container terminal ports, extending beyond Gantry Cranes through to HTE and MEQ.
- 12.195 We observe that each of the Parties has developed connectivity solutions which offers interoperability across a portfolio of CHE products (for example, Cargotec's Kalmar Insight and Konecranes' TRUCONNECT). As noted in Chapter 13, paragraph 13.356 to 13.366, the evidence from third parties suggests that customers value a single connectivity solution. Therefore, customers have a preference for connectivity solutions which are interoperable across a portfolio of CHE.
- 12.196 Cargotec submitted that [REDACTED] of its customers in Europe (including the UK) used its Kalmar Insight connectivity in the last quarter of 2021 exclusively for its MEQ.²⁰⁹⁵ Further, Konecranes' submitted that less than [REDACTED] of active TRUCONNECT users use the connectivity solution for both Konecranes MEQ and crane or HTE. Whilst the percentages of customers using these connectivity solutions across different types of CHE appear small, in light of the industry trend towards digitalisation, electrification and automation and the benefits for some customers of using a single connectivity solution across different types of CHE (see Chapter 13, paragraphs 13.338 to 13.346), we expect the proportion of customers using connectivity solutions to increase in the near future.

²⁰⁹² Parties submission [REDACTED].

²⁰⁹³ Parties submission [REDACTED].

²⁰⁹⁴ Cargotec submission [REDACTED].

²⁰⁹⁵ Parties submission [REDACTED].

12.197 The Parties submitted that their ECS is interoperable with third party systems. This would, in theory, allow a new entrant to integrate their ECS with the connectivity solutions provided by incumbent suppliers, and *vice versa*. Further, the Parties claimed that there are no significant technical, IP related or other legal barriers to entry.²⁰⁹⁶

12.198 However, as noted in paragraphs 12.175 to 12.182, the evidence from third parties indicates that customers perceive there to be difficulties in making different connectivity solutions interoperable (whether or not these perceptions are technically correct). In this regard, we note that the Parties' internal documents indicate that they consider that they have an advantage in terms of having a broad range of CHE, and potentially an advantage in setting the standards for interoperability. In this regard, we note that each of the Parties has developed connectivity solutions which facilitate interoperability across a range of CHE (for example, Cargotec's Kalmar Key²⁰⁹⁷ and Konecranes' Terminal Operating System from TBA²⁰⁹⁸).

12.199 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 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 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.

Consideration of other possible barriers to entry or expansion

12.200 We considered other possible barriers for entry but did not find them to be material. For instance:

- (a) Generally, whilst we note that the supply of CHE is subject to European and UK standards and regulations, and these may be different from the rest of the world,²⁰⁹⁹ we observe that these regulations can be overcome through investment by competitors and potential entrants, so these standards and regulations are considered in our assessment of the

²⁰⁹⁶ Merger Notice [REDACTED].

²⁰⁹⁷ Kalmar Key | Kalmarglobal: <https://www.kalmarglobal.com/automation/kalmar-key/>.

²⁰⁹⁸ Container Terminal Operating System (TOS) | Konecranes: <https://www.konecranes.com/software/terminal-operating-system-tos>.

²⁰⁹⁹ For example, in relation to CHE emissions (Call note [REDACTED]) and/or safety documentation (Call note [REDACTED].)

investment and time required to enter and/or expand, and the importance of economies of scale.

- (b) Whilst the Parties do own some intellectual property rights,²¹⁰⁰ they do not appear to act as an absolute barrier to entry or expansion.
- (c) Whilst customers have regard to the geopolitical environment when making their purchasing decisions,²¹⁰¹ they do not appear to consider this to be a key factor in their selection of a supplier of CHE.²¹⁰²
- (d) We found that there is an industry trend towards electrification, and both the European Union²¹⁰³ and UK government²¹⁰⁴ have set targets for the reduction of greenhouse gas carbon emissions²¹⁰⁵. The evidence indicates that customers take into account the potential impact of carbon emissions. The Parties told us that, ‘Suppliers are increasingly having to react to the technological and environmental transition that is happening in the industry and society at large’.²¹⁰⁶ A customer [REDACTED] awarded a contract to Konecranes to retrofit a mobile harbour crane with electrification in 2019 and announced that, ‘[REDACTED] always strives to reduce its environmental impact on the community that it is part of. The project to electrify our hard-working mobile harbour crane will make it quieter and reduce its local emissions’.²¹⁰⁷ Another customer [REDACTED] also noted that ‘environmental concerns’ is one of the factors taken into account at the pre-qualification stage in its tender process for CHE.²¹⁰⁸ We consider the importance placed by customers on suppliers’ CHE having low emissions in our assessment of the importance of having a strong track record and reputation, rather than as a barrier to entry or expansion in itself.

Assessment on barriers to entry and / or expansion

12.201 We have found several barriers to entry and/or expansion:

²¹⁰⁰ For example, in relation to Cargotec’s control interface. Cargotec submission [REDACTED].

²¹⁰¹ Third-party submission [REDACTED].

²¹⁰² We note that the Parties and their competitors produce in CHE in locations around the world, including China. As explained in Chapter 5, however, all RTG and most ASC delivered by Konecranes in Europe were produced in Europe (Konecranes submission [REDACTED]).

²¹⁰³ [Climate action | European Commission \(europa.eu\)](https://ec.europa.eu/info/topics/climate-action_en), https://ec.europa.eu/info/topics/climate-action_en.

²¹⁰⁴ [BEIS, Press Release, UK enshrines new target in law to slash emissions by 78% by 2035.](https://www.gov.uk/government/news/uk-enshrines-new-target-in-law-to-slash-emissions-by-78-by-2035)
<https://www.gov.uk/government/news/uk-enshrines-new-target-in-law-to-slash-emissions-by-78-by-2035>.

²¹⁰⁵ [Container Terminal Foresight, January 2020](http://www.ctf2020.info/), p 87. <http://www.ctf2020.info/>

²¹⁰⁶ Parties submission [REDACTED].

²¹⁰⁷ [Ship Technology website, Konecranes to electrify mobile harbour crane in Liège Terminal: https://www.ship-technology.com/news/dp-world-konecranes/](https://www.ship-technology.com/news/dp-world-konecranes/).

²¹⁰⁸ Transcript of call [REDACTED].

- (a) 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.
- (b) 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
- (c) 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.

12.202 These barriers may be reduced if a new entrant has been able to establish a strong track record or customer relationship in adjacent markets.

Nevertheless, we have found that these barriers in aggregate are likely to materially reduce the extent, timing and likelihood of entry or expansion following the Merger. All potential entrants or existing suppliers attempting to expand would face at least some of these barriers, and potentially all of them.

Entry and expansion as a result of the Merger

Parties views

- 12.203 The Parties identified a number of OEMs as potential new entrants or as having the potential and/or plans to enter or expand into the markets in which we found SLCs.²¹⁰⁹
- 12.204 The Parties have not specified whether any of the third parties referred to in paragraph 12.203 would be more likely to enter or expand in response to the Merger.
- 12.205 The Parties submitted that the CMA's Provisional Findings Report 'fail[s] to take account of the specific considerations that would apply to Chinese State-backed or State-owned rivals, or established competitors in adjacent markets'.²¹¹⁰ In particular, the Parties stated that significant costs of entry 'are highly unlikely to deter Chinese rivals given their access to capital and the broader strategic imperatives of the Chinese State in this sector'.²¹¹¹

Third-party evidence

- 12.206 In the course of our investigation, we gathered evidence from all the Parties' major competitors,²¹¹² including their views on barriers to entry and expansion and their plans to enter and expand in the relevant markets. We also contacted a number of other competitors and potential entrants identified by the Parties but did not receive responses from all of them.

²¹⁰⁹ For example, in relation to the supply of Gantry Cranes: Baltkran, CSSC, Doosan, DSD Hilgers, HDHM, Kaliningrad, Kuenz, Liebherr, Mi-Jack, Mitsui, Mitsubishi, Paceco Espana, Sany, and ZPMC; in relation to the supply of SC and ShC: Liebherr, Mobicon, Sany, Suzhou Dafang, and ZPMC; in relation to the supply of Mobile Equipment excluding heavy duty forklift trucks: CES, CVS Ferrari, FTMH, Dalian, Hangcha, Heli, Hyster, Liebherr, Loadstar, Mitsui, Uplifting, Sany, Shaanxi, SOCMA, Svetruck, Taylor, XCMG, Zhongtie-Wuxin, and ZPMC; and in relation to the supply of heavy duty forklift trucks: BYD, CES, CVS Ferrari, FTMH, Dalian, Doosan, Hangcha, Heli, Hyundai, Hyster, Linde, Loadstar, Mitsui, Uplifting, Sany, SOCMA, Svetruck, Taylor, XCMG, Zhongtie-Wuxin, and ZPMC.

²¹¹⁰ [Parties' Response to the Provisional Findings Report](#), paragraph 5.4.

²¹¹¹ [Parties' Response to the Provisional Findings Report](#), paragraph 5.5.

²¹¹² CVS Ferrari S.P.A., Hyster-Yale, Hyundai, Kuenz, Liebherr, Linde Material Handling, Sany, Terberg, TICO, ZPMC. In relation to spreader suppliers, we received responses from Elme, RAM and Stinis, Mitsui Engineering & Shipbuilding, Heli, XCMG.

- 12.207 The evidence we received was consistent and demonstrates that barriers to entry and expansion in the relevant markets are, in aggregate, high which indicates that it is difficult for OEMs to enter or expand in any of the markets in which we found an SLC in a timely manner and with a sufficient scale to offset the potential loss of competition resulting from the Merger.
- 12.208 As discussed in relation to each relevant market in Chapters 7, 8, and 9, we did not find evidence that any of the existing alternative suppliers, or any other third parties, have the necessary capabilities or intention to materially enter or substantially expand in the relevant markets, in the near future (irrespective of the Merger). As set out in those Chapters, no specific and timely entry or expansion plans appear to exist that would be sufficient in scope and magnitude to sufficiently constrain the Merged Entity to offset the potential loss of competition from the Merger.
- 12.209 When considering entry and expansion as a countervailing factor, the evidence we obtained from third parties also does not demonstrate that any OEM supplier would materially enter or substantially expand in the markets in which we found an SLC, in the near future, as a result of the Merger. Any such entry or expansion would need to be timely, likely and sufficient to prevent an SLC from arising as a result of the Merger. Small-scale entry that is not comparable to the constraint eliminated by the Merger would not be likely to prevent the SLCs we have found.²¹¹³
- 12.210 In this context, we did not identify any suppliers that expected to materially expand their turnover generated from the supply of in the UK, as a result of the Merger:
- (a) [REDACTED] told us that its financial forecasts and business plans have not changed following the announcement of the Merger.²¹¹⁴
 - (b) [REDACTED] told us that, '[it did] not think that the merger of Cargotec / Konecranes will or would influence [its] developments or sales planes [sic]'.²¹¹⁵ Furthermore, it told us that, '[w]ith regards to 2023 I am not able to give you a detailed plan in numbers and models. Based on the fact, that we started to change from Engine Emission of Stage IV to Stage V, we redesigned or still redesigning products. So far we do not know, which product when will be definitely ready for the European market'.²¹¹⁶

²¹¹³ CMA129, paragraph 8.39.

²¹¹⁴ Response to s.109 Notice [REDACTED].

²¹¹⁵ Email [REDACTED].

²¹¹⁶ Email [REDACTED].

(c) [REDACTED]²¹¹⁷ [REDACTED].²¹¹⁸

(d) [REDACTED] told us that it does ‘not expect much change in our markets’ in response to a question on how it expects the merger to impact competition in the supply of RTG and ASC to UK customers’.²¹¹⁹

12.211 Similarly, with regard to the availability of distributors, as noted at paragraph 12.78, there are few distributors in the UK which have the capabilities needed to supply CHE and, as noted at paragraph 12.90, there may not be a distributor available to facilitate entry or expansion. Even if a competitor or potential entrant was able to identify a suitable distributor, it would still need to invest some time and resources in order to facilitate the distribution of CHE.

12.212 Therefore, we do not consider that these or any other firms would enter and/or expand, as a direct response to the Merger, to such a degree that they would constrain the Merged Entity, in a manner which is timely, likely and sufficient. General plans by the Parties’ existing competitors to continue to compete to win tenders is characteristic of the pre-Merger competitive landscape.

12.213 We note that the Parties submitted that there are ‘specific considerations that would apply to Chinese State-backed or State-owned rivals’²¹²⁰ and, further, that significant costs of entry ‘are highly unlikely to deter Chinese rivals given their access to capital and the broader strategic imperatives of the Chinese State in this sector’. We consider that these are high-level submissions. In particular, we did not obtain evidence from the Parties or third parties that potential or actual Chinese competitors have plans to enter and/or expand in direct response to the Merger.

12.214 We also note that the only other firms which have achieved scale in the relevant markets in which we found an SLC are: i) ZPMC in the supply of Gantry Cranes (as described in Chapter 7); and ii) Sany in the supply of MEQ (as described in Chapter 9). ZPMC and Sany entered into the Gantry Crane and MEQ markets more than five years ago. We note that Kuenz entered into the supply of RTG in 2019 (see Chapter 7) from an adjacent market (the supply of ASC).²¹²¹ This evidence indicates that there has not been material recent entry, and the frequency of entry is low, which is

²¹¹⁷ Response to P2 questionnaire [REDACTED].

²¹¹⁸ Response to P2 questionnaire [REDACTED].

²¹¹⁹ Response to P2 questionnaire [REDACTED].

²¹²⁰ Parties’ Response to the Provisional Findings Report, paragraph 5.4.

²¹²¹ Response to P2 questionnaire [REDACTED].

consistent with barriers to entry being high and entry being unlikely as a result of the Merger.

12.215 We further note that two firms have tried to enter relevant markets but without success:

(a) A manufacturer [X] tried to enter the market for the supply of [X] but was unsuccessful;²¹²²

(b) Another manufacturer [X] tried to enter the market for the supply of [X] but was unsuccessful.²¹²³

Conclusion on entry and expansion as a countervailing factor

12.216 We consider expansion by the Parties' actual competitors, including some Chinese firms, that would have occurred irrespective of the Merger in our chapters on each theory of harm.

12.217 We consider that there is substantial evidence of a number of significant barriers to entry in the relevant markets, and these barriers in aggregate are likely to materially reduce the extent, timing and likelihood of entry following the Merger. Several barriers to expansion, such as establishing customer relationships and a proven track record, require more than financial resources to be overcome.²¹²⁴

12.218 The evidence we gathered from third parties also does not support that any firms would have the necessary capabilities or intention to enter or expand in CHE as a result of the Merger in a manner that would be timely, likely and sufficient to prevent the SLCs identified.

12.219 Whilst the scale of some of the barriers we have identified may not be as high for some firms as others (eg the amount of investment needed to enter and/or expand may not be as significant a barrier for Chinese State-owned firms or established competitors in adjacent markets as for other OEMs), all potential or actual competitors face some barriers such as the strategic advantages held by incumbent firms. Therefore, although the Parties might perceive the expansion of ZPMC and Sany to pose a competitive constraint, in the context of these barriers, we do not consider that their entry and/or

²¹²² Response to P2 questionnaire [X].

²¹²³ Call note [X].

²¹²⁴ As noted at paragraph 12.18(f), the Parties claimed that the CMA failed in its Provisional Findings report whether the barriers to entry which the CMA alleges exist would deter entry or expansion by the Parties' actual and potential Chinese rivals.

expansion as a direct response to the Merger would be sufficient, likely, and timely to offset the adverse effects arising from the SLCs identified.

12.220 Based on the above analysis, our conclusion is that that entry or expansion would not cumulatively and simultaneously be timely, likely and sufficient to prevent the SLCs in relation to any of the relevant markets.

Countervailing factors: Merger efficiencies

12.221 We considered whether efficiencies arising from the Merger could constitute a countervailing factor.

12.222 In some instances, mergers can give rise to efficiencies.²¹²⁵ Rivalry-enhancing efficiencies change the incentives of the merger firms and induce them to act as stronger competitors to their rivals—for example, by reducing their marginal costs giving them the incentive to provide lower prices or a better quality, range or service.²¹²⁶ They may prevent an SLC by offsetting any anticompetitive effects.²¹²⁷

12.223 Cost and revenue synergies often form part of the rationale for mergers, and it is not uncommon for firms to make efficiency claims in merger proceedings. Many efficiency claims by merger firms are not accepted by the CMA because the evidence supporting those claims is difficult to verify and substantiate.²¹²⁸

12.224 Most of the information relating to the synergies and cost reductions resulting from a merger is held by the merger firms.²¹²⁹ Therefore, it is for the Parties to demonstrate that the Merger will result in efficiencies.²¹³⁰

12.225 The Parties stated in their Merger Notice that they, ‘do not wish the CMA to consider efficiencies or relevant customer benefits at this stage. They reserve the right to raise these considerations in due course’.²¹³¹

12.226 Regarding possible synergies, the Parties subsequently told us that:

- (a) ‘No precise work or analysis has been carried out at this stage. However, the Parties anticipate that an important part of the deal rationale is to ensure that the parties are better placed to address

²¹²⁵ CMA129, paragraph 8.2.

²¹²⁶ CMA129, paragraph 8.3 (a).

²¹²⁷ CMA129, paragraph 8.4.

²¹²⁸ CMA129, paragraph 8.6.

²¹²⁹ CMA129, paragraph 8.7.

²¹³⁰ CMA129, paragraph 8.15.

²¹³¹ Merger Notice [redacted].

sustainability challenges in the industry, by providing a platform for innovation in automation, robotics, electrification, and digitalization.

- (b) The Transaction will allow the Merged Entity to develop innovative products at an accelerated rate (as compared to each Party alone) and so to meet intense competition from American, European and Asian suppliers who are currently outpacing the Parties'.²¹³²

12.227 We do not consider this evidence to be sufficient to assess potential efficiencies in any detail. 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.

Our assessment

12.228 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.

12.229 all of the above into account, the CMA's assessment is that any merger efficiencies would not be timely, likely, and sufficient to prevent an SLC from arising, in any of the market in which we found an SLC.

Conclusion on countervailing factors

12.230 For the reasons set out above, we conclude that there are no countervailing factors which would prevent an SLC from arising as a result of this Merger, in any of the markets in which we found an SLC.

13. Remedies

Introduction

13.1 This Chapter sets out our assessment of, and decision on, the remedy options for the SLCs and resulting adverse effects we have identified in seven markets in Chapters 7 to 10.

13.2 In reaching our decision on the remedy options, we have considered: the Parties' response to the Remedies Working Paper, the written responses to our public consultation on possible remedy options as set out in our notice of possible remedies²¹³³ ([Remedies Notice](#)); the Parties' various submissions

²¹³² Parties submission [§].

²¹³³ Our [Remedies Notice](#) was published on the CMA website on 29 November 2021.

and responses to our questions, including on remedies, evidence from our response hearings with each of the Parties; evidence from the third parties on possible remedies and on how the CHE industry works, as well as evidence from internal documents and quantitative evidence.²¹³⁴ As indicated in our [Remedies Notice](#), in identifying possible remedy options, we have also liaised with a number of other competition authorities investigating the Merger.

13.3 This Chapter sets out:

- (a) the CMA's framework for assessing remedies;
- (b) the nature of the SLCs and resulting adverse effects;
- (c) an overview of possible remedy options;
- (d) our assessment of the effectiveness of a remedy prohibiting the Merger;
- (e) our assessment of the effectiveness of divesting the entire CHE division of one of the Parties
- (f) our assessment of the effectiveness of the Parties' remedy proposal, including:
 - (i) the assessment of the composition risks of the proposed divestitures: i. risks arising from the scope of each of the businesses that the Parties proposed to divest; ii. risks relating to the product portfolio and scale of each of the divestiture packages; and iii. risks relating to the complexity of the proposed asset carve-outs;
 - (ii) the assessment of purchaser risks;
 - (iii) the assessment of the Parties' termination commitment proposal;²¹³⁵
- (g) our assessment of any relevant customer benefits;
- (h) our proportionality assessment of the effective possible remedies or remedy; and
- (i) our decision on the effectiveness and proportionality of possible remedies.

²¹³⁴ We received the Parties' joint written response to our Remedies Notice on 10 December 2021 and held separate response hearings with each of the Parties on 17 December 2021. See paragraphs 13.94 to 13.105 and Appendix D about engagement with third parties.

²¹³⁵ See 13.46.

CMA framework for assessing remedies

- 13.4 Where the CMA finds an SLC in its final report, it must decide what, if any, action should be taken to remedy, mitigate or prevent that SLC or any adverse effects which may be expected to result from the SLC.²¹³⁶
- 13.5 The Act requires that when considering possible remedial actions, the CMA shall 'in particular, have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the substantial lessening of competition and any adverse effects resulting from it'.²¹³⁷
- 13.6 To fulfil this requirement, the CMA will seek remedies that are effective in addressing the SLC and any resulting adverse effects.²¹³⁸ The CMA will assess the effectiveness of remedies in addressing the SLC and resulting adverse effects before going on to consider the costs likely to be incurred by the remedies.²¹³⁹
- 13.7 In determining an appropriate remedy, the CMA will consider the extent to which different remedy options will be effective in remedying, mitigating or preventing the SLCs and any resulting adverse effects. The effectiveness of a remedy is assessed by reference to its:²¹⁴⁰
- (a) impact on the SLC and its resulting adverse effects;
 - (b) duration and timing – remedies need to be capable of timely implementation and address the SLC effectively throughout its expected duration;
 - (c) practicality, in terms of its implementation and any subsequent monitoring; and
 - (d) risk profile, relating in particular to the risk that the remedy will not achieve its intended effects.
- 13.8 Remedies are conventionally classified as either structural or behavioural.²¹⁴¹ In merger inquiries, the CMA generally prefers structural

²¹³⁶ Section 36(2) of the Enterprise Act 2002 (the Act).

²¹³⁷ Section 36(3) of the Act.

²¹³⁸ Merger remedies guidance, CMA 87 (13 December 2018) (CMA87), paragraph 3.4.

²¹³⁹ CMA87, paragraph 3.5.

²¹⁴⁰ CMA87, paragraph 3.5.

²¹⁴¹ CMA87, paragraph 3.34 - Structural remedies, such as prohibition or divestiture, are generally one-off measures that seek to maintain or restore the competitive structure of the market by addressing the market participants and/or their shares of the market. Behavioural remedies are normally ongoing measures that are designed to regulate or constrain the behaviour of the merging parties with the aim of restoring or maintaining the level of competition that would have been present absent the merger.

remedies, such as prohibition and divestiture, over behavioural remedies because.²¹⁴²

- (a) structural remedies are more likely to deal with an SLC and its resulting adverse effects directly and comprehensively at source by maintaining or restoring rivalry;
- (b) behavioural remedies are less likely to have an effective impact on the SLC and its resulting adverse effects, and are more likely to create significant costly distortions in market outcomes; and
- (c) structural remedies rarely require monitoring and enforcement once implemented.

13.9 The CMA's guidance sets out that competition should be viewed as a dynamic process of rivalry between firms seeking to win customers' business over time.²¹⁴³ Maintaining or restoring this process of rivalry through structural remedies, such as prohibition or divestiture, which re-establish the structure of the market expected in the absence of the merger, can be expected to address an SLC and its adverse effects at source:²¹⁴⁴

- (a) prohibition necessarily maintains the competitive structure of a market that would have otherwise been changed by the merger;²¹⁴⁵ and
- (b) a successful divestiture will effectively address at source the loss of rivalry resulting from the merger by changing or restoring the structure of the market.²¹⁴⁶ In identifying a divestiture package, the CMA will take, as its starting point, divestiture of all or part of the acquired business.²¹⁴⁷ This is because restoration of the pre-merger situation in the markets subject to an SLC will generally represent a straightforward remedy.²¹⁴⁸

13.10 In defining the scope of a divestiture package that will satisfactorily address the SLC, the CMA will normally seek to identify the smallest viable, stand-

²¹⁴² CMA87, paragraph 3.46.

²¹⁴³ CMA87, paragraph 3.5(a).

²¹⁴⁴ CMA87, paragraph 3.5(a).

²¹⁴⁵ CMA87, paragraph 3.35.

²¹⁴⁶ CMA87, paragraph 3.38.

²¹⁴⁷ CMA87, paragraph 5.6. The CMA will consider a divestiture drawn from the acquiring business if this is not subject to greater risk in addressing the SLC.

²¹⁴⁸ This approach was supported by the Competition Appeal Tribunal (CAT), in *Ecolab v CMA*, [2020] CAT 12 (*Ecolab*) at paragraphs 73 to 75, which rejected, in the context of a completed merger, a claim that the 'CMA adopted a legally erroneous approach by seeking a remedy that restored the market to pre-Merger conditions of competition rather than to remedying the SLC'. Noting that the CMA's obligation under the Act was to find 'as comprehensive a solution as was reasonable and practicable' 'for the purpose of remedying, preventing or mitigating' the SLC was a high duty, the CAT held that it was reasonable for the CMA to take 'divestiture of all or part of the acquired business as its "starting point", since it will generally be a straightforward remedy, but that it will in appropriate cases consider other structural or quasi-structural remedies'. See also *Somerfield plc v Competition Commission* [2006] CAT 4 at paragraphs 99 and 100.

alone business that can compete successfully on an ongoing basis and that includes all the relevant operations pertinent to the area of competitive overlap. This may comprise a subsidiary or a division or the whole of the business acquired.²¹⁴⁹

- 13.11 The CMA will generally prefer the divestiture of an existing business, which can compete effectively on a stand-alone basis, independently of the merger parties, to the divestiture of part of a business or a collection of assets. This is because divestiture of a complete business is less likely to be subject to purchaser and composition risk and can generally be achieved with greater speed.²¹⁵⁰
- 13.12 Once the CMA has identified the remedy options that would be effective in addressing the SLC, the CMA will select the least costly and intrusive remedy that it considers to be effective. The CMA will seek to ensure that no effective remedy is disproportionate in relation to the SLC and its adverse effects. The CMA may also have regard, in accordance with the Act, to the effect of any remedial action on any relevant customer benefits (RCBs) arising from the merger.²¹⁵¹

Nature of the SLCs and resulting adverse effects

13.13 We have found that the Merger 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 CHE in Europe, including the UK:

- (a) RTG;
- (b) ASC;
- (c) ShC and SC;
- (d) ECH;
- (e) HDFLT;
- (f) RS; and
- (g) ATT.

13.14 We found that these SLCs may be expected to result in adverse effects, for example, in the form of higher prices and/or reduced quality, range or

²¹⁴⁹ CMA87, paragraph 5.7.

²¹⁵⁰ CMA87, paragraph 5.12.

²¹⁵¹ CMA87, paragraph 3.4.

service to UK customers than would otherwise be the case absent the Merger.²¹⁵²

- 13.15 An effective remedy in respect of the SLCs which have been found in relation to the supply of Gantry Cranes, Straddle Carriers and MEQ would be expected to result in conditions of competition which maintain or restore the dynamic process of rivalry which would be lost as a result of Cargotec and Konecranes no longer competing with each other independently. The criteria for an effective remedy are different in relation to ATT, given the nature of our SLC finding in this market.²¹⁵³

Overview of remedy options considered

13.16 In our [Remedies Notice](#), we set out our initial views that:

- (a) Prohibition of the Merger would represent an effective remedy;²¹⁵⁴
- (b) a structural remedy involving a partial divestiture of the businesses and assets necessary to remedy the SLCs would involve a high level of risk in terms of its effectiveness, and that any divestiture remedy would likely require, as a minimum, the divestiture of a whole CHE division of one of the Parties, provided that the associated risks could be addressed;²¹⁵⁵
- (c) a behavioural remedy was very unlikely to be an effective remedy given the risks around specification, circumvention, market distortion and/or monitoring that could undermine its effectiveness;²¹⁵⁶ and
- (d) specifically, in relation to addressing the SLC in the supply of ATT, we would consider whether a remedy based on the removal of the contractual link between Konecranes and Terberg, noting that the competition concerns in relation to ATT arose in large part because of this contractual link.²¹⁵⁷

²¹⁵² Summary, paragraphs 1-4.

²¹⁵³ As explained in Chapters 4 and 10 in relation to the supply of ATT, we found that both Cargotec and Konecranes would have competed in the supply of ATT in the counterfactual. We concluded 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. We found that Terberg is likely to become a key competitor within the ATT market. Terberg has a [X] with Konecranes. We are 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.

²¹⁵⁴ [Remedies Notice](#), paragraph 13.

²¹⁵⁵ [Remedies Notice](#), paragraphs 18 and 30.

²¹⁵⁶ [Remedies Notice](#), paragraphs 18 and 30.

²¹⁵⁷ [Remedies Notice](#), paragraph 23.

- 13.17 In their joint response to our Remedies Notice, the Parties told us that a remedy requiring the divestiture of a whole CHE division was disproportionate and unreasonable,²¹⁵⁸ and proposed (without prejudice to their views regarding the Provisional Findings Report) an alternative package of remedies, whereby the Parties would:²¹⁵⁹
- (a) divest Cargotec's Kalmar Automation Solutions business, comprising Cargotec's Port Cranes and ShC / SC business, including Cargotec's Kalmar One automation platform;
 - (b) divest Konecranes' MEQ business, which includes Konecranes' Lift Trucks business; and
 - (c) terminate Konecranes' [REDACTED] with Terberg (in accordance with its terms).²¹⁶⁰
- 13.18 The Merger is being, or has been, investigated in other jurisdictions, including the EU, USA and Australia. We note that, since first being set out in the Parties' joint response to the Remedies Notice, the Parties' remedy proposal has been subject to a number of iterations and modifications (some material), in response to questions and comments raised by the CMA and other authorities. In this Chapter, we consider the Parties' remedy proposal, as submitted to the CMA on 6 January 2022, together with the addendum submitted to the CMA on 20 January 2022 (the Parties' Remedy Proposal).²¹⁶¹ We also take into account that the Parties indicated, at a very late stage in the CMA's investigation (on 20 March 2022), that they would be willing to commit to sell the KAS Divestiture Business and the MEQ Divestiture Business to a single purchaser.²¹⁶²
- 13.19 Neither of the Parties, nor the third parties who engaged with us on remedies, told us that we should be pursuing a behavioural remedy. Given the number of SLCs (and their resulting adverse effects) we have found across multiple products, and the complexity of the Parties' operations, we consider that designing effective behavioural remedies to address all aspects of the SLCs would be impractical and subject to very substantial design risks (eg specification, circumvention, market distortion and/or monitoring risks). We therefore found no compelling reason to consider behavioural remedies in this case.

²¹⁵⁸ Parties' joint-response (dated 10 December 2021) to the Remedies Notice ([Parties' Response to the Remedies Notice](#)), paragraph 1.6.

²¹⁵⁹ [Parties' Response to the Remedies Notice](#), paragraphs 2.1 and 2.2.

²¹⁶⁰ [REDACTED] between Konecranes and Terberg, 14 and 25 March 2019.

²¹⁶¹ Email from the Parties [REDACTED].

²¹⁶² Email from [REDACTED] to the CMA teams of 20 March 2022.

- 13.20 As such, based on the framework set out above, we will consider in turn the effectiveness of the following remedy options:
- (a) a prohibition of the Merger;
 - (b) the divestiture of an entire CHE division; and
 - (c) the Parties' Remedy Proposal.

Assessment of the effectiveness of prohibiting the Merger

- 13.21 Prohibition of the Merger would prevent the combination of the Parties' businesses and result in Cargotec and Konecranes continuing to operate under separate ownership as independent competitors.
- 13.22 Prohibition of the Merger would result in Cargotec and Konecranes continuing to compete as independent competitors and prevent each of the SLCs we have found from arising. It would represent a comprehensive solution to all aspects of the SLCs we have identified (and consequently any resulting adverse effects).²¹⁶³
- 13.23 Given that the Merger remains anticipated, a prohibition could be readily implemented by the CMA accepting final undertakings from the Parties or making a final order binding on the Parties prohibiting the Merger and preventing them from merging for a specified period of time (normally 10 years) without the CMA's consent.²¹⁶⁴
- 13.24 In their response to the Remedies Working Paper, the Parties said that a prohibition would not maintain the competitive structure of the market, because, absent the Merger, [§]. The Parties claim that the CMA failed to take into account this 'reality' in its assessment of the prohibition of the Merger (as well as of the possible divestiture of one of the Parties' CHE divisions). In this context, the Parties also submitted that the CMA has provided no reasoned or reasonable explanation for rejecting the veracity of the evidence provided by Cargotec's CEO.²¹⁶⁵
- 13.25 The Parties' submissions in this respect have already been addressed in Chapter 4, the Counterfactual. Whilst we have taken account of the representations made by the CEO of Cargotec as part of the assessment of

²¹⁶³ CMA 87, paragraph 3.35.

²¹⁶⁴ CMA 87, paragraph 5.10.

²¹⁶⁵ Parties' submission [§].

the counterfactual, we do not consider that the evidence supports a counterfactual in which [REDACTED].²¹⁶⁶

- 13.26 In light of the above, we therefore conclude that prohibition of the Merger would clearly represent an effective remedy to the SLCs we have found.

Assessment of the effectiveness of divesting the entire CHE division of one of the Parties

- 13.27 In the Remedies Notice, we set out a potential remedy option involving the divestiture of the entire CHE division of one of the Parties. We investigated this option further, consulting with the Parties and third parties.
- 13.28 Some third parties told us the divestiture of an entire CHE division would be a more effective remedy than the Parties' Remedy Proposal.²¹⁶⁷ However, Konecranes told us [REDACTED].²¹⁶⁸ In addition, Cargotec told us 'a full divisional remedy would not only [REDACTED].²¹⁶⁹
- 13.29 The Remedies Working Paper, which contained our provisional decision on remedies, concluded that the divestiture of an entire CHE division could potentially represent an effective remedy to the SLCs we have found. However, the Remedies Working Paper also identified a number of possible composition risks associated with such a divestiture and made clear that additional evidence would be required from the Parties to enable us to conduct an informed assessment of whether the divestiture of an entire CHE division would carry a high degree of certainty of being an effective remedy.²¹⁷⁰ These potential risks included those associated with the transfer of contracts shared between the CHE division and the wider Cargotec or Konecranes corporate groups, the divestiture or licensing of the Konecranes or Kalmar brands, and the scale advantages arising from the CHE division being part of a wider corporate group. The Parties did not submit evidence that would enable us to assess further the effectiveness of a remedy involving the divestiture of a CHE division. During a conference call with the Parties' legal representatives on 9 March 2022, the representatives confirmed to the CMA that the Parties would not be engaging further on a CHE divestiture remedy. As a result, we are unable to determine with

²¹⁶⁶ For example, the Information Memorandum for the KAS Divestiture Business makes reference to Cargotec internal document [REDACTED]. We do not consider these plans and forecasts to be consistent with [REDACTED].

²¹⁶⁷ Examples of this third-party evidence are set out in paragraph 13.113(b).

²¹⁶⁸ Konecranes submission [REDACTED].

²¹⁶⁹ Cargotec submission [REDACTED].

²¹⁷⁰ As to the applicable test, see [Ecolab v CMA \[2020\] CAT 12 \(Ecolab\)](#) at paragraphs 88-89.

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

Assessment of effectiveness of the Parties' Remedy Proposal

13.30 In this section, we consider the effectiveness of the Parties' Remedy Proposal in addressing the SLCs we have found.

13.31 The CMA's guidance sets out three categories of risk that can impair the effectiveness of any divestiture remedy:²¹⁷¹

- (a) composition risk arises if the scope of the divestiture business is too narrowly constrained or not appropriately configured to attract a suitable purchaser, or does not allow a purchaser to operate as an effective competitor;
- (b) purchaser risk arises if a divestiture is made to a weak or otherwise inappropriate purchaser or if a suitable purchaser is not available; and
- (c) asset risk arises if the competitive capability of the divestiture business deteriorates before completion of the divestiture.

13.32 Our assessment of the Parties' Remedy Proposal is structured as follows:

- (a) Description of the Parties' Remedy Proposal.
- (b) The Parties' submissions on its effectiveness.
- (c) Our approach to the evidence on the effectiveness of the Parties' Remedy Proposal.
- (d) Assessment of the effectiveness of the Parties' Remedy Proposal, including an assessment of:
 - (v) composition risks; and
 - (vi) purchaser risks.
- (e) Our conclusion on the effectiveness of the Parties' Remedy Proposal, and
- (f) Our assessment and conclusion of the assessment of the non-divestiture element of the Parties' Remedy Proposal according to which the Parties

²¹⁷¹ CMA 87, paragraph 5.3.

would commit to terminate Konecranes' [REDACTED] with Terberg in relation to ATT (ie the Termination Commitment Proposal).²¹⁷²

Remedy description

Overview of the Parties' Remedy Proposal

13.33 In summary, under the Parties' Remedy Proposal, the Parties would:²¹⁷³

- (a) divest Cargotec's 'KAS Divestiture Business' (the KAS Divestiture Proposal);
- (b) divest Konecranes' 'MEQ Divestiture Business' (the MEQ Divestiture Proposal); and
- (c) terminate Konecranes' [REDACTED] with Terberg, in accordance with the terms of the Termination Commitment Proposal.

13.34 The KAS Divestiture Proposal and the MEQ Divestiture Proposal have been designed as separate divestiture packages, which could be sold to one or two purchasers. In their response to the Remedies Notice, the Parties submitted that '[t]he MEQ Divestment Business and the KAS Divestment Business would be marketed separately but could be acquired by either one or two purchasers.'²¹⁷⁴ Less than two weeks before the statutory deadline for the publication of this Final Report, the Parties said that they were willing to commit to sell the KAS Divestiture Business and the MEQ Divestiture Business to a single purchaser, 'should this be considered important by the CMA'.²¹⁷⁵ We set out further details provided by the Parties on each of the two parts of the Parties' Remedy Proposal below, namely the KAS Divestiture Proposal and the MEQ Divestiture Proposal.

KAS Divestiture Proposal

13.35 Under the KAS Divestiture Proposal, Cargotec would divest the 'entirety' of its Kalmar Automation Solutions (KAS) business (ie the KAS Divestiture Business), which comprises:²¹⁷⁶

²¹⁷² See definition in paragraph 13.33(c).

²¹⁷³ Parties' Response to the Remedies Notice, paragraphs 2.1 and 2.3.

²¹⁷⁴ Parties' Response to the Remedies Notice, paragraph 2.2

²¹⁷⁵ Email from Cargotec's Advisers [REDACTED] 20 March 2022.

²¹⁷⁶ Cargotec Commitments to the European Commission [REDACTED].

- (a) its Ports Cranes business (which encompasses the supply of Gantry Cranes),²¹⁷⁷ which is active in the supply of STS, RTG, RMG and ASC;
- (b) its Intelligent Horizontal Transport Solutions business (the IHTS Business), which consists of the supply and servicing of (i) manual and automated SC, (ii) manual and automated ShC (together Straddle Carriers); and
- (c) its Kalmar One automation system, together with all essential functions necessary to ensure the viability and competitiveness of the KAS Divestiture Business.

13.36 Figure 30 below shows a simplified structure chart of the KAS Divestiture Business.

Figure 30: [REDACTED]

[REDACTED]

Source: Cargotec form RM [REDACTED].

13.37 The KAS Divestiture Business would include the following tangible and intangible assets:²¹⁷⁸

- (a) *Premises:* KAS headquarters in Tampere, Finland, and other offices, workshops and warehouses.
- (b) *Port Cranes and Straddle Carriers product lines:* all Port Cranes (which includes STS, RTGs, RMGs, and ASCs)²¹⁷⁹ and Straddle Carriers (which includes SC and ShC) product lines assembled and sold by Cargotec (including related product descriptions and information).²¹⁸⁰
- (c) *Brands:* The ‘Nelcon’ brand (a brand used in the past in relation to Port Cranes) and the ‘Kalmar’ brand, in relation to the supply and servicing of Port Cranes and Straddle Carriers only (with Cargotec retaining the exclusive right to use the Kalmar brand in relation to the supply and servicing of any other equipment than Port Cranes and Straddle Carriers, in particular MEQ).²¹⁸¹ The Merged Entity would differentiate

²¹⁷⁷ Cargotec refers to its Port Cranes business as KAS Intelligent Crane Solutions (ICS).

²¹⁷⁸ Cargotec Commitments to the European Commission [REDACTED].

²¹⁷⁹ The definition of Port Cranes, when referring to Port Cranes in general and not specifically to the KAS Divestiture Proposal also includes mobile harbour cranes. Cargotec does not offer mobile harbour cranes.

²¹⁸⁰ Cargotec told us that KAS is currently [REDACTED]. However, all of Cargotec’s existing AGV-related know how and other assets would also be transferred as part of the KAS Divestiture Business. Source: Cargotec Commitments to the European Commission [REDACTED].

²¹⁸¹ In accordance with M.10078 - Commitments to the European Commission, 6 January 2022, KAS Schedule, paragraph 3(i). This would presumably be achieved by way of a grant of an exclusive and royalty-free licence for the ‘Kalmar’ brand in perpetuity for these products.

the Kalmar brand used in relation to the supply and servicing of any equipment other than Port Cranes and Straddle Carriers from the Kalmar brand used by the purchaser in relation to the supply and servicing of Port Cranes and Straddle Carriers.

- (d) *Spare parts inventory*: all existing Port Cranes and Straddle Carriers related inventory of finished goods, components, sub-components, raw materials, and spare parts as of the date of closing of the divestiture transaction.
- (e) *Tooling*: all existing Port Cranes and Straddle Carriers related toolbox containers, which contain necessary equipment for project delivery, and tools and jigs, which are used for assembly and maintenance, including all available related documentation.
- (f) *Development projects*: all relevant information existing at, or initiated, prior to closing of the divestiture transaction on product development projects in relation to Port Cranes, Straddle Carriers and Kalmar One.
- (g) *IPRs*: all patents, and other IPRs and knowhow held by Cargotec related to Port Cranes and/or Straddle Carriers, including any related to Port Cranes and/or Straddle Carriers spare parts. Where the KAS Divestiture Business relies on third-party IPRs which Cargotec licences from third parties, Cargotec would use its 'best efforts' to procure their transfer to the purchaser.
- (h) *Kalmar One*: the entire Kalmar One automation system, enabling the KAS Divestiture Business to sell fully-automated Port Cranes and Straddle Carriers. The KAS Divestiture Business would include the relevant IPRs and other assets in relation to the Kalmar One system. Where the Kalmar One system relies on third-party IPR licences, Cargotec would use its 'best efforts' to transfer those third-party licences to the purchaser.
- (i) *Customer contracts*: for Port Cranes and Straddle Carriers, all ongoing equipment orders and/or contracts at the time of closing of the divestiture of the KAS Divestiture Business, including options that were agreed in the context of deliveries in the past, all ongoing aftersales services contracts related to Port Cranes and Straddle Carriers, and all ongoing aftersales services contracts. Where customer consent is required for the transfer, Cargotec would use its 'best efforts' to procure such consent. Should such consent not be obtained, Cargotec would use its 'best efforts' to find another solution to transfer the relevant business to the purchaser, such as via a subcontracting arrangement,

subject to approval by a monitoring trustee. Should such a transfer not be possible, Cargotec would 'terminate the respective contract if and to the extent reasonably possible without exposing itself to damages claims or any other form of significant harm'.

- (j) *Customer relationships*: comprehensive copies of customer records from Cargotec's CRM system (including historical won and lost opportunities in relation to Port Cranes and Straddle Carriers).
- (k) *Records*: all other business records (including financial records, customer and supplier lists and research and commercial data) used exclusively or predominantly for the manufacturing, supply or servicing of Port Cranes and/or Straddle Carriers.

13.38 Many of the assets set out above (eg IPRs for shared technology, shared maintenance contracts, some employees that perform functions for KAS and Kalmar Mobile Solutions (Kamos) business,²¹⁸² shared supply contracts) are currently not used exclusively by KAS and/or do not form part of the KAS business. They would be carved out of other Cargotec businesses and transferred to the KAS Divestiture Business for the purpose of the divestiture of the KAS Divestiture Business.

13.39 The Parties' Remedy Proposal would include the following commitments to be exercised 'at the option of the [purchaser of the KAS Divestiture Business]' in relation to the following shared assets:

- (a) *Staff*: all staff currently employed by the KAS Divestiture Business, including staff seconded to the KAS Divestiture Business, comprising around [X] full-time equivalents worldwide (including 'frontline unit' personnel).
- (b) Cargotec's KAS services are currently supported by frontline units, which provide local services for all types of equipment supplied by Kalmar (MEQ, Port Cranes, Straddle Carriers). [X].²¹⁸³ Cargotec submitted that [X].²¹⁸⁴ In relation to certain functions that are provided at Kalmar level (eg certain IT support, compliance and communications functions),²¹⁸⁵ Cargotec would offer [X].
- (c) *Kalmar brand*: If the CMA approves the sale of the KAS Divestiture Business without the Kalmar brand (and thus the brand is not

²¹⁸² Which would be retained by Cargotec.

²¹⁸³ KAS Form RM [X].

²¹⁸⁴ KAS Form RM [X].

²¹⁸⁵ KAS Form RM [X].

'transferred' as discussed in paragraph 13.37(c) above), the Merged Entity would not be allowed to sell any Port Cranes and/or Straddle Carriers products using the Kalmar brand [REDACTED].²¹⁸⁶

- (d) *Facilities*: The Stargard facility in Poland currently comprises two buildings, one of which is used by Cargotec's business unit Hiab and the other one by Kalmar, which is used both for the assembly of straddle/shuttle carriers (KAS) and for Kamos' MEQ business. Cargotec would divest the Stargard facility. Cargotec would transfer its retained mobile equipment assembly activities (including MEQ employees) out of Stargard to another facility. For the period required to complete this transfer, Cargotec and the purchaser would enter into a transitional lease and services agreement pursuant to which the purchaser would allow Cargotec to continue to assemble mobile equipment at the Stargard facility. At the option of the purchaser, Cargotec would, in the period following twelve months from closing of the divestiture, reorganise the Stargard facility in such a way that the activities of the KAS Divestiture Business, ie all Straddle Carriers assembly would be moved to a dedicated building at the Stargard facility (separate from Hiab's building, which the Merged Entity would retain). [REDACTED].²¹⁸⁷
- (e) *Shared technology*: Cargotec would provide a royalty free, irrevocable, non-exclusive, sub-licensable, global and perpetual licence to the IPRs currently used by Cargotec primarily to develop, manufacture, sell and use products outside the scope of the KAS Divestiture Business, but which are also currently used for the development, manufacturing, sale and use of Port Cranes and Straddle Carriers.²¹⁸⁸
- (f) *Connectivity solutions*: a licence to the relevant IPRs or otherwise, a duplicate of the cloud-based environment and functionalities related to the KAS Divestiture Business, including Kalmar Cloud, Kalmar Cloud Gateway, Kalmar Insight, Kalmar Remote Services (Maintenance Remote Support and Kalmar One application monitoring), MyParts, MyKalmar and Smart Trucks, including, at the option of the purchaser, the personnel which has been predominantly involved in developing these functionalities for Port Cranes and/or Straddle Carriers. The purchaser would be permitted to use the aforementioned functionalities

²¹⁸⁶ Cargotec Commitments to the European Commission [REDACTED].

²¹⁸⁷ Addendum to the KAS Divestiture Proposal [REDACTED].

²¹⁸⁸ Cargotec Commitments to the European Commission [REDACTED]. The KAS Divestiture Proposal states that the licence would not extend to any improvements of or developments to the licensed technology, know-how or other intellectual property developed by the Parties after closing of the transaction. The purchaser would be able to make any changes to the technology as considered appropriate.

and associated IPRs exclusively for the Port Cranes and Straddle Carriers acquired from Cargotec.

(g) *Other third-party contracts*: Cargotec would transfer the relevant portion of any other third-party contracts that relate to the KAS Divestiture Business. This includes all relevant supply contracts and dealership / agency agreements relating to the KAS Divestiture Business. Shared supply contracts would be split up and the parts relevant for the KAS Divestiture Business would be transferred to the purchaser. To the extent supplier consent would be required for the transfer, Cargotec would use its best efforts to procure such consent. However, in case the purchaser would not be able to secure supplies for any of the relevant inputs required for the continued operation of the KAS Divestiture Business by the time of closing of the divestiture transaction, Cargotec would provide the corresponding inputs to the KAS Divestiture Business by entering into a transitional back-to-back supply agreement at cost.

13.40 The KAS Divestiture Business would transfer to the purchaser 'via a sale of 100% of the shares of 'Cargotec Holding Netherlands B.V.', a new holding company which would hold all the shares in the newly established legal entity 'Cargotec Advanced Netherlands B.V.' This entity would own the shares in 17 country-specific subsidiaries, into which the assets comprising the KAS Divestiture Business would be transferred before completion of the divestiture.²¹⁸⁹

13.41 The Parties would also commit not to implement the Merger before entering into a final binding sale and purchase agreement for the sale of the KAS Divestiture Business (Upfront Buyer Condition). The Parties would commit to divest the KAS Divestiture Business to a purchaser that: i) is independent from the Parties; ii) has the financial resources, proven expertise and incentive to maintain and develop the KAS Divestiture Business and more specifically has proven expertise in the material handling or heavy-duty equipment industry; and iii) owns a well-recognised brand in the material handling or heavy-duty equipment industry under which it may sell the KAS Divestiture Business' Port Cranes and Straddle Carriers (unless the purchaser acquires the licence to use the Kalmar brand). Cargotec accepted that the acquisition of the KAS Divestiture Business by the purchaser must not raise *prima facie* competition concerns. Cargotec also indicated that it would accept the appointment of a monitoring trustee and a hold separate manager.

