



EUROPEAN COMMISSION
DG Competition

PUBLIC VERSION

Case M.10078 – CARGOTEC / KONECRANES

(Only the English text is authentic)

**REGULATION (EC) No 139/2004
MERGER PROCEDURE**

Article 8(2) Regulation (EC) 139/2004
Date: 24.2.2022

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EUROPEAN
COMMISSION

Brussels, 24.2.2022
C(2022) 1070 final

COMMISSION DECISION

of 24.2.2022

**declaring a concentration to be compatible with the internal market and the EEA
agreement**

(Case M.10078 – CARGOTEC / KONECRANES)

(Text with EEA relevance)

(Only the English text is authentic)

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COMMISSION DECISION

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union¹,

Having regard to the Agreement on the European Economic Area, and in particular Article 57 thereof,

Having regard to Council Regulation (EC) No 139/2004 of 20.1.2004 on the control of concentrations between undertakings², and in particular Article 8(2) thereof,

Having regard to the Commission's decision of 2.7.2021 to initiate proceedings in this case,

Having given the undertakings concerned the opportunity to make known their views on the objections raised by the Commission,

Having regard to the opinion of the Advisory Committee on Concentrations,

Having regard to the final report of the Hearing Officer in this case,

Whereas:

1. INTRODUCTION

- (1) On 28 May 2021 the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 (the ‘Merger Regulation’) by which Cargotec Corporation (‘Cargotec’, Finland) intends to enter into a full merger within the meaning of Article 3(1)(a) of the Merger Regulation with Konecranes Plc (‘Konecranes’, Finland) by way of a statutory absorption merger under Finnish law providing for the transfer of all assets and liabilities of Konecranes to Cargotec in consideration for newly issued Cargotec shares (the ‘Merged Entity’) (the ‘Transaction’ and the ‘Proposed Transaction’).³ Cargotec and Konecranes are referred to together as the ‘Notifying Parties’ or the ‘Parties’.

¹ OJ C 115, 9.8.2008, p. 47.

² OJ L 24, 29.1.2004, p. 1 (‘the Merger Regulation’). With effect from 1 December 2009, the Treaty on the Functioning of the European Union (‘TFEU’) has introduced certain changes, such as the replacement of ‘Community’ by ‘Union’ and ‘common market’ by ‘internal market’. The terminology of the TFEU will be used throughout this decision.

³ Publication in the Official Journal of the European Union No C 215, 7.6.2021, p. 8.

- (2) Cargotec, headquartered in Helsinki, Finland, offers equipment and services in particular for cargo handling in ports, terminals, and for ship and road transport. Cargotec's main activities are divided into the (i) Kalmar business, which offers container handling equipment and terminal automation solutions; (ii) Hiab, which offers on-road load handling equipment; and (iii) MacGregor, which provides engineering solutions and services for the maritime industry.
- (3) Konecranes, headquartered in Hyvinkää, Finland, offers equipment and services in particular for lifting and cargo handling in shipyards, ports and terminals. Konecranes' main activities are divided into the (i) Port Solutions business, which offers container handling equipment and terminal automation solutions; (ii) Industrial Equipment, which offers hoists, cranes and material handling solutions for manufacturing and processing industries.

2. THE OPERATION AND THE CONCENTRATION

- (4) On 1 October 2020, the Notifying Parties entered into a Combination Agreement and Merger Plan and on 18 December 2020 the respective extraordinary general meetings of the Notifying Parties approved the Proposed Transaction.
- (5) It follows that the Proposed Transaction is a concentration within the meaning of Article 3(1)(a) of the Merger Regulation.

3. UNION DIMENSION

- (6) The undertakings concerned have a combined aggregate worldwide turnover of more than EUR 5 000 million (in 2019, Cargotec had a world-wide turnover of EUR 3 683 million and Konecranes EUR 3 327 million). Each of them has an aggregated EU-wide turnover in excess of EUR 250 million (in 2019, Cargotec had a EU-wide turnover of EUR [...] and Konecranes of EUR [...]), and they do not achieve more than two-thirds of their aggregate Union-wide turnover within one and the same Member State. The Transaction therefore has a Union dimension pursuant to Article 1(2) of the Merger Regulation.

4. THE PROCEDURE

- (7) On 28 May 2021, the Notifying Parties notified the Transaction to the Commission.
- (8) During its initial (Phase I) investigation, the Commission reached out to a large number of competitors, distributors and customers (that is terminal operators, including a number of Global Terminal Operators⁴, hereinafter referred to as 'GTO') of the Notifying Parties requesting information through telephone calls and written requests for information pursuant to Article 11(2) of the Merger Regulation.
- (9) In addition, the Commission sent several written requests for information to the Parties and reviewed internal documents of the Notifying Parties submitted at that stage.
- (10) On 2 July 2021, based on the initial market investigation, the Commission raised serious doubts as to the compatibility of the Transaction with the internal market and the functioning of the EEA Agreement, and adopted a decision to initiate

⁴ Global Terminal Operators (GTOs) are terminal operating companies that manage several ports or container terminals in several regions around the world.

proceedings pursuant to Article 6(1)(c) of the Merger Regulation (hereinafter referred to as the ‘Article 6(1)(c) Decision’).

- (11) On 3 July 2021, the Commission provided to the Notifying Parties a set of non-confidential versions of certain key submissions of third parties collected during the initial (Phase I) investigation.
- (12) On 19 July 2021, the Notifying Parties submitted their written comments on the Article 6(1)(c) Decision (hereinafter referred to as the ‘Response to the Article 6(1)(c) Decision’).
- (13) During its Phase I and during its in-depth (Phase II) investigation, the Commission sent several requests for information to the Parties pursuant to Article 11(2) of the Merger Regulation, including the request for internal documents of 5 July 2021 addressed to Cargotec (‘RFI 17’) and the request for internal documents of 5 July 2021 addressed to Konecranes (‘RFI 18’).
- (14) In addition to collecting and analysing a substantial amount of information from the Parties (including internal documents and submissions), the Commission collected information through additional telephone conferences and written requests for information addressed to the Parties’ competitors and customers pursuant to Article 11(2) of the Merger Regulation during the Phase II investigation.
- (15) On 20 July 2021, following Notifying Parties’ failure to reply to RFIs 17 and 18, issued under Article 11(2) of the Merger Regulation, the Commission adopted two decisions pursuant to Article 11(3) of the Merger Regulation, one addressed to Cargotec (decision on RFI 17), and another one addressed to Konecranes (decision on RFI 18). The respective decisions required each of the Notifying Parties individually to supply the requested information as soon as possible and no later than 31 August 2021. According to the two decisions, the applicable time limit referred to in Article 10(3) of the Merger Regulation was suspended as from 20 July 2021. The suspension was brought to an end on 13 September 2021 and the clock restarted on 14 September 2021.
- (16) On 22 July 2021, a state-of-play meeting took place between the Commission and the Parties by videoconference.
- (17) On 28 September 2021, the Commission informed the Notifying Parties of the preliminary results of the Phase II investigation during an in person state-of-play meeting.
- (18) On 18 October 2021, the Commission informed the Notifying Parties of further preliminary results of the Phase II investigation during a state-of-play videoconference meeting.
- (19) On 22 October 2021, the Commission adopted a Statement of Objections (‘SO’), which was sent to the Notifying Parties on the same day. In the SO, the Commission set out the preliminary view that the Transaction would likely significantly impede effective competition in the internal market, within the meaning of Article 2 of the Merger Regulation, (i) in relation to the EEA RTG market due to the creation or strengthening of a dominant position, (ii) in relation to the plausible EEA markets for straddle and shuttle carriers due to the creation or strengthening of a dominant position, (iii) in relation to the EEA reach stackers market due to the creation of a dominant position and/or the elimination of important competitive constraints, (iv) in relation to the EEA empty container handlers market due to the creation of a dominant position and/or the elimination of important competitive constraints, (v) in relation to the EEA heavy-duty forklift trucks (>10 tonne capacity) market due to the

creation of a dominant position and/or the elimination of important competitive constraints and, because of customer foreclosure, would have an overall impact on effective competition in the downstream mobile equipment markets where the Merged Entity is active. The Commission's preliminary conclusion was therefore that the notified concentration would be incompatible with the internal market and the functioning of the EEA Agreement.

- (20) On 25 October 2021, the Notifying Parties were granted access to the file. A data room was organised from 25 October to 29 October 2021 allowing the economic advisors of the Notifying Parties to verify confidential information of a quantitative nature, which formed part of the Commission's file. A non-confidential data room report ('First Data Room Report') was provided to the Notifying Parties on 2 November 2021.⁵ The confidential report was taken to the Commission's file.
- (21) On 29 October 2021, the Notifying Parties requested less redacted versions of six documents from the file. The Notifying Parties were provided with less redacted versions on 29 October, 2 November, 3 November and 5 November 2021.
- (22) On 9 November 2021, the Notifying Parties submitted their reply to the SO (the 'Reply to the SO').
- (23) Eight undertakings were recognised by the Hearing Officer as interested third persons (Liebherr, Hyster, Uplifting, CVS Ferrari, Eurogate, Rhenus, Elme, Heavy Handling). The interested third persons were provided with a non-confidential version of the SO and given a time limit within which to submit their observations. Two interested third persons submitted observations. One of them also requested to attend the oral hearing, and attended as a remote participant.
- (24) On 16 November 2021, an oral hearing was held, upon request by the Notifying Parties.
- (25) On 23 November 2021, following a request from the Notifying Parties dated 19 November 2021 to extend the procedure period previously set by 20 working days, the Commission adopted a decision pursuant to Article 10(3), second subparagraph, third sentence, of the Merger Regulation to extend the procedure by a total of 20 working days. The Commission considered that the extension was appropriate to allow the Commission to fully consider extensive supplemental document productions submitted by Cargotec in response to RFI 17.
- (26) On 29 November 2021, a state-of-play videoconference meeting was held, during which the Commission provided the Notifying Parties with preliminary feedback following their Reply to the SO.
- (27) On 2 December 2021, a Letter of Facts setting forth evidence corroborating the objections set out in the SO was sent to the Notifying Parties. The Notifying Parties submitted their comments on the Letter of Facts on 10 December 2021 ('Reply to the Letter of Facts').
- (28) On 3 December 2021, the Notifying Parties were granted subsequent access to file. Another data room was organised on 6 December 2021. A non-confidential data room report ('Second Data Room Report') was provided to the Notifying Parties on 7 December 2021.⁶ The confidential report was taken to the Commission's file.

⁵ Non-confidential version of the First Data Room Report, Doc. ID 4404.

⁶ Non-confidential version of the Second Data Room Report, Doc. ID 5028.

- (29) On 9 December 2021, the Notifying Parties submitted commitments pursuant to Article 8(2) of the Merger Regulation in order to address the competition concerns identified in the SO (the ‘MEQ Commitments of 9 December 2021’ and the ‘KAS Commitments of 9 December 2021’, together the ‘Commitments of 9 December 2021’).
- (30) On 9 December 2021, the Commission launched a market test of the Commitments of 9 December 2021. On 17 December 2021, the Commission provided feedback to the Notifying Parties on the outcome of the market test in a videoconference meeting.
- (31) On 21 December 2021, the Notifying Parties were granted subsequent access to file.
- (32) On 22 December 2021, the Notifying Parties requested less redacted versions of two documents from the file. The Notifying Parties were provided with less redacted versions on 22 December 2021 and 10 January 2022.
- (33) On 6 January 2022, the Notifying Parties submitted revised commitments pursuant to Article 8(2) of the Merger Regulation in order to address the competition concerns identified in the SO (the ‘Final MEQ Commitments’ and the ‘Final KAS Commitments’, together the ‘Final Commitments’).
- (34) On 6 January 2022, the Commission launched a market test of the Final KAS Commitments. On 14 January 2022, the Commission provided feedback to the Notifying Parties on the outcome of the market test in a videoconference meeting.
- (35) On 17 January 2022, the Notifying Parties were granted subsequent access to file.
- (36) On 20 January 2022, the Notifying Parties submitted a signed addendum to the Final KAS Commitments.
- (37) The meeting of the Advisory Committee took place on 11 February 2022.

5. PRODUCT MARKET DEFINITION

5.1. Quay cranes

- (38) **Quay cranes** are cranes used to load and unload ships. Quayside cranes include a variety of cranes such as ship-to-shore (‘**STS**’) cranes; mobile harbour cranes; portal harbour cranes; floating cranes; large jib/boom cranes; and multi-purpose jib cranes.⁷ Within quay cranes, the activities of the Merging Parties overlap only in STS cranes. Cargotec also provides spreaders to suppliers of mobile harbour cranes (vertical link).

5.1.1. *STS cranes*

- (39) **STS cranes** are large scale cranes mounted on rails and installed quayside for the loading and unloading of larger container ships. They are usually found in medium to large sized terminals. STS cranes consist of a supporting framework that can traverse the length of a quay and a moving platform called a trolley to which a lifting device, called a spreader, is fixed via a hoist and ropes.

⁷ Form CO, Chapter 1, paragraph 9.

Figure 1: STS crane



Source: Form CO, Chapter 1, Figure 1.

- (40) In terms of size, STS crane sizes mirror the vessel sizes that they are designed to handle, with larger STS cranes also being able to handle smaller vessels. From a demand-size perspective, customers will select the size of STS crane they need depending on the maximum vessel sizes they intend to serve.⁸
- (41) A direct consequence of this scaling up in terms of crane size and weight is the increase in the cost of crane foundations, particularly at the quayside. The cantilever effect of boom extensions also calls for a heavier counterweight to keep the crane stable. Therefore, corner loads and support requirements on the crane foundation have multiplied during the last decade.⁹
- (42) Because of these requirements, the Notifying Parties acknowledge that, from a demand-side perspective, STS cranes may constitute a separate product market within quay cranes.¹⁰ The question can be left open because the combined market share for STS cranes is below 5% at both EEA and worldwide level. STS cranes will therefore not be discussed further in this decision.

5.1.2. Mobile harbour cranes

- (43) Mobile harbour cranes ('MHCs') are quayside cranes used for loading and unloading ships. MHCs are typically only used in lower volume ports and in bulk and general cargo areas of large container terminals. MHCs may be used for container on- and offloading in smaller (lower-volume) ports that do not have STS cranes and handle multiple types of cargo.¹¹

⁸ Form CO, Chapter 1, paragraph 12.

⁹ Form CO, Chapter 1, paragraph 14.

¹⁰ Form CO, Chapter 1, paragraph 17.

¹¹ Form CO, Chapter 4, paragraph 85.

Figure 2: Mobile Harbour Crane



Source: Form CO, Chapter 4, Figure 76.

- (44) MHCs are used in container ports that do not have enough container traffic to justify the purchase of a STS. On that basis, there is no demand-side substitution between STS and MHCs and the Commission will treat MHCs as a separate market for STS.
- (45) Since Cargotec has not been independently active in MHCs in the past, there is no horizontal overlap between the Parties. Nevertheless, since MHCs are also suitable for container handling and therefore may be equipped with spreaders, this decision will assess the possible vertical links between MHC supplied by Konecranes and crane spreaders.

5.1.2.1. The Commission's past practice

- (46) In its previous decision¹², the Commission noted that mobile harbour cranes should be distinguished from other types of cranes due to their flexibility and versatility in the sense that they can handle a wide range of cargoes (bulk, break-bulk, containers) and can move around the harbour without the need for any special infrastructure which would be required for other types of crane such as portal harbour cranes. As such, mobile harbour cranes are appreciated by customers, often in smaller ports, which deal with various cargo types but are less common in larger ports specialising in the handling of shipping containers where other crane types are more suitable. This has been evidenced in the market investigation where the majority of customers have indicated that, if they needed to replace one of their existing mobile harbour cranes, they would most likely replace it with another mobile harbour crane rather than another type of crane. The Commission ultimately left the relevant product market definition open for the purposes of its previous decision.

5.1.2.2. The Notifying Parties' view

- (47) The Notifying Parties consider that MHCs are a different type of quay cranes than STS cranes¹³ and that there is no competitive overlap between MHCs supplied only by Konecranes and the ship and port cranes supplied by MacGregor (Cargotec)¹⁴.

¹² M.6255 – Terex/Demag Cranes of 5 August 2011, paragraphs 10 and 11.

¹³ Form CO, Chapter 4, paragraph 85.

¹⁴ Form CO, Chapter 4, paragraph 87.

5.1.2.3. The Commission's assessment

- (48) On the basis of the above, the Commission considers that the market for MHCs constitutes a separate product market from the market of STS cranes and other types of ship and port cranes and that the relevant product market definition can be left open for the purposes of this decision.

5.2. Gantry cranes

- (49) Rubber-tired gantry cranes ('RTGs'), rail-mounted gantry cranes ('RMGs'), automated stacking cranes ('ASCs') are commonly referred to as gantry cranes. Gantry cranes 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.
- (50) **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. They are, therefore, a more flexible (and typically cheaper) product than RMGs but this flexibility comes with a trade-off in terms of operation productivity and maintenance. Indeed, RTGs do not typically operate at the speed of an RMG, and tire maintenance adds costs. While the vast majority of RTGs are manually operated, both Parties also sell automated RTGs, which are not controlled individually on board the crane by a human operator but via an equipment control system ('ECS').¹⁵

Figure 3: Rubber-tired Gantry crane



Source: Form CO, Chapter 1, Figure 4.

- (51) **RMGs** are specialised yard container handling machines that are mounted on rails. RMGs are common in large container terminals and are used for the transportation and stacking of containers. Like RTGs, most RMGs are manually operated by a driver from a cab that is integral to the product. RMGs come in a variety of models with different spans and overhangs. RMGs are used in container terminals (as a potential alternative to RTGs, although they are more expensive than RTGs) and are also the product of choice in intermodal terminals, where they are used to load and unload containers to and from rail cars.¹⁶

¹⁵ Form CO, Chapter 1, paragraphs 20 and 21.

¹⁶ Form CO, Chapter 1, paragraphs 22 and 23.

Figure 4: Rail-mounted Gantry crane



Source: Form CO, Chapter 1, Figure 6.

- (52) ASCs are automated RMGs and, similarly to automated RTGs, they are not controlled individually on board the crane by a human operator but via an ECS.¹⁷

Figure 5: Automated Stacking Crane



Source: Form CO, Chapter 1, Figure 7.

5.2.1. The Commission's past practice

- (53) In previous cases,¹⁸ the Commission primarily discussed the substitutability between ASCs and other gantry cranes such as RTGs or RMGs. The Commission found that the choice between ASCs and other gantry cranes also depends on the layout and planned logistic flows of each container terminal. Moreover, the desired operational characteristics of the terminal also play a role when customers are deciding between different equipment types: in particular, when the terminal has chosen to install

¹⁷ Form CO, Chapter 1, paragraphs 22 and 24.

¹⁸ M.5345 – Terex Corporation/Fantuzzi Group of 19 November 2008, and M.7792 – Konecranes/Terex MHPS of 8 August 2016.

ASCs, it is particularly difficult and even uneconomical to switch back to manual gantry cranes such as RTGs or RMGs. Ultimately, the precise product market definition for ASCs was left open. Possible substitution between RTGs and RMGs was never assessed by the Commission.¹⁹

5.2.2. *The Notifying Parties' view*

- (54) The Notifying Parties are of the view that all gantry cranes may constitute a single relevant product market as they all perform the same functions in container terminals. In the Notifying Parties' view, demand-side substitutability between the various types of gantry cranes is generally high, especially in the conceptualization phase of a greenfield project (i.e. a new terminal). Moreover, even in brownfield projects (upgrades or expansions of existing operations), the Notifying Parties submit that customers can and do replace, for example RTGs with RMGs, or RTGs / RMGs with automated versions depending on their evolving preferences and needs.²⁰
- (55) In the Notifying Parties' view, there is also significant supply-side substitutability between the various gantry cranes for the following reasons:²¹
- (a) All gantry cranes can be and are produced in the same manufacturing plants using the same equipment. Konecranes manufactures all its gantry cranes in the same primary subcontractor manufacturing facilities located in [...]. Cargotec's gantry cranes are assembled in China through subcontractors. Similarly, Liebherr manufactures both RTGs and RMGs in the same facility located in Ireland. Further, there is a high degree of substitutability for the key components used for the manufacture of the various gantry cranes e.g., the electronic systems and steel structures. In light of these elements, according to the Notifying Parties, manufacturing capacity can be flexibly and opportunistically ramped up and down between the various gantry crane types.
 - (b) Widespread use of sub-contractors. Sub-contractors are widely used to design and manufacture crane components that are common to multiple types of gantry cranes. This practice greatly reduces investment costs for suppliers to switch production between different types of cranes.
 - (c) Common sales and service networks for all cranes. The Notifying Parties and their competitors sell and market their gantry cranes from centralised locations, and use the same sales teams regardless of the type of gantry crane. Similarly, service personnel are trained to provide assistance across the whole range of port cranes.
 - (d) Major suppliers offer a full suite of gantry cranes. For instance, competitors such as ZPMC, Künz, CSSC, Sany and others offer a full suite of gantry cranes, including also automated versions.

5.2.3. *The Commission's assessment*

- (56) For the following reasons, the Commission takes the view that the markets for RTGs (either manually-driven or automated) likely constitute separate markets from other gantry cranes such as RMGs and ASCs. The question whether ASCs and RMGs constitute separate product markets can be left open, as the competitive assessment does not change regardless of the precise product market definition.

¹⁹ M.7792 – Konecranes/Terex MHPS of 8 August 2016, paragraph 60.

²⁰ Form CO, Chapter 1, paragraph 26.

²¹ Form CO, Chapter 1, paragraphs 30 and 31.

5.2.3.1. Demand-side substitution is limited

- (A) Substitution between automated gantry cranes and non-automated gantry cranes is one-sided
- (57) In the first place, from a demand-side perspective, it appears that automated gantry cranes (such as ASCs or less common automated RTGs) are not fully substitutable with non-automated gantry cranes such as standard RTGs or RMGs. A customer may consider choosing between a non-automated gantry crane or an automated one only when a terminal has not been yet automated.²² Once automation has been implemented in a given terminal, it makes limited sense from a cost perspective to switch back to non-automated operations.
- (58) A majority of customers having responded to the market investigation has confirmed this lack of substitutability between automated and non-automated gantry cranes. As explained by one customer “(...). *Replacement of automated cranes with manual ones would be a step back that nobody will want to undertake in practice*”. A second customer added “*It depends on your business. If you are already fully automated it would be a significant cost increase to unwind that investment and revert to a more manual setup*”. This is confirmed by a third customer “*It might be technically possible to switch from an automated stacking crane (back) to a non-automated gantry crane, however, from an economic standpoint this would not make sense*”. A fourth customer confirmed that “*Also, if an operation is already automated, then there is no point from a cost perspective to switch back to manual operation*”²³.
- (59) Competitors also confirmed that it would be very expensive and difficult to revert to a manual approach once automated technology is implemented: “*Automated solutions require more initial investment and result in lower operational cost. Even if theoretically possible, it is very unlikely that a terminal operator goes from an automated solution to a manual one*”. A second competitor put forward that “*Once ASCs are installed and auto technology is implemented it is very difficult and expensive to revert to a manual approach. Also ASCs predominantly use each end of the container stack to exchange containers to ground handling equipment whereas RTGs do this in a separate lane within the RTG span*”.²⁴
- (60) The Notifying Parties have explained that historically, gantry cranes have been the first container handling equipment type that has seen automation at larger scale, given that automating container stacking is far less complex than, for example, automating horizontal container transport within terminals.²⁵ However, this does not mean that all container terminal operators consider purchasing automated gantry cranes to replace non-automated ones. This is because the initial investment that comes with a larger automation project is significant. Not only is automated equipment more expensive than non-automated equipment, but automation also requires investments into software solutions and, in many cases, changes to the terminal layout, processes and training. This has been confirmed by the Notifying Parties.²⁶

²² Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question B.A.2. Response to Q1 – Questionnaire to Competitors, Doc. ID 3154, question B.A.2.

²³ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question B.A.2.

²⁴ Response to Q1 – Questionnaire to Competitors, Doc. ID 3154, question B.A.2.

²⁵ Form CO, Section 1-5, paragraph 226.

²⁶ Form CO, Section 1-5 paragraph 229.

- (61) Furthermore, an automated terminal typically has higher fixed costs and lower variable costs compared to a manually operated terminal. High utilisation of an automated terminal is therefore essential for securing the required financial returns. This is also the main reason why mainly larger ports with high container throughput have automated their operations at larger scale so far and smaller container terminals still mostly resort to non-automated gantry cranes. This has been confirmed by the Notifying Parties.²⁷ As of today, there are approximately 500 terminals worldwide with some form of automation (ranging from only limited automated functions increasing the safety and efficiency of the crane to remotely controlled gantry cranes), but only about 70 terminals are automated to a larger extent (i.e. semi- or fully automated).²⁸ A number of GTO holding terminals in Europe, such as Eurogate and Yilport Holdings, do not own any automated container terminals.²⁹
- (62) In their Response to the Article 6(1)(c) Decision, the Notifying Parties acknowledged that demand-side substitutability is more limited in instances where a customer already implemented automated gantry cranes. Whilst it would be technically feasible to revert from an ASC to a non-automated RMG, or an ARTG to a non-automated RTG, it would likely make little commercial sense to do so.³⁰
- (63) On the basis of the above, the Commission takes the view that demand-side substitution may take place from non-automated gantry cranes to automated gantry cranes, but not in the other direction. Non-automated gantry cranes are not fully substitutable with automated gantry cranes from a demand-side perspective.
- (B) There are considerable differences between RTGs and RMG that reduce demand- side substitution
- (64) As regards demand-side substitution between RTGs and RMGs (whether automated or not), respondents to the market investigation submitted that, while both types of gantry crane generally provide to some extent similar functions within a port, switching between RTGs and RMGs would require an adaptation to the layout and the infrastructure. This would significantly limit substitution between both types of gantry cranes.
- (65) First, RTGs are mounted on wheels whereas RMG use rail tracks to store and move containers in the stacking area to wait for subsequent transport, or to move outbound containers to trains and trucks to be shipped to their final destinations. As such, the infrastructures required within a port to operate RMGs and RTGs are very different and switching from one to the other would require to add (or remove) rail tracks, which is a significant modification to the layout of the terminal and would not be undertaken lightly.
- (66) For example, one customer explained that “Typically container terminals design their civil infrastructure to suit their choice of container handling equipment. More specifically, if RTGs are used, the civil infra is normally designed for that (drainage, concrete runways, conduits etc.). For a RMG to be used, a lot of civil infra would need to be changed”. A second customer confirmed that “It is technically possible, however, changing from RTG operation to RMG operation requires significant civil

²⁷ *Ibidem*.

²⁸ See PN RFI 1, annex Q2. 48. Drewry Container Global Container Terminal Operators – Annual Review and Forecast 2020-2021, page 73.

²⁹ See PN RFI 1, annex Q2. 48. Drewry Container Global Container Terminal Operators – Annual Review and Forecast 2020-2021, page 74.

³⁰ Response to the Article 6(1)(c) Decision, paragraph 13.

infrastructure investments that can easily go in the hundreds of million EUR in any given terminal. Furthermore, RMGs cannot change the stacks in a yard (since they run on rails), whereas an RTG can switch to other stacks in the yard.” This was echoed by a third customer “This kind of equipment is specialised handling equipment which eventual change is usually not possible due to the construction of terminals and storage yards construction. This kind of change is connected with quite expensive construction works”. Finally, a fourth customer added that “RMG runs on crane rails at high speed and typically span across 10 boxes or more. RTG runs on pavements at a much slower speed and span only 6 boxes (some designs span 7 boxes). Further, there would be a lot of infrastructure civil works required to build RMG crane rail on existing RTG pavements and each of these two types of equipment serves different design purposes and cannot be readily substituted. On yard design philosophy RMG mode creates high stacking density but RTG mode provides flexibility in equipment deployment”.³¹

- (67) Competitors also confirmed that RTGs and RMGs are usually associated with quite different infrastructure layouts and civil works to adapt the terminal to the selected gantry cranes: *“In principle, this is possible. However, this will require infrastructure investment (rail tracks, power supply, ...), and will result in a different operational model. Also, RMGs are typically more expensive than RTGs. Therefore, this is business decision.”* A second competitor added that *“RTG's are the dominant equipment used in the majority of existing container terminals, it is very difficult and expensive for a terminal to convert the operation and install civil works, rails and the power network required to operate RMG's”*.³²
- (68) This lack of demand-side substitutability was also confirmed by customers in relation to possible substitution of ASCs with automated RTGs. As explained by one customer when asked whether ASC could be substituted by automated RTGs *“Not typically, unless the RTG stack is completely rebuilt to adapt to the ASC's dimensional and structural load configuration”*. This is confirmed by a second customer who argued that *“Technically is possible, however if for this question we assume a fully automated terminal already functioning with automated stacking cranes, then the answer should be no, as the existing civil works and existing infrastructures would significantly limit such substitution”*.³³
- (69) This is confirmed by the Notifying Parties who explained that customers could not always readily switch from, for example, lower stacking RTGs to ASCs, given that this would also require infrastructural changes and additional investments to the terminal.³⁴
- (70) On the basis of the above, the Commission takes the view that there is no demand-side substitutability between RTG and RMGs, due to different infrastructures needed to operate the cranes.
- (C) There are significant price differences between RTGs, RMGs and ASCs
- (71) There also appears to be significant price differences between these various types of gantry cranes, which limit demand-side substitutability. RTGs in particular, which are the most widespread gantry cranes in the market, are more affordable than the other types of gantry cranes. Documents submitted by the Notifying Parties show

³¹ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question B.A.1.

³² Response to Q1 – Questionnaire to Competitors, Doc. ID 3154, question B.A.1.

³³ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question B.A.3.

³⁴ Form CO, Section I-5 Executive Summary and Introduction, paragraph 115.

that the average unit price of a RTG was in 2019 [...] whilst the average unit price of a RMG was [...] in 2019 and the largest units might exceed a unit price of [...]. As regards ASCs, the average unit price was estimated in 2019 at [...].³⁵

- (72) The internal document of Konecranes presented below show the price differences between the various types of gantry cranes:

Figure 6: Price differences between various types of gantry cranes

[...]

Source: [Internal document reference].

(D) Conclusion on demand-side substitution

- (73) On the basis of the above, the Commission takes the view that the various types of gantry cranes are not substitutable from a demand-side perspective.

5.2.3.2. Supply-side substitution is not sufficiently effective and immediate to justify a definition of an overall market for gantry cranes.

- (74) As regards supply-side substitution, the market investigation did not confirm that major suppliers offer a full suite of gantry cranes. In the EEA, this is the case only for the Parties, ZPMC and Künz (for the latter to a much more limited extent as described further in the competitive assessment). In the RMG market, there are a number of suppliers that only or primarily sell RMGs such as Kocks Ardel and DSD Hilgers. Japanese player Mitsui sells RTGs and very limited volumes of RMGs but does not offer ASCs. Liebherr is active in the marketing and sale of RTGs and RMGs but does not sell ASCs.

- (75) The market investigation in that regard did not confirm that manufacturing capacity of these specialised competitors can be easily ramped up and down between the various gantry crane types. As explained by one competitor *“It is possible to engineer a rubber-tired-gantry crane from a rail-mounted gantry crane but it will not be quick, and could be costly as projects are high value and liquidated damages, etc. will raise the price to a point of not being competitive”*.³⁶

- (76) When asked whether any cranes manufacturer currently building and selling one specific type of crane (for example rail-mounted gantry cranes) can easily (with limited investment and relatively quickly) start building and selling other types of cranes (for example rubber-tired gantry cranes), the large majority of those competitors expressing a view submit that they would either not be able to start producing and supplying other types of cranes or only after a long period of time and with significant investments. In this context, one competitor claimed that there was *“Too much product and business critical factors difference/distance to be filled in short time”*. This is confirmed by another competitor *“product specific know how and experience is required and not readily available”*.³⁷

- (77) Beyond the need to acquire technical capabilities, a swift entry in the RTG market would require from the potential supplier a sound knowledge of the port equipment market and familiarity with customers’ demand, which would require time and investments. This is explained by a competitor who claimed that *“The prospective supplier would ideally have to be already established in the manufacture of maritime*

³⁵ DRS Research, “Container Terminal Foresight – Section 2: Container Handling Equipment”.

³⁶ Response to Q1 – Questionnaire to Competitors, Doc. ID 3154, question B.A.7.

³⁷ Response to Q1 – Questionnaire to Competitors, Doc. ID 3154, question B.A.7.

cranes for container handling". A second competitor claimed that there is *"Too much product and business critical factors difference/distance to be filled in short time."*. A third competitor explained that *"Rubber-tired gantry cranes are difficult to manufacture and require expertise "*.³⁸

- (78) When asked in particular what are the main requirements needed as well as the main challenges to be successful in entering the various gantry cranes markets, in particular RTGs, one competitor explained that the main requirements would be *"Engineering know how, infrastructure for at least main mech/elec assemblies; Clear strategy for after sales support. Cost effective supply chain of quality components"*. The main challenges would be linked to the needed time to develop the product and the justification of the investment *"Time to develop/ramp up and recouping initial investment. Consistent order quantities to justify investment."*. This competitor added *"Prolonged development/ramp up time and the technical skills required to achieve a competitive quality product are barriers to market entry for such products. It then takes approx. 2-3 years to convince the customer of product reliability and service quality in the field"*.³⁹
- (79) Another competitor identified as requirements know-how, expertise and capacities and as challenges management of capacities and logistics. This competitor added that *"Design and manufacturing of this type of equipment requires knowledge and experience in many different disciplines. With ten thousands of components involved and fabrication at different production sites, these projects also call for perfect organization in terms of supply chain and logistics"*.⁴⁰
- (80) As explained in Section 7.2.1.4, lack of track record in RTGs constitute a barrier to entry in the EEA market as customers tend to require references of supply of RTGs in the EEA in the recent years before the tender. It is therefore challenging to enter the RTG market from an adjacent area without any track record in RTGs (only Künz managed to do this with a product yet sold in very small quantities and which is not considered as a traditional RTG as explained in Section 7.2.1.3). One competitor explained in that regard that one of the main challenges to enter the RTG market was *"Track record and achieving price level with a reliable high quality product"*.⁴¹
- (81) The use of sub-contractors might be helpful to provide manufacturers with the possibility to switch production between different types of gantry cranes. However, as explained below, crane manufacturers carry out a significant share of design, engineering and production of the gantry crane. This part of the crane production cannot be outsourced and therefore limits the possibility to switch production.
- (82) From Konecranes' perspective, this share accounts for approximately [...] % of the production costs for RTGs, and approximately [...] % for ASCs and RMGs.⁴²
- (83) As regards Cargotec, Cargotec's only sub-contractor for the assembly of gantry cranes is its former Chinese joint venture Rainbow Investment Company ("RIC"). RIC is mainly used for assembly work. However, engineering, sourcing and quality inspections are done by Cargotec. From Cargotec's perspective, the share of non-

³⁸ Response to Q1 – Questionnaire to Competitors, Doc. ID 3154, question B.A.7.

