

Anticipated acquisition by Ritchie Bros. Auctioneers Incorporated of Euro Auctions Group

Decision to refer

ME/6958/21

The CMA's decision to refer under section 33 of the Enterprise Act 2002 given on 18 March 2022.

Please note that [X] indicates figures or text which have been deleted or replaced in ranges at the request of the parties for reasons of commercial confidentiality.

Introduction

1. Ritchie Bros. Auctioneers Incorporated (**Ritchie Bros**) has agreed to acquire Euro Auctions Group (which consists of Euro Auctions Limited, William Keys & Sons Holdings Limited, Equipment Sales Ltd, and Equipment & Plant Services Ltd and their subsidiaries, as well as certain assets belonging to Euro Auctions FZE, together **Euro Auctions**) (the **Merger**). Ritchie Bros and Euro Auctions are together referred to as the **Parties**.
2. On 4 March 2022, the Competition and Markets Authority (**CMA**) decided under section 33(1) of the Enterprise Act 2002 (the **Act**) that it is or may be the case that the Merger consists of arrangements that are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation, and that this may be expected to result in a substantial lessening of competition (**SLC**) as a result of horizontal unilateral effects in the supply of auction services for used heavy construction machinery in the UK (the **SLC Decision**).¹ Terms defined in the SLC Decision have the same meaning in this decision on reference unless otherwise specified.
3. On the date of the SLC Decision, the CMA gave notice pursuant to section 34ZA(1)(b) of the Act to the Parties of the SLC Decision. However, in order to allow the Parties the opportunity to offer undertakings to the CMA for the

¹ See [Ritchie Bros/Euro Auctions case page](#).

purposes of section 73(2) of the Act, the CMA did not refer the Merger for a phase 2 investigation pursuant to section 33(3)(b) on the date of the SLC Decision.

4. Pursuant to section 73A(1) of the Act, if a party wishes to offer undertakings for the purposes of section 73(2) of the Act, it must do so before the end of the five working day period specified in section 73A(1)(a) of the Act. The SLC Decision stated that the CMA would refer the Merger for a phase 2 investigation pursuant to sections 33(1), and in accordance with section 34ZA(2) of the Act, if no undertakings for the purposes of section 73(2) of the Act were offered to the CMA by the end of this period (ie by 11 March 2022); if the Parties indicated before this deadline that they did not wish to offer such undertakings; or if the undertakings offered were not accepted.
6. On 11 March 2022, the Parties offered the CMA the following undertaking (the **Proposed Undertaking**): to divest the whole of the UK auction business of Ritchie Bros (the **Divestment Business**) to an upfront buyer in the form of an asset sale. The Parties submitted that the Proposed Undertaking is designed to amount to an effective stand-alone business.
7. The Proposed Undertaking would include:
 - (i) The use of Ritchie Bros' Maltby auction site (under the existing lease or sublease) on the terms currently offered to Ritchie Bros, or [X], the ability to buy the Maltby site ([X]);
 - (ii) Certain key staff connected to the Divestment Business ([X], [X], [X] and [X]);
 - (iii) A licence for an initial period of [X] years to use the online Ringman platform (which supports online and timed-online auctions) (**Online Platform Software**), which is currently provided in-house by Xcirca (a wholly-owned subsidiary of Ritchie Bros). The Online Platform Software would be provided [X] for the initial period and then [X] at [X] offered to [X];
 - (iv) A complete customer list of all UK consignors/sellers and buyers purchasing or selling equipment in the UK from January 2020 to present; and
 - (v) All required licences to use the Ritchie Bros' auctions brand in the UK and domain name ('Ritchie Bros Auctioneers' and 'rbuctions.co.uk') for a total period of [X] [X], which would include a blackout period of at least [X] [X] to facilitate the transition to the purchaser's own brand. The exact duration of the blackout period beyond [X] [X] may

be determined by the purchaser as per the business plan (to be approved by the CMA).

Assessment of the Proposed Undertaking

8. The CMA concluded in the SLC Decision that it is or may be the case that the Merger may be expected to result in an SLC as a result of horizontal unilateral effects in the supply of auction services for used heavy construction machinery in the UK.
9. Section 73(2) of the Act states that the CMA may, instead of making a reference and for the purpose of remedying, mitigating or preventing the SLC concerned or any adverse effect which may be expected to result from it, accept undertakings in lieu of a reference (**UILs**) to take such action as it considers appropriate. When considering whether to accept UILs in phase 1 of its investigation, the CMA has an obligation under the Act to have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the SLC and any resulting adverse effects (section 73(3) of the Act).²
10. Accordingly, in order to accept UILs, the CMA must be confident that all of the potential competition concerns that have been identified in its investigation would be resolved by means of the UILs without the need for further investigation. UILs are therefore appropriate only where the remedies proposed to address any competition concerns raised by the merger are clear-cut and capable of ready implementation.³ Further:
 - (a) in relation to the substantive competition assessment, the clear-cut requirement means that ‘there must not be material doubts about the overall effectiveness of the remedy’; and
 - (b) in practical terms, the requirement for remedies to be capable of ready implementation means that ‘UILs of such complexity that their implementation is not feasible within the constraints of the Phase 1 timetable are unlikely to be accepted’.⁴
11. The CMA’s starting point in deciding whether to accept UILs offered is to seek an outcome that restores competition to the level that would have prevailed

² [Mergers remedies \(CMA87\)](#), December 2018 (**Remedies Guidance**), paragraph 3.30.