²¹⁸⁹ Cargotec Commitments to the European Commission [X].

MEQ Divestiture Proposal

- 13.42 Konecranes has proposed that it would divest what it refers to as its global Lift Trucks business, which comprises the manufacturing and supply of mobile equipment encompassing RS, full container handlers and ECH, as well as FLT and related spare parts and technical support. This includes the following assets:
- (a) *Management and employees*: operational management for Konecranes' lift trucks and around [X] operational employees are providing key functions such as management, sales, marketing, business control, human resources, health-safety-environment, R&D, engineering, quality, procurement and assembly capabilities. Moreover, certain/key locally based sales and support staff hosted by local Konecranes entities would transfer with the MEQ Divestiture Business.
 - (b) *Assembly lines*: dedicated assembly sites in Markaryd, Sweden and Lingang (Shanghai), China which are not used for manufacturing or assembly of other equipment (the MEQ Divestiture Business [X]).
 - (c) *Customer, distributor, agent and supply agreements*: all customer, distributor, agent and supply agreements entered into by the legal entities part of the MEQ Divestiture Business.
 - (d) *Customer and supplier lists*: all customer, distributor and agent information, including reports, transactional data and accreditations.
 - (e) *R&D and product development*: R&D and pipeline projects and related information existing or initiated at completion of the divestiture transaction, together with know-how and associated IPRs.
 - (f) *Sales channels*: dedicated sales organisation and channels as Konecranes' MEQ is mainly sold through distributors.
 - (g) *Spare parts / support for services*: spare parts business associated with MEQ and support for services (as these are delivered through distributors, customers' own maintenance teams or third-party service providers).
 - (h) *Commercial agreements*: [X] is the main counterparty to key commercial agreements (distributor, supplier and customer contracts) that would transfer with the MEQ Divestiture Business. Konecranes would use its reasonable best efforts to transfer the benefit of these agreements and the relevant goods and services are readily available from third-party suppliers.

- (i) *General functions*: mostly separate general and administrative services (local finance & control, HR, quality and purchasing fully dedicated to lift trucks).
- (j) *Brands*: The SMV and Liftace Trademarks which are used in the supply of MEQ would be transferred with the MEQ Divestiture Business. The Konecranes brand would not form part of the MEQ Divestiture Business, but Konecranes would undertake not to sell any MEQ under the Konecranes brand for a period of eight years. At the option of the purchaser, Konecranes and the purchaser would 'enter into commercially acceptable arrangements, including if applicable through a licence' to allow the purchaser to sell MEQ products using the Konecranes brand for a period of three years '[...]' from the moment when the Parties and the Purchaser have agreed on the relevant arrangements.²¹⁹⁰
- (k) *IPRs*: The MEQ Divestiture Business would include IPRs used by the MEQ Divestiture Business currently and required for the fulfilment of its current product development pipeline.

13.43 There are some links and shared assets between the MEQ Divestiture Business and other parts of Konecranes' business:

- (a) The following shared assets would not be transferred:
 - (i) certain shared framework supply contracts which primarily relate to general corporate inputs such as IT systems and software or general corporate services;
 - (ii) shared component supply contracts relating to items which can be readily sourced from a number of suppliers;
 - (iii) certain corporate central services and shared business IT systems (including Konecranes SAP system); and
 - (iv) certain shared storage and office facilities for local spare parts.
- (b) Connectivity solutions:
 - (i) *The TRUCONNECT platform for remote monitoring and maintenance management of MEQ and other products.* Konecranes would, at the option of the purchaser, provide a duplicate of its remote monitoring platform, c, comprising the

²¹⁹⁰ Non-confidential Summary of the Parties' Remedy Proposal, submitted on 22 January 2022, page 1.

hardware and software system that collects and stores data for monitoring Konecranes' mobile equipment. The purchaser would be permitted to use the TRUCONNECT system and associated intellectual property exclusively for MEQ.

- (ii) YourKonecranes customer platform for customer access to Port Cranes maintenance information, asset condition and usage data, and agreement details. Konecranes would provide a TSA to provide access to the YourKonecranes platform for up to two years.
- (iii) *Konecranes Store eCommerce platform that is used for online sale of spare parts and other Konecranes products.* This system is shared across the Konecranes businesses and [REDACTED]. Konecranes would provide a TSA for a period up to twenty-four months from closing of the divestiture.

- (c) *IPRs:* The MEQ Divestiture Business would receive a royalty free, irrevocable, non-exclusive, perpetual licence in relation to patents and other IPRs, technology and know-how which are currently used by Konecranes primarily to develop, manufacture, sell and use products outside the scope of the MEQ Divestiture Business but which are also currently used for the development, manufacturing, sale and use of MEQ.

13.44 The MEQ Divestiture Business is comprised of the following Konecranes legal entities: i) [REDACTED]; ii) [REDACTED] and iii) [REDACTED]. Any additional legal entities which may be established prior to closing to transfer additional assets to the MEQ Divestiture Business would be established as subsidiaries of [REDACTED].

13.45 Konecranes offered an Upfront Buyer Condition in relation to the divestiture of the MEQ Divestiture Business. The Parties would commit to divest the MEQ Divestiture Business to a purchaser that: i) is independent from the Parties; and ii) has the financial resources, proven expertise and incentive to maintain and develop the MEQ Divestiture Business. Konecranes accepted that the acquisition of the MEQ Divestiture Business by the purchaser must not raise *prima facie* competition concerns. Konecranes indicated that it would accept the appointment of a monitoring trustee and hold separate manager.

Termination Commitment Proposal

13.46 Konecranes also offered to terminate its [REDACTED] with Terberg in accordance with the terms of that [REDACTED].²¹⁹¹

The views of the Parties

13.47 The Parties told us that the Parties' Remedy Proposal would completely eliminate the overlaps identified in the [Provisional Findings Report](#); not give rise to significant composition, purchaser or asset risks; and represent a more proportionate and less costly remedy than a divestiture of a whole CHE division.²¹⁹² The Parties submitted that a divestiture of a whole CHE division would burden purchasers with elements of the CHE Division which they might not wish to have, or which might result in competition concerns.²¹⁹³

13.48 The Parties also told us that the Parties' Remedy Proposal would fully restore the 'status quo ante' and result in the Merged Entity continuing to be constrained by sophisticated and well-resourced competitors in the global supply of MEQ, SC and Port Cranes, including the purchaser(s) of the MEQ Divestiture Business and the KAS Divestiture Business.²¹⁹⁴

13.49 The Parties added that:²¹⁹⁵

- (a) the KAS Divestiture Proposal would not only entirely eliminate any overlap in the supply of RTG, ASC, ShC and SC, but also represent a significant 'over-divestiture' as the Port Cranes business²¹⁹⁶ (part of the KAS Divestiture Business) also includes Cargotec's STS Cranes and RMG businesses, in relation to which the CMA had not identified provisional SLCs in the Provisional Findings Report;
- (b) the MEQ Divestiture Proposal would not only entirely eliminate any overlap in the global supply of ECH, HDFLT and RS, but also given the products being divested (including full container handlers) and the geographic reach of the MEQ Divestiture Business, represent a material 'over-divestiture' as it goes beyond the overlaps of concern provisionally identified by the CMA in the Provisional Findings Report; and

²¹⁹¹ [Parties' Response to the Remedies Notice](#), paragraph 2.3.

²¹⁹² [Parties' Response to the Remedies Notice](#), paragraphs 1.4 and 8.1.

²¹⁹³ [Parties' Response to the Remedies Notice](#), paragraphs 1.4 and 8.1.

²¹⁹⁴ [Parties' Response to the Remedies Notice](#), paragraph 2.1.

²¹⁹⁵ [Parties' Response to the Remedies Notice](#), paragraphs 2.1 and 2.3.

²¹⁹⁶ Cargotec refers to its Port Cranes business as KAS Intelligent Crane Solutions ('ICS').

- (c) the Termination Commitment Proposal would separately remedy the CMA’s provisional concerns identified in the Provisional Findings Report in relation to the supply of ATT.

Cargotec’s submissions on the KAS Divestiture Proposal

13.50 In relation to the KAS Divestiture Proposal, in particular, Cargotec told us that the KAS Divestiture Business comprises Cargotec’s entire existing KAS business unit and includes all material assets that contribute to its current operation or which are necessary to ensure its ongoing viability and competitiveness.²¹⁹⁷ The Parties told us that the KAS Divestiture Business is currently operated as a largely independent, separate business unit within Cargotec’s strategic business unit Kalmar, with a dedicated management team headquartered in Tampere, Finland.²¹⁹⁸ Cargotec also told us that the grouping of KAS and Kamos together was ‘simply a legacy of corporate transactions in the late 1990s and early 2000s’²¹⁹⁹ and that KAS and Kamos have always been viewed as separate businesses within Cargotec.

13.51 [REDACTED].²²⁰⁰ The recent financial performance of the business is set out in Table 51 below.

Table 51: KAS Divestiture Business Recent Financial Performance

Financial Year Actual / Forecast	2019 Actual / €m	2020 Actual / €m	2021 Forecast / €m
Turnover	[REDACTED]	[REDACTED]	[REDACTED]
EBITDA†	[REDACTED]	[REDACTED]	[REDACTED]

Source: KAS Form RM – Confidential’ (as amended on 3 January 2022), paragraph 125, Table 5.

Note: † Earnings before interest, tax, depreciation and amortisation.

13.52 Cargotec also submitted that:

- (a) The KAS Divestiture Business benefits from being part of a wider corporate group through economies of scale, which include, but are not limited to, back-office support structures which – as is typical in a corporate setting – provide cost efficient, centralised support. The KAS Divestiture Business could, however, achieve equivalent – or greater – scale efficiencies following acquisition by another large industrial group.
- (b) The KAS Divestiture Business does not need to be linked to Cargotec’s operations in MEQ or any other type of container handling equipment to

²¹⁹⁷ Cargotec Commitments to the European Commission [REDACTED].

²¹⁹⁸ Cargotec Commitments to the European Commission [REDACTED].

²¹⁹⁹ Parties’ submission [REDACTED].

²²⁰⁰ KAS Form RM [REDACTED].

be well-known to European (including UK) customers as it is already a well-established business. There is no customer in the UK (or elsewhere) that is not already fully familiar with its product lines and track record; this does not depend on the KAS Divestiture Business being part of a group that also offers other types of container handling equipment.

(c) [REDACTED].²²⁰¹

Konecranes' submissions on the MEQ Divestiture Proposal

13.53 In relation to the MEQ Divestiture Proposal, in particular, Konecranes submitted that the MEQ Divestiture Business includes all of the relevant operations pertinent to the supply of MEQ globally and represents a straightforward divestiture of the entirety of Konecranes' existing global MEQ business.²²⁰² In this regard, Konecranes told us that the MEQ Divestiture Business:²²⁰³

- (a) has a [REDACTED] within Konecranes and is operated through [REDACTED] within the Konecranes group, which are independent from, and unrelated to, other Konecranes CHE businesses;
- (b) operates with [REDACTED]. Konecranes added that the MEQ Divestiture Business has a long track record of operating in the MEQ sector and includes highly experienced senior management and customer sales teams who hold the customer and distributor relationships and knowledge of customer requirements relating to MEQ, including in Konecranes' [REDACTED];
- (c) has its own [REDACTED], which are not co-mingled with other parts of Konecranes and are not complex:
 - (i) Konecranes' current route to market involves the use of distributors in the UK and the EEA which are [REDACTED] (these distributor agreements would also transfer with the MEQ Divestiture Business);
 - (ii) key inputs (such as product components) are [REDACTED] and are supplied through [REDACTED] that would transfer with the MEQ Divestiture Business. Konecranes added that [REDACTED];

²²⁰¹ Cargotec submission [REDACTED].

²²⁰² MEQ Divestiture Business Form RM [REDACTED].

²²⁰³ MEQ Divestiture Business Form RM [REDACTED].

- (iii) the MEQ Divestiture Business does not require [REDACTED]. Konecranes added that to the extent that Konecranes offers some limited technical support and training to distributors, this capability would transfer with the MEQ Divestiture Business; and
- (iv) the MEQ Divestiture Business does not require any automation capability as MEQ is not automated.

13.54 Konecranes also explained that any necessity for ongoing TSA support from Konecranes to the purchaser of the MEQ Divestiture Business would be customary and very limited and that, given the limited nature of the proposed TSAs, they would not impact on the ability of the purchaser to operate the MEQ Divestiture Business viably and independently of Konecranes on acquisition. In this regard, Konecranes told us that such TSAs (if required by the purchaser) would cover:²²⁰⁴

- (a) general shared IT systems (such as SAP) used by most businesses;
- (b) Konecranes' online sales platform used for the sale of MEQ spare parts; and
- (c) certain group-wide framework contracts for the supply of general commercial products or services such as IT software (eg Microsoft) or postal/courier services.

13.55 Konecranes also submitted that TRUCONNECT and YourKonecranes were based on [REDACTED] which were typically used by suppliers of MEQ and industrial equipment more generally. Konecranes considered that [REDACTED] for MEQ customers as compared to the functionality and operation of the MEQ itself. It added that it would propose a TSA of up to 24 months for the purchaser (at its request), which would allow the purchaser to migrate the MEQ Divestiture Business to its own systems or to develop its own alternative system, as it preferred. It added that this would support a smooth transition of the MEQ Divestiture Business to the purchaser.

Our approach to the evidence on the effectiveness of the Parties' Remedy Proposal

13.56 In our assessment of the effectiveness of the Parties' Remedy Proposal we considered the evidence submitted to us by third parties together with

²²⁰⁴ MEQ Divestiture Business Form RM [REDACTED].

evidence from the Parties' internal documents and information provided by the Parties about various aspects of their businesses.

- 13.57 We have not relied on any one specific piece of evidence in isolation to inform our decision on remedies; rather, we have assessed all of the evidence together and in the round, including giving due regard to the extent to which our view on the interpretation of a piece of evidence is corroborated (or not) by other evidence available to us.²²⁰⁵
- 13.58 The details of the Parties' views, third-party evidence and evidence from internal documents are considered below in relation to the assessment of each of the specific aspects of the Parties' Remedy Proposal.

Parties' submissions on procedural issues

- 13.59 In response to the Remedies Working Paper, the Parties made a number of submissions regarding the CMA's conduct of the inquiry and approach to the evidence.
- 13.60 The Parties submitted that the Remedies Working Paper introduced material new elements into the CMA's competitive assessment which were not contained in the Provisional Findings Report and that the CMA failed to comply with its statutory obligation and guidance by deciding not to re-issue a revised Provisional Findings Report.
- 13.61 In this context, the Parties submitted that it was not appropriate for the CMA to seek to revise and substantiate what the Parties considered to be material aspects of the CMA's competitive assessment by way of the Remedies Working Paper and expect the Parties to comment on it out of context, under a shortened deadline and without access to the underlying third-party feedback.²²⁰⁶
- 13.62 Amongst other things, the Parties submitted that the CMA:
- (a) Failed to discharge its duty to consult on its provisional findings by failing to provide a 'full' explanation of its reasoning;²²⁰⁷ and
 - (b) proceeded to consider remedies before its 'full' provisional findings were issued, without considering whether any additional procedural safeguards were necessary to ensure that discussion of remedies did not prejudice the CMA's SLC decision. As a result, the Parties had to

²²⁰⁵ CMA129, paragraph 2.23.

²²⁰⁶ Parties' submission [redacted].

²²⁰⁷ Parties' submission [redacted].

make submissions on remedies before knowing what the ‘provisional SLCs might be once the CMA had considered the Parties’ submissions on its competitive assessment’.²²⁰⁸

13.63 On 17 March 2022, in response to the consultation paper summarising the additional third-party evidence from the response hearings held after the Remedies Working Paper was issued (the Consultation Paper), the Parties submitted that:

- (a) The CMA acted unreasonably and unfairly in only allowing the Parties two days to respond to the Consultation Paper stating that ‘[h]ad the Parties been given an appropriate amount of time to respond, it would have been possible to issue an even more comprehensive set of rebuttals to the CMA’s concerns.’²²⁰⁹
- (b) The CMA failed to discharge its duty to consult and undermined the Parties’ rights of defence because:
 - (i) the feedback from the additional customers contained in the Consultation Paper was not included in the Provisional Findings Report or the Remedies Working Paper;²²¹⁰ and
 - (ii) the Consultation Paper did not provide an indication of whether the CMA’s substantive conclusions in the Provisional Findings Report or the Remedies Working Paper had changed as a result of the additional evidence contained in the Consultation Paper,²²¹¹ meaning that the Parties were unable to give ‘intelligent consideration and an intelligent response to a consultation request’.²²¹²

Our assessment: Parties’ submissions on procedural issues

13.64 The statutory framework for CMA merger control proceedings requires the CMA to consult where it proposes to make a relevant decision that is likely to be adverse to the interests of the merger parties.²²¹³

13.65 As set out in our guidance, consistent with settled precedent, the Provisional Findings are the main means by which the CMA fulfils this duty in relation to

²²⁰⁸ Parties’ submission [REDACTED].

²²⁰⁹ Parties’ submission [REDACTED].

²²¹⁰ Parties’ submission [REDACTED].

²²¹¹ Parties’ submission [REDACTED].

²²¹² Parties’ submission [REDACTED].

²²¹³ Section 104 of the Act.

its competitive assessment.²²¹⁴ In the context of remedies, the CMA discharges the duty to consult by issuing a Remedies Working Paper to the merger parties which contains a detailed assessment of the different remedy options and sets out provisional decisions on remedies.²²¹⁵

- 13.66 In this case, as part of the substantive assessment of the impact of the Merger on competition, the CMA gathered evidence in each of the markets in which the Parties overlap. On the basis of this evidence, we provisionally identified seven SLCs. We set out our provisional conclusions and the reasons for reaching such conclusions in the Provisional Findings Report and are satisfied that the report contained a full explanation of our reasoning at that time.²²¹⁶
- 13.67 Subsequently, the Parties submitted the Parties' Remedy Proposal, which consists of two separate divestment businesses (with each Party contributing one divestment business). We collated evidence to inform our assessment of the effectiveness of that proposal.²²¹⁷ As discussed in detail in this Chapter, some of that evidence indicates that the Parties' structure and broad CHE portfolio offering are capabilities that are material to the competitiveness of the Parties, especially for customers operating terminals with a significant degree of automation. The evidence also indicates that, as automation and digitalisation become increasingly important, so too will the ability to offer a single interoperable automation software and connectivity solution that can be used in different categories of CHE. We considered the fact that such benefits could be lost under the Parties' Remedy Proposal to have a material impact on the ability of that remedy to address the SLCs we had provisionally identified and, therefore, to be a relevant consideration in our assessment of the effectiveness of the Parties' Remedy Proposal.
- 13.68 Additional evidence collated after the Provisional Findings Report was set out in the Remedies Working Paper. This was, however, not the first instance at which the potential competitive significance of having a broad CHE portfolio was raised during this inquiry. In particular: i) the Provisional Findings Report included evidence on customer concerns about interoperability between CHE of different OEMs and the strength of the Parties' ability to offer a broad portfolio;²²¹⁸ ii) the [Remedies Notice](#) stated

²²¹⁴ [CMA2 Revised](#), paragraphs 12.12-12.13 and 13.4.

²²¹⁵ [CMA2 Revised](#), paragraph 13.18.

²²¹⁶ In accordance with [CMA2 Revised](#), paragraph 12.13.

²²¹⁷ Some elements of this evidence had been provided to us prior to publication of the Provisional Findings Report whereas other elements were obtained following its publication.

²²¹⁸ For example, the Provisional Findings Report stated that 'the evidence shows that some customers have concerns about the difficulty of integrating different types of automated equipment and software from different suppliers. These concerns combined with their broad automated portfolios play even more to the Parties'

'[o]ur current thinking is that an effective divestiture package may be difficult to design due to the following key factors, in particular: [...] [t]he importance customers place on suppliers of CHE having a strong track record, a large product portfolio, and established customer relationships in order to compete effectively'; and iii) during the Parties' response hearings on 17 December 2021, the Parties were asked various questions about the importance of having a broad CHE portfolio.^{2219,2220} Accordingly, the Parties were aware that the CMA was considering the competitive significance of having a broad CHE portfolio at various stages of our inquiry before the Remedies Working Paper was issued and were provided with several opportunities – even before the Remedies Working Paper – to make representations to the CMA on this issue (as they in fact did)²²²¹.

13.69 Whilst the additional evidence collated after the Provisional Findings Report was predominantly relevant to the consideration of the effectiveness of potential remedies, we considered that it was also relevant to the substantive assessment of the impact of the Merger on competition. In particular, we considered that the additional evidence provides further support for the position that the Parties, which are the only market participants to supply such a broad range of CHE equipment, are likely to be close competitors.²²²²

13.70 This position was conveyed to the Parties at the time of the Remedies Working Paper in an email dated 14 February 2022, stating:

'Some of the evidence upon which the provisional decision on remedies is based (which was not included in the Provisional Findings) is also relevant to the CMA's competitive assessment. In particular, the CMA currently considers that the evidence summarised in the provisional decision on remedies further

advantage as customers seek to avoid interoperability issues' (paragraph 6.87); 'Parties have strong offerings and will continue to vigorously 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' (paragraph 6.74); and that 'even if it is technically possible to integrate CHE products from different suppliers, our provisional assessment is that some customers still believe that it is preferable to purchase CHE from the same supplier so that it has characteristics which they are familiar with. This gives an to incumbent suppliers or suppliers with a broad portfolio of CHE' (paragraph 12.144).

²²¹⁹ For instance, we asked: 'One area of concern that we have generally in these mix and match remedies, so where you are taking part of one business and part of another business and potentially putting it together. I know one possibility might be sales of each business separately. The competitive loss that may come from the loss of economies of scale, from the loss of economies of scope, so there will be potentially a narrower product portfolio. The loss in this case of automation and interoperability across a CHE portfolio. Do you think we should be concerned about these areas in relation to your proposal?' (Transcript of Cargotec's Response Hearing, [REDACTED]).

²²²⁰ The Parties' submission of 18 January 2022 includes the Parties' representations on the CMA's provisional concerns regarding the risk of the Parties' Remedy Proposal resulting in the loss of the benefits the Parties derive from having a broad portfolio across different types of CHE.

²²²¹ Transcript of the Main Parties Hearing. See also Cargotec's and Konecranes' submissions [REDACTED] and the Parties' submission [REDACTED].

²²²² As such, the context of this additional evidence was disclosed to the Parties (contrary to the Parties' submission in paragraph 2.4 of the Parties' submission [REDACTED]).

supports the provisional findings that the Parties are close competitors in the markets in which SLCs were provisionally found and that there are material barriers to entry and expansion into these markets.

In responding to the Remedies Working Paper, we therefore invite the Parties to make submissions regarding the additional evidence we have gathered and/or further analysed since the Provisional Findings which is set out in the Remedies Working Paper, not only as it relates to remedy effectiveness but also to the competitive assessment set out in the Provisional Findings'.²²²³

- 13.71 In this context, we note that it is not uncommon for the CMA to gather additional evidence which may be relevant to its substantive assessment following the publication of provisional findings. Indeed, the Parties recognise that the CMA's competitive assessment does not end following publication of the provisional findings.²²²⁴
- 13.72 As set out in our guidance, it may be appropriate for the CMA to issue updated provisional findings where 'the CMA changes its provisional decisions on the statutory questions (or, exceptionally, where the 'gist' of the CMA's case fundamentally evolves) as a result of evidence received following publication of its provisional findings'. In such circumstances, 'it may be appropriate for the CMA to publish on its website, or otherwise disclose to the merger parties and relevant third parties, a description of its reasons for changing its provisional decision in order to provide parties with an opportunity to comment prior to publication of the final report'.²²²⁵
- 13.73 The additional evidence collated as part of the remedies assessment in this case did not meet that threshold. It did not alter our provisional decisions on the statutory questions set out in the Provisional Findings Report, nor do we consider that this evidence resulted in a fundamental evolution of the gist of the CMA's case such that updated Provisional Findings were required. In this regard, we note that the additional evidence contained in the Remedies Working Paper provided further support for the SLCs provisionally identified in the Provisional Findings Report; as such, it was not essential to the

²²²³ Email from the CMA to the Parties of 14 February 2022.

²²²⁴ Parties' submission [redacted].

²²²⁵ [CMA2 Revised](#), paragraph 13.21.

identification of the provisional SLCs and none of the Provisional Findings hinged on it.²²²⁶

- 13.74 In these circumstances, we are satisfied that it was not necessary to update the Provisional Findings Report and that, in making that decision, we acted consistently with our statutory duty to consult, as well as with the CMA's guidance.
- 13.75 Furthermore, we note that the additional evidence was provided to the Parties in the Remedies Working Paper²²²⁷ and that the Parties were given a reasonable amount of time to make representations on it (both as it relates to the assessment of remedy effectiveness and as it relates to the competitive assessment). Our guidance states that merger parties will typically have at least five working days to respond to the Remedies Working Paper.²²²⁸ In the present case, the Parties were given eight working days to respond.
- 13.76 In this context, we note that the CMA's guidance states that, where the CMA proposes to offer parties to make further submissions, 'the requirement for a minimum 21-day period for consultation on provisional findings does not apply and an appropriate period for response will be set depending on the circumstances of the case in question'.²²²⁹ As recognised by the CAT, while merger parties '[...] must be given a proper opportunity to digest the Working Papers and prepare their comments', procedural '[f]airness does not require parties to a merger to be given as much time as they believe, from their own perspective, may be necessary for them to respond to any documents. The effect of the overall statutory timetable means that their responses may have to be less complete or thorough than they would wish.'²²³⁰ In the present case, the additional evidence relating to the competitive assessment was of relatively limited scope and scale when compared with the Provisional Findings Report. As a result, we consider that the period of time given to the Parties to respond to the Remedies Working Paper was appropriate as it provided the Parties with sufficient time to respond. We also note that the

²²²⁶ The facts in the present case are materially different from those in *Amazon/Deliveroo*, in which the basis for the CMA's provisional findings fundamentally shifted (from provisionally clearing the merger on the basis that Deliveroo would have exited the market to provisionally clearing it on the basis that Amazon's investment in Deliveroo was not expected to damage competition).

²²²⁷ We note the Parties' submission that they have not been given 'appropriate access to any of the underlying third-party feedback' (Parties' submission [§]). However, we note that the disclosure of additional evidence remains subject to Part 9 of the Act and, as explained at paragraph 6.17 of this Final Report, the CMA disclosed the gist of the additional evidence to the Parties. For a discussion of the legal framework for disclosure under which the CMA operates in merger cases see paragraphs 6.14 to 6.16.

²²²⁸ [CMA87](#), paragraph 4.64.

²²²⁹ [CMA2 Revised](#), paragraph 13.21.

²²³⁰ *J Sainsbury plc and Asda Group Limited v CMA* [2019] CAT 1 at paragraphs 63 and 70.

Parties did not request an extension to the response deadline for the Remedies Working Paper.

- 13.77 Similarly, we consider that the period of time afforded to the Parties to respond to the Consultation Paper was appropriate. Again, the additional evidence set out in the Consultation Paper (which was a 13-page document) was of relatively limited scope and scale. The CMA also provided the Parties with advance notice, on 9 March 2022, that additional evidence would be provided to them on 15 March 2022, and that they would be afforded two working days to respond to that evidence (in order to help the Parties make appropriate preparations to be able to make any representations). We also note that the Parties did not request an extension to the response deadline for the Consultation Paper.
- 13.78 Given that the inclusion of additional evidence in the Remedies Working Paper did not mean that it was incumbent on us to update our Provisional Findings Report, it follows that it was also not necessary to re-issue a revised Remedies Working Paper. The Remedies Working Paper contained our provisional decision on remedies, along with the underlying reasoning. The Parties were, in accordance with our guidance,²²³¹ provided with an opportunity to submit, and did submit, informed representations.²²³²
- 13.79 We also do not agree with the Parties' submissions in response to the Consultation Paper that the CMA failed in its duty to consult:
- (a) Firstly, the feedback from the additional customers set out in the Consultation Paper had not been gathered by the time of the Provisional Findings Report or the Remedies Working Paper, and therefore could not, as a practical matter, be included in either of those documents. As set out in paragraph 13.71 above, it is not uncommon for the CMA to gather additional evidence which may be relevant to its substantive assessment following the publication of provisional findings. However, there is no duty to consult the merger parties on any and all evidence gathered by the CMA post provisional findings or remedies working paper where such evidence does not lead to a revision of the answer(s) to the statutory questions or involve the gist of the CMA's case fundamentally changing. To accept the Parties' submissions in this respect would artificially limit the CMA's ability to gather and rely on new evidence after provisional findings or remedies working paper (because

²²³¹ [CMA2 Revised](#), paragraph 13.18.

²²³² The Parties' submission on the additional evidence was taken into account when the final decision was taken both on the competitive effects of the Merger and the effectiveness of the Parties' Remedy Proposal (per the Parties' submission [X]).

the CMA would be required to re-issue its provisional findings or remedies working paper each time it obtained new evidence it wished to rely on).²²³³

- (b) Secondly, we do not consider that the Consultation Paper described a revision to the CMA's substantive conclusions in the Provisional Findings Report or the Remedies Working Paper, nor that the gist of the CMA's case had fundamentally changed as a result of the additional evidence contained in the Consultation Paper. The Consultation Paper stated that '[w]e note that this additional evidence is, in the round, not materially different in nature to the third-party evidence summarised in the Remedies Working Paper and therefore does not appear to present any reason to believe that the third-party feedback gathered for the purposes of the Remedies Working Paper was not sufficiently representative.'²²³⁴ On any reasonable reading, this statement provides a clear indication that the additional evidence contained in the Consultation Paper did not result in a change to the provisional substantive conclusions.²²³⁵

13.80 In light of the facts set out above, we are satisfied that we acted consistently with our statutory duty to consult during this inquiry, including on our Provisional Findings and on our provisional decision on remedies.

Parties' submissions on CMA third-party engagement

13.81 Prior to receiving the CMA's Remedies Working Paper, the Parties submitted that:

- (a) The market test conducted by the European Commission in the context of its assessment of the Parties' Remedy Proposal did not lead to a conclusion that the Parties benefitted from economies of scale or scope in the supply of CHE such that a full divestiture of one of the Parties' CHE businesses was necessary to address the European Commission's competition concerns.

²²³³ Any such conclusion would also not be aligned with our guidance, which clearly envisages the potential for additional evidence to be gathered after provisional findings and explains the circumstances in which the CMA may need to consult on such evidence. See [CMA2 Revised](#), paragraph 13.21.

²²³⁴ CMA Consultation Paper, paragraph 3.

²²³⁵ As explained in the CMA Consultation Paper, the response hearings summarised in the Consultation Paper were focused on remedy effectiveness. For completeness, the Consultation Paper also noted that 'some third parties had commented on the competitive effects of the Merger' and included a brief summary of such views (at paragraph 20), noting that 'the evidence received from customers in this respect was mixed' (as was the corresponding evidence summarised in the Provisional Findings Report). Accordingly, the Consultation Paper did not suggest a change to the provisional conclusions in relation to the competitive effects of the Merger. The reason for including these views in the Consultation Paper was to afford the Parties with an opportunity to comment on them (which they did), in the context of the theories of harm and the reasoning for the CMA's provisional findings, as set out in the Provisional Findings Report.

- (b) The CMA's practice of third-party engagement by way of conference calls with a selection of market participants (as opposed to the European Commission's practice of sending questionnaires to a wider selection of market participants) is liable to lead to 'undue selectivity, lack of representativeness and confirmation bias'.
- (c) If the CMA is put on notice of a significant body of evidence that either contradicts the CMA's own views or the third-party responses it has itself received (or both), the CMA's duty of sufficient inquiry, necessitates that the CMA informs itself of this evidence, in this case either via the European Commission or from those third parties directly.²²³⁶

13.82 In response to the Remedies Working Paper, the Parties submitted that the CMA failed to make reasonable inquiries in determining the effectiveness of the Parties' Remedy Proposal, in particular by failing to consult relevant evidence available as part of the European Commission's file and by not taking into account considerations that would have been material to its decision.²²³⁷

13.83 Specifically, the Parties reiterated the submission set out in paragraph 13.81(c)²²³⁸ and submitted that the CMA's market testing was insufficient, including because the CMA did not seek the views of non-UK customers.²²³⁹

13.84 Lastly, the Parties submitted that the European Commission's decision in this case, and in particular the outcome of its market testing on remedies, is a material consideration to which the CMA should have regard in reaching its decision on effectiveness of the Parties' Remedy Proposal.²²⁴⁰ In this context, the Parties referred us to the European Commission's decision, which states that [REDACTED].²²⁴¹

13.85 In response to the Consultation Paper, the Parties reiterated their submission that the CMA failed to acquaint itself with material relied on by the European Commission which contradicted the CMA's position. In particular, the Parties submitted that:

- (a) 'As a first step in that regard, the CMA should have ascertained if the third parties which provided responses to it had also provided responses

²²³⁶ Parties' submission [REDACTED].

²²³⁷ Parties' submission [REDACTED].

²²³⁸ Parties' submission [REDACTED].

²²³⁹ Parties' submission [REDACTED].

²²⁴⁰ Parties' submission [REDACTED]. In this respect, the Parties note the CAT's confirmation that it will quash a decision where the decision-maker failed to have regard to a relevant factor which is 'material' to the challenged decision, per *Tesco plc v Competition Commission* [2009] CAT 6, paragraph 78.

²²⁴¹ Parties' submission [REDACTED].

to the [European] Commission and the CMA should have asked to see those responses to the [European] Commission to ensure that it was receiving consistent and accurate information.²²⁴²

- (b) The CMA should have requested from all the customers with which it held response hearings waivers granting the CMA access to the European Commission's market testing or should have required those customers to supply the CMA with copies of their responses to the European Commission's market testing questionnaire.²²⁴³
- (c) The number of third parties with which the CMA held response hearings following the Remedies Working Paper was insufficient as the sample size was too small to be representative of relevant customers.²²⁴⁴ In this context, the Parties pointed out that the CMA received a total of 23 third-party responses as part of its remedies assessment, whereas the European Commission received more than 120 responses to its initial market testing questionnaire and an additional 67 responses to the market testing questionnaire relating to the KAS Divestiture Business.²²⁴⁵

Our assessment: the alleged requirement to obtain confidential evidence from the European Commission file

- 13.86 We have during this inquiry engaged closely with a number of other competition authorities reviewing the Merger – including the European Commission, the US Department of Justice and the Australian Competition and Consumer Commission – both in relation to the substantive assessment of competitive effects and the assessment of remedies.
- 13.87 However, our inquiry has been carried out independently from those other authorities. While the CMA will, in appropriate cases, cooperate with other authorities,²²⁴⁶ there is no obligation on the CMA to take investigative steps identical to those taken by other authorities such as the European Commission or to seek access to the evidence base collated by other authorities as part of their own independent investigations.
- 13.88 In this context, we do not accept that it was incumbent on us, in order to enable us to answer the statutory question on remedies, to depart from the CMA's established processes (which are discussed below) for third-party

²²⁴² Parties' submission [REDACTED].

²²⁴³ Parties' submission [REDACTED].

²²⁴⁴ Parties' submission [REDACTED].

²²⁴⁵ Parties' submission [REDACTED].

²²⁴⁶ See section 18 of [CMA2 Revised](#).

engagement in relation to remedies and to instead replicate the European Commission's market test.

- 13.89 We also do not consider that the difference in the outcome of third-party engagement conducted by the CMA and the European Commission required us to seek to obtain the confidential third-party evidence contained in the European Commission's file. We do, however, consider that material evidence of divergence in the outcomes of third-party engagement in relation to the same product and geographic markets is a potentially relevant consideration to which we may need to have regard (whilst also recognising that it can be rational for different competition authorities to reach different conclusions even where there is some overlap in the evidence base available to them).
- 13.90 Having become aware of the outcome of the European Commission's market test and in view of the potential for divergent views across customer groups, we decided to take further investigatory steps to ensure that our own engagement with third parties was appropriately robust. As set out in paragraphs 13.99-13.100 below, this included obtaining additional third-party evidence from a number of European customers to supplement our previous engagement with third parties. We also assessed the European Commission's market test questionnaire²²⁴⁷ and its final decision²²⁴⁸ to understand the basis for its market testing and the conclusions it reached.
- 13.91 Following a review of the additional evidence gathered from European customers, we concluded that the third-party feedback originally gathered for the purposes of the Remedies Working Paper was sufficiently representative to inform our remedies assessment. In particular, the evidence obtained in our additional evidence-gathering provided no indication that the customer feedback gathered before the Remedies Working Paper (which had been based on the approach set out in paragraphs 13.97 to 13.104 below) did not provide a sufficiently representative sample of customer views. Accordingly, we consider that the steps we took were sufficient to inform ourselves in relation to customer views, which have been weighted appropriately alongside other evidence available to us. That being the case, there was, contrary to the Parties' submissions, no reason for us to seek waivers from,

²²⁴⁷ Our review of the questionnaire did not identify any issues that were potentially relevant to the assessment of the Parties' Remedy Proposal that the CMA had not been exploring in its own third-party outreach.

²²⁴⁸ In particular, we noted that the European Commission's analysis had 'not identified major synergies within Cargotec and Konecranes between both business lines'. European Commission decision of 24 February 2022, [redacted].

or to compel, third parties we held response hearings with to provide evidence they may have provided to the European Commission.²²⁴⁹

13.92 As a result, we do not agree that it was necessary (or appropriate) to request waivers from the customers with whom we held response hearings or compel them to produce their responses to the European Commission's market testing questionnaire.²²⁵⁰ As explained in more detail in paragraph 13.106 below, the CMA's approach is to gather evidence and views from third parties in relation to the effectiveness of remedies by way of response hearings at which relevant topics are discussed in detail. This is different from the approach followed by the European Commission, which we understand (as explained further below) primarily obtains feedback by way of written responses to questionnaires. We are not required to replicate the European Commission's market test and we consider that the evidence that we gathered from third parties is robust.

13.93 In any event, we note that the evidence gathered by the European Commission from third parties as part of its market test is confidential and subject to strict confidentiality obligations under European Union law.²²⁵¹ In the absence of waivers from all third parties that responded to the European Commission's market test questionnaires, there is no available mechanism for the CMA to access the European Commission's evidence file. While we have obtained waivers from the Parties to enable the exchange of information confidential to the Parties with the European Commission, such waivers do not enable the sharing of information confidential to third parties. It would not be practicable (nor appropriate) for us to approach and request waivers from all third parties consulted by the European Commission in an effort to replicate the European Commission's market test.²²⁵²

Our assessment: scope of CMA third-party engagement in relation to remedies

13.94 In *Ecolab*, the CAT noted that it is ultimately for CMA to carry out such investigation as it considers appropriate to assess whether a remedy is

²²⁴⁹ In this context, we also note that all third parties with which the CMA holds response hearings are made aware that it is an offence under section 117 of the Act to provide information to the CMA that is false or misleading in a material respect. The CMA has no reason to doubt the veracity of the third-party evidence provided in response hearings.

²²⁵⁰ Parties' submission. [X].

²²⁵¹ Pursuant to Article 17 of the Council Regulation (European Commission) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings.

²²⁵² Similarly, the Parties' argument would suggest that in this case, and more broadly across all of its merger investigations, the CMA would be expected to seek waivers from all third parties that submitted evidence in relation to remedies to other competition authorities. This approach would be wholly impractical and disproportionate.

effective.²²⁵³ More broadly, the CAT has also noted that it is for the CMA to evaluate what evidence is necessary to collect in order ‘to acquaint itself with the relevant information to enable it to answer each statutory question’ and in so doing it has a wide margin of appreciation.²²⁵⁴ In applying this approach, it is for the CMA to decide which third parties to engage with and how such engagement takes place, provided that the third-party feedback is sufficiently representative to inform our remedies assessment.

13.95 In this case, our approach to the third-party engagement in relation to remedy assessment was based on our knowledge of, and evidence concerning, the CHE industry relied upon in reaching our decision on SLCs, while also taking into account the third parties that the Parties identified as potential purchasers.

13.96 Our approach was consistent with the established process followed in previous cases as set out in the CMA’s Merger Remedies Guidance.²²⁵⁵ In particular, we have, in accordance with the CMA’s Merger Remedies Guidance:

- (a) publicly sought views from interested third parties in the [Remedies Notice](#) on the effectiveness of possible remedies to address the provisional competition concerns identified in our [Provisional Findings Report](#),²²⁵⁶ and
- (b) held response hearings with a range of third parties on the effectiveness of possible remedies.²²⁵⁷

13.97 Set out below is a summary of the CMA’s engagement with third parties in relation the assessment of remedies.

13.98 Prior to issuing the Remedies Working Paper:

- (a) We contacted 19 third parties to obtain views on what may constitute an effective remedy to address our provisional competition concerns. These third parties included: i) a number of UK customers selected on the basis that they operate port terminals of different sizes and levels of automation;²²⁵⁸ ii) OEMs of MEQ and Port Cranes, including both OEMs who already have a material presence in Europe and smaller OEMs, as

²²⁵³ [Ecolab](#), paragraph 110.

²²⁵⁴ *BAA Limited v Competition Commission*, [2012] CAT 3, ([BAA-CC](#)), paragraph 20(3).

²²⁵⁵ [CMA87](#), 4.56-58.

²²⁵⁶ [CMA87](#), 4.56.

²²⁵⁷ [CMA87](#), 4.58.

²²⁵⁸ All except one of the customers had previously been contacted as part of the competitive assessment and expressed varying views regarding the impact of the Merger.

well as some OEMs that the Parties identified as '[REDACTED]';²²⁵⁹ and iii) distributors, given their close relationship with customers and understanding of their needs. Six third parties declined to comment, and one did not respond to our requests.

- (b) We held response hearings with: i) five OEMs (two OEMs that supply Port Cranes and three OEMs that supply MEQ); ii) four UK customers and one port terminal operator that operates a port terminal under concession of one of these customers, including both larger and smaller port terminals (together referred as 'customers'); and iii) two distributors. Some of these third parties were [REDACTED].²²⁶⁰ We also took into account third-party evidence submitted before the publication of the Provisional Findings Report.

13.99 As explained above, in light of the outcome of the European Commission's market test, we undertook additional evidence-gathering to ensure that our own engagement with third parties was appropriately robust. This included contacting a number of European customers in order to assess whether the views of these non-UK customers differed materially from those of the UK customers with which we had held response hearings prior to issuing the Remedies Working Paper.²²⁶¹ As part of this exercise:

- (a) We contacted 13 customers, operating container handling terminals of different sizes in the European Union. These customers were selected on the basis that they represented a variety of port sizes, were active in different parts of the European Union, and purchased a variety of different CHE or only one type of CHE from each Party or from both Parties.
- (b) Held response hearings with five European customers. The remaining eight customers did not respond to the CMA request or did not agree to attending a response hearing.
- (c) Contacted and held response hearings with two GTOs²²⁶² with UK operations.

²²⁵⁹ Cargotec submission [REDACTED].

²²⁶⁰ Cargotec submission [REDACTED].

²²⁶¹ We did not consider that a similar widening of the scope to non-UK customers was required for our engagement with third parties in relation to the competitive assessment. This is because both competition authorities reached broadly the same conclusions in their respective substantive assessment of the Merger, ie we were not aware of any potentially material divergence in outcomes of third-party engagement in relation to competitive assessment. See Chapter 6, paragraphs 6.21 to 6.28.

²²⁶² One of these GTOs had been previously invited for a response hearing before the Remedies Working Paper was issued, but had refused the invitation.

- 13.100 The evidence obtained from customers is summarised below in relation to the assessment of each of the specific aspects of the Parties' Remedy Proposal. However, for the purposes of this section we note that the evidence obtained from the European customers is, in the round, not materially different in nature to the third-party evidence summarised in the Remedies Working Paper. Accordingly, as noted above, we are satisfied that the third-party feedback originally gathered for the purposes of the Remedies Working Paper was sufficiently representative to inform our remedies assessment. Accordingly, we consider that the steps we took in relation to third-party engagement were sufficient to inform us of customer views (which have been weighted appropriately alongside the other evidence available to us).
- 13.101 After issuing the Remedies Working Paper, we also held response hearings with four potential purchasers that submitted a non-binding offer for the KAS Divestiture Business.²²⁶³ The Parties had asked interested parties to submit non-binding offers for that business by 4 March 2022 and provided the CMA with the details of [REDACTED] potential purchasers on 7 March 2022.
- 13.102 On 16 March 2022, the Parties confirmed the identity of [REDACTED] bidders that submitted non-indicative offers in relation to the MEQ Divestiture Business. The CMA held conference calls with two of these bidders (one prior to issuing the Remedies Working Paper and the other in the context of its offer for the KAS Divestiture Business).²²⁶⁴
- 13.103 In addition, on 20 March 2022, the Parties informed us that [REDACTED].²²⁶⁵ [REDACTED].
- 13.104 These response hearings with the potential purchasers that submitted non-binding offers or expressed an interest in the Divestiture Businesses were focused on their views on the KAS Divestiture Business (replicating the topics covered in the hearings with other third parties) but were not intended to assess the suitability of these potential purchasers (or form part of any purchaser suitability assessment process).²²⁶⁶

²²⁶³ We note that subsequently we learned that one of these bidders (a private equity firm) had also submitted a non-binding offer for the MEQ Divestiture Business.

²²⁶⁴ Given the late stage at which the CMA was provided with the identity of these bidders, it was not feasible to hold response hearings with all of them but we did not consider that this was necessary to inform our assessment of the effectiveness of the Parties' Remedy Proposal.

²²⁶⁵ Email of [REDACTED] to the CMA, 20 March 2022.

²²⁶⁶ The assessment of the suitability of potential purchasers takes place after the CMA accepts Final Undertakings or makes a Final Order.

Our assessment: format of CMA third-party engagement in relation to remedies

- 13.105 As noted by the Parties, the format of our engagement with third parties in relation to remedies varied from that of the European Commission. This is not unique to this case and is a function of each authority following the applicable legal framework and its established processes.
- 13.106 As set out in the CMA's Merger Remedies Guidance,²²⁶⁷ the CMA's approach is to gather evidence and views from third parties in relation to the effectiveness of remedies via response hearings at which relevant topics are discussed in detail. We understand that this differs from the approach followed by the European Commission, which solicits third-party feedback by way of questionnaires that are typically sent to a larger proportion of the total customer base.
- 13.107 In our engagement with third parties, we sought views not only on specific aspects of the Parties' Remedy Proposal but also on different aspects of the Parties' businesses, the overall functioning of the CHE industry and customer preferences relevant to the assessment of the effectiveness of remedy options. In doing so, we took into account whether the views of third parties might be influenced by their own incentives (eg a potential interest in acquiring the KAS or MEQ Divestiture Business).
- 13.108 We have made a qualitative assessment of the third-party evidence obtained, considering in the round the comments of third parties on specific aspects of the Parties' Remedy Proposal, on what customers value in an OEM and factors that are relevant for the competitiveness of an OEM, in conjunction with other third-party evidence (as well as evidence from internal documents). We have, therefore, not limited our analysis to quantitative assessments of the number of third parties that expressed (or did not express) concerns in relation to specific aspects of the Parties' Remedy Proposal.
- 13.109 We do not accept the proposition that the fact that we obtained more detailed evidence from fewer third parties than the European Commission suggests that we have insufficient third-party feedback to inform our assessment of remedies. We have no reason to believe that the CMA's means of gathering third-party feedback (as followed in previous CMA merger inquiries and set out in the CMA's published guidance) is, in principle, unlikely to be sufficient to gather third-party views. We also do not

²²⁶⁷ CMA87, paragraph 4.58.

accept that the CMA's established practice of questioning third parties in response hearings results in undue selectivity, lack of representativeness and confirmation bias²²⁶⁸ or that consultation of third parties by way of questionnaires is inherently more reliable or objective.²²⁶⁹ In particular, we are satisfied that it is appropriate for us to have focused on a smaller sample of third parties and engaged with such third parties in greater depth.

Overview of third-party evidence

- 13.110 As outlined above, the evidence that we received from third parties in the response hearings includes views from OEMs of different types of CHE (including some OEMs identified by the Parties as potential purchasers of the KAS and MEQ Divestiture Businesses); a variety of customers covering port terminals of different sizes and levels of automation, as well as customers that do not purchase all their CHE from the Parties; and CHE distributors.
- 13.111 We provide below an overview of the general comments made by these third Parties about the Parties' Remedy Proposal and summarise the third-party evidence in relation to certain features of the design and scope of the Parties' Remedy Proposal, as well carve out risks, the performance of the KAS Divestiture Business and the necessary capabilities of the prospective purchaser(s).
- 13.112 A more detailed analysis of the third-party evidence, including in relation to specific aspects of the Parties' Remedy Proposal, is included in our assessment of the composition and purchaser risks.
- 13.113 General comments about the KAS and the MEQ Divestiture Businesses: Third parties have mixed views on whether the KAS and MEQ Divestiture Businesses would be as effective competitors as the Parties (and therefore would replace the loss of competition brought about as a result of the Merger). Some third parties told us that the KAS and MEQ Divestiture Businesses (the Divestiture Businesses) were broadly 'standalone' and

²²⁶⁸ We also do not agree that the third-party evidence was solicited by leading and biased questions (paragraph 3.6 of the Response to the Consultation Paper). We have followed the CMA's established approach to third-party engagement (CMA87, paragraph 4.58). Third parties were also asked to confirm the CMA's summaries of the evidence gathered during the response hearings. In fact, the Parties state, for example that 'the evidence supports the Parties' submissions' (paragraph 3.11 of the Response to the Consultation Paper) and that 'customer feedback on the merger's competitive effects is in fact overwhelmingly positive about the [Merger]' (see paragraph 3.36 of the response to the Consultation Paper). Whilst the CMA does not accept the Parties' representations, it is difficult to reconcile these assessments by the Parties with their claim that the evidence was solicited by 'leading and biased questions'.