³⁹ Response to Q1 – Questionnaire to Competitors, Doc. ID 3154, question B.C.G 1.

⁴⁰ Response to Q1 – Questionnaire to Competitors, Doc. ID 3154, question B.C.G 1.

⁴¹ Response to Q1 – Questionnaire to Competitors, Doc. ID 3154, question B.C.G 1.

⁴² Form CO, Chapter 1, paragraph 31.

outsourced work accounts for approximately [...] % of all the production costs for any type of gantry cranes.⁴³

- (84) In any case, in the light of the market structure, where a large number of suppliers are not active for all types of gantry cranes, the concentrated nature of the markets, the limitation that some suppliers seem to face when moving to another area of gantry crane, and the fact that key elements of the production of gantry cranes (such as design, engineering, automation process or quality control) are ensured by cranes suppliers, the possibility of sub-contracting some parts of the manufacturing process does not warrant a full supply-side substitutability in gantry cranes and thereby a broad market definition.
- (85) The Notifying Parties have argued in the Response to the Article 6(1)(c) Decision that there are a number of suppliers with a broad range of gantry cranes such as ZPMC, Künz, Mitsui-Paceco, Mitsubishi, Hyundai Heavy Industries and HDHM.⁴⁴ The Commission notes that among these six players, the last four are not active in the EEA for gantry cranes and Mitsui is not active in ASCs.⁴⁵ The Notifying Parties also argue that Liebherr “*has or could, as one of the world leading’s specialist in automation systems, extend its offering to ASCs or A-RTGs*”.⁴⁶ Liebherr has however explained that “*to date we have been unable to secure ASC orders due to lack of references*”.⁴⁷
- 5.2.3.3. There is no need to introduce an additional segmentation between automated RTGs and non-automated RTGs.
- (86) The main characteristic of an automated RTG (or-A-RTG) is automated performance. A-RTGs are not controlled individually on board the crane by a human operator but via software systems. In other words, A-RTGs are an automated (man-less) version of RTGs.⁴⁸
- (87) There is the same level of non-substitutability between non-automated RTGs and automated RTGs as between, for example, RMGs and automated stacking cranes in the sense that it would be very expensive and therefore uneconomical to revert to a manual approach once automated technology is implemented.
- (88) However, as regards more specifically RTGs, the Commission notes that automated RTGs are quite rare in the EEA, with only 8 units sold between 2010 and 2020 whereas, over the same period, 322 non-automated RTGs were delivered in the EEA. Out of these 8 RTGs, Cargotec sold 4 to the Dublin Ferryport terminal (2 in 2017⁴⁹ and 2 in 2020⁵⁰) and Künz delivered four of these automated RTGs to the port of Vlissingen in the Netherlands. Konecranes first deliveries of automated RTGs took place in 2021, to three of Yilport’s European container terminals (two in Portugal and one in Sweden) as well as to APMT’s Algeciras terminal (Spain).

⁴³ Form CO, Chapter 1, paragraph 31.

⁴⁴ Response to the Article 6(1)(c) Decision, paragraph 15.

⁴⁵ Non-confidential minutes of a call with Mitsui-Paceco on 23 September 2021, paragraph 7, Doc. ID 4311.

⁴⁶ Response to the Article 6(1)(c) Decision, paragraph 15.

⁴⁷ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 27-1.

⁴⁸ Form CO, Chapter 1, paragraph 21.

⁴⁹ See PN RFI 1, annex Q2.5, WCN yard crane report 2017.

⁵⁰ See <https://www.kalmarglobal.com/news--insights/articles/2019/future-proofing-automated-rtg-operations-at-dublin-ferryport-terminals/>, retrieved on 7 October 2021.

- (89) As Künz only sold automated RTGs, the market for manual RTGs only would be even more concentrated as Künz is not present in this potential market. As regards automated RTGs, the only players currently active are Cargotec and Künz, with Konecranes as a recent entrant in 2021 and potential to expand given the competitive edge of the Merging Parties in automation as identified in Section 7.2.1.1. The Transaction would therefore reduce the number of competing companies in this potential market from three to two.
- (90) Therefore, the question whether the market for RTGs can be further segmented into the markets for automated and manual RTGs can be left open, as this would not change the outcome of the competitive assessment in the present case.

5.2.3.4. Conclusion

- (91) On the basis of the above, the Commission takes the view that the markets for RTGs, RMGs and ASCs constitute separate product markets.

5.3. Horizontal Equipment

- (92) Horizontal transport equipment comprises straddle carriers, shuttle carriers, automated guided vehicles (AGV) and terminal tractors.
- (93) **Straddle and shuttle carriers** are both mounted on wheels and have a hoisting structure allowing them to lift containers.
- (94) **Straddle carriers** are able to lift containers and stack them. They are used for stacking containers at the yard and for (horizontally) transporting containers to and from the yard, see Figure 7 below. They are also used for loading/unloading trucks and railcars.

Figure 7: Straddle carriers dual function

Figure 1: Straddle carrier (horizontally) transporting container to/from landside loading area



Figure 2: Straddle carrier stacking containers at the container yard



Source: Form CO, Chapter 2, Figures 1 and 2.

- (95) Straddle carriers can typically stack four containers on top of each other. However, 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”). Straddle carriers are available in different sizes, stacking containers 1-over-2 or 1-over-3. There are various models, e.g. using different drive types (including diesel-hydraulic,

diesel-electric, battery-electric and diesel-battery-hybrid) and lifting components (single-lift and twin-lift spreaders).

- (96) Straddle carriers stack in single container width, leaving travel room on either side for moving containers into and out of the stack (straddle carriers need a certain amount of space to drive over the containers and pick them up). Unlike reach stackers, straddle carriers transport containers with the narrow side in front, so that the operating corridors between container stacks can be kept comparatively narrow.
- (97) Straddle carriers are available in manual and automated form. Most straddle carriers are manually operated by a driver inside a cab that is an integrated part of the vehicle (see left picture in Figure 7 above). The basic functionalities of automated straddle carriers are identical to those of their manual counterparts, i.e. they are also used for horizontal container transport, stacking at the container yard and loading/unloading at the landside area.
- (98) **Shuttle carriers** 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, see Figure 8 below.

Figure 8: Shuttle carrier



Source: Form CO, Chapter 2, Figure 3.

- (99) Like straddle carriers, shuttle carriers are available in manual and automated (i.e. self-driving) form. The only real difference between these types in terms of “hardware” is that manual shuttle carriers have a driver’s cab and cannot be operated without a human driver. Shuttle carriers are only available in one size and can (only) stack containers 1-over-1. As is the case for straddle carriers, there are various shuttle carrier models, e.g. using different drive types varying from diesel-hydraulic, diesel-electric, battery-electric to diesel-battery-hybrid.
- (100) An Automated Guided Vehicle (‘AGV’) is an unmanned software-controlled vehicle for the horizontal transport of containers between the quayside and the container yard, see Figure 9 below. AGVs are predominantly used in large ports. They travel forwards, in reverse, sideways and can even overtake each other.

Figure 9: AGV transporting containers from the quayside to the container yard



Source: Form CO, Chapter 2, Figure 9.

- (101) **Terminal tractors** are vehicles for horizontal transport in container terminals and other environments (e.g. distribution centres). They pull a trailer upon which containers and other heavy loads can be placed, see Figure 10 below. Terminal tractors are not able to pick up and drop containers themselves (unlike, for example, straddle carriers or reach stackers; so-called active or de-coupled operation) but need to be loaded/unloaded using other equipment that is capable of vertically moving containers, such as cranes or reach stackers (so-called passive or coupled operation). Terminal tractors are the most common horizontal transport equipment for containers partly because of their limited cost. Besides horizontal transport between quayside, container yard and landside loading/unloading area, terminal tractors are also used to load/unload so-called roll-on-roll-off vessels (RoRo Vessels). Moreover, terminal tractors are not only used in container terminals – they are also widely deployed in warehouses, distribution centres and various industrial fields of application.

Figure 10: Terminal tractor transporting a container to the container yard (left) and unloading a RoRo vessel (right)



Source: Form CO, Chapter 2, Figures 4 and 5.

- (102) Terminal tractors can have various different drive types, i.e. electric or diesel engines. Loading capacity and speed can vary across models.

- (103) Further, there is a new product development most commonly referred to as automated (“auto”) terminal tractors (‘A-TT’). These are essentially driverless terminal tractors that use advanced autonomous driving technology, which is currently being developed by major suppliers in the automotive industry (e.g. Volvo, Daimler, MAN etc.) and tech companies (including tech giants like Google, Microsoft and Amazon). There appear to be no fully functioning automated terminal tractors available in the market yet. However, many suppliers are making advances in the field and a larger scale marketability appears imminent. By way of example, the automated terminal tractor products shown below have already been launched for testing with customers, see Figure 11 below.

Figure 11: A-TTs: Westwell Lab Q-Truck (left), Terberg AutoTUG (middle), Einride (right)



Source: Form CO, Chapter 2, Figures 6 to 8.

5.3.1. Straddle and shuttle carriers

5.3.1.1. The Commission’s past practice

- (104) In a previous decision, the Commission considered straddle carriers to constitute a separate product market from other types of container transport and/or stacking equipment, such as reach stackers, terminal tractors and gantry cranes, because of their versatility. The Commission did not expressly consider shuttle carriers this decision.⁵¹

5.3.1.2. The Notifying Parties’ view

- (105) The Notifying Parties are of the view that there is significant cross-competition between straddle/shuttle carriers and other means of stacking (i.e. gantry cranes) and horizontal transport. This may not merit a joint product market but ought to be taken into account in the competitive assessment.

5.3.1.3. The Commission’s assessment

- (106) The Commission finds that straddle carriers and shuttle carriers constitute a separate product market from both other types of horizontal equipment and from other means of stacking (i.e. gantry cranes). For the purposes of this decision, the Commission leaves open, whether straddle carriers and shuttle carriers might each constitute a separate sub-segment within the overall market for straddle and shuttle carriers or whether they are distinct product markets. As regards manual and automated straddle and shuttle carriers, the Commission finds that both modes of operation fall within the same product market and do not constitute separate sub-segments of the overall straddle and shuttle carrier market.

⁵¹ Case M.7792 – Konecranes/Terex MHPS, paragraphs 56 and 59.

(A) Straddle and shuttle carriers vs other types of horizontal and stacking equipment

- (107) In line with the Commission's previous decision, the findings of the market investigation show that there seems to be very limited demand-side substitutability with other horizontal equipment and other means of stacking (i.e. gantry cranes). A vast majority of customers said that they would most likely keep purchasing straddle and shuttle carriers if the price increased 5-10% instead of other types of horizontal equipment or means for stacking (i.e. gantry cranes).⁵² Individual replies of customers indicate that the main reason for this is the significant switching costs associated with changing the operational mode of a terminal after its initial design. An EEA terminal operator stated: "*Changing the operational mode of a terminal is very cost intensive. The straddle carrier – especially [sic] in the yard operation - is not easy to replace.*"⁵³ Another customer added: "*There is a lot of work and associated costs to change the infrastructure to suit another equipment type, unless the terminal already has plans to change the terminal design due to other reasons.*"⁵⁴ A GTO explained: "*Because there would be no other choice. Other choices would come with very big cost.*"⁵⁵
- (108) Further, the Commission finds that there is limited supply-side substitutability. The manufacturers of other types of horizontal equipment and means of stacking differ from those active in straddle and shuttle carriers.⁵⁶

(B) Straddle carriers vs shuttle carriers

- (109) The Commission finds that there are indications that straddle carriers and shuttle carriers are separate segments in an overall straddle and shuttle carrier market rather than distinct product markets because of a high degree of supply-side substitutability between them as well as their similar use cases in horizontal transport and resulting cross-competition. However, for the reasons explained below, the market definition can ultimately be left open in this regard for the purposes of this decision.
- (110) **First**, as regards the demand-side substitutability of straddle and shuttle carriers the Commission considers that it is rather limited.
- (111) **One**, the Commission finds that shuttle carriers can only be used for horizontal transport of usually one container, while straddle carriers can stack two to four containers in addition to their horizontal transport function. A GTO explained in this regard: "*Shuttle Carrier is used only as horizontal transport from the quay to the stacking area and is complementary to stacking cranes (usually ASCs) which will pick up the container and stock them in the stack. Straddle carriers are standalone machines in charge of both horizontal transport and container stacking in the yard.*"⁵⁷
- (112) **Two**, in light of the dual function of straddle carriers, the Commission's market investigation shows that straddle carriers and shuttle carriers are frequently used in different terminal designs. Straddle carriers are used in terminals where they perform both the horizontal transport as well as stacking functions. Shuttle carriers, on the

⁵² Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question D.A.3.1.

⁵³ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question D.A.3.1.1.

⁵⁴ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question D.A.3.1.1.

⁵⁵ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question D.A.3.1.1.

⁵⁶ See PN RFI 2 – Annex – Q5.

⁵⁷ Response to Q7 – PH2 Questionnaire to HTE Customers, Doc. ID 3608, question 3.

other hand, due to their lack of stacking function, are usually used in combination with stacking cranes (e.g. gantry cranes). Several customers reported that shuttle carriers are in particular used in semi-automated and automated terminals.⁵⁸ A GTO explained in this regard: *“This decision depends mainly on the terminal design and on the chosen operation mode – which is usually defined when designing a new container terminal. Shuttle Carriers are pure horizontal transport equipment that operates together with (Automated) Stacking Cranes (e.g. (A)-RMG’s), whereas Straddle Carriers are horizontal transport AND Yard cranes. Usually Straddle and Shuttle operation are not mixed.”*⁵⁹ Another GTO further explained: *“straddle carriers are designed to handle for 1 over 2 or 1 over 3 containers. Mostly the 1 over 2 are used waterside and can pick or drop containers 3 high on the yard. 1 over 3 are mainly used on the landside to load/offload trucks. They can pick up containers out of a 3 high stacked yard. [Shuttle carriers] are mainly 1 container high. They can pick up containers on the ground and move them to a position where stacking cranes (RTG or RMG’s) can pick them up to position them in the right slot on the yard.”*⁶⁰

- (113) **Second**, straddle and shuttle carriers are not substitutable for a number of customers. While the Commission finds that there are customers that regard straddle and shuttle carriers as interchangeable⁶¹ and in terms of price level there is no significant difference⁶², the Commission also finds that there are several others that cannot substitute them in their operations. In light of the additional stacking function that straddle carriers perform, a vast majority of customers⁶³ stated that they could not use a shuttle carrier instead of a straddle carrier in a cost-effective way. While straddle carriers perform the horizontal transport function of shuttle carriers, a slight majority of customers still stated⁶⁴ that they could not use straddle carriers instead of shuttle carriers in a cost-effective way. Consequently, the Commission found and several customers confirmed that they were only operating straddle carriers or only operating shuttle carriers in their terminal. For instance, an international customer stated: *“Our operational model does not utilise shuttle carriers at this time. [...]”*⁶⁵ Similarly, another international customer said: *“We do not purchase shuttle carriers, only 1 over 3 straddle carriers.”*⁶⁶ Further, an EEA customer expressed their preference: *“[Our terminal] buys only straddle carriers [...]”*⁶⁷ An EEA customer explained in this regard: *“We purchase Straddle Carriers due to their ability to store Containers, rather than just move them. We generally would procure 4 High (1-over-3) Machines.”*⁶⁸ Further, the Commission founds that straddle carriers are most often purchased to address replacement demand (brownfield project), while shuttle carriers appear to be purchased mostly for new terminals (Greenfield projects). A 2017 dated market report of DS Research, an independent market research company for the container terminal industry, reports that *“In the years before 2008 delivery numbers [for straddle carriers] were higher, because the market was driven by both replacement demand and demand from capacity expansion projects. This has*

⁵⁸ Responses to Q7 – PH2 Questionnaire to HTE Customers, Doc. ID 3608, question 3.

⁵⁹ Response to Q7 – PH2 Questionnaire to HTE Customers, Doc. ID 3608, question 3.

⁶⁰ Response to Q7 – PH2 Questionnaire to HTE Customers, Doc. ID 3608, question 3.

⁶¹ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question D.A.4.

⁶² Form CO, Chapter 2, paragraphs 10 and 16.

⁶³ Responses to Q7 – PH2 Questionnaire to HTE Customers, Doc. ID 3608, question 5.

⁶⁴ Responses to Q7 – PH2 Questionnaire to HTE Customers, Doc. ID 3608, question 4.

⁶⁵ Response to Q7 – PH2 Questionnaire to HTE Customers, Doc. ID 3608, question 3.

⁶⁶ Response to Q7 – PH2 Questionnaire to HTE Customers, Doc. ID 3608, question 3.

⁶⁷ Response to Q7 – PH2 Questionnaire to HTE Customers, Doc. ID 3608, question 3.

⁶⁸ Response to Q7 – PH2 Questionnaire to HTE Customers, Doc. ID 3608, question 3.

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.”⁶⁹. This is a further indication of limited demand-side substitutability.

- (114) **Third and however**, the Commission finds that there is a high degree of supply-side substitutability between straddle carriers, on the one hand, and shuttle carriers, on the other hand. In the market investigation, a potential competitor as well as an actual competitor agreed that the technical know-how required for straddle and for shuttle carriers was “very similar”⁷⁰ or even “the same”⁷¹ and limited costs and investments of about three to five million EUR were needed to start producing the other one if one was already producing the other. A further indication of high supply-side substitutability is that all of the three global suppliers of straddle and shuttle carriers offer both products. The potential competitor explained in this regard: “*The [shuttle carrier] is indeed a by-product of the [straddle carrier]. In practice, there are no [shuttle carrier] makers that do not make [straddle carriers] and vice-versa. If there was any, the similarity in the technology would enable the development of a [straddle carrier] with some time and money injection.*”⁷²
- (115) In light of this, the Commission finds that the cross-competition between straddle and shuttle carriers is limited because of a limited degree of demand-side substitutability. While there is a high degree of supply-side substitutability, the more limited demand-side substitutability indicates that straddle carriers and shuttle carriers might constitute separate segments in an overall straddle and shuttle carrier market. However, for the purposes of this decision it can ultimately be left open whether the straddle and shuttle carrier market is just differentiated or can be further sub-divided into straddle and shuttle carrier segments or even markets as the Proposed Transaction raises concerns under both of these segmentations as well as on the overall market.

(C) Manual vs automated solutions

- (116) As regards the substitutability of manual straddle and shuttle carriers, on the one hand, with automated straddle and shuttle carriers, on the other hand, demand-side substitutability when switching from manual to automated straddle and/or shuttle carriers appears to be higher than for switching between straddle carriers, on the one hand, and shuttle carriers, on the other hand. A majority of customers consider them substitutable.⁷³ A GTO noted in this regard: “*We have an example: in Antwerp we change the mode of operations in the yard from [straddle carriers] to [automated straddle carriers]*”⁷⁴. However, the Commission notes that still a significant number of customers does not consider them substitutable.⁷⁵ Further, the Commission expects a level of non-substitutability when switching from automated to manual straddle and shuttle carriers as it would be very expensive and uneconomical for customers to revert to a manual approach once automated technology has been implemented in a terminal.

⁶⁹ Internal document, Doc. ID 3664-28680 - CAR-MON-00126921.pdf, slide 5.

⁷⁰ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, questions D.40 and D.41.

⁷¹ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question D.40.1.

⁷² Responses to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question D.40.1.

⁷³ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question D.A.5.

⁷⁴ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question D.A.5.1.

⁷⁵ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question D.A.5.

- (117) The Commission further finds that there appears to be a degree of supply-side substitutability, as all three suppliers – Cargotec, Konecranes and ZPMC - appear to offer automated straddle and shuttle carriers.
- (118) Therefore, the Commission takes the view that manual and automated solutions for straddle and shuttle carriers are part of the same product market(s). In any case, the Commission notes that automated straddle and shuttle carriers are still rare in the EEA, with only eight units of automated straddle carriers delivered to the Hutchinson terminal in Stockholm by ZPMC in 2020 and no other deliveries or orders of automated straddle carriers in the EEA in 2018-2020. Automated shuttle carriers are not existent in the EEA at present. Further, there have been no orders in 2018-2020 in the EEA. Globally, automated straddle and shuttle carriers at present only make up around [10-20]% of the overall straddle and shuttle carrier market in terms of volume of deliveries in 2018-2020 and [10-20]% in terms of volume of orders in 2018-2020.⁷⁶ Therefore, a distinction between automated and manual straddle and/or shuttle carriers would have no appreciable effect on the competitive assessment of the straddle and shuttle carrier market and plausible sub-segments both in the EEA and globally.

(D) Conclusions on product market definition for straddle and shuttle carriers

- (119) Based on the above findings of the market investigation, the Commission takes the view that straddle and shuttle carriers constitute a distinct product market from other types of horizontal equipment and stacking equipment such as gantry cranes. A potential further sub-segmentation of the straddle and shuttle carrier market, into straddle carriers and shuttle carriers can ultimately be left open for the purposes of this decision as the Proposed Transaction raises concerns under both of these segmentations as well as on the overall market.

5.3.2. *Terminal tractors*

5.3.2.1. The Notifying Parties' view

- (120) With respect to terminal tractors, the Notifying Parties note that they might indeed constitute a distinct product market, as terminal tractors are significantly cheaper than other types of horizontal equipment such as shuttle carriers and AGVs. However, they submit that cross competition with road trucks exists.⁷⁷
- (121) The Parties further submit that A-TTs and AGV belong to separate product markets.⁷⁸

5.3.2.2. The Commission's assessment

- (122) As regards terminal tractors, the Commission finds that terminal tractors constitute a distinct product market separate from other horizontal container handling equipment. The market investigation confirmed that there is very limited demand-side substitutability with other horizontal equipment and regular road trucks. A clear majority of customers said that they would most likely keep purchasing terminal tractors if the price increased 5-10%.⁷⁹ Like with straddle/shuttle carriers, individual replies of customers indicate that the main reason for this are the significant switching costs associated with changing the operational mode of a terminal after its

⁷⁶ PN RFI 2, Annex Q5.

⁷⁷ Form CO, Chapter 2, paragraphs 83 et seq.

⁷⁸ Form CO, Chapter 2, paragraphs 87 et seq.

⁷⁹ Q2 – Questionnaire to Customers, question D.A.3.3.

initial design.⁸⁰ Two GTOs stated in relation to a substitution of terminal tractors with regular road trucks: *“Because when it’s the decided mode of operation for a given terminal, then you don’t change the equipment type.”*⁸¹ and *“But this is then a full change of the overall Mode of Operations”*⁸² While a very slight majority of customers agreed that terminal tractors were substitutable with regular road trucks,⁸³ individual responses further show that the demand-side substitutability is limited and customers are referring to a degree of cross-competition rather than substitutability. As one customer described: *“Regular road trucks can replace TT buy with significant limitations.”*⁸⁴ Several responses of market participants mention significant advantages to terminal tractors over road trucks including a significantly lower price level, specifications and manoeuvring/multipurpose use. One customer explained: *“I think there’s a lot of advantage in a terminal tractor vs a regular road truck in terms of TCO, ergonomics, price level for parts etc.”*⁸⁵ One customer association noted: *“terminal tractors allow much more efficient manoeuvring of (cranable) semi-trailers used frequently in continental intermodal transport”*⁸⁶. Another customer stated: *“Terminal tractors and regular road trucks do not share the same specifications”*⁸⁷. Another customer said: *“There is no substitute for multipurpose activities.”*⁸⁸ Another customer explained: *“Tractors and road trucks are technically substitutable from an operational perspective but it is uneconomical to use road truck to replace terminal tractor given that road trucks are typically 30% more expensive.”*⁸⁹ Accordingly, a customer said that they had never substituted terminal tractors and regular road trucks: *“[We] work[s] for 42 years and has not done this. Thus, zero years out of 42. It is unlikely that these are substitutes.”*⁹⁰ Those who indicated that they were operating both terminal tractors and regular road trucks indicated different use cases or limited use of road trucks. One customer described: *“Horizontal transport using tractors here, and domestic cargo is welcoming regular road trucks”*⁹¹. Another customer said: *“We operate right now terminal tractors (and some times regular road truck) and planning to continue same way in the nearest future”*⁹².

- (123) As regards terminal tractors, the Commission finds that terminal tractors constitute a distinct product market separate from other horizontal container handling equipment and regular road trucks. A potential further sub-segmentation of the terminal tractor market into manual terminal tractors, on the one hand, and automated terminal tractors (A-TTs), on the other hand, can ultimately be left open for the purposes of this decision, as the Proposed Transaction does not raise concerns under both of these segmentations as well as on the overall market.

⁸⁰ Q2 – Questionnaire to Customers, question D.A.3.3.1.
⁸¹ Q2 – Questionnaire to Customers, question D.A.6.1.
⁸² Q2 – Questionnaire to Customers, question D.A.6.1.
⁸³ Q2 – Questionnaire to Customers, question D.A.6.
⁸⁴ Q2 – Questionnaire to Customers, question D.A.6.1.
⁸⁵ Q2 – Questionnaire to Customers, question D.A.6.1.
⁸⁶ Q2 – Questionnaire to Customers, question D.A.6.1.
⁸⁷ Q2 – Questionnaire to Customers, question D.A.6.1.
⁸⁸ Q2 – Questionnaire to Customers, question D.A.6.1.
⁸⁹ Q2 – Questionnaire to Customers, question D.A.6.1.
⁹⁰ Q2 – Questionnaire to Customers, question D.A.6.1.
⁹¹ Q2 – Questionnaire to Customers, question D.A.6.1.
⁹² Q2 – Questionnaire to Customers, question D.A.6.1.

5.3.3. Automated Guided Vehicles (AGVs)

(124) As regards AGVs, the Commission finds that AGVs constitute a distinct product market from other horizontal container handling equipment. The market investigation confirmed that there is very limited demand-side substitutability with other horizontal equipment. A clear majority of customers said that they would most likely keep purchasing terminal tractors if the price increased 5-10%.⁹³ Like with straddle/shuttle carriers, individual replies of customers indicate that the main reason for this are the significant switching costs associated with changing the operational mode of a terminal after its initial design.⁹⁴ Further, as regards a potential substitutability with automated terminal tractors (A-TTs), responses from customers indicate that AGVs and A-TTs fall into separate product markets as there are significant differences between them from a demand-side perspective such as agility (bi-directional vs one-directional), capacity, use case as well as price. In relation to agility customers explained: “AGV’s are more agile, can drive like a crab.”⁹⁵ and “AGV is bi-directional moving but A-TT is mainly forward moving with higher complexity in reverse moving.”⁹⁶ A GTO explained the main differences as follows: “1. The geometry and driving behaviour of AGV’s versus TT’s. This makes it very difficult to replace TT’s with AGV’s, whereas an a-TT can replace a manual TT 2. Price: aTT much cheaper than AGV”⁹⁷ Another customer explained: “The AGV itself carries the load and is operated automatically. The A-TT can pull several trailer with loads. Meaning more container handling capacity in one ride.”⁹⁸ In terms of use case, a customer explained: “AGV is for transport between crane and stacking yard and A-TT is between yards”.⁹⁹

(125) Based on the above findings of the market investigation, the Commission takes the view that AGVs constitute a distinct product market from other types of horizontal equipment such as terminal tractors or more specifically A-TTs.

5.3.4. Conclusion on Horizontal Equipment

(126) Based on the above findings, the Commission concludes that each of the following types of horizontal equipment constitutes a distinct product market: straddle and shuttle carries, terminal tractors and AGVs. The Commission leaves open a potential further sub-segmentation of the straddle/shuttle carrier market into straddle carriers and shuttle carriers for the purposes of this *decision* as the Proposed Transaction raises concerns under both of these segmentations as well as on the overall market. Likewise, the Commission leaves open a potential further sub-segmentation of the terminal tractor market into manual terminal tractors and A-TTs for the purposes of this decision as the Proposed Transaction does not raise concerns under both of these segmentations as well as on the overall market.

5.4. Mobile Equipment

(127) Mobile equipment is mainly used to transport and lift containers, other cargo and flat racks in terminals, and by industrial and logistics companies. It comprises reach

⁹³ Q2 – Questionnaire to Customers, question D.A.3.2.

⁹⁴ Q2 – Questionnaire to Customers, question D.A.3.2.1.

⁹⁵ Q2 – Questionnaire to Customers, question D.A.7.

⁹⁶ Q2 – Questionnaire to Customers, question D.A.7.

⁹⁷ Q2 – Questionnaire to Customers, question D.A.7.

⁹⁸ Q2 – Questionnaire to Customers, question D.A.7.

⁹⁹ Q2 – Questionnaire to Customers, question D.A.7.

stackers, container handlers as well as forklift trucks. Mobile equipment is sometimes also referred to as 'lift trucks'.

- (128) Reach stackers have a boom with a spreader that grips the container from above, allowing it to operate several rows deep (i.e. they are also able to reach containers located in the second or third row of a container stack). Some reach stackers are also operated with attachments other than container spreaders – and are used to handle industrial components such as windmill parts or heavy metal components (e.g. with magnets).

Figure 12: Reach stacker



Source: Form CO, Chapter 2, Figure 11.

- (129) Container handlers are offered either as full container handlers or as empty container handlers. Both are masted lift trucks able to stack containers only in the first row. Full container handlers have a lifting capacity sufficient for the handling of laden containers and can stack up to six containers high (as the Notifying Parties' have a worldwide market share below 10% and are not active in this product in the EEA, full container handlers will not be considered further in this Decision).

Figure 13: Full container handler



Source: Form CO, Chapter 2, Figure 13.

- (130) Empty container handlers have a lower lifting capacity than full container handlers and are used to stack unladen containers, generally up to eight containers high. Empty container handlers exist in versions for single or double container handling. Empty container depots are among the main customers of empty container handlers.

Figure 14: Empty container handler



Source: Form CO, Chapter 2, Figure 15.

- (131) Forklift trucks are mast lift trucks equipped with a fork. While they can also be used to handle containers, they are in most cases used to handle other types of cargo, such as palletised goods or a range of industrial components.

Figure 15: Forklift truck



Source: Form CO, Chapter 2, 16.

5.4.1. Reach stackers

5.4.1.1. The Commission's past practice

- (132) In its past decisions, the Commission did not conclude on the exact definition of a product market for reach stackers. The Commission however noted that container handling equipment is appropriately segmented according to equipment type, such as reach stackers.¹⁰⁰

5.4.1.2. The Notifying Parties' view

- (133) The Notifying Parties submit that reach stackers are not entirely substitutable from a demand-side perspective with other mobile equipment types such as empty container handlers and forklift trucks. However, the Notifying Parties state that both reach stackers and full container handlers are predominantly used for full container handling, both use top spreaders and are comparable in price. They further submit

¹⁰⁰ Commission decision of 8 August 2016, M.7792 – Konecranes/Terex MHPS, paragraph 58.

that there is significant supply-side substitutability, as reach stackers and full container handlers are produced in the same production facilities. Therefore, reach stackers and full container handlers might belong to the same product market.¹⁰¹ According to the Notifying Parties, in any case, no further segmentation by lifting capacity of any potential market for reach stackers is warranted, as standard capacity reach stackers account for the bulk of demand and the competitive situation is similar across different reach stacker types.¹⁰²

5.4.1.3. The Commission's assessment

- (134) Reach stackers have to be distinguished from other types of mobile equipment (and other container and material handling equipment). They fulfil different – and specific – customer needs. In particular, they are used for container stacking, loading and unloading, while being more flexible than gantry cranes. They are also used for certain non-container applications (e.g. windmill component handling). Reach stackers also have characteristics different from other equipment types, e.g. in that they unlike gantry cranes drive freely on terminals; and unlike other mobile equipment types, are equipped with a boom which allows ranged stacking operations (beyond the first row of container stacks). As a consequence, reach stackers have a very limited demand-side substitutability and a limited supply-side substitutability.

(A) Very limited demand-side substitutability

- (135) Demand-side substitutability with respect to reach stackers appears to be very limited. Customers do not appear to be able to replace reach stackers with other mobile equipment. Reach stackers are relatively versatile and can be used in a range of applications. Customers for example indicate that they use reach stackers for full container handling and empty container handling, as well as, to a lesser extent, for other cargo handling and the handling of industrial components.¹⁰³ A majority of customers expressing their view further indicate that they could not use any type of equipment other than reach stackers for all applications instead.¹⁰⁴ In that context one customer explains that *‘Container Handlers (Empty/Full) (CH) and Heavy Duty Forklift Trucks (HDFLT) are not substitutes for Reach Stackers (RS), as they cannot perform RS’s key, characteristic functionality, i.e. horizontal operation and multi-purpose operation of both empty and full containers, and certain non-standard loads’* and further that *‘CH and HDFLT operate only vertically, which means that they can only pick and drop units along two rows (one from either side) on a terminal site. ECHs moreover are built to carry only empty containers. By contrast, RS have a telescopic boom that reaches at an angle, providing reach and thus allowing both vertical and horizontal operation of both full and empty containers, meaning one RS can typically operate up to six rows of containers (three from either side, several containers high and mixed), as they can reach over the first and second rows’*.¹⁰⁵
- (136) Specifically, a majority of respondents to the market investigation does not consider that reach stackers and full container handlers can be used interchangeably for all relevant applications.¹⁰⁶ One customer explains that *‘[r]eachstackers are more*

¹⁰¹ Form CO, Chapter 2, paragraphs 96-100.

¹⁰² Form CO, Chapter 2, paragraph 101.

¹⁰³ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question E.A.1.1.

¹⁰⁴ Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 3.1.

¹⁰⁵ Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 3.1.1.

¹⁰⁶ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question E.A.4 and Response to Q1 – Questionnaire to Competitors, Doc. ID 3154, question E.A.2.