³ Remedies Guidance, paragraph 3.27.

⁴ Remedies Guidance, paragraphs 3.28.

absent the merger, thereby comprehensively remedying the SLC (rather than accepting a remedy that simply mitigates the competition concerns).⁵

12. The CMA generally prefers structural remedies, such as divestiture, over behavioural remedies.⁶ Further, 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.⁷
13. In the present case, the CMA has material doubts that the Proposed Undertaking would effectively remedy the competition concerns identified in the SLC Decision. While the CMA notes that the Proposed Undertaking comprises the whole of Ritchie Bros' UK auction business and is of a wider product scope than the SLC identified by the CMA in its SLC Decision (as it also includes auction services for transport and agricultural used heavy equipment), the CMA considers that the Proposed Undertaking does not offer a clear-cut solution to the competition concerns identified in the SLC Decision for the following reasons.
14. First, the CMA has material concerns regarding the overall effectiveness of the remedy. The CMA considers that the scope of the Proposed Undertaking may not be appropriately configured to allow a purchaser to operate as an effective competitor in the UK market. In particular:
 - (a) The CMA is not confident that a standalone UK divestment package would be effective in comprehensively addressing the SLC identified by the CMA in its SLC decision. Ritchie Bros has [X] and the benefits [X] from the wider strategic, financial and operational support of its international group. It is not clear that Ritchie Bros' UK auction business would be able to compete effectively without this wider support.
 - (b) The Proposed Undertaking requires a carve-out from the global Ritchie Bros business and does not comprise an existing standalone business. The creation of a standalone business is dependent on the successful implementation of various steps and will create ongoing links between the Parties and the potential purchaser, including through the licensing of the brand, website and Online Platform Software. The CMA considers that these steps and ongoing links present material composition risks. It is

⁵ Remedies Guidance, paragraphs 3.27 to 3.28 and 3.30 to 3.31.

⁶ Remedies Guidance, paragraphs 3.46.

⁷ Remedies Guidance, paragraphs 5.12.

unclear whether the Proposed Undertaking will function effectively under the licensing arrangements to allow a purchaser to operate as an effective competitor in the UK market.

- (c) The CMA is not confident that the temporary ability to use the 'Ritchie Bros Auctioneers' brand in the UK and the UK domain name `rbauctions.co.uk` would give the potential licensee the necessary incentives and ability to compete sufficiently strongly with Ritchie Bros' international auctions brand in the UK market. The CMA has material doubts that the proposal is sufficient to allow the potential licensee to establish and transition to a suitably strong alternative brand with a level of consumer awareness equivalent to the Ritchie Bros brand, as required to compete effectively after expiry of the licence term.
 - (d) Additionally, a potential purchaser may not have a sufficient incentive to invest in marketing under the licensed brand, as such activities may benefit Ritchie Bros' other international operations. This risk is exacerbated by the fact that a significant number of Ritchie Bros' customers for UK auctions are based outside the UK.
 - (e) In addition, the CMA considers that the Proposed Undertaking does not include all the relevant operations of the Ritchie Bros UK auctions business. A number of back-office functions are not included in the offer (such as [X]), which, casts doubt on the stand-alone status of the Proposed Undertaking.
15. Second, the CMA considers that the Proposed Undertaking raises material concerns regarding implementation. The CMA notes that the various steps required in order for the Proposed Undertaking to be implemented (as noted at paragraphs 7(i), 7(ii) and 14(b)) raises material concerns that these will not be feasible within the constraints of the phase 1 timetable.
16. The CMA therefore considers there is a significant risk that the Proposed Undertaking would not effectively restore competition to the level that would have prevailed absent the Merger. The CMA considers the Proposed Undertaking is not clear-cut and would not fully address the competition concerns identified in the SLC Decision. The CMA does not consider that these issues could be addressed through further modifications of the Proposed Undertaking in the phase 1 process.

Decision

17. For the reasons set out above, after examination of the Proposed Undertaking, the CMA does not believe that it would achieve as

comprehensive a solution as is reasonable and practicable to the SLC identified in the SLC Decision and the adverse effects resulting from that SLC.

18. Accordingly, the CMA has decided not to exercise its discretion under section 73(2) of the Act to accept undertakings in lieu of reference.
19. Therefore, pursuant to sections 33(1) and 34ZA(2) of the Act, the CMA has decided to refer the Merger to its chair for the constitution of a group under Schedule 4 to the Enterprise and Regulatory Reform Act 2013 to conduct a phase 2 investigation.

David Stewart
Executive Director, Markets and Mergers
Competition and Markets Authority
18 March 2022