²²⁶⁹ For the criteria used for selecting the third parties contacted by the CMA in relation to the assessment of remedies, see paragraphs 13.97 to 13.104 above.

viable businesses.²²⁷⁰ A significant number of third parties (including some of those which considered each of the Divestiture Businesses to be largely a standalone business) told us, however, that the Divestiture Businesses might not enable the purchasers to compete as effectively as each of the Parties would have been able to in the absence of the Merger. In particular, some of these third parties, including three customers, highlighted that the assets being divested in each package may not be sufficient to transfer to the purchaser the necessary expertise and track record²²⁷¹ and enable it to offer a comparable competitive offering to the Parties.

- (a) Two customers, in particular, also expressed strong general concerns with the Parties' Remedy Proposal:
- (i) One customer²²⁷² told us that the KAS Divestiture Proposal (and potentially any other remedy short of prohibition) raises serious concerns for customers. This customer noted that there is a risk that the KAS Divestiture Business would not continue to offer its current product range. The potential purchaser may decide to close the ASC business of KAS if it is not winning new contracts. Although the customer considered that the question of whether the divested entity post-Merger would be an effective or weakened competitor against the Parties was dependent on the identity of the purchaser,²²⁷³ this customer stated that the divested entity may not, if the new owner was a smaller business, be economically viable to offer the same level of maintenance and service support network post-Merger.²²⁷⁴
 - (ii) Another customer²²⁷⁵ told us that a standalone business comprised of the KAS Divestiture Business or the MEQ Divestiture Business will not be competitive against the Merged Entity. The customer

²²⁷⁰ Transcript of call [REDACTED], Transcript of call [REDACTED] (in relation to MEQ Divestiture Proposal), Transcript of call with [REDACTED] (in relation to the MEQ Divestiture Proposal); Transcript of call with [REDACTED] (in relation to the MEQ Divestiture Business), Transcript of call with [REDACTED] (in relation to MEQ Divestiture Proposal).

²²⁷¹ A Port Cranes OEM told us 'If you have somebody who is just buying those assets, I do not know how a customer would look at, 'You are now a brand-new organisation, you do not have any experience' (Transcript of call with [REDACTED]). A customer told us that the prospective purchaser 'would not be able to say, 'Well, we used to be part of Cargotec and Kone, they have done it, we cannot rely on them because they are a new entity' (Transcript of call with [REDACTED]).

²²⁷² Call note [REDACTED].

²²⁷³ In their response to the Consultation Paper, the Parties highlighted that the concerns raised by this customer 'will depend on the identity of the purchaser but no specific concerns are identified in relation to the composition or nature of the KAS Divestiture Business' (paragraph 3.31(a)). As explained in paragraph 13.549, the CMA is under a duty to identify effective remedies in its Final Report and it is not appropriate to rely on the attributes of the purchaser to address substantial and inherent defects of an ineffective remedy.

²²⁷⁴ In their response to the Consultation Paper, the Parties highlighted that the concerns raised by this customer 'will depend on the identity of the purchaser but no specific concerns are identified in relation to the composition or nature of the KAS Divestiture Business' (paragraph 3.31(a)). As explained in paragraph 13.549, the CMA is under a duty to identify effective remedies in its Final Report and it is not appropriate to rely on the attributes of the purchaser to address substantial and inherent defects of an ineffective remedy (see 13.549).

²²⁷⁵ Call note [REDACTED].

considered that the Parties are cherry-picking the best parts of their businesses, whilst divesting / carving out the poorly performing parts.²²⁷⁶ For example, the Parties are proposing to keep Konecranes' good RTG offering (a profitable business), whilst carving out Kalmar's not as good RTG offering (Kalmar's RTGs are produced not by Kalmar, but in China). Similarly in MEQ, the Parties are proposing to keep the Kalmar MEQ business; the only good thing the Parties are carving out from Cargotec is Kalmar's straddle carrier business. However, the customer considers that that business is on par with the Konecranes' straddle carrier business, as both Parties produce good machines. In automation, the customer observed that the Parties' proposal is to carve out the Kalmar One system (an automation business that has historically lost money), but not the Konecranes TBA system (which has conversely made money and is a more advanced system than Kalmar One).

- (b) Two other customers and one OEM of Port Cranes told us that the divestiture of the CHE division of one of the Parties would be a more effective remedy than the proposed divestiture of the separate KAS and MEQ Divestiture Businesses:²²⁷⁷
- (i) One customer noted that 'a legal entity bidding for a regulated contract can only rely on its own experience, history' within the context of bidding for contracts subject to utilities contracts regulations. This customer stated that, if a purchaser were to acquire KAS (instead of Kalmar) that might 'reduce the ability of a new entity to successfully bid for regulated contracts, as it will not have the requisite operating history and experience'. As such, this customer considers that 'Kalmar can bid on a more equal footing because, ultimately, that is the company that we know, we trust, and we have used before, and they have got reference points historically'.²²⁷⁸
- (ii) Another customer told us that a purchaser will have to be able to 'replicate what Kalmar [is] offering. I think that a big part of their appeal is this ability to deal with any aspect of your problem[s] with

²²⁷⁶ In their response to the Consultation Paper, the Parties submitted that the comments of what this customer considered to be this customer about the divestiture of the worse parts of Cargotec and Konecranes 'are not relevant to the effectiveness of the remedy package in resolving the provisional SLCs in either MEQ or straddle/carriers and cranes respectively' (paragraph 3.31(b)). We consider that these comments are relevant to the effectiveness of the remedy. If the worse parts of the Parties' business are being divested, this may affect the viability and competitiveness of each of the Divestiture Businesses, as they will be separated from each of the Parties' CHE divisions. The evidence from internal documents suggests that the Divestiture Businesses are likely to be more viable and competitive as part of Kalmar and Konecranes Port Solutions' divisions (see, for examples, paragraphs 13.313 to 13.328).

²²⁷⁷ Transcript of call [REDACTED], Transcript of call [REDACTED], Transcript of call [REDACTED], Transcript of call with [REDACTED].

²²⁷⁸ Transcript of call [REDACTED].

various solutions. I think [the purchaser] would have to be able to replicate that'.²²⁷⁹²²⁸⁰

- 13.114 Third parties widely believe that there are competitive advantages from being part of a broader CHE business. A material number of third parties (see paragraphs 13.334 to 13.347, 13.358 to 13.362 and 13.394) told us that the Parties currently benefit from material synergies and competitive benefits, including with respect to the supply of 'one stop' solutions and the offer of connectivity solutions across the whole CHE portfolio (including different categories of equipment).²²⁸¹ Some third parties also noted that the Parties benefit from economies of scale, including in terms of procurement of components that are used across their portfolio of equipment.²²⁸²
- 13.115 Carve-out risks. Some customers highlighted some carve-out risks, including in relation to the retention of employees and customer contracts of the KAS and MEQ Divestiture Businesses by the purchaser (see paragraph 13.470). The potential purchasers of the KAS Divestiture Business also expressed different levels of concern with possible carve-out risks and the sale process (see paragraph 13.478 to 13.480).
- 13.116 Views on performance of the KAS Divestiture Business. One potential purchaser that submitted a bid for the KAS Divestiture Business expressed concerns with the performance and profitability of KAS's Port Cranes business because Cargotec outsourced KAS' supply chain, which increases KAS' cost base and impedes its competitiveness.²²⁸³ Another bidder noted that KAS' Port Cranes business has been struggling and that it sees scope for improvement.²²⁸⁴
- 13.117 Third parties consider that prospective purchaser(s) for the Divestiture Businesses would need to possess specific capabilities. Some third parties told us that it would be important for the effectiveness of the remedy that the Divestiture Businesses are purchased by industrial purchasers.²²⁸⁵ A significant number of the third parties we spoke to also highlighted factors that should be taken into account in any assessment of the likely availability

²²⁷⁹ Transcript of call [REDACTED].

²²⁸⁰ Another customer also told us that the divestiture of Kalmar would allay 'some of my concerns about the scale of what is being hived off and it creates a nice, neat business unit I guess..... The idea of Kalmar as a whole being hived off – if that is the right term – I think would seem to be a sensible one'.

²²⁸¹ Transcript of call [REDACTED], Transcript of call [REDACTED], Transcript of call [REDACTED], Transcript of call [REDACTED], Transcript of call [REDACTED], Transcript of call [REDACTED], Transcript of call [REDACTED], Transcript of call [REDACTED].

²²⁸² Transcript of call [REDACTED], Transcript of call [REDACTED], Transcript of call [REDACTED].

²²⁸³ Call note [REDACTED].

²²⁸⁴ Call note [REDACTED].

²²⁸⁵ Transcript of call [REDACTED], Transcript of call [REDACTED], Transcript of call [REDACTED], transcript of call [REDACTED].

of prospective purchasers (eg worldwide presence, strong financial capability and scale)²²⁸⁶ (see paragraphs 13.502 to 13.506).

13.118 We have considered evidence from third parties in more detail below in relation to the assessment of each of the specific aspects of the Parties' Remedy Proposal.

Composition risks

13.119 In assessing whether a divestiture remedy is subject to risks that could limit its effectiveness in addressing an SLC, the CMA will consider composition risks. These are risks that the scope of the divestiture package may be too constrained or not appropriately configured to attract a suitable purchaser or may not allow a purchaser to operate as an effective competitor in the market²²⁸⁷. Accordingly, in this section, we assess the composition risks arising from the Parties' Remedy Proposal.

13.120 Our analysis is set out in three sections:

- (a) Composition risks relating to the scope of the Parties' Remedy Proposal. These concern the asset perimeter of the remedy, for example specific assets that are not included in the remedy, or the way in which assets would be transferred (such as limitations on their use).
- (b) Composition risks relating to the design of the Parties' Remedy Proposal, arising from the creation of two divestiture packages. These comprise: (a) the risk of losing the advantages associated with the offer and development of a broad CHE portfolio; and (b) the risk of losing economies of scale. We also considered these risk in a scenario in which a both the KAS and MEQ Divestiture Businesses are sold to a single purchaser.
- (c) Composition risks relating to the complexity of the proposed asset 'carve-outs' that are part of the design of the Parties' Remedy Proposal. Under this heading, we examine the identification, allocation and transfer of divestiture assets.

Composition risks relating to the scope of the Parties' Remedy Proposal

13.121 We assessed composition risks related to the scope of each of the KAS and MEQ Divestiture Proposals (ie whether there would be specific assets that

²²⁸⁶ Transcript of call [REDACTED], Transcript of call [REDACTED], Transcript of call [REDACTED], Transcript of call [REDACTED], Transcript of call [REDACTED] and Transcript of call [REDACTED].

²²⁸⁷ CMA87, paragraph 5.3 a).

were not included in the packages or issues related to the way an asset would be transferred (eg limitation in its use - see paragraph 13.37(c)).

13.122 We have identified a number of risks to effectiveness arising from the scope of the Parties' Remedy Proposal. These risks fall into three broad categories:

- (a) assets not included in the Parties' Remedy Proposal which would be required for an effective divestiture, in particular maintenance contracts, and R&D personnel and projects;
- (b) licences for brands and software that restrict the ability of the KAS and MEQ Divestiture Businesses to compete effectively; and
- (c) uncertainty over whether all necessary assets are included in the Parties' Remedy Proposal. This category includes Cargotec's Stargard facility, spare parts warehouses and inventory, and IPRs.²²⁸⁸

13.123 Although some of the risks would arise to some extent in any remedy involving a partial divestiture, the risks assessed below are particularly acute, particularly when considered cumulatively, given the nature of the Parties' Remedy Proposal, which would require the divestiture of a small part of each of the Parties' existing businesses with material links to businesses that the Merged Entity would retain.

13.124 For completeness, we also note that these risks cannot be fully addressed through the purchaser approval process, in particular because of the asymmetry of information between the Parties and the purchaser in relation to the identification of assets that are important for the effectiveness of the remedy package. The fact that a purchaser may be willing to purchase a given package of assets does not, in itself, provide sufficient comfort that the asset perimeter is appropriate to restore the competition lost as a result of a merger, given that the incentives of the merger parties and the purchaser during the implementation period may not be aligned with those of the CMA. A purchaser may, for example, be willing to take more risk, or an incomplete set of assets, in exchange for a lower purchase price (whereas it would not be appropriate for the CMA to accept that consumers should bear the same risks).

²²⁸⁸ In this section about composition risk related to the scope of the Parties' Remedy Proposal, we focus on whether or not specific assets would end up being part of the Divestiture Businesses, because the Parties have not identified such assets as being part of each of the Parties' Divestiture Businesses. In paragraphs 13.442 to 13.485 about carve-out risk, we highlighted more generally the risks associated with the identification and transfer of shared assets to be included in the Divestiture Businesses, in the context of carving-out the Divestiture Businesses from the businesses that the Parties would be retaining, see paragraphs 13.197 to 13.218 .

13.125 We consider below the Parties' submissions on composition risks relating to the scope of the Parties' Remedy Proposal and each of the categories set out above.

Parties' submissions on composition risks relating to the scope of the Parties' Remedy Proposal

13.126 In response to the Remedies Working Paper, the Parties submitted that the CMA's assessment of the Parties' Remedy Proposal, was based on material misunderstandings of its scope and nature, which the Parties say raised questions of whether the CMA analysed and market tested the correct remedy package.²²⁸⁹ The examples provided by the Parties were the description of the [REDACTED], as explained in more detail below.

13.127 We assess below the Parties' specific submissions on each of the CMA's concerns with the scope of the Parties' Remedy Proposal.

Excluded assets

13.128 This section considers the composition risks associated with the exclusion of certain assets from the scope of the KAS and MEQ Divestiture Businesses, such as employees associated with R&D functions and maintenance contracts.

13.129 While Cargotec has characterised the KAS Divestiture Business as 'Cargotec's standalone horizontal transport equipment and cranes business',²²⁹⁰ we note that the KAS Divestiture Business is part of Cargotec's wider Kalmar division, with a relatively extensive, complex and wide-ranging set of tangible and intangible assets, operations, contracts and frontline employees which are shared between the KAS Divestiture Business and the rest of the Kalmar division which would be retained by the Merged Entity.

13.130 Cargotec provided an extensive list of assets which it considered should form part of the KAS Divestiture Business. However, in several instances, the Parties recognised that this list may not be exhaustive or complete.²²⁹¹

13.131 Given the complexity of the Parties' businesses as they are operated at present, and the challenges arising from the information asymmetry between

²²⁸⁹ Parties' submission [REDACTED].

²²⁹⁰ Parties' submission [REDACTED].

²²⁹¹ For example, Cargotec only submitted a non-exhaustive list of 'aftersales services contracts', of its supply contracts, of its ongoing equipment orders and/or contracts and of its development projects (Cargotec submission [REDACTED]).

the Parties and the CMA (which limits our ability to assess what assets would be necessary for the business to continue to operate with the same competitive intensity), we consider that there is a material risk that there may be other assets, which are important for the effectiveness of the KAS Divestiture Business, that have not been listed or highlighted for our attention.

13.132 In this respect, in response to the Remedies Working Paper, the Parties submitted that:

(a) [REDACTED].²²⁹²

(b) While the CMA has claimed that there are shared staff, the Konecranes MEQ business is a standalone business with all the resources necessary to operate competitively following divestment, and [REDACTED] unless the European Commission and the monitoring trustee determine that these employees are essential for the competitiveness and viability of the MEQ Divestiture Business.²²⁹³

13.133 Irrespective of whether KAS personnel should be characterised as a ‘shared asset’, we consider that the key point, for the assessment of the risks relating to the proposed scope of the KAS Divestiture Business, is that certain frontline unit personnel that support both KAS and Kamos would either: i) need to be either carved out from the Kamos business (eg including staff from Cargotec’s after sales team); or ii) would not be transferred at all (eg personnel involved in certain corporate functions such as IT and compliance and certain personnel that are part of Cargotec’s R&D teams involved in the development and support of Cargotec’s connectivity solutions (see paragraph 13.138)).

13.134 We therefore consider that the description of the Parties’ commitment in relation to Cargotec’s employees that would be transferred as part of the KAS Divestiture Business, and the existence of some employees that do not work exclusively for the KAS business, as described in the Remedies Working Paper, accurately reflected the substance of that commitment. The CMA’s engagement with third parties was aimed at understanding third parties’ views on the key features of the Parties’ Remedy Proposal, and the CMA therefore considers that any differences in the understanding of the granular details of the remedy would not have had a material impact on the views received. Furthermore, many third parties told us that they were familiar with remedies as described in the European Commission’s market

²²⁹² Parties’ submission [REDACTED].

²²⁹³ Parties’ submission [REDACTED].

test questionnaire. As a result, we consider that any mischaracterisation of the Parties' Remedy Proposal (which we do not accept) would not have had a material impact on the value of the evidence the CMA obtained from third parties.

13.135 We note the MEQ Divestiture Business relies on a significant number of 'shared capabilities', which are services provided to the MEQ Divestiture Business by the Konecranes Group. After an initial TSA, these services would need to be provided by a purchaser of the MEQ Divestiture Business. Konecranes identified [REDACTED] 'shared capabilities' in its frontline functions and a further [REDACTED] in its support functions.²²⁹⁴ This indicates to us that there is a significant restriction in the scope of the remedy, with substantial risks arising in relation to frontline capabilities such as [REDACTED], which are not included with the divestiture business. The Parties' proposal to provide these [REDACTED] frontlines 'shared capabilities' under TSAs does not, in our view, present material mitigation to the risks arising (given that an effective remedy is intended to provide a lasting re-establishment of the market structure expected in the absence of the Merger), and presents further concerns around the Merged Entity providing these critical services for a competitor.

- *R&D*

13.136 Given the asymmetry between the information available to us and the Parties, it has not been possible or practical to conduct an exhaustive, line-by-line assessment of the assets that form part of the Parties' Remedy Proposal. However, we note that the R&D teams and assets that would be transferred to the purchasers of each of the KAS Divestiture Business and the MEQ Divestiture Business (including the R&D staff and assets common to each of these businesses and the business to be retained by the Merged Entity) would need to be separately identified and carved out from the wider Cargotec and Konecranes business.

13.137 In relation to the KAS Divestiture Proposal, it appears that some of Cargotec's R&D teams and assets do not form part of the KAS Divestiture Business.

13.138 For example, personnel involved in developing Cargotec's connectivity functionalities – Kalmar Cloud, Kalmar Cloud Gateway, Kalmar Insight, Kalmar Remote Services (Maintenance Remote Support and Kalmar One application monitoring), MyParts, MyKalmar and Smart Trucks²²⁹⁵ – would

²²⁹⁴ Konecranes submission [REDACTED].

²²⁹⁵ KAS Form RM [REDACTED].

only be transferred where they have been predominantly involved in developing these functionalities for Port Cranes and/or Straddle Carriers.²²⁹⁶ The Parties told us that the R&D teams and facilities for these connectivity solutions would otherwise be retained by Cargotec as they were necessary to ensure Cargotec's overall R&D capabilities, including for other business units.

13.139 We note, in this respect, that Cargotec estimated that there are [REDACTED] employees who have been predominantly involved in developing connectivity solutions that are used by both KAS and KAMOS.²²⁹⁷ These individuals are currently [REDACTED].²²⁹⁸ Cargotec's website indicates that there are more than [REDACTED] employees in its Digital Solutions Hub.²²⁹⁹ We therefore infer that at least [REDACTED] employees (ie around two-thirds of the existing employee base), who may have knowledge, skills or experience which is critical to the current and future innovation capabilities of the KAS Divestiture Business, may not be transferring.²³⁰⁰ We consider that this presents a material risk that the KAS Divestiture Business would not be able to compete as effectively as the Parties do at present.

13.140 We also have concerns that the necessary R&D personnel, know-how and experience may not be included in the MEQ Divestiture Business. As set out below in paragraph 13.326, Konecranes has certain 'Technology Projects' that may benefit more than one type of equipment – typically Port Cranes and Straddle Carriers, but also Port Cranes, Straddle Carriers and MEQ. While the evidence available to us indicates that [REDACTED] (which we understand would not be included with the MEQ Divestiture Business),²³⁰¹ it shows that these capabilities are, in practice, deployed for projects that cut across different business areas, with R&D projects covering more than one type of CHE. The evidence available to us also indicates that such functions are likely to become important in future as the industry moves towards increased automation and digitalisation. On this basis, we consider that the non-inclusion of these assets (even taking into account the limited number of 'live' projects) presents a material risk that the MEQ Divestiture Business would not be able to compete as effectively as the Parties do at present.

²²⁹⁶ Cargotec Commitments to the European Commission [REDACTED].

²²⁹⁷ Cargotec submission [REDACTED].

²²⁹⁸ Cargotec submission [REDACTED].

²²⁹⁹ Cargotec, Digital Solutions Hub – Careers, 21 March 2022. <https://www.cargotec.com/en/careers/dish-main/>

²³⁰⁰ The Information Memorandum for the sale of the KAS Divestiture Business refers to the following shared R&D and technology capabilities: (1) Patent management, (2) IP management, (3) Automated systems, (4) Industrial design, (5) HMI / GUI Ergonomics, and (6) Technology scouting. Parties submission [REDACTED].

²³⁰¹ Konecranes submission [REDACTED].

13.141 Further, whilst the MEQ Divestiture Proposal includes ‘R&D and pipeline projects’ which are ‘predominantly or exclusively’ for the supply of MEQ,²³⁰² this may not include all of the R&D projects which benefit the MEQ business. For example, some innovation projects, such as R&D projects underpinning TRUCONNECT which is currently used both in MEQ and other CHE, [REDACTED].

- *Maintenance contracts*

13.142 Cargotec and Konecranes have a number of maintenance contracts that cover both the maintenance of MEQ and Port Cranes (see paragraphs 13.367 to 13.373). These contracts are among [REDACTED] maintenance contracts held by the Parties. As noted below, [REDACTED] of these contracts are within [REDACTED] maintenance contracts by revenue in 2021. There are material risks incumbent in splitting these combined contracts, including that customers may withhold consent to the novation to the purchaser of the Divestiture Businesses’ interest under these contracts. Indeed, Cargotec told us that, from its [REDACTED] combined maintenance contracts, [REDACTED] would be transferred and that it ‘is currently considering the appropriate manner of divestiture of all other contracts’.²³⁰³

13.143 Konecranes has [REDACTED] maintenance contracts that cover both the maintenance of MEQ and Port Cranes. In response to the Remedies Working Paper, Konecranes submitted that shared maintenance contracts are ‘limited in number and have [REDACTED]’.²³⁰⁴

13.144 We note, however, that [REDACTED] of these contracts is [REDACTED]. While maintenance contracts are typically performed by distributors, we note that these maintenance contracts refer to Konecranes’ MEQ and the maintenance available to that equipment (either directly and indirectly) is an important factor in a customer’s choice of its MEQ OEM.²³⁰⁵ Furthermore, Konecranes told us that these combined contracts are not part of the MEQ Divestiture Proposal.²³⁰⁶ This means that the purchaser would lose the revenue derived from these maintenance contracts, which constitutes a material proportion of the overall revenue which Konecranes and Cargotec currently derive from such contracts (as discussed in paragraph 13.373).

13.145 We consider that, even if all the combined maintenance contracts of the Parties were included, there could be a material risk incumbent in splitting these ‘one stop shop’ contracts, including that customers may withhold

²³⁰² Cargotec Commitments to the European Commission [REDACTED].

²³⁰³ Cargotec submission [REDACTED].

²³⁰⁴ Parties’ submission [REDACTED].

²³⁰⁵ See paragraphs 5.155 to 5.157 Chapter 5.

²³⁰⁶ Konecranes submission [REDACTED].

consent to the novation of the KAS Divestiture Business' interest and MEQ Divestiture Business' interests under these contracts to the purchaser.

13.146 The exclusion of these contracts from the Divestiture Businesses and the risk that customers would withhold their consent to novate these contracts is a material composition risk that could affect the competitiveness of the Divestiture Businesses.

Restricted licences – brands

13.147 This section considers the composition risks associated with branding that arise from the design of the Parties' Remedy Proposal, which comprises Divestiture Businesses drawn from both Parties.

13.148 In relation to the Kalmar brand, as noted at paragraph 13.3713.37(c) the Parties' Remedy Proposal includes the transfer of the Kalmar brand to the purchaser of the KAS Divestiture Business in relation to the supply and servicing of Port Cranes and Straddle Carriers, while the Merged Entity would retain the exclusive use of the licence for all other products.²³⁰⁷ ²³⁰⁸ Kalmar also offered to fully transfer its 'Nelcon' brand.

13.149 In relation to Konecranes, as noted in paragraph 13.4213.42(j), Konecranes offered to transfer the 'SMV' and 'Liftace' trademarks. The Konecranes brand would not form part of the MEQ Divestiture Business, but Konecranes would undertake not to sell any MEQ under the Konecranes brand for a period of eight years from closing of the divestiture transaction. At the option of the purchaser, the Parties and the purchaser would 'enter into commercially acceptable arrangements, including if applicable through a licence' to allow the purchaser to sell MEQ products using the Konecranes brand for a period of three years '[...]' from the moment when the Parties and the Purchaser have agreed on the relevant arrangements.²³⁰⁹

13.150 We have assessed below:

²³⁰⁷ Cargotec Commitments to the European Commission [X]. Non-confidential Summary of the Parties' Remedy Proposal, submitted on 22 January 2022, page 3, paragraph a).

²³⁰⁸ Cargotec would differentiate the Kalmar brand used in relation to the supply and servicing of any other equipment than Port Cranes and Straddle Carriers from the Kalmar brand used by the purchaser in relation to the supply and servicing of Port Cranes and Straddle Carriers. The Merged Entity would retain the exclusive right to use the Kalmar brand in relation to the supply and servicing of any other equipment than Port Cranes and Straddle Carriers, in particular MEQ. Alternatively, as noted in paragraph 13.3913.39(c), if the CMA agreed to a divestment that did not include the Kalmar brand for these products, the purchaser would have an option to licence the brand for a period of five years. After this five-year period, and until the end of the tenth year from closing of the divestiture transaction, neither the Parties nor the purchaser would be allowed to sell Port Cranes or Straddle Carriers products under the Kalmar brand. Finally, if the purchaser does not acquire a licence to use the Kalmar brand, the Parties shall not be allowed to sell any Port Cranes and/or Straddle Carriers using the Kalmar brand during the period of ten years from closing of the divestiture transaction.

²³⁰⁹ Non-confidential Summary of the Parties' Remedy Proposal, submitted on 22 January 2022, page 1.

- (a) Evidence on the importance of the Kalmar and Konecranes brands that the Parties offered to transfer as part of the respective packages;
- (b) evidence on the potential risks and difficulty of rebranding; and
- (c) evidence on the potential for customer confusion as a result of the ‘dual use’ of the Kalmar and Konecranes brands.

13.151 In our assessment, we considered the Parties’ views and evidence from third parties and internal documents.

- *The Parties’ views*

13.152 Cargotec submitted that the risk of customer confusion in relation to a brand used in Port Cranes and Straddle Carriers, on the one hand, and MEQ, on the other, is very low, due to: (i) differences between the products in question; (ii) distinct nature of the Port Cranes and Straddle Carrier businesses, which is characterised by infrequent, large and highly customised deliveries; and (iii) the fact that customers are highly sophisticated and that there is limited overlap between the customers that purchase Port Cranes and Straddle Carriers, on the one hand, and MEQ, on the other. Cargotec also stated that ‘the parallel use of the Kalmar brand by the Merged Entity and the KAS Divestiture Business’ would not ‘affect the competitiveness of the purchaser in relation to the supply of cranes and straddle / shuttle carriers’.²³¹⁰

13.153 Konecranes told us that ‘the risk of brand confusion is limited because: i) the SMV and Liftace brands will distinguish Konecranes-branded MEQ from other Konecranes CHE; and ii) the distributors have the main supply relationship with customers for MEQ and these are large and sophisticated customers.’²³¹¹

13.154 In response to the Remedies Working Paper, the Parties submitted that:

- (a) The CMA’s assessment of the brand element of the KAS Divestiture Proposal fails to take into account that the Parties have offered to fully divest the Kalmar brand for KAS applications, and assumes that the purchaser would be unable to use the Kalmar brand after a five-year licence period has elapsed. The Parties submitted that, if assessed

²³¹⁰ Cargotec submission [REDACTED].

²³¹¹ Cargotec Commitments to the European Commission [REDACTED].

properly, it is clear that the brand divestment does not give rise to composition risks in relation to time limit and rebranding.²³¹²

- (b) In relation to the MEQ Divestiture Proposal, the Parties submitted that the CMA's concerns in relation to the fact that the Konecranes brand would not be fully transferred are unfounded, as demonstrated by Konecranes' past experience (ie 'Konecranes added the Liftace and SMV brands to the Konecranes' brand [redacted]'). Furthermore, the Parties submitted that: i) the cost and time involved in rebranding is inherent to any acquisition; ii) the CMA misconstrued the third-party analyses on the Konecranes brand as well as the internal documents on the importance of brand for MEQ products' competitiveness (ie the internal documents referred by the CMA are not specific to MEQ and RWP relies on one piece of third-party evidence on brand that is speculative).²³¹³
- *Importance of the Konecranes and Kalmar brands and the other brands that the Parties offered to fully divest*

13.155 As set out below, evidence from the Parties' internal documents and from third parties generally shows that the 'Konecranes' and 'Kalmar' brands are important for Konecranes' and Cargotec's competitiveness and that brand equity is considered as a significant asset of the Cargotec and Konecranes businesses. This evidence also shows that 'Nelcon' is not a well-known brand and that 'SMV' is, to some extent, less strong than the Konecranes brand.

13.156 In this regard, we note that, while Cargotec offered to transfer the 'Kalmar' brand in respect of the supply and servicing of Port Cranes and Straddle Carriers, the Merged Entity would retain the exclusive right to use the Kalmar brand in relation to the supply and servicing of any other equipment, in particular mobile equipment. Accordingly, we do not consider that the Parties are offering to effect a 'full' transfer of the 'Kalmar' brand to the purchaser of the KAS Divestiture Business.

13.157 Establishing whether the 'Kalmar' brand is a significant element of the KAS Divestiture Business is, therefore, an important part of our assessment, despite the fact that Cargotec would transfer the brand in respect of the supply and servicing of Port Cranes and Straddle Carriers, in order to ascertain the risk of confusion arising from the brand being used

²³¹² Parties' submission [redacted]Parties' submission [redacted].

²³¹³ Parties' submission [redacted].

simultaneously by the purchaser in respect of Port Cranes and Straddle Carriers and the Merged Entity in respect of other products.

o **Internal documents**

13.158 Internal documents from Cargotec prepared in the ordinary course of business often refer to the strength of the Kalmar brand as a competitive advantage and indicate that separating the Kamos and KAS businesses could affect the value of that brand. For example:

- (a) A Cargotec presentation [REDACTED].²³¹⁴
- (b) Cargotec's regular reports [REDACTED]²³¹⁵ [REDACTED].²³¹⁶ [REDACTED].
- (c) A Cargotec [REDACTED].²³¹⁷

13.159 Internal documents prepared in the context of the Merger highlight the importance of both the Kalmar and Konecranes brands and note, in particular, that maintaining both brands will be important to avoid any risk of [REDACTED] that might arise as a result of the Merger. For example:

- (a) A presentation by an external consultant (Bain) about the growth strategy for the Merged Entity proposed as a strategy, [REDACTED].²³¹⁸
- (b) A presentation by an external consultant ([REDACTED]) about the brand of the Merged Entity [REDACTED].²³¹⁹ [REDACTED]²³²⁰ [REDACTED].²³²¹
- (c) An internal document from Konecranes titled [REDACTED], states [REDACTED].²³²²

13.160 These documents support the view that the Kalmar and Konecranes brands are important to the Parties, that the Konecranes Lift Truck business is not as valuable without full use of the Konecranes brand and that there is a material risk that the purchaser could lose customers as part of a rebranding process.

²³¹⁴ Cargotec internal document [REDACTED].

²³¹⁵ Cargotec internal document [REDACTED].

²³¹⁶ Cargotec internal document [REDACTED].

²³¹⁷ Cargotec internal document [REDACTED].

²³¹⁸ Konecranes internal document [REDACTED].

²³¹⁹ Parties internal document [REDACTED].

²³²⁰ Parties internal document [REDACTED].

²³²¹ Parties internal document [REDACTED].

²³²² Konecranes internal document [REDACTED].

o **Third-party evidence**

13.161 During hearings with third parties, we asked about the importance of the Kalmar and Konecranes brands, general risks associated with rebranding in this industry and the potential for confusion if a brand is used by more than one supplier in respect of different products.²³²³

13.162 Third parties submitted mixed responses regarding the importance of the Kalmar and Konecranes brands. Three OEMs and two customers noted that customers are well informed and can see beyond the brand.²³²⁴ A number of other third parties (two distributors, two OEMs and one customer) highlighted, however, the strength of the Kalmar and Konecranes brands and their importance for the competitiveness of the Parties' offerings.²³²⁵ For the MEQ Divestiture Proposal, SMV was considered a relatively strong brand by some third parties. Only one OEM told us that 'Nelcon' is known in the industry and, even then, noted that it had not been used recently.²³²⁶ Two customers told us they knew the Nelcon brand, but had no comments on the strength of the brand.²³²⁷

13.163 More specifically, a number of third parties indicated that the lack of a transfer of the Parties' existing brands is unlikely to undermine the effectiveness of the KAS and MEQ Divestiture Proposals:

- (a) An OEM of MEQ told us that 'the brand may be important for a few months, but I don't think it's important long term'.²³²⁸ We note that this OEM has its own brand and is potentially interested in the acquisition of the MEQ Divestiture Business.
- (b) An OEM that supplies Port Cranes told us that 'it would expect the customers to follow the sales people and the company brand perhaps, is maybe of secondary importance'.²³²⁹ This same OEM told us, however, that although people that have been in the industry for many years know the Nelcon brand, this brand 'has not been used for many years. So you won't find any current products or marketing features. So you would have to invest somewhat but there is a history of the Nelcon brand, it's

²³²³ The CMA did not ask questions regarding the specifics of the Parties' Remedy Proposal, including in particular the transfer / licensing of the Kalmar brand in relation to Port Cranes and Straddle Carriers. As such, any mischaracterisation of the Parties' Remedy Proposal in relation to the Kalmar brand in the Remedies Working Paper is unlikely to have affected the robustness of the evidence gathered from third parties during these hearings (contrary to the Parties' submission [REDACTED]).

²³²⁴ Transcript of call [REDACTED].

²³²⁵ Transcript of call [REDACTED]; Transcript of call [REDACTED]; Transcript of call [REDACTED]; Transcript of call [REDACTED]; and Transcript of call [REDACTED].

²³²⁶ Transcript of call [REDACTED].

²³²⁷ Transcript of call [REDACTED] and Transcript of call [REDACTED].

²³²⁸ Transcript of call [REDACTED].

²³²⁹ Transcript of call [REDACTED].

for old guys in the business, they know about Nelcon and the quality they made in former times'.²³³⁰

- (c) An MEQ OEM told us that 'there is still a lot of recognition in the market for SMV as a piece'. This OEM also commented in relation to the use of the SMV brand that 'the customers are quite sophisticated' and 'people would know the background, where it comes from, which factory and what history is behind it' so they 'do not think that would be horrific for the new company'. This OEM noted that rebranding might be possible.²³³¹
- (d) A customer told us that its decision is more about the quality of the product than the brand and that 'quite often those things go hand in hand, but it is about the Kalmar technical capability I think'. This customer told us that it knew the Nelcon brand.²³³²
- (e) Another customer told us that they 'do not think branding is that important'. This customer said that they can 'look at a crane' and 'tell you what brand it is'. This third-party told us, however, that Cargotec 'bought Nelcon going back a long time and, really, Nelcon died a death with the last crisis in 2008 – 2009'.²³³³
- (f) Another customer told us that 'brand is not a key aspect of the procurement decision'.²³³⁴
- (g) Another customer also told us that brand does not play an important role in relation to its decision about the choice of CHE OEM.²³³⁵
- (h) One customer told us that the brand is not important when making a purchasing decision. The quality, service and specification of the equipment is important.²³³⁶

13.164 On the other hand, a number of third parties highlighted the importance of the Kalmar and Konecranes brands:

- (a) A distributor told us that 'brand means a lot in the [CHE] sector. The brand gives the product credibility', noting that the 'Kalmar name, it is a very, very credible brand in that sector'.²³³⁷ It also explained that SMV

²³³⁰ Transcript of call [REDACTED].

²³³¹ Transcript of call [REDACTED].

²³³² Transcript of call [REDACTED].

²³³³ Transcript of call [REDACTED].

²³³⁴ Call note [REDACTED].

²³³⁵ Call note [REDACTED].

²³³⁶ Call note [REDACTED].

²³³⁷ Transcript of call [REDACTED].

operates under Konecranes. It said that 'brands are very, very strong' and that rebranding by the purchaser would 'lessen' its strength'. However, in regard to SMV and Konecranes this distributor said that it does not think customers 'see a differentiation in either of the brands and equally have the same respect for both brands'.²³³⁸ It also commented that it would be hard to say which the customer valued the most: the service support or the brand of the product.²³³⁹

- (b) Another distributor told us that Konecranes has 'a lot of brand equity within Konecranes. SMV is the previous brand and some people still recognise [it]'. As 'there is a lot of equity in Konecranes brand itself' a package without the Konecranes brand and only the SMV brand would be at a serious disadvantage' compared with Konecranes.²³⁴⁰
- (c) An MEQ OEM told us that the MEQ Divestiture Proposal with the SMV brand may work, but that without the Konecranes brand the purchaser may lose 'a bit of strength altogether'. In relation to the KAS Divestiture Business, this third-party told us that the Nelcon brand is a 'Stone Age brand' and that the arrangements proposed in relation to the transfer of the Kalmar brand 'do not make any sense' (see paragraph 13.16813.168(b) in relation to the position of this third-party about the risks of dual use of the Kalmar brand).²³⁴¹
- (d) An OEM of Port Cranes told us that Kalmar is amongst the brands that customers all over the world know, 'even more than Cargotec' and that the dual use of the Kalmar brand would be confusing (see paragraph 13.16813.168(a) in relation to the position of this third-party about the risks of dual use of the Kalmar brand). This third-party also told us that it had never heard of Nelcon.²³⁴²
- (e) A customer told us that 'as a brand and as an entity, Kalmar would bring a lot with it, it is known in the sector'.²³⁴³
- (f) Another customer noted that the Kalmar brand is important in the industry as a sign of quality.²³⁴⁴

²³³⁸ Transcript of call [REDACTED].

²³³⁹ Transcript of call [REDACTED].

²³⁴⁰ Transcript of call [REDACTED].

²³⁴¹ Transcript of call [REDACTED].

²³⁴² Transcript of call [REDACTED].

²³⁴³ Transcript of call [REDACTED].

²³⁴⁴ Call note [REDACTED].

- (g) Another customer told us that the Kalmar brand is important and that its value is well recognised.²³⁴⁵

13.165 Two other customers, while noting the importance of the Kalmar and Konecranes brands, were not concern with this aspect of the Parties' Remedy Proposal:

- (a) Another customer told us that the Kalmar brand is important, especially for the 'good' equipment – such as straddle carriers. However, this customer noted that the importance of the brand will depend on the purchaser of the KAS Divestiture Business. If the purchaser is a highly reputable company, then it can put its own label on the equipment.²³⁴⁶
- (b) One customer of MEQ told us that brand could play a role in the success of the MEQ Divestiture Business and it would be good to have a temporary arrangement in place. However, the customer said that it does not find the brand particularly significant when buying MEQ because it is a sophisticated purchaser and can see beyond the brand and evaluate the quality of the product and the supplier.²³⁴⁷

13.166 Evidence provided by the potential purchasers that submitted an indicative bid for the KAS Divestiture Business shows that all of these businesses value the Kalmar brand and intend to use it.²³⁴⁸

- (a) One bidder told us that it 'want[s] to use the Kalmar brand, which is well-recognised by port customers'.²³⁴⁹
- (b) Another bidder told us that one of the important factors for the KAS Divestiture Business to be a successful standalone business was having exclusive use of the Kalmar brand. The bidder explained that the brand is crucial in demonstrating the continuity of the businesses to customers and the retention of key employee expertise.²³⁵⁰
- (c) Another bidder told us that the main reason for its interest in the KAS Divestiture Business is to acquire the Kalmar brand. This bidder told us that the high-end Kalmar brand would be an important asset for

²³⁴⁵ Call note [REDACTED].

²³⁴⁶ Call note [REDACTED].

²³⁴⁷ Call note [REDACTED].

²³⁴⁸ In response to the Consultation Paper, the Parties submitted that feedback from bidders 'fails to acknowledge that the Kalmar brand is included in the KAS Divestiture Business' and therefore does not 'support the CMA's conclusions in relation to the effectiveness of the remedy.' (Parties' submission [REDACTED]). As the above evidence shows, however, the bidders were confident that the brand would be included in the KAS Divestiture Business and would be valuable.

²³⁴⁹ Call note [REDACTED].

²³⁵⁰ Call note [REDACTED].

overcoming the challenges of entering the European CHE market. This bidder emphasised that details in relation to brand usage remain up for negotiation.²³⁵¹

- (d) Another bidder told us that brand is typically important to consider carefully in carve out transactions and that it would be smoother if the brand were included. This bidder also told us, however, that it would not be concerned if the brand was excluded because it often rebrands businesses, which requires appropriate communication with customers. This is an area that this bidder wanted to investigate further.²³⁵²

13.167 The industry bidder that submitted a non-binding offer to the MEQ Divestiture Business and initially expressed interest in the KAS Divestiture KAS (although subsequently deciding not to pursue a non-binding offer) expressed confidence on the possibility of using its own brand in relation to the products included in the Divestiture Businesses. It told us that its own brand is extremely strong and it has a lot of confidence in it and that, while the Kalmar brand is also fairly strong, [REDACTED].²³⁵³

- *Risks of dual use of the Kalmar brand, including customer confusion*

13.168 A few third parties noted the difficulties, costs and risks of the proposed solution for the licensing and dual use of the brands, including in relation to brand confusion. For example:

- (a) An OEM of Port Cranes told us that the dual use of the Kalmar brand would be confusing and customers might not be sure if they are buying equipment from Cargotec or the purchaser of the KAS Divestiture Business. This OEM thinks that customers would not 'make that differentiation'.²³⁵⁴
- (b) An OEM of MEQ told us that it is 'ridiculous' having a situation in which Cargotec would use the Kalmar brand for MEQ and the purchaser of the KAS Divestiture Business would use the same brand (differentiated in appearance) for Port Cranes and straddle and shuttle carriers. This OEM considers this situation would be confusing to customers and to the market. It also explained that it is not relevant for how long the purchaser

²³⁵¹ Call note [REDACTED].

²³⁵² Call note [REDACTED].

²³⁵³ Call note [REDACTED].

²³⁵⁴ Transcript of call [REDACTED].

can use the Kalmar brand stating that ‘the longer this confusion stays in the market, the worse’.²³⁵⁵

- (c) A customer that considers the quality of the product to be more relevant than the brand nevertheless noted that the situation where the Kalmar brand is used both by the purchaser and the Merged Entity could raise confusion, with customers asking themselves the question ‘Which Kalmar am I dealing with’.²³⁵⁶

13.169 One of the potential purchasers that submitted a bid for the KAS Divestiture Business told us that it was unsure about how Cargotec plans to use the brand for its own products, but indicated that, if it did, there is risk of confusion (although this may be mitigated by brand differentiation).²³⁵⁷

13.170 Cargotec provided a small number of examples of ‘slightly differentiated brands that have been managed in the hands of different owners’.²³⁵⁸ The examples provided by Cargotec all refer, except one, to situations where the products under the ‘slightly differentiated’ brands were sold to different customers. Almost all port terminals purchase both MEQ and Port Cranes / Straddle Carriers. The only example provided by Cargotec of a slightly differentiated brand being used with similar customer bases was in relation to products that appear to be more distinct in their purpose than different types of CHE.²³⁵⁹

- *Risks associated with rebranding*

13.171 The purchaser of the MEQ Divestiture Business would need to rebrand at the latest three years after having ‘agreed on the relevant arrangements’²³⁶⁰ with Konecranes. The purchaser of the KAS Divestiture Business may also consider rebranding the acquired Port Cranes and Straddle Carriers to avoid

²³⁵⁵ Transcript of call [REDACTED].

²³⁵⁶ Transcript of call [REDACTED].

²³⁵⁷ Call note [REDACTED]. In relation to this risk of confusion, the Parties submitted in response to the Consultation Paper that the CMA failed to acknowledge that the KAS Divestiture Proposal requires Cargotec to differentiate the Kalmar brand used in relation to the supply of other CHE. The comments of this potential purchaser make it clear that it was aware that Kalmar would differentiate the Kalmar brand and we have taken that into account in our assessment. (Parties’ submission [REDACTED])

²³⁵⁸ Parties’ submission [REDACTED].

²³⁵⁹ The examples provided included the use of slightly differentiated brands: i) in the CHE and heavy lifting industry (Konecranes and Konecranes), ii) in the aero engines and power systems industries and in the car manufacturing industry (Rolls Royce); and iii) in the truck manufacturing industry, military industry, heavy-duty equipment industry and in the manufacturing of engine / axles (Sisu).

²³⁶⁰ Non-confidential Summary of the Parties’ Remedy Proposal, [REDACTED].

the risk of confusion resulting from the fact that the Kalmar brand would also be used by the Merged Entity for MEQ.²³⁶¹

13.172 While one MEQ OEM said that rebranding would not be ‘a big neck breaker’,²³⁶² some third parties noted that rebranding involved some risks. In particular:

- (a) A customer told us that rebranding would negatively affect the resale value of the equipment, because ‘a lot of what you are doing is based on name’. This customer explained that ‘what you are trading on [is] the name of the product because people traditionally know that Kalmar or Kone has got that reputation and that name for being good well-built equipment that will last in the industry. If they change their name [...] is that going to carry the same weight, who knows. I could see it having an impact that is for sure’.²³⁶³
- (b) This customer also noted that the OEM’s brand is an important element of having an established track record (which, as we explain in our competitive assessment, is an important capability for a supplier to possess). It stated that, if there is rebranding, the customer ‘would have to see what they are bringing to the table. You would have to look at it as a new product’.²³⁶⁴
- (c) Another customer told us if ‘they were going to discontinue lines because they were going to rebrand and provide new kit, that would be a concern’ but generally, it is ‘less concerned with this area’.²³⁶⁵
- (d) A distributor noted that if the purchaser had to rebrand it would confuse the customers.²³⁶⁶

13.173 We also note that the internal document described in paragraph 13.158 to 13.160 above, which recommended that the Merged Entity dual brand to mitigate a risk of sales erosion, is consistent with the risk that rebranding can lead to a loss of competitiveness and equity.

²³⁶¹ Similarly, a single purchaser of both Divestiture Businesses may wish to rebrand the Divestiture Businesses to enable the purchaser to use a single brand across its entire CHE portfolio. The arrangements proposed by the Parties would not allow a single purchaser to use either the Kalmar or the Konecranes brands across an entire CHE portfolio.

²³⁶² Transcript of call [REDACTED].

²³⁶³ Transcript of call [REDACTED].

²³⁶⁴ Transcript of call [REDACTED].

²³⁶⁵ Transcript of call [REDACTED].

²³⁶⁶ Transcript of call [REDACTED].

13.174 The Parties submitted that the cost and time involved in rebranding is inherent to any acquisition.²³⁶⁷ We agree that rebranding is required in many acquisitions, and therefore that the cost and time of such rebranding does not, by itself, act as a barrier to business activities being transferred. We note, however, that additional considerations apply within the context of a divestiture in a merger remedies process, where rebranding (including the cost and time involved, and the commercial risks that it raises) must not affect the effectiveness and competitiveness of the divestment business. The Parties' submitted that Konecranes added the Liftace and SMV brands to the Konecranes brand [REDACTED].²³⁶⁸ We note that this example is of limited relevance for the purposes of our assessment, given that the addition of these two brands to an existing brand is different from a rebranding process. Konecranes also submitted that the internal documents referred by the CMA are not specific to MEQ.²³⁶⁹ We would not expect internal documents to assess the importance of the Konecranes brand specifically in relation to MEQ, given that the Konecranes brand is used across all Konecranes' products. Furthermore, we see no reason why (and the Parties did not suggest any reason why) the comments in internal documents about the Konecranes brand should not be relevant to MEQ.

- *Our assessment of composition risks relating to brand*

13.175 The Parties currently have strong and widely recognised brands (Kalmar and Konecranes) covering their whole CHE product portfolio, which are an important part of the competitiveness of their existing offerings. In relation to the sub-brands and trademarks in the divestment packages ('Nelcon' for KAS) and ('SMV' and 'Liftace' for Konecranes' MEQ business), 'Nelcon' is not a well-known brand and the 'Liftace' and SMV' brands are, to some extent, less strong than the Konecranes brand.