*flexible than full container handlers’ and another market participant states that ‘[d]epending on the design selected, reach stackers can be used for multi-purpose applications’.*¹⁰⁷ Finally, another market participant submits that *‘[r]each stacker[s] can handle containers from first to fourth row where full container handlers can handle first row only’.*¹⁰⁸ A large majority of customers therefore submits that if the price for reach stackers were to increase by 5-10%, they would continue purchasing reach stackers, instead of switching to full container handlers.¹⁰⁹ A customer explains this reply by stating that reach stackers *‘are used for various tasks, these include container stacking of laden/unladen containers, servicing trucks in container storage areas, servicing train wagons within rail terminals etc. Reach Stackers are versatile pieces of equipment which can undertake the above tasks whereas other mobile equipment has more specific uses and cannot easily be interchanged’.*¹¹⁰

(B) Limited supply-side substitutability

- (137) Supply-side substitutability with respect to reach stackers is also limited. Firstly, not all manufacturers active in the supply of mobile equipment are active in the supply of reach stackers. For example, suppliers like Svetruck do not supply reach stackers, but have a meaningful market presence in heavy-duty forklift trucks (>10 tonne capacity). Secondly, and as explained in more detail in Section 7.4.1.3, there are a number of significant barriers to the supply of reach stackers. In particular, majorities of competitors of the Parties consider it important for new entrants in the supply of reach stackers in the EEA to achieve a price-competitive product and a high quality product.¹¹¹ Both of these parameters are according to majorities of competitors expressing their view very or somewhat difficult to achieve.¹¹² Thirdly, customer groups of reach stackers differ somewhat from those of other types of mobile equipment, in particular heavy-duty forklift trucks (>10 tonne capacity). While some customers use both reach stackers and heavy-duty forklift trucks (>10 tonne capacity), certain customers only rely on one type (e.g. an intermodal terminal may rely only on reach stackers, whereas a timber plant may rely only on heavy-duty forklift trucks (>10 tonne capacity)). A manufacturer currently present only in heavy-duty forklift trucks (>10 tonne capacity) would therefore need to establish new and broader sales channels to be able to supply reach stackers also to the main customer group of these products (container terminals). Therefore, it appears that manufacturers of other types of mobile equipment could not readily switch to manufacturing and supplying reach stackers.

(C) Sub-segmentation

- (138) The market for reach stackers is differentiated. Differentiations exist for example by lifting capacity (standard models handle containers with a maximum of 45-46 tonne capacity, while certain heavy-duty versions can handle in excess of 100 tonnes), wheelbase (also related to stacking capacity in second and third row of a container stack – longer wheelbases are needed to handle cargo farther away from the centre of gravity of the machine), and drive train (e.g. diesel, hybrid, electric).

¹⁰⁷ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question E.A.4.1.

¹⁰⁸ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question E.A.4.1.

¹⁰⁹ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question E.A.5.

¹¹⁰ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question E.A.5.1.

¹¹¹ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 87.1.

¹¹² Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 88.1.

- (139) However, a sub-segmentation of the reach stacker market is not appropriate. A majority of respondents considers all types of reach stackers to be usable for the whole range of applications for which reach stackers are typically used.¹¹³ Nevertheless, some market participants point towards relevant distinctions between different types of reach stackers. One customer explains that *‘[f]or heavy loads (non container), special heavy duty reach stackers are required. There are not so many manufacturers to produce them’*.¹¹⁴ A competitor states that *‘[t]here are differences in application by machine size and load attachment which have to be considered for each application’*.¹¹⁵ Another competitor describes a range of different applications for reach stackers, with different required technical specifications: *‘General container handling. Placing boxes in the 1st, 2nd, 3rd row stacks, mainly picking from trailers, under cranes. Over-height containers, flat racks and other specialty boxes handling on the terminal are part of this. - Barge handling. This container application is different as longer load-centers at high capacity are needed as well as negative lift capabilities. Driving need for more specialized and bigger trucks. - Rail handling. This container application also has longer load-centers at high capacity needed (2nd rail) but no negative lift. In this application we see also trailer handling (placing trailers on rail cars). - Specialty. Main sectors: Steel handling (coils with hook or clamp, plate and beams with magnets), Wind mill handling (slings or special attac[h]ments), Bulk handling with tipping/rotating spreaders to unload containers. - Empty container/semi loaded container handling. Smaller sized trucks with higher stacking capabilities.’*¹¹⁶ Therefore, the market for reach stackers appears to be differentiated.

(D) Conclusion

- (140) Due to limited supply-side and very limited demand-side substitutability, reach stackers constitute a distinct product market from other mobile equipment products.

5.4.2. Empty container handlers

5.4.2.1. The Commission’s past practice

- (141) The Commission did not consider empty container handlers in its previous decisional practice.

5.4.2.2. The Notifying Parties’ view

- (142) The Notifying Parties explain that there is a degree of demand-side substitutability between equipment for full container handling such as full container handlers and reach stackers, and empty container handlers – any equipment capable of handling full containers can also handle empty containers. However, this may not be cost effective and in any case, empty container handlers cannot be used for full container handling. The Notifying Parties further submit that from a supply-side perspective, full and empty container handlers are largely interchangeable, as they use similar components and are manufactured in the same factories. Therefore, full and empty container handlers may form part of the same product market. Further, the Notifying Parties consider that electric empty container handlers are substitutable with non-

¹¹³ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question E.A.3 and Response to Q1 – Questionnaire to Competitors, Doc. ID 3154, question E.A.1.

¹¹⁴ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question E.A.3.1.

¹¹⁵ Response to Q1 – Questionnaire to Competitors, Doc. ID 3154, question E.A.1.1.

¹¹⁶ Response to Q1 – Questionnaire to Competitors, Doc. ID 3154, question E.A.1.1.

electric empty container handlers and therefore a distinction between the two would not be appropriate.¹¹⁷

5.4.2.3. The Commission's assessment

- (143) Empty container handlers have to be distinguished from other types of mobile equipment (and other container and material handling equipment). They fulfil different – and specific – customer needs. In particular, they are used for one specific application (empty container stacking), while other types of mobile equipment like reach stackers and heavy-duty forklift trucks (>10 tonne capacity) are used for range of applications. Empty container handlers also have characteristics different from other equipment types, e.g. in that unlike gantry cranes, they drive freely on terminals; and unlike reach stackers, they are not equipped with a boom but with a mast (and therefore can only stack containers in the first row). As a consequence, empty container handlers have a very limited demand-side substitutability and a limited supply-side substitutability.

(A) Very limited demand-side substitutability

- (144) Demand-side substitutability with respect to empty container handlers appears to be very limited. From a customer perspective, empty container handlers appear to be used for one specific application and not for any other one. A large majority of customers submit that they use empty container handlers for empty container handling and not for other applications.¹¹⁸ It appears unlikely that customers that have specific empty container handling needs (e.g. empty container depots, or terminals with significant empty container storage needs) would switch from empty container handlers to other mobile equipment which can in principle also be used to handle empty containers such as reach stackers, as reach stackers are significantly more expensive. A majority of customers expressing their view further indicate that they could not use any type of equipment other than empty container handlers for all applications instead.¹¹⁹ In that context one customer explains that it *'could use reach stacker to handle empty container. But this is much too expensive'*.¹²⁰ Another customer explains that *'[t]here is no way to replace the ECH with other type machines. There is no other mobile machine that can reach the stacking capacity of eight (8) containers, 8'6" type'*.¹²¹

(B) Limited supply-side substitutability

- (145) Supply-side substitutability with respect to empty container handlers also appears to be limited. Firstly, not all manufacturers active in the supply of mobile equipment are active in the supply of empty container handlers. For example, suppliers like Liebherr do not supply empty container handlers, but are present in other mobile equipment markets, like e.g. reach stackers. Secondly, and as explained in more detail in Section 7.4.2.4, there are a number of significant barriers to the supply of empty container handlers. In particular, majorities of competitors of the Parties consider it important for new entrants in the supply of empty container handlers in the EEA to achieve a price-competitive product and a high quality product.¹²² Both of these parameters are according to majorities of competitors expressing their view

¹¹⁷ Form CO, Chapter 2, paragraphs 105-109.

¹¹⁸ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question E.A.1.3.

¹¹⁹ Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 3.2.

¹²⁰ Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 3.2.1.

¹²¹ Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 3.2.1.

¹²² Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 87.2.

very or somewhat difficult to achieve.¹²³ Thirdly, customer groups of empty container handlers differ somewhat from those of other types of mobile equipment, in particular heavy-duty forklift trucks (>10 tonne capacity). While some customers use both empty container handlers and heavy-duty forklift trucks (>10 tonne capacity), certain customers only rely on one type (e.g. an empty container depot may rely only on empty containers, whereas a timber plant may rely only on heavy-duty forklift trucks (>10 tonne capacity)). A manufacturer currently present only in heavy-duty forklift trucks (>10 tonne capacity) would therefore need to establish new and broader sales channels to be able to supply empty container depots also to the main customer group of these products (container terminals and empty container depots). Therefore, it appears that manufacturers of other types of mobile equipment could not readily switch to manufacturing and supplying empty container handlers.

(C) Sub-segmentation

- (146) A sub-segmentation of the empty container handler market does is not appropriate. A majority of market participants submit that they can use all types of empty container handlers for the whole range of applications for which empty container handlers are typically used.¹²⁴

(D) Conclusion

- (147) Due to very limited demand-side substitutability and limited supply-side substitutability, empty container handlers constitute a distinct product market from other mobile equipment products.

5.4.3. *Heavy-duty forklift trucks (>10 tonne capacity)*

5.4.3.1. The Commission's past practice

- (148) In its past decisions the Commission has considered a separate market for forklift trucks (or counterbalanced forklift trucks), irrespective of the lifting/weight bearing capacity of the forklift trucks. For example, in case M.8190 – Weichai/Kion,¹²⁵ the Commission noted that '*[t]here is a variety of models differing in weight bearing capacity and type of engine, but all of them share common distinctive characteristics - they can carry goods in both horizontal and vertical directions, and have a maximum lift height in the range of four to six meters*' and that in previous decisions the Commission '*has defined one product market for [counterbalanced forklift trucks], notably based on the general supply side-substitutability: manufacturers generally produce the entire range of forklift trucks of various sizes, engines, and capacity ranges*'.

5.4.3.2. The Notifying Parties' view

- (149) The Notifying Parties submit that no further segmentation, in particular based on lifting capacity, is warranted.¹²⁶ In particular, the Notifying Parties submit that a further segmentation between different types of forklift trucks especially with a lifting capacity of above 5 tonnes is not warranted due to demand- and supply-side substitutability.¹²⁷

¹²³ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 88.2.

¹²⁴ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question E.A.6 and Response to Q1 – Questionnaire to Competitors, Doc. ID 3154, question E.A.3.

¹²⁵ Commission decision of 15 February 2017, M.8190 – Weichai/Kion, paragraphs 17-18.

¹²⁶ Form CO, Chapter 2, paragraphs 112-113.

¹²⁷ Response to the Article 6(1)(c) Decision, paragraph 206.

- (150) With respect to demand-side substitutability, the Notifying Parties submit that the lifting capacity and size of forklift trucks delineate their main use-case, but that they are not confined to any one particular application. While forklift trucks cannot be used to handle materials exceeding their maximum lifting capacity, heavier forklift trucks can be used to handle lighter materials.¹²⁸ Further, the Notifying Parties explain that customers do not only use forklift trucks with a higher lifting capacity for heavy pieces of cargo but often use these higher capacity forklift trucks to handle several pieces of lighter cargo at the same time, such as e.g. four pieces of four tonnes each. Also a low capacity forklift truck could be utilised for this task, which underlines the considerable degree of demand-side substitutability between lower and higher capacity forklift trucks. In addition, the Notifying Parties state that forklift trucks with a lifting capacity above 5 tonnes and above 10 tonnes are typically used in similar general industrial applications.¹²⁹ If forklift trucks were to be segmented based on demand-side considerations, the distinction between forklift trucks for indoor and outdoor use may be a more appropriate basis than lifting capacity.¹³⁰
- (151) With respect to supply-side substitutability, the Notifying Parties submit that all types of forklift trucks (lighter and heavier models) are based on the same technology (i.e. that the weight of the cargo being lifted is countered with a counterweight placed at the rear end of the forklift trucks). The differences between lighter and heavy-duty forklift trucks are according to the Notifying Parties in particular related to the forklift's size and strength of certain components (such as forks, drive axles, chassis and hydraulic systems) as well as the traction of the engines installed. These are standardised components that the Parties procure from third parties.¹³¹
- (152) As all forklift trucks are assembled using standard, widely-available components and engines, and are based on the same technology, the Notifying Parties submit that manufacturers are able to produce all types of forklift trucks using their existing production capacities without having to invest in changes in their production facilities, particular R&D and/or employee training. All forklift truck manufacturers are said to be able to adjust their production to different types of forklift trucks relatively easily.¹³²
- (153) The Notifying Parties further submit that several important forklift truck manufacturers offer forklift trucks with lifting capacities ranging from below 5 to above 10 tonnes – these include Helo, Hyster, Hyundai, Linde, Taylor, Toyota FL and Goodsense Hangzhou – Hangcha Forklift. Cargotec offers light, medium and heavy forklift trucks, while Konecranes offers medium and heavy forklift trucks but considers it easily possible to expand into light forklift trucks.¹³³ Further, the Notifying Parties submit that a small but significant non-transitory increase in price of more than 5% for heavy-duty forklift trucks would make it commercially attractive for several manufacturers of lighter forklift trucks to also expand into heavy-duty forklift trucks.¹³⁴
- (154) Finally, the Notifying Parties state that differences in market shares for different types of forklift trucks alone do not warrant a further segmentation of the market for

¹²⁸ Response to the Article 6(1)(c) Decision, paragraph 207.

¹²⁹ Response to the Article 6(1)(c) Decision, paragraph 209.

¹³⁰ Reply to the SO, paragraph 724.

¹³¹ Response to the Article 6(1)(c) Decision, paragraph 213.

¹³² Response to the Article 6(1)(c) Decision, paragraph 215.

¹³³ Response to the Article 6(1)(c) Decision, paragraph 216.

¹³⁴ Response to the Article 6(1)(c) Decision, paragraph 217.

forklift trucks. Such differences may merely express the fact that some suppliers put a stronger commercial focus on certain models due to profitability considerations, while they could easily switch production to other forklift truck models.¹³⁵

5.4.3.3. The Commission's assessment

- (155) Heavy-duty forklift trucks (>10 tonne capacity) have to be distinguished from other types of mobile equipment (and other container and material handling equipment), and from lower capacity forklift trucks. They fulfil different – and specific – customer needs. In particular, they are used for a range of heavy-duty lifting applications by customers. They in particular are able to handle a wide range of non-container goods and cargo, while other types of mobile equipment like reach stackers and empty container handlers are used primarily for container handling. Heavy-duty forklift trucks (>10 tonne capacity) also have characteristics different from other equipment types, e.g. in that unlike gantry cranes or industrial cranes they drive freely on terminals and on industrial sites; and unlike reach stackers, are not equipped with a boom but with a mast (and therefore can only operate in the first row). As a consequence, heavy-duty forklift trucks (>10 tonne capacity) have a very limited demand-side substitutability and a limited supply-side substitutability.

(A) Very limited demand-side substitutability

- (156) Demand-side substitutability with respect to heavy-duty forklift trucks (>10 tonne capacity) appears to be very limited. Customers expressing their view indicate that they use heavy-duty forklift trucks (>10 tonne capacity) for a range of applications (e.g. handling of non-standardised cargo, handling of industrial components, handling of palletised goods, other cargo handling).¹³⁶ A majority of customers expressing their view indicate that they could not use any type of equipment other than heavy-duty forklift trucks (>10 tonne capacity) for all applications instead.¹³⁷

(A.i) Customers purchase heavy-duty forklift trucks (>10 tonne capacity) for lifting tasks above 10 tonnes

- (157) Customers of heavy-duty forklift trucks (>10 tonne capacity) appear to purchase this type of equipment according to specific lifting capacity requirements, as indicated by a large majority of customers expressing their view in the market investigation.¹³⁸ One customer explains that '[l]ifting capacity is crucial factor and depends on types of cargo we want to handle' and another one that '[f]orklift trucks are selected based on the lifting capacity needed in the location and operation in which they are use[d]'.¹³⁹
- (158) Specifically, the main reason why customers purchase heavy-duty forklift trucks (>10 tonne capacity) clearly appears to be to handle cargo of a weight above 10 tonnes, and not to handle batches of lower weight cargo that could also be moved with lower capacity forklift trucks. In that context a large majority of customers responding to the market investigation submit that the main purpose for which they purchased a heavy-duty forklift truck (>10 tonne capacity) is for the handling of cargo of a weight above 10 tonnes.¹⁴⁰ A customer explains this by stating that

¹³⁵ Response to the Article 6(1)(c) Decision, paragraph 218.

¹³⁶ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question E.A.1.4.

¹³⁷ Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 3.3.

¹³⁸ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question E.A.7.

¹³⁹ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question E.A.7.1.

¹⁴⁰ Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 4.

*‘[l]arge forklifts (above 10T) are specifically purchased to handle heavier cargo. If the anticipated cargo is below 10Ts, then a smaller forklift is purchased for operations’.*¹⁴¹ Another customer states that *‘[u]nder 10 ton cargo is handled with smaller equipment’.*¹⁴²

(A.ii) Lower capacity forklift trucks are not an alternative for customers of heavy-duty forklift trucks (>10 tonne capacity)

- (159) Customers of heavy-duty forklift trucks (>10 tonne capacity) and competitors of the Parties do not consider lower capacity forklift trucks as an alternative to heavy-duty forklift trucks (>10 tonne capacity).
- (160) A majority of customers and competitors does not consider forklift trucks (>5 tonne capacity) to be generally used for the same applications as heavy-duty forklift trucks (>10 tonne capacity).¹⁴³ One customer explains the distinction as follows: *‘we are using trucks with capacity of 7 to for unloading products from a lorry. trucks with capacity of >10to generally have forks with other dimensions. Using 7to trucks might be possible for indoor handling. trucks > 10to are not usable in logistic centers, only outdoor’.*¹⁴⁴ A competitor submits that *‘[h]eavy duty forklift trucks (i.e. trucks with >10t capacity) always have a very special application and cannot be compared to applications of <10t capacity trucks. Thus, such trucks are not interchangeable’.*¹⁴⁵ Another competitor states that *‘[f]orklift trucks >5 tonne capacity cannot be used for heavy-duty forklift trucks application >10 tonne capacity’.*¹⁴⁶
- (161) Further, a large majority of customers submit that they could not use forklift trucks with a lifting capacity below 10 tonnes instead of heavy-duty forklift trucks (>10 tonne capacity) for the tasks for which the latter are currently used for.¹⁴⁷ One customer explains in this context that it *‘cannot use forklift trucks with a lifting capacity below 10 tons because our load can reach 15 tons to 20 tons’.*¹⁴⁸
- (162) In this context, the Notifying Parties submit that even if demand-side considerations were to support a market segmentation based on lifting capacity, it is not evident why the appropriate point of distinction is 10 tonnes.¹⁴⁹ While certain customers’ specific use-cases for forklift trucks may indeed result in them considering a different lifting capacity as the appropriate cut-off point delineating the ‘heavy-duty’ segment from lower capacity forklifts, a majority of customers does not consider lower capacity forklift trucks as an alternative to forklift trucks with a lifting capacity above 10 tonnes¹⁵⁰ (10 tonnes as the lifting capacity cut-off point for the potential heavy-duty forklift truck market is advanced by the Notifying Parties in the Form CO, as it captures the overlap between the Notifying Parties’ offering¹⁵¹).

¹⁴¹ Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 4.1.

¹⁴² Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 4.1.

¹⁴³ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question E.A.8 and Response to Q1 – Questionnaire to Competitors, Doc. ID 3154, question E.A.4.

¹⁴⁴ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question E.A.8.1.

¹⁴⁵ Response to Q1 – Questionnaire to Competitors, Doc. ID 3154, question E.A.4.1.

¹⁴⁶ Response to Q1 – Questionnaire to Competitors, Doc. ID 3154, question E.A.4.1.

¹⁴⁷ Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 5.

¹⁴⁸ Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 5.1.

¹⁴⁹ Reply to the SO, paragraph 725.

¹⁵⁰ See e.g. Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question E.A.8 and Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 5.

¹⁵¹ Form CO, footnote 374.

(A.iii) *Dealers/distributors tend to offer heavy-duty forklift trucks (>10 tonne capacity) and lower capacity forklift trucks separately*

- (163) The circumstance that higher capacity forklift trucks, typically with a minimum lifting capacity starting at around 10 tonnes, are generally marketed separately from lower capacity forklift trucks, further underlines the different demand characteristics for heavy-duty forklift trucks (>10 tonne capacity).
- (164) A number of companies active as dealers/distributors for mobile equipment advertise ‘heavy-duty’ forklift trucks (typically with a minimum lifting capacity starting at around 10 tonnes) separately from other types of forklift trucks on their websites. For example, Henley Forklift Group advertises all types of forklifts under the category ‘Diesel and Gas Forklifts’, whereas in the category ‘Port Handling Equipment’, only heavy-duty forklift trucks (>10 tonne capacity) are advertised.¹⁵² The company Eder Stapler similarly distinguishes between ‘Diesel and Gas forklifts’ and ‘heavy-duty forklifts’.¹⁵³ Further, company Isfort also distinguishes in its used machines and hire/rental offering of counterbalanced forklift trucks between ‘Heavy Forklifts’ and other categories such as ‘Electric 4-wheel forklift’ or ‘Rough terrain forklift truck’.¹⁵⁴ While, as submitted by the Notifying Parties,¹⁵⁵ these and other dealers do not follow a fully homogeneous segmentation of different forklift trucks, their promotional materials nevertheless underline that they distinguish between lower capacity forklift trucks and heavy-duty forklift trucks – and that the latter in this context are considered to start at or around a lifting capacity of 10 tonnes.
- (165) Similarly, a reseller of mobile equipment, the company Forkliftcenter, clearly distinguishes between heavy-duty forklift trucks (>10 tonne capacity) and lower capacity forklift trucks on its website, as shown in Figure 16. This company explains that *‘[f]orklifts with lifting capacity below 10 tonnes and equal to 10-60 tonnes are presented separately to customers on the Forkliftcenter website, as these products target different types of customers (1-10T are more the domestic customers (warehouse, distribution and small industries with a few forklifts). 10-60T are more the bigger production plants (Steel, concrete, papermills, windmill plants, ports etc and more often international oriented companies). Since approx. 80% of Forkliftcenter’s customers are ports and terminals, it is important for Forkliftcenter to separately present forklifts with different lifting capacities. Big forklift trucks (i.e. heavy-duty forklift trucks >10 tonne capacity) are largely used in ports and terminals and in the steel industry for different special applications. Warehouse equipment, which includes lower capacity forklift trucks, is a totally different type of equipment’*.¹⁵⁶ The Notifying Parties submit that this statement rather ‘points more towards a delineation between indoor and outdoor use’.¹⁵⁷ While lower capacity forklift trucks may often be used indoors and heavy-duty forklift trucks be mostly used outdoors, this fact does not take away from the underlying distinction based on lifting capacity (which determines whether the machine is rather used for low

¹⁵² Doc. ID 4002 and Doc. ID 4008, Henley Forklift Group Website, <https://henley.ie/>, accessed 21 September 2021.

¹⁵³ Courtesy translation. The original German text reads: ‘Diesel- und Treibgasstapler’ and ‘Schwerlaststapler’. Doc. ID 4012, Eder Stapler Website, <https://www.eder-stapler.de/>, accessed 21 September 2021.

¹⁵⁴ Doc. ID 4010, Isfort Website, <https://www.isfort.com/>, accessed 21 September 2021.

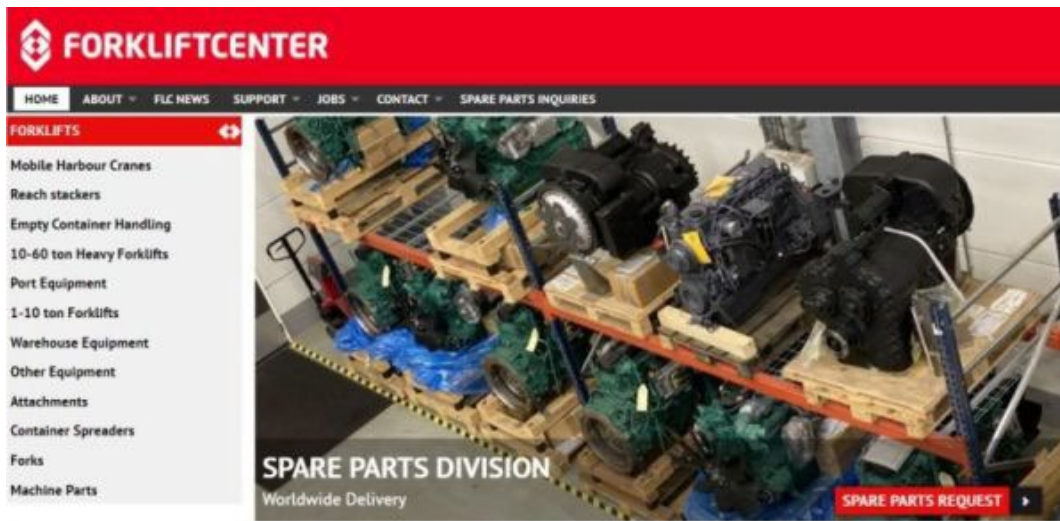
¹⁵⁵ Reply to the SO, paragraph 729.

¹⁵⁶ Doc. ID 4110, Minutes of a call with a reseller, 27 August 2021.

¹⁵⁷ Reply to the SO, paragraph 729.

capacity handling that occurs often indoors, or high capacity handling that occurs often outdoors).

Figure 16: Forkliftcenter website



Source: Doc. ID 4001, Forkliftcenter Website, <https://www.forkliftcenter.com/>, accessed 21.9.2021.

(166) In addition, competitors of the Parties also appear to distinguish in their public offering between heavy-duty forklift trucks and other forklift trucks. For example, competitor Hyster advertises ‘high capacity forklift trucks’ separately from other types of forklift trucks. In addition, Hyster also advertises only heavy-duty forklift trucks (>10 tonne capacity) to certain customer groups on its website, for example to ‘Ports & Terminals’.¹⁵⁸ The Notifying Parties in this context submit that manufacturers of forklift trucks tend to have differing definitions of from what lifting capacity onwards they consider forklift trucks to be ‘large’, ‘heavy’ or ‘high capacity’.¹⁵⁹ Indeed, some manufacturers advertise forklift trucks with a maximum lifting capacity of 8.5 tonnes as high capacity, while others consider forklift trucks below 16 tonnes as lower capacity forklift trucks. These distinctions are largely made based on the segments the manufacturer in question is active in – and appear to lie mostly close to 10 tonnes.

(B) Limited supply-side substitutability

(167) Supply-side substitutability with respect to heavy-duty forklift trucks (>10 tonne capacity) is limited.

(B.i) *The structure of supply for heavy-duty forklift trucks (>10 tonne capacity) is different than for lower capacity forklift trucks*

(168) The structure of supply for heavy-duty forklift trucks (>10 tonne capacity) in the EEA differs significantly from the structure of supply of a hypothetical broader range of forklifts (e.g. above 5 tonnes capacity).

(169) **First**, while indeed some manufacturers of heavy-duty forklift trucks (>10 tonne capacity) are active also in the supply of lower capacity forklift trucks,¹⁶⁰ differences

¹⁵⁸ Doc. ID 4004 and Doc. ID 4005, Hyster Website, <https://www.hyster.com/en-gb/europe/>, accessed 21 September 2021.

¹⁵⁹ Reply to the SO, paragraph 730.

¹⁶⁰ The Notifying Parties submit that for example Linde, Hyster, Toyota and Heli ‘offer a broad range of forklift trucks’ and are active in both low capacity and heavy-duty forklift trucks (see the Reply to the

in market shares suggest that the competitive landscape and presence of suppliers differs significantly on the market for heavy-duty forklift trucks (>10 tonne capacity) when compared to lower capacity forklift trucks. Market share estimates submitted by the Notifying Parties show that shares differ significantly depending on whether a market for forklift trucks (>5 tonne capacity) or a market for heavy-duty forklift trucks (>10 tonne capacity) is considered. The Merged Entity for example for 2018-2020 is said to have a combined share of [10-20]% for forklift trucks (>5 tonne capacity) and [50-60]% for heavy-duty forklift trucks (>10 tonne capacity).¹⁶¹

- (170) **Second**, some companies active in the supply of forklift trucks are evidently only active in the production and supply of lower capacity forklift trucks. For example, Manitou ‘*offers forklift trucks with a capacity of up to 10 ton[n]es*’.¹⁶² Similarly, companies such as Jungheinrich or Sumitomo Nacco Forklift offer only forklift trucks with a capacity below 10 tonnes.
- (171) **Third**, some competitors to the Parties appear to be only active in heavy-duty forklift trucks (>10 tonne capacity) and not in lower capacity forklift trucks. For example, Svetruck and Sany only produce and supply forklift trucks with a capacity above 10 tonnes.¹⁶³
- (172) **Fourth**, while some market participants consider that most manufacturers of forklifts with a capacity between 5 and 10 tonnes are generally also active in the production and supply of heavy-duty forklift trucks (>10 tonne capacity), most market participants consider only a few of them to also be active in heavy-duty forklift trucks (>10 tonne capacity).¹⁶⁴ While one customer submits that ‘*[t]he design of 5-10 tonne forklift trucks is similar to forklift truck of above 10 tonnes, so it is common for forklift truck suppliers to manufacture a heavy-duty range of forklift trucks*’,¹⁶⁵ another customer explains that ‘*[b]elow 10 tonnes you find a lot of manufacturers. Above 10 tonnes they are limited. And most of the time not the same manufacturers. It is a different playing ground between those capacities and I think that no manufacturer has been succes[s]ful on both capacity ranges*’.¹⁶⁶ A competitor states that ‘*[a]bove 10t is still a broad range. Above 20t this is different. Linde, Toyota, Doosan, Hyundai, Hyster-Yale, TCM, all have above 10t trucks*’.¹⁶⁷
- (173) Therefore, and contrary to the findings in prior Commission cases, it does not appear that ‘*manufacturers generally produce the entire range of forklift trucks of various [...] capacity ranges*’.¹⁶⁸ While some manufacturers do, others do not and instead are focused on either heavy-duty forklift trucks (>10 tonne capacity) or only forklift trucks of lower capacity ranges.

SO, paragraph 736). Linde and Hyster are indeed active in both markets in the EEA, whereas Toyota and Heli are at least not active in heavy-duty forklift trucks in the EEA.

¹⁶¹ Form CO, RFI PN2 – Annex – Q5– Confidential – market shares.

¹⁶² Reply to RFI 26, question 1.b.

¹⁶³ Form CO, Chapter 2, paragraph 360.

¹⁶⁴ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question E.A.9 and Response to Q1 – Questionnaire to Competitors, Doc. ID 3154, question E.A.5.

¹⁶⁵ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question E.A.9.1.

¹⁶⁶ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question E.A.9.1.

¹⁶⁷ Response to Q1 – Questionnaire to Competitors, Doc. ID 3154, question E.A.5.1.

¹⁶⁸ E.g. Commission decision of 15 February 2017, M.8190 – Weichai/Kion, paragraphs 17-18.

(B.ii) The Parties are not active across all types of forklift trucks and concentrate on higher capacity forklift trucks

- (174) Similar to some of their competitors, also the Parties themselves are not active across all ranges of forklift truck lifting capacities.
- (175) Konecranes only offers forklift trucks with a lifting capacity of 10 tonnes or higher.¹⁶⁹ Konecranes is therefore only active in heavy-duty forklift trucks (>10 tonne lifting capacity), but not in lower capacity forklift trucks.
- (176) Cargotec offers different capacity ranges of forklift trucks, starting from a lifting capacity of 5 tonnes.¹⁷⁰ Cargotec is therefore active in both heavy-duty forklift trucks (>10 tonne capacity) and some lower capacity forklift trucks. Cargotec's forklift trucks activities however appear to be concentrated in heavy-duty forklift trucks (>10 tonne capacity), as they account for around [...] % of Cargotec's overall forklift activities by volume in the EEA ([...] % worldwide).¹⁷¹ If one were to consider this proportion by value, the relative importance of heavy-duty forklift trucks (>10 tonne capacity) in Cargotec's overall forklift trucks activities would be even higher, as heavy-duty forklift trucks (>10 tonne capacity) are significantly more expensive than lower capacity forklifts.¹⁷²
- (177) Therefore, the Parties appear to be either active exclusively in or concentrating on heavy-duty forklift trucks (>10 tonne capacity). This further confirms that the structure of supply is different when compared to lower capacity forklift trucks and in any case also suggests that in order to assess the competitive interaction between the Parties, and any potential negative effects on competition as a consequence of the Proposed Transaction, heavy-duty forklift trucks (>10 tonne capacity) are of particular relevance.

(B.iii) The Parties monitor the competitive landscape for heavy-duty forklift trucks

- (178) It appears that the Parties in internal documents regularly consider a market for heavy-duty forklift trucks, often starting with a minimum capacity of either 9 or 10 tonnes. When the Parties benchmark themselves against competitors in forklift trucks, it appears that they do so in particular against competitors also active in heavy-duty forklift trucks (>10 tonne capacity).
- (179) **First**, Cargotec in its ordinary course of business appears to monitor the competitive landscape with respect to heavy-duty forklift trucks primarily with respect to its competitors active in the 9-72 tonne range (which matches Kalmar's medium to heavy forklift truck portfolio). For example, in a document entitled '*Market information for years 2021-2024*', Kalmar presents a '*FLT market analysis 9-72 t (heavy & medium)*'.¹⁷³
- (180) Similarly, in an internal assessment of '[p]rojected market share development during 2020-2024', captioned in Figure 17, Kalmar assesses that it has a global 'FLT' share in 2020 of [10-20] % and an aim to increase this to [20-30] % in 2024. Given that the Notifying Parties submit that if one were to consider a global market for all forklift trucks above a capacity of 5 tonnes, Cargotec's (Kalmar's) share would only be

¹⁶⁹ Form CO, Chapter 2, Table 16.

¹⁷⁰ Form CO, Chapter 2, Table 15.

¹⁷¹ Calculation based on data provided in Form CO, RFI PN2 – Annex – Q5 – Confidential – market shares.

¹⁷² See e.g. Form CO, Table 15 and Table 16.

¹⁷³ Response to RFI 2, Annex QC80.3, slide 4.

[0-5]%,¹⁷⁴ it has to be assumed that the ‘FLT’ market assessed in this internal document relates to only heavy-duty forklift trucks.

Figure 17: Kalmar projected market share development 2020-2024

[...]

Source: [Internal document reference].

- (181) In another internal document, Kalmar considers the market sizes for ‘FLT’ alongside the market sizes for reach stackers, terminal tractors and empty container handlers. In this document, captioned in Figure 18, it is explained that the ‘FLT’ market relates to ‘FLH & FLM’, i.e. medium and heavy forklift trucks, which according to Kalmar’s product portfolio start at 9 tonnes minimum capacity.

Figure 18: Kalmar view on forklift truck market size

[...]

Source: [Internal document reference].