13.176 We have found significant composition risks relating to the brand licensing and transfer arrangements in the Parties' Remedy Proposal. In particular:

- (a) The limitation of the brand licences to specific CHE products (Port Cranes and Straddle Carriers for Cargotec, MEQ for Konecranes) prevents the purchasers from applying the brands to a wider range of CHE. This would exacerbate the risks discussed in paragraphs 13.168 to 13.174.

²³⁶⁷ Parties' submission [REDACTED].

²³⁶⁸ Parties' submission [REDACTED].

²³⁶⁹ Parties' submission [REDACTED].

- (b) The proposed split and dual use of the 'Kalmar' and 'Konecranes' brands by the Merged Entity and by the purchaser of the KAS Divestiture Businesses risks giving rise to a significant risk of customer confusion.
- (c) The Parties' Remedy Proposal will require a process of rebranding of the MEQ Divestiture Business, either immediately after completion, or when the brand licence expires. This takes time and cost, and involves risks that the purchaser may not succeed in developing as strong a brand within the product areas at issue, with the risk of affecting the competitiveness of the MEQ Divestiture Business. Similar risks would arise in relation to the KAS Divestiture Business should the purchaser to decide to rebrand to avoid the risk of confusion resulting from the fact that the Kalmar brand would also be used by the Merged Entity for MEQ.²³⁷⁰

13.177 Some of these risks are mitigated to a degree by Cargotec's offer to permanently transfer the Kalmar brand for supply and servicing of Port Cranes and Straddle Carriers and the fact that the MEQ Divestiture Proposal includes the 'SMV' brand, which is generally recognised by MEQ customers. We nevertheless consider that the composition risks raised remain significant.

13.178 We also note that Cargotec's proposal to mitigate brand-related risks by providing a condition for purchaser approval, which would require the purchaser to have a well-recognised brand in the material handling or heavy-duty equipment industry, might mitigate the risk raised above to some extent. However, it is unclear what assurance a brand used for products other than CHE would provide for container handling customers (particularly where CHE customers have no previous experience of that brand).

Restricted licences – connectivity solutions and software

13.179 This section considers the composition risks associated with the licensing of connectivity solutions and software, including in relation to restrictions in their use to certain types of CHE.

²³⁷⁰ As indicated above, a single purchaser of both Divestiture Businesses may also wish to rebrand the Divestiture Businesses to enable the purchaser to use a single brand across its entire CHE portfolio. The arrangements proposed by the Parties would not allow a single purchaser to use either the Kalmar or the Konecranes brands across an entire CHE portfolio.

- *Parties' submissions*

13.180 Konecranes submitted that its commitment to provide a duplicate of TRUCONNECT (together with a TSA to use its customer portal YourKonecranes) would mean that the purchaser would not have to install an alternative solution at the end of the transitional period following the sale of the MEQ Divestiture Business – ie no work or modifications to the Konecranes mobile equipment would be required. It also stated that ‘if a purchaser preferred to use its own solution so they can replace the relevant software and hardware relatively easily’.²³⁷¹

13.181 Cargotec submitted that the proposed commitment of duplicating the Kalmar Cloud platform, including its connectivity solutions and transferring a copy to the purchaser is ‘the most feasible option’. It also stated that the [REDACTED].²³⁷²

- *Cargotec's connectivity solutions*

13.182 As set out in paragraph 13.39 above, Cargotec has offered to provide a duplicate of its connectivity solutions, to be used exclusively for Cargotec Port Cranes and Straddle Carriers.

13.183 Cargotec's connectivity solutions are proprietary and an important part of its offering to customers. In addition to the third-party evidence summarised in paragraphs 13.341 to 13.344 about the advantages of a broad CHE portfolio in terms of interoperability and connectivity, some third parties told us that it would be important for these connectivity solutions to be fully transferred to the purchaser (so that the Merged Entity does not retain any use of them) in order for the KAS Divestiture Business to be effective and that Cargotec's connectivity solutions are difficult to replicate. For example:

(a) An MEQ OEM told us that ‘it takes a long time and lots of investment to develop these types of systems, to the extent they [...] can be developed. It is major investment’ and ‘it is incredibly difficult’.²³⁷³ This OEM also noted that the proposed arrangement for the licensing of duplicates of the cloud-based environment and functionalities related to the KAS Divestiture Business may create issues if the licence is transferred but ‘any development belongs’ to the Merged Entity.²³⁷⁴ This OEM submitted that the proposed solution also allows Kalmar to approach the customers transferred to the purchaser and tell them that

²³⁷¹ Konecranes submission [REDACTED].

²³⁷² Konecranes submission [REDACTED].

²³⁷³ Transcript of call [REDACTED].

²³⁷⁴ Transcript of call [REDACTED].

they can continue servicing their equipment based on Insight or another connectivity solution, because they know the technology solution and ‘can easily connect’.²³⁷⁵ This OEM said that it is very difficult to address and prevent all these potential issues contractually and it anticipated that the Merged Entity would migrate all CHE (including MEQ) to Insight, because Insight is a better system than the equivalent Konecranes solution.²³⁷⁶

- (b) Another OEM of Port Cranes told us that connectivity solutions can be developed but ‘it takes time and resources’.²³⁷⁷
- (c) One customer told us that Kalmar’s Insight (one of Kalmar’s connectivity solutions) is a ‘very good system’ and that, as explained in paragraph 13.341 it prefers having a single connectivity solution for all its equipment.²³⁷⁸
- (d) One bidder told us that it could work with restrictions on technology licenses (eg [REDACTED]), although would need to investigate this further. It also noted that for connectivity solutions there would need to be firewalls to prevent access to information between the purchaser’s and the Parties’ installed base.²³⁷⁹

13.184 We consider that the evidence summarised above indicates that the proposed transfer of the cloud-based environment and functionalities of Kalmar connectivity solutions through limited licences would result in significant risks:

- (a) Limiting the use of the licensed connectivity technology by the purchaser to Cargotec’s Port Cranes and Straddle Carriers prevents the purchaser from: i) using it in other types of CHE it may supply and benefiting from the resulting advantages from having a broad portfolio of CHE; and ii) making the technology interoperable with and using it in equipment which has been supplied by other OEMs, which may limit its customer base.²³⁸⁰

²³⁷⁵ Transcript of call [REDACTED].

²³⁷⁶ Transcript of call [REDACTED].

²³⁷⁷ Transcript of call [REDACTED].

²³⁷⁸ Transcript of call [REDACTED].

²³⁷⁹ Call note [REDACTED].

²³⁸⁰ We also note that, although Cargotec stated that it was in the ‘process of identifying the exact number of employees who work on the connectivity solutions’, it expected that this would involve less than eight FTEs, it is not clear whether the employees that will transfer as part of the KAS Divestiture Business will include all necessary employees to ensure the continuity and competitiveness of the KAS Divestiture Business (Cargotec submission [REDACTED])

- (b) Relying on the eventual purchaser to implement its own connectivity solutions for the KAS Divestiture Business, after an initial transitional period, gives rise to a further risk given the investment and resources required, and because the purchaser could have difficulty connecting its solutions with the technology of an incumbent OEM. Furthermore, it would limit the pool of potential purchasers if the purchaser is required to have its own connectivity solutions or depth of knowhow and expertise to replicate and develop the functionality of the full suite of Cargotec's connectivity solutions.
- (c) Licensing a duplicate of the technology would not allow the purchaser to have access to Cargotec's future developments, and it is unclear whether it would provide the purchaser with the necessary tools and software code to carry out its own development.

13.185 In addition, having two competitors in the same market (ie the Merged Entity and the purchaser of the KAS Divestiture Business) using connectivity software from a common source would risk softening competition compared to the pre-Merger situation in which the Parties compete using their own proprietary software.

13.186 We consider, therefore, that the proposed licensing of a duplicate of Cargotec's connectivity solutions, with the proposed restrictions in use, limits a purchaser's ability to provide an integrated system across a portfolio of CHE equipment, a capability that the evidence shows us that customers value in the Parties' offer (especially given the trend in the industry towards digitalisation, as explained below), unless it develops its own systems, which is likely to be challenging and require significant additional resources.

- *TRUCONNECT and YourKonecranes connectivity solutions*

13.187 As mentioned in paragraph 13.43(b), Konecranes has offered to provide a duplicate of its remote monitoring platform, TRUCONNECT, comprising the hardware and software system that collects and stores data for monitoring Konecranes' mobile equipment. The purchaser would be permitted to use the TRUCONNECT system and associated intellectual property exclusively for MEQ. Konecranes would also enter into a TSA to provide the purchaser access to the YourKonecranes platform for up to two years.

13.188 In response to the Remedies Working Paper, the Parties submitted that the CMA's concerns about the licensing of the TRUCONNECT licence are speculative and not supported by evidence. The Parties submitted, for example, while the CMA claims that TRUCONNECT is a material part of Konecranes' MEQ offering, most users of TRUCONNECT are [REDACTED] are

industrial customers and that the MEQ usage of TRUCONNECT Services accounts for a minor proportion of total usage.²³⁸¹ In this respect, see paragraph 13.281. We also note that the Parties generally did not, however, highlight any evidence (or provide any reasoning) to raise material doubts about the probative value of the specific pieces of evidence used in our assessment, as set out below.)

13.189 We found that the TRUCONNECT connectivity solution is proprietary and the evidence from third parties suggests that it is a material part of Konecranes' product offering.²³⁸²

13.190 Evidence from third parties indicates that TRUCONNECT is important to customers and distinct from other systems currently on offer (off the shelf) by third parties. For example:

(a) One distributor explained that systems like TRUCONNECT, supplied by the OEM, will provide the 'location and driving characteristics of the truck', as well as the 'technical information on the actual operation of the truck and its performance and fault codes'. Some of the third-party solutions will give 'only the former but not the latter'.²³⁸³

(b) Another distributor told us 'TRUCONNECT is a very good telemetry platform' and 'it is widely seen that it is an excellent piece of software. 'TRUCONNECT is really part of the whole Konecranes package. If you were to package that up as a business, TRUCONNECT fits in there and it needs to stay in there'.²³⁸⁴

13.191 The concerns we have in relation to the licensing of TRUCONNECT are broadly equivalent to those described above in relation to the licensing of Cargotec's connectivity solution:

(a) Licensing a duplicate of the technology would not allow the purchaser to have access to Konecranes' future developments of that technology and it is unclear whether it would provide the purchaser with the necessary instruments and 'coding' to conduct further developments of the transferred technology.

²³⁸¹ Parties' submission [REDACTED].

²³⁸² We note that the fact that 'most of users of TRUCONNECT' are industrial customers does not mean TRUCONNECT is not an important part of Konecranes' MEQ offering. A significant proportion of TRUCONNECT customers are industrial customers and some port customers also use it (a minority of around [REDACTED] customers of Konecranes use TRUCONNECT for categories of CHE other than MEQ.). Furthermore, given the port industry trend towards digitalisation (see paragraphs 13.265 to 13.276), it is likely that more port terminals will use connectivity solutions in the future.

²³⁸³ Transcript of call [REDACTED].

²³⁸⁴ Transcript of call [REDACTED].

(b) Limiting the purchaser's use of the licensed connectivity technology to MEQ prevents the purchaser from using it in other CHE it may offer and benefiting from the resulting advantages of using an integrated connectivity solution across different categories of CHE in its portfolio.

13.192 More broadly, having two competitors in the same market (ie the Merged Entity and purchaser of the MEQ Divestiture Business) using connectivity software from a common source would risk softening competition compared to the pre-Merger situation.

13.193 Furthermore, if the purchaser chose to develop and switch to its own equivalent connectivity system, it would need to make physical changes in each piece of equipment (eg change SIM card and the physical gateway).²³⁸⁵ This may be a significant obstacle to the purchaser implementing its own connectivity system into Konecranes' equipment and prevent customers from switching to the purchaser's system.

13.194 We consider, therefore, that the proposed licensing of a duplicate of TRUCONNECT, with the proposed limitations in use, would limit a purchaser's ability to provide a service with a similarly-strong connectivity solution, a capability that the evidence shows us that customers value. Overcoming these limitations is likely to be challenging and require significant additional resources.

13.195 In relation to YourKonecranes, the period of the TSA may be insufficient to allow the MEQ Divestiture Business to compete effectively, particularly given that the purchaser would need to update and adapt all of the equipment using this solution after the end of the transitional period and potentially install an alternative solution.

Uncertainty over the inclusion of assets

13.196 In addition to assets that appear to be excluded from the KAS and MEQ Divestiture Businesses, there are also some uncertainties around whether (and how) certain assets would be transferred. This section considers the composition risks associated with uncertainty in relation to certain assets in the KAS and MEQ Divestiture Businesses, specifically: i) the operations of Cargotec's Stargard facility; ii) spare parts warehouses and inventory; and iii) IPR.

²³⁸⁵ Konecranes submission [redacted].

- *Stargard*

13.197 As mentioned above in paragraph 13.3913.39(d), the Stargard facility, which is currently used for the assembly of straddle carriers and MEQ, would be part of the KAS Divestiture Business. However, the divestiture of the Stargard facility would not include all of the assets that it has today and it will be reorganised in a different way.

13.198 The Parties proposed a reverse carve out after the divestiture of the KAS Divestiture Business of the Cargotec MEQ business currently located at the Stargard facility. The facility would also be reconfigured to separate the building that would be transferred to the purchaser and the building currently used by Cargotec's Hiab division.

13.199 Cargotec submitted that the divestiture of the Stargard facility would be implemented as a 'true reverse carve-out', meaning that in addition to all Kalmar real estate at Stargard, all other Kalmar personnel and assets at Stargard would transfer with the exception of the personnel and assets that are exclusively used for the mobile equipment activities (ie Cargotec's Kamos business). Cargotec noted that this type of reverse carve-out of personnel and assets, in this case for the Kamos business, has been accepted by the European Commission, as well as other competition authorities, in the past. Cargotec also stated that the reverse carve out for the Stargard facility would – together with the other commitments – ensure the viability and competitiveness of the KAS Divestiture Business, given the detailed separation plan, which could be implemented within a reasonable period of time. Cargotec noted that this type of reverse carve out has proven to be part of successful commitments in prior cases.²³⁸⁶

13.200 In response to the Remedies Working Paper, Cargotec submitted that:

- (a) The CMA made [REDACTED].²³⁸⁷ The Parties claim that insufficient market testing by the CMA led to an overstatement of issues raised by the reverse carve-out.
- (b) The CMA was irrational to expect a full list of assets and employees that would transfer. Having a monitoring trustee and a hold separate manager to approve the list at a later date should be sufficient.²³⁸⁸

13.201 Although a reverse carve-out arrangement can help to mitigate the adverse effects of composition risks by transferring some of the consequences of

²³⁸⁶ KAS Form RM, [REDACTED].

²³⁸⁷ Parties' submission [REDACTED].

²³⁸⁸ Parties' submission [REDACTED].

these risks to the merging parties, some risks to the effectiveness of a partial divestiture remain. It is unclear exactly which assets (eg employees, equipment, front-office support) would be part of the reverse carve out (ie how assets would be allocated between the MEQ and the straddle carriers businesses), in particular with regard to employees. Cargotec has proposed to address the carve-out risks by making the list of assets included in the separation of Stargard subject to the approval of a monitoring trustee and a hold separate manager. We would not expect the Parties to provide a full list of employees (or other assets) to be transferred at this stage. We note, however, that the Parties did not provide any indication of the general principles that they propose to use as a guide. The uncertainty involved in a carve out (including in a 'reverse carve-out'), especially in the absence of any such principles, gives rise to risks that the scope of the package is inadequately specified. While these risks may be partially mitigated by having a monitoring trustee and a hold separate manager to approve the list of assets to be carved out, we are mindful of the monitoring risks arising from the asymmetry of information between the monitoring agencies and Cargotec.²³⁸⁹

13.202 We note that one MEQ OEM noted that the Stargard assembly facility would be 'oversized for only the straddle carrier business'.²³⁹⁰

13.203 We also note that the commitment given to the Parties to divest both the KAS Divestiture Business and the MEQ Divestiture Business to a single purchaser means that the purchaser will be a competitor of Cargotec in relation to the supply of MEQ. As Cargotec will continue to assemble MEQ at the Stargard facility during a transitional period (see 13.39(d)), this creates questions around the protection of competitively sensitive information.

13.204 Based on the above assessment, we consider, therefore, that while the divestiture of the Stargard assembly facility, on the terms proposed in the KAS Divestiture Proposal, transfers some of the composition and carve-out risks from a purchaser to Cargotec, significant residual composition and implementation risks remain. The Stargard facility forms a key part of the KAS Divestiture Business and therefore material uncertainties around the approach to allocate shared assets between the retained and divested businesses give rise to material risks of disruption (even where the assets and employees at issue may be limited in scope).

²³⁸⁹ CMA87, paragraph 7.4 d).

²³⁹⁰ Transcript of call [redacted].

- *Spare parts warehouses and inventory*

13.205 We note that Cargotec told us that [REDACTED].²³⁹¹ In fact, [REDACTED].²³⁹²

13.206 While the KAS Divestiture Business [REDACTED],²³⁹³ it is uncertain whether the inclusion of these facilities on their own, without the support of Kalmar's frontline logistical capabilities, would give the purchaser access to the requisite inventory management systems and processes, which would be necessary to replicate Kalmar's operations for the supply of spare parts to customers.

13.207 Furthermore, it seems that not all shared warehouses would be transferred [REDACTED].²³⁹⁴ It is unclear whether the purchaser would without these warehouses have access to similar sites and achieve the necessary geographic coverage to compete as effectively as Cargotec.

13.208 Overall, there is a material risk that a purchaser is unable to replicate Kalmar's spare parts offering.

13.209 Similarly, while the MEQ Divestiture Proposal includes two distribution centres for spare parts in [REDACTED], it does not include sites which are currently shared by the MEQ Divestiture Business and Konecranes' other business units in [REDACTED].²³⁹⁵ Konecranes submitted that it would be willing to enter into a TSA with the purchaser of the MEQ Divestiture Business to store the spare parts at these shared distribution centres for a period of up to twelve months.

13.210 We consider that it is unclear how a purchaser of the MEQ Divestiture Business would manage the logistics of fulfilling orders and restocking spare parts at the shared distribution centres during the proposed twelve-month transitional period since they would continue to be operated by Konecranes during this time.

13.211 Furthermore, we consider that there is a material risk that the purchaser of the MEQ Divestiture Business would not be able to maintain the same geographic coverage, or at least the same level of operational efficiency, after relocating its spare parts to alternative sites.

13.212 The purchaser(s) of the Divestiture Businesses may also lose the benefits of economies of scale arising from spare parts being stored at the same

²³⁹¹ Cargotec submission [REDACTED].

²³⁹² Parties' submission [REDACTED].

²³⁹³ Cargotec Commitments to the European Commission [REDACTED].

²³⁹⁴ KAS Form RM, [REDACTED]. The Parties submitted in relation [REDACTED] (KAS Form RM [REDACTED]). We note, however, that it is uncertain whether the purchaser would find a suitable warehouse to [REDACTED] in order to replicate Kalmar's spare parts offering. We would also have concerns with the Merged Entity and the purchaser, as competitors, [REDACTED].

²³⁹⁵ Konecranes submission [REDACTED].

distribution centres as the spare parts for the Parties' other business units.²³⁹⁶

- *IPR*

13.213 Cargotec submitted that the KAS Divestiture Business includes all product IPR (patents and product designs) relating to Port Cranes and Straddle Carriers and that it had not identified (as at 3 January 2022) any shared engineering IPR between KAS and Kamos or other parts of Cargotec.

13.214 Cargotec told us that, in any event, it would provide a licence to the purchaser for any shared technology or IPR that is predominantly used for the retained business but also for use in Port Cranes and/or Straddle Carriers.²³⁹⁷

13.215 We note that 'shared technology' is defined as IPR for use in Port Cranes and/or Straddle Carriers which: i) has been jointly developed by Cargotec and by the KAS Divestiture Business as of closing of the divestiture transaction, or ii) has been developed solely by Cargotec or the KAS Divestiture Business. It does not include IPR developed by Cargotec alone to develop and manufacture products outside the scope of the KAS Divestiture Business. The licence does not extend to any improvements of or developments to the licensed technology, know-how or other intellectual property developed by Cargotec after the closing of the divestiture.

13.216 First, the above definition means that IPR that was developed to manufacture products outside the scope of the KAS Divestiture Business but that could be used in the future in Port Cranes and/or Straddle Carriers will not be transferred.

13.217 Second, the purchaser will not have access to Cargotec's future developments in relation to the licensed IPR, and it is unclear whether it would provide the purchaser with the necessary assets to carry out its own development.

13.218 Third, where the KAS Divestiture Business relies on IPR which Cargotec licences from third parties, Cargotec offered to use its 'best efforts to procure that the relevant licences (or relevant portions thereof) will be transferred' to the purchaser' of the KAS Divestiture Business.²³⁹⁸ We consider this gives rise to the risk of either the purchaser needing to rely on Cargotec (eg by

²³⁹⁶ Cargotec Commitments to the European Commission [REDACTED].

²³⁹⁷ KAS Form RM [REDACTED].

²³⁹⁸ KAS Form RM [REDACTED].

entering into a separate licensing agreement with Cargotec to ensure its ongoing access to the IPRs) or the purchaser taking on the risk of procuring its own IPRs to compensate for the deficiencies in the KAS Divestiture Proposal.

- 13.219 The MEQ Divestiture Business will also only include ‘patents, design rights and other intellectual property technology and know-how’ which are ‘currently used exclusively or predominantly to develop, manufacture, sell and use MEQ, which are held by Konecranes’.²³⁹⁹ The MEQ Divestiture Proposal includes a definition of ‘shared technology’ equivalent to the one in the KAS Divestiture Proposal. The licensing of shared IPR does not extend to any improvements of or developments to the licensed technology.
- 13.220 Therefore, the concerns regarding the transfer of IPR set out in paragraphs 13.213 to 13.218 also apply to the MEQ Divestiture Business.

Our views on composition risks relating to scope

- 13.221 We have found a number of material risks related to scope associated with each of the KAS Divestiture Proposal and the MEQ Divestiture Proposal. These fall into three broad categories:
- (a) Assets currently used in the operation of the Parties’ businesses that are not included in the KAS and/or MEQ Divestiture Proposals, such as: i) for the MEQ Divestiture Proposal, R&D pipeline projects that do not relate exclusively and predominantly to the MEQ businesses; ii) for the KAS Divestiture Proposal, personnel in Cargotec’s connectivity solution development teams that have not been predominantly involved in developing these functionalities for Port Cranes and/or Straddle Carriers;
 - (b) narrow constraints on the use of assets and licences part of the Divestiture Businesses; and
 - (c) material uncertainty over the exact specification and configuration of the Parties’ Remedy Proposal (the identification of the assets and people needed to operate each of the Divestiture Businesses effectively).
- 13.222 While it is possible that some of these risks when considered individually might be capable of effective mitigation, we found that it is unlikely that all such risks could be effectively mitigated. The number and complexity of the risks in terms of scope, and their potential interaction, leads to the Parties’

²³⁹⁹ Cargotec Commitments to the European Commission [X].

Remedy Proposal having a high risk profile, especially if combined with the other composition risks considered below.

Design risks relating to product portfolio and scale of each of the Divestiture Businesses

- 13.223 We next assessed whether risks relating to product portfolio and scale of each of the Divestiture Businesses, which primarily arise as a result of the divested assets forming part of two separate packages may prevent the Divestiture Businesses from competing effectively.
- 13.224 The Parties are the two main OEMs that offer a wide range of CHE in Europe, from Port Cranes to MEQ. Their CHE operations are organised into single divisions – Port Solutions for Konecranes, and Kalmar for Cargotec.
- 13.225 The Parties' Remedy Proposal envisages the divestment of two separate packages (one from each Party), each of which is only a subset of each of the Parties' existing CHE divisions. Each of the Divestiture Businesses accounts for a limited proportion of the revenues generated by the broader entities of which they each form part presently. The KAS Divestiture Business is approximately [X]% of the size (by turnover)²⁴⁰⁰ of Cargotec's Kalmar CHE division, and the MEQ Divestiture Business is approximately [X]% of the size (by turnover)²⁴⁰¹ of Konecranes' Port Solutions.
- 13.226 Our competition assessment observed (see Chapters 6 and 12) that, for some customers, the supply of a broad product portfolio and integrated connectivity and automation solutions was, or would become, an important aspect of the Parties' offer.²⁴⁰² We have also found that this aspect, as well as economies of scale, could be a material barrier to entry and expansion to some OEMs.²⁴⁰³ Although most of the evidence refers to economies of scale and the advantages of having a broad portfolio within a specific CHE category, the comments of a few third parties suggests that these advantages also arise from the offer of a broad portfolio across different CHE categories (see paragraphs 13.338 to 13.341 and to 13.358).
- 13.227 Our questions to third parties in relation to our competition assessment were generally framed in relation to specific product markets, and the responses of third parties generally focused on the product markets at hand. When gathering evidence as part of our remedies process, we asked third parties

²⁴⁰⁰ Cargotec internal document [X].

²⁴⁰¹ KAS Form RM [X].

²⁴⁰² [Provisional Findings Report](#), paragraphs 6.75, 6.86, 6.87.

²⁴⁰³ [Provisional Findings Report](#), paragraphs 12.38, 12.55, 12.62 to 12.65, 12.82, 12.96, 12.102, 12.127, 12.140, and 12.144.

additional, specific questions in relation to the linkages between CHE equipment categories, in order to assess the effectiveness of a remedy where the Parties' Cranes/Straddle Carriers and MEQ divisions would be divested separately.

- 13.228 In keeping with our approach to assessing whether the Parties' Remedy Proposal would restore the competition that would otherwise be lost as a result of the Merger, we have considered whether providing a broad portfolio of CHE makes the Parties' offer more competitive and whether being part of a broader CHE business facilitates economies of scale.
- 13.229 In the assessment of the risks relating to product portfolio and scale of each of the Divestiture Businesses, we assess in turn:
- (a) The Parties' views;
 - (b) the risks associated to the loss of advantages associated with the offer and development of broad CHE portfolio; and
 - (c) the risks associated to the loss of competitive advantages and benefits associated to economies of scale.
- 13.230 We have also assessed the potential for risks relating to scale and product portfolio of the Divestiture Businesses in a scenario in which both packages are sold to a single purchaser. If the Parties' Remedy Proposal is sold to one purchaser, it would involve a mixture of assets from both Parties (a so-called 'mix-and-match' approach).
- 13.231 As explained above in paragraph 13.34, shortly before the statutory deadline for the publication of this Final Report, the Parties told the CMA that they were willing to commit to sell the KAS Divestiture Business and the MEQ Divestiture Business to a single purchaser, 'should this be considered important by the CMA'.²⁴⁰⁴
- 13.232 The sale of this broader package of assets to a single purchaser would, by its nature, mitigate the potential risks relating to the scale and product portfolio of the Divestiture Businesses. We have, however, in this section nevertheless sought to consider whether it would be necessary (if the Parties' Remedy Proposal were otherwise to be considered effective) for both Divestiture Businesses to be sold to a single purchaser to mitigate the risk relating to the loss of advantages associated with the offer of a broad

²⁴⁰⁴ Email from Cargotec's representatives [REDACTED].

integrated portfolio and scale. We also consider whether there may be additional ‘mix and match’ risks associated with a sale to a single purchaser.

The Parties’ views

- 13.233 Konecranes told us that it considers its MEQ business to be ‘very much a standalone business’²⁴⁰⁵ and that, in particular, ‘[i]f you look at the market structure, there is no real linkage in these products [MEQ, Straddle Carriers and Port Cranes], in terms of either how the businesses operate [...] or how suppliers operate in the market. So we have got companies who are strong in MEQ but not necessarily in Port Cranes and vice versa. Also, for customers to purchase and buy these products together, or by multi-sourcing these products, is not the typical way for them to operate’.²⁴⁰⁶
- 13.234 Konecranes also told us that, ‘when you look at Konecranes’ MEQ business, it is [REDACTED].’²⁴⁰⁷ In relation to economies of scale, Konecranes submitted that, ‘[t]o the extent that benefits arise from scale, that can come in different forms with different buyers. A lot of the buyers we have sent you as potential purchasers are themselves huge businesses. So we would not necessarily see the issue as being focused on whether these two particular product lines are attached together or not.’²⁴⁰⁸ Konecranes also submitted, in relation to any potential advantages of having a broad portfolio that ‘it is not necessary to have a broader CHE portfolio to compete successfully in MEQ’.²⁴⁰⁹
- 13.235 Cargotec, in relation to economies of scale, told us that its business ‘benefits from being part of a wider corporate group through economies of scale’, including in terms of back-office support structures which ‘as is typical in a corporate setting, provide cost efficient, centralised support’. Cargotec submitted, however, that ‘KAS could achieve equivalent, or greater, scale efficiencies following acquisition by another large industrial group’. Cargotec also noted that, although the objective of the Merger is to allow the [REDACTED].²⁴¹⁰ Cargotec’s CEO also stated that ‘because these are very different business systems, very different sort of business models, [REDACTED].’²⁴¹¹
- 13.236 In relation to economies of scope, Cargotec stated that the [REDACTED] considering ‘the discrete nature of the KAS business within Cargotec’. Cargotec also noted that ‘several successful suppliers of Port Cranes – ZMPC, Kuenz,

²⁴⁰⁵ Transcript of Konecranes’ Response Hearing, [REDACTED].

²⁴⁰⁶ Transcript of Konecranes’ Response Hearing, [REDACTED].

²⁴⁰⁷ Transcript of Konecranes’ Response Hearing, [REDACTED].

²⁴⁰⁸ Transcript of Konecranes’ Response Hearing, [REDACTED].

²⁴⁰⁹ [Parties Response to the Remedies Notice](#), paragraph 4.15.

²⁴¹⁰ Cargotec submission [REDACTED].

²⁴¹¹ Transcript of Cargotec’s Response Hearing, [REDACTED].

Liebherr, Mitsui, amongst others – all achieve success with no (or a very small) mobile equipment offering in Europe'.²⁴¹²

13.237 Cargotec also explained that:

(a) [REDACTED].

(b) [REDACTED].²⁴¹³

13.238 In a joint submission,²⁴¹⁴ the Parties stated that '[n]either Party depends upon economies of scope or scale between its Port Cranes and straddle carrier businesses and their MEQ businesses to be competitive'. The Parties told us that there is no good basis for considering that the Parties benefit from material economies of scope or scale from combining each of their MEQ and Port Cranes/Straddle Carriers businesses which would be lost in the sale of two separate packages. The Parties claimed that the MEQ, Straddle Carriers and Port Cranes businesses of each Party, although broadly serving the same customer base (ports):

(a) Do not rely on the same assets [REDACTED]. Each of the Parties' current MEQ businesses are largely standalone from an operational / structural perspective.

(b) Do not rely on the same inputs or materially share procurement costs.

(c) The Parties' current MEQ businesses have largely distinct supply chains with limited [REDACTED] and are very rarely purchased together – this indicates that customers place limited value on combining purchases of these products.

13.239 In the same submission, Cargotec explained that [REDACTED].²⁴¹⁵ In addition, [REDACTED].²⁴¹⁶

13.240 In the same submission, the Parties noted that the purchaser criteria set out in the KAS Divestiture Proposal (eg the purchaser must have the financial resources and proven expertise in the material handling or heavy-duty equipment industry) ensure that any purchaser presented to the authorities for approval would be capable of benefitting from economies of scale in manufacturing material handling or other heavy-duty equipment.²⁴¹⁷

²⁴¹² Cargotec submission [REDACTED].

²⁴¹³ Cargotec submission [REDACTED].

²⁴¹⁴ Parties' submission [REDACTED]. These submissions were repeated in the Parties' submission [REDACTED].

²⁴¹⁵ We note in this respect that vast majority of Straddle Carriers/Port Cranes customers also purchase MEQ.

²⁴¹⁶ Parties' submission [REDACTED].

²⁴¹⁷ Parties' submission [REDACTED].

13.241 The Parties submitted that the alleged mix-and-match nature of the Parties' Remedy Proposal is a 'misnomer' as the proposed remedy proposal consists of the sale of two standalone businesses.²⁴¹⁸

13.242 In response to the Remedies Working Paper, the Parties submitted that:

- (a) The Provisional Findings Report did not refer to any economies of scale and scope between Port Cranes and Straddle Carriers on the one hand and MEQ on the other as being relevant to the CMA's competitive assessment.²⁴¹⁹
- (b) The Remedies Working Paper mischaracterised the Parties' strategic decisions to expand their portfolios and organise their CHE portfolios under the same business divisions and reached unreasonable conclusions.²⁴²⁰
- (c) The Remedies Working Paper misrepresented the rationales for previous acquisitions and the Merger.²⁴²¹
- (d) The Remedies Working Paper distorted its presentation of changes to the industry and the Parties' strategy in view of these changes.²⁴²² The Parties submitted that, [REDACTED].²⁴²³
- (e) The Remedies Working Paper exaggerated and mischaracterised the purported advantages enjoyed by the Parties due to their broad integrated portfolio of CHE.²⁴²⁴
- (f) The Remedies Working Paper wrongly concluded that customers prefer to purchase multiple types of CHE from the same OEM.²⁴²⁵
- (g) The Remedies Working Paper wrongly concluded that the Parties' customers typically have maintenance contracts covering different types of CHE.²⁴²⁶

²⁴¹⁸ Cargotec submission [REDACTED].

²⁴¹⁹ Parties' submission [REDACTED].

²⁴²⁰ Parties' submission [REDACTED].

²⁴²¹ Parties' submission [REDACTED].

²⁴²² Parties' submission [REDACTED].

²⁴²³ Parties' submission [REDACTED].

²⁴²⁴ Parties' submission [REDACTED].

²⁴²⁵ Parties' submission [REDACTED].

²⁴²⁶ Parties' submission [REDACTED].

Risk of losing the advantages associated with the offer and development of a broad CHE portfolio

- 13.243 We have considered whether there are any competitive benefits associated with the development and offering of a broad CHE portfolio that may be lost with the divestiture of two separate packages (one from each Party), each of which is only a subset of an existing CHE division. These might arise from:
- (a) Customers' preference for having a single supplier of different categories of CHE and associated servicing and technology solutions, either for cost and operational reasons (eg in order to facilitate interoperability and connectivity across different types of CHE); and
 - (b) organisational synergies in developing and offering a broad integrated portfolio of CHE.
- 13.244 In the assessment of these potential competitive benefits, we considered the evidence available to us in relation to the following topics:
- (a) the Parties' strategic decision to expand their portfolio and organise their CHE portfolio under the same business division;
 - (b) changes to the industry and the Parties' strategy in view of these changes; and
 - (c) the Parties' current and future advantages from offering a broad portfolio of CHE.
- 13.245 We assessed these topics by reference to the following evidence:
- (a) evidence from internal documents prepared by or for the Parties;
 - (b) evidence from the Parties' public marketing;
 - (c) evidence from third parties;
 - (d) evidence in relation to customer purchases of multiple types of CHE from each of the Parties; and
 - (e) evidence on the Parties' customers having maintenance contracts covering different types of CHE.

- *Parties' strategic decision to organise their CHE portfolio under the same business division and expand their portfolio through previous acquisitions*

13.246 We consider below the evidence available to us about the rationale for the Parties organising their CHE portfolios within the same business division and on whether the expansion of its portfolios to include other types of CHE was an important part of the rationale for Konecranes' previous acquisitions.

o **Rationale for the Parties' current business structure**

13.247 The Parties choose to organise their CHE operations into single divisions – Port Solutions for Konecranes, and Kalmar for Cargotec. We considered whether this way of organising their businesses forms an important part of (or reflects) the competitive capabilities of the Parties, including in terms of their ability to provide a broad portfolio of CHE, and the ability to provide an offering that is attractive to customers.

13.248 A presentation to Konecranes' board about the rationale for the adoption in 2017 of Konecranes' current corporate structure, in which all CHE sits within the same business division (Port Solutions), states that: i) [REDACTED]; ii) [REDACTED]; iii) [REDACTED]; iv) [REDACTED]. [REDACTED].²⁴²⁷

13.249 Konecranes submitted, in response to the Remedies Working Paper, that the CMA placed excessive weight on this document, which Konecranes characterised as an '[REDACTED]'.²⁴²⁸ We note, however, that this interpretation (which was not supported by any other evidence) is inconsistent with a plain reading of the document, which considers Konecranes' management and operational structure and therefore considers matters beyond financial reporting and compliance with the international financial reporting standards.

13.250 Konecranes also submitted that this document shows that [REDACTED].

13.251 We consider that Konecranes' interpretation of the document (which was not supported by any other evidence) is again inconsistent with a plain reading of the document. In particular, in addition to commonality of customers, this document also explicitly refers to [REDACTED] as supporting the grouping of MEQ, Port Cranes and SC/ShC.

13.252 The fact that Konecranes sells MEQ through distributors does not, by itself, necessarily mean that there are no synergies in organising all CHE within

²⁴²⁷ Konecranes internal document [REDACTED].

²⁴²⁸ Parties' submission [REDACTED].

the same business division (eg because of synergies at the production level and in relation to R&D). The document in question also states that: [REDACTED].²⁴²⁹ We note in this respect that Konecranes submitted that, as it ‘sells its MEQ products through independent distributors’, ‘there is no basis to conclude that Konecranes offers “an integrated end-to-end package” that would include MEQ.’²⁴³⁰ We note that Konecranes uses distributors for the supply of MEQ. We understand, however, that Konecranes also supplies MEQ directly to some large customers. Furthermore, even if Konecranes’ MEQ is supplied through a distributor, its broad portfolio would still allow it to meet some customers’ preference for purchasing different types of CHE (other than MEQ) from the same OEM.

13.253 In relation to Kalmar, Cargotec explained that MEQ has been in the same business division as Port Cranes and Straddle Carriers since 1997, when Partek acquired the MEQ, Port Cranes and SC/ShC businesses. Cargotec told us that it does not have any internal documents specifically articulating the reason for the adoption of this business structure.²⁴³¹

13.254 Cargotec submitted that ‘[g]iven Cargotec’s restructuring of Kalmar in 2019, one would expect that, if the grouping of all CHE were of major commercial significance to Cargotec, at least some documents would have mentioned this fact during the restructuring process.’²⁴³² In this regard, Cargotec submitted that the [REDACTED]

13.255 We do not, however, believe that it is appropriate to put material weight on this submission. We note that this statement does not appear to be fully consistent with statements made by Cargotec earlier in the investigation²⁴³³ and in its response to the Remedies Working Paper, in which it stated that the organisational ‘grouping [of KAS and Kamos] is simply a legacy of corporate transactions in the late 1990s and early 2000s’.²⁴³⁴ On this basis, we understand that the ‘grouping’ of Cargotec’s MEQ, Port Cranes and Straddle Carriers businesses under Kalmar occurred well before the Kalmar restructuring in 2019 (and therefore was not among the key changes undertaken within the 2019 restructuring). We note, more broadly, that Cargotec’s position in this regard is inconsistent with a number of its internal documents, as set out below in paragraphs 13.313 to 13.328, which show

²⁴²⁹ Konecranes internal document [REDACTED].

²⁴³⁰ Parties’ submission [REDACTED].

²⁴³¹ Cargotec internal document [REDACTED].

²⁴³² Parties’ submission [REDACTED].

²⁴³³ In response to Cargotec submission [REDACTED], Cargotec stated: ‘mobile equipment has been together with cranes and HTE since as early as 1997, when Partek acquired the mobile equipment, cranes and straddle/shuttle carriers businesses’.

²⁴³⁴ Parties’ submission [REDACTED].

that there are synergies in developing and offering a broad integrated portfolio of CHE under a single business division.²⁴³⁵

o **Rationale for previous acquisitions**

13.256 Konecranes' internal documents and external communications indicate that developing a broad product portfolio in order to benefit from the advantages of offering a complete CHE solution was a key driver of previous acquisitions by Konecranes, including Konecranes' acquisition of SMV Liftrucks AB (SMV) in 2004 and of Terex Material Handling & Port Solutions (Terex MHPS), in 2016.

13.257 Konecranes' acquisition of SMV led to Konecranes extending its product range from mainly Port Cranes to MEQ, such as RS and FLT in 2004. While the acquisition of SMV took place in 2004, we consider that the rationale for that acquisition is still relevant to understand the importance that Konecranes attached to becoming a complete solution provider for its competitive position. In this regard, the press release issued at the time of this acquisition shows that one of the benefits that Konecranes saw in the acquisition of SMV was the increase of its portfolio and the consolidation of its position as a 'one-stop-shop' supplier²⁴³⁶ and 'complete solution provider'.²⁴³⁷ The Parties submitted that the press release from the SMV acquisition was prepared '[redacted]'. The Parties also stated that, even if developing a broad product portfolio was the stated rationale of the SMV acquisition or the Konecranes strategy, this does not support the view that this strategy is important for any OEM to be competitive in the market or that it confers certain advantages compared to other OEMs.²⁴³⁸ The Parties further claimed that the fact the CMA is relying on a 18-year-old documents is indicative of the scarcity of evidence to support its findings.²⁴³⁹

²⁴³⁵ <https://www.cargotec.com/en/nasdaq/stock-exchange-release-kalmar-hiab-macgregor/2019/cargotec-enhances-kalmars-growth-opportunities-by-reorganising-its-businesses-and-appointing-stefan-lampa-as-president-of-kalmar-mobile-solutions/>

²⁴³⁶ Konecranes' press release dated 29 October 2004 about SMV entitled 'KCI Konecranes has closed the acquisition of SMV Liftrucks' states that, 'The acquisition is an important step in KCI Konecranes strategy to become a complete solutions provider in ports and terminals all around the world. Through SMV's complementary product ranges the Group now provides solutions that cover the entire logistics chain in harbours and intermodal terminals. SMV's dealer network will further increased KCI Konecranes presence in ports.'

²⁴³⁷ Stock exchange release 'KCI Konecranes acquires SMV Liftrucks AB of Sweden', September 2004. This press release Konecranes' Mikko Uhari (Executive Vice President of Industrial Equipment) commented on Konecranes' acquisition of SMV on 8 September 2004 by stating that 'SMV's product portfolio is fully complementary with KCI Konecranes', and extends our total product range' 'The reach stacker and lift trucks constitute a natural addition to our existing container handling equipment range consisting of Ship-to-Shore Container Cranes, Rubber Tyred Gantry (RTG) Cranes, and Rail Mounted Gantry (RMG) Cranes. This enables us to position ourselves as a complete solution provider in harbours, intermodal terminals and in the shipping industry. We will now cover the entire logistics chain.'

²⁴³⁸ Parties' submission [redacted].

²⁴³⁹ Parties' submission [redacted].

13.258 We note, and took into account, the Parties' position that the press release was prepared for marketing purposes. We nevertheless also note, however, that Konecranes chose to prioritise these capabilities, in its communications with potential customers, which we consider show that they were considered to be attractive attributes for customers (and therefore important competitive capabilities for Konecranes). We also consider that this document is relevant for our assessment, despite dating from 18 years ago, because it was with this acquisition that Konecranes materially expanded its portfolio across different types of CHE and, therefore, it reflects the benefits that Konecranes associated with that expansion. There is no reason to believe that these benefits are specific to the period in which the SMV acquisition occurred.

13.259 With respect to Konecranes' acquisition of Terex MHPS in 2016, Konecranes achieved a significant position in SC (where it previously had a small presence) and increased its market position in relation to mobile equipment (in particular RS). Konecranes' internal documents considering the transaction show that [REDACTED]. For example:

(a) A Konecranes internal presentation relating to its acquisition of Terex MHPS, dated 16 May 2016, beneath the heading, 'Acquisition Benefits', states that this merger [REDACTED]. This topic is third amongst the seven other main benefits of this acquisition.²⁴⁴⁰ The same presentation elaborates on this point, stating that the acquisition of Terex MHPS would:

(i) [REDACTED].

(ii) [REDACTED].

(iii) [REDACTED].

13.260 A Q&A document prepared to be used by Konecranes' senior management at an Extraordinary General Meeting states [REDACTED].²⁴⁴¹

13.261 Another Q&A document to be used as reference by Konecranes' spokesperson in various communication activities about the announcement of the Terex MHPS merger, states, as the strategic rationale behind the merger, that [REDACTED].²⁴⁴²

13.262 A report with a preliminary assessment of the synergies expected from the Konecranes and Terex MHPS merger estimated [REDACTED].²⁴⁴³

²⁴⁴⁰ Konecranes internal document [REDACTED].

²⁴⁴¹ Konecranes internal document [REDACTED].

²⁴⁴² Konecranes internal document [REDACTED].

²⁴⁴³ Konecranes internal document [REDACTED].

13.263 In response to the Remedies Working Paper, the Parties submitted that the CMA had misinterpreted internal documents relating to the Terex MHPS acquisition as it failed to acknowledge the primary purpose of the transaction, which was [REDACTED].²⁴⁴⁴

13.264 The Parties have not provided any evidence supporting this statement and the Parties' position in this regard is contradicted by Konecranes' public position at the time. In particular, a press release of May 2016 regarding Konecranes' acquisition of Terex MHPS states that the merging parties will, as part of the rationale for this acquisition, 'Combine complementary Port segment technological and marketing capabilities into complete product offering to better compete in global markets: a) [a]bility to offer comprehensive port solutions to global customers; b) [h]ighly complementary range of products; c) [e]nhances further strategic customer dialogue'.²⁴⁴⁵ In addition, a general letter to the customers of Konecranes, announcing the closing of the Terex MHPS acquisition, states 'Technology is also a strong focus in our lift trucks. Recently, this has resulted in more powerful, eco-friendly reach stackers, software that makes our lift trucks smarter and provides customers with the information they need to optimize operations. This technology focus will continue to be at the heart of our business'. We believe that this indicates that achieving portfolio and scale synergies was part of the overall rationale of this acquisition, including in relation to MEQ.²⁴⁴⁶

o ***Changes to the industry and Parties' strategy in view of these changes***

13.265 The Parties' internal documents indicate that, as early as 2017, the Parties had identified a number of 'mega trends' occurring in the port industry, notably in automation and digitalisation, that they considered could lead to fundamental changes. For example:

- (a) a Cargotec presentation from 2019, [REDACTED], states that: [REDACTED]. This document also explains that [REDACTED] and that [REDACTED];²⁴⁴⁷
- (b) a Konecranes presentation about its '[REDACTED]' across all of Konecranes identifies '[REDACTED]' as one of six megatrends and the v;²⁴⁴⁸ and

²⁴⁴⁴ Parties' submission [REDACTED]

²⁴⁴⁵ <https://www.konecranes.com/press/releases/2016/konecranes-acquires-terexs-material-handling-port-solutions-business-to-create-focused-global-leader-in>

²⁴⁴⁶ <https://www.konecranes.com/konecranes-acquisition-of-terex-material-handling-port-solutions-is-complete-what-it-means-to-you>

²⁴⁴⁷ Cargotec internal document [REDACTED].

²⁴⁴⁸ Konecranes internal document [REDACTED].

(c) Konecranes' 2018 annual review states that 'We see the future of our offering in terms of its readiness for Industry 4.0 and its strong potential for integration into the wider ecosystem of our customers' operations. As a trend, intelligence will expand to lighter devices from heavy process equipment, while we will enjoy economies of scale due to our ability to capitalize on introducing common technologies across the entire portfolio'.²⁴⁴⁹ That same document further notes that '[t]he material handling industry stands on the brink of a technological revolution that will blur the lines between the physical and digital spheres. We can already see how emerging technologies like AI, advanced wireless networks or fully autonomous vehicles are disrupting our thinking on what is possible and what is not.'²⁴⁵⁰

13.266 The CMA considers that these changes have been reflected in the Parties' strategy to be better positioned and take advantage of the current trends.

13.267 Part of that strategy is for Cargotec to [REDACTED]. This strategy is set out in different Cargotec internal documents:

(a) Cargotec's [REDACTED]²⁴⁵¹ [REDACTED]. Cargotec considers that winning these battles will [REDACTED].²⁴⁵²

(b) Another presentation, entitled '[REDACTED]', also states that Cargotec aims, [REDACTED].²⁴⁵³

(c) Cargotec's presentation about the '[REDACTED]' describes Cargotec's intention.²⁴⁵⁴

13.268 In its 2018 Annual Review report, Konecranes also states that an important part of the future of Konecranes' offering will be: 'its readiness for Industry 4.0 and its strong potential for integration into the wider ecosystem of our customers' operations.' The same report notes that Konecranes 'will enjoy economies of scale due to our ability to capitalize on introducing common technologies across the entire portfolio'.²⁴⁵⁵ Another strategic Konecranes' presentation – '[REDACTED]' – notes how the recent trends in the port industry would impact on Konecranes' offering, including with the expansion of: " and to offer '[REDACTED]' as competitive advantages.²⁴⁵⁶

²⁴⁴⁹ Konecranes internal document [REDACTED].

²⁴⁵⁰ Konecranes internal document [REDACTED].

²⁴⁵¹ Cargotec internal document [REDACTED].

²⁴⁵² Cargotec internal document [REDACTED].

²⁴⁵³ Cargotec internal document [REDACTED].

²⁴⁵⁴ Cargotec internal document [REDACTED].

²⁴⁵⁵ [Konecranes-Annual-Review-2018.pdf](#).

²⁴⁵⁶ Konecranes internal document [REDACTED].

- 13.269 One additional strategy presentation to the Konecranes board about Konecranes' [REDACTED] notes that this expansion was a [REDACTED] and an important part of Konecranes' [REDACTED], in terms of developing automation across its CHE portfolio and [REDACTED]. With its expansion into ATT, Konecranes would: [REDACTED] and it would be able to [REDACTED].²⁴⁵⁷ Another Konecranes' strategic document about its' 'Automated Terminal Tractor (A-TT) Product Strategy 2019-2025', lists among the main opportunity arising from [REDACTED].²⁴⁵⁸ The Parties submitted that the reference to [REDACTED] refers to solutions within equipment types (ie to create end-to-end services from CHE to automation solutions to servicing). We consider, however, that this interpretation is not supported by the reference in the document about Konecranes' strategy for ATT to [REDACTED] and by the following statement, in the same document: [REDACTED].²⁴⁵⁹
- 13.270 These documents show that the Parties' approach to these industry trends is to leverage their existing CHE portfolio and develop their automation and digitalisation capabilities to offer an integrated end-to-end package, including CHE, automation solutions and servicing, with a view to becoming a strategic partner to their customers and an integral part of their ecosystem (especially as regards larger 'mega' port customers).
- 13.271 The Parties submit, however, that we have misinterpreted these documents. In addition to the submissions specific to each of the documents considered above, the Parties noted that it is possible to offer product-specific automation services and thus there is no need for a broad portfolio.²⁴⁶⁰
- 13.272 The CMA agrees that OEMs have the ability to develop and offer product-specific automation services. The CMA also recognises that some customers may prefer such solutions. This is not, however, inconsistent with the position that being able to offer a single automation solution applicable across a broader CHE portfolio can be an important capability, particularly when competing for the portion of the customer base who may value such a solution.
- 13.273 Further, the Parties submitted that their MEQ is not currently automated and thus there is no possibility to offer a fully automated solution across their CHE offering.²⁴⁶¹ While the majority of MEQ equipment is not currently automated, the CMA is required (as the Parties have noted in their

²⁴⁵⁷ Konecranes internal document [REDACTED].

²⁴⁵⁸ Konecranes internal document [REDACTED].

²⁴⁵⁹ Konecranes internal document [REDACTED].

²⁴⁶⁰ Parties' submission [REDACTED].

²⁴⁶¹ Parties' submission [REDACTED]. In paragraph 3.5 of their response to the Consultation Paper, the Parties reiterated that the third-party concerns in relation to interoperability did not refer to concerns between MEQ and cranes/Straddle Carriers because MEQ is not automated.

submissions on the substance of the case) not simply to look at a static view of the market but rather consider how the sector is likely to develop over time (as discussed further below). It is clear from the Parties' internal documents that they (and other OEMs) are currently developing automated solutions for this type of equipment.²⁴⁶² As noted below, we also placed some weight on the fact that Cargotec currently has a pipeline project for the development of MEQ automation (see paragraph 13.323).^{2463 2464}

13.274 The Parties also submitted that while they will seek to create end-to-end services from CHE to automation solutions to servicing, these projects are distinct by equipment type due to the fact that customers do not purchase different CHE types together, nor are they likely to, given that the competitive dynamics engaged by the tendering/negotiating models at play in the industry are advantageous to customers.²⁴⁶⁵ In our view, even if most customers currently purchase each type of CHE separately, the evidence considered below in relation to the importance of interoperability (see paragraphs 13.338 and 13.344) suggests that a non-negligible portion of customers see benefits in acquiring different types of CHE products from a single OEM (even if not within a single procurement process) if those products operate on a single automation system, even if that is not the key driver of the procurement decision for most customers (see paragraphs 13.356 to 13.365).

13.275 As such, we consider that automation is a material feature of the CHE market which is likely to result in the ability to offer broad CHE portfolio being an increasingly important capability for the Parties when competing for customers in the near future. We have therefore assessed whether, given their wide portfolio the Parties are better placed to compete in an industry moving towards full automation by offering a 'seamless integration' of common technologies across the entire portfolio compared to an OEM with a more limited portfolio.

13.276 Given that the shift to automation and digitalisation is ongoing, we have not focused only on the current offering of the Parties and preferences of customers in past tenders. We have considered the evidence from a dynamic perspective, taking into account customers' future preferences and whether the Parties' wide CHE portfolios, as well as their current and

²⁴⁶² See Cargotec's internal documents set out in paragraphs 13.323 to 13.325.

²⁴⁶³ The Parties also submitted that certain OEMs may be able to develop automation services for CHE products more swiftly and effectively (Parties' submission [REDACTED]). In our view, this does not materially affect the potential for the Parties to benefit from offering an automated solution covering a broader CHE portfolio if customers are interested in such an offering.

²⁴⁶⁴ We note, in this regard, a Cargotec video showing the prototype of its robotic mobile equipment (see <https://youtu.be/0jZTyc77jjk>, accessed on 27 March 2022).

²⁴⁶⁵ Parties' submission [REDACTED].

evolving automation and connectivity offerings may become a more relevant competitive capability in the future.

o **Parties' current and future advantages from offering a broad portfolio of CHE**

13.277 In addition to a wide portfolio that includes different categories of CHE, the Parties already offer connectivity solutions (such as TRUCONNECT, YourKonecranes and Kalmar Insight) across their whole portfolio of CHE equipment. The Parties also offer ECS (eg Kalmar One) currently mainly for Port Cranes and Straddle Carriers but with the prospect of also automating MEQ.

13.278 In fact, in relation to ECS automation software, Cargotec is actively investing in automated mobile equipment development, [REDACTED].²⁴⁶⁶

13.279 The Parties submitted that their automation solutions are open and interoperable with any third-party equipment.²⁴⁶⁷ Third-party evidence indicates that, although using the Parties' automation software in other ECS is technically possible, in practice third parties have strong reluctance to do so and find it difficult in practice (see paragraphs 13.341(f) and 13.34213.342(a)).²⁴⁶⁸

13.280 In relation to the Parties' connectivity solutions, a material number of the Parties' customers already use the Parties' connectivity solutions ([REDACTED] and [REDACTED] Konecranes CHE customers use Konecranes' solution).²⁴⁶⁹ These connectivity solutions are mostly used for MEQ at present ([REDACTED])²⁴⁷⁰ and only a small number (and proportion) of customers at present use them across Port Cranes/Straddle Carriers and MEQ.²⁴⁷¹

13.281 Konecranes' submitted that less than [REDACTED]% of active TRUCONNECT users²⁴⁷² use TRUCONNECT for both Konecranes MEQ and Port Cranes or Straddle Carriers.²⁴⁷³ However, given the industry trend towards digitalisation and the benefits for some customers of using a single connectivity solution across different types of CHE (see 13.341 and 13.342), we have considered

²⁴⁶⁶ Cargotec submission [REDACTED].

²⁴⁶⁷ Parties submission [REDACTED].

²⁴⁶⁸ In addition, we note that even if the Parties' submissions are correct and the solutions they offer are currently open and interoperable, this does not mean that they will continue to be so in the future.

²⁴⁶⁹ Konecranes email [REDACTED]. Cargotec email [REDACTED].

²⁴⁷⁰ [REDACTED]. [REDACTED] Konecranes' CHE customers that use TRUCONNECT, used it in respect of MEQ only.

²⁴⁷¹ [REDACTED] and [REDACTED] used Kalmar insight and TRUCONNECT, respectively, for more than one CHE category. See Konecranes email of 1 February about the number of customers that use Konecranes for each category of CHE. Cargotec's email [REDACTED].

²⁴⁷² This percentage appears to include both industry and port customers. By nature, industry customers would not use TRUCONNECT in relation to other categories of CHE than MEQ

²⁴⁷³ Parties' submission [REDACTED].

whether the evidence available to us indicates that the number of customers using connectivity solutions, including TRUCONNECT, across different types of CHE can reasonably be expected to increase in the near future.

- 13.282 The Parties submitted that ‘Third party equipment can easily be equipped with Kalmar Connect hardware (although the scope of data might be more limited compared to Kalmar Connect on Kalmar machines)’.²⁴⁷⁴ The evidence indicates that, although it is possible to use the Parties’ connectivity solutions in third-party equipment, in practice customers do not tend to use each of the Parties’ connectivity systems with CHE from other OEMs, which would raise concerns for both OEMs and customers (see 13.341(a), 13.341(e) and 13.342(b)).
- 13.283 Information submitted by the Parties to the CMA also indicates that TRUCONNECT is not currently used in third-party CHE and that only one customer uses Kalmar Insight both with Kalmar CHE and with CHE of a third party.²⁴⁷⁵
- 13.284 While the importance of having a wide CHE portfolio may have been less important in the past, the Parties and third parties have told us that digitalisation and automation are key industry trends. Digitalisation and automation are likely to require greater connectivity between different types of CHE using automation software and connectivity between different categories of CHE using connectivity solutions.
- 13.285 There are some OEMs that offer only certain categories of CHE that compete effectively against the Parties. This does not necessarily mean, however, that these OEMs are in a position to compete as effectively and closely with the Parties as the Parties compete with each other, at present or in the near future, particularly as the port industry shifts to increased automation and digitalisation.²⁴⁷⁶
- 13.286 In Cargotec’s response hearing, Cargotec’s Senior Vice President for Strategy told us that: ‘Basically our Chinese competitors are trying to enter to become more like a fully-fledged companies’.²⁴⁷⁷ However, Cargotec subsequently submitted that we should not take that to mean that the KAS

²⁴⁷⁴ Parties’ submission [§].

²⁴⁷⁵ Konecranes email [§]. Cargotec’s email [§]. In addition, even if the Parties’ submissions are correct, this does not mean that they will keep their connectivity solutions available to third-party equipment providers in the future.

²⁴⁷⁶ We note, in this regard, that Cargotec’s Senior Vice President for Strategy stated that ‘Everybody else [other than Cargotec and Chinese suppliers that are becoming more ‘fully-fledged’ OEM) is then either the yard crane provider or mobile equipment provider or only one or two products within those groups. Predominantly the market is then separated by two different blocks because the earnings logics are different, one is a project business, another one is a product business’. (Source: Transcript of Cargotec’s Response Hearing, [§]).

²⁴⁷⁷ Transcript of Cargotec’s Response Hearing, [§].

Divestiture Business (as a non fully-fledged entity) would not be sufficiently competitive,²⁴⁷⁸ because KAS is already a well-established business and has no need of operations in MEQ or any other type of CHE to be well-known to Europe (including UK).

13.287 We acknowledge that Kalmar is a strong brand, but we nevertheless consider that there are advantages in having a broad product portfolio, which Chinese suppliers seem to be trying to emulate. The evidence we have received indicates, however, that Chinese suppliers have not succeeded in achieving this by expanding into new CHE categories in Europe, including as a result of the barriers to entry and expansion we have identified (see Chapter 12).

13.288 The Parties stated that the CMA should give ‘equal weight’ in all aspects of its review of the Merger to the importance for an OEM’s competitiveness of leveraging the success and customer relationships gained in one equipment type to compete in other equipment types.²⁴⁷⁹

13.289 We do not consider that we treated the evidence inconsistently in the assessment of the competitiveness of Chinese suppliers and in the assessment of effectiveness of the Parties’ Remedy Proposal. In our assessment of the competitiveness of Chinese suppliers we focussed on whether these OEMs have created or can develop a broad CHE portfolio (across different CHE categories) so as to more effectively constrain the Parties and we have found they have not yet developed a broad portfolio and are not likely to do so in the near future. When we considered the effectiveness of the Parties’ Remedy Proposal, we considered whether a remedy that would break up the Parties’ existing broad portfolios would effectively remedy the loss of competition created by the Merger. While the relevant considerations are different, we have been consistent in their application across the different questions we are required to answer.

o **Internal documents**

13.290 We assess below certain internal documents prepared by the Parties in the ordinary course of business which are relevant to understanding whether being able to offer a broad portfolio of CHE is an important competitive capability, including:

²⁴⁷⁸ Cargotec submission [REDACTED].

²⁴⁷⁹ Cargotec submission [REDACTED].

- (a) benefits associated with a broad CHE portfolio in terms of interoperability and connectivity across different types of CHE;
- (b) competitive benefits as a result of customers' preference for 'one stop shopping';²⁴⁸⁰ and
- (c) organisational and R&D synergies in the development and offering a broad portfolio of CHE.

13.291 In relation to the assessment of internal documents, the Parties submit that the CMA's views are not robust because they are only based on a small number of documents, compared to the approximately one million documents submitted by the Parties to the CMA, and the documents cited do not offer support for the CMA's conclusions.²⁴⁸¹ We do not consider that this argument carries weight. First, it is not uncommon for large volumes of documents submitted to competition authorities in merger control investigations to consider materials not relevant to an analysis of competition.²⁴⁸² Second, the internal documents on which we are placing weight, as outlined below, comprise the most strategic documents prepared by the Parties, namely forward-looking business plans prepared for, and considered by, the Board. We also note that the Parties did not draw any other documents to the CMA's attention that would support alternative conclusions.

- Internal documents on benefits associated with a broad CHE portfolio in terms of interoperability and connectivity across different types of CHE

13.292 We consider below internal documents on whether customers value having a single supplier of connectivity solutions and automation software across a broad CHE portfolio, including the ability to provide connectivity and interoperability across different categories of CHE and to what extent it is reflected in the Parties' strategy and perceived as a source of competitive difference that should also form part of an effective remedy.

²⁴⁸⁰ We note that Konecranes uses distributors for the supply of MEQ. We understand, however, that Konecranes supplies MEQ directly to some large customers. Furthermore, even if Konecranes MEQ is supplied through a distributor, Konecranes' broad portfolio would still allow it to meet some customers' preference for purchasing different types of CHE from (other than MEQ) from the same OEM.

²⁴⁸¹ Parties submission [§<].

²⁴⁸² As explained in relation to the documents considered in the competition assessment, many of the documents were general industry reports or reports that simply record sales achieved by each supplier.

13.293 As noted above, we have focused our review on the Parties' most strategic documents. Overall, as demonstrated in this section, these documents consistently reflect a position that:

- (a) Automation is one of the key trends in the industry and is expected to become more significant in the supply of CHE. It constitutes a 'must win battle' for the Parties;
 - (i) The Parties intend to develop their MEQ automation services in response to this trend;
 - (ii) The Parties consider that offering a single automation solution interoperable across their CHE portfolio is an important means of attracting certain types of customers, including 'mega' terminal operators / customers looking for turnkey solutions.
- (b) Digitalisation is another key trend in the industry, with the Parties aiming to develop their digital offerings to meet customer demand for connected and integrated supply chains.
- (c) These two trends are not entirely distinct and both Cargotec and Konecranes are striving to provide intelligent and customer-specific services that combine automation and connectivity. In particular, the capture and use of data through connectivity is identified as an important element of improving automation solutions.

13.294 A Cargotec internal document, '[REDACTED]', highlights that Cargotec [REDACTED]²⁴⁸³ [REDACTED].²⁴⁸⁴

13.295 The Parties submitted that:

- (a) [REDACTED]; and
- (b) [REDACTED].²⁴⁸⁵

13.296 We are satisfied that our interpretation of this document is reasonable and that the quotations are not taken out of context. In particular, we agree that there is no need to have a broad portfolio in order to offer automation services, as discussed in paragraph 13.272 above. However, the document

²⁴⁸³ 'Kalmar Key' provides a set of open application interfaces that allows opening the Kalmar One automation system's interfaces to extend the capabilities of the system. This enables terminal operators to customise their automation deployments and allows third-party developers to provide their own offerings that are interoperable with the automation system (see [Kalmar Key | Kalmarglobal](#)).

²⁴⁸⁴ Cargotec internal document [REDACTED].

²⁴⁸⁵ Parties' submission [REDACTED].

clearly lists Cargotec's [REDACTED].²⁴⁸⁶ This indicates that a broad portfolio may be important for, at least, certain, large customers.²⁴⁸⁷ This is consistent with the approach implied by the reference in the same slide to '[REDACTED]'.

- 13.297 The same document notes that [REDACTED].²⁴⁸⁸ One of the [REDACTED].
- 13.298 A Cargotec presentation from 2019, '[REDACTED]' (see paragraph 13.265). This document states: '[REDACTED]'.²⁴⁸⁹ The presentation states that [REDACTED].²⁴⁹⁰ A further internal document, an Appendix to '[REDACTED]', is consistent with this interpretation, stating that [REDACTED].²⁴⁹¹
- 13.299 A Cargotec presentation from 2019, entitled 'The future of port automation WIP', further confirms that developing Kalmar Key is necessary to provide 'the solution to integrate & connect non-standard data from fragmented systems & suppliers onto one common interface. Automation's premise is predictable performance – one needs to connect the siloed data in order to sufficiently enable predictability. A solution that is able to connect & convert unstandardized data into useful format would improve potential of analytics & automation.'²⁴⁹² The Parties submitted that [REDACTED].²⁴⁹³ [REDACTED].²⁴⁹⁴
- 13.300 We note that this document states that 'Customers today [are] yet to believe in turnkey solution,' (emphasis added) suggesting that customers may be open to this in the future (eg because they are waiting for maturity and strong reference cases).²⁴⁹⁵ The same document also notes that '[REDACTED]',²⁴⁹⁶ a not immaterial proportion of Cargotec's potential customers. In paragraph 13.299 above, we also discuss Cargotec's comment that turnkey projects are rare. Finally, the focus on turnkey projects in this presentation indicates that such opportunities are important to Cargotec's future strategy. Accordingly, we consider that they constitute an important element of future competition for Cargotec. As explained in more detail elsewhere in this Chapter, an effective remedy must be able to appropriately accommodate changes in the market over time, allowing a purchaser to compete for any business

²⁴⁸⁶ Cargotec internal document [REDACTED].

²⁴⁸⁷ Slide 18 refers to this objective achieving a key KPI of 'mega project order intake'.

²⁴⁸⁸ Cargotec internal document [REDACTED], slide 12.

²⁴⁸⁹ Cargotec internal document [REDACTED].

²⁴⁹⁰ Cargotec internal document [REDACTED].

²⁴⁹¹ Cargotec internal document [REDACTED], produced by Mikael Laine (SVP Strategy and M&A) in September 2018. This document states: 'ZPMC and Konecranes have been developing their OneTerminal concepts, several suppliers developing automated TT and other mobile solutions'.

²⁴⁹² Cargotec internal document [REDACTED].

²⁴⁹³ Parties' submission [REDACTED].

²⁴⁹⁴ Parties submission [REDACTED].

²⁴⁹⁵ We also note that note that the RWP does refer to this quotation (see Remedies Working Paper, paragraph 125).

²⁴⁹⁶ Cargotec internal document [REDACTED].

opportunities in the relevant markets in which an SLC was found (see paragraphs 13.10 to 13.11).

13.301 A Cargotec presentation about the automation and projects division strategy – ‘Automation and projects division strategy’ produced in August 2018 – sets out the [REDACTED].²⁴⁹⁷

13.302 The same document [REDACTED].²⁴⁹⁸

13.303 The Parties submitted that the document is from 2018 and merely expresses a high-level ambition to improve and expand Kalmar Key. On this basis, the Parties consider that this document is too speculative to inform the basis of the CMA’s conclusions regarding the need for an integrated CHE portfolio.²⁴⁹⁹ We do not agree with the Parties’ submission: the document is a strategy deck prepared for the Kalmar board that provides an overview of the automation ‘market’ and outlines anticipated developments and specific initiatives to prepare for / benefit from these developments. While the document is now several years old, we note that it is not so historic (within the context of the markets at issue) to not merit any evidential weight.²⁵⁰⁰

13.304 Konecranes’ internal documents also discuss how [REDACTED], especially as CHE (including MEQ) becomes more automated and interconnected, and how Konecranes perceives its ability to offer a broad CHE portfolio in terms of interoperability and connectivity across different types of CHE as a source of [REDACTED].

13.305 For example, as mentioned above, the Konecranes strategic document – ‘[REDACTED]’ – from August 2018 states that it is a competitive advantage for Konecranes to be able to offer [REDACTED].²⁵⁰¹ We note, however, that this document also indicates that [REDACTED] the competitiveness of Konecranes’ offering than connectivity, price and quality.²⁵⁰²

13.306 This same document notes that ‘[REDACTED]’ as well as ‘[REDACTED]’. This is resulting in Konecranes having [REDACTED].²⁵⁰³

13.307 The Parties submitted that this document cannot support the following two statements the CMA has made: ie that an integrated CHE offer is a competitive advantage but not relevant to Konecranes’ competitiveness. The

²⁴⁹⁷ Cargotec internal document [REDACTED].

²⁴⁹⁸ Cargotec internal document [REDACTED].

²⁴⁹⁹ Parties’ submission [REDACTED].

²⁵⁰⁰ Noting that many of the strategic documents pre-dating the Merger being in contemplation date from 2018 and 2019.

²⁵⁰¹ Konecranes internal document [REDACTED].

²⁵⁰² Konecranes internal document [REDACTED].

²⁵⁰³ Konecranes internal document [REDACTED].

Parties state that the CMA misinterpreted the references to ‘integration’ to mean ‘broad CHE portfolio’ instead of automation, which is irrelevant to MEQ.²⁵⁰⁴ We do not agree that these statements are contradictory: the offer of seamless integration across the CHE portfolio can be a competitive advantage because it is valued by some customers. It does not need to be the most significant factor for Konecranes’ competitiveness to be relevant within our assessment. More importantly, as discussed above, the evidence indicates that the offer of a broad CHE portfolio is expected to become more competitively relevant in the near future. We have addressed in paragraphs 13.269 to 13.275, the Parties’ submission that ‘integrated solutions’ do not mean a broad portfolio solution. We also note that this same document refers to the [REDACTED].²⁵⁰⁵ It is unclear why this would exclude MEQ.

13.308 A Konecranes letter of introduction to a customer from May 2019 highlights the following positive distinctive aspect of Konecranes’ offering: ‘[REDACTED]’.²⁵⁰⁶

13.309 A briefing and Q&A document produced in December 2020, used by Konecranes in the onboarding of Leadership Team Members (which includes Konecranes’ most senior management), states that ‘[REDACTED]’.²⁵⁰⁷

13.310 Taken together, the Parties’ internal documents set out above show that it is an important part of the Parties’ strategy to offer automation solutions that are interoperable across different types of CHE and connectivity solutions across different categories of CHE, promoting the offer of an ‘integrated & complete solution’. Some documents indicate that this is perceived as a distinctive element of the Parties’ offering relevant for some customers.

- Internal documents on customers’ preference for ‘one stop shopping’

13.311 We consider below internal documents in which the Parties take into account customers’ preference for a ‘one stop’ solution as part of their strategy and commercial pitch. For example:

(a) A Konecranes’ strategy document – ‘[REDACTED]’ – highlights as a threat that [REDACTED].²⁵⁰⁸

(b) A Cargotec strategic document – [REDACTED].²⁵⁰⁹ The Parties submitted that this document [REDACTED].²⁵¹⁰ While the presentation does not explicitly make a

²⁵⁰⁴ Parties submission [REDACTED].

²⁵⁰⁵ Konecranes internal document [REDACTED].

²⁵⁰⁶ Konecranes internal document [REDACTED].

²⁵⁰⁷ Konecranes internal document [REDACTED].

²⁵⁰⁸ Konecranes internal document [REDACTED].

²⁵⁰⁹ Cargotec internal document [REDACTED].

²⁵¹⁰ Parties’ submission [REDACTED].

reference to customers purchasing both MEQ and other types of equipment, it covers all of Kalmar, including MEQ, and outlines [REDACTED].²⁵¹¹ Cargotec intends to grow its MEQ business by [REDACTED],²⁵¹² indicating that it may form part of the overall solutions offered to customers.

- (c) A Cargotec internal commercial document from April 2019 – [REDACTED].²⁵¹³ The Parties submitted that this document related only to [REDACTED] by the CMA.²⁵¹⁴ We note that, while this initiative only applies to microterminals, such terminals still amount to over 10% of all potential customers in Europe,²⁵¹⁵ a not immaterial segment of customers. Further, this document presents the initiative as a '[n]ew market segment for us in smaller terminals, [with] [o]pportunities to expand and strengthen customer base [and] [u]pselling opportunities in the long run.'²⁵¹⁶ Finally, while we recognise that other factors were identified as being relevant, this does not diminish the fact that a 'one stop' solution was identified as one of the main factors for attracting customers.
- (d) A Konecranes commercial internal document from 2020 lists as one element to be highlighted to customers [REDACTED].²⁵¹⁷
- (e) A market monitoring document report prepared by Cargotec [REDACTED].²⁵¹⁸

13.312 The documents cited above show that the Parties use the offer of a 'one stop' solution as part of their sales pitch, both in terms of being able to offer servicing and software integrated as 'one package' for each type of equipment including across different types of CHE. In this respect, we do not agree that the CMA has misinterpreted documents and that Konecranes' offer of servicing and software integrated applies separately to each type of equipment.²⁵¹⁹ The importance attached in these internal documents to the offering of a broad CHE portfolio, together with servicing and software, as a package, in order to meet preferences and requirements of some customers, is consistent with the ability to offer a 'one stop' solution being considered a competitive benefit by the Parties, particularly as the industry shifts to increased automation and digitalisation.

²⁵¹¹ Cargotec internal document [REDACTED].

²⁵¹² Cargotec internal document [REDACTED].

²⁵¹³ Cargotec internal document [REDACTED].

²⁵¹⁴ Parties' submission [REDACTED].

²⁵¹⁵ Cargotec internal document [REDACTED].

²⁵¹⁶ Cargotec internal document [REDACTED].

²⁵¹⁷ Konecranes internal document [REDACTED].

²⁵¹⁸ Cargotec internal document [REDACTED].

²⁵¹⁹ Parties submission [REDACTED].

- Internal documents on organisational and R&D synergies in the development and offer of a broad portfolio of CHE

13.313 We have assessed internal documents from Cargotec about the planned reorganisation of KAS and about the current and expected future collaboration between KAS and Kamos to understand, from a supply-side perspective, whether there are synergies in developing and offering a broad integrated portfolio of CHE under a single business division.

13.314 The presentation entitled [REDACTED].²⁵²⁰

13.315 Consistent with the importance of the factors set out in the [REDACTED]. In this regard, the presentation states that:

(a) [REDACTED].²⁵²¹

(b) [REDACTED].²⁵²²

(c) [REDACTED].²⁵²³

13.316 The Parties submitted that [REDACTED].²⁵²⁴ We consider, however, that this document is relevant to show that KAS and Kamos are not two standalone units and that there are synergies between KAS and Kamos that result from collaboration in the servicing, sale and development of the different types of CHE in the KAS and Kamos portfolios, which a purchaser of the KAS Divestiture Business may not be able to benefit from following the carve out of KAS. As such, we do not agree with the Parties that this is not a synergy related to the presence of a wide portfolio of CHE and that any purchaser with a servicing function can explore these same synergies. In particular, without a wide CHE portfolio comparable to that of KAS and Kamos, a purchaser would be unlikely to be able to benefit from the synergies resulting from a more efficient and flexible [portfolio?] of different types of CHE in terms of sales, servicing and product development.

13.317 This internal document sets out proposals to improve collaboration between KAS and Kamos, rather than synergies that Kalmar was already benefiting from at the date of this document. Cargotec also told us²⁵²⁵ that [REDACTED]. Cargotec further explained that a '[REDACTED] of the KAS Divestiture Business. However, it is unclear how many of Kamos' frontline units will actually

²⁵²⁰ Cargotec internal document [REDACTED].

²⁵²¹ Cargotec internal document [REDACTED].

²⁵²² Cargotec internal document [REDACTED].

²⁵²³ Cargotec internal document [REDACTED].

²⁵²⁴ Parties' submission [REDACTED].

²⁵²⁵ Email from Cargotec of 14 January 2022.

transfer and whether that is sufficient to recreate the synergies highlighted in the document from having KAS and Kamos as part of the same organization. As explained below in paragraph 13.457, the carve-out of Kamos' frontline units also involves significant carve-out risks.

13.318 [REDACTED]²⁵²⁶ [REDACTED] includes notes prepared by [REDACTED] (Cargotec's VP Forklift Trucks) for feedback in relation to the 'collaboration within Kamos-KAS'. This document highlights the benefits of collaboration between KAS and Kamos and the existence of material synergies within Kalmar. The feedback lists certain positive aspects that show the importance and benefits of collaboration between Kamos and KAS, such as: [REDACTED]. Other comments suggest that collaboration has been working well in practice: [REDACTED]. This document also shows what were considered to be the risks of KAS and Kamos not working together sufficiently, when it states that '[REDACTED]'. This document also shows that Kalmar interacts with customers as a single business, when it states: [REDACTED].²⁵²⁷

13.319 The Parties submitted that [REDACTED].²⁵²⁸ As noted above (and in the Remedies Working Paper [REDACTED].²⁵²⁹ We consider that these areas of concern refer not to disadvantages of having a broad portfolio, but to concerns relating mainly to the fact that cooperation could be more effective and improved in its execution.

13.320 [REDACTED].²⁵³⁰

13.321 A Konecranes internal document – 'Project Castle' – describes Konecranes' concept of [REDACTED]. This document includes an image showing the [REDACTED].²⁵³¹

13.322 We consider that these internal documents highlight the importance that Cargotec attaches in practice (notwithstanding its submissions in our investigation) to collaboration between KAS and Kamos to explore synergies in selling and servicing, as well as synergies in the development of automation technology. The documents also consistently highlight the importance that Cargotec attaches to interacting with customers as a 'single Kalmar' is also highlighted in these documents.²⁵³²

²⁵²⁶ [REDACTED].

²⁵²⁷ Cargotec internal document [REDACTED].

²⁵²⁸ Parties submission [REDACTED].

²⁵²⁹ The [REDACTED].

²⁵³⁰ Cargotec internal document [REDACTED].

²⁵³¹ Konecranes internal document 'Project Castle', August 2020, prepared in the context of the Merger by Konecranes' Chief Strategy Officer, to Konecranes' Officers and/or Directors.

²⁵³² In response to the Remedies Working Paper, Cargotec submitted that the CMA 's findings about the importance of interacting with customers as a 'single' united Kalmar' 'ignore [...] that there are no sales personnel

13.323 We also considered internal documents in relation to Cargotec's current pipeline project for the development of MEQ automation to understand whether this project benefits from R&D synergies with KAS, by building on Kalmar One, collaborating with the KAS R&D team and integrating Kalmar One and Kalmar's future MEQ solution.

13.324 These documents show that:

(a) [REDACTED].²⁵³³

(b) [REDACTED].²⁵³⁴ [REDACTED].²⁵³⁵

Figure 31: [REDACTED]

[REDACTED]

Source: [REDACTED].

13.325 In response to the Remedies Working Paper, the Parties submitted that '[REDACTED].²⁵³⁶ We do not consider less weight should be placed on these documents based on the fact that they were prepared by Kamos (given that they will still nevertheless reflect the contemporaneous views of business people working in the areas in which Kamos is active). The purpose of these documents is to 'start the discussion of next steps in Kamos' automation strategy'²⁵³⁷ as an integral part and in the context of the overall Kalmar division, as indicated by the references to Kalmar One and other Kalmar IP, as well as the existing Kalmar automation service portfolio and the Kalmar 'Global Sales & Services network'.²⁵³⁸ Although these documents do not set out a fully-fledged strategy, the various references to expanding the use of Kalmar One into MEQ and the intention to use KAS as a 'Future Competence Map for Kamos Automation Solutions' shows the possibility and

and/or account managers (or equivalent) in Kalmar who are the 'contact person' for certain customers' (Parties submission [REDACTED]). We consider that 'interacting with customers as a single Kalmar' does not necessarily require having a single account manager and sales person for all CHE sold by Kalmar. It refers the fact that customers perceive Kalmar as a single entity, in terms of reputation, brand and overall financial and operational strength. The statement in one of the internal documents quoted above – '[REDACTED]'. Furthermore, operating as a 'single Kalmar' appears to create cross-selling opportunities.

²⁵³³ Cargotec internal document [REDACTED].

²⁵³⁴ The Parties submitted that this reference refers to 'the potential for selling equipment, services and software together' and not to any competitive advantages of CHE portfolio' (paragraph 4.27 g) of the Parties' Response to the Remedies Working Paper). Even if that is the case (see paragraph 13.324(a)), these documents support that there are synergies in the development of automation technology and synergies in selling and servicing this technology as part of project solution.

²⁵³⁵ Cargotec internal document [REDACTED].

²⁵³⁶ Parties' submission [REDACTED].

²⁵³⁷ Cargotec internal document [REDACTED].

²⁵³⁸ Cargotec internal document [REDACTED].

plan to use the synergies between KAS and Kamos in relation to the development of automation in MEQ.²⁵³⁹

13.326 In relation to Konecranes, it told us that its Port Solutions R&D projects are [REDACTED].²⁵⁴⁰ Konecranes notes, however, that the Port Solutions division has some [REDACTED]. Konecranes explained that these so-called ‘Technology Projects’ may benefit more than one type of equipment – typically Port Cranes and Straddle Carriers, but also, Port Cranes, Straddle Carriers and MEQ, such as the GUI platform.²⁵⁴¹ This is illustrated in a Konecranes internal document, which sets out the [REDACTED].²⁵⁴² This document also lists ‘[REDACTED]’.

13.327 As explained above in paragraph 13.140, while the evidence available to us indicates that there is only one such project at present (which we understand [REDACTED] included with the MEQ Divestiture Business),²⁵⁴³ it shows that these capabilities are, in practice, deployed for projects that cut across different business areas, with R&D projects covering more than one type of CHE. The evidence available to us also indicates that such functions are likely to become more important in future as the industry moves towards increased automation and digitalisation. On this basis, we consider that the non-inclusion of these assets (even taking into account the limited number of ‘live’ projects) presents a material risk that the MEQ Divestiture Business would not be able to compete as effectively as the Parties do at present.

13.328 Overall, the internal documents considered above in paragraphs 13.313 and 13.327 indicate that there is the potential for important synergies and economies of scope in undertaking and deploying R&D across a broad CHE portfolio. They show that the Parties have been seeking to exploit the commercial potential within: i) certain R&D activities that can be carried out centrally that would have potential applications across several product categories; and ii) certain R&D developments in one CHE category that can be rolled into another.

o ***Evidence from the Parties’ public marketing in relation to the advantages of developing and offering a single integrated connectivity solution to be used across all CHE***

13.329 Consistent with the internal documents considered above in relation to the competitive benefits of offering a broad CHE portfolio, information on

²⁵³⁹ We note that the document [REDACTED], includes a clear timetable to [REDACTED].

²⁵⁴⁰ Konecranes internal document [REDACTED].

²⁵⁴¹ Konecranes submission [REDACTED].

²⁵⁴² Konecranes internal document [REDACTED].

²⁵⁴³ Konecranes submission Konecranes’ response to RFI 3 of 10 January 2022, para 11.3.

Cargotec's website about Kalmar Insight (Kalmar's connectivity platform)²⁵⁴⁴ highlights the level of integration between Kalmar connectivity systems with the portfolio of different equipment types (including MEQ and Straddle Carriers) and the advantages of such integration for customers in terms of having all information necessary for the management of their entire fleet in a single platform.

13.330 This may represent a 'portfolio' advantage to the extent that integration with third-party CHE is not possible in some cases, or is more complicated or less seamless, as compared to integration with the Parties' own CHE.²⁵⁴⁵ Further, where the Parties' integration solutions are used with third-party CHE, the Parties would potentially have advantages due to their control of data standards and superior access to data.²⁵⁴⁶ However, we note that Cargotec told us that [REDACTED], while [REDACTED].²⁵⁴⁷

13.331 In relation to Kalmar's Insight, Cargotec's website states that: '[Kalmar] Insight collects together data from your entire fleet and puts it onto a single platform, including equipment built by other manufacturers. For the first time, operators have a real-time, holistic view of their site and equipment performance'. 'At one glance, Insight provides real-time, historical information on multiple and individual sites, whole fleet and single machines, as well as shifts or on individual drivers'.²⁵⁴⁸

²⁵⁴⁴ Kalmar Insight Flyer on Cargotec's website: [Cargotec website, Kalmar Insight: https://www.kalmarglobal.com/news--insights/articles/2019/20190603_goodbye-data-chaos-hello-impactful-insights/](https://www.kalmarglobal.com/news--insights/articles/2019/20190603_goodbye-data-chaos-hello-impactful-insights/). Downloaded on 2 February 2022.

²⁵⁴⁵ Kalmar Insight Flyer on Cargotec's website: [Cargotec website, Kalmar Insight: https://www.kalmarglobal.com/news--insights/articles/2019/20190603_goodbye-data-chaos-hello-impactful-insights/](https://www.kalmarglobal.com/news--insights/articles/2019/20190603_goodbye-data-chaos-hello-impactful-insights/). Downloaded on 2 February 2022.

²⁵⁴⁶ We note one OEM expressed concerns that it would be difficult to compete with a Kalmar-Konecranes standard and that the Parties would have access to other OEMs' 'equipment to run on the same management software' (see 13.341 a)). Another OEM noted that if its equipment is connected to the Parties' connectivity system it may be difficult to have access to the data collected by their systems (13.342 b)).

²⁵⁴⁷ Cargotec email [REDACTED] and Konecranes email [REDACTED].

²⁵⁴⁸ Kalmar Insight Flyer on Cargotec's website: https://www.kalmarglobal.com/news--insights/articles/2019/20190603_goodbye-data-chaos-hello-impactful-insights/. Downloaded on 2 February 2022.

Figure 32: Kalmar Insight, integration with other systems and data from operations



Source: Cargotec website, Kalmar Insight: https://www.kalmarglobal.com/news--insights/articles/2019/20190603_goodbye-data-chaos-hello-impactful-insights/.

13.332 Cargotec’s prospectus in relation to Kalmar Insight states: ‘All new Kalmar equipment can be connected to Kalmar Insight, while older models or equipment from other manufacturers may need to have connectivity hardware fitted to facilitate the seamless flow of data between your equipment and Kalmar Insight.’²⁵⁴⁹

13.333 Information available on Cargotec’s website about its remote servicing offering also shows that Cargotec markets the advantages of being an integrated solutions provider to customers. These extracts set out below make clear that Cargotec considers that customers benefit from the integration between Kalmar’s remote capabilities used for analytics and remote maintenance and Kalmar’s automation systems and wide portfolio of CHE (including MEQ, Port Cranes and SC). Cargotec considers that this integration is important to customers, not only to find ‘new solutions and support equipment manufacturers’ product development’ but also ‘to improve [...] customers’ processes’, creating ‘customer value’. For example:

(a) ‘Originally, the principal reason for connecting mobile container handling equipment to cloud-based analytics was to [...] support equipment manufacturers’ product development. At Kalmar, the first machines to be connected have been the ubiquitous straddle carriers, with RTG cranes currently next in line. However, these in-house remote capabilities have rapidly evolved into full-fledged services for terminal operators’. ‘In a

²⁵⁴⁹ Kalmar Insight prospectus on Cargotec’s website. <https://www.kalmarglobal.com/equipment-services/kalmar-insight/> Downloaded on 2 February 2022.

similar fashion, remote service capabilities that have originally been developed for automation and software systems have recently been finding new applications in mobile container handling equipment’.

- (b) ‘The data gathered from [customers’] machines is stored in [Cargotec’s] secure cloud. From there, [Cargotec’s] experts analyse and enrich it in order to produce a report with clear findings and recommendations to optimise equipment maintenance and usage’. ‘Whether we are dealing with container handling equipment or the entire automation system, remote services can give the terminal a head start by identifying the root causes of problems and resolving issues as they are developing’.²⁵⁵⁰

o **Third-party evidence**

13.334 In addition to the evidence from the Parties’ internal documents and marketing materials considered above, we also assessed evidence from third parties about:

- (a) the potential competitive advantages associated with an OEM having a broad CHE portfolio in terms of ensuring interoperability between the automation software used in different CHE and using the connectivity solutions of a single OEM across different categories of CHE; and
- (b) the competitive advantages for OEMs of having customer relationships across multiple products.

13.335 We considered both third-party evidence submitted before the Provisional Findings Report, and third-party evidence received as part of our engagement with third parties in relation to the effectiveness of possible remedies.

13.336 We received evidence during the remedies consultation process from a number of third parties, including some that had not engaged in our investigation before the Provisional Findings Report (see paragraph 13.97 to 13.104).

13.337 As mentioned above, in paragraph 13.56, the evidence submitted by third parties was assessed together with evidence from the Parties’ internal documents and information provided by the Parties about various aspects of their businesses.

²⁵⁵⁰ Cargotec website, remote service: https://www.kalmarglobal.com/news--insights/articles/2021/20211209_remote-services/.

- Third-party evidence on competitive advantages or benefits associated with a broad CHE portfolio in terms of interoperability and connectivity across different types of CHE

13.338 We start by considering the evidence received prior to the Provisional Findings Report about the extent to which competitive advantages or differences are associated with a broad CHE offer in terms of ensuring interoperability of the ECS automation software used in different types of CHE and connectivity between the connectivity solutions used in different types of CHE.

13.339 As set out in Chapter 7,²⁵⁵¹ RTG customers were evenly split between those that scored interoperability as important in their choice of supplier, and those that scored it neutrally. Both ASC customers that we heard from scored it as being important. We note that it is not possible to look at these scores in isolation to understand whether customers were thinking about interoperability across a wide breadth of CHE (ie including Port Cranes, Straddle Carriers and MEQ) or on a narrower basis (ie in relation to a package with a single product offering) when providing this evidence. As such, we have attached only limited weight to these responses. In their qualitative comments about the strengths and weaknesses of different suppliers, customers' comments seemed to focus on interoperability of automation software within a single category of CHE or across Port Cranes and Straddle Carriers.²⁵⁵² However, one OEM of Port Cranes told us that, '[s]everal different equipment types need to work together to make a port productive. Post-Merger, the Merged Entity can supply every single type of equipment for the port which gives it a distinct advantage against smaller competitors in terms of costs and integration'.²⁵⁵³ The Parties submitted that, while the CMA attached limited weight to the evidential value of the customers' scores of interoperability as a factor in their choice of supplier, 'even this is too much'.²⁵⁵⁴ We note that, while the quantitative evidence of the customers scores was of limited probative value on its own, this evidence should be considered together with other evidence, including qualitative comments from customers (rather than being discounted completely).

²⁵⁵¹ See paragraphs 7.70 and 9.47.

²⁵⁵² For instance, one customer [REDACTED] told us that the degree of interoperability with other equipment and already having an installed base of equipment from a particular supplier will be rated 5 in future tenders (paragraph 12.159), [REDACTED] response to the questionnaire, but following to further discussions with this customer, this seems refer to interoperability between the same type of CHE.

²⁵⁵³ Call note [REDACTED].

²⁵⁵⁴ Parties' submission [REDACTED].

13.340 As discussed in Chapter 9, MEQ customers responding to our questionnaire generally did not score ‘degree of interoperability’ as being an important criterion in their choice of MEQ supplier, and generally scored other criteria more highly.²⁵⁵⁵ We note that, as part of their qualitative comments, while some of these MEQ customers told us that the MEQ was designed to be used on a standalone basis, others said interoperability was important, or was not currently important but would become more important in future.

13.341 As part of our engagement with third parties on remedies, we held calls with third parties during which we assessed the importance of interoperability and interconnectivity both in relation to ECS automation software²⁵⁵⁶ and connectivity solutions²⁵⁵⁷ in more detail.²⁵⁵⁸ Some OEMs and customers of Port Cranes highlighted the increasing importance for customers of interoperability and interconnectivity across different types of CHE and indicated that this is likely to be a factor in a customer’s decision-making. They noted that OEMs with a broad CHE portfolio, such as the Parties, may have a competitive advantage in this respect. For example:

- (a) An OEM of Port Cranes said that the Parties have an incumbency advantage because they have their connectivity solutions installed in the CHE of their current customer base, which means that ‘for the customer, they would be locked into: “I am going to go with Konecranes IT solution because they can get into their own crane”. This OEM also explained that the more equipment an OEM has on its interconnectivity management software, the more data it is able to collect from customers and the better it can streamline its spare part sales and what type of inventory it needs to hold. This third-party noted that it would be ‘very

²⁵⁵⁵ Question wording: *When thinking about purchasing [equipment type], please score the following factors according to how important they are to your choice of supplier. Please assign a score from 1-5 where 5 = very important and 1 = not important at all (more than one factor can have the same score). The factors listed were: differences in equipment reliability, differences in automation/assistive technology features, differences in purchase price, differences in running costs, differences in strength of local aftersales presence (servicing, maintenance, spare parts), differences in efficiency/environmental performance, degree of interoperability with other equipment, and already having installed base of equipment from a particular supplier.*

²⁵⁵⁶ In the Parties’ response to the Consultation Paper, the Parties submitted that ‘third-party feedback are silent on MEQ automation – naturally, as MEQ is not automated at all’ (paragraph 3.10). In this respect, see paragraph 13.273 about the trend toward automation, including in MEQ. Furthermore, the evidence in the Consultation Paper must be read alongside other third-party evidence. One third-party, for example, mentioned that ‘extending automation to MEQ is ‘where the future lies’ (see 13.342 d). We also note that automation is expected in the near future in ATT (see Chapter 10). Cargotec’s TT is not part of the KAS Divestiture Business. One third-party specifically mentioned the importance of connectivity between SC and ATT (13.341 f)).

²⁵⁵⁷ See paragraph 13.281 in relation to the Parties’ submission in the Consultation Paper that ‘connectivity solutions are predominantly used for MEQ’.

²⁵⁵⁸ Contrary to the suggestion in paragraph 3.7(a) of the Parties’ response to the Consultation Paper, we recognise the distinction between interoperability and connectivity. We have taken into account the difference between ECS automation software and connectivity solutions and considered the evidence provided by third parties in relation to each of these aspects. We have found that both technologies are or will be used across different categories of CHE and that, for some customers, there are advantages in using the same automation software in all their CHE in terms of interoperability and in connecting their CHE to the connectivity solutions of the same OEM.

difficult' to have the Parties allow a competitor to access the data collected through the Parties' connectivity systems. It also stated that while developing a cloud-based connectivity solution 'is not something that cannot be done...it takes time and resources and people'.²⁵⁵⁹

- (b) Another OEM of Port Cranes told us that, 'on a piece of paper, you could definitely draw some advantages' that an OEM can have from the same system that applies across a whole range of products. While this OEM told us that ECS can be purchased in the market, a 'lot of experience and skilled people [are needed] to customise that to make that work in a specific environment, so it's not something that you can just sell'. This OEM also commented that it thought Kalmar's 'one stop solution' had only been sold by Kalmar 'once or twice, but not to independent terminals'.²⁵⁶⁰
- (c) One customer told us that 'interoperability and standardisation is always important. If it was disproportionately technically complex or disproportionately expensive to use or run two together, yes, that would absolutely be a factor'.²⁵⁶¹ We tend to shy away from having a number of different operations systems and management systems. Once you have a certain system or infrastructure in place, it can be disproportionate to move away from it from an operation or cost perspective'.²⁵⁶²
- (d) Another customer told us that it is important to have the same connectivity system across different categories of CHE both for operational and maintenance purposes. The customer explained that 'the systems are moving more and more towards' 'integration between the pieces of equipment and the terminal operating systems', which is important 'for efficiency reasons and safety reasons'. This customer also commented that connectivity between different categories of CHE is important for the purposes of maintenance and to facilitate data-capture, remote diagnostics and fault-finding. This customer stated that connectivity and interoperability had not been relevant to its operations until recently, but had now become more important as it has chosen the automation and digitalisation route.²⁵⁶³

²⁵⁵⁹ Transcript of call with [REDACTED].

²⁵⁶⁰ Transcript of call with [REDACTED].

²⁵⁶¹ The Parties submitted that the quote of this customer's submission 'would only be prompted by a question asking whether it would be disproportionately expensive to run equipment from two different OEMs together, which is obviously leading' (Parties submission [REDACTED]). We note, however, that this customer expressed this view in response to the question of whether the connectivity technology would be a consideration for this customer in future purchases (Transcript of call [REDACTED]). We do not consider that this question is leading.

²⁵⁶² Transcript of call with [REDACTED].

²⁵⁶³ Transcript of call with [REDACTED].

- (e) Another customer²⁵⁶⁴ stated that an integrated CHE offer is important and the use of systems such as Kalmar Insight and Kalmar One will increase in the future.²⁵⁶⁵ The customer told us that, while the decision on which supplier's CHE to purchase currently depends mainly on the quality, service and price of the CHE, the supplier's software offering is (if it being included in an offer) a useful add-on to the equipment. It noted that where there is a large range of CHE in the same software system, there is greater connectivity between different pieces of CHE, which then subsequently work better together. Such connectivity advantages may, the customer went on to state, be lost with the proposed Divestiture Businesses. It also said that customers can become reliant on a single supplier of software and noted the risk of a customer becoming reliant on an unknown supplier to maintain or replace software it currently uses post-Merger, as any purchaser of the KAS Divestiture Business may keep Kalmar Insight or 'kill it and replace it' with its own software, which may or may not be as good quality.²⁵⁶⁶ The customer stated that Cargotec's Kalmar Insight is used across all types of Kalmar CHE and that, in practice, Kalmar Insight and Konecranes' TRUCONNECT (which monitor data in usage, fuel consumption etc and are useful for maintenance) only work with Kalmar and Konecranes products, respectively. It further noted that although it is technically possible to retrofit other manufacturers' products to work with integration software produced by other suppliers, no one in the industry ever does this.
- (f) Another customer²⁵⁶⁷ told us that CHE OEMs have been smart in developing integrated platform solutions (combining equipment and automation solutions), as this gives them considerable leverage over port operators, who have been a 'little complacent' in not developing these solutions for themselves. Any port terminal that is automated through these integrated platform solutions is in the control of the OEM that supplies it, as the OEM now has the core competencies for running the port operating within *their* business rather than within the port

²⁵⁶⁴ Transcript of call [REDACTED]

²⁵⁶⁵ This customer acquired connectivity solutions for both MEQ and Straddle Carriers from one of the Parties. This customer stated: 'We are talking about Kalmar reach stackers, empty handlers and tractors at the moment. Those machines are also connected to Kalmar Insight, but now they will belong to the new company and the new company will not have Kalmar Insight, but they will have to connect those machines to TRUCONNECT (Transcript of call [REDACTED]).