- (182) In yet another internal document, Kalmar also presents the ‘FLT’ market size, as well as market share estimates differentiated by world regions. In the slide captioned in Figure 19, the principal competitors that are considered by name are Hyster, Taylor, Konecranes and Svetruck. All of these competitors are active in heavy-duty forklift trucks (>10 tonne capacity), some of them exclusively so (e.g. Konecranes, Svetruck). No competitors that are active only in lower capacity forklift trucks are mentioned.

Figure 19: Kalmar view on market shares of heavy-duty forklift truck competitors

[...]

Source: [Internal document reference].

- (183) In addition, when considering particular customer segments, Kalmar also appears to consider competition only from players also active in heavy-duty forklift trucks (>10 tonne capacity). For example in an internal presentation on trends in the metal industry, Kalmar benchmarks its own offering of forklift trucks and counterbalanced container handlers against the offering of Konecranes, Svetruck, Linde, Hyster and Hyundai – all companies active in the heavy-duty forklift trucks (>10 tonne capacity) product range.¹⁷⁵
- (184) **Second**, Konecranes in its ordinary course of business appears to benchmark its forklift truck market presence primarily against a market for heavy-duty forklift trucks (>10 tonne capacity).
- (185) For example, in a slide of an internal document, captioned in Figure 20, Konecranes assesses the [internal document reference]. Konecranes therefore also benchmarks itself against competitors active in heavy-duty forklift trucks (>10 tonne capacity), not against players active only in lower capacity forklift trucks.

¹⁷⁴ Form CO, Chapter 2, Table 54.

¹⁷⁵ Doc. ID 3706-11494 (The Parties’ reply to the Commission’s request for information RFI 17, CAR-COL-00125656.pptx), slide 11.

Figure 20: Konecranes view on forklift truck ≥ 10 tonne market

[...]

Source: [Internal document reference].

- (186) **Third**, the Parties and their advisers in documents related to the Proposed Transaction appear to consider heavy-duty forklift trucks as a market separate from lower capacity forklift trucks.
- (187) For example, in the document captioned in Figure 21, which is a presentation about the Proposed Transaction, combined market shares are considered for the product category ‘FLT (9-72t)’, i.e. not for a market that would encompass forklift trucks with a capacity significantly below 10 tonnes.

Figure 21: [...]

[...]

Source: [Internal document reference].

- (188) The Notifying Parties submit that ‘the fact that the Parties monitor certain competitors more closely than others does not [...] in itself justify a particularly narrow product market definition’, and that Cargotec’s presentations do not focus on forklift trucks with a capacity above 10 tonnes, but rather on forklift trucks above 9 tonnes.¹⁷⁶ Indeed, an assessment of the Notifying Parties’ internal evaluation of market shares alone would not suffice to conclude on the appropriate product market. In conjunction with the other evidence presented in this Section 5.4.3.3 however, the Notifying Parties’ internal market share calculations focused on a space of forklift trucks with either more than 9 tonnes (Cargotec) or more than 10 tonnes (Konecranes) further supports the finding that heavy-duty forklift trucks (>10 tonne capacity) constitute a product market distinct from lower capacity forklift trucks.

(B.iv) Heavy-duty forklift trucks (>10 tonne capacity) are technically different from lower capacity forklift trucks

- (189) While the Notifying Parties submit that all forklift trucks are based on the same technology (and that therefore it is easy for manufacturers to switch production from lighter to heavy-duty forklift trucks (>10 tonne capacity),¹⁷⁷ it appears that heavy-duty forklift trucks (>10 tonne capacity) are in fact technologically significantly different from lower capacity models. This is also reflected in differences in the production process.
- (190) Naturally, certain underlying design principles (e.g. the inclusion of a mast and a counter-weight) are shared by both low capacity forklift trucks and heavy-duty forklift trucks (>10 tonne capacity). However beyond these commonalities, there appear to be significant differences in design and production process. For example, a competitor explains: ‘Heavy duty forklift trucks require special technical equipment which to a certain extent differs from technical equipment used for the manufacturing of forklift trucks with capacities up to 10t. Thus, not all forklift truck manufacturers offer the whole range of capacities of forklift trucks but specialize in a certain product segment (such as Konecranes for example is specialized in providing heavy duty forklift trucks with capacities of >10t). [The Company] is specialized in providing forklift trucks up to 10t capacity but to a certain extent also provides heavy

¹⁷⁶ Reply to the SO, paragraph 739.

¹⁷⁷ See e.g. the Reply to the SO, paragraph 733.

duty forklift trucks but only up to a capacity of 18t and not above'.¹⁷⁸ Another forklift truck manufacturer, currently not active in heavy-duty forklift trucks (>10 tonne capacity), in that context also explains that it could not readily start manufacturing heavy-duty forklift trucks (>10 tonne capacity), because it *'does not have capability of design and manufacturing of heavy-duty forklift trucks'*.¹⁷⁹

- (191) Similarly, a reseller of forklift trucks explains that 'Warehouse equipment, which includes lower capacity forklift trucks, is a totally different type of equipment [than heavy-duty forklift trucks (>10 tonne capacity)]. Technically, these are different machines, with different engineering'.¹⁸⁰

(B.v) Companies active in lower capacity forklift trucks cannot easily start supplying heavy-duty forklift trucks (>10 tonne capacity)

- (192) Contrary to the submission of the Notifying Parties that companies that are currently active only in lower capacity forklift trucks could easily start producing and supplying also heavy-duty forklift trucks (>10 tonne capacity), it appears that significant barriers exist.
- (193) Asked whether, if they currently only supply forklift trucks with a lifting capacity below 10 tonnes, they would start to produce heavy-duty forklift trucks (>10 tonne capacity) and supply them in the EEA, following a 5-10% price increase for heavy-duty forklift trucks (>10 tonne capacity), only one respondent indicated that it would. Overall, while half the responding competitors indicated 'I do not know', the large majority of those competitors expressing a view submit that they would not start to produce heavy-duty forklift trucks (>10 tonne capacity) and supply them in the EEA following a 5-10% price increase.¹⁸¹
- (194) In this context one competitor submits that '[m]anufacture of Heavy Duty Forklifts (>10 Tonne capacity) is an extremely lucrative industry. A price increase of 5-10% would make the situation more attractive'.¹⁸² However, another company currently only active in lower capacity forklift trucks states that does not 'think the price positioning is the main driver, the market is too small for [the Company], it is more a specialist market'.¹⁸³
- (195) The Notifying Parties in this context submit that such responses from forklift manufacturers show that rather than technological differences, it is commercial considerations that explain forklift manufacturers' inability and unwillingness to expand from low capacity forklifts to heavy-duty forklift trucks (>10 tonne capacity).¹⁸⁴ The Commission observes that these differing commercial considerations can (i) in part result from the technological differences (expanding into heavy-duty forklift trucks is clearly seen connected to significant extra costs) and (ii) be in themselves an indication that low capacity and heavy-duty forklift trucks are not part of the same product market.
- (196) In any case, asked whether, if they currently only supply forklift trucks with a lifting capacity below 10 tonnes, they would be able to start producing heavy-duty forklift trucks (>10 tonne capacity) and supplying them in the EEA in a short matter of time

¹⁷⁸ Response to Q1 – Questionnaire to Competitors, Doc. ID 3154, question E.A.5.1.

¹⁷⁹ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 69.1.

¹⁸⁰ Doc. ID 4110, Minutes of a call with a reseller, 27 August 2021.

¹⁸¹ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 68.

¹⁸² Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 68.1.

¹⁸³ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 68.1.

¹⁸⁴ Reply to the SO, paragraph 737.

and without significant investments, only one respondent indicated that it would. Overall, while half the responding competitors indicated ‘I do not know’, the large majority of those competitors expressing a view submit that they would either not be able to start producing and supplying heavy-duty forklift trucks (>10 tonne capacity) or only after significant time and with significant investments.¹⁸⁵

- (197) In this context one company currently only active in lower capacity forklift trucks explains that it *‘does not have capability of design and manufacturing of heavy-duty forklift trucks’*.¹⁸⁶ Another company currently only active in lower capacity forklift trucks explains the challenges related to entering heavy-duty forklift trucks (>10 tonne capacity) by stating that *‘[t]he market is too small and it will be more linked with our ability to support the product while being used by the customers’*.¹⁸⁷
- (198) It therefore appears the companies currently only active in lower capacity forklift trucks could not readily and without significant investments start supplying heavy-duty forklift trucks (>10 tonne capacity), also not in case of 5-10% price increase.

(C) Sub-segmentation

- (199) The market for heavy-duty forklift trucks (>10 tonne capacity) is differentiated. Differentiations exist for example by lifting capacity (the Parties for example offer different capacity range models), wheelbases (longer wheelbases generally allow for higher capacity handling) and drive train (e.g. diesel, hybrid, electric).
- (200) However, a sub-segmentation of the heavy-duty forklift trucks (>10 tonne capacity) market is not appropriate. A majority of market participants considers that all types of heavy-duty forklift trucks (>10 tonne capacity) can be used for the whole range of applications for which heavy-duty forklift trucks (>10 tonne capacity) are typically used.¹⁸⁸ One competitor provides the following explanation: *‘This strongly depends on the application of the trucks. While for some applications, standard trucks can be used, some special applications require special technical options/equipment of the trucks. Hence, without adaptations depending on the particular application a truck is to be used for, not all heavy duty trucks are suitable for each type of possible application. Since customer demands strongly vary a meaningful segmentation except for a segmentation into applications for forklift trucks with capacities up to 10t and heavy duty forklift trucks with capacities above 10t is difficult’*.¹⁸⁹
- (201) Nevertheless, heavy-duty forklift trucks appear to be used for a wide set of cargo handling applications (and only to a limited extent for container handling). Only a minority of customers submit that they use heavy-duty forklift trucks (>10 tonne capacity) for container handling applications. By contrast customers indicate that handling of non-standardised cargo, other cargo handling, handling of industrial components and the handling of palletised goods are among the main functions fulfilled by heavy-duty forklift trucks (>10 tonne capacity).¹⁹⁰ Further, certain applications require a heavy-duty forklift truck (>10 tonne capacity) with a certain minimum lifting capacity significantly in excess of 10 tonnes. Therefore, the market for heavy-duty forklift trucks (>10 tonne capacity) is differentiated.

¹⁸⁵ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 69.

¹⁸⁶ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 69.1.

¹⁸⁷ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 69.1.

¹⁸⁸ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question E.A.10 and Response to Q1 – Questionnaire to Competitors, Doc. ID 3154, question E.A.6.

¹⁸⁹ Response to Q1 – Questionnaire to Competitors, Doc. ID 3154, question E.A.6.1.

¹⁹⁰ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question E.A.1.4.

(D) Conclusion

- (202) Due to very limited demand-side substitutability and limited supply-side substitutability, heavy-duty forklift trucks (>10 tonne capacity) constitute a distinct product market from lower capacity forklift trucks and from other mobile equipment products.

5.5. Spreaders

- (203) Spreaders are devices used for grabbing containers and unitised cargo, usually with a locking mechanism at each corner of the spreader that attaches to the four corners of the container. They are used in all types of port cranes, some horizontal transport equipment and some mobile equipment. Although the spreaders are designed to grip standard-sized containers, a number of variants of spreaders exist depending on the type of equipment they are intended to be used with, top or front load design and 'single-lift' or 'twin-lift' versions. Some spreaders may be equipped with innovative features, such as sensor and monitoring technologies.
- (204) Spreaders are manufactured either by the container handling equipment manufacturers, such as the Notifying Parties, or by independent manufacturers. The horizontal equipment spreaders (for straddle and shuttle carriers) are solely produced by the Notifying Parties for their captive use.

Figure 22: Crane spreader



Source: Form CO, Chapter 3: Other overlapping markets, page 84.

Figure 23: Mobile equipment spreader



Source: Form CO, Chapter 3: Other overlapping markets, page 84.

5.5.1. Commission's past practice

- (205) The Commission did not consider spreaders in its previous decisional practice.

5.5.2. *The Notifying Parties' view*

- (206) The Notifying Parties submit that the relevant product market comprises all spreaders and that no further segmentations are warranted. This would arise from the fact that although the substitutability between crane and mobile equipment spreaders may be limited from the demand-side, there is a high degree of supply-side substitutability.
- (207) First, the Notifying Parties note that spreaders used in quay and gantry cranes are very similar and in theory could be used interchangeably. Quay crane spreaders are however built with a particular structural strength in order to resist to higher forces due to faster operational speed and accelerations. They are also equipped with longer ropes and flipper arms to facilitate landing on the container¹⁹¹. According to the Notifying Parties, mobile equipment spreaders are similar in terms of size, lifting capacity and shape. The latter are usually only purchased by OEMs, who integrate them into the newly built equipment, while crane spreaders are purchased both by OEMs for new cranes and by terminal operators and retrofit companies for installation on existing cranes¹⁹².
- (208) Second, the Notifying Parties submit that although the spreaders for quay cranes, gantry cranes and mobile equipment may have specific features, the production of all types of spreaders is based on similar basic technology, requires similar capabilities and are all designed to handle standardised containers. As all types of spreaders are manufactured in the same production facilities, any supplier could easily and with minimal additional cost, time and engineering expertise expand its production for other type of spreaders. This would be demonstrated by the fact that spreaders manufacturers Stinis, Bromma (Cargotec), Elme and RAM offer a wide portfolio of spreaders and specialised manufacturers, such as Elme, would have recently successfully extended its spreaders portfolio¹⁹³.

5.5.3. *The Commission's assessment*

- (209) The Commission finds that spreaders constitute at least three different product markets: crane spreaders (including spreaders for STS cranes, yard cranes (RTGs, RMGs and ASCs) and MHCs), horizontal equipment spreaders (including straddle and shuttle carriers) and mobile equipment spreaders (including in particular reach stackers and empty and full container handlers)¹⁹⁴.
- (210) Crane spreaders designate spreaders used for all types of cranes, i.e. STS, RTGs, RMGs, ASCs or MHCs. These spreaders share similar design of being attached to the crane by rope. From the supply side perspective, crane spreaders are available either from the in-house production of crane manufacturers or from independent crane spreaders manufacturers¹⁹⁵. The selection of the crane spreader can also be done by the end-users, terminal operators, when purchasing a new crane. The end-user may either acquire a new crane with a spreader or without a spreader. When acquiring a new crane with a spreader (turnkey solution), the end-user typically specifies the spreader in the technical specifications that are matched by the crane

¹⁹¹ Form CO, Chapter 3, paragraph 289.

¹⁹² Form CO, Chapter 3, paragraph 290.

¹⁹³ Form CO, Chapter 3, paragraph 294, Reply to the SO, paragraphs 1237 et seq., and Reply to the Letter of Facts, paragraphs 158 et seq.

¹⁹⁴ Response to Q1 – Questionnaire to Competitors, Doc. ID 3154, question C.A.2. and Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question C.A.2.

¹⁹⁵ Form CO, Chapter 3, paragraph 277 and Agreed minutes of a call with a competitor of 23 September 2021, Doc. ID 4021, paragraph 6.

manufacturers either with their in-house or a third-party spreader¹⁹⁶. A crane spreader is often substituted by a replacement spreader of the same brand, which occurs relatively frequently during the normal course of operations. It is also possible to substitute it by a spreader of a different brand, subject to certain compatibility adjustments¹⁹⁷. Several crane spreader manufacturers are active on the market, e.g. Bromma (Cargotec), Stinis, RAM, VDL and certain crane manufacturers offer their in-house crane spreaders, such as ZPMC.

- (211) Horizontal equipment spreaders are spreaders designed for the use with the horizontal equipment, i.e. straddle and shuttle carriers. They may constitute a specific market with a very limited merchant market, as most horizontal equipment spreaders are sourced in-house by the main horizontal equipment manufacturers¹⁹⁸. Apart from Stinis, no independent spreader manufacturer appears to be offering horizontal equipment spreaders. The respondents to the market investigation provided diverging views on the fact whether horizontal spreaders constitute a separate market¹⁹⁹. This question may therefore be left open for the purpose of this decision, as no competition issues have been identified under any market definition with regard to the horizontal equipment spreaders mainly due to the very limited merchant market.
- (212) Mobile equipment spreaders are spreaders attached to the mobile equipment at the stage of the manufacturing process. Spreaders on the mobile equipment are not designed for being substituted during their normal course of operation. The choice of mobile equipment spreader is made by the mobile equipment manufacturer usually for the entire production time of a specific mobile equipment model. The end-users, terminal operators, do not have the possibility to choose a spreader to be attached to the mobile equipment model they are willing to acquire. The combination is set by the mobile equipment manufacturer.
- (213) The main differences of mobile equipment spreaders include the lifting weight capacity, duty cycles, impact protection, control system, attachment mechanism (wire rope length/rotatable for crane spreaders and tilting attachment to the boom for mobile equipment spreaders). Crane spreaders have top load mechanisms, while mobile equipment spreaders may have top load mechanisms (forklift trucks, full container handlers, reach stackers) or side load mechanisms (empty container handlers, forklift trucks) and there is no twin lift laden container spreader for the mobile equipment²⁰⁰.
- (214) For the purposes of the present decision, the relevant relation is between mobile equipment spreaders and other spreaders, in particular crane spreaders in view of the very limited merchant market for horizontal equipment spreaders. The Commission takes the view that based on limited demand and supply-side substitutability, mobile equipment spreaders and crane spreaders are part of a different product market.

5.5.3.1. No demand side substitutability

- (215) The Commission finds that there is no demand-side substitutability of mobile equipment spreaders with crane spreaders. This is mainly due to the differences in the products, channels to market, procurement patterns and prices.

¹⁹⁶ Form CO, Chapter 3, paragraph 283 and M.10078 – RFI 21 – Response – Confidential.pdf, question 24.

¹⁹⁷ Agreed minutes of a call with a customer of 7 October 2021, Doc. ID 4030, paragraph 6.

¹⁹⁸ Form CO, Chapter 3, paragraph 263.

¹⁹⁹ Responses to Q1 – Questionnaire to Competitors, Doc. ID 3154, questions C.A.1.1. and C.A.2.2.

²⁰⁰ Responses to Q1 – Questionnaire to Competitors, Doc. ID 3154, questions C.A.2.1. and C.A.2.2. and Response to Q2 – Questionnaire to Customers, Doc. ID 3153, questions C.A.1. and C.A.2.2.

- (216) First, the results of the market investigation show that crane and mobile equipment spreaders are different products, with a number of different technical features and they cannot be used interchangeably. The majority of customers and competitors expressing their view in response to the questionnaire confirmed these characteristics²⁰¹.
- (217) More specifically, a customer mentioned that ‘Spreader for cranes normally has connection with headblock which is different from spreader for mobile equipment.’²⁰² Another explained that ‘Form, size and lifting capacity are identical. However, spreaders for cranes cannot be used for mobile equipment and vice versa because the mountings are different.’²⁰³ For other customers the differences are more functional: ‘Spreaders for cranes normally have more functions, have to resist higher Impacts because of higher Speeds and loads,’²⁰⁴ or in terms of design: ‘[t]he engineering design and operating process are different for cranes and mobile equipment, so the design of spreader is customized to the types of crane and mobile equipment. Most noticeable is the control system and the attachment mechanism and wire rope length’²⁰⁵. Other noticeable differences are in attachments: ‘The lifting and lowering of spreaders under cranes is done with crane ropes / wire ropes and, depending on the type of crane, with booms. Flippers are also used. The lifting and lowering of spreaders on mobile equipment is mostly done with a boom. In addition, this spreader should be rotatable through 360 °,’²⁰⁶ or in the lifting capacity: ‘Weight - Crane spreader is heavier than mobile equipment spreader. Lifting capacity - 65-Ton for crane spreader and 45-Ton for mobile equipment Control system’²⁰⁷.
- (218) Competitors provided even more detailed overview of differences in crane and mobile equipment spreaders, such as: ‘Spreaders are typically divided in three segments. Crane spreaders - spreaders for gantry cranes (ASC, RMG, RTG, STS) and mobile harbour cranes (MHC). The market for crane spreaders is mainly end user (terminal operators) driven in which the end user still have a quite strong mandate in determining spreader supplier and the spreader is mainly considered as a stand alone unit. This is commonly occurring in both OEM and direct/replacement sales. Mobile spreaders - spreaders for trucks (ECH, FCH, FLT, RST) and straddle carriers (horizontal eq. SC,ShC). The market for mobile spreaders is mainly manufacturer (OEM) driven. A main reason is the integration between spreader and the machine, i.e. the spreader is integrated as a part of the machinery. As example, RST's are supplied to the market as one unit (truck + spreader) where deviations on the spreader characteristics/design imply a strong impact on the characteristics/design on the truck as well as it's CE declaration.’²⁰⁸ Another one mentioned that ‘All spreaders are tailored to the type of crane, horizontal or mobile equipment and the type of containers that need to be moved. These are not simply interchangeable.’²⁰⁹, while another one explained that ‘Generally these look the

²⁰¹ Responses to Q1 – Questionnaire to Competitors, Doc. ID 3154, question C.A.2. and Responses to Q1 – Questionnaire to Competitors, Doc. ID 3154, question C.A.2.

²⁰² Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question C.A.2.1.

²⁰³ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question C.A.2.1.

²⁰⁴ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question C.A.2.1.

²⁰⁵ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question C.A.2.1.

²⁰⁶ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question C.A.2.1.

²⁰⁷ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question C.A.2.1.

²⁰⁸ Response to Q1 – Questionnaire to Competitors, Doc. ID 3154, question C.A.1.1.

²⁰⁹ Response to Q1 – Questionnaire to Competitors, Doc. ID 3154, question C.A.1.1.

same. However the impact on the spreaders are definitely different and therefore the steel structure used is definitely different for both type of spreaders²¹⁰.

- (219) Second, as regards channels to market and customer choice, while terminal operators choose the crane spreaders, mobile equipment OEMs choose mobile equipment spreaders for a specific model of mobile equipment, leaving the end-customers (e.g. terminal operators) no choice on the spreader attached to a specific machine²¹¹. The customers of crane and mobile equipment spreaders are therefore different types of undertakings, active at a different level of the supply chain and thus with no demand side substitutability for crane and mobile equipment spreaders.
- (220) Third, procurement patterns appear to be substantially different. End-users describe crane spreaders in detail on the tender specifications for the new crane or acquire them separately from the new crane or as a replacement²¹². For mobile equipment spreaders, end-users have no possibility to choose a specific spreader to be attached to a mobile equipment product. The end-customer chooses the final mobile equipment product, such as reach stacker or empty container handler, which is already equipped with a specific type of spreader chosen by the mobile equipment manufacturer²¹³.
- (221) Fourth, prices for crane and mobile equipment spreaders are substantially different, reflecting their level of robustness and complexity. According to the data provided by the Notifying Parties, a yard crane spreader (for RTGs, RMGs and ASCs) costs for example [...] EUR²¹⁴, while a mobile harbour crane spreader costs in average [...] EUR²¹⁵ and an STS crane spreader costs for example [...] EUR²¹⁶. On the other hand, according to the data provided by the Notifying Parties, a spreader for reach stacker costs between [...] to [...] EUR and an empty container handler spreader costs approximately [...] EUR²¹⁷.

5.5.3.2. Very limited supply side substitutability and different supply structure.

- (222) Supply side substitutability of mobile equipment spreaders with crane spreaders appears to be very limited.
- (223) First, not all manufacturers are able to supply different types of mobile equipment spreaders. There is in fact only one independent supplier of mobile equipment spreaders on the merchant market able to supply the complete range of mobile equipment spreaders – Elme. A second supplier with similar capability is Bromma, which is however vertically integrated with Kalmar. All other independent suppliers of mobile equipment spreaders either left the market, e.g. Stinis: *‘Stinis does not supply mobile equipment spreaders any more. It is a very competitive market and Stinis cannot compete with the established players.’*²¹⁸, or supply only a very limited number of models or even specialise in tailor-made spreaders, such as RAM:

²¹⁰ Response to Q1 – Questionnaire to Competitors, Doc. ID 3154, question C.A.1.1.

²¹¹ Response to Q1 – Questionnaire to Competitors, Doc. ID 3154, question C.A.1.1. and Agreed minutes of a call with a competitor of 23 August 2021, Doc. ID 4278, paragraph 11.

²¹² Reply to RFI 21, question 24.

²¹³ Form CO, Chapter 3, paragraph 296 or Response to Q1 – Questionnaire to Competitors, Doc. ID 3154, question C.A.1.1.

²¹⁴ Form CO, Chapter 3, paragraph 323.

²¹⁵ Form CO, Chapter 3, paragraph 329.

²¹⁶ M.10078 – RFI 21 Annex QC25 – Confidential.

²¹⁷ Range based on data provided in M.10078 – RFI 21 Annex QC 30 – Confidential and M.10078 – RFI 21 Annex QK30.

²¹⁸ Agreed minutes of a call with a competitor of 23 September 2021, Doc. ID 4021, paragraph 11.

*'Despite having spreaders for mobile container handling equipment in its portfolio, RAM is mainly active in spreaders for cranes which it supplies to crane manufacturers, end-users (e.g., port terminal operators) and to other entities that use cranes. The Company had a stronger presence in the market for mobile container handling equipment spreaders 10 years ago, but has now reduced its activities in that market and produces only specialised attachments for mobile container handling equipment.'*²¹⁹

- (224) Second, the lack of supply-side substitutability is reflected in the very different supply structure for different types of mobile equipment manufacturers. In particular, mobile equipment manufacturers who have to source mobile equipment spreaders within their production process in order to offer a complete solution to the end-customers have a very limited choice of mobile equipment spreader manufacturers: only Bromma and Elme currently offer a full range of mobile equipment spreaders in industrial quantities. Bromma, being part of the Cargotec group, supplies mobile equipment spreaders in-house to Kalmar and has almost no merchant sales. All other mobile equipment manufacturers are either exclusively reliant on the supplies of mobile equipment spreaders from Elme (in particular Konecranes and [...]) or use in-house spreaders for standard mobile equipment purposes and buy specialised mobile equipment spreaders from Elme²²⁰.
- (225) Third, based on results of the market investigation, it appears unlikely that any of the crane spreader manufacturers would be able to bring a plausible alternative offer of mobile equipment spreaders. In fact, the majority of competitors expressing their view considered that a crane spreader manufacturer would not be able to start building and selling other types of spreaders, in particular mobile equipment spreaders²²¹. In particular, a competitor declared that *'In my opinion it is two totally different kinds of equipment and takes a different skill set.'*²²² Another competitor considered that *'The OEM will only change if there is a good ROI to do this, meaning considerable cost advantages. If the spreader manufacturer needs to provide the cost advantages and get a return on their investment the business case just does not seem to work.'*²²³

5.5.3.3. Sub-segmentation

- (226) A sub-segmentation of the mobile equipment spreaders market, in particular on spreaders for reach stackers or empty container handlers, does not appear appropriate. Even if the mobile equipment spreaders encompass a dozen different versions (e.g. master, double, single, etc.) of mobile equipment spreaders²²⁴, they match the full range of mobile equipment products of the major mobile equipment manufacturers. The market investigation showed that there might be minor differences in the portfolio of the two major mobile equipment spreader suppliers, Bromma and Elme²²⁵. Nevertheless, the ability to offer the full range of mobile equipment spreaders at industrial scale appears to be a prerequisite for a supplier of

²¹⁹ Agreed minutes of a call with a competitor 28 April 2021, Doc. ID 1341, paragraph 3.

²²⁰ Agreed minutes of a call with a competitor of 2 September 2021, Doc. ID 4037, paragraph 7.

²²¹ Response to Q1 – Questionnaire to Competitors, Doc. ID 3154, question C.A.4.

²²² Response to Q1 – Questionnaire to Competitors, Doc. ID 3154, question C.A.4.1.

²²³ Response to Q1 – Questionnaire to Competitors, Doc. ID 3154, question C.A.4.1.

²²⁴ Agreed minutes of a call with a competitor of 23 August 2021, Doc. ID 4278, paragraph 10.

²²⁵ Agreed minutes of a call with a competitor of 14 September 2021, Doc. ID 4220, paragraph 13 (Please note that due to a clerical error, these minutes refer to a call that took place on 14 October 2021, instead of 14 September 2021).

mobile equipment spreaders to satisfy the demand of mobile equipment manufacturers.²²⁶ No sub-segmentation therefore appears to be necessary.

5.5.3.4. Conclusion

- (227) Due to no demand side and very limited supply-side substitutability, mobile equipment spreaders appear to constitute a distinct product market from other types of spreaders and in particular of crane spreaders.

6. GEOGRAPHIC MARKET DEFINITION

6.1. The framework of the Commission's assessment

- (228) The Commission's Market Definition Notice²²⁷ defines a relevant geographic market as the geographic area in which the merging companies offer their products and in which the conditions of competition are sufficiently homogeneous and distinct from neighbouring areas.
- (229) According to the Commission's Market Definition Notice, the supply structure is generally a good first indication of the geographic market. This preliminary view is later checked against an analysis of demand characteristics in order to establish whether suppliers from different areas constitute an effective alternative of supply. When necessary, the Commission also looks at supply factors to assess whether companies located in different areas can effectively supply the whole market, or on the opposite, that companies outside a given area do not constitute a competitive constraint.
- (230) In its assessment the Commission takes therefore into account various factors, including:
- Demand characteristics, including preferences for regional suppliers and need for a local presence;
 - Current geographic patterns of purchases;
 - Trade flows/patterns of shipments;
 - Barriers and switching costs associated with trade across areas, such as transport costs, tariffs, quotas and regulations and
 - Views of customers and competitors.

6.2. Mobile harbour cranes

6.2.1. *The Commission's past practice*

- (231) In its previous decision²²⁸, the Commission left open whether the scope of the geographic market is EEA-wide or global, as the major suppliers, Liebherr and Demag had their manufacturing locations in the EEA, were present across all Member States and indeed globally. Furthermore, MHC suppliers operated a standard ex-works price for their products regardless of the customers' location and transport costs were not a significant element in comparison to the final sales price of the mobile harbour crane. Finally, there was no real product differentiation, local

²²⁶ Agreed minutes of a call with a competitor 23 August 2021, Doc. ID 4278, paragraph 9 and Agreed minutes of a call with a competitor of 2 September 2021, Doc. ID 4037, paragraph 18.

²²⁷ Commission Notice on the definition of the Relevant Market for the purposes of Community competition law OJ C 372, 9.12.1997, p. 5 ('Market Definition Notice').

²²⁸ M.6255 – Terex/Demag Cranes of 5 August 2011, paragraph 15.

preferences or technical barriers to trade (at least within the EEA) that would affect trade in this product.

6.2.2. The Notifying Parties' views

(232) The Notifying Parties have not considered the mobile harbour cranes specifically in their submissions, as in their view there is a single product market for port cranes, which includes quay cranes, yard cranes and their respective subtypes.

(233) In the Notifying Parties' view, the port cranes market (where MHCs are included) is global for the following reasons. First, port cranes are sold and marketed on a worldwide basis. Second, there are no material differences in product specifications or standards that affect the OEMs' ability to supply. Third, customers of port cranes purchase globally and have terminals in several regions and countries. Fourth, transportation costs are relatively low compared to the overall upfront investment. Fifth, there are no significant barriers to trade.²²⁹

6.2.3. The Commission's assessment

(234) The Commission found that the structure of supply is not very different in the EEA or on a worldwide basis. EEA demand is addressed mainly by Liebherr and Konecranes and to a much lesser extent by Italgru, Gemma and Sonnebogen. When looking at the positions of these OEMs at a worldwide level, the differences are small.²³⁰

(235) For the purposes of the Commission's competitive assessment, it was not necessary to conclude on the precise geographic scope of the MHC product market, whether it is EEA-wide or global. The geographic definition of this product market can therefore be left open.

6.3. Gantry cranes

6.3.1. The Commission's past practice

(236) In its previous decisions,²³¹ the Commission has considered that the geographic markets for container handling equipment may be EEA wide or wider, but ultimately left the exact geographic definition open. These decisions did not however address the gantry cranes markets specifically, but mobile harbour cranes and some types of horizontal and mobile equipment.

6.3.2. The Notifying Parties' views

(237) The Notifying Parties are of the view that the relevant geographic market for gantry cranes, including both RTGs and ASCs, is worldwide in scope. In support of their view, they presented the following arguments.²³²

(238) First, the structure of supply is global. According to the Notifying Parties, gantry cranes are sold and marketed on a worldwide basis. The manufacture of gantry cranes is largely an assembly business, that uses extensively sub-contractors. These

²²⁹ Form CO, Chapter 1, paragraphs 34-36.

²³⁰ Form CO, Chapter 4, paragraph 96.

²³¹ Commission decision of 8 August 2016, M.7792 – Konecranes/Terex MHPS, paragraphs 62-65; Commission decision of 5 August 2011, M.6255 – Terex/Demag Cranes, paragraphs 12-16; Commission decision of 19 November 2008, M.5345 – Terex Corporation/Fantuzzi Group, paragraphs 12-14.

²³² The arguments were enounced in the Form CO, Chapter 1, paragraphs 33-36 and further developed in the Response to the Article 6(1)(c) Decision, paragraphs 17-51; as well as in the Reply to the SO, paragraphs 187-262, particularly in relation to RTGs.

sub-contractors are well versed on regional specificities, and can supply components and constituent structures that can be assembled by OEMs and sold anywhere in the world. Moreover, there are no longer qualitative differences between products offered by Chinese suppliers and Western suppliers. Many major Chinese suppliers, like ZPMC and Sany, are at the forefront of equipment automation and electrification, fully meeting the high standards of global and European customers.

- (239) Second, customers purchase globally and have terminals in several regions and countries. According to the Notifying Parties, customers procure gantry cranes through global tenders or negotiate framework agreements centrally at group level.
- (240) Third, customer preferences are not indicative of the geographic scope of the market because gantry cranes are usually customised to the users' requirements.
- (241) Fourth, local after-sales service presence is not a prerequisite to supply cranes and is not an indicative of a narrow geographic market. Customers have their own in-house maintenance and repair capabilities, including extensive stocks of spare parts and there are several other alternative providers of after-sales services in addition to the cranes OEMs, such as independent service providers and spare part trading companies. In addition, Covid-19 pandemic has increased the use of remote maintenance services. Moreover, already today the Notifying Parties' competitors have equally broad and dense service networks.
- (242) Fifth, regulatory requirements do not constitute a barrier to trade. According to the Notifying Parties, there are no differences in product specifications or standards. Although the Notifying Parties recognise there are some limited alterations to satisfy specific needs, these do not materially alter the products and all major suppliers can meet those specifications. Moreover, according to the Notifying Parties, many countries have adopted ISO standards, or have created national standards based on ISO and / or European Standards ("EN"). These standards are generally very similar, with minor modifications so as to comply with local safety requirements.
- (243) Sixth, transport costs and delivery times have no appreciable effect on global trade. Transport cost are relatively low compared to the overall upfront investment. They estimate that, on average, transport costs account for 10-15% of the product. Moreover, all suppliers ship globally from a limited number of assembly facilities. The Notifying Parties however argue that Chinese competitors have a competitive advantage as they benefit from their own transportation fleets.
- (244) Seventh, there are no significant barriers to trade. The vast majority of the revenues in cranes are generated outside Europe.
- (245) Eighth, alleged price differences are not indicative of geographic delineation of the markets. RTGs are differentiated products, customised to meet the customers' specifications. This implies costs differences and result in price differences. Prices can vary significantly within a given region and equipment class. In Konecranes' experience, EEA and US based customers typically require additional safety or productivity features that increase the purchasing costs. However, as Konecranes supplies the same customer in different parts of the world, these customers have full transparency on price. A simple comparison of prices across regions in over a significant period does not take into account all cost factors that affect prices independently of the competitive conditions in any particular reason.
- (246) In their Response to the Article 6(1)(c) Decision and their Reply to the SO, the Notifying Parties reiterated their views however, in case the Commission would consider a narrower market, the Notifying Parties argue that the scope of such market

should at least be Europe-wide, including the EEA, the UK, Switzerland, Turkey and Ukraine. According to the Notifying Parties “[g]iven the insignificant if not non-existent differences in standards, regulations and customer preferences as well as the geographic proximity and identical competitive dynamics of these markets a further segmentation would not be appropriate”.²³³

6.3.3. The Commission’s assessment

(247) In the present Section, the Commission focuses on RTGs and ASCs. The overlap between the Notifying Parties’ activities is too small in the RMGs market for this product market to be considered an affected market.

6.3.3.1. Rubber-tired Gantry Cranes

(248) Based on the market investigation and the evidence available to it, the Commission considers the geographic relevant market for rubber-tired gantry cranes is EEA-wide based on the following findings.

(A) Market position of the suppliers in the EEA as compared to other regions

(249) The Commission finds that the market positions of suppliers in the EEA are different from other regions in the world. This distinct structure of supply points at different conditions of competition in the EEA.

(250) First, not all RTGs suppliers address the EEA demand. In the last 10 years, the EEA demand has mainly been supplied by the Notifying Parties, ZPMC, Liebherr and very recently by Künz. Paceco was also present but exited the market in 2018 due to financial difficulties of Paceco Espana, which was supplying the EEA from its manufacturing facilities in Spain.

(251) In 2019, Künz entered the RTGs market with a much-differentiated product as further detailed in Section 7.2.1.3 (C). Künz is an Austrian based OEM active in the neighbouring market of rail-mounted cranes, including ASCs.

(252) Apart from these companies, no RTG suppliers active in other regions of the world has made any sales in the EEA in the last 10 years. These include the USA-based Mi-Jack, the South Korea-based Doosan and the China-based Sany, CSSC and HDHM. Mi-Jack supplies the US, in particular the West and East coasts. Doosan supplies Asia and India. Sany sells mostly in Asia and India and CSSC and HDMH are active in Asia.

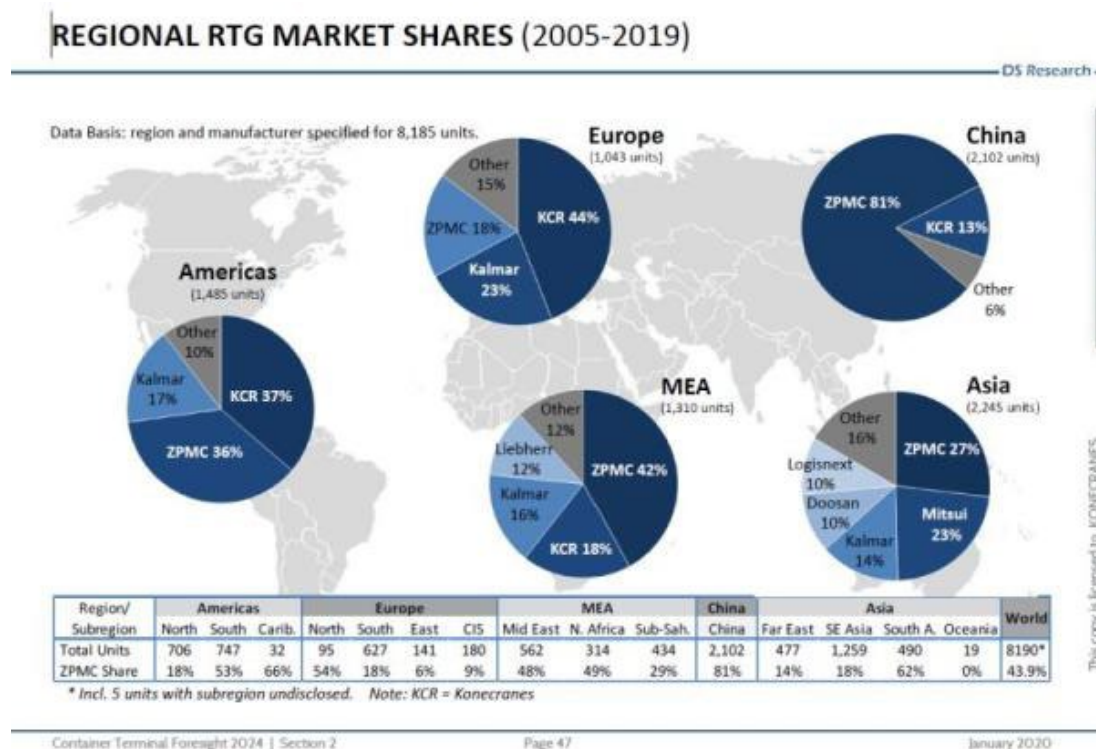
(253) In their submissions, the Parties also identify Baltkran as new entrant in the RTGs market that creates a new constraint on their sales, including in the EEA. Baltkran has been active in rail-mounted cranes for rail terminals and industrial application. In late 2019/ early 2020, it delivered one RTGs to a rail terminal in Brest, Belarus and received an order for another RTG for the Port of Vladivostok, Russia. Baltkran has therefore no sales of RTGs in the EEA.

(254) Second, the position of the Parties and their competitors also seems to be different across world regions, leaving customers with a very different supply structure and range of options. The figure below originates from a third party analyst report that both Notifying Parties use in their ordinary course of business. Although the figure does not single out EEA, aggregates several world regions, and singles out China, it still shows that even the major players that sell in different regions of the world do not have the same strength across the globe. These numbers cover a long time span

²³³ Response to the Article 6(1)(c) Decision, paragraph 19.

(2005-2019) and therefore ensure that the data are representative of long-term trends in the supply of RTG to various continents.

Figure 24: Regional RTG Market Shares



Source: DS Research, “Container Terminal Foresight – Section 2: Container Handling Equipment”, Doc. ID 3704-3324, CAR-CED-00000525.pdf.

- (255) As these graphs show, the suppliers’ positions vary significantly across world regions. Konecranes’ shares range from [40-50]% to [10-20]%. Its strongest presence is in Europe, followed by the Americas. Konecranes has a smaller presence in China (ca. two thirds of its sales in Europe), much smaller in the MEA (ca. half of its sales in Europe), and it is hardly present in other areas of Asia and Oceania. Cargotec’s shares range from [20-30]% to less than [5-10]%. Cargotec has also its largest position in Europe, followed by MEA, Americas and Asia. Cargotec is hardly present in China. ZPMC’s shares range from [80-90]% in China, its ‘home market’ to [10-20]% in Europe. The fact that the positions of the bigger players, who are active in different regions of the world, significantly vary across those regions, indicates that the competition conditions are different across those regions
- (256) The Notifying Parties’ argue that this figure would support a market for “Europe” instead of an EEA market. Furthermore, this figure also suggests that ZPMC is a leading supplier in the North of Europe and the global leading supplier with a share of [40-50]%.²³⁴ As mentioned above, what this figure shows is that even OEMs that sell in different regions of the world have different strengths across those regions. This figure supports the argument that the geographic market is most likely regional than global.
- (257) As to the Notifying Parties’ proposal that if not global the geographic market should include the EEA together with the Switzerland, Turkey, Ukraine and UK, the Commission notes that there is no supplier based in any of these countries that has

²³⁴ Reply to the SO, paragraphs 200-202.

supplied, currently supplies or could potentially supply the EEA. Moreover, none of the suppliers that currently supply these countries and do not supply the EEA (e.g. Mitsui, Sany) has been able to address the EEA demand for the reasons explained in this Section, in particular due to the lack of track-record, difficulties in meeting the regulatory requirements or transport costs.

(B) Notifying Parties and market participant views

- (258) In spite of making the argument that the supply structure is global, in their internal documents, the Notifying Parties only take into consideration the competitive interaction with OEMs such as Doosan, Sany, HDHM, HHMC (a subsidiary of CSSC) and Mitsui outside Europe, particularly in the Asia Pacific and Middle East regions,²³⁵ with Baltkran in Russia;²³⁶ and with Mi-Jack in the USA²³⁷. These companies are not mentioned in relation to sales or tenders in the EEA. Moreover, it seems that CSSC has joint venture companies with Cargotec's subsidiary Macgregor, calling into question how much of a competitive constraint they can effectively exert in the container handling business.²³⁸
- (259) In their Reply to the SO, the Notifying Parties claim that there are other internal documents, which have been provided to the Commission that 'clearly militate for a global market'. They give as examples two slides from an internal presentation of Konecranes entitled "Port Cranes Competition and Market". In one slide Konecranes lists all OEMs active in the different types of container handling equipment (not only cranes) and indicates which type of container equipment each OEM supplies – this slide is entitled "Competitors Mapping". The other slide depicts the logos of several OEMs and is entitled "other competitors".²³⁹ As implied in the title of this presentation, it gives an overview of the Cranes business, including not only RTG but also other types of cranes and equipment for horizontal transport. Moreover, it provides a description of Konecranes' main competitors supplying different types of container handling equipment.
- (260) Similarly, the Notifying Parties also claim that the Commission has not considered the global reach of the Chinese competitors and give as examples two extracts from Konecranes documents.²⁴⁰ The reference to the Chinese competitors in these documents is general, as it regards the entire Konecranes' Port business and not specifically the RTG market.
- (261) Market participants also recognise that the competitive interactions in the EEA are different from other regions in the world. When asked to describe the competitive landscape in the EEA, they take into account established suppliers in the EEA and recognise that other OEMs active in other parts of the world constitute no competitive constraint in the EEA.

²³⁵ Response to RFI 17, Doc. ID 3707-014259, CAR-ERI-00026330.pptx, Doc. ID 3661-2717, CAR-KAU-00057655.pptx, Doc. ID 3662-5390, CAR-KAU-00146961.pptx, Doc. ID 3704-36955, CAR-CED-00001818.pdf, and Response to RFI 18, Doc. ID 3583-73821, M.10078 Cargotec Konecranes RFI 18-00029378.pptx, Doc. ID 3595-65207, M.10078 Cargotec Konecranes RFI 18-01365479.msg.

²³⁶ Response to RFI 18, Doc. ID 3591-70217, M.10078 Cargotec Konecranes RFI 18-00882929 msg.

²³⁷ Response to RFI 18, Doc. ID 3593-32548, M.10078 Cargotec Konecranes RFI 18-01134621.pptx; Doc. ID 3593-26582, M.10078 Cargotec Konecranes RFI 18-01147269 msg.

²³⁸ Response to RFI 17, "Cargotec MacGregor and CSSC to join hands in China, Doc. ID 3669-035033, CAR-VEH-00015796.pdf.

²³⁹ Reply to the SO, paragraph 205.

²⁴⁰ Reply to the SO, paragraph 206.

- (262) A non-EEA supplier mentioned, “Chinese suppliers, such as Sany, can be considered as a niche player, mainly active in Asia and not relevant in Europe and the US. On the other hand, Chinese competitors are quite active in the Indian market for cranes, where customers are particularly attentive to prices.”²⁴¹
- (263) One EEA supplier added, “Baltkran, (...) is only active in Russia and adjacent countries more so for RMG type cranes [...] (...) Mitsui, which is also active in the Turkish market for STSs, because of long standing relationships that they have in two ports, despite otherwise high manufacturing and transportation costs from Japan[...] (...) Sany, which is performing well in the market for reach stackers but is not particularly active in that for RTGs. [The Company] has not heard for the RTG market of some specific Asian suppliers, such as Doosan, HDHM and CSSC.”²⁴²
- (264) Another EEA supplier explained “[t]he [Notifying] Parties are dominating the European market for yard cranes. Other OEMs including ZPMC, Liebherr and Künz are also active in the European market for yard cranes. Aside of ZPMC, no other Asian competitors are active in the European yard crane markets, because these OEMs (e.g. active in the markets for yard cranes in Japan and China) first, have a limited production capacity that does not allow them to enter the European market. Second, the European standard requirements are too different for some Japanese and Korean players to fulfil. Third, most of the Asian OEMs including [The Company] are unable to offer competitive delivery times to European yard crane customers, in contrast to the Parties”.²⁴³
- (265) In their Reply to the SO, the Notifying Parties refer to the results of the phase I market investigation where a majority of respondents, including two of the OEMs quoted in the paragraphs above, state that they meet the same suppliers of gantry cranes or the same large suppliers of gantry cranes across different regions of the world.²⁴⁴ However, this question was not specific to RTGs and some of the respondents do not even supply RTGs.²⁴⁵ The Notifying Parties claim that a non-EEA supplier and two EEA suppliers confirmed they compete with the same competitors in the EEA as in other world regions and referred to the questionnaire sent to competitors in phase II. However, the question was whether the suppliers considered they had a similar position in the EEA compared to other world regions and actually, a majority responded in the negative.²⁴⁶
- (266) In conclusion, the Notifying Parties and market participants are of the view that the competitive landscape is not homogeneous across the world. Different regions have different competition conditions and most importantly not all OEMs suppliers can address the EEA demand. This includes any OEM which may be present in the wider European region -proposed by the Parties - and which does not currently supply the EEA.
- (C) Demand characteristics and customer preferences
- (267) The Commission finds that the demand characteristics and customer preferences in the EEA also indicate that suppliers active in other areas do not constitute a real alternative source of supply.

²⁴¹ Agreed minutes of a call with a Competitor on 23 September 2021, Doc. ID 4311.

²⁴² Agreed minutes of a call with a Competitor on 17 September 2021, Doc. ID 4077.

²⁴³ Agreed minutes of a call with a Competitor on 23 April 2021, Doc. ID 1779.

²⁴⁴ Reply to the SO, paragraph 210.

²⁴⁵ Responses to Q1 – Questionnaire to Competitors, question B.B.6.1.

²⁴⁶ Responses to Q3 – PH2 Questionnaire to Competitors, question 3.

- (268) In the EEA, the demand pertains to replacement and capacity extensions. This ‘replacement demand’ implies that the number of RTGs ordered is relatively small and less appealing to companies who usually ship several units at the same time (using as much as possible the capacity of a vessel) in order to lower the transport costs and maintain their competitive advantage in terms of price.
- (269) In fact, for the period 2010-2020, EEA tenders were typically very small, with more than 40% of tenders concerning at most 2 units, and more than 50% at most 3 Units.²⁴⁷
- (270) This is explained by the fact that a significant part of RTGs demand pertains to small and medium-sized terminal operators (‘SMTO’), i.e. terminals with less than 1 million Twenty-foot Equivalent Unit (‘TEU’).²⁴⁸ In the last 10 years [60-70]% of the tenders were launched by SMTO representing [30-40]% of the total sales (in volume), as estimated by the Notifying Parties.²⁴⁹
- (271) The small volume of tenders is also explained by the fact that GTOs do not necessarily purchase on a global basis for all their terminals located across the globe; they also launch tenders for specific terminals. For example, the European terminals owned by the Chinese undertaking COSCO launch their own tenders independently. In COSCO words: “[r]egarding the terminals in Europe, the terminals launch their own tenders when they need new equipment (for instance, the Piraeus port would launch its own tender when required)”.²⁵⁰ Hutchison also submitted that their bigger terminals run their own tenders whereas Hutchison gives administrative support to small terminals. In Hutchison’s words “[l]arge business units such as the ECT terminal in Rotterdam and Felixstowe in the UK run the tenders for the sourcing of the container handling equipment themselves, subject to approval by the head office at a later stage. On the contrary, smaller terminals rely on the headquarters for the organisation of tenders.”²⁵¹ Contrary to what the Notifying Parties claim²⁵², the fact the head office of Hutchison approves the winner of the tender does not mean that Hutchison procures on a global basis. In that moment, what is being approved is the purchase for a given terminal taking into consideration the needs of that specific terminal.
- (272) In fact, when GTOs run tenders from their headquarters it does not necessarily mean that tenders cover various terminals in different regions of the world. They launch tenders for specific terminals and they take into consideration the suppliers’ after-sales capabilities in the vicinity of those terminals. As PSA explained: “[S]pecific characteristics inherent to the terminals’ locations can be of considerable importance in the selection of the supplier. As noted above, the production of equipment in Europe and its assembly on the terminal saves the Company significant transportation costs”.²⁵³ Another GTO, DP world, also highlighted the importance of the suppliers’ after-service location when selecting a supplier via a tender: “When choosing a container handling equipment supplier, DPW takes into account the

²⁴⁷ Commission’s estimate based on WCN Yard Crane Reports 2011-2020.

²⁴⁸ Twenty-foot Equivalent Unit or TEU is a measurement unit used to determine cargo capacity for container ships and terminals. The Notifying Parties classify their customers’ size base on the terminal capacity, i.e. the terminals throughput, which is measured in TEUs – see RFI 19, question 13.

²⁴⁹ Notifying Parties’ reply to RFI 36, question 5.

²⁵⁰ Agreed minutes of a call with a Customer on 3 March 2021, Doc. ID 4374.

²⁵¹ Agreed minutes of a call with a customer on 13 April 2021, Doc. ID 642.

²⁵² Reply to the Letter of Facts, paragraph 17.

²⁵³ Agreed minutes of a call with a customer on 10 March 2021, Doc. ID 4744.

lifetime cost of the equipment. Therefore, the price of spare parts and the location of the OEM's service centre also play an important role. For instance, DPW could prefer to opt for the second best offer if the OEM's service centre is located nearby the terminal."²⁵⁴

- (273) In relation to the reduced appeal of small orders mentioned above, the Notifying Parties argued that ZPMC has also won small orders in the EEA (one in 2014 and another recently in 2021) to support their argument that non-EEA suppliers can also address the demand for smaller orders.²⁵⁵ First, ZPMC is not a 'non-EEA supplier'. ZPMC supplies the EEA. It is therefore an EEA- supplier. Second, as ZPMC explained, it usually ships several cranes together to lower transport costs. Third, the small order allegedly won by ZPMC in 2014 in [country] does not appear in the data on RTG orders for the last ten years that has been provided by the Notifying Parties.²⁵⁶ Fourth, as ZPMC recognised it has more difficulties in supplying yard cranes (particularly in smaller inland terminals) than quay cranes due to transport costs.²⁵⁷
- (274) The Notifying Parties also mention that Sany and Mitsui-Paceco can address small orders in the EEA. To the present, Sany has not supplied any RTG in the EEA and as the Parties recognised has participated in a tender for STS and RTGs together and not for RTGs only, which indicates that also Sany might not find attractive to address small orders of RTGs. Mitsui-Paceco has not supplied any RTG in the EEA and as explained below, it also faces difficulties due to transport costs.²⁵⁸
- (275) In addition to how the orders' size affects the ability to compete, the replacement demand characteristic of the EEA also gives the incumbent companies an advantage over outside suppliers. Contrary to new suppliers, incumbents already have a relation with the customer, the customer most likely has spare parts that otherwise cannot be used, the customer has also its personnel trained to use the same brand machines. In their Response to the Article 6(1)(c) Decision, the Notifying Parties argued that switching to a new supplier is possible and provided two examples. One regarding ASCs where a European customer switched from Cargotec to Künz; another example regarding RTGs where a North-American customer switched from Konecranes to ZPMC. The issue is not whether switching will ever occur, but that switching to a new supplier is more difficult. In fact, in the last 3 years, the Notifying Parties sales of RTGs in the EEA were to customers, who already had RTGs from the Notifying Parties.
- (276) Moreover, in the EEA, RTG customers value the reputation and experience of the supplier. In particular, the customers look for references that the crane is performing in a terminal nearby (with similar requirements to theirs) and that the supplier can also assist them throughout the lifetime of the crane, i.e., the customer look to the track record of the supplier. According to the market investigation, the lack of track record in the EEA has proven to be a main obstacle for non-EEA suppliers.
- (277) All RTG EEA customers that responded to the market investigation declared they have not purchased from an OEM without a track record in the EEA²⁵⁹ and the

²⁵⁴ Agreed minutes of a call with a customer on 10 March 2021, Doc. ID 508.

²⁵⁵ Reply to the Letter of Facts, paragraphs 12 and 13.

²⁵⁶ The Notifying Parties' response to RFI 3, Annex Q1.

²⁵⁷ See Recitals (303) and (305).

²⁵⁸ See Recitals (307) and (308).

²⁵⁹ Responses to Q5 – PH2 Questionnaire to customers of cranes and automation software for all cargo handling equipment, Doc. ID 3606, question 17.

majority of those respondents, including GTOs, are not ready to source from a supplier without a track record in the EEA.²⁶⁰ As a GTO explained “[f]ull qualification (technical, commercial, quality assessment, financial assessment) must be confirmed with enough return of experience on this category of equipment”. Another port operator clarified “[w]e need reliable service, track record of deliveries across Europe and proven success in automation”.²⁶¹

- (278) An RTG OEM that has been trying to sell in the EEA also recognised that “[t]he main issue faced by [the Company] in tenders for RTGs in the EEA [is] (...) that they are not able to provide any evidence of successful deliveries of RTGs in the EEA”.²⁶²
- (279) Another OEM who tried to enter the EEA without success explained, “that customers in Europe often require references of 5 years of successful deliveries of RTGs in Europe and while the license programme helps in the regard, lack of track record constitutes a serious barrier to entry for the EEA RTG market”.²⁶³
- (280) The preference for an OEM with proven experience is also confirmed when the vast majority of RTG customers in the EEA have not ordered a RTG from an OEM with no existing equipment in its terminal (not only RTGs but also no other type of handling equipment).
- (281) Current EEA suppliers confirmed the importance of a track record in the EEA to be able to compete. Liebherr noted *“References and track record are important in the RTG market in Europe. Customers tend to be loyal to their existing suppliers”*.²⁶⁴ Künz explained *“for new entrants in the RTGs market, the most relevant factors are good track records and innovation, and not only prices. Kuenz can be considered as having some background experience and track record in Europe, notably in RMGs and ASCs”*.²⁶⁵
- (282) In fact, it took ZPMC - the only non-EEA based OEM currently supplying the EEA - many years to enter the RTG market in the EEA and ZPMC did not do so directly. First, it entered the Ship-to-Shore (STS) cranes market, built its customer base and then moved to neighbouring markets of yard cranes.
- (283) Moreover, a track record appears to be even more critical when it comes to automated equipment (given its novelty). In a study ordered by Cargotec regarding customer value proposition in automated or semi-automated yard cranes, proven track record” is listed as a key purchasing criteria.²⁶⁶
- (284) In addition, EEA RTG customers consider that EEA suppliers (based or not in the EEA) can deliver better quality than other OEMs. As a customer put it *“ we continue to need EEA supplier responsibility for the design and quality of RTG's, notwithstanding the fact these machines may be built outside of the EEA”*.

²⁶⁰ Responses to Q5 – PH2 Questionnaire to customers of cranes and automation software for all cargo handling equipment, Doc. ID 3606, question 18.

²⁶¹ Responses to Q5 – PH2 Questionnaire to Customers of cranes and automation software for all cargo handling equipment, Doc. ID 3606, question 18.1.

²⁶² Agreed minutes of a call with a RTG OEM on 22 September 2021, Doc. ID 3983.

²⁶³ Agreed minutes on a call with an OEM RTG on 23 September 2021, Doc. ID 4311.

²⁶⁴ Non-confidential minutes of a call with Liebherr dated 17 September 2021, paragraph 14, Doc. ID 4077.

²⁶⁵ Non-confidential minutes of a call with Künz dated 16 September 2021, paragraph 18, Doc. ID 4289.

²⁶⁶ Response to RFI 25, annex QC1(e)1 “Project Thor: final report 25 May 2018”, slide 52.

- (285) Even if some respondents consider that RTGs are a commodity product only requiring general engineering skills,²⁶⁷ customers in the EEA generally consider that EEA suppliers as opposed to other OEMs offer better quality in terms of both product and service.
- (286) The majority of RTG customers consider that non-EEA suppliers are not comparable to EEA suppliers in terms of design/engineering and overall quality of RTGs. As a GTO explained “[the Company] has encountered many differences in the quality of design and manufacturing between non EEA and EEA suppliers, leading to higher maintenance costs and lower reliability of the equipment.” Another port operator explained, “[n]on-EU tend to be heavier in terms of the amount of steel used and the joints are hand welded so less precise compared to EU cranes.” Another one stated, “we believe that European manufacturers quality is better, supply of spare parts and services is faster”.
- (287) The majority of RTG customers in the EEA also consider that non-EEA suppliers of RTGs are not comparable to EEA suppliers in terms of fast reaction time for the service of cranes. One GTO explained “[s]pare parts management have been difficult with non EEA suppliers with very long delivery time and after sales reactivity is not at the level of EEA suppliers.
- (288) When asked to compare EEA suppliers with other OEMs, notably Asian manufacturers, a customer responded “Asian gantry cranes suppliers are not comparable to EEA suppliers in terms of quality of manufacturing. Furthermore, spare parts management and TCO are notably different for gantry cranes as (the customer) encounters difficulties on spare parts management with some Asian actors which has impacts on operations”.²⁶⁸ A second customer added that “The main challenge on Chinese cranes is to obtain a proper quality in manufacturing and workmanship”.²⁶⁹
- (289) The Notifying Parties argue that the perception that Asian manufacturers still lack behind is unfounded, as today OEMs like ZPMC and Sany are at the forefront of automation and electrification and can meet the high standards of global and European customers.²⁷⁰
- (290) As mentioned above, ZPMC currently supplies the EEA. It cannot therefore be considered as non-EEA supplier. Notwithstanding a recent entrant to EEA RTG market claimed that even ZPMC has still difficulties in terms of reputation when competing in the EEA. This OEM explained: “(...) the main obstacle to ZPMC entry in the EEA market for RTGs is the fact that European customers have a strong preference for higher quality standards compared to those provided by ZPMC”.²⁷¹
- (291) More importantly, even if unfounded the perception that non-EEA suppliers have less quality is still relevant for customers are less willing to source from these OEMs. The vast majority of RTG customers in the EEA have not even tried to purchase from non-EEA suppliers when faced with a price increase in the EEA; a small

²⁶⁷ Responses to Q5 – PH2 Questionnaire to Customers of cranes and automation software for all cargo handling equipment, Doc. ID 3606, question 18.

²⁶⁸ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question B.C.F.1.

²⁶⁹ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question B.C.F.2.

²⁷⁰ Response to the Article 6(1)(c) Decision, paragraphs 68 and 70.

²⁷¹ Non-confidential minutes of a call with Künz dated 16 September 2021, paragraph 16, Doc. ID 4289.

minority tried but was not successful.²⁷² In fact, when asked whether non-EEA suppliers have been involved in their most recent RTG tenders, one EEA customer answered, “[y]es they have participated. Price & quality were below expectations”.²⁷³

- (292) In view of the above, the Commission concludes that demand characteristics and customer preferences indicate that OEMs outside the EEA are not real alternatives of supply, including any OEM which may be present in the wider European region - proposed by the Parties - and does not currently supply the EEA.

(D) Effects of differences in the regulatory environment

- (293) Contrary to what the Notifying Parties argue, the market investigation has shown that well established suppliers in other areas in world have not been able to enter the EEA because they could not meet the EEA standards.
- (294) This was the case of a Japan based OEM that was not able to tender in the EEA as it could not get the CE marking, nor did its equipment met the FEM standards²⁷⁴. The OEM explained, “*as the design of this RTG had been realized in Japan, it satisfied the JIS but not the FEM standard. Hence, some electrical components made in Asia and batteries included in the model had no CE marking. Mitsui-Paceco could not get the CE marking sufficiently on time (one month) to be able to participate in the tender.*”²⁷⁵ In fact, the OEM has still not obtained the CE marking and informed that it would take at least six months of “*intensive engineering*” for that type of battery. In case different batteries or components are needed to obtain CE certification, additional time will be required.²⁷⁶
- (295) In the Notifying Parties’ view, the fact that this OEM could obtain the CE marking “after six months” shows that regulatory requirements do not amount to a material barrier to entry.²⁷⁷ The Notifying Parties however seem to ignore that it requires at least six months of ‘*intensive engineering work*’ for that particular battery. In case different batteries are needed, it may take longer. As these are not off the shelf products and tenders have their own specifications, it is not certain, as the Notifying Parties claim, that this OEM would be prepared in six months to gain orders in the EEA.
- (296) It is worth to note that this OEM has sold RTGs in Turkey but has not yet been able to sell them in the EEA. This calls into question the Notifying Parties claim that Turkey has a similar regulatory environment to the EEA. The Notifying Parties have argued without demonstrating it that neighbouring countries to the EEA in particular, Switzerland, Turkey, Ukraine and the UK have similar regulatory environments. Even if correct, there are no RTGs OEMs in these countries that supply or could supply the EEA. Moreover, none of the suppliers that currently supply these countries and do not supply the EEA (e.g. Mitsui, Sany) has not been able to address the EEA demand including – as in the Mitusi case – for not being able to meet the EEA regulatory requirements.

²⁷² Responses to Q5 – PH2 Questionnaire to Customers of cranes and automation software for all cargo handling equipment, Doc. ID 3606, question 24.1.

²⁷³ Responses to Q5 – PH2 Questionnaire to Customers of cranes and automation software for all cargo handling equipment, Doc. ID 3606, question 29.

²⁷⁴ European Material Handling Federation (FEM).

²⁷⁵ Agreed Minutes of a Call with a RTG OEM on 23 September 2021, Doc. ID 4311.

²⁷⁶ *Idem*.

²⁷⁷ Reply to the SO, paragraph 241.

- (297) A current EEA supplier, which is based in China, corroborated the difficulties of meeting the EEA requirements. In his own words: *‘the European standard requirements are too different for some Japanese and Korean players to fulfil’*.²⁷⁸ Another EEA supplier explained: *“[c]ranes sizes and customer preferences vary quite a lot and different countries are governed by different standards which affect structural, mechanical and electrical design e.g. USA/AUS/EU.”*²⁷⁹ Later, as the Notifying Parties stressed, this same supplier stated, *“there are no significant difficulties/costs to supply RTGs in the EEA because of specific regulatory requirements”*.²⁸⁰ This response regarded however its own activities, for the question was *“Please explain your answer [whether the EEA regulatory environment made it more difficult to supply in the EEA than in other regions] and provide examples, if any, of EEA regulatory requirements that have an influence on your capacity to sell RTGs in the EEA”*.²⁸¹ Given this EEA supplier is a European company it is natural that it does not find it difficult to meet the EEA standards. This statement regarding its own business does not call into question the previous statement regarding its own characterisation of the market at large, nor reflects, as argued by the Notifying Parties, a change of mind.
- (298) Customers are also aware of the effects of the stringent regulatory environment in the EEA compared to other regions. One GTO mentioned *“increased cost of production and delivery due to compliance with regulations and also the extra import duties”* make it more costly to supply the EEA. Another GTO stated, *“Directive machines and all protections related to safety are usually an issue for non-EEA suppliers”*. Some customers also recognise that the compliance with the EEA regulatory requirements increases the price of the equipment. One GTO mentioned, *“compared to certain regions in the world, the EEA regulations make equipment more expensive”*. Another customer explained *“to use Europe standard & Europe branded parts, there is a premium to be paid even if the machines are not actually made in EEA”*.²⁸²
- (299) The Notifying Parties contended that the majority of customers responded that they do not consider that regulatory requirements in the EEA make it more difficult or costly for non-EEA suppliers to sell RTGs in the EEA.²⁸³ In fact, within this small majority there are customers, which do not use RTGs and customers who have referred to ZPMC which is a EEA supplier when they explain their response.²⁸⁴ Hence, the response to this question cannot be considered conclusive.
- (300) For the above reasons, the Commission concludes that regulatory differences affect the ability to supply in the EEA. This applies in particular to the OEMs that may serve the wider European region (proposed by the Notifying Parties) but are not addressing the EEA demand.

²⁷⁸ Agreed Minutes of a Call with a Competitor on 23 April 2021, Doc. ID 1779.

²⁷⁹ Response to Q1 – Questionnaire to Competitors, question B.B.9.1.

²⁸⁰ Response to Q3 – PH2 Questionnaire to Competitors, question 5.1.

²⁸¹ Response to Q3 – PH2 Questionnaire to Competitors, question 5.1.

²⁸² Response to Q5 – PH2 Questionnaire to Customers of cranes and automation software for all cargo handling equipment, Doc. ID 3606, question 9.1.

²⁸³ Reply to the SO, paragraph 242.