²⁵⁶⁶ In paragraph 3.11(a) of their response to the Consultation Paper, the Parties queried what the incentive of a purchaser would be to kill or replace Kalmar Insight. We note that the main concern expressed by this customer relates to the uncertainty about the identity of the purchaser that would acquire the KAS and MEQ Divestiture Businesses. More generally, this customer noted that, from a technical perspective, 'if the whole Kalmar would stay together, that is easier' because if there are any issues Kalmar would have the solution. (Transcript of call [REDACTED]).

²⁵⁶⁷ Transcript of call [REDACTED].

operator's business.²⁵⁶⁸ This customer explained that OEMs will always argue that any automation of new port equipment should always happen on their platform on the basis that this is safer and cheaper. OEMs' equipment will always, likely, interface better with their own equipment; whilst it may be possible to integrate other suppliers' equipment, this likely comes at a cost. This customer stated that 'there are very easy ways how a supplier can make that unattractive for you [to connect their ECS software with third party equipment]. For instance, they can say, "We do not take any kind of performance liability for our system because it could always be that third-party equipment or that third-party platform that you are using"'. If a port has, for example, a Kalmar automated platform and Kalmar automated SC, it has an incentive, when looking to purchase ATT, to buy these from Kalmar as well. The customer stated that this logic applies only to automated (not manual) operations. This customer also noted that although suppliers are marketing that it is possible to use their automation and connectivity systems with third party equipment, when the customer previously asked for this, their supplier made this difficult.

- (g) One customer that uses its own automation software told us that it is important that it remains in control of its software. This customer noted that OEMs are trying to get income from areas outside of just selling CHE and for a broader base of influence in the operation of the port terminals of their customers.²⁵⁶⁹
- (h) The operator of a small port told us that interoperability is not an issue for smaller ports who cannot afford to invest in the best quality equipment, but larger port terminals may have a different experience. This customer noted that the trend towards automation is accelerating, with significant new investment driving towards automated, or semi-automated, products.²⁵⁷⁰ However, it is not clear whether the outcome of this trend will lead to different proprietary autonomous solutions being

²⁵⁶⁸ In relation to this customer's feedback, the Parties submitted in paragraph 3.11(b) of their response to the Consultation Paper that automated terminals are usually larger terminals that can avoid being 'controlled' by an OEM. However, we note that this customer, which expressed concerns about OEMs' control, is a GTO and does not have its own software. The Parties further submitted at paragraph 3.11(b) that the customer's statement was not evidence of any portfolio advantage given the lack of automation in MEQ. As noted previously at paragraph 13.277 and 13.278, Cargotec is actively investing in automated MEQ development.

²⁵⁶⁹ Transcript of [REDACTED].

²⁵⁷⁰ In paragraph 3.10 of their response to the Consultation Paper, the Parties submitted that statements on the increasing importance of automation should be weighed against industry research on the topic, which concludes that the uptake will not be as significant as suggested. However, the Parties' internal documents and submissions in the course of our inquiry note that automation is an important trend in the CHE industry (see paragraphs 13.265 to 13.270).

offered by different suppliers, or to a standardised automated solution.²⁵⁷¹

- (i) Another customer told us that it uses its own proprietary integration IT system and develops its IT systems in-house.²⁵⁷²

13.342 In addition, some MEQ OEMs and MEQ customers indicated that as technology develops, the Parties may hold commercial advantages relating to interoperability and interconnectivity, compared to standalone MEQ businesses that do not have a software system spanning multiple types of CHE. For example:

- (a) One OEM of MEQ told us that, as technology develops, for some terminals that use different categories of equipment (eg RTG and reach stackers), 'it's helpful to that particular customer' if all that technology can speak to each other. Although this OEM considered that the MEQ Divestiture Proposal was a standalone business that would allow the purchaser to compete, it said that the Parties have a strong advantage by having this broad portfolio of products and smaller players, like itself, could not replicate that advantage, because an OEM that only offers MEQ would have the challenge of developing and offering an agnostic technology system that not only can 'talk' with its MEQ equipment, but with the Port Cranes of all other OEMs. This third party explained that the advantage that the Parties hold is to be able to offer a technology that they control to be used in all equipment in a port terminal. It noted that the Parties have an incumbency advantage in this respect, because they already have their own technology ingrained into the equipment of their customers and the technology of other OEMs would have to be 'agnostic' to be interconnected.²⁵⁷³
- (b) An OEM of MEQ told us that 'one of the major things [t]hat everybody had difficulty with is that if Kalmar Konecranes would be one, and everything would be run on the same system, the access for other people's equipment to run on the same management software, fleet management software and so on'. The OEM added that 'de facto you would have the Kalmar-Kone standard because most of the equipment around the world would run on that. To beat that, that would be a difficulty...it is very difficult to see now if [the Parties' Remedy Proposal] would take care of that'.²⁵⁷⁴

²⁵⁷¹ Transcript of call [REDACTED].

²⁵⁷² Another customer told us that it had no views on this topic.

²⁵⁷³ Transcript of call with [REDACTED]. This customer stated that '[REDACTED].'

²⁵⁷⁴ Transcript of call with [REDACTED].

- (c) An MEQ OEM told us that, as the importance of automation and interconnective systems increases, OEMs (such as the Parties) have an important competitive advantage by being able to offer this multiplatform remote support and by having captive technologies inserted into their CHE. This OEM also explained that Insight is a 'multiplatform software' and that Cargotec wants to retain it to use in MEQ and use it in Konecranes straddle carriers, because Konecranes equivalent system (Tuck) is weaker. The third party further noted that there are synergies within the Parties' CHE '(ie software platforms, after sale service network and programs, etc.)' that might be impaired by the Parties' Remedy Proposal.²⁵⁷⁵
- (d) A customer noted that it currently has Insight 'on straddle carriers' and 'reach stackers'. This customer explained that Insight can be used to 'look at' what is happening across 'several' categories of CHE and stated that 'what you do not want to be doing is bouncing from one software system to another to evaluate what one machine is doing compared to another one. If you have them all on the same system, it makes it much easier for evaluation purposes'. This customer also said that extending automation to MEQ is 'where the future lies' and that it would be looking at this, although not in the next two years.²⁵⁷⁶ In relation to the future importance of automation for MEQ, it noted that: 'not this year, not next year, not the year after but we are certainly already looking at things down the automation lines for the mobile equipment'.²⁵⁷⁷

13.343 The evidence from some of the potential purchasers that submitted bids for the KAS Divestiture Business also suggests that automation is becoming increasingly relevant in CHE. Some potential purchasers also noted the importance of interoperability for the success of the KAS Divestiture Business:

- (a) One bidder told us automation will drive investment from end customers over the coming years and it sees potential for new revenue streams (eg, by adding an automation fee or exploring a SaaS-type model). This bidder explained that it did not see the KAS Divestiture Business becoming a systems integrator, responsible for ensuring integration and interoperation across other port equipment. However, this bidder observed that an interesting challenge will arise in ensuring that the KAS Divestiture Business can connect to the relevant port management systems and can interface with other automated machinery. This bidder

²⁵⁷⁵ Transcript of call with [REDACTED].

²⁵⁷⁶ Transcript of call with [REDACTED].

²⁵⁷⁷ Transcript of call with [REDACTED].

told us that it plans to carry out further diligence on how interconnected the KAS Divestiture Business' equipment would be with other port equipment.²⁵⁷⁸

- (b) Another bidder told us that it was unsure what 'software and IT', would be included in the divestiture package. It noted that it would want its technical team to investigate this closely. For example, if it could not use Cargotec's automation technology in the future, that would be a 'big problem'. Conversely, if it could not use software specific to a niche part of the industry, it would be less concerned.²⁵⁷⁹
- (c) Another bidder told us that 'automation will be key to success in the ports market.'²⁵⁸⁰
- (d) One potential bidder²⁵⁸¹ told us that it was interested in understanding what automation services would be included [REDACTED]. This bidder said that it is 'very important' that its equipment could be linked with that ECS, which would be a 'great advantage'. In relation to automation of MEQ, this third party said that it will want to explore how far Kalmar has got with using automation technology with MEQ.

13.344 Third-party evidence regarding the competitive benefits of offering a broad CHE portfolio is mixed.²⁵⁸² The evidence indicates that interoperability and connectivity between different types of CHE is a consideration for some customers that require or will require automated and digitalised systems (unless they have their own automation software) and that the requirement for automation and digitalisation is increasing. It is not currently an important factor for customers with manual operations. Although automation is currently mainly relevant for customers' decision-making in relation to the

²⁵⁷⁸ Transcript of call [REDACTED].

²⁵⁷⁹ Transcript of call [REDACTED].

²⁵⁸⁰ Transcript of call [REDACTED].

²⁵⁸¹ This third-party submitted a non-binding offer to the MEQ Divestiture Business and initially expressed interest in the KAS Divestiture Business, but subsequently decided not to pursue a non-binding offer for the KAS business.

²⁵⁸² The Parties submitted that there is no justification to conclude in the round that there are competitive advantages of offering a broad integrated CHE portfolio, when the results of third-party evidence were mixed. (Parties' submission [REDACTED]). The Parties reiterated in their response to the Consultation Paper that the CMA 'misrepresents evidence in a number of ways, eg, by describing it as mixed, but then arriving at a conclusion that 'in the round' it does not support the Parties' conclusions without explaining why on balance this view was more compelling' (paragraph 3.6 iii)). In this context, it should be noted that we do not conclude that there are competitive advantages of offering a broad integrated CHE portfolio based on the third-party evidence alone (which we accept is mixed). Our overall conclusion on the whether a broad CHE portfolio confers competitive advantages is set out at paragraph 13.379 to 13.386 and draws on the totality of the evidence we have gathered on this point, which include submissions made by the Parties, internal documents and third-party views. We consider that this approach is consistent with the framework for the CMA's assessment of the evidence set out in the Merger Assessment Guidelines (CMA129, paragraphs 2.19 – 2.25), in particular paragraph 2.23 which states: 'The CMA does not normally consider specific pieces of evidence in isolation when considering the question of an SLC, although it is common for the CMA to weight pieces of evidence differently'.

supply of Port Cranes, the evidence above indicates that automation is expected to become more important in ATT and MEQ over time. Digitalisation is also a trend in the industry. This means that the Parties have an advantage in offering a broad portfolio because some customers already seem to value – and are likely to consider more important in the future – the ability to buy CHE with interoperable automation software and to use the same connectivity solutions across different categories of CHE.

13.345 As explained in paragraph 13.341, evidence from third parties suggests that using a single automation software and connectivity solution across the CHE of the same OEM may facilitate interoperability and connectivity. Furthermore, to the extent that the Parties' automation and connectivity solutions could be used with third-party CHE, the evidence available to us indicates that the Parties would potentially maintain certain commercial advantages due to their control of data standards and superior access to data.²⁵⁸³ As such, some OEMs consider that they may be disadvantaged if they cannot replicate the Parties' broad offerings and associated advantages in terms of interoperability and connectivity.

- Third-party evidence on competitive advantages for OEMs of having customer relationships across multiple products

13.346 Some third parties told us that another benefit of the Parties' broad CHE portfolio arises from the relationships they build and develop with some customers through multiple interactions across their portfolio. For example:

- (a) An OEM of Port Cranes explained that an OEM that offers different categories of products will be in contact with customers 'all the time' and they will often become aware of business opportunities, for instance for Port Cranes, before they are publicised and can work on making sure their cranes conform with the specification required in the tender.²⁵⁸⁴
- (b) An MEQ OEM told us that, although OEMs that supply only a single category of products can 'survive', the Parties have an advantage resulting from their vast portfolio of CHE. This OEM explained that, for example, there are common systems for spare parts and technicians who are able to work on the full range of different categories of CHE products. There are also synergies across different categories of CHE, including in the product support and the distribution. This third-party said that 'Kalmar is an evident example of this'. This OEM explained that

²⁵⁸³ An OEM noted that if its equipment is connected to the Parties' connectivity system it may be difficult to have access to the data collected by their systems (see 13.342(b)). In addition, another OEM expressed concerns with Kalmar having access to other OEM CHE to run on its connectivity system (see 13.341(a)).

²⁵⁸⁴ Transcript of call with [REDACTED].

even if some customers buy some MEQ equipment from them, these customers also continue to buy MEQ from the Parties (even if they would prefer to have a single purchaser of MEQ) to keep the relationship with the Parties, which are also supplying other (possible more valuable) CHE.²⁵⁸⁵

- (c) A distributor told us that OEMs that have a wider portfolio across different categories of equipment have a competitive advantage, because when they are interacting with one of the big ports or terminals, these OEMs can be their supplier of Port Cranes and Straddle Carriers and 'pick up the lift truck business as part of that'. As a result, there may be lost opportunities to compete, although this distributor pointed out that on the other hand 'you have a business that is more focused on a smaller subset, so I do think it could work either way'. Overall the distributor stated that they think 'it is a disadvantage not having the full product range.'²⁵⁸⁶
- (d) One customer told us that, the more business a port has with a supplier, the more it needs to engage with the supplier to solve problems that occur along the way. The relationship with the supplier will naturally grow stronger over time as problems are resolved. This also leads to both companies enjoying much more leverage to cross-solve problems, relationships are 'give and take', and successful relationships will work towards a position where problems are traded and smoothed and significant compensation sums are not flowing between the companies. This can sometimes influence purchasing decisions as problems can be solved by purchasing a solution, or piece of equipment, from a particular supplier.²⁵⁸⁷
- (e) Another customer told us it has built up strong relationships with existing suppliers, such as Cargotec and Konecranes. As a result, they have a detailed knowledge of the port, which it described as critical, because OEMs acquire good knowledge of how your port terminal operates and can help you solve problems.²⁵⁸⁸
- (f) Another customer told us that procurement 'decisions are taken also apart from the price and technical specification' and 'the customer

²⁵⁸⁵ Transcript of call with [REDACTED].

²⁵⁸⁶ Transcript of call with [REDACTED].

²⁵⁸⁷ Transcript of call [REDACTED].

²⁵⁸⁸ Transcript of call [REDACTED].

friendly approach or pro-customer approach, maintenance, service and these kinds of soft tools are also quite important'.²⁵⁸⁹

13.347 While mixed, there is some evidence from third parties that relationships across multiple products is relevant for some customers and may influence their purchasing decisions to some extent.²⁵⁹⁰ A purchaser of one of the Divestiture Businesses may not be able to explore broadly the same advantages that the Parties currently have in relation to customer relationships and degree of access to new business opportunities by not having a broad CHE offering.²⁵⁹¹

o ***Evidence in relation to customers' purchasing of multiple types of CHE from each of the Parties***

- Parties' submissions and data on the extent to which customers buy multiple types of CHE from the Parties

13.348 We consider below the Parties' submissions and data regarding the extent to which customers purchase both: (a) Port Cranes or Straddle Carriers and (b) MEQ from the Parties.

13.349 The Parties submitted that customers:

- (a) do not tend to bundle together purchases of multiple equipment types; and
- (b) have mixed fleets and do not tend to single-source (ie do not source different types of CHE from a single supplier).²⁵⁹² In support of their submission, they said that all UK terminals with a capacity of more than

²⁵⁸⁹ Transcript of call [REDACTED].

²⁵⁹⁰ The Parties submitted in paragraph 3.16 of their response to the Consultation Paper that 'no mention has been made' of whether relationships with customers span 'both MEQ and Straddle Carriers/Cranes', which is relevant to the 'question of whether the divestment of an entire CHE division is necessary.' We note that the evidence submitted in the Consultation Paper should not be considered in isolation, but alongside the other evidence gathered by the CMA (on which the Parties had the opportunity to comment in response to the Remedies Working Paper). For example, third parties told us that customer relationships in relation to cranes/Straddle Carriers offer the Parties early notice of business opportunities in MEQ (see). Furthermore, the Parties' internal documents indicate that customer relationships are with OEMs as a whole. For example, one of Cargotec's internal documents explains that '[REDACTED]' and that some customers believe that they have more leverage over the OEM if they purchase different categories of CHE from the same OEM (see 13.318).

²⁵⁹¹ The Parties submitted in paragraph 3.17 of their response to the Consultation Paper that the loss of customer relationships would be mitigated by the fact that 'any buyer of the KAS Divestiture Business would be an industry buyer' and 'would most likely have existing customer relationships of its own. We have taken into account the purchaser criteria that would be required to address the composition risks we have identified as part of our assessment of purchaser risks (see paragraphs 13.495 to 13.553). We found that the condition offered by the Parties that the suitable purchaser will acquire both the KAS Divestiture Business and the MEQ Divestiture Business further restricts the pool of purchasers giving rise to a material risk that a purchaser with these capabilities could not be found.

²⁵⁹² Parties' submission [REDACTED].

100,000 TEUs²⁵⁹³ source equipment from multiple different suppliers and that, in the European Economic Area, only [REDACTED]% of customers exclusively source MEQ from the same manufacturer as their yard cranes supplier.²⁵⁹⁴

13.350 The evidence that we have seen shows that different categories of CHE are not usually purchased as part of a single procurement process. In particular, data from the Parties shows that, over the period 2018-20, covering the Parties' customers in Europe, only one UK customer did so. This was ABP Immingham, which purchased both Port Cranes and MEQ from Cargotec in 2019 as part of the same procurement process.

13.351 We note, however, that the Parties' data in relation to customers buying multiple types of CHE from each of the Parties, in the last three years, as part of separate procurement processes shows that:

- (a) Between 2018 and 2020, Cargotec had [REDACTED] customers of Port Cranes, SC and ShC in Europe of which [REDACTED] customers ([REDACTED]%) also purchased MEQ from Cargotec in that period. These [REDACTED] customers accounted for around [REDACTED]% of Cargotec's revenues for these equipment categories in these three years.²⁵⁹⁵
- (b) Between 2018 and 2020, Konecranes' had [REDACTED] customers of Port Cranes, SC and ShC in Europe, of which [REDACTED] customers ([REDACTED]%) also purchased MEQ from Konecranes in the period. These [REDACTED] customers accounted for around [REDACTED]% of Konecranes' revenues for these equipment categories in these three years. These figures do not include MEQ sales by Konecranes' distributors (only direct sales by Konecranes of both Port Cranes and MEQ) and are therefore likely to understate the extent to which customers buy both categories of Konecranes equipment.²⁵⁹⁶

13.352 We consider that the statistics at paragraph 13.351 are subject to some limitations and are therefore likely to provide only limited insight into competitive dynamics. First, where customers did not buy more than one equipment category from a Party in the three-year period, this may reflect the fact that the customer did not tender for certain equipment during that period (which may not be uncommon given the relatively long lifecycle of certain CHE, such as Port Cranes and SC), rather than the customer

²⁵⁹³ Twenty-foot equivalent unit (TEU) is the standardised measure for containers in the industry where one 40ft container equals two TEU.

²⁵⁹⁴ Parties' submission [REDACTED].

²⁵⁹⁵ CMA analysis of Cargotec's data (Cargotec submission [REDACTED]).

²⁵⁹⁶ CMA analysis of Konecranes' data. (Konecranes submission [REDACTED]).

preferring different suppliers for different equipment categories.²⁵⁹⁷ Second, where customers did buy more than one equipment category from a Party in the period, it is not possible to determine from the data whether this purchasing choice was influenced by a preference for having the same supplier across equipment categories.

13.353 Given the limitations set out above, limited weight can be placed on this evidence in isolation. We note, however, that a significant minority of the Parties' customers have purchased both MEQ and Port Cranes or horizontal equipment from the Parties in the same recent three-year period. This evidence should be considered together with the third-party evidence set out below, regarding the extent to which customers have a preference to source both of these equipment categories from a single supplier.

13.354 In response to the Remedies Working Paper, the Parties submitted that 'Absent any preference for single sourcing, one could still reasonably expect the Parties to have supplied at least one HDFLT, RS or ECH to around [REDACTED]% of their crane/Straddle Carriers customers.'²⁵⁹⁸

13.355 We note that the percentages used by the Parties underlying the statement in 13.354 are not directly comparable with market shares, as they do not contain information about how many customers in the market as a whole bought both categories of CHE in the period (from any supplier(s)). We note, as explained in paragraph 13.351, that the percentages used in our analysis have some limitations and we have therefore placed limited weight on these figures in isolation. We interpret these figures, however, in light of the evidence of third parties on the importance for customers of purchasing different categories of CHE from a single purchaser.

- Third-party evidence on importance for customers of purchasing different categories of CHE from a single purchaser

13.356 We discuss below third-party evidence on the importance for the customer of purchasing different categories of CHE from a single purchaser. We start with evidence from customers and then consider evidence from OEMs.

13.357 As part of our competitive assessment we did not ask customers specifically about purchasing different categories of CHE from a single purchaser. As set out in Chapter 7, when asked to score a number of factors according to their

²⁵⁹⁷ Consistent with this, fewer customers bought both Port Cranes or SC/ShC and MEQ from the Parties when considering a shorter time period of 12 months. In particular, only two Cargotec customers bought both Port Cranes or SC/ShC and MEQ in 2021 (accounting for around 2% of Cargotec's revenues for these equipment types in 2021), while [REDACTED] of Konecranes customers did so. CMA analysis of Cargotec's data (Konecranes submission [REDACTED]) and CMA analysis of Konecranes' data (Cargotec submission [REDACTED]).

²⁵⁹⁸ Parties' submission [REDACTED].

importance to their choice of supplier,²⁵⁹⁹ most RTG and MEQ customers did not score 'already having installed base of equipment from a particular supplier' as important in their choice of supplier.²⁶⁰⁰ We note, however, that one customer told us that, although price was the most important factor in its choice of supplier, 'If you tackle it purely from an asset management point of view, it is perfect if you can buy all of your equipment from one vendor because it minimises the amount of spare parts variation, the technical training that you need to undertake and you end up with your incumbent technicians very familiar with the equipment and your ability to maintain it and keep it working at its optimum is much easier because your team become very familiar with it'.²⁶⁰¹

13.358 As part of our engagement with third parties on remedies, we asked customers more specifically about the extent to which they buy CHE together and the competitive significance of suppliers being able to offer a range of CHE including MEQ and Port Cranes. In this regard:

- (a) A customer that purchased both MEQ and Port Cranes from Cargotec as part of the same procurement process submitted that the value offered for the overall package procurement 'was a big driver' in its decision to award that tender to Cargotec²⁶⁰² and that 'bundling tenders together achieves a better price'.²⁶⁰³ In a subsequent conference call, this customer explained that it was motivated by achieving cost efficiencies in relation to the underlying equipment costs and also assembly and installation in this customer's port terminal. This customer noted that bundling led to a 'better commercial deal' and that OEMs offering only one equipment type were not competitive in their bids for that type of equipment. The customer also stated that it is important that the CHE in its terminal 'works together', in terms of: i) operational familiarity of the equipment (ie an operator moving from a STS to eRTG to ECH would be familiar with the controls and layout); ii) a 'familiar user interface' for the telematics in terms of retrieving operational and maintenance data; iii) one point of contact for support of the equipment in the container terminal; and iv) one source for any strategic spares, as there are likely

²⁵⁹⁹ Question wording: *When thinking about purchasing [equipment type], please score the following factors according to how important they are to your choice of supplier. Please assign a score from 1-5 where 5 = very important and 1 = not important at all (more than one factor can have the same score). The factors listed were: differences in equipment reliability, differences in automation/assistive technology features, differences in purchase price, differences in running costs, differences in strength of local aftersales presence (servicing, maintenance, spare parts), differences in efficiency/environmental performance, degree of interoperability with other equipment, and already having installed base of equipment from a particular supplier.*

²⁶⁰⁰ Paragraph 7.70,

²⁶⁰¹ Paragraph 12.57, a) iii). See Transcript of call [REDACTED].

²⁶⁰² Response to the P2 questionnaire [REDACTED].

²⁶⁰³ Note of call in P1 [REDACTED].

common parts across the different types of equipment which would reduce the customer's inventory holding.²⁶⁰⁴

- (b) A customer that purchased both MEQ and Port Cranes from Cargotec (via separate tender processes) submitted that:²⁶⁰⁵
- (i) Although it would choose the OEM supplier that offers the best CHE to the requirements of its port terminals, Kalmar has currently a 'distinct advantage' given its ability to offer MEQ alongside Port Cranes and automation, as it allows 'one-stop shop' solutions to multi-faceted problems. This customer stated, in particular, that Kalmar 'can offer us terminal tractors, they can offer us forklifts, they can offer us yard planning, they can offer us software, reach stackers, cranes. It is all there whereas others cannot'. This customer explained that it deals with a 'maintenance manager' in Kalmar who is responsible for the maintenance of all its equipment, 'whether it be a reach stacker, a straddle carrier' and that when it is 'reporting defects, breakdowns and things like that, there is one person in Kalmar it reports to that into and then that person co-ordinates from there'. This customer described this as a 'one-stop shop for all'.²⁶⁰⁶
 - (ii) In relation to Port Cranes, what Kalmar is offering is the 'full package...not just their crane' and that this 'one stop shop' offer would sway it to Kalmar in relation to purchasing RTG. It said that Kalmar does 'everything from the site survey, the civil engineering to get the crane into place, the building of the frame, the installation, the maintenance, the software, everything'. This customer's understanding is that there are other divisions of Kalmar other than KAS involved in the supply of this package.²⁶⁰⁷
- (c) Another customer told us that its own purchasing strategy was to have separate frameworks for Port Cranes and MEQ but noted that, depending on their strategies, some other customers may prefer to buy all port equipment from one supplier.²⁶⁰⁸

²⁶⁰⁴ Note of call [REDACTED].

²⁶⁰⁵ We note that, as part of our phase 1 investigation, [REDACTED] told us that it deals with a 'maintenance manager' in Kalmar who is responsible for the maintenance of all its equipment, 'whether it be a reach stacker, a straddle carrier'. This customer also told us that when it is 'reporting defects, breakdowns and things like that, whether it be a straddle carrier or a reach stacker' there is one person in Kalmar it reports to that into and then that person co-ordinates from there. This customer described this as a 'one-stop shop for all'. Note of call in P1 with [REDACTED].

²⁶⁰⁶ Transcript of call with [REDACTED].

²⁶⁰⁷ Transcript of call with [REDACTED].

²⁶⁰⁸ Transcript of call with [REDACTED].

- (d) Another customer told us that there is no advantage for OEMs such as Cargotec, who are able to offer Port Cranes and MEQ over OEMs who cannot offer both. This customer said it is not ‘one against the other’, its selection process has been ‘I have selected you. Now, I am going to get the best value out of you’.²⁶⁰⁹
- (e) Another customer²⁶¹⁰ told us that there are advantages and disadvantages in having the same OEM supply MEQ and Port Cranes. On the one hand, while it is unnecessary to buy all CHE from the same OEM, as the industry moves towards automation there may be integration advantages from buying all equipment for one terminal from one OEM. On the other hand, there is a risk that a customer can become reliant on the supplier, which may lead to reduced quality.²⁶¹¹ This customer also noted that suppliers offering a narrower portfolio are worse off in terms of R&D, which can have a ‘read across’ to different types of CHE. By way of example, the customer explained that a supplier such as Hyster, which does not manufacture automated Port Cranes or SCs, would be in an inferior position as compared to the Parties if it wanted to automate trucks.²⁶¹²
- (f) Another customer²⁶¹³ explained that the range of products available from a supplier does not really influence the customer’s choice of supplier for manual equipment, as they will purchase the best product in the market at the time irrespective of who the supplier is and whether they have other equipment from the same supplier. However, the offer of a portfolio across different types of CHE is relevant in relation to automated terminals given the benefits of interoperability across different types of CHE.
- (g) One customer told us that it has CHE from all major suppliers and has worked on that basis for the last 20 years. It tries to strike a balance between being open to all suppliers but also not partnering with too many different suppliers. It said that if you want a broad range of

²⁶⁰⁹ Transcript of call with [REDACTED].

²⁶¹⁰ Transcript of call with [REDACTED].

²⁶¹¹ The Parties submitted in paragraph 3.20(a) of their response to the Consultation Paper that this evidence is ‘at most neutral, as it allegedly refers to both disadvantages and advantages of buying all equipment from a single OEM.’ In assessing remedies, however, we cannot discount in our assessment any advantages in purchasing different categories of CHE from a single purchaser, as such advantages would be lost with the Parties’ Remedy Proposal, representing a risks to its effectiveness.

²⁶¹² The Parties submitted in paragraph 3.20(a) of their response to the Consultation Paper that ‘market participants’ have ‘different strategies and marketing approaches’ and ‘there is no basis to assume that one confers certain advantages over the other.’ However, the evidence of this customer clearly indicates that Hyster is at a disadvantage in terms of technologies that should be interoperable and connected to different categories of CHE. Unlike the Parties, a company with the strategy of offering a single category of CHE cannot cater to customers that have a preference for a single supplier of CHE.

²⁶¹³ Transcript of call [REDACTED].

products then the technicians will have to be familiar with a broader range of platforms. It has tried to limit different software suppliers to two or three, so the technicians do not have to familiarise themselves too often.²⁶¹⁴

- (h) Another customer²⁶¹⁵ told us that a broad portfolio of CHE including Port Cranes and MEQ is not an important procurement consideration for it. This is because it only acquires MEQ, and bespoke cranes designed specifically for its intended use.

13.359 In relation to evidence from OEMs, as set out in Chapters 7 and 9, some OEMs provided qualitative comments on the strengths and weakness of competitors in relevant product categories. We note that, while OEMs supplying MEQ and Port Cranes that we heard from did not, at that stage, specifically highlight the Parties' breadth of offering across different types of CHE as a strength, one OEM of MEQ listed the offer of a 'full line of port equipment' as a strength of Cargotec's MEQ offer (see paragraph 13.360 below).

13.360 As part of our engagement with third parties in relation to remedies, we also asked a number of OEMs that supply Port Cranes or MEQ (but not both) about whether being present in only MEQ or Port Cranes impacted their competitiveness with customers:

- (a) An OEM that only supplies Port Cranes, told us that OEMs that have a wider portfolio may have an advantage because they 'can cross subsidy [sic] in a way and find ways to make the whole package more attractive'. There have been situations in the past in which this OEM could not compete in 'package deals' against Chinese players with wider portfolios.²⁶¹⁶ This third party told us that 'it's rather for the really big greenfield projects that is an issue, but it's not something that we're really suffering from'.²⁶¹⁷²⁶¹⁸

²⁶¹⁴ Transcript of call [REDACTED].

²⁶¹⁵ Transcript of call [REDACTED].

²⁶¹⁶ It is not clear whether those projects were in Europe (including the UK) or in other region.

²⁶¹⁷ Transcript of call with [REDACTED].

²⁶¹⁸ In their response to the Remedies Working Paper the Parties submitted, based on this reference, that the CMA's approach has involved a complete 'volte face' in relation to the competitive strength of Chinese suppliers. The Parties noted that, while in its competitive assessment, the CMA had consistently downplayed or simply ignored the competitive strength of the Chinese suppliers, in the context of considering the Parties' Remedy Proposal, the CMA was using 'their strength as evidence for the supposed competitive advantages of a full portfolio'. We do not agree with this claim. We simply quoted a competitor, which mentioned the 'package deals' offered by Chinese competitors. We have not, and could not, make inferences based on this quote about the competitive strength of the Chinese suppliers as a whole in Europe. We consider this quote provides evidence that 'package deals' may be valuable for some customers. This competitor had not indicated whether these package deals are offered in Europe by Chinese suppliers and we cannot infer from the example provided by this competitor that the Parties are not in a position to offer such package deals.

- (b) Another Port Cranes OEM told us that it would typically see tenders for RTG only, or for RTG and STS together (because a port buying two STS would need six RTG to support those). RS would not typically be purchased alongside these cranes. However, it said that tenders for a wider range of equipment (including Port Cranes and MEQ) are sometimes seen in tenders for greenfield sites where there is no existing terminal.²⁶¹⁹
- (c) An OEM that only supplies MEQ stated that in some 'big deals with RMGs, RTGs', instead of offering a discount, OEMs that have a wide portfolio 'throw in three or four reach stackers'. This competitor told us that on these occasions it did not get a chance to bid to supply the reach stackers however, it also noted these occasions were very rare. We note that, in response to our phase 2 questionnaire, this competitor listed a strength of Cargotec in RS and ECH as 'full line of port equipment'.²⁶²⁰
- (d) Another MEQ OEM also told us that there have been a small number of situation[s], especially in 'big worldwide tenders', where an OEM did not win a contract for MEQ because the customer had [a] preference to have a supplier that could supply not only MEQ but also the Port Cranes or horizontal equipment. However, this OEM emphasised that although 'it does happen' it is 'not the majority of the business'.²⁶²¹
- (e) Another MEQ OEM told us that although OEMs that supply only a single category of products can 'survive', the Parties have an advantage resulting from their vast portfolio of CHE. This OEM explained that, for example, there are common systems for spare parts and technicians who are able to work on the full range of different categories of CHE products. There are also synergies across different categories of CHE, including in the product support and distribution. This third party clarified that 'Kalmar is an evident example of this'.²⁶²²
- (f) In contrast to this, one distributor told us that 'there is a very different skillset required into maintaining a shuttle carrier versus maintaining a lift truck' and therefore, 'it would be unlikely to be the same engineering resource'.²⁶²³

²⁶¹⁹ Transcript of call with [REDACTED].

²⁶²⁰ Response to phase 2 questionnaire [REDACTED].

²⁶²¹ Transcript of call with [REDACTED].

²⁶²² Transcript of call with [REDACTED].

²⁶²³ Transcript of call with [REDACTED].

13.361 We also asked potential purchasers of the KAS Divestiture Business about the importance of offering a broad portfolio of different types of CHE.²⁶²⁴

- (a) One bidder²⁶²⁵ suggested that it may be relevant to offer to customers different types of CHE. One bidder told us that the KAS Divestiture Business alone would not be enough to complete a port installation. It explained that it would have to develop other products. In particular, it would need to offer reach stackers to have a complete solution for port customers.^{2626 2627}
- (b) Another bidder told us that it was not concerned that the KAS Divestiture Business does not include MEQ and that, although it was also looking at Konecrane's MEQ Business, its initial view was that MEQ is used for different functions to Port Cranes and SC. However, it plans to investigate further how customers purchase port equipment and, in particular, whether procurement is joint.²⁶²⁸
- (c) Another bidder noted that the KAS Divestiture Business' product offering appeared to be complete and that it did not consider that the omission of MEQ activities would prevent the KAS Divestiture Business from competing effectively. It explained that, in its view, customers can and often do select a 'best in class' product from different suppliers instead of acquiring all aspects of CHE from a single supplier.²⁶²⁹ This bidder

²⁶²⁴ In the Parties' response to the Consultation Paper, the Parties submitted that the feedback of the potential purchasers who submitted an indicative bid for the KAS Divestiture Business and were contacted by the CMA 'is nearly entirely supportive of the Parties' position, and fundamentally undermines the CMA's contention that a broad product offering encompassing both MEQ and HTE/cranes is essential for competitiveness' (paragraph 3.21). Since most potential purchasers have only made an indicative bid to acquire the KAS Divestiture Business, it is to be expected that these potential purchasers would suggest that they do not require to offer other categories of CHE beyond Port Cranes and Straddle Carriers. One of these bidders nevertheless told us that the KAS Divestiture Business alone will not be enough to complete a port installation.

²⁶²⁵ Transcript of call [REDACTED].

²⁶²⁶ This potential purchaser stated that 'When you enter the port business, you really need a range of products to be successful in a port. We believe even with the segment we have made the bid for, that will not be enough product for us to complete a port installation. We could see that we will have to develop other products, Particularly, where the automation is going to be so key to be successful in port industry'. (Transcript of call [REDACTED]).

²⁶²⁷ In the Parties' response to the Consultation Paper, the Parties submitted that the concern expressed by this third-party in relation to its being able to offer complete port solutions to customers 'is irrelevant: greenfield projects are rare and in any event, it is extremely unlikely that any customer would purchase all CHE required for such a project from a single supplier' (see paragraph 3.21(b)). We see no reason to question the uncaveated statement of this bidder, which considers the offer of complete port solutions important, such that it considers they will have to develop other products. In addition, we refer to the evidence from third parties about the advantages of purchasing CHE from the same OEM (regardless of whether the purchase occurs as part of the same procurement process) (see 13.358 and 13.360). The Parties also noted in their response to the Consultation Paper that, in the CMA's summary, feedback from 'bidders which supports the Parties' views' about importance of offering a broad portfolio did not include the caveat made in relation to other bidders about the need to conduct further due diligence (paragraph 3.22). We accept that this caveat equally applies in relation to all bidders.

²⁶²⁸ Transcript of call [REDACTED].

²⁶²⁹ Transcript of call [REDACTED].

caveated its comments, however, on the basis that it needed to do further due diligence on the scope of the KAS Divestiture Business.

- (d) One industry bidder that submitted a non-binding offer to the MEQ Divestiture Business and expressed interest in the KAS Divestiture Business (although subsequently decided not to pursue a non-binding offer for the KAS business) told us that, if it were to acquire the KAS Divestiture Business as well as the MEQ Divestiture Business, it would enable it to offer what is known in the industry as the ‘full liner’, which is the ability to handle anything from the quay side to the land side. This bidder told us that the KAS Divestiture Business would provide a competitive advantage because of the similar customer base and the ability to cross-sell. This bidder also said that it hopes to be able to [REDACTED].²⁶³⁰

13.362 In response to the Remedies Working Paper, the Parties submitted that the CMA only quoted the view of a ‘single customer’ supporting that ‘it can be helpful to purchase all equipment from a single OEM’, ‘despite this clearly being a secondary consideration after price. The Parties noted that ‘three out of four customers support the Parties’ submissions.’²⁶³¹ In response to the Consultation Paper, the Parties also submitted that ‘several customers who confirm that the range of products available from a supplier is not an important consideration, and that they work with a number of different suppliers’.²⁶³²

13.363 As explained above, we are not adopting a quantitative approach to the third-party evidence and consider all of the evidence available to us in the round. We note, however, that that the submissions of two customers support the view that the ability of the Parties to offer a range of CHE, including MEQ and Port Cranes, represent a competitive advantage (regardless of whether the purchase occurs as part of the same procurement process). We also note that the evidence from competitors refers, in most instances, to the offer of different types of CHE as part of the same procurement process (see paragraph 13.35813.358(a)) but acknowledge that such joint procurement is rare. This therefore provides only limited insight into whether different equipment from the same OEM may occur as part of different procurement processes. Furthermore, a few customers told us that they generally avoid having too many different CHE suppliers.

²⁶³⁰ Transcript of call [REDACTED].

²⁶³¹ Parties’ submission [REDACTED].

²⁶³² Parties’ submission Parties’ response to the Consultation Paper, paragraph 3.20(b).

13.364 Overall, we found that different categories of CHE are not often offered as part of the same bidding process (with the main exception being CHE tenders for greenfield sites), although a substantial minority of customers purchased different categories of CHE from the same OEM at different times (ie not as part of the same procurement process).

13.365 Relatively few third parties told us that purchasing equipment from a single supplier is an important consideration in their purchasing decisions at present.

13.366 Equally, some evidence indicates that this is already an important consideration (eg for operational efficiency) and that purchasing different categories of CHE from one or from a limited number of OEMs is likely to become more important with the increase in automation and digitalisation (see paragraphs 13.265 to 13.270 and paragraphs 13.338 to 13.344).

o ***Evidence on the Parties' customers having maintenance contracts covering different types of CHE***

- Parties' data on the number of the Parties' combined maintenance contracts for different types of CHE

13.367 The Parties currently have in place some maintenance/after-sales service agreements that encompass both MEQ and Port Cranes, including some very large contracts. In particular:

(a) Cargotec has [REDACTED].²⁶³³ [REDACTED].²⁶³⁴ [REDACTED].

(b) Konecranes has [REDACTED].²⁶³⁵ [REDACTED].²⁶³⁶ We note that Konecranes [REDACTED] Cargotec probably because of its business model in which maintenance to MEQ is mainly provided by Konecranes' distributors.

13.368 The evidence above suggests that combined maintenance contracts for different types of CHE account for a material proportion of the overall Parties' revenues from maintenance contracts (particularly for Cargotec).

13.369 In response to the Remedies Working Paper, Cargotec submitted that there are no significant synergies for OEMs arising from combining maintenance

²⁶³³ [REDACTED]. Cargotec submission [REDACTED].

²⁶³⁴ [REDACTED]. Cargotec submission [REDACTED].

²⁶³⁵ [REDACTED]. Konecranes submission [REDACTED].

²⁶³⁶ CMA analysis of Konecranes' data (Konecranes submission [REDACTED]).

across a CHE portfolio, nor are there any significant premiums. Cargotec claimed that [REDACTED].²⁶³⁷

- 13.370 In response to the Remedies Working Paper, Konecranes also submitted that these combined maintenance contracts cover MEQ as well as third-party equipment only to a limited extent (ie and that the core purpose of the contracts was to services cranes and other CHE). Konecranes claims that these combined maintenance contracts are not relevant to the MEQ Divestiture Business, because these agreements are negotiated, agreed and executed by Konecranes local port services frontline units without the involvement of the MEQ business and MEQ business employees are not involved in performing these contracts. Konecranes explained that [REDACTED] and spare parts may be purchased from the MEQ Divestiture Business (we note, however, that the references, branding or codes relevant to spare parts for Konecranes' Port Cranes will not transfer with the MEQ Divestiture Business).²⁶³⁸
- 13.371 Konecranes also stated that, if we consider all Konecranes revenue generated from the supply of maintenance services (not only the revenues generated from maintenance contracts), the revenue from shared contracts represents [REDACTED] of total maintenance revenue.²⁶³⁹ We note that Konecranes' calculations do not seem to be comparing like with like (ie the revenue of combined maintenance contracts, with the revenue from all its maintenance contracts), as it appears to include maintenance revenue beyond those generated under maintenance contracts.
- 13.372 While the MEQ component of these contracts may be of more limited value, we believe that it is significant that certain customers (among the Parties' highest value maintenance customers) have chosen to have combined maintenance contracts, as a purchaser that acquires the KAS and MEQ Divestiture Businesses separately will not be in a position to offer this option. The fact that there are combined maintenance contracts therefore again highlights that MEQ and Ports Cranes/Straddle Carriers business in Konecranes and Cargotec are not operated as standalone businesses at present (and therefore that the KAS and MEQ Divestiture Businesses, held separately, would not be able to offer certain capabilities that can be provided by the Parties today).
- 13.373 There would, in addition, be certain risks incumbent in dividing up these contracts (see paragraphs 13.144 to 13.146). Even if these combined

²⁶³⁷ Parties' submission [REDACTED].

²⁶³⁸ Konecranes submission [REDACTED]; Konecranes' submission [REDACTED].

²⁶³⁹ Parties submission [REDACTED].

contracts were part of each of the Divestiture Businesses (which we understand is not the case), carving out the KAS Divestiture Businesses from Kalmar and Konecranes' Port Solutions business would mean that a purchaser - even acquiring both Divestiture Businesses - would not be able to service these contracts as they are currently serviced (see paragraph 13.427).

- Evidence on the importance for customers of having combined maintenance contracts for different types of CHE

13.374 We have considered evidence about the reasons why some customers choose to have a single maintenance contract with the same OEM for the supply of maintenance services across different categories of CHE.

13.375 A terminal operator [REDACTED] which has a maintenance contract with Cargotec covering both MEQ and Port Cranes told us that having a combined contract with Kalmar covering different types of CHE gives this customer leverage when negotiating the purchase of CHE from Kalmar. ICG states that it uses 'expenditure with Kalmar to leverage everything [it] can with Kalmar'. ICG noted that it would make a difference operationally if it had separate maintenance contracts for MEQ and Port Cranes. ICG also explained that Kalmar's engineers that are on-site are able to serve different types of CHE, rather than being specialised in a specific type of CHE.²⁶⁴⁰

13.376 We note that in a recent press release (January 2021) about Konecranes' contract with Calata Bettolo for the supply of maintenance services to MEQ and Port Cranes together, both Konecranes and Calata Bettolo highlighted the benefits of having maintenance contracts covering more than one product category. This customer stated that '[a] significant service agreement across all equipment helps us to focus on our core business'. Konecranes notes that by having a single maintenance contract with Konecranes, Bettolo benefits from 'complete solutions that are tailored precisely to their needs, whatever their stage of development. This press release noted that 'The preventive and corrective maintenance contract covers all cranes, lift trucks, tractors and trailers at the terminal until October 2024' and underlines the fact that the package offered by Konecranes to this customer includes a connectivity solution 'which provides data on the physical condition of mechanical components and highlights potential problems before they occur'.²⁶⁴¹

²⁶⁴⁰ Transcript of call with [REDACTED].

²⁶⁴¹ [Konecranes Complete Container Handling Solution for Calata Bettolo in Genoa – Heavy Lift News.](#)

13.377 The evidence summarised above therefore suggests that the main benefits for customers from having single maintenance contracts for different categories of CHE relate to operational efficiency and to achieving better commercial conditions.

13.378 Having considered the number and value of the maintenance contracts that cover more than one category of CHE, as well as the other qualitative evidence available to us, our view is that there may be synergies to the OEM and benefits to customers being able to provide these maintenance services for more than one category of equipment together. As such, OEMs that can meet these customers' preferences may have a competitive advantage in relation to these customers over OEMs that cannot provide such combined maintenance services.

- *Our views on risks of losing the advantages associated with the offer and development of a broad CHE portfolio*

13.379 Having reviewed evidence from a variety of sources, we note that this evidence paints a mixed picture of the current impact of the Parties' broad CHE portfolio on their competitiveness.

13.380 There is some evidence suggesting that having a broad CHE portfolio does not currently have a significant impact on the Parties' competitiveness. In particular:

- (a) Some of the evidence from customers and internal documents suggests that having a wide portfolio is currently less relevant for the competitiveness of the Parties' offering than factors such as price and quality.
- (b) In practice, customers only rarely tender for different categories of CHE together. Furthermore, while Cargotec and Konecranes offer interconnectivity services to their customers, at present these are predominantly used by their MEQ customers and very few customers use these tools across Port Cranes/Straddle Carriers and MEQ.
- (c) Currently, OEMs that supply only one category of CHE have been able to compete with the Parties.

13.381 On the other hand, other parts of the evidence available to us suggests that the Parties' ability to provide a broad portfolio of CHE (as reflected in the way that both have chosen to organise their businesses) is considered to be an important part of their commercial strategy and, therefore, their overall competitive offering. This evidence also indicates that this capability is likely

to become more important in future as the industry shifts to increased automation and digitalisation accelerates. In particular:

- (a) Konecranes' stated rationale for its business structure suggests that there are benefits in having all CHE portfolio under the same business division, in particular because of the [✂] between the different types of CHE. The rationale for previous acquisitions entered into by Konecranes demonstrates the importance attached by Konecranes, as part of its competitive strategy, to offering an integrated CHE solution.
- (b) The Parties' internal documents and third-party evidence clearly show that the Parties are positioning themselves to leverage their existing CHE portfolio and automation and digitalisation capabilities to offer CHE across different categories, with interoperable automation software and using the same connectivity solutions. In addition, the Parties' internal documents make clear that the impact of the trend towards automation and digitalisation on the CHE industry is likely to become more pronounced in the foreseeable future. On this basis, the CMA considers that the competitive benefits of being able to offer an a broad CHE portfolio are likely to become more significant. This is also supported by some third parties who recognised that a broad CHE portfolio will become increasingly important, given the industry trends, to facilitate interoperability and connectivity across the whole CHE portfolio.
- (c) The evidence we have seen also demonstrates that the Parties currently benefit from certain organisational synergies (ie cross-selling, know-how sharing and cost savings) that arise from having a broad portfolio of CHE products, including in developing, deploying and supporting their connectivity solutions. In particular, there are some synergies and economies of scope in undertaking and deploying R&D across a broad CHE portfolio (eg the Parties make use of technology developed for one category of CHE in other product categories and apply data collected from the whole range of CHE installed across their customer base to further improve existing technology). The interdependencies between the MEQ and the Port Cranes/Straddle Carriers businesses from each of the Parties are also reflected in the fact that these businesses present themselves to customers under the same umbrella and offer the same connectivity solutions. There are also a number of supply contracts and aftersales service contracts that are shared between the Divestiture Businesses and the Parties' retained operation.
- (d) While third-party evidence and data submitted by the Parties indicate that different categories of CHE are currently rarely offered as part of the same bidding process (with the main exception being CHE tenders for

greenfield sites), we found that a significant number of customers have purchased both MEQ and Port Cranes or Straddle Carriers from one or other of the Parties in the past or have valuable combined contracts with one or other of the Parties for the maintenance of more than one category of CHE. This is consistent with evidence from third parties and internal documents which indicates that the Parties' ability to offer a 'one-stop' solution can be important for customers that have a preference for a single CHE supplier, or for a single supplier of maintenance services, in order to achieve a better price or for operational efficiency.

- (e) We note Cargotec's view that KAS and Kamos have always been viewed as separate businesses, and their presence in the Kalmar division was merely a legacy of past acquisitions. We consider that this understates the linkages between KAS and Kamos, which use the same brand, have common customers served through a 'key account' sales structure, have shared employees and use common IT platforms.²⁶⁴²

13.382 We note the Parties' submission that the CMA has not adduced any meaningful evidence regarding the importance of a broad portfolio.²⁶⁴³ We do not agree with this submission. We recognise that the evidence available to us is mixed, to some extent, and have reflected that in our reasoning. We consider that there is significant evidence in the Parties' internal documents (which we have interpreted reasonably, taking into account the views of the Parties in relation to the context of statements in specific documents), in particular as regards their plans for future growth and how they intend to position themselves competitively as the CHE sector evolves. To address the SLCs we have identified by restoring the rivalry that would be lost as a result of the Merger requires us to make a forward-looking assessment, which inherently involves a degree of uncertainty. The fact that some uncertainty exists about how important the ability to offer a broad portfolio is for some customers (both today and over time) does not preclude us from concluding that such a capability is a material part of the Parties' competitive offering now and in the foreseeable future (and therefore relevant to our assessment of effective remedies).

13.383 Taking this evidence in the round, we found that the Parties, as a result of their CHE portfolio being wider than most of their competitors, are likely to

²⁶⁴² These linkages, which are set out in the remedy description in paragraph 13.39, are extensive and would require complex arrangements in order to be severed, as set out in our assessment of carve out risks in paragraphs 13.442 to 13.485.

²⁶⁴³ Parties' submission [redacted].

compete particularly closely for the customers who value such portfolio breadth now and in the foreseeable future.

13.384 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.

13.385 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. For the reasons set out above, we consider that it would be important, in principle, for an appropriately configured business across all of the SLC areas to be sold to a single purchaser to ensure that these capabilities would not be lost.

13.386 We also note, however, that the nature of the Parties' Remedy Proposal (being based on sub-sets of each of their existing businesses) would require the purchaser to integrate two previously separate businesses, which can give rise to 'mix and match' risks (which we consider further below in paragraphs 13.408 to 13.441). The sale of the Divestiture Businesses as a single package could also narrow the pool of potential purchasers, increasing purchaser risk (which we consider further below in paragraphs 13.503 to 13.528). We also note that the sale of a single package of assets to a single purchaser would not mitigate the other risks relating to the scope (considered further in paragraphs 13.121 to 13.222) and the carve out of the Divestiture Businesses (considered further in paragraphs 13.442 to 13.485).

Risk of losing the competitive advantages and benefits associated to economies of scale

13.387 We assess below the significance of economies of scale for the competitiveness of the Parties' offer with a view to assessing the potential implications for the Divestiture Businesses if sold to separate purchasers.

13.388 We then assess in paragraphs 13.438 to 13.441 if any risks associated with scale remain if the KAS and MEQ Divestiture Businesses are sold to a single purchaser, as offered by the Parties.

13.389 Under separate ownership, the Divestiture Businesses are unable to benefit from the same economies of scale as the Parties, and if such economies of scale are important to the competitiveness of the Parties' offer, this would indicate that the Divestment Businesses would be less effective at competing than the Parties pre-Merger. In particular, we considered whether there are some scale benefits in supplying CHE, including:

- (a) procurement economies; and
- (b) technical and administrative economies (ie the ability to operate a greater number of local offices and service centres located closer to customers, more efficient use of shared overheads, and the ability to undertake more R&D).

13.390 The Parties submitted that the Remedies Working Paper's approach and conclusion regarding economies of scale was 'manifestly incorrect':

- (a) The Parties' MEQ businesses are distinct from their respective Port Cranes and Straddle Carriers businesses from an operational, structural perspective and procurement perspective.²⁶⁴⁴
- (b) Any economies of scale which do exist are the result of group-wide synergies resulting from standard group-wide functions such as central HR, finance, and information management/IT.²⁶⁴⁵
- (c) In relation to the scale benefits identified by the CMA in the Remedies Working Paper, the Parties submitted that:
 - (iv) Those benefits apply to group-wide benefits, not benefits related to the scale of the Parties' CHE operations.²⁶⁴⁶
 - (v) The ability to operate a greater number of local offices and service centres located closer to customers' is only an economy of scale and not of scope;²⁶⁴⁷ and
 - (vi) Procurement efficiencies can be dealt with by the purchaser, [REDACTED].²⁶⁴⁸

13.391 In general, we do not agree with the starting point of the Parties' submission that the Parties' MEQ businesses are distinct from their respective Port

²⁶⁴⁴ Parties' submission [REDACTED].

²⁶⁴⁵ Parties' submission [REDACTED]. Cargotec noted [REDACTED]. Konecranes noted that [REDACTED].

²⁶⁴⁶ Parties' submission [REDACTED].

²⁶⁴⁷ Parties' submission [REDACTED].

²⁶⁴⁸ Parties' submission [REDACTED].

Cranes and Straddle Carriers businesses. As set out above in the section about the risks regarding the scope of the Parties' Remedy Proposal and below in relation to carve out risks, there are a number of links and commonalities between the MEQ and the Port Cranes/Straddle Carriers businesses (see also, for a summary, paragraphs 13.38 and 13.43.)

13.392 We also note that, while economies of scale may occur from group-wide operations, they are clearly related to scale. It therefore follows that if the Divestiture Businesses are smaller than each of the Parties' CHE divisions, and scale is important to the competitiveness of the Parties' offering, the Parties' Remedy Proposal (assuming each business is under separate ownership), will cause some benefits arising from economies of scale to be lost and the Divestiture Businesses less able to compete as effectively as the Parties pre-Merger.

- *Third-party evidence*

13.393 As set out in Chapter 12, a number of OEMs that responded to our questionnaire identified economies of scale as a barrier to entry or expansion. It is unclear from the submissions in this regard, whether these third parties were referring to economies of scale in relation to the supply of a large number of CHE of a particular category.²⁶⁴⁹ As such, we have attached only limited weight to these responses.

13.394 Within the context of engagement on potential remedies, a number of other third parties made submissions in relation to the significance of economies of scale.

- (a) One MEQ OEM told us it believes that the Parties have a 'huge advantage' resulting from economies of scale in relation to the acquisition of 'certain components which are used across the different' categories of CHE (eg engines). This third party also explained that the Parties, as large customers of components, have an advantage over smaller OEMs by being able to negotiate shorter delivery lead times from their suppliers, lower prices and better terms. It further noted that 'The prospective purchaser shall be capable to carry on the business on scope and scale that will preserve or expand the current level of competition existing in every market segment'.²⁶⁵⁰

²⁶⁴⁹ See Chapter 12, paragraphs 12.38, 12.55., 12.62 to 12.65, 12.82, 12.96, 12.102, 12.127, 12.140, and 12.144).

²⁶⁵⁰ Transcript of call with [REDACTED].

- (b) Another MEQ OEM told us that ‘the more batteries that you buy creates more opportunity for economies of scale’ or ‘purchase power to buy those batteries’. However, this OEM also commented that ‘because we are small and we’re nimble and we’re able to make decisions and we’re able to accomplish things for the customer in a faster fashion than a big corporate conglomerate, that gives us a competitive advantage’.²⁶⁵¹
- (c) An OEM that supplies Port Cranes also told us that economies of scale resulting from the fact that the Parties supply a high number of different categories of equipment is ‘a key advantage, because the amount of steel you purchase, obviously the more steel you purchase the better the price per pound for steel. Components, you may get a price break, if you buy more motors than less motors. It is just not the price of the components, but it may also be the lead time of these components’.²⁶⁵²
- *The Parties’ current and future advantages arising from scale*

13.395 As mentioned above, the Parties have chosen to organise their CHE operations into single divisions – Port Solutions for Konecranes, and Kalmar for Cargotec. We considered whether this way of organising their businesses forms an important part of the competitive capabilities of the Parties, including whether it facilitates economies of scale.

13.396 We note, in this regard, that the 2017 presentation to Konecranes’ board referred to in paragraph 13.248, which discusses the rationale for the adoption of Konecranes’ current corporate structure, states that: ‘[REDACTED]’.²⁶⁵³ These statements suggest that there are economies of scale in having Port Cranes and MEQ under the same business unit.

13.397 Konecranes submitted that ‘Konecranes’ top shared suppliers for MEQ supply products that are [REDACTED].’²⁶⁵⁴ We agree with this submission in principle, although there may be varying degrees of overlap depending on the purchaser’s activities.

13.398 Evidence from the Parties’ submissions to the CMA, internal documents and external sources indicates that achieving further economies of scale was a material commercial driver for the Merger, including with the objective of responding to their competitors’ activities. The evidence available to us in

²⁶⁵¹ Transcript of call with [REDACTED].

²⁶⁵² Transcript of call with [REDACTED].

²⁶⁵³ Konecranes internal document. Presentation to the board, [REDACTED].

²⁶⁵⁴ Konecranes internal document, [REDACTED]. Email from [REDACTED].

relation to Konecranes' historical M&A activity also indicates that this has been an important driver of previous acquisitions for the company.

13.399 The Parties told us that securing economies of scale was part of the rationale for the Merger:

(a) In response to the [Provisional Findings Report](#), Cargotec's CEO told us that 'Particularly, in terms of R&D . . . , it is really crucial [in order to compete with Chinese CHE suppliers] to be able to develop at the adequate scale the automation and electrification going forward'.²⁶⁵⁵ Similarly, Konecranes' CEO told us '[REDACTED]'.²⁶⁵⁶[REDACTED].²⁶⁵⁷

(b) The Parties' Merger Notice states:²⁶⁵⁸

(vii) 'Combining R&D efforts from across their different business units will allow them to develop greater scale and efficiency, in order to respond to their competitors' activities. The Parties expect that by pooling their technology offering and R&D capabilities they will also create a platform for innovation'.²⁶⁵⁹

(viii) 'By pooling Cargotec's and Konecranes' resources, the Merged Entity will be able to further enhance its R&D capabilities and to provide a European platform for innovation, digitalisation and automation as well as sustainability and electrification'.²⁶⁶⁰

13.400 Internal documents from the Parties or prepared by external consultants at their request in relation to the Merger also highlight the importance of economies of scale as part of the rationale for the Merger. For example:

(a) A script [REDACTED].²⁶⁶¹

(b) A report prepared by McKinsey, at the Parties' request,²⁶⁶² which assesses [REDACTED]²⁶⁶³ [REDACTED]:

²⁶⁵⁵ Konecranes, Response Hearing, [REDACTED].transcript, [REDACTED] (Joint Session).

²⁶⁵⁶ Konecranes, Response Hearing, [REDACTED].

²⁶⁵⁷ Konecranes, Response Hearing, transcript, [REDACTED].

²⁶⁵⁸ Merger Notice, [REDACTED]. Underlining added by CMA for emphasis.

²⁶⁵⁹ Merger Notice, [REDACTED]. Underlining added by CMA for emphasis.

²⁶⁶⁰ Merger Notice, [REDACTED]. Underlining added by CMA for emphasis.

²⁶⁶¹ Cargotec internal document [REDACTED].

²⁶⁶² [REDACTED]. Cargotec submission [REDACTED].

²⁶⁶³ [REDACTED].

(c) A presentation prepared by an external consultant (Bain), which was commissioned by Konecranes in relation to the Merger and the future Merged Entity, identifies as '[REDACTED]': i) [REDACTED]; ii) [REDACTED].[REDACTED].²⁶⁶⁴

- *Evidence from internal documents*

13.401 A few internal documents of the Parties suggest that they have the potential to benefit from economies of scale within their CHE divisions.

13.402 A Konecranes internal document – 'Project Castle' – describes Konecranes' concept of [REDACTED]: i) '[REDACTED]'; and ii) '[REDACTED]'. [REDACTED].²⁶⁶⁵

13.403 A Cargotec internal presentation [REDACTED].²⁶⁶⁶ We consider this document conveys Cargotec's understanding that its scale provides it with the ability to obtain materially better input costs than other suppliers.

13.404 The Parties' business documents show that the Parties' scale and product breadth provides a basis to achieve material technical and administrative economies, including from production and logistics efficiencies and the efficient use of shared overheads (local sales and servicing offices, sales and marketing and R&D). These documents note that the loss of these economies may affect growth of profitability, in particular given the importance of spreading fixed costs. For example:

(a) This general principle is set out clearly in Konecranes' 2018 annual report, which states that 'We see the future of our offering in terms of its readiness for Industry 4.0 and its strong potential for integration into the wider ecosystem of our customers' operations. As a trend, intelligence will expand to lighter devices from heavy process equipment, while we will enjoy economies of scale due to our ability to capitalize on introducing common technologies across the entire portfolio' (emphasis added).²⁶⁶⁷

(b) Other documents make clear that this principle applies specifically in relation to the Kalmar business. A Cargotec internal presentation, [REDACTED].²⁶⁶⁸

²⁶⁶⁴ Konecranes internal document [REDACTED].

²⁶⁶⁵ Konecranes internal document [REDACTED], prepared in the context of the Merger by Konecranes' Chief Strategy Officer, to Konecranes' Officers and/or Directors.

²⁶⁶⁶ Cargotec internal document [REDACTED].

²⁶⁶⁷ Konecranes Annual Review-2018 (emphasis added). <https://www.konecranes.com/sites/default/files/2019-03/Konecranes-Annual-Review-2018.pdf>.

²⁶⁶⁸ Cargotec internal document [REDACTED].

(c) A Cargotec presentation for the [REDACTED].²⁶⁶⁹

13.405 In response to the Remedies Working Paper, the Parties submitted that the purchaser of the Divestiture Businesses does not need to sell Port Cranes/Straddle Carriers and MEQ to benefit from procurement efficiencies.²⁶⁷⁰ We agree that the Parties' procurement efficiencies might be capable of being replicated by the purchaser of the Divestiture Businesses, if that purchaser is already active in materials handling or heavy duty equipment. We consider the effect of this requirement as part of our assessment of purchaser risks below.

- *Views on risks of losing economies of scale*

13.406 We consider that, while not all of the evidence points to a risk of losing economies of scale, several important sources of evidence indicate that the Parties' current scale enables them to exploit economies of scale in the supply of CHE, including procurement efficiencies, the ability to operate a greater number of local offices and service centres located closer to customers, and more efficient use of shared overheads.²⁶⁷¹ Because the Divestiture Businesses are smaller in combination than either of the Parties' CHE divisions, they will not be able to benefit from similar economies of scale, even if divested to a single purchaser.

13.407 The loss of some types of economies of scale may also be further mitigated by a suitable purchaser that would itself have scale in CHE or a related industry. This outcome may deal with most of the composition risk relating to lost economies of scale, and we assess the effect of this requirement on purchaser risk in the section starting at paragraph 13.495 below.

Risks relating to scale and product portfolio of the KAS and MEQ Divestiture Businesses where both packages are sold to a single purchaser

13.408 In our Remedies Working Paper, we considered whether the composition risks inherent in the Parties' Remedy Proposal set out above relating to product portfolio and scale of the Divestiture Businesses would change if

²⁶⁶⁹ Cargotec internal document [REDACTED].

²⁶⁷⁰ Parties' submission [REDACTED].

²⁶⁷¹ In relation to the Parties' submission that the ability to operate a greater number of local offices and service centres located closer to customers' is only an economy of scale and not of scope (see paragraph 1(b)(v)), we note that our finding is that 'economies of scale' (not scope) allows the Parties to operate a greater number of local offices and service centres located closer to customers. We note, however, that there are some shared warehouses and distribution centers shared by the Parties MEQ and Port Cranes/HTE businesses (see paragraphs 13.205 and 13.209).

both the KAS and MEQ Divestiture Businesses were sold to a single purchaser.

13.409 Cargotec initially told us that the likelihood of the two remedy packages being sold to the same purchaser is ‘relatively low’.²⁶⁷² Only [REDACTED] private equity bidders made indicative bids for both the KAS Divestiture Business and in relation to the MEQ Divestiture Business.²⁶⁷³

13.410 As noted above in paragraph 13.103, on 20 March 2022, the Parties informed us that a company active in the CHE industry, had already submitted a non-binding offer for the MEQ Divestiture Business had also expressed an ‘interest in purchasing’ the KAS Divestiture Business. A letter sent by this company to Cargotec’s investment bankers ‘express[ed] [its] interest ‘to further review’ the KAS Divestiture Business and participate in the sale process but the letter ‘was not (yet) a non-binding offer’, since this company had to better understand the KAS Divestiture Business.²⁶⁷⁴ On 24 March 2022 this third party informed the CMA that it had decided not to pursue a non-binding offer for the KAS Divestiture Business.

13.411 The Parties indicated, at the same time (20 March 2022), that they would be willing to commit to sell the KAS Divestiture Business and the MEQ Divestiture Business to a single purchaser.

- *Mix-and-match risks*

13.412 As noted at paragraph 13.385, a single purchaser of both the KAS Divestiture Business and the MEQ Divestiture Business would be able to offer a broad portfolio of CHE products and services. This would, in principle, help to replicate the advantages from offering a broad portfolio (discussed in paragraphs 13.379 to 13.384).

13.413 However, as noted at paragraph 13.386, 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) may create additional composition risks, such that the divestiture package would not function effectively.

13.414 As our guidance makes clear, if the divestiture of a set of assets or parts of a business is proposed, it will normally be preferable for all the assets to be provided by one of the merger parties, unless it can be demonstrated to the

²⁶⁷² Cargotec’s CEO told us that: ‘I think the likelihood of actually having the same buyer for both businesses is relatively low. [REDACTED].’ (Cargotec, Response Hearing, [REDACTED]).transcript, [REDACTED]).

²⁶⁷³ One of these private equity firms is one of the bidders that the [REDACTED] (see footnote 2756).

²⁶⁷⁴ Submission from [REDACTED]. This potential purchaser told us that it is still at the beginning of the diligence process. [REDACTED]. This bidder explained that the MEQ Divestiture Business has been its priority because it is closely related to its business, with similar technology, customer base, type of service, and production process (Call note [REDACTED]).

CMA's satisfaction that there is no significant increase in risk from a mix-and-match alternative.²⁶⁷⁵ Mix-and-match risks result from the different assets, systems, processes and cultures that are brought from each merger party. As the assets that would form part of the combined divestiture package would be contributed from both businesses and have not been operated together in the past, the CMA is required to consider whether there would be a significant increase in risk as a result of this mix-and-match approach.

13.415 As noted at paragraph 13.18, the Parties indicated that they were willing to commit to sell the KAS Divestiture Business and the MEQ Divestiture Business to a single purchaser less than two weeks before the statutory deadline for the publication of this Final Report. Before this point, the Parties had been clear that the KAS Divestiture Business and the MEQ Divestiture Business could be sold to different purchasers²⁶⁷⁶. Accordingly, while the CMA highlighted in its Remedies Working Paper that mix-and-match risks would arise if the KAS and MEQ Divestiture Businesses were to be sold to a single buyer²⁶⁷⁷, the very late amendment to the Parties' remedies proposal has left only limited time for the CMA to more comprehensively assess the additional risks that might be raised by a mix-and-match approach.

13.416 In general, in order for the KAS Divestiture Business and MEQ Divestiture Business to compete effectively, a purchaser would need to integrate the two parts of the business. This, like all business change programmes, would involve a degree of execution risk and potentially give rise to disruption during the process. These challenges would be even more pronounced in circumstances where it is envisaged that the purchaser of the KAS and MEQ Divestiture Businesses would also provide certain capabilities that are critical to the competitiveness of those businesses (see paragraphs 13.507 to 13.544).

13.417 In addition, the CMA has found that there are several specific – and material – mix-and-match risks that arise from the specific nature and scope of the KAS and MEQ Divestiture Businesses.

13.418 First, in relation to connectivity solutions, a single purchaser of the KAS Divestiture Business and the MEQ Divestiture Business would be permitted to use:

²⁶⁷⁵ CMA 87, paragraph 5.16.

²⁶⁷⁶ Cargotec Commitments to the European Commission M.10078 - Commitments to the European Commission, 6 January 2022, Remedies Working Paper, paragraph 31 and Transcript of Cargotec Response Hearing, 17 December 2021, p 16.

²⁶⁷⁷ Remedies Working paper, paragraphs 210. – 225.

(a) A duplicate of the functionalities of Cargotec's Kalmar Insight, but only for Port Cranes and Straddle Carriers; and

(b) Konecranes' TRUCONNECT, but only for MEQ.

13.419 Therefore, if both the KAS and MEQ Divestiture Businesses were sold to a single purchaser, customers of the KAS and MEQ Divestiture Businesses (who wish to use connectivity solutions currently provided by those businesses) could only use Cargotec's connectivity solutions for their Port Cranes and Straddle Carriers and Konecranes' connectivity solutions for their MEQ.

13.420 If the single purchaser wanted to offer a single connectivity solution across all of its CHE offering (as each of the Parties currently offers – and customers value), it would have to source or develop its own. As explained above (see, for example, paragraph 13.193) a purchaser that chose to develop and switch to its own equivalent connectivity system would need to make physical changes in each piece of equipment (eg changing SIM card and the physical gateway). There is a significant risk that the purchaser would not be successful in overcoming this challenge (or would face considerable business disruption in doing so).

13.421 Similar risks would not arise in a non-mix-and-match remedy, in which either one of the Parties' existing connectivity solutions could be transferred for full use across all of the CHE businesses being transferred, which, according to the CMA's guidance, is its preferred options and starting point.²⁶⁷⁸

13.422 Second, a mix-and-match remedy would bring additional disruption to customers who have chosen to purchase different products from a single supplier and/or source maintenance service for different products from a single supplier.

13.423 As set out in more detail above:

13.424 A significant minority of the Parties' customers have purchased both MEQ and Port Cranes or horizontal equipment from the Parties in the past (see paragraphs 13.348 to 13.366); and

13.425 Cargotec and Konecranes have a number of maintenance contracts that cover both the maintenance of MEQ and Port Cranes (see paragraphs 13.367 to 13.378).

²⁶⁷⁸ CMA 87, paragraph 5.16.

- 13.426 Customers that would like to carry on purchasing CHE and/or maintenance services from a single supplier of CHE in the future would have this position disrupted by the proposed remedy. This might make those customers more reluctant to transfer to the purchaser (which is a risk considered in more detail in paragraphs 13.473 to 13.475) or require them to establish new working relationships with the sales personnel (or distributor) in relation to at least one type of their CHE.
- 13.427 This means, for example, that existing Cargotec customers that value having Cargotec as their supplier for multiple categories of CHE, or value having a combined maintenance contract with Cargotec for multiple categories of CHE, might seek to remain with the Merged Entity. If those customers chose to transfer to the purchaser, they would lose the continuity of their relationships with Cargotec in relation to MEQ and instead be required to start dealing with a Konecranes' distributor (with the Konecranes MEQ business now under the control of the purchaser).
- 13.428 Similar risks would not arise in a non-mix-and-match remedy, in which either one of the Parties' existing set of supply relationships across their CHE business would be transferred, without division, to the purchaser.
- 13.429 We note that the Merged Entity would also be required to establish new customer relationships which extend across its broad portfolio of CHE. While the Parties have voluntarily chosen to assume this risk, within the overall context of all of the potential costs and benefits that the Merger could give rise to for the Parties, this is of limited relevance to our analysis, which instead considers the risks that this position might raise for the purchaser of the Divestiture Businesses.
- 13.430 Third, the evidence indicates that each of the Parties benefits from company-specific organisational synergies (see paragraphs 13.313 to 13.328), which would be materially disrupted by a mix-and-match remedy. While the benefits of being able to offer a broader portfolio of products are set out in detail above (see paragraphs 13.223 to 13.386), additional risks can arise (eg around duplication or incompatibility) where these capabilities are drawn from different businesses.
- 13.431 For example, as a result of the carve out of the KAS and MEQ Divestiture Businesses, synergies relating to ongoing research projects being undertaken by the KAS Divestiture Business and the MEQ Divestiture Business could be lost and difficult to replicate with the integration process. Even where projects are intended to achieve the same broad outcome (eg the development of automation technologies for CHE), they may not be sufficiently compatible to be carried out at the same pace.

- 13.432 We note, in this regard, that a report by McKinsey & Company, dated 16 June 2020 (around two months after the Parties entered into discussions regarding the Merger), indicates that harmonising ongoing R&D activities and product portfolios can take some time and require ‘extensive’ engineering efforts.^{2679,2680}
- 13.433 We consider that there is a material risk that a single purchaser of the MEQ Divestiture Business and of the KAS Divestiture Business would not achieve the organisational synergies set out above and in paragraphs 13.313 to 13.328 (eg the integration of the separate KAS and MEQ Divestiture Businesses by the purchaser will take time and/or the integration of both Divestiture Businesses may not be successful in achieving these synergies).
- 13.434 Again, we note that similar risks would not arise in a non-mix-and-match remedy, under which two businesses that are already operated under common ownership (and benefit from company-specific organisational synergies) would be transferred to the purchaser.
- 13.435 The mix-and-match risks we have identified may be accentuated where the contributed businesses are weaker elements of more strongly-performing business units of which they currently form part (see paragraph 13.113).
- 13.436 Accordingly, for the reasons set out above, we consider that there would be a significant increase in risk from a mix-and-match remedy. The Parties have not explained how these risks would be addressed. Within the limited time available to us following the Parties indicating that they were willing to commit to sell the KAS Divestiture Business and the MEQ Divestiture Business to a single purchaser, we have not identified any way in which these risks (which are inherent to the design of the remedy) could be mitigated in any material way.
- 13.437 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.
- *Economies of scale*
- 13.438 In paragraphs 13.387 to 13.407, we noted that there would be a risk that the Parties’ Remedy Proposal, if split into more than one package and sold to

²⁶⁷⁹ Although this document refers to Cargotec and Konecranes in general, nothing in the document suggests that it does not apply to R&D projects in relation to Konecranes’ Port Solutions.

multiple purchasers, would not benefit from similar economies of scale which the Parties' comparatively larger existing CHE businesses are able to achieve.

13.439 The Parties' commitment to sell both the KAS and MEQ Divestiture Businesses to a single purchaser means that the combined business will have a larger scale than if the packages were sold separately. However, the combined KAS and MEQ Divestiture Businesses, together, are around [X] per cent of the scale of Cargotec's Kalmar division and around [X] per cent of the scale of Konecranes' Port Solutions division.²⁶⁸¹ Therefore, the KAS and MEQ Divestiture Businesses, sold as a single package of assets, would be smaller in scale than either of the Parties' current respective CHE businesses. As such, a divestiture of the KAS and MEQ Divestiture Businesses to a single purchaser could still give rise to composition risks arising from lower economies of scale.

13.440 As we noted in paragraph 13.407, these scale risks may be mitigated by a purchaser that itself has sufficient scale. However, the KAS and MEQ Divestiture Businesses would, in substance, be transferred as two distinct, separate businesses (as that is how they are operated today). A purchaser's ability to exploit economies of scale would depend on its ability to integrate the two businesses effectively (both with each other and with the purchaser's broader business).

- *Our views on risks relating to scale and product portfolio of the Divestiture Businesses in a single purchaser scenario*

13.441 Our view is that, the commitment to sell the KAS and MEQ Divestiture Businesses to a single purchaser means that the purchaser would be able to offer a broad portfolio. However, the risks relating to the divestiture of a partial CHE portfolio of each of the Parties would likely remain. Given the 'mix and match' nature of the Parties' Remedy Proposal, additional risks would be created as a single purchaser would need to integrate two previously separate businesses into its own business. 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. We also note that the sale of this package of assets to a single purchaser would not mitigate the other risks relating to the scope (13.121 to 13.222) and the carve out of the Divestiture Businesses (13.442 to 13.485).

²⁶⁸¹ Paragraphs 3.3, 3.2, 3.8 and 3.9. The combined 2020 turnover of the Divested Business is around €[X] million (KAS Divestiture Proposal: €451 million; MEQ Divestiture Proposal: €[X] million).

Risks relating to the complexity of proposed asset ‘carve-outs’

- 13.442 We assessed whether risks relating to the complexity of the asset ‘carve-outs’ required to bring about the transfer of the Divestiture Businesses may prevent the divested businesses from competing effectively.
- 13.443 As set out in the description of the Parties’ Remedy Proposal in paragraphs 13.33 to 13.46, the KAS and MEQ Divestiture Businesses are not fully standalone businesses, but comprise carve-outs of assets, operations, employees and customer and supplier contracts. For the purposes of this analysis, we call these the ‘divestiture assets’ (Divestiture Assets).
- 13.444 The CMA’s remedies guidance says that it ‘will generally prefer the divestiture of an existing business, which can compete effectively on a stand-alone basis, independently of the merger parties, to the divestiture of part of a business or a collection of assets. This is because divestiture of a complete business is less likely to be subject to purchaser and composition risk and can generally be achieved with greater speed’.²⁶⁸²
- 13.445 Divestitures involving such carve-outs are inherently riskier than the transfer of fully standalone existing businesses (eg brought about by the transfer in ownership of pre-existing corporate entities by way of share sale), with risks to effectiveness arising from the identification of assets, the allocation of shared assets, and the transfer of assets to the businesses to be divested.
- 13.446 In this section, we summarise the Parties’ views, then we consider the composition risks relating to the complexity of asset carve-outs. These include:
- (a) identification of the necessary Divestiture Assets;
 - (b) allocation of Divestiture Assets that are shared between the businesses to be divested and the Parties; and
 - (c) obtaining consent from employees and contract counterparties for transfer to the Divestiture Businesses.

Parties’ views

- 13.447 As mentioned above, the Parties submitted that both the MEQ Divestiture Business and the KAS Divestiture Business are broadly two standalone businesses.²⁶⁸³ Cargotec also submitted that some carve-out risks raised by

²⁶⁸² CMA 87, paragraph 5.12.

²⁶⁸³ Parties’ submission [§].

the CMA are largely theoretical and have not prevented the approval of undertakings or the transfer of businesses in previous cases and can be addressed during the implementation period.²⁶⁸⁴ In their response to the Consultation Paper, the Parties reiterated that carve-out risks, such as the final perimeter of non-key employees, the final allocation of contracts, and the final transfer of assets, can commonly be solved in the implementation phase.²⁶⁸⁵

13.448 Konecranes told us that its ‘MEQ business (Lift Trucks) runs as a [REDACTED] within Konecranes’ Port Solutions business area. The MEQ business has [REDACTED] [REDACTED]’.²⁶⁸⁶

13.449 In their response to the Remedies Working Paper, the Parties noted that ‘the CMA has in other cases accepted that such risks can be managed through the design of the divestiture process’,²⁶⁸⁷ citing the *Rentokil/Cannon* case²⁶⁸⁸ as an example.

13.450 We note the following in relation to the Parties’ general submissions on carve-out risks:

(a) With respect to the Parties’ citation of previous CMA cases, we note that the CAT has confirmed that ‘merger decisions of the CMA do not constitute precedents and it is axiomatic that each case turns on its own facts’.²⁶⁸⁹ In the current case, we considered the extent of complexity, and the associated level of risk, of the Parties’ Remedy Proposal to be high. In our view, the complex and wide-ranging carve-outs proposed by the Parties present substantial risks to the effectiveness of the Parties’ Remedy Proposal. For the reasons set out below, we do not consider that that these risks could be adequately mitigated given the Parties’ chosen design of the Remedy.

(b) While some details of the carve-out process can be managed, the CMA cannot accept that a remedy is effective and progress to the implementation stage, without a ‘high degree of certainty’ that the remedy will achieve the intended effect of remedying, mitigating or preventing the SLCs we have found (see paragraph 13.534).²⁶⁹⁰ Furthermore the remedies implementation phase (ie after the final

²⁶⁸⁴ Cargotec submission [REDACTED].

²⁶⁸⁵ Parties’ submission Parties’ response to the Consultation Paper, paragraph 3.27.

²⁶⁸⁶ Parties’ submission [REDACTED].

²⁶⁸⁷ Parties’ submission [REDACTED].

²⁶⁸⁸ [Rentokil Initial/Cannon Hygiene merger inquiry](#).

²⁶⁸⁹ [Ecolab](#), paragraph 93.

²⁶⁹⁰ See [Ecolab](#) at paragraphs 88-89 and [CMA87](#), paragraph 3.5, d).

report) does not provide for a further period in which the CMA can consider what remedy is appropriate (see paragraph 13.537).²⁶⁹¹

13.451 We address the other submissions of the Parties in relation to specific pieces of evidence below.

Identification of Divestiture Assets

13.452 While we have been provided with non-exhaustive lists of assets that would form part of the Divestiture Businesses, there remains a considerable information asymmetry between the Parties and the CMA. It is therefore difficult for the CMA to establish with any confidence whether the assets that have been identified so far by the Parties would be sufficient to allow the Divestiture Businesses to compete effectively (and to replace the constraint lost as a result of the Merger).²⁶⁹²

13.453 As explained in more detail in paragraph 13.137 above, Cargotec and Konecranes have not identified all the staff and assets that would likely be transferred with the KAS Divestiture Business and the MEQ Divestiture Business.

13.454 For example, the Parties would transfer shared personnel, that ‘predominantly’ work for the KAS and/or MEQ Divestiture.²⁶⁹³ However, it is not clear whether this would lead to an appropriate number of employees in the KAS and/or MEQ Divestiture Businesses, particularly in remote locations where there may only be a small number of employees in the whole CHE division.²⁶⁹⁴

13.455 Cargotec told us that it was ‘confident’ that the identification of the shared employees to be transferred with the KAS Divestiture Business based on the number of hours would ‘capture all important employees who are important to the KAS business.’²⁶⁹⁵

13.456 We consider, however, that it is unclear whether the number of hours worked for each business within Cargotec is the appropriate criterion to define which employees ‘predominantly’ work for the KAS business and should be transferred as part of the KAS Divestiture Business. In particular, in order to operate effectively, the KAS and MEQ Divestiture Businesses may need the

²⁶⁹¹ [Ecolab](#), paragraph 111.

²⁶⁹² In addition to our concerns regarding to the risks relating to the product portfolio and scale of the divestiture business.

²⁶⁹³ Parties’ Commitments to the European Commission [REDACTED].

²⁶⁹⁴ While servicing in remote locations may not be particularly relevant in the UK, it is a relevant consideration in the assessment of the Parties’ Remedy Proposal as a whole.

²⁶⁹⁵ Cargotec submission [REDACTED].

services of employees who are ‘predominantly’ working for other business units (particularly where those employees have specialist skills, qualifications or experience).

13.457 This is particularly relevant because there is a considerable number of staff in both Parties’ CHE divisions that currently work across both the parts of the respective divisions that are proposed to be retained by the Merged Entity and the parts that are proposed to be divested. This risk is highlighted by certain evidence in relation to how the Parties’ businesses operate in practice:

- (a) A Cargotec internal document [REDACTED].²⁶⁹⁶
- (b) Cargotec told us that [REDACTED].²⁶⁹⁷ [REDACTED] ‘no more than a handful of FTEs’ will be transferred for this purpose;²⁶⁹⁸ and
- (c) Some third parties (see paragraph 13.360 and 13.375) told us that there are engineers in Kalmar that currently support both KAS and MEQ businesses. It is not clear how the engineers to be transferred with the KAS Divestiture Business would be identified or, more broadly, how it would be ensured that the KAS Divestiture Business would have a sufficient number of engineers to ensure the same level of servicing Kalmar currently provides.

13.458 We note that these concerns apply, not only to shared employees, but also in relation to other types of shared assets that will only be included in the KAS Divestiture Business if they are ‘predominantly or exclusively’ used in relation to Port Cranes and/or Straddle Carriers, including: a) ‘business records, books of account, financial records; b) ‘research data and commercial data’; and c) sales and promotional literature.²⁶⁹⁹

13.459 In relation to the MEQ Divestiture Business, in addition to the limited number of shared employees, there are other assets that will only be transferred if they are ‘predominantly or exclusively’ used in relation to MEQ, such as: a) ‘patents, design rights and other intellectual property technology and knowhow’; b) ‘R&D and pipeline projects’, and c) business records, books of account, financial records, tax records, research data and commercial data.²⁷⁰⁰

²⁶⁹⁶ Cargotec internal document [REDACTED]. A comment in this slide states, [REDACTED].

²⁶⁹⁷ Cargotec submission [REDACTED].

²⁶⁹⁸ Cargotec submission [REDACTED].

²⁶⁹⁹ Cargotec commitments to the European Commission [REDACTED].

²⁷⁰⁰ Konecranes commitments to the European Commission [REDACTED].

Allocation of shared assets

- 13.460 Turning to allocation of assets to be shared between the divested business and the Merged Entity, these largely fall into two categories: R&D functions and contracts.
- 13.461 Some R&D functions are currently carried out at a divisional or corporate level, with some projects that apply to the part of the division to be divested, some which apply to the part to be retained, and some which apply to both. For the reasons explained above, we consider, for example, that this might give rise to risks around the allocation of staff and projects in these functions, with a purchaser being unable to know which staff are critical to the KAS and/or MEQ Divestiture Businesses.
- 13.462 We also note that one possible purchaser of the KAS Divestiture Business told us that there is a risk that its ability to transfer IT and software infrastructure across could be hampered if there are difficulties in integration, such as the transfer of systems or data.²⁷⁰¹
- 13.463 The Parties have also identified supply contracts and aftersales service contracts which are shared between the Divestiture Businesses and the retained businesses. In this regard we note that:
- (a) In relation to Konecranes, there are [REDACTED] group framework contracts relevant to the MEQ Divestiture Business, ie contracts at a group level or by entities not part of the MEQ Divestiture Business. These contracts accounted for around [REDACTED]% of MEQ spend in 2020.²⁷⁰²
 - (b) In relation to Cargotec, of [REDACTED] suppliers used by KAS or Kamos in 2020, [REDACTED]% supplied both KAS and Kamos in that year (and purchases from suppliers used by both KAS and Kamos accounted for [REDACTED]% of the total spend of these business units on suppliers).²⁷⁰³
- 13.464 These shared contracts appear to be particularly prevalent in the KAS Divestiture Proposal. Cargotec would commit to use 'best efforts' to split these shared contracts. However, it is unclear how joint benefits and obligations under the contracts (for example, volume rebates or discounts) will be allocated between the businesses, or the incentives on Cargotec to ensure that the portion of the contract that is allocated to the KAS Divestiture Business is reasonable or suitable for its needs.

²⁷⁰¹ Call note [REDACTED].

²⁷⁰² Konecranes submission [REDACTED].

²⁷⁰³ CMA analysis of Cargotec's data. (Cargotec submission [REDACTED]).

13.465 In addition to these shared assets, we note that Cargotec proposed a ‘reverse carve-out’ for its Stargard facility, whereby the whole facility is to be included in the KAS Divestiture Business,²⁷⁰⁴ with Cargotec carving out its MEQ business (which is to be retained by the Merged Entity) within two years of completion of the divestiture of the KAS Divestiture Business. Some scope and implementation risks may arise from this arrangement (these are considered above at paragraphs 13.197 and 13.204), in particular given the asymmetry of information between the Parties and the purchaser and that the incentives of the CMA and the purchaser may vary. The proposed ‘reverse carve out’ only reduces the risks related to the carve-out of Kalmar’s MEQ business from the Stargard facility to some extent, as it puts more of the carve-out risks relating to allocation and transfer on the Parties.

Transfer of Divestiture Assets to the Divestiture Businesses

13.466 We turn now to the carve-out risks associated with the transfer of the Divestiture Assets to the Divestiture Business.

13.467 As explained below, transferring contracts with employees, customers and suppliers will in most cases require consent of the counterparty. As a result, the Parties are not fully in control of the outcome of this process.

13.468 We first consider the transfer of employees. While some employees may be willing to transfer to the Divestiture Businesses, there may be others (particularly those whose role would change because their current role incorporates elements of the retained business) that may have concerns regarding the identity of the purchaser of the Divestiture Businesses or the terms of their employment contract (for example, continuation of pension benefits). These transferred staff are likely to be critical to the effective competitiveness of the Divestiture Businesses. For instance, we note that Cargotec has committed to transfer certain Kamos frontline units to the KAS Divestiture Business that a Cargotec internal document (Cargotec’s presentation, ‘Kalmar Automation Solutions Services reorganization’, prepared around June 2020) indicates are essential for the competitiveness of KAS.²⁷⁰⁵ We note that one prospective purchaser told us that ‘there is a risk that employees do not transfer. It explained that it has particular expertise in managing complex carve-out transactions, however, there could be staff retention issues due to regional laws and pension liabilities.’

13.469 The Parties committed to ‘take all reasonable steps, or procure that all reasonable steps are being taken, [REDACTED] (based on industry practice), to

²⁷⁰⁴ [REDACTED].

²⁷⁰⁵ Cargotec internal document, [REDACTED].

encourage all key personnel to remain with the KAS Divestiture Business, and not to solicit or move any personnel to Cargotec's remaining business. Where, nevertheless, individual members of the key personnel leave the KAS Divestiture Business, Cargotec committed to providing a reasoned proposal to replace the person or persons concerned to the European Commission and the monitoring trustee.²⁷⁰⁶

13.470 We note, however, that this provision just applies to 'key personnel'. The 'KAS Divestiture Business Key Personnel' currently listed in Appendix 11 of the KAS Divestiture Proposal only includes six [REDACTED].²⁷⁰⁷ The Parties did not explain what would happen to employees that do not wish to transfer, or how the Divestiture Businesses would remedy any shortfall in staff. In their response to the Remedies Notice, the Parties said that the employees would transfer 'subject to local laws'.²⁷⁰⁸ There is a risk these 'local laws' might present a material impediment to transfer. We note in this regard that:

- (a) One customer told us that it is concerned that key technical experts may leave KAS, with no suitable replacements able to deal its problems in the future.²⁷⁰⁹
- (b) Another customer²⁷¹⁰ told us that the purchaser would find it difficult to retain software developers if it moves software development for Kalmar One away from Finland. It noted that the developers themselves are the key competence.
- (c) One of Cargotec's customers told us that it is concerned about what would happen to maintenance agreements currently in place with the Parties, as well as to the supply of spare parts, should the current divestiture proposals go ahead.²⁷¹¹

13.471 Second, we consider that supply contracts should, in principle, be easier to transfer, as the supplier would have a financial incentive to continue to supply both the Merged Entity and the KAS and MEQ Divestiture Businesses. However, some suppliers may have concerns, for example, around counterparty risk. In addition, suppliers may take the opportunity to negotiate more favourable terms as a condition of transfer, as a condition of granting consent to split their contracts, and it is not clear how the proposed remedy would guard against any worsening in the position of the Divestiture

²⁷⁰⁶ Cargotec Commitments to the European Commission [REDACTED].

²⁷⁰⁷ [REDACTED].

²⁷⁰⁸ Parties' submission [REDACTED].

²⁷⁰⁹ Call note [REDACTED].

²⁷¹⁰ Call note [REDACTED].

²⁷¹¹ Call note with DP World.

Businesses (compared to that of the Parties pre-Merger) if this were to occur.

13.472 Some supply contracts are key for the competitiveness of the KAS Divestiture Business,²⁷¹² and could not be readily replicated by a purchaser of the KAS Divestiture Business. The mechanism offered by Cargotec for the eventuality that a supplier withholds its consent to the transfer of its contract to the purchaser (ie Cargotec will provide the corresponding inputs to the KAS Divestiture Business by entering into a transitional back-to-back supply agreement at cost) raises some concerns and has some limitations.²⁷¹³ One MEQ OEM told us that it is unclear, from the Parties' Remedy Proposal, whether the purchaser that acquires Stargard will also have the assets that Kalmar currently uses to support and provide after-sales servicing to its straddle carrier customers.²⁷¹⁴

13.473 Third, we consider contracts and service agreements with customers or distributors. These contracts are essential for the functioning and viability of the Divestiture Businesses.

13.474 In our view, there are significant risks that customer contracts will not be transferred:

(a) As we set out in paragraphs 13.358 to 13.362 and 13.374 to 13.378, some of the Parties' customers purchase multiple types of CHE from each of the Parties. This means that these customers have a relationship with the relevant Party across their CHE portfolio. Under the Parties' Remedy Proposal, that relationship will be broken up, and a part of such customers CHE supply would transfer to an entity that only provides some types of CHE equipment or, in the case of both Divestiture Businesses being acquired by a single purchaser, the customer would be faced with an entity that sells different MEQ or Port Cranes than it has previously acquired. The customer may also find that the equipment that it has previously bought from one of the Parties is now being serviced by two different companies. In addition to being

²⁷¹² For example, [REDACTED], and also [REDACTED].

²⁷¹³ The 'back-to-back supply arrangements would give the Merged Entity visibility over the inputs that the purchaser (a competitor) is sourcing. Furthermore, the purchaser would not be able to directly negotiate the price of the contract with the supplier and would also have no control over non-price elements of the contract (eg delivery times).

²⁷¹⁴ This MEQ OEM noted that the profitability of any OEM is highly dependent from the higher margin aftersales business (parts and service sales) and not from the equipment sales. As such the purchase of Stargard assembly line, without the associated service network and infrastructure, is of very limited value for the purchaser.

presented with arrangements that are likely to be less efficient, the customer may also be concerned about the identity of the purchaser.²⁷¹⁵

- (b) As mentioned in paragraphs 13.374 to 13.376, both Konecranes and Cargotec have a number of maintenance contracts that cover both the maintenance of MEQ and Port Cranes ('one stop shop' contracts). As explained in more detail above in paragraphs 13.142 to 13.146, there are obvious difficulties in splitting these 'one stop shop' contracts and a material risk that customers may withhold consent to the novation of the Divestiture Businesses' interest under these contracts to the purchaser.

13.475 The Parties' Remedy Proposal [REDACTED]:

- (a) A subcontracting arrangement, whereby the Merged Entity would effectively act as an agent for its competitors, the Divestiture Businesses. This arrangement would have the potential to distort competition and undermine the effectiveness of the remedy.
- (b) [REDACTED].²⁷¹⁶ The caveats in these clauses materially limit their likely utility, as a customer that has had its contract unilaterally terminated may well seek redress.

13.476 In addition, as mentioned in paragraph 13.135 above, the MEQ Divestiture Business relies on a significant number of 'shared capabilities', which are services provided to the MEQ Divestiture Business by the Konecranes group. After an initial TSA, these services would need to be provided by a purchaser of the MEQ Divestiture Business. Konecranes identified [REDACTED]'shared capabilities' in its frontline functions and a further [REDACTED] in its support functions.²⁷¹⁷ This demonstrates the scale of the complexity and resulting risk of the Parties' Remedy Proposal.

13.477 In our view, a comprehensive solution to the SLCs we have found would require all, or nearly all, of these contracts to be successfully transferred. For the reasons set out above, we consider, however, that there is a material risk that a non-negligible proportion of these contracts may not be successfully transferred.

²⁷¹⁵ One terminal operator, for example, told us that it would 'transfer' with the KAS business but it was concerned with that outcome: 'I expected Kalmar, Cargotec, a large 300 million or 3.2 billion, whatever size it is, manufacturer to be looking after that planting equipment on my behalf for the next 25 years. I did not buy that planting equipment for KAS to be separated out', with the risk of Kalmar saying 'It will not be our problem any more'. This terminal operator told us that it would have a problem because 'all the people I am having my relationship with are not going to work for Kalmar any more. Actually, it is worse, Kalmar will be a competitor of theirs' (Transcript of call with [REDACTED]).

²⁷¹⁶ Konecranes commitments to the European Commission [REDACTED].

²⁷¹⁷ Konecranes internal document [REDACTED].

Evidence from potential purchasers of the KAS Divestiture Business

13.478 We held calls with the four of the shortlisted bidders for the KAS Divestiture Business. The evidence provided by the bidders identified some carve-out risks associated with the divestiture of the KAS Divestiture Business,²⁷¹⁸ although these bidders noted that some of these risks can be mitigated and/or that they are still finalising due diligence and investigating certain issues.²⁷¹⁹

(a) One bidder expressed concerns with the following carve-out risks:²⁷²⁰

- (i) The risk that manufacturing staff do not remain with the KAS Divestiture Business. This bidder plans to rely on this resource and expertise to manufacture KAS products.
- (ii) The risk of the KAS Divestiture Business risks losing recurring revenues and customer confidence if there is insufficient local service support. This bidder told us that it would need warehouses overseas to support aftersales services.

(b) Another bidder expressed concerns with the following carve-out risks:²⁷²¹

- (i) The risk that the KAS Divestiture Business does not have important technologies, or there are limitations on the use of technologies. This bidder also considers that R&D staff are essential to this innovation-centric business and that there is a risk that they do not transfer.
- (ii) The risk that employees, more generally, do not transfer, and that there could be staff retention issues due to regional laws and pension liabilities.

²⁷¹⁸ In their response to the Consultation Paper, the Parties submitted that the evidence submitted by the bidders summarised below 'does not contribute to the assessment of the effectiveness of the proposed remedy, as the feedback is either generic and would apply to *any* divestment remedy, or can easily be mitigated' (paragraph 3.26). We agree that some concerns expressed by the potential purchasers are generic but some bidders did express specific concerns in relation to employee retention and the transfer of customer contracts. These risks (if significant) are not acceptable in the context of a divestment that needs to be effective to address the competition concerns that we have identified.