²⁸⁴ Response to Q5 – PH2 Questionnaire to Customers of cranes and automation software for all cargo handling equipment, Doc. ID 3606, question 9.1

(E) Effects of transport costs

- (301) The Commission takes the view that transport costs have an impact in the OEM's ability to compete in the EEA for the following reasons.
- (302) The Notifying Parties estimate that on average transport cost amount to 10%-15% of the costs of a port crane,²⁸⁵ which is not insignificant. In addition, the EEA demand is characterised by small orders, therefore it is more difficult to 'dilute' the transport cost as it is spread over a lower number of units. According to Liebherr, *[i]n Europe the size of orders of RTGs is smaller compared to other world regions. Of course, smaller batches are more costly to erect and transport.*²⁸⁶ This competitor explained that small order includes 2-3 RTGs, while a large order would include 8-10 units. According to Liebherr, the transportation cost of a smaller batch of RTGs is therefore typically twice the price per unit as the one of a larger one. To mitigate the transport costs, this OEM ships whenever possible RTGs together with other types of cranes in particular, STS cranes. It explained: *"STS and RTGs are shipped together when possible in order to reduce transportation costs"*.²⁸⁷
- (303) This is also the strategy followed by ZPMC, which has its own transportation fleet and ships its cranes across the world from China. Indeed, the fact that ZPMC ships its equipment across the world does not necessarily mean - as the Notifying Parties argue - that transport cost have no appreciable effects on the OEMs ability to compete. Similar to Liebherr, also ZPMC recognises the importance of large orders in particular for RTGs.
- (304) ZPMC started by explaining that even in the STS market where it takes a leading position in the EEA, it sees that its competitors based in Europe have an advantage. ZPMC explained, *"European OEMs such as the Parties or Liebherr are however generally able to offer more competitive offers when customers source a single crane, as [the Company]'s transport costs prevent it from offering a competitive price. The Company ships the STS cranes fully erected on vessels that can transport four cranes at a time. The transport costs are therefore affordable when clients purchase four, eight or twelve cranes but are not when transporting a single unit"*. The OEM further added *"[t]he Company 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."*
- (305) These are the words of the OEM the Notifying Parties claim has a competitive advantage over them since it has its own fleet of vessels. Even this OEM considers that transport costs interfere with its ability to compete. Moreover, the OEM recognises it has more difficulties in competing for the supply of yard cranes to inland terminals given they are more difficult to reach: *"there is less competition on tenders at intermodal/inland. This is due to smaller order size of inland terminals, which gives local manufacturers an advantage to deliver the cranes, as inland terminals are more difficult for international OEMs to reach than seaside terminals. Furthermore, the OEM considers that "most of the Asian OEMs including [itself] are unable to offer competitive delivery times to European yard crane customers, in contrast to the [Notifying] Parties."*

²⁸⁵ Form CO, Chapter 1: Cranes, paragraph 34.

²⁸⁶ Agreed minutes of a call with a Competitor on 17 September 2021, Doc. ID 4077.

²⁸⁷ *Idem*.

- (306) Künz that has recently entered the RTG market highlighted, “transportation costs are a significant share of the final price of cranes, mainly depending on distance of the final destination and transportation options. They are also typically increasing at the moment. Currently, demand for transportation is exceeding available capacities due to Covid and unstable supply chains. Hence, according to [the recent entrant], optimization of transportation is a key element in the market”.²⁸⁸
- (307) Mitusi, which the Parties consider a potential entrant into the EEA, also explained how transport costs affect its ability to compete. Mitsui stated, “[its] *activity in cranes is mainly focused in the South East Asia market and in the West coast of the US and Canada, due to high transport costs towards other parts of the US (such as the East Coast and the Gulf of Mexico) and Europe*”.²⁸⁹ This OEM estimates that on average the transport costs from Japan to Europe are more than 8% higher than the 10-15% average estimated by the Parties. This OEM explained; “[c]osts of transportation to the US West Coast [from Japan] greatly depend on the number of cranes delivered at a time, based on vessel availability and crane mix (if STS and RTG cranes are ordered together). Typically shipping costs are 10% of the crane price to the West Coast, but if the crane is shipped to the Gulf of Mexico through the Panama Canal, costs for each crane can increase an additional 5-8% per crane. For Europe, shipping costs from Japan can be even higher and must navigate rough water. In terms of transportation, vessel availability is easiest when transporting three RTGs”.²⁹⁰
- (308) Moreover, similarly to ZPMC, Mitsui also considers that transport costs have a bigger impact on the supply of RTGs than on the supply of STS cranes, which also explains its decisions to bid for RTG tenders. Mitsui stated “[t]he design of RTGs is quite standardized, while that for STSs is particularly engineering-intensive and even small changes entail relevant detailed design and supporting calculations. Hence, if the terminal requires particular specifications for STSs, costs can significantly increase. Mitsui would decide to bid on STS if the terminal accepts an OEM specification, or they can match specifications that are decided by the terminal (or the consultant) and be competitive on these specifications. For RTGs, which are much more standardised and terminal prone to allow an OEM specification, Mitsui would decide to bid if the location of the terminal enables them to be competitive price-wise and if they can achieve the required lead-time to deliver”.²⁹¹
- (309) The Notifying Parties, nevertheless contend the fact that this OEM has participated in tenders for RTGs in the EEA demonstrates that transport costs do not hinder it from competing in the EEA. Mitsui has indeed participated in a tender for STS and RTGs in the EEA but has only won the STS part; the RTGs were awarded to Konecranes.
- (310) Transport costs also appear to affect Sany’s ability to sell RTGs in the EEA. According to Sany, “[t]ypically, Sany ships fully-erected RTGs when the final destination has good access to the sea. [...]”) Sany explained that the advantage of receiving fully-erected RTGs is that they are immediately operational once commissioned. There is also a confidence aspect to the fully-erected crane, as all the test are performed in the factory. However, fully-erected RTGs entail higher costs that EU customers are not always willing to incur. This is in particular due to

²⁸⁸ Agreed minutes of a call with a Competitor on 16 September 2021, Doc. ID 4289.

²⁸⁹ Agreed minutes of a call with a RTG OEM on 23 September 2021, Doc. ID 4311.

²⁹⁰ *Idem*.

²⁹¹ *Ibidem*.

transportation costs of a fully erected RTG that can be higher as of the space required on a vessel.” The fact that Sany, as submitted by the Notifying Parties, is currently active in a couple of tenders grouping together STS and RTGs in the Baltic States, does not constitute evidence that transport costs are immaterial. On the contrary, it is consistent with the difficulties Sany faces to overcome the cost of transport and its strategy to ship RTGs and STS together to mitigate that cost (as other OEMs do). In addition, Sany has not won the tender.

- (311) The Commission therefore notes that all RTG suppliers active in the EEA (in addition to the Notifying Parties) and two RTG suppliers active outside of the EEA have explained that transportation costs have appreciable effects on their ability to compete in different world regions.
- (312) Moreover, despite their arguments that transport costs are immaterial, the Notifying Parties have recognised the impact they have in their ability to compete.
- (313) In a submission about its crane business, Cargotec acknowledges that having a full assembly line in China from where it ships his cranes to other world regions [internal document reference].²⁹² More explicitly Cargotec submits [internal document reference].²⁹³
- (314) Cargotec also argued that despite shipping from China, ZPMC would be less affected by this increase and volatility of the transport cost.²⁹⁴ Even if indeed ZPMC would be less affected than Cargotec, it does not mean that other OEMs with assembly lines outside of Europe would not be affected, if they tried to enter the EEA - contrary to ZPMC they do not own their own fleet of vessels, nor ship large volumes of cranes.
- (315) Also Konecranes recognises in its strategy document for Port Solutions that [...]. In fact, two other current EEA suppliers explain that transport costs are the main reasons for price differences across world regions.²⁹⁵
- (316) Finally, customers including GTO that source in different regions of the world also recognise the significance of transport costs. As a GTO explained, “[the GTO] has a lot of terminals in the far east, so we have data and references within the group of non EEA equipment. Price is not always lower due to transport costs.”²⁹⁶
- (317) For the reasons above, the Commission takes the view that transport costs have an effect on the companies’ ability to supply the EEA.

(F) Regional presence

- (318) The Commission finds that regional access with a regional sales system and a regional after-sales support are of significance for the supply of RTGs in the EEA and therefore support the definition of a EEA-wide market.
- (319) First, all EEA suppliers have physical presence in the EEA including an after-sales service network. There is no example of any supplier to the EEA that has not some sales and after-sales services presence in the EEA.
- (320) Moreover, all EEA suppliers with the exception of ZPMC and Cargotec have also assembly lines in the EEA from which they supply the EEA demand. Liebherr

²⁹² Supplemental submission on Cargotec’s crane business, paragraph 10.

²⁹³ Supplemental submission on Cargotec’s crane business, paragraph 24.

²⁹⁴ Supplemental submission on Cargotec’s crane business, dated 16 September 2021, paragraph 24.

²⁹⁵ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 8.1.

²⁹⁶ Response to Q5 – PH2 Questionnaire to Customers of cranes and automation, Doc. ID 3606, question 24.1.1.

supplies the EEA demand from its assembly line in Ireland, and the recent entrant Künz from Austria. In the last 10 years, [...] % of Konecranes sales in the EEA come from its assembly lines in [countries] and the remainder [...] % from its assembly lines in [countries] and from a subcontractor facility in [country], which has in the meantime closed. In the last 10 years, no sales made by Konecranes in the EEA came from China nor from anywhere else outside the European continent.²⁹⁷

- (321) Second, the majority of RTG suppliers, including those that currently do not supply the EEA recognise the importance of having a regional after-sales presence to be considered an effective alternative of supply.²⁹⁸ One supplier explained, “[f]or container cranes a lot of ports have experienced staff for day to day service requirements, for more detailed technical support it’s important to have a local presence or fast response from the production facility”. Another clarified, “[w]hile technical possibilities for supporting the product remotely are getting better and better, local presence is a strong sign of commitment to customers and makes problem solving much easier”²⁹⁹. One OEM which has been trying to enter the EEA market considers that regional presence is a very important factor in its ability to compete and explained, *[m]aintenance provision and after sales service is an important factor for customers which require suppliers to provide local support in a short reaction time.*³⁰⁰
- (322) Third, although customers do not exclusively rely on the OEMs for maintenance and repair services, the majority of customers consider very important that the supplier has after-service capabilities in the region to be considered a reliable source of supply. This view is not only shared by smaller terminals with fewer in-house maintenance and repair capabilities but also by the GTOs. As a GTO explained: *“[h]igh reliability and high availability of the equipment is a must. A good distribution network for spare parts and services is primordial.”* Another GTO clarified, *“if a supplier does not have a subsidiary or a dealer/ distribution network in your region (for the provision of spare parts or after sales service for gantry cranes), companies do not get the required service and the equipment availability drops”*.
- (323) Moreover, customers recognise the impact the lack of presence has in the ability of an OEM to compete. As a GTO explained, *“[s]ome non-EEA suppliers of RTGC have local offices in Europe which can quickly respond to terminals’ request of services on the cranes. However, there are still non-EEA suppliers of RTGC with their head office located in China who cannot react as fast as EEA suppliers of RTGC due to the time zone difference and limited local representatives in Europe.”*³⁰¹ Another terminal operator stated, *“[i]t [i]s impossible to have same support and reaction time without proper representative network in Europe”*.³⁰²
- (324) In the words of a GTO, “[w]hen choosing a container handling equipment supplier, DPW takes into account the lifetime cost of the equipment. Therefore, the price of

²⁹⁷ Konecranes’ reply to RFI 36, question 4, Annex QK4.1.

²⁹⁸ Response to Q1 – Questionnaire to Competitors, Doc. ID 3154, question B.B.2 and B.B.5; and Response to Q3 – PH 2 Questionnaire to Competitors, Doc. ID 3582, question 10.

²⁹⁹ Response to Q1 – Questionnaire to Competitors, Doc. ID 3154, question B.B.2.1 and Response to Q3 – PH 2 Questionnaire to Competitors, Doc. ID 3582, question 10.1.

³⁰⁰ Agreed minutes of a call with a RTG OEM on 22 April 2021, Doc. ID 657.

³⁰¹ Response to Q5 – PH2 Questionnaire to Customers of cranes and automation software for all cargo handling equipment, Doc. ID 3606, question 23.1.

³⁰² *Idem.*

spare parts and the location of the OEM's service centre also play an important role. For instance, DPW could prefer to opt for the second best offer if the OEM's service centre is located nearby the terminal."³⁰³ In the words of a smaller terminal in the north of the EEA "while Asian OEMs are popular in major ports (e.g. Rotterdam) where there are many cranes, the lack of local support through dealers or representatives in Eastern Europe and Nordic countries dissuade terminal operators in that region to source from them."³⁰⁴

(G) Conclusion

- (325) In view of these findings, the Commission considers that suppliers active outside the EEA do not constitute an effective competitive constrain to EEA suppliers and therefore takes the view that the relevant geographic market for the supply of RTGs is EEA wide. In any event, constraints stemming from suppliers established outside of the EEA and potentially capable of supplying customers within the EEA will be addressed in the competitive assessment.

6.3.3.2. Automatic Stacking Cranes

- (326) Similar to RTGs, there are several factors speaking in favour of a regional EEA market, however unlike RTGs there are also a few indicators in favour of a broader market.
- (327) First, the EEA demand is addressed by the Notifying Parties, ZPMC and Künz and not by all OEMs as contended by the Notifying Parties. The position of these suppliers is not the same across the world but the differences across regions and at the worldwide level are much less striking than the ones in RTGs.³⁰⁵
- (328) Second, unlike RTGs, the EEA demand for ASC is not a replacement demand characterised by small orders. On the contrary, EEA demand for ASC is driven by yards automation and greenfield projects, which generally translate into bigger orders. This makes demand more appealing and less bound to the incumbent suppliers.
- (329) Third, similar to RTGs, ASC customers in the EEA value the reputation and experience of the supplier. ASC customers that responded to the market investigation declared they have not purchased from an OEM without a track-record in the EEA³⁰⁶ and the majority of these respondents, including GTOs, are not ready to source from a supplier without a track record in the EEA.³⁰⁷ In fact, a majority of customers have not even tried to purchase from non-EEA suppliers when faced with a price increase in the EEA; a small minority tried but was not successful.³⁰⁸
- (330) Fourth, although transport costs still play an important role - as explained by the China based supplier - given that ASCs are more expensive than RTGs the impact on price is smaller.

³⁰³ Agreed minutes of a call with a customer on 10 March 2021, Doc. ID 508.

³⁰⁴ Agreed minutes with a Customer on 7 April 2021, Doc. ID 675.

³⁰⁵ See market shares in Section 7.2.2.1.

³⁰⁶ One GTO said it did but identify the supplier as ZPMC, which is already established in the EEA. See responses to Q5 – PH2 Questionnaire to Customers of cranes and automation software for all cargo handling equipment, Doc. ID 3606, question 19.

³⁰⁷ Responses to Q5 – PH2 Questionnaire to Customers of cranes and automation software for all cargo handling equipment, Doc. ID 3606, question 20.

³⁰⁸ One GTO said it did successfully but the supplier was ZPMC. See responses to Q5 – PH2 Questionnaire to Customers of cranes and automation software for all cargo handling equipment, Doc. ID 3606, question 24.2 and question 24.2.1.

- (331) Fifth, similar to RTGs, regional presence is an important factor to be able to compete effectively, although the ASC customers seem to rely more on their own maintenance and repair capabilities than the RTG customers.³⁰⁹
- (332) For the reasons above the Commission considers that the ASC market is at least EEA wide. However, as the Proposed Transaction does not raise concerns under any plausible geographic market definition, its precise scope can be left open.

6.4. Horizontal Equipment

6.4.1. *Straddle and shuttle carriers*

6.4.1.1. The Commission's past practice

- (333) In its previous decisions,³¹⁰ the Commission has considered that the geographic markets for container handling equipment may be EEA wide or wider, but ultimately left the exact geographic definition open. These decisions did not however address the horizontal equipment or straddle and shuttle carrier markets specifically, but mobile harbour cranes and some types of horizontal and mobile equipment.

6.4.1.2. The Notifying Parties' views

- (334) The Notifying Parties are of the view that the relevant geographic market for straddle and shuttle carriers is worldwide in scope. In support of their view, the present the following arguments.
- (335) **First**, the structure of supply is global. According to the Notifying Parties, straddle and shuttle carriers are sold and marketed on a worldwide basis. All suppliers had centralised their global assembly activities and delivered all of their straddle and shuttle carriers to customers all over the world out of these centralised assembly facilities, regardless of customer's location.³¹¹
- (336) **Second**, transport costs and delivery times had no appreciable effect on global trade. Transport cost are relatively low compared to the overall upfront investment. They estimate that, on average, transport costs account for [...] % of the product. As such, localising production did not constitute a competitive advantage.³¹²
- (337) **Third**, customers purchased globally and have terminals in several regions and countries. According to the Notifying Parties, customers procure straddle and shuttle carriers through global tenders or negotiate framework agreements centrally at group level.³¹³
- (338) **Fourth**, local after-sales service presence is not a prerequisite to supply straddle and shuttle carriers and is not an indicative of a narrow geographic market. Customers have their own in-house maintenance and repair capabilities, including extensive stocks of spare parts and there are several other alternative providers of after-sales services in addition to the straddle and shuttle carrier OEMs, such as independent service providers and spare-part-trading companies. In any case, all major suppliers

³⁰⁹ Responses to Q5 – PH2 Questionnaire to Customers of cranes and automation software for all cargo handling equipment, Doc. ID 3606, question 12.

³¹⁰ Commission decision of 8 August 2016, M.7792 – Konecranes/Terex MHPS, paragraphs 62-65; Commission decision of 5 August 2011, M.6255 – Terex/Demag Cranes, paragraphs 12-16; Commission decision of 19 November 2008, M.5345 – Terex Corporation/Fantuzzi Group, paragraphs 12-14.

³¹¹ Response to the Article 6(1)(c) Decision, paragraph 96.

³¹² Response to the Article 6(1)(c) Decision, paragraph 97.

³¹³ Response to the Article 6(1)(c) Decision, paragraph 98.

of straddle and shuttle carriers had a service network in Europe and could be established relatively quickly and easily and a new entrant could build on its existing network in neighbouring container handling equipment or crane segment.³¹⁴

- (339) **Fifth**, demand patterns and customer preferences were similar across regions. Less extensive use of straddle carriers in Chinese terminals was due to the size of those terminals than due to customer preferences and thus not indicative of the geographic scope of the market. In terms of quality, ZPMC's straddle carriers were on par with the Parties' offering. Any perceived concerns as regards ZPMC's straddle carriers should vanish quickly once ZPMC will have proven its capabilities with major customers.³¹⁵
- (340) **Sixth**, regulatory and safety requirements do not constitute a barrier to trade. According to the Parties, there are no relevant differences in product specifications or standards. Although the Notifying Parties recognise there are some limited alternations to satisfy specific needs and environmental standards, these do not materially alter the products and all major suppliers can meet those specifications.
- (341) **Seven**, current market shares were not indicative of the geographic scope of the market, as ZPMC had just entered the market and demand for straddle and shuttle carriers was lumpy.
- (342) **However**, the Parties submit that in any event, the exact geographic scope of the market could be left open in the case at hand.

6.4.1.3. The Commission's assessment

- (343) Based on the market investigation and the evidence available to it, the Commission considers that the relevant geographic market for straddle and shuttle carriers is at least EEA-wide. There are indications that the plausible market(s) for straddle and shuttle carriers are global in scope. However, for the purposes of this decision, the exact geographic delineation can ultimately be left open as the Proposed Transaction raises concerns under both an EEA-wide or global geographic market definition.
- (344) While besides the Notifying Parties there are several competitors and customers with global sourcing teams and supply chains who view the market as global³¹⁶, some responses to the Commission's questionnaires showed that some factors point in the direction of an EEA-wide rather than a global delineation of the market(s) for straddle and shuttle carriers. The Commission assessed the following aspects:
- Market position of suppliers (see Section 6.4.1.3 (A) below),
 - demand patterns and customer preferences in the EEA as compared to other regions (see Section 6.4.1.3 (B) below),
 - barriers associated with cross-regional trade such as lead/delivery times and reliability, tariffs and transport costs, resulting in a competitive advantage of localising production in a region (see Section 6.4.1.3 (C) below),
 - regulatory product requirements and related expectations in the EEA as compared to other regions (see Section 6.4.1.3 (D) below),
 - a need for regional access (see Section 6.4.1.3 (E) below),

³¹⁴ Response to the Article 6(1)(c) Decision, paragraphs 100 et seq.

³¹⁵ Response to the Article 6(1)(c) Decision, paragraphs 106 et seq.

³¹⁶ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question D.B.1.1.

(A) Structure of supply

- (345) The Commission finds that the structure of supply in the plausible market(s) for straddle and shuttle carriers appears to be global. At present there are essentially only three OEMs supplying straddle and shuttle carriers, namely Cargotec, Konecranes and ZPMC. The market position of these three suppliers does not differ significantly when looking at market shares on an EEA-level as compared to market shares worldwide.³¹⁷
- (346) However, the Commission notes that there is a small competitor, namely Mitsubishi, who is only active very regionally in Japan and potentially Taiwan. However, Mitsubishi has a very limited capacity and, therefore, does not appear to play a relevant role in the supply of straddle and shuttle carriers (see Section 7.3.2.3 (C) below). Not only is Mitsubishi not supplying to the EEA,³¹⁸ they also do not seem to be considered a competitive constraint in the EEA or globally or even known to customers at all. Not a single customer mentioned Mitsubishi as a competitor of the Parties when asked to name suppliers of straddle and shuttle carriers in the Commission's market investigation.³¹⁹ Further, the Commission finds that some past competitors such as TCM, which was acquired by Mitsubishi in 2017, had a regional focus. A 2017 dated market report of DS Research, an independent market research company for the container terminal industry, describes TMC as a "*regional champion on the Far East (mainly Taiwan and Japan), followed by Liebherr, with several sales mainly to Europe and Oceania.*"³²⁰
- (347) However, all relevant suppliers supply globally.

(B) Demand characteristics and customer preferences

- (348) The Commission finds that the demand characteristics and customer preferences in the EEA also indicate that suppliers active in other areas could at least in theory constitute a real alternative source of supply.
- (349) While the Commission notes that straddle and shuttle carriers are more prevalent in EEA terminal designs and the EEA is the main market for straddle and shuttle carriers, this appears to be mainly due to the size of terminals in the EEA that favour the operation of straddle and shuttle carriers. A 2017 dated market report of DS Research, an independent market research company for the container terminal industry, reports that "*The use of straddle carriers is exceptionally high in North Americas (13%), North Europe (41%) and Oceania (8%)*" and that "*[straddle carrier]-operating terminals are located mainly in world regions, which have achieved only moderate growth, as North Americas, North Europe and Oceania.*"³²¹ The numbers in the internal documents of the Parties are even more pronounced, see Figure 25 below.

Figure 25: Regional distribution of straddle carrier sales

[...]

Source: [Internal document reference].

³¹⁷ RFI PN2 – Annex – Q5.

³¹⁸ Response to Q3 – PH2 Questionnaire to Competitors, question 54.1.

³¹⁹ See in particular responses to Q2 – Questionnaire to Customers, Doc. ID 3153, question D.C.A.1, where customers were asked to identify and rate OEMs active in the supply of straddle and/or shuttle carriers.

³²⁰ Internal document, Doc. ID 3664-28680 - CAR-MON-00126921.pdf, slide 7.

³²¹ Internal document, Doc. ID 3664-28680 - CAR-MON-00126921.pdf.

- (350) No EEA customer in the market investigation appeared to have a specific preference for straddle carriers for reasons other than the terminal design.³²²
- (351) Further, a majority of EEA terminal operators and GTOs said they were open to sourcing from a straddle and shuttle carrier supplier with no track record of supply of straddle and shuttle carriers in the EEA.³²³
- (352) In view of the above, the Commission concludes that demand characteristics and customer preferences indicate that OEMs outside the EEA could constitute a real alternative of supply.
- (C) Effects of transport costs, delivery times and cultural differences
- (353) The Commission takes the view that transport costs have some, but not necessarily a significant impact in the ability of suppliers from other regions to compete in the EEA.
- (354) While overall a majority of EEA customers stated that each of these factors made purchasing straddle and shuttle carriers from outside the EEA at least somewhat more difficult or costly, some EEA customers, including GTOs stated that transport costs, additional lead times, as well as communication issues/cultural differences each made it significantly more difficult/costly to purchase from outside the EEA.³²⁴
- (355) For the reasons above, the Commission takes the view that transport costs and delivery times have some but not necessarily a significant effect on non-EEA based suppliers' ability to supply the EEA.
- (D) Effects of differences in the regulatory environment
- (356) The Commission takes the view that the EEA regulatory environment has no significant impact in the OEM's ability to compete in the EEA.
- (357) While the Commission finds that there are some regulatory differences between the EEA and other world regions such as the EU Machine Directive³²⁵, Engine Regulation³²⁶, emission standards and CE markings,³²⁷ they do not appear to be a significant constraint on cross-regional competition. A past and potential competitor described these are not significant.³²⁸ No competitor provided examples where regulatory differences had had an impact on non-EEA suppliers ability to sell straddle and shuttle carriers in the EEA.³²⁹ A GTO explained: "*The differences in regulatory requirements are not the primary problem it is more the lack of knowledge of applicable regulatory requirements.*"³³⁰

³²² See for instance, responses to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, questions 46 and 46.1.

³²³ Responses to Q7 – PH2 Questionnaire to HTE Customers, Doc. ID 3608, question 21.

³²⁴ Responses to Q7 – PH2 Questionnaire to HTE Customers, Doc. ID 3608, question 8.

³²⁵ Directive 2006/42/EC of the European Parliament and of the Council of 17 May 2006 on machinery, OJ L 157, 9.6.2006, p. 24–86.

³²⁶ Regulation (EC) No 595/2009 of the European Parliament and of the Council of 18 June 2009 on type-approval of motor vehicles and engines with respect to emissions from heavy duty vehicles (Euro VI) and on access to vehicle repair and maintenance information, OJ L 188, 18.7.2009, p. 1–13.

³²⁷ Responses to Q7 – PH2 Questionnaire to HTE Customers, Doc. ID 3608, question 7.

³²⁸ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 44.

³²⁹ Responses to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, questions 45 and 45.1.

³³⁰ Response to Q7 – PH2 Questionnaire to HTE Customers, Doc. ID 3608, question 8.1.

- (358) In conclusion, the regulatory differences do not appear to lead to significantly different product requirements and, thus, do not significantly affect a non-EEA supplier's ability to supply in the EEA.
- (E) Need for a regional presence
- (359) The Commission finds that regional access with a regional customer base, regional sales system and in particular, a regional customer and technical (aftermarket) support are of significance for the supply of straddle and shuttle carriers and any plausible sub-segment thereof and appear to affect customer preferences. This was confirmed both by the results of the market investigation as well as by internal documents of the Parties.
- (360) **First**, all suppliers supplying to the EEA have physical presence in the EEA including an after-sales service network. There is no example of any supplier to the EEA that has not some sales and after-sales services presence in the EEA.
- (361) **Second**, a majority of competitors recognise the importance of having a regional after-sales presence to be considered an effective alternative of supply. A majority of competitors rated local service/after-sales presence as very important for the ability to sell straddle and shuttle carriers in the EEA.³³¹ One past competitor of straddle and shuttle carriers explained: *"Local after service is very important as these machines are heavily utilized."*³³² While another past and potential competitor disagreed in relation to after-sales service, they stressed the importance of a regional presence in terms of technical support: *"The SC and ShC are normally served by the user. However from time to time direct service might be required. In general what is of key importance is the Technical support to the entity that executes the service. For Technica Support is intended the Fault Diagnostic and Trouble Shooting competence as well as teh [sic] SpareParts availability."*³³³
- (362) **Third**, although customers do not exclusively rely on the OEMs for maintenance and repair services and have extensive in-house servicing and spare parts, the majority of customers consider at least "important" that the supplier has after-service capabilities in the region to be considered a reliable source of supply. This view is not only shared by smaller terminals with fewer in-house maintenance and repair capabilities but also by the GTOs.³³⁴ A GTO explained: *"Reactivity & spare parts availability are key as [we] cannot afford stopping these high value equipments for long as disrupting terminal operations. Stoppages have a high cost for the terminal."*³³⁵ An EEA terminal stressed: *"Quick access to spare parts is vital."*³³⁶
- (F) Conclusion on the geographic market definition for the supply of straddle and shuttle carriers
- (363) In light of the above findings in Sections 6.4.1.3 (A) to (E), the Commission finds that the plausible market(s) for the supply of straddle and shuttle carriers, are at least EEA-wide in geographic scope. While there are many indications that the plausible market(s) for straddle and shuttle carriers might be wider than EEA-wide and potentially global, there are also several indications that a regional market definition

³³¹ Responses to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 48.

³³² Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 48.1.

³³³ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 48.1.

³³⁴ Responses to Q7 – PH2 Questionnaire to HTE Customers, Doc. ID 3608, question 13.

³³⁵ Response to Q7 – PH2 Questionnaire to HTE Customers, Doc. ID 3608, question 13.1.

³³⁶ Response to Q7 – PH2 Questionnaire to HTE Customers, Doc. ID 3608, question 13.1.

might be more appropriate, such as the relevance of a regional aftersales and maintenance network, the fact that some past competitors such as TCM have had a regional focus, the fact that some customers consider transport costs and delivery times to make purchases more difficult or the stark differences in demand for straddle and shuttle carriers between regions. The Commission considers that the exact delineation of the geographic market can be left open for the purposes of this Decision as the Proposed Transaction raises concerns under both an EEA-wide or global geographic market definition.

6.4.2. *Terminal tractors and AGVs*

6.4.2.1. Previous Commission decision

(364) In its previous decisions³³⁷, the Commission considered that markets for container handling equipment, including for AGVs and terminal tractors, are EEA-wide or global, but ultimately left the exact geographic definition open.

6.4.2.2. The Notifying Parties' arguments

(365) Similar to the cranes markets, the Parties consider that the horizontal transport equipment markets are global.³³⁸ According to the Parties, the main suppliers are active across the globe, the equipment is largely identical across the world, transport costs are relatively low compared to the total purchase price and there are no specific barriers to trade.

(366) However, the Parties submit that 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).³³⁹

6.4.2.3. The Commission's assessment

(367) The Commission's market investigation broadly confirmed that the geographic scope of the markets for the manufacturing and supply of AGVs and terminal tractors are at least regional (i.e. EEA-wide) in scope. While some findings of the market investigation are indicative of global markets (potentially excluding China), contrary to the Parties' view, several other findings supported by the outcome of the market investigation are more indicative of a regional scope of the markets for horizontal equipment.

(368) While some GTOs with global sourcing teams and supply chains view the market as global³⁴⁰, overall responses to the Commission's questionnaires showed that a number of factors point in the direction of an EEA-wide rather than a global delineation of the markets for the manufacturing and supply of AGVs and terminal tractors.

(369) **First**, it appears that regional access via local sales and distribution networks as well as local aftersales service and spare parts supply network are of high importance. From a demand-side perspective, a majority of customers said that the location of the supplier was an important factor when purchasing at least some types of horizontal equipment including AGVs and terminal tractors.³⁴¹ Accordingly, a majority of customers recognises that there are advantages in purchasing horizontal equipment

³³⁷ Commission decision of 8 August 2016, M.7792 – Konecranes/Terex MHPS, paragraphs 62-65.

³³⁸ Form CO, Chapter 2, paragraphs 115 et seq.

³³⁹ Form CO, Chapter 2, paragraphs 121 et seq.

³⁴⁰ Q2 – Questionnaire to Customers, question D.B.1.1.

³⁴¹ Q2 – Questionnaire to Customers, question D.B.1.

including AGVs and terminal tractors from a supplier that is based in the same region of the world as the location of the port/terminal.³⁴² The most critical factor mentioned by several market participants appears to be the proximity to the supplier's after-sales service and spare part network, rather than the manufacturing location. Suppliers, which do not have an after-sales service presence in the EEA, are not considered reliable alternatives to the suppliers with such presence. One customer stated: *"Service availability is key criteria."*³⁴³ An association of customers explained in this regard: *"the small batch-type manufacturing and OEM-specific features (=lack of standardisation) mean that spare part supply and access to aftermarket services is essential"*³⁴⁴. Another customer further said: *"Proximity to the vendor in geography, language and culture is important to operate efficient container terminals and solve problems quickly. This is especially important in terms of response times in the sector of maintenance and repair."*³⁴⁵ Another customer explained: *"Its much easier and faster to communicate, solve different technical questions and to receive spare parts/services from supplier which is located close by. Even sometimes its a bit more expensive compared to non EEA manufacturers."*³⁴⁶ This is confirmed by competitors, the majority of which considers it "very important" to have EEA subsidiaries and/or a dealer/distributor network for the provision of spare parts or after sales services in the EEA, in order to be considered as a reliable supplier in the EEA.³⁴⁷ A competitor explained: *"No Sale is possible without a credible and effective After Sale Support."*³⁴⁸ Another competitor in terminal tractors explained in line with explanations from customers: *"You need to be close to the customer with a distributor that can support them 24/7. It is also important to have a distributor in the same culture to immediately understand the customers needs."*³⁴⁹ In addition to this, customers also mentioned advantages of a local manufacturing location, such as transport costs, delivery time and compliance with local specifications.³⁵⁰

- (370) **Second**, it appears that the demand characteristics are not homogeneous across the globe. For instance, in pre-notification calls, some customers expressed a preference for European suppliers due to quality reasons.³⁵¹ Similarly, Chinese customers seem to have a preference for a local supplier. An internal document of the Parties discusses that [...]. It explains that [internal document reference].³⁵²
- (371) **Third**, it appears that, contrary to what the Notifying Parties argue, regulatory and safety standards give rise to significant product differentiation. There are also some regulatory requirements in terms of environmental regulations and safety standards as well as local culture (i.e. the cabin design for terminal tractors) that may demand different adaptations to the equipment.
- (372) **Fourth**, some customers mentioned barriers associated with cross-regional trade such as lead/delivery times and transport costs as a reason why they preferred local

³⁴² Q2 – Questionnaire to Customers, question D.B.2.

³⁴³ Q2 – Questionnaire to Customers, question D.B.1.1.

³⁴⁴ Q2 – Questionnaire to Customers, question D.B.1.1.

³⁴⁵ Q2 – Questionnaire to Customers, question D.B.1.1.

³⁴⁶ Q2 – Questionnaire to Customers, question D.B.2.1.

³⁴⁷ Q1 – Questionnaire to Competitors, question D.B.6.

³⁴⁸ Q1 – Questionnaire to Competitors, question D.B.6.1.

³⁴⁹ Q1 – Questionnaire to Competitors, question D.B.6.1.

³⁵⁰ Q2 – Questionnaire to Customers, question D.B.1.1 and D.B.2.1.

³⁵¹ For instance non-confidential minutes of a call with a customer dated 23 March 2021, paragraph 25.

³⁵² Form CO, 5.4 Submission, Annex QK 5.4.117, slide 30.

sourcing, which might constitute a competitive advantage of localising production in a region.³⁵³

- (373) **Fifth**, there appear to be significantly different market positions of suppliers in the EEA compared to their market position in other regions in terminal tractors and AGVs where there are more alternative suppliers than in Straddle/Shuttle Carriers. For instance in terminal tractors, competitor Terberg is strong, with a stable market share [70-80]% in the EEA throughout the last decade, but with a similarly stable global market share of only [20-30]% throughout the past decade. Similarly, for AGVs, ZPMC has a global market share of [40-50]% in 2016-2020, while it is not present in the EEA.³⁵⁴ Sixth, it appears that there is no sufficiently clear cross-regional competition from Chinese suppliers, in light of ZPMCs limited market share in Straddle/Shuttle Carriers in the EEA and no presence of Chinese suppliers in the EEA in both AGVs and terminal tractors. ZPMC has a high market share in AGVs globally, but is not present in the EEA. Shaanxi and Sinotruk have market shares close to [5-10]% and [0-5]% respectively globally, but are not present in the EEA.³⁵⁵
- (374) In the view of the above, it appears that suppliers from other areas in the world, that have no after-sales presence in the EEA, do not constitute a real alternative source of supply.
- (375) While the above findings indicate that the plausible product market(s) for terminal tractors and AGVs are regional rather than global in scope, the geographic scope of these markets can ultimately be left open for the purposes of this decision, as the Proposed Transaction does not raise concerns under both an EEA-wide and a global scope.

6.4.3. *Conclusion on Horizontal Equipment*

- (376) The Commission leaves open the geographic market definitions for straddle and shuttle carriers, terminal tractors and AGVs for the purposes of this decision as the Proposed Transaction raises concerns in the plausible straddle and shuttle carrier market(s) under both an EEA-Wide and a global scope while the Proposed Transaction raises no concerns in the plausible market(s) for terminal tractors and the market for AGVs under both an EEA-wide and a global scope.

6.5. **Mobile Equipment**

6.5.1. *The Commission's past practice*

- (377) In its previous decisions, the Commission has considered that the geographic markets for container handling equipment, including for some types of mobile equipment such as reach stackers may be EEA wide or global, but it ultimately left the exact geographic definition open.³⁵⁶
- (378) In previous decisions concerning the supply of counterbalance forklift trucks, the Commission has defined the relevant geographic markets to be at least EEA-wide.³⁵⁷

³⁵³ Response to Q2 – Questionnaire to Customers, question D.C.A.4.3.1.

³⁵⁴ RFI PN2, Annex Q5.

³⁵⁵ RFI PN2, Annex Q5.

³⁵⁶ Commission decision of 8 August 2016, M.7792 – Konecranes/Terex MHPS, paragraphs 62-65; Commission decision of 19 November 2008, M.5345 – Terex Corporation/Fantuzzi Group, paragraphs 12-14.

³⁵⁷ Commission decision of 15 February 2017, M.8190 – Weichai/Kion, paragraph 19; Commission decision of 20 December 2006, M.4478 – KKR/Goldman Sachs/Kion, paragraphs 11-12.

6.5.2. *The Notifying Parties' views*

- (379) The Notifying Parties are of the view that the relevant geographic market for mobile equipment is worldwide in scope. In support of their view, they presented the following arguments³⁵⁸.
- (380) First, customer base is consolidating and becoming more global. The Notifying Parties recognise that tenders generally play a less relevant role for mobile equipment, as it is often sold via branch offices or third party distributors or sales agents. However, the ongoing consolidation of ports, where ports operators invest in globally, leads to an increase in the adoption of global procurement processes.
- (381) Moreover, customers' sourcing strategies are aligned across their operations. Mobile equipment can be sourced centrally or on a decentralised basis. In case of the latter, customers have internal process to ensure that sourcing is aligned across their organisations and thus still follow a globalised procurement approach.
- (382) Second, there are no significant differences in customers' preferences that would prevent suppliers from competing globally. In the Notifying Parties' view the Commission's market investigation confirms that customer preferences do not play a role in the definition of the geographic market for a minority of competitors mentioned having difficulties in supplying the EEA due to customer preferences and a majority of customers stated they are able to purchase globally. Further, the Notifying Parties argue that their product lines, including those that target specific needs in certain regions of the world are also sold in other regions.
- (383) Third, the location of manufacturing facility is not a decisive factor. The location of the production facility alone does not generally have implications on customers' purchase decision. In addition, facilities outside the EEA can meet the necessary standards, regulations and customer preferences. The Notifying Parties themselves who produce mobile equipment in and outside the EEA do generally not distinguish their products according to location of the production facility.
- (384) The Notifying Parties further submitted that local assembly lines are not necessary to ensure short leading times. There are other options such as to have a few units on stock close to major customer centres. The Notifying Parties gave the example of Sany who also stocks equipment in Europe.³⁵⁹
- (385) Fourth, local sales presence is not a prerequisite to sell in a given region of the world. It is common for container handling equipment customers to invite international suppliers to quote, even if they do not have a local or regional presence. However, the Parties recognise that it can be a competitive advantage, when customers buy or even rent smaller volumes, as in such case, customers would typically source from local distributors.
- (386) The Parties further submitted that the fact that regional distribution networks are more prevalent for mobile equipment than for gantry cranes does not in itself prove that such networks are necessary to effectively compete; and, in particular, it does

³⁵⁸ The arguments were enounced in the Form CO, Chapter 2, paragraphs 126-128, and further developed in the Response to the Article 6(1)(c) Decision, paragraphs 220-236; as well as in the Reply to the SO, paragraphs 741-767.

³⁵⁹ Reply to the SO, paragraph 758.

not disprove the fact that suppliers have ample choice to build up such regional networks within a reasonable timeframe.³⁶⁰

- (387) Fifth, local services presence is not a prerequisite for equipment sales. Fast and reliable service is an important factor that customers take into account. However, it is not necessary that the OEMs themselves offer their own local service capabilities. There are a number of independent providers, dealers and distributors offering after-sales services. Large customers have also their own in-house capabilities. Further, OEMs generally offer to service third-party equipment in addition to their own. Moreover, equipment sales and equipment service activities constitute separate markets based on the Commission's decisional practice. While service markets usually include local players, this has no impact on supplier's ability to sell equipment on a global basis. While local services presence can be a competitive advantage, it is not a prerequisite for the equipment sales as such.
- (388) Sixth there are no significant differences in regulatory environment. The vast majority of standards and regulations are openly available to all existing and new manufacturers. They are essentially similar across the globe and they only differ in certain details, in particular for environmental and safety standards.
- (389) The Parties further submitted that regulatory requirements are evolving towards a zero-emission standard for all types of engines and vehicles. This trend will further diminish regional or national differences. In addition, OEMs and port operators have created an initiative to define technical standards with regards to automation and connectivity.³⁶¹
- (390) Seventh, price differences are insignificant across the globe. Difference in prices may result from several factors (currency movements, different financial conditions, different distribution systems or taxes and duties) but they do not necessarily hinder global flows. Any lower willingness to pay in certain emerging markets does not mean that suppliers from third countries would not be able to meet any higher customer preferences or standards in other regions.
- (391) Eight, many suppliers are active globally. Not only the Notifying Parties but also major players such as Hyster, CVC Ferrari or Sany offer mobile equipment across all continents. Other players, which do not offer the full range of mobile equipment, are also active on a global basis, such as Heli or Svetruck.
- (392) Furthermore, the Commission's market investigation also shows – in the Notifying Parties' view – that players currently focussed in a given region have plans to expand and that the majority of competitors stated that they meet mostly the same competitors across the world.
- (393) Ninth, Non-European suppliers have strong positions in Europe. Also non-European suppliers are able to successfully manufacture their mobile equipment in Europe (e.g. US-headquartered Hyster and China-headquartered Sany). Non-European suppliers often rely on European dealers, distributors and/or service providers and generally also themselves employ local technicians who are accustomed to the respective region, as part of their global sales strategy.
- (394) In their Response to the Article 6(1)(c) Decision, the Parties submitted that in case the Commission would consider a narrower market, then the scope of such market

³⁶⁰ Reply to the Letter of Facts, paragraph 83.

³⁶¹ Reply to the SO, paragraph 744.

should at least be Europe-wide, including the EEA, the UK, Switzerland, Turkey and Ukraine. According to the Notifying Parties “[g]iven the insignificant if not non-existent differences in standards, regulations and customer preferences as well as the geographic proximity and identical competitive dynamics of these markets a further segmentation would not be appropriate”.³⁶²

- (395) In their Reply to the SO, the Notifying Parties however reiterated their proposal of a European-wide market only for reach stackers (in case the Commission were to conclude on a market narrower than global). In the Notifying Parties’ view, within this region (EEA, UK, Switzerland, Turkey and Ukraine), there are no significant differences in the regulatory environment, customer preferences and prices. In addition, neither local assembly lines nor local after-sales network are necessary to compete effectively across this region and many mobile equipment suppliers are active across this region. Finally, neither the Notifying Parties nor their competitors distinguish between EEA and non-EEA countries.³⁶³
- (396) In their Reply to the SO, the Notifying Parties insisted that they do not distinguish between EEA and non-EEA countries and that the different regions mentioned in their internal documents correspond to the Notifying Parties’ regional sales organisation.

6.5.3. The Commission’s assessment

- (397) The Commission considers the relevant geographic market for each of the mobile equipment product markets identified above (*i.e.*, reach stackers, empty container handlers, and heavy-duty forklift trucks (>10 tonne capacity)) is EEA wide based on the following findings.

6.5.3.1. Market position of the suppliers in the EEA as compared to other regions

- (398) The Commission finds that the market positions of suppliers in the EEA are distinct from other regions in the world. This different structure of supply points at different conditions of competition in the EEA.

(A) Reach Stackers

- (399) In the last four years, the main OEMs that have addressed the EEA demand for reach stackers are: the Notifying Parties, Hyster, CVS Ferrari and to a much smaller extent Liebherr, Sany, FMTH and CES. Several other OEMs have not addressed the EEA demand for reach stackers. Among them: Taylor (USA), ZPMC (China), XCMG (China), Load Star (India), Toyota/Hoist (USA) Mitsubishi (Japan), Hyundai (S. Korea) and Doosan (S. Korea).
- (400) In addition, the positions of the Parties and their competitors also seem to be different across world regions. The graph below comes from Cargotec’s market analysis 2017-2021 presentation created in its ordinary course of business.

Figure 26: Cargotec’s estimate of regional RST market shares

[...]

Source: [Internal document reference].

- (401) According to this graph, the OEMs’ market shares vary significantly across the different world regions, which shows different supply structures across the world.

³⁶² Response to the Article 6(1)(c) Decision, paragraph 221.

³⁶³ Reply to the SO, paragraphs 768-784.

Cargotec's market shares ranges from [10-20]% to [40-50]% across the different regions, whereas Konecranes' share ranges from [10-20]% to [30-40]%; Hyster's share from [5-10]% to [10-20]%, Sany's share from [5-10]% to [20-30]%. Taylor has a strong position in its home market (North America), a considerable smaller position in South America and is hardly present in Asia.

(B) Empty Container Handlers

- (402) Similarly to reach stackers, only a few OEMs have addressed the EEA demand for empty container handlers in the last 4 years. These are: the Notifying Parties, Hyster, CVS Ferrari, and to a much smaller extent Svetruck, Uplifting, FTMH and Sany.³⁶⁴ Several other OEMS have never sold in the EEA in the last four years, amongst others: Taylor (USA), ZPMC (China), Heli (China), Dalian Forklift (China), Clark (Australia), Komatsu (Japan), Mitsubishi (Japan), Hyundai, (South Korea), Doosan (South Korea).
- (403) In addition, the positions of the Parties and their competitors also seem to be different across world regions. The graph below comes from Cargotec's market analysis 2017-2021 presentation created in its ordinary course of business.

Figure 27: Cargotec's estimate of regional ECH market shares

[...]

Source: [Internal document reference].

- (404) Similarly to reach stackers, Cargotec seems to distinguish three different areas within Europe. More importantly, the market shares of Cargotec and of the competitors that Cargotec considers most important vary significantly across the regions of the world portrayed in the graph. Cargotec's market share ranges from [10-20]% to [40-50]%, whereas Konecranes' market share ranges from [5-10]% to [20-30]%, Hyster's share from [5-10]% to [30-40]%, Sany's share from [5-10]% to [20-30]%. Taylor has a strong position in its home market (North America), a considerable smaller position in South America and is hardly present in Asia.

(C) Heavy-duty forklift trucks (>10 tonne capacity)

- (405) In the last four years the EEA demand for heavy-duty forklift trucks (>10 tonne capacity) has been addressed by the Notifying Parties, Hyster, Svetruck, Kion/Linde, and to a much smaller extent Doosan and Hyundai. Several other OEMS have not sold in the EEA in the last 10 years, amongst others: Taylor (USA), ZPMC (China), XCMG (China), Heli (China), Dalian Forklift (China), Hangzhou-Hangcha Forklift (China), Toyota (Japan) LiuGong (China), Lonking (China).
- (406) In addition, the positions of the Notifying Parties and their competitors also seem to be different across world regions. The graph below comes from Cargotec's market analysis 2017-2021 presentation created in its ordinary course of business.

Figure 28: Cargotec's estimate of regional Heavy and medium FLT market shares

[...]

Source: [Internal document reference].

- (407) As with the other two types of mobile equipment, Cargotec distinguishes three areas in Europe. More importantly also in the market of heavy-duty forklift trucks

³⁶⁴ The Commission's market reconstruction.

(>10 tonne capacity), the positions of the Notifying Parties and their competitors vary significantly across world regions. Cargotec's market share ranges from [10-20]% to [40-50]%, whereas Konecranes' share ranges from [0-5]% to [20-30]%, Hyster's from [0-5]% to [20-30]%. Svetruck, only present in Europe, has a market share between [0-5]% and [20-30]% depending of the area while Taylor, only present in America, has a share of [20-30]% in North America of [10-20]% in Latin America.

(408) Konecranes also considers the market for forklift trucks, including heavy-duty forklift trucks (>10 tonne capacity) to be [...].³⁶⁵

(409) The Commission therefore considers that these differences in the structure of supply are indicative of different market dynamics and demand patterns across the world regions.

6.5.3.2. Notifying Parties and market participants views on competitive interaction in the EEA as compared to other regions

(410) The Notifying Parties also seem to analyse the competitive landscape and plan market strategies for the supply of these mobile equipment products on a regional basis.

(411) As shown in the Figure 26, Figure 27 and Figure 28, Cargotec monitors different regions and the competition it faces in those regions separately. The following figures come from presentation created in the ordinary course of business. It includes other product markets than reach stackers, empty container handlers and heavy-duty forklift trucks (>10 tonne capacity).

Figure 29: Cargotec's assessment of the competitive landscape in Northern Europe

[...]

Source: [Internal document reference].

Figure 30: Cargotec's assessment of the competitive landscape in Central Europe

[...]

Source: [Internal document reference].

Figure 31: Cargotec's assessment of the competitive landscape in Southern Europe

[...]

Source: [...].

(412) Cargotec not only monitors these regions in the Europe and neighbouring countries (such as Russia included in Northern Europe area, or Turkey and Morocco included in the Southern Europe area) but it also monitors competition in individual countries in the EEA, such as Belgium and The Netherlands, as shown in the figure below.

Figure 32: Cargotec's assessment of the competitive landscape in Belgium

[...]

Source: [Internal document reference].

³⁶⁵ Konecranes response to PN RFI 7, Annex QC39.1.

Figure 33: Cargotec's monitoring of the Netherlands

[...]

Source: [Internal document reference].

- (413) In none of these areas, Cargotec takes into consideration competitors that are not active in the EEA. In contrast, when Cargotec monitors other regions of the world it takes into account competitive interaction with other suppliers such as Taylor active in the USA, or Load Star active in India.³⁶⁶
- (414) Moreover, Cargotec plans market strategies on a regional basis. The figure below refers to actions to be adopted in the different regions for the supply of reach stackers and empty container handlers. Cargotec's recognises that to grow in the different areas it needs to adapt different strategies.

Figure 34: Cargotec's regional strategies for RS and ECH

[...]

Source [Internal document reference].

- (415) Also Konecranes seems to monitor world regions separately. The following figure shows the internal reporting on key strengths and weaknesses [...].

Figure 35: Konecranes' analysis of the competitive landscape in Europe

[...]

Source: [Internal document reference].

- (416) The figure below reports on sales in market share of mobile equipment in Europe. In Europe for mobile equipment, Konecranes seems to track the following competitors: [...]. Konecranes has similar documents for other regions of the world such as [...].³⁶⁷

Figure 36: Konecranes' Sales & Distribution in Europe

[...]

Source: [Internal document reference].

- (417) In particular with regards to forklift trucks, Konecranes has similar internal reporting. The figure below depicts its observations regarding its competitors' strengths and weaknesses in Europe and the actions to [...].

Figure 37: Konecranes' internal reporting on Forklift Trucks in Europe

[...]

Source [Internal document reference].

- (418) The next figure depicts [...].

Figure 38: Konecranes estimates of market shares in Europe in forklift trucks

[...]

Source [Internal document reference].

³⁶⁶ Response to RFI 17, Doc. ID 3711-037122, CAR-MAL-00011591.pptx.

³⁶⁷ Response to RFI 18, Doc. ID 3586-22510, M.10078 Cargotec Konecranes RFI 18-00936262.pptx.

- (419) In their Reply to the SO, the Notifying Parties stressed several times that their internal documents do not distinguish between EEA and non-EEA countries and therefore they cannot be used as evidence in support for an EEA market (which in their view is superficial).³⁶⁸ The Commission refers to the documents above to show that indeed in their ordinary course of business, the Notifying Parties do not assess their competitive constraints on a global level but on a regional level and that there are indeed differences across regions.
- (420) Market participants also recognise that the competitive interactions in the EEA are different from other regions in the world. When asked to describe the competitive landscape in the EEA, they take into account established suppliers in the EEA and recognise that other OEMs active in other parts of the world constitute no competitive constrain in the EEA.
- (421) One of the Notifying Parties' main competitor in the three market products (reach stackers, empty container equipment and heavy-duty forklift trucks (>10 tonne capacity)), which is also active in other regions of the world, considers "[s]ome Asian manufacturers, such as Sany and others have been trying to enter the European market in different waves. First, they started with direct imports from China, then they realised that they needed local support (e.g. in form of local distributors/service providers). This attempt was not really successful. Even if their price positions are challenging for the European producers, they need to build their distribution network to have the same quality standard not only with the product (i.e., regarding the need to meet European standards), but also for the service and maintenance. XCMG, ZPMC, Liugong. are the examples of companies that [are] trying to jump in the mobile harbour equipment space in Europe – some of these companies have entered into mobile equipment in their home-markets (e.g. China, but do not have the Stage 5 equipment required for European market entry)."³⁶⁹
- (422) Another competitor active in the three product markets is of the following view, "the northern European market is dominated by Kalmar and Konecranes. With regards to the Scandinavian market specifically, Kalmar and Konecranes are perceived as by far the market leaders. Svetruck is also active in the heavy-duty forklift trucks market. Hyster is a sizeable competitor in the Netherlands, Benelux and the United Kingdom but its presence is limited in Germany. CVS Ferrari is active in Germany, but is not perceived as having a strong market position. Chinese players are perceived as having a limited presence, or even quasi non-existent in the Northern European and German markets. In the Southern-European markets (i.e., France, Italy and Spain), Kalmar and Konecranes are perceived as major players but are not as strong as in Northern Europe, notably because Hyster has a larger presence. While CVS Ferrari is not perceived as a strong player in France and is only starting to be active in Spain, it is very active in Italy (its home market) where it is perceived as stronger than the Parties. Konecranes has a very limited presence in Italy". In its view "[t]he Chinese manufacturers that are entering the European Market of Mobile Equipment are Sany and ZPMC. Sany is particularly active in the reach stackers, empty container handler and FLT segments, while ZPMC is concentrating in reach stackers, empty container handlers and shuttle carriers and straddle carriers. Other Chinese makers like XCGM and SOCMA and Indian-made products like HYSTER/TIL are entering other non-European markets (e.g., the Far East and Africa)." Nonetheless, this competitor also considers "Chinese OEMs are strong when the price is the key consideration for the

³⁶⁸ Reply to the SO, paragraphs 777-780.

³⁶⁹ Agreed minutes of a call with a Competitor on 20 April 2021, Doc. ID 932.

customers. This is especially true in certain geographical markets such as China, the Far East, Africa and South America.” Therefore not in the EEA.³⁷⁰

- (423) A Chinese-headquartered EEA supplier of heavy-duty forklift trucks (>10 tonne capacity) and reach stackers is also of the view that the Parties are the main players in these product markets in the EEA. According to this competitor “[i]n Europe, in the market for heavy-duty forklift trucks, [The Company] competes with Cargotec, Konecranes, Hyster and Svetruck. The Parties are also active in heavy-duty forklift trucks with a lifting capacity above 32 tonnes, even above 50 tonnes, but [The Company] is not. (...). The Parties and [The Company] offer very similar reach stackers when looking at reach stackers used for standard yard operations (...). [The Company] is however not active in semi-laden container reach stackers, where the Parties are active (...). [The Company] is also active, but not as successful as intended, in high capacity reach stackers used in industrial activities such as in the windmill industry. (...). However, the market is shifting towards even higher required capacities such as above 55-65 tonnes, which [The Company] cannot currently offer. (...) Regarding barge loading activities in the inland waterway areas, Konecranes and Cargotec offer an eight to nine metres wheelbase reach stacker with a telescoping boom for laden container handling operations. Hyster is the only other OEM active in this equipment. [The Company] is concerned that post transaction, there will only be two players in this market: Hyster and the Merged Entity. (...). The market for reach stackers in Europe is the most concentrated, as aside of the Parties, only Hyster appears to be focusing significantly on this segment and other suppliers, like CVS Ferrari only have a minor presence”.³⁷¹
- (424) In addition, EEA customers are hardly aware of non-EEA suppliers. When asked whether they knew the following OEMs the vast majority of EEA customers responded they had not heard of the company: Goodsence, Hangzhou – Hangcha Forklift, Heli, Socma, XCMG, Dalian Forklift and Camblift. The very few that know these companies never tried to purchase mobile equipment from them. Although Taylor, Toyota/heist and ZPMC are better known to customers, the vast majority has not even tried to purchase mobile equipment from them.³⁷²
- (425) In conclusion, the Notifying Parties’ internal documents and market participants are of the view that in the EEA the competitive landscape is different from other regions of the world.

6.5.3.3. Demand characteristics and customer preferences

- (426) The Commission finds that demand characteristics and customer preferences lead to product differentiation in the EEA and affect the ability of OEMs active in other areas of the world to supply the EEA.
- (427) First, EEA customers seem to have certain preferences in terms of product characteristics, in particular certain ergonomic features, preference for components made in Europe. This is confirmed by both EEA and non- EEA suppliers.
- (428) A Chinese supplier, that has a small position in the EEA, had to adapt its manufacturing process and make changes to its product offering to be able to address the EEA demand and supply into the EEA, it called it “Europeanisation efforts”. In its own words, “[i]n 2013-2014 there was (...) an engineering team installed on [The

³⁷⁰ Agreed minutes with a Competitor on 3 May 2021, Doc. ID 1773.

³⁷¹ Agreed minutes with a Competitor on 22 April 2021, Doc. ID 657.

³⁷² Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 27.

Company]'s German site, and a lot of work and 'Europeanisation' efforts undertaken on the [The Company]'s machines (e.g. inclusion of specific components such as Kessler axles, Volvo engines, Bucher hydraulics). (...).Today, European customers still require some components to be included which are not part of the [The Company]'s design that is made in China. For example, on the control side, there is significant Europeanisation and the German site includes components that are not used in the rest of the world in the machines (i.e. a joystick from a Bavarian company, whereas in other parts of the world American joysticks are used).³⁷³ Another EEA-supplier also agrees that EEA customers are more demanding in certain aspects than others "[t]he customers in EEA has much more tendencies on ergonomics, noise level than others."³⁷⁴

- (429) One non-EEA supplier, when asked about a possible entry into the EEA, mentioned amongst others that it would need to adapt its product offering. It explained "*the current design of [The Company]'s container handling equipment would require certain modifications to meet European customer preferences, especially in relation to ergonomic features that are of importance to equipment operators in Europe. Operators in North America typically have less demanding requirements than those in Europe*".³⁷⁵ Another non-EEA supplier made it clear that customers preferences made it difficult to supply the EEA, "[c]ustomer preferences in equipment configurations, attachments, & driveline make it difficult to supply"³⁷⁶
- (430) In their Reply to the SO, the Notifying Parties referred to the questionnaire sent to competitors, where only a small minority of competitors responded that customers preferences make it difficult or more costly to supply in the EEA.³⁷⁷ These two respondents are in fact not active in the EEA, contrary to the majority of respondents that currently supply the EEA demand and therefore see no difficulties.³⁷⁸
- (431) The Notifying Parties also quoted one of their main competitors in mobile equipment, who acknowledge differences in customer preferences around the world saying however that these differences do not constitute a hurdle for them.³⁷⁹ Like the Notifying Parties, this competitor is already supplying other regions in addition to the EEA. The Notifying Parties referred the following response of another competitor: '*price sensitivity may vary from region to region while production costs for high quality products more or less remain the same*'. According to the Notifying Parties, this means that products do not significantly differ across regions given the product costs are not significantly different.³⁸⁰ However, what this quote shows is that customers have different willingness to pay across world regions.
- (432) In their Reply to the SO, the Notifying Parties also referred to questionnaire sent to customers, where the vast majority of respondents said they were able in practice to purchase from all suppliers active across the world for their EEA operations.³⁸¹ However, when asked whether they had in fact purchased, or intended to purchase from suppliers without an after-sales presence in the EEA, the majority of

³⁷³ Agreed minutes of a call with a Competitor on 22 September 2021, Doc. ID 3983.

³⁷⁴ Responses to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 76.1.

³⁷⁵ Agreed minutes of a call with a Competitor on 19 August 2021, Doc. ID 4133.

³⁷⁶ Responses to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 76.1.

³⁷⁷ Reply to the SO, paragraph 745.

³⁷⁸ Response to Q3 –Questionnaire to Competitors, Doc. ID 3582, question 76 and 76.1.

³⁷⁹ Reply to the SO, paragraph 749.

³⁸⁰ *Idem*.

³⁸¹ Reply to the SO, paragraph 746.

respondents said no.³⁸² Contrary to what the Notifying Parties claim, the fact that EEA customer say that they could purchase from all active suppliers across the world does not necessarily mean that they actually do it or that those suppliers can meet their demands.

- (433) In addition, Cargotec acknowledges that it has created an “Essential” line with simplified features and less expensive for customers outside the EEA. In Cargotec’s own words [internal document reference].³⁸³
- (434) Konecranes has [...] launched a basic product line “liftace” to compete in [...].³⁸⁴
- (435) The fact Cargotec and Konecranes have sold products of these lines in the EEA – as the Notifying Parties claim in their Reply to the SO – ³⁸⁵ does not change the fact that these lines were created to [...].
- (436) Second, the EEA customers also seem to prefer known and established brands to recent suppliers. The majority of customers consider the brand of the equipment an important to very important factor in their decision to purchase mobile equipment.³⁸⁶ A majority of competitors also recognises that brand plays an important role in the customers’ selection of a supplier.³⁸⁷ A mobile equipment supplier that is active in the EEA in other container handling product markets (particularly in STS cranes) says “[i]t has not yet sold any units in Europe, as clients are not willing to switch suppliers (as they are unfamiliar with the equipment from new suppliers)”.³⁸⁸ As reach stackers customer explained “[The Company] does not consider non-EEA, e.g. Chinese suppliers, of RS to be real viable alternatives to the offering of the parties. This is due in particular to the lower quality and reliability of their machines and their lack of a local service capability, [redacted]. [The Company] understands that Chinese entrants may be backed and/or encouraged by the Chinese State, but this does not make them viable alternatives in [The Company]’s eyes: building a reputation for high-quality reliable products backed by skilled local service capabilities depends on building a track record over time, rather than the extent of a company’s financial backing as such”.³⁸⁹
- (437) The Parties have alleged that particularly in relation to reach stackers, customers in other neighbouring countries of the EEA have similar preferences and requirements, however the Parties have not supported their claim. More importantly, there is no OEM based in those countries that supplies or could potentially supply the EEA that would justify the Commission to extend the geographic scope of the market to include those countries.
- (438) In conclusion, the Commission finds that the EEA customers have different expectations and requirements, which seem to lead to product differences and more importantly to the ability of OEMs to compete in the EEA.

³⁸² Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, questions 10.1, 10.2, 10.3, 11.1, 11.2 and 11.3.

³⁸³ Response to RFI 24, question 9.

³⁸⁴ Response to RFI 24, question 9, Annex QK9.2, page 4.

³⁸⁵ Reply to the SO, paragraph 750.

³⁸⁶ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question E.B.2.

³⁸⁷ Response to Q1 – Questionnaire to Competitors, Doc. ID 3154, question E.B.9.

³⁸⁸ Agreed Minutes of a Call with a Competitor on 23 April 2021, Doc. ID 1779.

³⁸⁹ Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 28.1.

6.5.3.4. Effects of differences in the regulatory environment

- (439) The Commission found that regulatory differences, in particular safety and electrification lead to additional significant differences in product requirements and appear to affect the ability of OEMs to supply the EEA.
- (440) A majority of competitors consider that differences in regulations make it difficult and/or costly to supply mobile equipment in the EEA.³⁹⁰ The regulatory environment in the EEA -is more demanding than other regions of the world and that has an impact on price according to the following explanations of competitors:
- (1) A supplier of heavy-duty lift trucks in the EEA explained: “[t]he regulations make the machines specialized and make [them] expensive. So less price competitiveness and production scale”.
 - (2) An OEM that the three types of mobile equipment outside the EEA stated, “[w]e currently supply mobile equipment per Indian Standards. As EU regulations are generally stricter, we may have challenges to supply mobile equipment.”
 - (3) An OEM that sold a few heavy-duty forklift trucks (>10 tonne capacity) in the EEA stated “[t]he emission regulation is getting stricter”.³⁹¹
- (441) An important competitor of the Notifying Parties active outside the EEA stated “*the CE stamp certification is the main one [difficulty] for us*”³⁹². This OEM later clarified “*with the initially relatively low number of units [the Company] could expect to sell in Europe, it would not be worth the expense to undertake the necessary CE certificate registration for the products. While the Company does not have recent quotes for the costs of the CE certificate, it estimates it would cost mid six figures to achieve at least – if one were to certify the entire product line, this would probably reach into the seven figures*”.³⁹³
- (442) The relevance of the regulatory environment on the ability to supply is such that Cargotec defines regions according to the stringency of the respective emission regulation and for each of these regions it estimates its market shares in reach stackers and empty container handlers³⁹⁴ The Notifying Parties contended that other countries in the world have the same emission standard as in “Europe”³⁹⁵ The fact that the same EU4-EU5 is applied by other countries outside the EEA does not call into question, the need that Cargotec has to track the differences and to treat its demand differently according to the respective requirements.
- (443) When assessing the broader regulatory environment, in addition to the regulations that stipulate specific standards and the requirements mobile equipment must meet, empty container handlers and forklift trucks, including heavy lifting forklift trucks, manufactured outside the EEA are subject to customs tariffs of 4.5% when imported into the EU customs Union from China.³⁹⁶

³⁹⁰ Responses to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 75.

³⁹¹ Responses to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 75.1 (three quotes).

³⁹² *Idem.*

³⁹³ Agreed minutes of a call with a Competitor on 19 August 2021, Doc. ID 4133.

³⁹⁴ Cargotec’s response to RFI 17, Doc. ID 3659-54576.

³⁹⁵ Reply to the SO, paragraphs 771 and 772.

³⁹⁶ Both products fall into the Common Nomenclature (CN code) heading 8427 to which a 4.5% tariff is attributed. See Annex I to the Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff, as amended by Council Regulation (EC)

- (444) Moreover, as the next internal documents show, both Notifying Parties are well aware of these custom tariffs. The passage below is extracted from an e-mail exchange between Cargotec's employees, including the director of business development in Kalmar's counterbalance container handling division, and a third party consultancy firm, where the latter lists the different custom duties for imports from China into Europe: *'please find the general duty rates of the machines applicable the EU when imported from China.*

Reachstacker 8426 41 00 => 0 %

Empty Container Handler,

Forkli diesel 8427 20 11 => 4,5 %

Forkli electric 8427 10 10 => 4,5 %

Straddle Carrier 8426 12 00 => 0 %

Terminal Tractor 8701 95 90 => 7 %

*There is no duty preference arrangement or FTA between China and the EU.*³⁹⁷

- (445) The Cargotec however argued that these tariffs are relatively low and that it still imported from China [...] of its sales of empty container handlers in the Europe in the period 2018-2020.³⁹⁸
- (446) Also Konecranes is well aware that empty container handlers and forklift trucks are subject to custom tariffs when imported into the EEA from China. The following extract [...]. It reads, [internal document reference].³⁹⁹
- (447) In their proposal of a wider European market (EEA together with Ukraine, Turkey, Switzerland and the UK) particularly for reach stackers, the Notifying Parties argue that these countries have similar regulatory environments but they have not demonstrate it. More importantly, there is no OEM based in those countries that supplies or could potentially supply the EEA. Moreover, the suppliers that currently supply these countries and do not supply the EEA have not been able to address the EEA demand.
- (448) In conclusion, the relevant regulatory differences seem to lead to significantly different product requirements in the EEA and seem to have an effect on the ability of outside EEA suppliers to address the EEA demand for the three types of mobile equipment products: reach stackers, empty container handlers and heavy-duty forklift trucks (>10 tonne capacity).

6.5.3.5. Need for regional access

- (449) The Commission finds that regional access with regional sales system and regional after-sales support are very important for the supply of reach stackers, empty container handlers and heavy-duty forklift trucks (>10 tonne capacity) in the EEA and affect customer preferences.

No 2261/98 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff.

³⁹⁷ Cargotec's response to RFI 17, CAR-KAR-00162253.pdf, Doc. ID 3660-41681.

³⁹⁸ Reply to the Letter of Facts, paragraph 79.

³⁹⁹ Konecranes' reply to RFI 18, M.10078 Cargotec Konecranes RFI 18-00317743.pdf; Doc. ID 3586-94327.