²⁷¹⁹ In their response to the Consultation Paper, the Parties submitted that the 'bidders' feedback in relation to 'carve-out risks' is of limited evidentiary value at this stage given detailed due diligence has not started' (paragraph 3.26). We have taken into account in our assessment the caveats made by bidders and reflected the fact that the due diligence process is ongoing in our weighting of the evidence. We still, however, attribute some evidentiary weight to the evidence by the potential purchasers in relation to possible carve-out risks, because some of these risks were mentioned by several bidders in relation to the same specific aspect of the KAS Divestiture Business (eg staff retention and the transfer of customer customers).

²⁷²⁰ Call note [REDACTED].

²⁷²¹ Call note [REDACTED].

(iii) The risk associated with its ability to transfer IT and software infrastructure across, which could be hampered if there are difficulties in integration, such as the transfer of systems or data.

(c) This bidder noted that the transfer of key customer contracts is crucial to ensuring the success of the KAS Divestiture Business. This bidder would seek to transfer customers under contract and needs to investigate this matter further.

13.479 Another bidder expressed concerns with the following carve-out risks:²⁷²²

- (a) Strong concerns about how customers would be separated from the Cargotec business. This bidder told us that it cannot evaluate the customer consequences of the carve-out, but noted that it would be a 'tragedy' if the KAS business lost half of its customers.
- (b) Concerns about how suppliers would be separated, although its initial view is that supply chains for products can be separate.

13.480 Another bidder noted that:²⁷²³

- (a) The separation of joint customer arrangements is 'unlikely to work 100% first time' and this bidder does not currently have detail on the joint contractual arrangements.
- (b) The main risk with the carve-out is that employees with customer relationships choose not to stay with the KAS Divestiture Business, which is an issue that this bidder wanted to investigate further through due diligence.

13.481 A company present in the CHE industry that submitted a non-binding offer for the MEQ Divestiture Business and expressed interest in the KAS Divestiture Business (although subsequently decided not to pursue a non-binding offer in relation to the KAS Divestiture Business) told us that it does not have sufficient information at this stage to comment on the risks associated with the carve-out of the Divestiture Businesses. It noted that:

- (a) It would need IT systems operational on Day 1 to compete at maximum strength.

²⁷²² Call note [REDACTED].

²⁷²³ Call note [REDACTED].

(b) It has not decided on its plans regarding the use of the Stargard facility.
[§].²⁷²⁴

Our assessment of the risks associated with complexity of proposed asset ‘carve-outs’

- 13.482 As a general proposition and based on the CMA’s experience of implementing merger remedies, a remedy design that involves identifying, allocating and transferring multiple assets, rather than a standalone business or business unit, for the purposes of a divestiture presents significant additional risks to the effectiveness of that remedy.
- 13.483 Divestitures involving such carve-outs are inherently riskier than the transfer of fully standalone existing businesses (eg brought about by the transfer in ownership of pre-existing corporate entities by way of share sale), with risks to effectiveness arising from the identification of assets, the allocation of shared assets, and the transfer of assets to the businesses to be divested.
- 13.484 The KAS and, to a lesser extent, the MEQ Divestiture Proposal do not involve divestiture of fully standalone businesses, but comprise carve-outs of assets, operations, employees and customer and supplier contracts. In particular, as we have explained above, the KAS Divestiture Business is tightly integrated into Cargotec’s corporate structure, and involves a significant number of common employees and many key contracts, which gives rise to the risks set out above. The MEQ Divestiture Business also has a number of ‘shared capabilities’, which are services provided to the MEQ Divestiture Business by the Konecranes group.
- 13.485 In our view, the complex and wide-ranging carve-outs proposed by the Parties present substantial risks to the effectiveness of the Parties’ Remedy Proposal. We do not consider that that these risks could be adequately mitigated given the Parties’ chosen design of the remedy.

Our views on composition risks

- 13.486 The Act requires that when considering possible remedial actions, the CMA shall ‘in particular, have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the substantial lessening of competition and any adverse effects resulting from it’.²⁷²⁵ As set out in paragraph 13.6 above, to fulfil this requirement, the CMA will seek remedies that are effective in addressing the SLCs and any resulting adverse

²⁷²⁴ Call note [§].

²⁷²⁵ Section 36(3) of the Act.

effects.²⁷²⁶ In evaluating the effectiveness, we seek remedies that have a high degree of certainty of achieving their intended effect because customers or suppliers of merger parties should not bear significant risks that remedies will not have the requisite impact on the SLC or its adverse effects.²⁷²⁷

- 13.487 In the present case, we have found substantial and wide-ranging composition risks that are inherent to the design, scope and practical aspects of the Parties' Remedy Proposal and are likely to undermine its effectiveness. In particular:
- 13.488 First, we identified significant risks arising from the scope of the Parties' Remedy Proposal. In particular, certain assets currently used in the operation of the Parties' businesses that are not included in the Parties' Remedy Proposal. 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. 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) (see paragraphs 13.221 to 13.222).
- 13.489 Second, we identified significant risks relating to the product portfolio and scale of the Divestiture Businesses. 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. 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 (see paragraphs 13.223 to 13.407).
- 13.490 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

²⁷²⁶ CMA87, paragraph 3.4.

²⁷²⁷ See [Ecolab](#) at paragraphs 88-89 and [CMA87](#), paragraph 3.5 d).

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. 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 (see paragraphs 13.408 to 13.441). 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 (paragraph 13.406).

13.491 Third, we identified significant risks relating to the complexity of the proposed asset carve-outs. 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 (see paragraphs 13.482 to 13.485).

13.492 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.

13.493 Given the nature and scope of the composition risks set out above, we do not consider that the Parties' Remedy Proposal has a 'high degree of certainty of achieving [its] intended effect'²⁷²⁸ in order to be able to conclude that the remedy has an acceptable risk profile and, therefore, can be considered an effective remedy.²⁷²⁹

²⁷²⁸ CMA 87, paragraph 3.5 (d).

²⁷²⁹ As confirmed by the CAT in *Ecolab*, 'a divestiture remedy adopted by the CMA constitutes a one-off intervention. If the risk involved in that remedy materialised, there would be nothing that the CMA could do about it and the SLC would then persist. That is one reason why the CMA, in our view entirely reasonably, does not favour a remedy for which it cannot have a high degree of confidence of success' (paragraph 83).

13.494 In the next section, we consider the extent to which any of these composition risks could be mitigated by the selection of a suitable purchaser, as part of our assessment of purchaser risks.

Purchaser risks

13.495 We consider below the risks that the businesses comprising the Parties' Remedy Proposal may be sold to a weak or otherwise inappropriate purchaser or purchasers, or that a suitable purchaser or purchasers may not be available. These risks, if not properly addressed, could undermine the effectiveness of any divestiture remedy. We also consider the extent to which the composition risks identified above might be mitigated by the identification of a suitable purchaser.

13.496 The CMA normally manages the risks of an acquisition by an unsuitable purchaser by satisfying itself that a potential purchaser:²⁷³⁰

- (a) is independent of the merging parties (in this case, Cargotec and Konecranes);
- (b) has the necessary capability to compete in the relevant markets;
- (c) is committed to competing in the relevant markets; and
- (d) will not create further competition concerns.

13.497 Where the CMA is in doubt as to the viability or attractiveness to purchasers of a proposed divestiture business (for example as a result of composition risk) and/or believes there may be only a limited pool of suitable purchasers (for example, because of the nature of the business, or the necessary criteria for suitability), it may require an upfront buyer, whereby the merger parties must first obtain a suitable purchaser who is contractually committed to the transaction as a condition of final undertakings or a final order.²⁷³¹ The Parties have committed to an upfront buyer condition for each of the Divestiture Businesses (and further committing to the Divestiture Businesses being acquired by the same upfront buyer). With or without an upfront buyer, the Parties would need to obtain CMA approval of the purchaser(s) before completion of the divestitures.²⁷³²

13.498 We assess below:

²⁷³⁰ CMA 87, paragraph 5.21.

²⁷³¹ CMA 87, paragraph 5.28.

²⁷³² CMA 87, paragraph 5.20.

- (a) the Parties' submissions on purchaser risks and interested purchasers;
- (b) third-party evidence on features of a suitable purchaser and potentially interested purchasers;
- (c) whether the composition risks of the Parties' Remedy Proposal can be sufficiently mitigated by the identification of a suitable purchaser; and
- (d) whether the composition risks of the Parties' Remedy Proposal can be sufficiently mitigated by an Upfront Buyer Condition.

Parties' submissions on purchaser risks and interested purchasers

13.499 Cargotec submitted that it 'trusts that proceeding with an upfront buyer condition will significantly mitigate the risks identified by the CMA'.²⁷³³

13.500 A letter from Cargotec's CEO to the CMA dated 24 January 2022 noted that there is substantial interest from potential purchasers of the KAS Divestiture Business. The Parties informed us that, as of 8 February 2022, 15 companies had signed a non-disclosure agreement (NDA) to have access to the materials regarding the KAS Divestiture Business.²⁷³⁴ Of these 15 companies, [REDACTED] submitted indicative bids.

13.501 In response to the Remedies Working Paper, the Parties submitted that:

- (a) The CMA's assessment of purchaser risks is fundamentally undermined by the extremely limited nature of its market test.²⁷³⁵
- (b) The Remedies Guidance indicates that purchaser risks will usually be mitigated with the requirement of an upfront buyer. While the size of the pool of potential purchasers might be a relevant consideration for post-closing divestments, it is an irrelevant consideration when the remedies in question will include an upfront buyer condition.²⁷³⁶
- (c) The CMA is unreasonable when it places weight on whether a small handful of third parties contacted by the CMA expressed interest in the acquisition of the Divestiture Businesses, while dismissing the effort that significantly more third parties put in to signing an NDA, in some cases

²⁷³³ Cargotec submission [REDACTED].

²⁷³⁴ Cargotec submission [REDACTED].

²⁷³⁵ Parties' submission [REDACTED].

²⁷³⁶ Parties' submission [REDACTED].

appointing financial advisers, and negotiating with the seller of a business.²⁷³⁷

- (d) The Remedies Working Paper fails to engage with the possibility that each package is bought by purchasers with complementary CHE operations.²⁷³⁸

Third-party evidence on features of a suitable purchaser and potentially interested purchasers

13.502 We discussed with third parties what features were necessary for a prospective purchaser to be deemed suitable. In this context:

- (a) One MEQ OEM told us that a suitable purchaser would not need to be present in the container handling industry to become an effective competitor 'but obviously it would help'. Another OEM of Port Cranes told us that 'It's definitely an advantage if a purchaser is part of the industry for the sake of the success' but noted that 'if you have self-sufficient units in a way, then also a financial investor in an extreme case could be the solution'.
- (b) One customer²⁷³⁹ told us that the purchaser of the KAS Divestiture Business should be a current player in the ports business.
- (c) Another customer²⁷⁴⁰ told us that a purchase of the KAS Divestiture Business by a private equity firm would be a 'disaster' for customers, for example as they would look to increase prices significantly in areas such as software platforms where they have significant leverage against port operators.
- (d) One customer of MEQ²⁷⁴¹ told us that the purchaser would ideally need to be an industry buyer with substantive knowledge of the MEQ industry rather than a financial investor.
- (e) Four other third parties (including two customers, one MEQ OEM and one OEM of Port Cranes) told us that it would be important for the effectiveness of the remedy that the Divestiture Businesses are purchased by industrial purchasers.²⁷⁴²

²⁷³⁷ Parties' submission [REDACTED].

²⁷³⁸ Parties' submission [REDACTED].

²⁷³⁹ Call note [REDACTED].

²⁷⁴⁰ Call note [REDACTED].

²⁷⁴¹ Call note [REDACTED].

²⁷⁴² Transcript of call [REDACTED]; Transcript of call [REDACTED]; Transcript of call with [REDACTED]; and Transcript of call [REDACTED].

- (f) One customer for example, said: 'I would like to see it go into the hands of the industry buyer rather than equity for sure, because they will have very different goals for the business in terms of short-term versus long-term views'.

13.503 In relation to the financial capability and scale of the purchaser:

- (a) One customer noted that the purchaser would need to have significant size, scale and financial resources and the scale of a supplier of CHE is a consideration in its purchasing decisions, as large value contracts cannot be awarded to a small entity, without sufficient financial standing.²⁷⁴³
- (b) Another customer told us that scale is important and that it would present a risk if the purchaser of the KAS Divestiture Business is a smaller company, because it may not be present everywhere the customer operates.²⁷⁴⁴

13.504 In the same vein, two third parties (one OEM of Port Cranes²⁷⁴⁵ and one customer²⁷⁴⁶) noted that the purchaser would need to be financially strong to meet the financial requirements in tenders (especially tenders for more expensive equipment such as Port Cranes or SC), including in terms of liability for damages in relation to delays or malfunctioning of the equipment. A distributor noted that the development cost of certain technology, like an electric engine will be 'sizeable' and therefore 'the company that buys that business needs to have certainly the financial strength to be able to continue to develop the products. Otherwise it will just literally become obsolete'.²⁷⁴⁷

13.505 Evidence from customers also highlighted the scale of the prospective purchaser as an important factor:

- (a) One customer made a similar comment that a purchaser would need to have the financial strength to take responsibility for any structural issues with the installed fleet and the capability to ensure the installed

²⁷⁴³ Transcript of call [REDACTED]. This customer told us that the scale of a supplier of CHE is a consideration in its purchasing decisions because larger contracts are too risky for OEMs without a certain scale. It said that, for large contracts, it considers whether a supplier is big enough to satisfy 'the appropriate financial level for large contracts' and also 'the scale of what they sell'. This customer also said that 'a small player' may not be big enough and a potential concern for certain contracts.

²⁷⁴⁴ Call note [REDACTED].

²⁷⁴⁵ Transcript of call [REDACTED].

²⁷⁴⁶ Transcript of call [REDACTED].

²⁷⁴⁷ Transcript of call with [REDACTED].

equipment 'is fully supported into the future and fully developed and it does not become a kind of end-of-line solution'.²⁷⁴⁸

- (b) Another customer also told us that scale is important and that it looks for financial soundness in its suppliers. This customer noted that, if the purchaser of KAS is a smaller company, this would be a risk.²⁷⁴⁹
- (c) One customer²⁷⁵⁰ said that smaller businesses should not be excluded as potential purchasers of the KAS Divestiture Business, as the products of the two businesses could be complementary.
- (d) Another customer told us that it does not have certainty over the ability of smaller suppliers to support it into the future. This customer tries to buy sufficient spare parts when it purchases its CHE and trains its own technicians.²⁷⁵¹

13.506 One third-party (OEM of Port Cranes) also highlighted other factors that should be taken into account in any assessment of the likely availability of prospective purchasers. It suggested that it might be difficult for a purchaser without a worldwide presence or presence in Europe to manage the Divestiture Businesses and manufacturing locations in Europe.²⁷⁵² It also noted, however, that players that are already present in the MEQ or Port Cranes/horizontal equipment business may not be interested in purchasing, respectively, the whole MEQ Divestiture Business or the KAS Divestiture Business, because of the duplication with their own existing assets (ie they would only be interested in particular assets).²⁷⁵³

13.507 The Parties submit that the CMA's assessment of the above evidence on the necessary features of a suitable purchaser fails to consider that evidence against the criteria already contained in the Parties' Remedy Proposal.²⁷⁵⁴ We took into account that some of the factors highlighted by third parties as important features of a suitable purchaser are, to some extent, reflected in the purchaser criteria set out in the Parties' Remedy Proposal.²⁷⁵⁵ We note, however, that there is a risk that the criteria set out in the Parties' Remedy Proposal would limit the pool of purchasers that: (i) meet these criteria; and

²⁷⁴⁸ Transcript of call with [REDACTED].

²⁷⁴⁹ Call note [REDACTED].

²⁷⁵⁰ Call note [REDACTED].

²⁷⁵¹ Call note [REDACTED].

²⁷⁵² Transcript of call [REDACTED].

²⁷⁵³ Transcript of call [REDACTED].

²⁷⁵⁴ Parties submission [REDACTED].

²⁷⁵⁵ We note, however, that the MEQ Divestiture Proposal did not require the purchaser to have a presence in a related industry.

(ii) would not raise competition concerns if they were to acquire the Divestiture Businesses.

Potential mitigation of composition risks by identification of a suitable purchaser

13.508 As set out in the section above about composition risks, we have found significant composition risks in relation to the Parties' Remedy Proposal. We have considered whether these risks are capable of effective mitigation by the identification of a suitable purchaser, able to compensate for the weaknesses in the composition of the divestiture packages. We note that, for this to be the case, the purchaser criteria set out in paragraph 13.496 above would also need to include the ability and commitment adequately to mitigate these risks. In such circumstances, the ability and commitment of a purchaser to mitigate these risks would need to be a central part of the CMA's assessment of suitable purchasers.

13.509 However, even with as strong a purchaser as could reasonably be expected, it is unlikely that all of these risks could be adequately mitigated. Moreover, the more requirements that are placed on a potential purchaser, particularly where these relate to shortcomings of a divestiture proposal rather than the characteristics of a purchaser, the smaller the pool of potentially suitable purchasers is likely to be. This increases the risk that a suitable purchaser may not be found.

13.510 We considered the capabilities that a purchaser would need to possess to provide us with a high degree of certainty that the composition risks we have identified would be sufficiently mitigated.

13.511 Based on the evidence in the section on composition risks above, purchasers of each of the packages comprising the Parties' Remedy Proposal would need substantial complementary capabilities in order to mitigate the composition risks to any material degree, including:

- (a) Risks relating to brand;
- (b) Risks relating to connectivity solutions and other software systems.
- (c) Risks relating to scale and product portfolio; and
- (d) Carve-out risks relating to staff and supplier contracts.

13.512 The purchaser would also need to have other capabilities, such as the financial resources and proven expertise in the material handling or heavy-duty equipment industry, to in order to meet the purchaser conditions offered by the Parties (see paragraphs 13.41 to 13.45, which are consistent with the

factors identified as necessary by third parties for a suitable purchaser (see paragraph 13.502 to 13.506).

- 13.513 The list of capabilities that a purchaser would have to possess for this purpose, as set out below, is substantial and is likely, in our view, to severely restrict the pool of available purchasers, possibly to the extent that a purchaser with these capabilities could not be found.
- 13.514 We note, in this regard, that some third parties told us that it is important for the effectiveness of the Parties' Remedy Proposal that the KAS and MEQ Divestiture Businesses are acquired by an industry purchaser and noted a number of other factors that should be taken into account in the assessment of the purchaser's suitability, which are likely to reduce the availability of prospective purchasers (see paragraphs 13.502 and 13.506). [REDACTED] companies²⁷⁵⁶ (including [REDACTED] private equity firms) submitted a non-binding offer in relation to the KAS Divestiture Business and [REDACTED] companies (including [REDACTED] private equity companies)²⁷⁵⁷ submitted a non-binding offer in relation to the MEQ Divestiture Business. During a conference call between the Parties and the CMA on 9 March 2022, Cargotec's legal representatives told the CMA that it was unlikely that there would be further bids for the KAS Divestiture Business, but that Cargotec would consider any further bids received after the deadline of 4 March 2022. Subsequently, the Parties submitted that they are continuing the process of seeking acceptable buyers for the KAS and MEQ Divestiture Businesses.²⁷⁵⁸
- 13.515 [REDACTED] private equity bidders submitted a non-binding offer for both the MEQ Divestiture Business and the KAS Divestiture Business.²⁷⁵⁹ As explained in paragraph 13.103, one industry player that submitted a non-binding offer to the MEQ Divestiture Business initially expressed interest in the KAS Divestiture Business, but subsequently decided not to pursue a non-binding offer for the KAS Divestiture Business.
- 13.516 The Parties submitted that it would be inappropriate for the CMA to base any final conclusions on the identities of the bidders that have already

²⁷⁵⁶ The Parties informed us, in relation to one of these private equity firms that, Cargotec was still analysing its offer but that, at that stage, [REDACTED] (email from Cargotec's advisers, Freshfields Bruckhaus Deringer of 14 March 2022).

²⁷⁵⁷ We spoke with one of the industry bidders that submitted a non-binding offer in relation to the MEQ Divestiture Business before the Remedies Working Paper. This bidder told us in a response hearing (before it had submitted its non-binding offer) that it might be interested in the acquisition of a broader MEQ Divestiture Business. It also told us that, although the KAS Divestiture Business is complementary to its business, it would not be interested in purchasing that business as the current proposal is 'so confused, it is so complicated'.

²⁷⁵⁸ Parties' submission [REDACTED]. The Parties updated that CMA on 14 March 2022 that an equity firm had submitted a non-binding offer for the KAS Divestment Business, and informed the CMA on 20 March 2022 that an industry player had expressed interest in buying the KAS Divestment Business as well as the MEQ Divestment Business (although this third party subsequently withdrew its interest in the KAS Divestment Business).

²⁷⁵⁹ One of these private equity firms is the one of the bidders that the [REDACTED] (see footnote 2756).

'materialised', as this may not represent the complete picture.²⁷⁶⁰ We agree that the suitability of any purchasers would be addressed during the CMA's purchaser approval process. We are not drawing conclusions in relation to the effectiveness of the Parties' Remedy Proposal based on the current list of bidders. We have, however, placed some weight on the evidence provided by the current bidders that submitted offers at the current stage of the sale process.

13.517 We next consider the potential ability of purchasers to mitigate the categories of composition risk set out in paragraph 13.511 and meet the attributes that third parties identified as relevant in a suitable purchaser.

Ability to mitigate risks relating to brand

13.518 As explained above, there are material risks associated with the fact that the Konecranes brand is only being licensed temporarily for use in MEQ and that the Merged Entity will retain the exclusive right to use the Kalmar brand in relation to the supply and servicing of any equipment other than Port Cranes and Straddle Carriers. We consider, therefore, that the purchaser would need a well-recognised brand in CHE or in an adjacent industry..

13.519 Even if a purchaser possessed such a brand, we would expect there to be a period of disruption while the Divestiture Businesses' assets were (at least partially) rebranded, with possible negative effect on the competitiveness of the Divestiture Businesses.

13.520 In this case, the purchaser would be required, as part of our purchaser approval process, to be able to demonstrate its ability and commitment to rebrand, including by presenting a credible and timely rebranding plan and evidence of its ability to execute this plan without impairment of the Divestiture Businesses' competitive capability.

Ability to mitigate risks relating to connectivity solutions and other software systems

13.521 Given the licensing restrictions in the use of the connectivity solutions in each of the MEQ and KAS Divestiture Proposals (see paragraph 13.182 to 13.196), if a purchaser wanted to provide its customers with a single connectivity system for all CHE, it would need to buy, build or migrate MEQ or KAS customers onto such a system.

²⁷⁶⁰ Parties' submission [redacted].

13.522 The evidence set out in paragraph 13.183 above indicates that developing such a connectivity system would require significant time and resources. The purchaser would have to show the ability (eg technical and financial capability) and commitment to offer its own connectivity system for all CHE.

Ability to mitigate risks relating to scale and product portfolio

- 13.523 As noted in paragraph 13.385 above, we consider that the Parties' commitment to selling the Divestiture Businesses to a single purchaser would mitigate the risks we have identified relating to the breadth of the product portfolio. However, as discussed at paragraphs 13.413 to 13.436, a single purchaser may lead to an increase in risk arising from a 'mix-and-match' divestiture.
- 13.524 In paragraphs 13.418 to 13.420, we noted that the terms of the Parties' Remedy Proposal prevent the connectivity solutions included in the Divestiture Businesses from being used across the whole broad portfolio of CHE. A single purchaser would have to source or develop its own connectivity solutions, and there is therefore a risk that they would not be successful in doing so. Even if the purchaser was able to offer equivalent connectivity solutions, it would still have to migrate the divested CHE customers to them. Whilst having a strong brand and an established track record in a relevant market might mitigate this risk, we consider that there is a high degree of uncertainty that any purchaser could overcome these challenges.
- 13.525 In paragraphs, 13.424 to 13.427, we identified another 'mix-and-match' risk: that existing customers that purchase both MEQ and Straddle Carriers or Port Cranes from one of the Parties would need to build a new relationship with the sales personnel (or distributor) in relation to one type of their CHE (see 13.346 to 13.347) , and this would lead to disruption for these customers and potentially a desire to switch away from the Divestiture Businesses. Based on the evidence we obtained on the investment in time and cost needed to establish new relationships (see Chapter 12), we consider that a purchaser with a strong brand, established track record and existing presence in one of the relevant markets would have an advantage in being able to mitigate this risk, however, there are likely to be short-term transition risks to its ability to act as an effective competitor.
- 13.526 In paragraphs 13.430 to 13.433, we noted that there would be a risk that the Divestiture Businesses do not have an equivalent level of organisational capital as each of the Parties (for example, synergies such as technical know-how, production efficiencies and enhanced cross-selling opportunities).

There is also execution risks around integration of the Divested Businesses with each other and with the purchaser's business.

- 13.527 Therefore, in order to be able to mitigate these risks, we consider that a single purchaser will need to have a strong brand, the ability to develop new connectivity solutions and integrate two distinct businesses, as discussed in paragraph 13.384 above.
- 13.528 Looking first at risks associated with the loss of scale, as set out above in paragraph 13.225, the KAS Divestiture Business is approximately [REDACTED]% of the size (by turnover) of Cargotec's Kalmar CHE division, and the MEQ Divestiture Business is approximately [REDACTED]% of the size (by turnover)²⁷⁶¹ of Konecranes' Port Solutions. These scale risks may be mitigated by a purchaser that itself has sufficient scale and integration capability. As an indicator of scale, the turnover of the Port Solutions division in 2020 was [REDACTED],²⁷⁶² and the turnover of the Kalmar division in the same year was [REDACTED].²⁷⁶³ Therefore, while a smaller player may not be able sufficiently to mitigate this risk, there would appear to be a sufficient number of potential purchasers that the scale risks (on its own) arising from the composition of the Parties' Remedy Proposal can be satisfactorily mitigated.

Ability to mitigate carve out risks relating to staff and supplier contracts

- 13.529 If staff were unwilling or unable to transfer to the Divestiture Businesses, and the divestiture completed without a full staff roster, a purchaser would need to recruit new staff. In order to mitigate this risk, a suitable purchaser would need to be able to provide sufficient assurance to the CMA (for example, through a detailed staffing plan) that it would be able to cover the roles of those staff from its existing employees, or recruit new employees quickly enough that customer disruption is avoided. The number and range of staff being transferred is significant, increasing the risk that this process would not be executed smoothly. Given the global nature of the Divestiture Businesses, any purchaser would need to have an international footprint to be able to overcome any staff losses.
- 13.530 Where supplier contracts cannot be transferred to the Divestiture Businesses, we would require a purchaser to have the ability (with a high degree of certainty) to enter into supply contracts with the same or similar

²⁷⁶¹ KAS [REDACTED] Form RM [REDACTED].

²⁷⁶² MEQ [REDACTED] Form RM [REDACTED].

²⁷⁶³ Cargotec internal document [REDACTED].

suppliers under which it could procure inputs and services for the KAS and/or MEQ Divestiture Business(es) it has acquired.

Financial capability and industry experience

13.531 Evidence from third parties indicates that experience in the CHE or adjacent industry and financial strength are important capabilities that a suitable purchaser should meet (see paragraph 13.502 to 13.506/13.507). The purchaser conditions offered by the Parties - such as that the purchaser must have other financial resources and proven expertise in the material handling or heavy-duty equipment industry (see paragraphs 13.41 to 13.45) - reflect these requirements. This may reduce the pool of available purchasers, for example by excluding many financial buyers.

Conclusion on mitigation of composition risks

13.532 We consider that purchasers of the Divestiture Businesses would need substantial complementary capabilities in order to mitigate the composition risks of the Parties' Remedy Proposal to any material degree. The list of these capabilities is substantial (eg having a presence in CHE or adjacent industries, global operations at scale, a strong brand, and expertise in developing connectivity solutions and other customer-facing IT systems and financial strength) and we currently consider that it is likely to severely restrict the pool of available purchasers. While mitigating concerns relating to scope of the 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 purchasers, giving rise to a material risk that a purchaser with these capabilities could not be found.

Upfront Buyer Condition as a mitigating factor of composition and purchaser risks

13.533 Cargotec submitted that 'potential execution and purchaser risks - to the extent they have a grounding in the specific circumstances of this case - will be significantly mitigated with an upfront buyer arrangement'.²⁷⁶⁴ In their response to the Remedies Working Paper, the Parties said that any information asymmetries between the Parties and the CMA during the implementation of the divestiture would be 'completely addressed by the work of the Monitoring Trustee and Hold Separate Manager'.²⁷⁶⁵ We also

²⁷⁶⁴ Cargotec submission [38].

²⁷⁶⁵ Parties' submission.

note the Parties' further submissions on our Remedies Working Paper, which are summarised at paragraph 13.501.

- 13.534 Our guidance says that 'the CMA will seek remedies that have a high degree of certainty of achieving their intended effect. Customers or suppliers of merger parties should not bear significant risks that remedies will not have the requisite impact on the SLC or its adverse effects'.²⁷⁶⁶
- 13.535 As noted by the CAT in *Ecolab*, a divestiture remedy adopted by the CMA constitutes a 'one-off intervention'.²⁷⁶⁷ If the CMA accepts a remedy and a risk inherent in the remedy subsequently materialises so as to render it ineffective, there would be nothing that the CMA could do about it and the SLC would then persist.²⁷⁶⁸
- 13.536 It is, therefore, not sufficient for merger parties to demonstrate that a purchaser for a proposed divestiture package could be found during the remedy implementation phase. The CMA must also have a high degree of certainty that the divestiture will achieve its intended effect. In *Ecolab*, the CAT endorsed the CMA's decision to reject a remedy proposal with significant identified shortcomings even though the merging parties could find a purchaser. The CAT's judgment notes that the CMA rejected the remedy not 'because it was concerned that a purchaser [...] could not be found', but rather because 'the significant shortcomings' of the remedy led the CMA to 'conclude that it was not an effective and comprehensive remedy'.²⁷⁶⁹
- 13.537 The CAT has also held that the remedies implementation phase (ie after the final report) does not provide for a further period in which the CMA can consider what remedy is appropriate.²⁷⁷⁰ This means that the CMA should not accept and proceed to the implementation phase of a remedy that is unlikely to be effective. In the present case, the composition risks that we have identified are substantial and inherent to the Parties' Remedy Proposal.
- 13.538 Even if a purchaser or purchaser(s) could be found which could suitably mitigate composition risks associated with the loss of the advantages related to having a significant scale and a broad CHE portfolio, there are other composition risks which a purchaser is unlikely to be able to mitigate, such as those relating to scope and asset carve-outs and the integration and

²⁷⁶⁶ CMA87, paragraph 3.5, d).

²⁷⁶⁷ See also fn 2729.

²⁷⁶⁸ *Ecolab*, paragraph 83.

²⁷⁶⁹ *Ecolab*, paragraphs 114 and 115.

²⁷⁷⁰ *Ecolab*, paragraphs 109 to 111. The CAT judgment confirmed that the remedies implementation phase 'does not provide for a further period in which the CMA can consider what remedy is appropriate.' (paragraph 111).

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.

- 13.539 In essence, a remedy that relies so heavily on the integration with the purchaser's existing business carries many of the same risks as a 'mix-and-match' remedy (see paragraphs 13.412 to 13.437), and therefore gives rise to a material risk that the divestiture package will not function effectively.
- 13.540 In this circumstance, the incentives of the CMA and the purchaser may vary (see paragraph 13.124) and the CMA has limited powers to ensure that the purchaser remains committed to running the Divestiture Businesses in a way that minimises the adverse effects of the SLC in the longer-term. Accordingly, while a purchaser can bring some complementary capabilities to a divestiture package, it is important that the assets or business are sufficiently viable on a stand-alone basis to maintain the rivalry that currently exists in the market.
- 13.541 This means that, while an Upfront Buyer Condition can legitimately be used as a risk management tool where there are some doubts about the viability of a proposed divestiture package (as the CMA's guidance reflects),²⁷⁷¹ it is not appropriate for us to accept an ineffective remedy in the hope that a potential purchaser can be identified during the remedies implementation phase that might 'cure' those inherent defects. In addition, although other risk management measures such as appointment of a monitoring trustee or a hold separate manager might provide for some mitigation of the information asymmetries between the Parties and the CMA (for example, in relation to issues affecting the precise scope of the assets included in a divestiture package), these measures cannot address the risk that a deficient divestiture package will lead to an ineffective remedy.
- 13.542 As such, we do not agree with the Parties' submission, summarised at paragraph 13.501, that 'the size of the pool of potential purchasers [...] is an irrelevant consideration when the remedies in question will include an upfront buyer condition'. If there are material composition and purchaser risks that cannot be adequately mitigated, this means that the remedy is unlikely to be effective, irrespective of any upfront buyer condition. Given our duties under section 36(2) of the Act, the CMA should not accept ineffective remedies.

²⁷⁷¹ CMA87, paragraph 5.28.

13.543 We are under a duty to identify a comprehensive solution to the SLCs we have found in our Final Report. To fulfil this duty, we seek remedies that are, with a high degree of certainty, effective at addressing the SLCs we have found. Our view is that the Parties' Remedy Proposal does not meet that standard.

13.544 For these reasons, we disagree with the Parties' contention that an upfront buyer effectively transfers all purchaser risk to the Parties and that it ensures that the remedy is of an acceptable risk profile.²⁷⁷²

Conclusions on purchaser risk

13.545 As discussed in paragraphs 13.119 to 13.493, the Parties' Remedy Proposal carries significant composition risks. We note that some of these risks have the potential to be mitigated to some degree if the purchaser(s) of the Divestiture Businesses were to have particular capabilities. The list of these capabilities is substantial, including having a presence in CHE or adjacent industries, global operations at scale, a strong brand, and expertise in developing connectivity solutions and other customer-facing IT systems and financial strength.

13.546 Furthermore, there are other composition risks which a purchaser is not likely to mitigate, such as those relating to asset carve-out and the integration of two different businesses. The composition risks that we have identified are, in our view, substantial and inherent to the Parties' Remedy Proposal. The acquisition of the Divestiture Businesses would leave any purchaser with substantial challenges in terms of integration and developing their competitive capability. 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.

13.547 A purchaser would also need to be able to demonstrate coherent plans for overcoming the numerous other deficiencies in composition of the Divestiture Businesses. Even if the divestiture process was to go as well as could reasonably be expected, the re-organisation and (at least partial) rebranding of the Divestiture Businesses would be likely materially to impair their effectiveness for a period following completion. The Parties' late commitment to a single purchaser of both businesses increases these risks, and further reduces the availability of suitable purchasers.

²⁷⁷² Cargotec submission [☒]

13.548 In our view, imposing additional purchaser criteria to seek a suitable purchaser or purchasers with the capabilities and assets to mitigate the substantial composition risks we have identified would, in turn, lead to an increased risk that such purchasers would not be available or willing to acquire both Divestiture Businesses, or would leave unacceptable residual competition risks (in which case the CMA would be unable to conclude that the purchaser criteria were met).

13.549 We note that the Parties have committed to an upfront buyer condition in relation to the Divestiture Businesses and submitted that this would transfer the purchaser risk to Parties. We do not consider, however, that an upfront buyer will sufficiently mitigate risks that are substantial and inherent to the design of the Parties' Remedy Proposal. While a purchaser can bring some complementary capabilities to a divestiture package, it is important that the assets or business are sufficiently viable on a stand-alone basis to maintain the rivalry that currently exists in the market. If the risks we have identified in the Parties' Remedy Proposal subsequently materialise, as we judged likely, there would be nothing that the CMA could do about it and the SLCs and their adverse effects would then persist.

Conclusion of our assessment of the effectiveness of the Parties' Remedy Proposal

13.550 We consider that there are significant composition and purchaser risks associated with both structural elements of the Parties' Remedy Proposal. These risks concern the scope and perimeter of the Divestiture Businesses, risks relating to the complexity of the proposed asset 'carve-outs' and the design of the remedy giving rise to risks relating to product portfolio and scale.

13.551 We therefore consider that the structural elements of the Parties' Remedy Proposal fall considerably short of effectively addressing the competition concerns we have identified. The most significant of these risks are inherent to the design of the remedy. In addition, the Parties' Remedy Proposal has material risks relating to elements of the package, including brand, software, maintenance contracts and R&D.

13.552 Some of these risks have the potential to be mitigated to some degree if the purchaser(s) of the KAS and MEQ Divestiture Businesses were to have particular capabilities. These criteria are likely, in our view, to significantly limit the number of potentially suitable purchasers, and therefore increase the risk that a suitable purchaser will not be available. This risk is increased further because the divestiture is being structured as two packages and these risks apply to each. Even if the Parties were to identify an 'ideal'

purchaser or purchasers, the weaknesses of the KAS and MEQ Divestiture Proposals are such that we cannot have a high degree of certainty that the Parties' Remedy Proposal would be effective.

13.553 Based on the above, and having considered the effectiveness of the Parties' Remedy Proposal both in its entirety, and separately as two structural elements, it is our conclusion that the Parties' Remedy Proposal would not be an effective remedy to the SLCs and resulting adverse effects we have identified.

Assessment of the Termination Commitment Proposal

13.554 We now turn to assessing the impact of the Termination Commitment Proposal, as offered by the Parties, and whether it addresses our concern in relation to ATT.

13.555 We have found that Terberg is likely to become one of the main future competitors in the supply of ATT in Europe and therefore would (assuming that it could continue to operate independently from the Merged Entity) be a key competitor within this market.²⁷⁷³

13.556 We have also found that 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, the contractual link between the Merged Entity and Terberg brought about by the Merger presents a material risk that competition between two of the main players within this emerging market would be substantially lessened 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.²⁷⁷⁴

13.557 In our Remedies Notice, we indicated that we would consider whether a remedy which removed the contractual link between Konecranes and [✂] would be effective in addressing our competition concerns in this market. In this regard, we noted in the Remedies Notice that the competition concerns in relation to ATT arose in large part because of this contractual link.²⁷⁷⁵

13.558 In relation to the impact of such termination on Terberg, given the alternative options that appear to be available to Terberg, we were not concerned that

²⁷⁷³ Summary, paragraph 77.

²⁷⁷⁴ Summary, paragraph 81.

²⁷⁷⁵ See paragraph 13.16(d).

the loss of Konecranes as a partner would materially affect the competitiveness of Terberg post-Merger.²⁷⁷⁶

13.559 Given that the Termination Commitment Proposal would terminate the [✂] between Konecranes and Terberg for the development of ATT and ensure that Terberg continues to operate independently from the Merged Entity, we conclude that the Termination Commitment Proposal would address our concerns in relation to the supply of ATT provided that:

- (a) the termination comes into force promptly after the acceptance of final undertakings or the making of a final order; and
- (b) in order to prevent circumvention of this element of the Parties' Remedy Proposal, the Parties are prohibited from joint selling with Terberg in relation to ATT (for 10 years).

Conclusion on effectiveness of the Parties' Remedy Proposal

13.560 We conclude that the Parties' Remedy Proposal is not an effective remedy to the SLCs we have identified in this Final Report, other than to the SLC relating to ATT.

Conclusions on effective remedy options

13.561 We conclude that the following remedy option would be effective in remedying the SLCs and resulting adverse effects we have identified: the prohibition of the Merger.

13.562 We conclude that the following remedy option would not be effective in remedying the SLCs and resulting adverse effects relating to Gantry Cranes, Straddle Carriers and MEQ:

- (a) The Parties' Remedy Proposal; and
- (b) The divestiture of the entire CHE division of one of the Parties (ie Kalmar or Konecranes' Port Solutions division).

13.563 We also conclude that the Termination Commitment Proposal would be effective in remedying the SLC relating to ATT but note that prohibition of the Merger would also address this SLC. Given this and the fact that the Termination Commitment Proposal would not address any of the other SLCs arising from the Merger, and prohibition is the only effective remedy we have

²⁷⁷⁶ Summary, paragraph 79.

identified in relation to all SLCs, we have not considered the Termination Commitment Proposal further.

13.564 Having identified an effective remedy for all of the SLCs, we next consider whether there are any RCBs which we need to take into account, before considering the issue of proportionality.

Assessment of relevant customer benefits

13.565 The Act allows the effect of a proposed remedy on RCBs to be taken into account.²⁷⁷⁷ RCBs are defined by the Act as benefits to relevant customers (current and future customers) in the form of: (a) 'lower prices, higher quality or greater choice of goods or services in any market in the United Kingdom (whether or not in the market(s) in which the SLC has occurred or may occur) or (b) greater innovation in relation to such goods or services'.²⁷⁷⁸ The Act provides that a benefit is only an RCB if it accrues or may be expected to accrue from the merger and would be unlikely to accrue without the merger 'or a similar lessening of competition'.²⁷⁷⁹

13.566 RCBs that will be foregone due to the implementation of a particular remedy may be considered as costs of that remedy and may be taken into account in our assessment of the proportionality of a remedy. An effective remedy to an SLC might be considered disproportionate if it prevents customers from realising any RCBs arising from the merger, where these benefits outweigh the SLC and any resulting adverse effects.

13.567 The CMA may modify a remedy to ensure retention of RCBs or it may change its remedy selection. For instance, it may decide to implement an alternative effective remedy which retains RCBs, or it may decide that no remedy is appropriate.²⁷⁸⁰

13.568 The burden of proof of whether RCBs arise from a merger is on the merging parties: '[t]he merger parties will be expected to provide convincing evidence regarding the nature and scale of RCBs that they claim to result from the merger and demonstrate that these fall within the Act's definition of such benefits'.²⁷⁸¹

²⁷⁷⁷ Section 41(5) of the Act.

²⁷⁷⁸ CMA87, paragraph 3.17 and section 30 of the Act.

²⁷⁷⁹ Section 30 of the Act.

²⁷⁸⁰ CMA87, paragraph 3.16.

²⁷⁸¹ CMA87, paragraph 3.20.

Our assessment of RCBs

13.569 Neither the Parties nor third parties have put forward any RCBs for consideration.

13.570 We note that the Parties made a number of efficiency claims. We took account of these efficiency claims in Chapter 12 as part of our assessment of whether the Merger gives rise to efficiencies which might be a countervailing factor to the SLCs we have identified. We concluded that the Parties have not demonstrated that the Merger would result in such rivalry-enhancing efficiencies, such that they would offset the adverse effects of the Merger on competition.²⁷⁸² In that assessment, we also concluded that we do not consider that these efficiencies were either Merger-specific or rivalry-enhancing.

Conclusion on RCBs

13.571 On the basis of the analysis set out above, it is our conclusion that no RCBs arise from the Merger. Consequently, we have not modified our view of the appropriate remedy in light of any RCBs that would be eliminated by the remedy that we have found to be effective.

Proportionality assessment

13.572 In this section, we set out our assessment of, and conclusions on, the proportionality of the remedy option – prohibition of the Merger – we have concluded would be effective in addressing the SLCs we have found.

Proportionality assessment framework

13.573 In order to be reasonable and proportionate, the CMA will seek to select the least costly remedy, or package of remedies, that it considers will be effective. In other words, if the CMA is choosing between two remedies which it considers will be equally effective, it will select the remedy that imposes the least cost or that is least restrictive.²⁷⁸³

13.574 Having identified the least costly effective remedy, we then consider whether even the least costly effective remedy will result in costs that are disproportionate to the scale of the SLCs and resulting adverse effects we have identified. In doing so, we are required to compare the level of harm which is likely to arise from the SLCs with the relevant costs of the proposed

²⁷⁸² Summary, paragraph 98 and 99. See also paragraphs 12.221 to 12.230.

²⁷⁸³ CMA87, paragraph 3.6.

remedy.²⁷⁸⁴ In cases where all feasible remedies are likely to be disproportionate, the CMA may conclude that no remedial action should be taken. In practice, such instances are extremely rare.²⁷⁸⁵

Parties' views on proportionality

13.575 The Parties told us that, as the UK customers account only for a small proportion of the Parties' turnover, 'the *de facto* prohibition of the merger would be disproportionate'.²⁷⁸⁶

13.576 In response to the Remedies Working Paper, the Parties submitted that the CMA should have considered the proportionality of the Parties' Remedy Proposal because the CMA failed to demonstrate to the adequate legal standard (or as a matter of fact) that the Parties' Remedy Proposal would not be an effective remedy.²⁷⁸⁷

Our assessment of proportionality

13.577 As set out in paragraph 13.561 above, we concluded that prohibition of the Merger would be effective in remedying the SLCs and resulting adverse effects we have identified. Having assessed the Parties' Remedy Proposal in detail, we concluded that it is not effective in remedying the SLCs and resulting adverse effects we have identified.

13.578 The CMA's assessment of proportionality between different remedy options is only concerned with a comparison and assessment of *effective* remedies.²⁷⁸⁸ It would not be appropriate to seek to balance the costs of an ineffective remedy against those of an effective remedy.²⁷⁸⁹ The Parties' Remedy Proposal is, therefore, not relevant to this proportionality assessment because we have not found it to be effective.

13.579 We have identified only one remedy – prohibition of the Merger – which, based on our assessment above, we consider would each be effective in achieving the legitimate aim of comprehensively addressing the SLCs and

²⁷⁸⁴ CMA87, paragraph 3.11.

²⁷⁸⁵ CMA87, paragraph 3.53.

²⁷⁸⁶ Parties' submission [redacted].

²⁷⁸⁷ Parties' submission [redacted].

²⁷⁸⁸ CMA87, paragraph 3.6.

²⁷⁸⁹ See [SRCL Limited v Competition Commission \[2012\] CAT 1](#) at paragraphs 46-47 and [Ecolab](#) at paragraph 77 ("[...] the reason the CMA rejected the [remedy proposal] was because it concluded that it would not be an effective remedy. Unless that conclusion is overturned, questions of proportionality therefore do not arise.").

resulting adverse effects we have identified. Prohibition of the Merger is therefore the least costly effective remedy.²⁷⁹⁰

- 13.580 We considered whether prohibition of the Merger is disproportionate to the SLCs and the resulting adverse effects. The adverse effects resulting from the SLCs we have identified include higher prices and/or reduced quality, range or service to UK customers than would otherwise be the case absent the Merger.²⁷⁹¹ This could have also had adverse knock-on effects for consumers and businesses across the UK. In this context, we do not consider that the proportion of the total revenues generated by the Parties' businesses that arises in the UK is a relevant consideration in the assessment of the proportionality of an effective remedy, in particular when there is no less intrusive effective remedy.
- 13.581 It is our view that the harm arising from the SLCs (including their cumulative effect over time) is likely to be significant and have a widespread impact on customers in the UK, and would persist and be sustained if the Merger was permitted to proceed.²⁷⁹² As set out above in paragraphs 13.569 to 13.571, we have not identified any RCBs that would be lost as a result of the Merger, or other relevant costs that would outweigh the need to achieve a comprehensive and effective solution to the SLCs.
- 13.582 In summary, 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 an effective remedy in the form of prohibition of the Merger would outweigh the benefits of such a remedy. Consequently, we have found that prohibition of the Merger would not be disproportionate to the SLCs and resulting adverse effects.

Conclusion on proportionality

- 13.583 On the basis of our reasoning as explained above, we conclude that prohibition of the Merger would represent a proportionate remedy to the SLCs and the resulting adverse effects we have identified.

²⁷⁹⁰ As indicated above, prohibition of the Merger is effective at remedying the SLC relating to ATT. Therefore the Termination Commitment Proposal is not required to remedy this SLC.

²⁷⁹¹ Summary, paragraph 4.

²⁷⁹² As mentioned above in paragraph 13.577, we consider that it is the absolute harm arising, and not the size of the Parties' UK operations relative to those in the rest of the world that is relevant in our assessment of the proportionality of an effective remedy.

Decision on the effectiveness and proportionality of possible remedies

13.584 We conclude that only the prohibition of the Merger represents an effective and proportionate remedy to address all SLCs and resulting adverse effects we have found.

Remedy implementation

13.585 Having identified our preferred remedy, we now consider how it should be implemented.

13.586 The CMA has the choice of implementing any final remedy decision either by accepting final undertakings pursuant to section 82 of the Act if the Parties wish to offer them, or by making a final order under section 84 of the Act. The final undertakings must be accepted, or the final order made, within 12 weeks of publication of our Final Report (a deadline which can be extended once by up to six weeks under exceptional circumstances),²⁷⁹³ including the period for any formal public consultation on the draft undertakings or order as specified in Schedule 10 of the Act.

13.587 In line with the CMA's Remedies Guidance, we conclude that once our preferred remedy has been fully implemented in line with the conclusions set out in this Final Report, each Party shall be prohibited from subsequently acquiring control or material influence over the assets or shares of the other Party. Our Remedies Guidance states that the CMA will normally limit this prohibition to a period of 10 years.²⁷⁹⁴ We find no compelling reason to depart from the guidance in this case by seeking a shorter or longer prohibition period.

14. Decision

14.1 For the reasons set out in the preceding Chapters, the Inquiry Group appointed to consider this reference has made the following Decision on the statutory questions it has to decide pursuant to section 36(1) of the Act:

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

²⁷⁹³ Section 82 and section 84 of the Act.

²⁷⁹⁴ CMA87, paragraph 5.10.

- (b) the creation of that situation may be expected to result in a substantial lessening of competition 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 (vii) ATT.