- (450) First, the main EEA suppliers address the EEA demand from assembly lines in the EEA.
- (451) A Chinese competitor, who according to the Notifying Parties, benefits from low production costs in China, had the need to build an assembly line in the EEA to satisfy the specificities of EEA customers. This OEM explained, “[g]enerally [the Company] seeks to undertake a range of works in China because of the lower labour costs. However its distribution strategy is to have stock equipment in Europe in order to ensure short lead times to European customers. Having stock kits in Europe saves on the shipping time from China to Europe when an order comes in.(...). Overall, considering deliveries to European customers, somewhat less than half of the units are built fairly close to customer preferences in China, the other half is significantly modified for European customers at [The Company]’s German site.”⁴⁰⁰
- (452) In fact, OEMs either build regional assembly factories or acquire regional players in order to be active in a certain region of the world. For instance, Cargotec has acquired the Indian company Indital, which manufactures mobile equipment with different standards and under a brand not used in the EEA. Konecranes has [...].⁴⁰¹ Hyster acquired an Indian company TIL and a Chinese company Maximal that focus on their respective home markets.
- (453) In fact, the Parties themselves acknowledge that in the mobile equipment markets as well as in the terminal tractors markets ‘sales via regional/local distributors are much more prevalent compared to gantry cranes and straddle/shuttle carriers’.⁴⁰²
- (454) Even when [...].⁴⁰³
- (455) Second, all EEA suppliers have sales and after-sales service networks in the EEA. The importance of such networks was confirmed by the market investigation. The vast majority of competitors recognised that sales and after-sales networks are a very important asset in their ability to compete effectively in the EEA.⁴⁰⁴ An important EEA supplier explained “North American and European customers often have service back-up requirements that make difficult for any supplier not having adequate sales/service channel to have any success in such markets”.⁴⁰⁵
- (456) Indeed, a majority of customers value the proximity to the OEMs’ (or its dealers/distributors) after-sales services as a very important factor they take into account when purchasing mobile equipment.⁴⁰⁶ As a terminal operator explained, “[w]e usually try to choose supplier with well established service/maintenance premises in our country and sometimes pay even more if other don’t have service locally. Through the years it pays back and a lot”.⁴⁰⁷ Another clarified: “[p]roximity of OEMs/distributor’s service/maintenance location [is very important because] availability and reliability are the most important criteria when choosing port equipment.”⁴⁰⁸ Another testified ‘[d]uring its last tender for empty container handlers (for reach stackers and forklifts the market situation is broadly the same),

⁴⁰⁰ Agreed minutes of a call with a Competitor on 22 September 2021, Doc. ID 3983.

⁴⁰¹ Response to RFI 24, Annex QK7.9, page 5.

⁴⁰² Notifying Parties’ submission of 2 September 2021, “Follow-up submission after SOP on 22 July 2021”.

⁴⁰³ Response to RFI 17, Doc. ID 3739-16199, CAR-HEI-00018875.msg.

⁴⁰⁴ Responses to Q1 – Questionnaire to Competitors, Doc. ID 3154, question E.B.9.

⁴⁰⁵ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 76.1.

⁴⁰⁶ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question E.B.1.

⁴⁰⁷ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question E.B.2.1.1.

⁴⁰⁸ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question E.B.2.1.1.

the Company invited all available players on the mobile equipment market to bid. Five OEMs submitted offers: Kalmar, Konecranes, Hyster, Sany and CVS-Ferrari. Both CVS-Ferrari's and Sany's offerings were not accepted as they did not offer any local service in Lithuania (Sany has a service offering in Latvia, but this is too far away). The Company's choice is therefore limited to Hyster, Kalmar and Konecranes which have local dealers in Lithuania'.⁴⁰⁹

- (457) As a distributor of Konecranes explained: '[t]he Company is constantly building its service organisation to be able to offer an efficient servicing. Some 170 [Company] employees are on the road every day for that purpose. The service offering is important because customers do not purchase twice from a supplier or distributor, if that supplier or distributor does not offer a good after-sales service.'⁴¹⁰ Even when the after-sales services belong to a different market and there are other services providers in addition to the OEMs themselves, contrary to what the Notifying Parties' claim these facts do not diminish the importance of a regional after-sales service in order to be able to sell the equipment in the first place.
- (458) In fact, when asked whether they would consider purchasing mobile equipment from an OEM, which did not have after-sales presence in the region, the vast majority of customers responded negatively.⁴¹¹
- (459) Moreover, when faced with a price increase in the EEA, the majority of customers did not even tried to purchase from an OEM not established in the EEA. This holds for reach stackers, empty container handlers and heavy-duty forklift trucks (>10 tonne capacity).⁴¹² One customer explained, "[i]n addition to the performance parameters, the availability of a device is the decisive criterion. That is why the local availability of spare parts and service is an extremely important aspect at all times. The risk of implementing a non-EU provider locally and initially operating a machine without service is unmanageably high. The risk would be acceptable when it comes to individual machines and if operational safety can be guaranteed through the principle of backups. However, when it comes to the elementary part of the vehicle fleet, availability always has priority."⁴¹³

(A) Reach Stackers

- (460) All reach stackers EEA suppliers have a sales and after-sales presence in the EEA. Moreover, except for Liebherr, which has a smaller position in the market, all other EEA suppliers serve the EEA demand from assembly lines in the EEA; Liebherr supplies from the UK which until recently belong to the EEA. In the triennium 2018-2020, Cargotec shipped [...] reach stackers from China to the EEA, corresponding to less than [...] % of its total sales in the EEA.⁴¹⁴ [...] Konecranes' sales in the EEA came from its EEA assembly factory.⁴¹⁵
- (461) The majority of competitors considers very important to have an after-sales presence in order to be able to sale reach stackers.⁴¹⁶ One competitor explained, "*Reach*

⁴⁰⁹ Agreed minutes of a call with a Customer on 7 April 2021, Doc. ID 675.

⁴¹⁰ Agreed minutes of a call with a Distributor of mobile equipment on 19 April 2021, Doc. ID. 881.

⁴¹¹ Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 26.

⁴¹² Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, questions 17.1, 17.2 and 17.3.

⁴¹³ Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 17.1.1.

⁴¹⁴ Response to RFI 13, Annex QC16.

⁴¹⁵ Response to RFI 13, Annex QK16.

⁴¹⁶ Responses to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 78.1.

*Stackers are often sold to companies that do not have their own internal service organization and in any case an effective After Sale Service organization with local presence is always required to be successful in this product market /segment". Another one specified, "[w]ithout well trained and equipped local support you do not even qualify to bid on tenders of major customers like CMA/CGM, APMT, DPW, MSC. Due to the relative low volume of the global market (compared to for example Excavators, Wheel loaders) one can't assume independent service is available and competent. As much is specialized expensive equipment uptime is important, generally back up equipment availability is limited. RST are often used in a 24/7 operation with big impact on logistic performance when equipment is down."*⁴¹⁷

- (462) Moreover, it is not easy to establish such presence. As a competitor explained, "[i]t is difficult to find dealers that have the scale and knowledge and capital to be competitive. This means the OEM will need to train, equip and finance smaller dealers to grow. For that you must be able to have significant volume. If there is a competitive dominant player already established it is very hard to enter that market."⁴¹⁸
- (463) The vast majority of customers did not purchase and do not consider to purchase reach stackers from OEMs, which do not have an after-sales presence in the region where they are active.⁴¹⁹ After-sales presence is a very important or important criterion in the decision to purchase reach stackers for the vast majority of customers.⁴²⁰ This view is also shared by GTO that generally have in-house maintenance and repair capabilities. A GTO explained, "[a]vailability of spares and after sales support is an important parameter for shortlisting OEM for equipment purchase". Another clarified "[i]t is very important considering two factors. First due to the high technology incorporated in all the modern Reach stackers, at many electronic malfunctions only the authorized dealer has access for unlocking the systems, and second for the availability and quick purchase of spare parts. Otherwise, for the malfunctions we are forced to communicate via email or phone with the manufacturer which means a lot of waste of time, and for the spare parts we are forced to keep high stock in our warehouse, with all the financial consequences".⁴²¹
- (464) Worth noting that this GTO seems to have a very different opinion from the Notifying Parties on the need for after-sales support in relation to electric equipment. The Notifying Parties submitted, [Parties' assessment of electric equipment].⁴²² The Notifying Parties' own internal documents seem to be closer to GTO view than the one they submitted. The following slide comes from Cargotec's presentation on the strategy for mobile equipment. Together with product developments such as electrical reach stackers, and empty container handlers, another important element of the strategy is to improve customer support as depicted in the figure below.

⁴¹⁷ Responses to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 78.1.1.

⁴¹⁸ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 79.1.1.

⁴¹⁹ Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, questions 10.1 and 11.1.

⁴²⁰ Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 7.1.

⁴²¹ Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 7.1.1.

⁴²² Notifying Parties' submission on Mobile Equipment, 8 June 2021, paragraph 21.

Figure 39: [...]

[...]

Source: [Internal document reference].

- (465) As shown in the figure above, customer support continues to play an important role in the OEM's ability to compete including to address the need for electric mobile equipment. In the same presentation, Cargotec [...] as shown in the next figure.

Figure 40: [...]

[...]

Source: [Internal document reference].

- (466) In the view of the above, the Commission takes the view that after-sales presence is also important regarding electric mobile equipment.

(B) Empty Container Handlers

- (467) All EEA suppliers have a sales and after-sales presence in the EEA and the main players have also assembly lines in the EEA from which they serve the EEA demand. In the triennium 2018-2020, Cargotec however shipped [...] ECH from China to the EEA, corresponding to [...] of its sales in the EEA⁴²³ In the same period, Konecranes shipped [...] ECH from China to the EEA, corresponding to less than [...] % of its sales in the EEA.⁴²⁴
- (468) Similarly to reach stackers, a majority of competitors considers very important to have an after-sales presence in order to be able to sale empty container handlers.⁴²⁵ OEMs active in both reach stackers and empty container handlers stated that situation is identical for both types of products. One explained, *"ECH are often sold to companies that do not have their own internal service organization and in any case an effective After Sale Service organization with local presence is always required to be successful in this product market /segment"*.⁴²⁶
- (469) Like in the reach stackers market, the majority of competitors recognise that is not easy to establish such presence as it takes time and investments.⁴²⁷ An outside EEA supplier declared, *"[s]ince we are not yet active in the EEA, a significant amount of time, investment, & manpower will be required to establish a presence there"*. An EEA supplier explained *"[s]ome markets are very hard to penetrate because of the strength of the distribution channel (Sale and Service) of incumbent players"*.⁴²⁸
- (470) The vast majority of customers did not purchase and do not consider to purchase empty container handlers from OEM, which do not have an after-sales presence in the region where they are active.⁴²⁹ Similarly to reach stackers, after-sales presence is a very important or important criterion in the decision to purchase empty container handlers for the vast majority of customers.⁴³⁰ This view is shared by GTO and

⁴²³ Response to RFI 13, Annex QC16.

⁴²⁴ Response to RFI 13, Annex QK16.

⁴²⁵ Responses to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 78.2.

⁴²⁶ Responses to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 78.2.1.

⁴²⁷ Responses to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 79.2.

⁴²⁸ Responses to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 79.2.1.

⁴²⁹ Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, questions 10.2 and 11.2.

⁴³⁰ Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 7.2.

smaller operators. A smaller terminal operator declared *“is very important for us to put full service maintenance in the purchase contract”*. One GTO explained, *“[i]t is very important considering two factors. First due to the high technology incorporated in all the modern Empty container handlers, at many electronic malfunctions only the authorized dealer has access for unlocking the systems, and second for the availability and quick purchase of spare parts. Otherwise, for the malfunctions we are forced to communicate via email or phone with the manufacturer which means a lot of waste of time, and for the spare parts we are forced to keep high stock in our warehouse, with all the financial consequences.”*⁴³¹

- (471) The Commission notes that similarly to electric reach stackers, after-sales presence is important for electrical empty container handlers for the reasons presented in Recitals (464) and (465) above.

(C) Heavy-duty forklift trucks (>10 tonne capacity)

- (472) All EEA suppliers have a sales and after-sales presence in the EEA and the main players also have assembly lines in the EEA from which they serve the EEA demand. In the triennium, 2018-2020, both Notifying Parties served the EEA demand from their assembly factories in the EEA.⁴³²
- (473) Similarly to reach stackers and empty container handlers, a majority of competitors considers very important to have an after-sales presence in order to be able to sell heavy-duty forklift trucks (>10 tonne capacity).⁴³³ One OEM, which has sold a few units four and three years ago, recognises *“[s]ervicing is very important factor for customers to select a forklift supplier”*. Another OEM with a small presence in the EEA explained, *“[f]orklift products need periodic maintenance. Having a local service/after-sales presence is therefore important to generate sales since it is one of the key decision factors.”*⁴³⁴
- (474) Like in the reach stackers and empty container handlers markets, a majority of competitors also considers it takes time and investments to build such a presence.⁴³⁵
- (475) The vast majority of customers did not purchase and do not consider to purchase empty container handlers from OEM, which do not have an after-sales presence in the region where they are active.⁴³⁶ After-sales presence is also a very important or important criterion in the decision to purchase heavy-duty forklift trucks (>10 tonne capacity) for the vast majority of customers.⁴³⁷ A GTO explained *“[i]t is very important considering two factors. First due to the high technology incorporated in all the modern forklifts, at many electronic malfunctions only the authorized dealer has access for unlocking the systems, and second for the availability and quick purchase of spare parts. Otherwise, for the malfunctions we are forced to communicate via email or phone with the manufacturer which means a lot of waste*

⁴³¹ Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 7.2.1.

⁴³² Response to RFI 13, Annex QC16 and Annex QK16.

⁴³³ Responses to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 78.3.

⁴³⁴ Responses to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 78.3.1.

⁴³⁵ Responses to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 79.3.

⁴³⁶ Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, questions 10.3 and 11.3.

⁴³⁷ Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 7.3.

*of time, and for the spare parts we are forced to keep high stock in our warehouse, with all the financial consequences”.*⁴³⁸

- (476) In conclusion, the Commission finds that a regional footprint including assembly factories, sales and after-sales networks are of significance for the sale of reach stackers, empty container handlers and heavy-duty forklift trucks (>10 tonne capacity).

6.5.4. Conclusion

- (477) The Commission therefore finds the market positions of suppliers in the EEA are distinct from other regions in the world. Differences in the structure of supply are indicative of different market dynamics and demand patterns across the world regions. This finding is confirmed by the Notifying Parties’ internal documents and market participants, which view the competitive landscape in the EEA as being different from other regions of the world, and thus analyse the competitive landscape on a regional basis and plan market strategies for the supply of mobile equipment products accordingly. Furthermore, demand characteristics and customer preferences, based on specific expectations and requirements, lead to product differentiation in the EEA and affect the ability of OEMs active in other areas of the world to compete in the EEA. Differences in product requirements find also its source in regulatory differences, in particular safety and electrification, which affect the ability of outside EEA suppliers to address the EEA demand. Finally, a regional footprint including assembly factories, sales networks and after-sales support are very important for the supply in the EEA and affect customer preferences.
- (478) In the view of these findings, the Commission takes the view that the relevant geographic market for each of the reach stackers, empty container handlers and heavy-duty forklift trucks (>10 tonne capacity) is EEA wide.

6.6. Spreaders

6.6.1. Crane spreaders

6.6.1.1. The Commission’s past practice

- (479) The Commission did not consider crane spreaders in its previous decisional practice.

6.6.1.2. The Notifying Parties’ views

- (480) The Notifying Parties consider that the spreader markets are worldwide in scope because spreaders are standardised across the world and are manufactured to fit the standard container sizes and shapes used globally. Spreaders are typically manufactured in a few production sites and shipped globally to OEMs, terminal operators or retrofit companies with low transport cost below 5% of the price of a spreader. Moreover, there are no meaningful geographic, economic or legal barriers to the trade of spreaders globally.⁴³⁹

6.6.1.3. The Commission’s assessment

- (481) The market investigation indicated that the location of the supplier is not important for the purchase decision⁴⁴⁰. As to the structure of the market, the majority of

⁴³⁸ Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 7.3.1.

⁴³⁹ Form CO, Chapter 3, paragraphs 297-300.

⁴⁴⁰ Response to Q1 – Questionnaire to Competitors, Doc. ID 3154, question C.B.1. and Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question C.B.1.

competitors indicated that the large spreader suppliers are present worldwide, while small local suppliers are specific to some regions⁴⁴¹.

- (482) In addition, the majority of competitors expressing an opinion found difficulties to compete on Asian and in particular on the Chinese market⁴⁴². To this effect, a competitor explained that *'The Chinese market is basically only accessible for Chinese suppliers of cranes, mobile and horizontal equipment and spreaders'*, while another confirmed by stating *'We experience that it is more difficult to compete in Asia with crane spreaders. This mainly because our competitors produce in that region'*⁴⁴³.
- (483) Finally, the majority of competitors expressing their view found that the characteristics of demand are not similar across the different regions of the world. Differences consist in the size and type of containers to be grabbed by the crane spreaders and by the complexity of the spreaders typically required by consumers of specific regions of the world. To this effect, a competitor explained that *'Especially for intermodal spreaders, there are different requirements in North America as compared to Europe because of different types of containers (WTP, 53ft, ...).'* Another confirmed by stating that *'In the US there is a demand for spreaders that can handle wider containers, so called WTP containers'* or yet another competitor explained that *'Customers preferences and needs differs with the handling required. As example, WTP containers (North America) require specific spreader characteristics but also intermodal handling require spreaders combining container and trailer handling.'* Last competitor mentioned that *'(t)he characteristics of demand are related to the maturity of the different markets/ports and the size of the container terminals. Large container terminals will handle large ships, which gives higher requirements for the spreaders. Less developed areas/ports/container terminals require spreaders with lower complexity.'*⁴⁴⁴
- (484) Based on the abovementioned, the Commission considers that the relevant geographic market for crane spreaders is as at least EEA wide for the purposes of this decision.

6.6.2. Mobile equipment spreaders

6.6.2.1. The Commission's past practice

- (485) The Commission did not consider mobile equipment spreaders in its previous decisional practice.

6.6.2.2. The Notifying Parties' views

- (486) The Notifying Parties consider that the spreader markets are worldwide in scope because spreaders are standardised across the world and are manufactured to fit the standard container sizes and shapes used globally. Spreaders are typically manufactured in a few production sites and shipped globally to OEMs, terminal operators or retrofit companies with low transport cost below 5% of the price of a spreader. Moreover, there are no meaningful geographic, economic or legal barriers

⁴⁴¹ Response to Q1 – Questionnaire to Competitors, Doc. ID 3154, question C.B.2.

⁴⁴² Response to Q1 – Questionnaire to Competitors, Doc. ID 3154, question C.B.3.

⁴⁴³ Response to Q1 – Questionnaire to Competitors, Doc. ID 3154, question C.B.3.1.

⁴⁴⁴ Response to Q1 – Questionnaire to Competitors, Doc. ID 3154, question C.B.5.1.

to the trade of spreaders globally⁴⁴⁵ and both main mobile equipment spreaders manufacturers have similar market shares in the EEA and worldwide⁴⁴⁶.

6.6.2.3. The Commission's assessment

(487) Based on the market investigation and all the evidence available to it, the Commission considers that the geographic relevant market for mobile equipment spreaders is at least EEA wide.

(A) Structure of demand and supply in EEA compared to other regions

(488) While the market investigation provided some evidence of differentiation in the supply structure, the market structure on the merchant market at EEA and at a broader level appears to be similar.

(489) First, there are only two manufacturers of mobile equipment spreaders active on the merchant market worldwide, Bromma and Elme. Bromma has [0-5]% market share in the EEA and [0-5]% market share worldwide. Bromma's merchant market share is very low compared to its in-house mobile equipment spreaders production. The vast majority of Bromma's mobile equipment spreaders is consumed in-house by Kalmar within the Cargotec group. Elme, the only independent mobile equipment spreaders supplier, has [80-90]% market share in the EEA and [80-90]% market share worldwide⁴⁴⁷.

(490) Second, the needs for mobile equipment spreaders not covered by Bromma or Elme are satisfied by in-house mobile equipment spreader provision by OEMs, as shown in Figure 41 and Figure 42 below.

(491) The vast majority of the merchant market of the mobile equipment spreaders is supplied by Elme, a Swedish company, with a single production facility in Sweden.⁴⁴⁸ The share of Elme is similar irrespective of whether a market at the EEA or at a broader level is considered. Bromma is a company established in Singapore with its single production facility located in Malaysia.⁴⁴⁹

(492) In regions outside EEA, the supply of mobile equipment spreaders is covered to a significantly higher extent by in-house production of mobile equipment OEMs and none of the mobile equipment spreader manufacturers outside EEA sells them on a merchant market to EEA mobile equipment manufacturers.

(493) In conclusion, while the demand in other world regions is fulfilled predominantly in-house, whereas large manufacturers providing mobile equipment in the EEA rely on the sourcing of mobile equipment spreaders on the merchant market, thus pointing at a different demand structure, the few options available on the merchant market appear to be similar as represented by similar shares at EEA and global level.

(B) Demand characteristics and customer preferences

(494) The majority of respondents to the market investigation replied that the location of the supplier of spreaders was not an important factor in their purchase decision.⁴⁵⁰ Nevertheless, most of the respondents expressing their view specified that they

⁴⁴⁵ Form CO, Chapter 3, paragraphs 297-300.

⁴⁴⁶ Reply to the SO, paragraph 1242.

⁴⁴⁷ M.10078 – RFI 28 – Annex QC4 – Confidential. Doc. ID 3839.

⁴⁴⁸ Agreed minutes of a call with a competitor of 2 September 2021, Doc. ID 4037, paragraph 4.

⁴⁴⁹ Form CO, Chapter 3, paragraph 298.

⁴⁵⁰ Response to Q1 – Questionnaire to Competitors, Doc. ID 3154, question C.B.1. and Response to Q2 – Questionnaire to Customers, Doc. ID 3153, questions C.B.1.

would prefer EEA based manufacturers⁴⁵¹. A customer noted that potential alternative suppliers of mobile equipment spreaders from China cannot be considered as viable alternatives to Bromma and Elme⁴⁵².

- (495) Concerning generally all types of spreaders, according to the majority of market participants expressing their view, the demand characteristics for spreaders are not the same across different regions of the world⁴⁵³. For example, a competitor mentioned that *‘Especially for intermodal spreaders, there are different requirements in North America as compared to Europe because of different types of containers (WTP, 53ft, ...)*⁴⁵⁴, while another indicated similarly that *‘Customers preferences and needs differs with the handling required. As example, WTP containers (North America) require specific spreader characteristics but also intermodal handling require spreaders combining container and trailer handling.*⁴⁵⁵ The majority of competitors expressing their view also indicated that the same large suppliers are active across the different regions while smaller local suppliers are specific to some smaller regions⁴⁵⁶.
- (496) The competitors expressing their view in the market investigation also highlighted these regional differences in the mobile equipment spreaders. One competitor mentioned that *‘Typically truck (mobile equipment) OEM's with "in house" manufacturing of spreaders are competitors with strong local approach. E.g. Taylor (US), SANY (China) but also other small mobile equipment OEM's specifically in China where the majority of the spreaders installed on their trucks are "in house" manufactured.*⁴⁵⁷, while other one added that *‘In Asia the "copies" of ELME or Bromma by Sany, TIL, ZPMC are accepted by some customers. But large port operators generally specify ELME or Bromma as the only accepted brands also in Asia.*⁴⁵⁸ and another one concluded that *‘mobile equipment- each region and equipment supplier has different options.*⁴⁵⁹
- (497) Moreover, internal documents of the Notifying Parties demonstrate that vast majority of the mobile equipment spreaders market share is located in EMEA, in particular 78% of the reach stacker spreader market share and 75% of the Empty Container Handler spreaders market share.

Figure 41: Reach Stacker Spreader Market Share - by Region

[...]

Source: [Internal document reference].

Figure 42: Empty Container Handler Spreaders Market Share - by Region

[...]

Source: [Internal document reference].

⁴⁵¹ Response to Q1 – Questionnaire to Competitors, Doc. ID 3154, question C.B.1.2.

⁴⁵² Agreed minutes of a call with a Competitor on 23 August 2021, Doc. ID 4278, paragraph 9.

⁴⁵³ Response to Q1 – Questionnaire to Competitors, Doc. ID 3154, question C.B.5.

⁴⁵⁴ Response to Q1 – Questionnaire to Competitors, Doc. ID 3154, question C.B.5.1.

⁴⁵⁵ Response to Q1 – Questionnaire to Competitors, Doc. ID 3154, question C.B.5.1.

⁴⁵⁶ Response to Q1 – Questionnaire to Competitors, Doc. ID 3154, question C.B.2.1.

⁴⁵⁷ Response to Q1 – Questionnaire to Competitors, Doc. ID 3154, question C.B.2.2.

⁴⁵⁸ Response to Q1 – Questionnaire to Competitors, Doc. ID 3154, question C.B.2.2.

⁴⁵⁹ Response to Q1 – Questionnaire to Competitors, Doc. ID 3154, question C.B.2.2.

- (498) Further internal evidence of the Notifying Parties corroborates the fact that Elme is the market leader in mobile equipment spreaders globally, Bromma being the strong second. The rest of the market is shared among mobile equipment manufacturers producing spreaders internally.

Figure 43: Global mobile equipment spreader market structure

[...]

Source: [Internal document reference].

(C) Conclusion

- (499) Based on the above information, in spite of the global presence of the main mobile equipment manufacturers, Elme and Bromma, certain differences exist in mobile equipment spreaders market across various regions. The only independent mobile equipment spreader manufacturer is located in the EEA, while the US and the Asian markets have a significantly stronger presence of integrated manufacturers with in-house mobile spreader manufacturers. Moreover, the respondents to the market investigation mention regional differences due to the size of container, strong local approach of mobile equipment manufacturers and voiced a preference for EEA based mobile equipment spreaders.
- (500) In view of the fact that the share on the merchant market of the main options available to customers are similar at the EEA and at the global level, and because of the assessment of possible customer foreclosure effects on suppliers of mobile equipment spreaders requires the assessment of the impact on the activities of such competitor, the Commission considers that the relevant geographic market for mobile equipment spreaders can be considered as at least EEA wide for the purposes of the customer foreclosure assessment.

7. COMPETITIVE ASSESSMENT

7.1. Legal Framework

- (501) Under Article 2(2) and (3) of the Merger Regulation, the Commission must assess whether a proposed concentration would significantly impede effective competition in the internal market or in a substantial part of it, in particular through the creation or strengthening of a dominant position. Depending on the position of the Parties in the supply chain, a concentration may entail horizontal and/or non-horizontal effects.
- (502) Horizontal effects arise when the parties to a concentration are actual or potential competitors in one or more of the relevant markets concerned. The Commission appraises horizontal effects in accordance with the guidance set out in the Horizontal Merger Guidelines.⁴⁶⁰
- (503) Non-horizontal effects arise when the parties to a concentration operate in different levels of the supply chain in certain relevant markets (vertical effects) or when the Parties operate in closely related markets (conglomerate effects). The Commission appraises non-horizontal effects in accordance with the guidance set out in the Non-Horizontal Merger Guidelines.⁴⁶¹

⁴⁶⁰ Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings ('Horizontal Merger Guidelines'), OJ C 31, 5.2.2014.

⁴⁶¹ Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings ('Non-Horizontal Merger Guidelines') (2008/C 265/07).

- (504) Both Horizontal and Non-Horizontal Guidelines distinguish between two main ways in which mergers between actual or potential competitors on the same relevant market may significantly impede effective competition, namely non-coordinated and coordinated effects.
- (505) In horizontal mergers, non-coordinated effects may significantly impede effective competition by eliminating important competitive constraints on one or more firms, which consequently would have increased market power, without resorting to coordinated behaviour. In that regard, the Horizontal Merger Guidelines consider not only the direct loss of competition between the merging firms, but also the reduction in competitive pressure on non-merging firms in the same market that could be brought about by the merger.⁴⁶²
- (506) Generally, a merger giving rise to such horizontal non-coordinated effects would significantly impede effective competition by creating or strengthening the dominant position of a single firm. Furthermore, mergers in oligopolistic markets involving the elimination of important competitive constraints that the merging parties previously exerted upon each other together with a reduction of competitive pressure on the remaining competitors may, even where there is little likelihood of coordination between the members of the oligopoly, also result in a significant impediment to competition.⁴⁶³
- (507) In other words, a horizontal merger may significantly impede effective competition not only by creating or strengthening a dominant position but also by eliminating important competitive constraints that the merging parties exert upon each other, which will also reduce the competitive pressure on the remaining competitors. Contrary to what the Notifying Parties argue, these two possible ways of significantly impeding effective competition are not mutually exclusive.⁴⁶⁴ They rely on the same concept of a market power increase. Through a merger, the merging parties eliminate important competitive constraints, which allows them to increase their market power. Ultimately, the elimination of important competitive constraints may lead to the creation or strengthening of a dominant position. The elimination of important competitive constraints and the creation of dominance are therefore not mutually exclusive.
- (508) The Horizontal Merger Guidelines list a number of factors, which may influence whether, or not, significant non-coordinated effects are likely to result from a merger, such as large market shares of the merging firms, close competition, the limited possibilities for customers to switch suppliers.⁴⁶⁵ Furthermore, in accordance with the Horizontal Merger Guidelines, a merger with a potential competitor can also have horizontal anti-competitive effects where the potential competitor constrains the behaviour of firms active in the market.⁴⁶⁶
- (509) In non-horizontal mergers, non-coordinated affects may arise when the concentration gives rise to foreclosure. In vertical mergers, foreclosure can take the form of input foreclosure, where the merger is likely to raise costs of downstream rivals by restricting their access to an important input; and/or of customer foreclosure, where

⁴⁶² Horizontal Merger Guidelines, paragraph 24.

⁴⁶³ Horizontal Merger Guidelines, paragraph 25.

⁴⁶⁴ Reply to the SO, paragraphs 48 to 52.

⁴⁶⁵ Horizontal Merger Guidelines, paragraph 26.

⁴⁶⁶ Horizontal Merger Guidelines, paragraph 59.

the merger is likely to foreclose upstream rivals by restricting their access to a sufficient customer base.⁴⁶⁷

- (510) In assessing the likelihood of such foreclosure scenarios, the Commission assesses whether the merged entity would have the (i) ability and (ii) the economic incentive to foreclose its rivals, as well as (iii) whether such foreclosure strategy would have a detrimental effect on competition, causing harm to consumers.⁴⁶⁸

7.2. Gantry Cranes

- (511) The Notifying Parties' activities overlap in the three markets of gantry cranes, but not to the same extent. The main area of overlap is RTGs, where the Transaction would significantly strengthen the leading position of Konecranes in a very concentrated market. As explained further in the following Sections, the Commission found that the Transaction is likely to significantly impede effective competition in the EEA RTG market.
- (512) If a distinction were to be made between manual and automated RTGs, the market for manual RTGs only would be even more concentrated as Künz is not present in this potential market. As regards automated RTGs, the only players currently active are Cargotec and Künz, with Konecranes as a recent entrant in 2021 and potential to expand given the competitive edge of the Merging parties in automation as identified in Section 7.2.1.1. The Transaction would hence reduce the number of competing companies in this potential market from three to two. Therefore, a distinction between automated and manual RTGs would have no appreciable effect on the competitive assessment of the RTG market in the EEA.
- (513) The EEA ASC market is also very concentrated but the Merged Entity is no longer the chief supplier in the EEA, as ZPMC has taken the lead following a decline in the Merged Entity's market share. As explained further below in Section 7.2.2, the Commission found that the Transaction is not likely to significantly impede effective competition in the EEA ASC market.
- (514) As regards the EEA RMG market, the combined share of the Merged Entity has systematically been below 20% over the last ten years. The EEA market leader is Künz with a market share of 50-60% depending of the years, followed by German supplier DSD Hilgers with a share reaching now slightly more [20-30]%. Accordingly, the RMG market is not affected by the Transaction and will not be discussed further in the decision.

7.2.1. Rubber-tired gantry cranes (RTGs)

- (515) Pursuant to Article 2(2) and 2(3) of the Merger Regulation, the Commission must assess whether or not a proposed concentration would significantly impede effective competition in the internal market or in a substantial part of it, in particular as a result of the creation or strengthening of a dominant position.
- (516) In this respect, a concentration may entail horizontal and/or non-horizontal effects. Horizontal effects derive from a concentration where the undertakings concerned are active in the same relevant market(s). Non-horizontal effects are those deriving from a concentration where the undertakings concerned are active in different relevant markets.

⁴⁶⁷ Non-Horizontal Merger Guidelines, paragraph 30.

⁴⁶⁸ Non-Horizontal Merger Guidelines, paragraphs 32 and 94.

- (517) As regards the assessment of horizontal overlaps, the Commission guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings (the “Horizontal Merger Guidelines”) distinguish between two main ways in which mergers between actual or potential competitors on the same relevant market may significantly impede effective competition, namely non-coordinated and coordinated effects.
- (518) According to the Horizontal Merger Guidelines, non-coordinated effects result from the elimination of important competitive constraints on one or more firms, which consequently would have increased market power, without resorting to coordinated behaviour. In this case, the most direct effect of the concentration will be the loss of competition between the merging firms, i.e., the elimination of the competitive constraints that they previously exerted upon each other, while non-merging firms in the same market can also benefit from the reduction of competitive pressure that results from the merger.
- (519) The creation of a dominant position by a single firm is one form of significant impediment to effective competition arising from non-coordinated effects. Thus, a concentration giving rise to non-coordinated effects could significantly impede effective competition by creating the dominant position of a single firm, one which, typically, would have an appreciably larger market share than the next competitor post-merger.
- (520) According to well-established case law, very large market shares - 50% or more - may in themselves be evidence of the existence of a dominant market position. As a result, although market shares and additions of market shares only provide first indications of market power and increases in market power, they are normally important factors in the assessment. Likewise, the overall concentration level in a market may also provide useful information about the competitive situation likely to prevail post-merger.
- (521) Other relevant parameters of competition to consider in the assessment of non-coordinated effects and, in particular, of the creation of a dominant position include the strength and number of competitors, the presence of capacity constraints or the extent to which the products of the merging parties are close substitutes even though, according to the Horizontal Merger Guidelines, these elements are particularly relevant when the combined market share of the merged entity will remain below 50%. When products are differentiated and merging firms are close competitors, they are more likely to raise prices post-Transaction due to the high degree of substitutability between their products. Likewise customers facing limited alternative suppliers post-merger are particularly vulnerable to price increases.
- (522) The likelihood that a concentration would result in a significant impediment to effective competition in the relevant markets also depends on the absence of countervailing factors, such as countervailing buyer power and entry.
- (523) The Commission considers, when relevant, to what extent customers will be in a position to counter the increase in market power that a merger would otherwise be likely to create. In that context, countervailing buyer power exists where a buyer has a particular bargaining strength in commercial negotiations with suppliers due to its size, commercial significance to the seller and its ability to switch to alternative suppliers. For buyer power to be a countervailing factor it must survive the merger in a sense that it must remain effective under the post-merger market setup. This is because some mergers may reduce the degree of buyer power by removing a credible alternative, thereby rendering it ineffective.

- (524) Entry analysis constitutes another important element of the overall competitive assessment of horizontal mergers. For entry to be considered a sufficient competitive constraint on the merging parties, it must be shown to be likely, timely and sufficient to deter or defeat any potential anti-competitive effects of the merger. For entry to be likely, it must be sufficiently profitable, whereas high risk and costs of failed entry may make entry less likely. Indeed, potential entrants may encounter barriers to entry which determine entry risks and costs and thus have an impact on the profitability of entry. Barriers to entry can take various forms; for example, it may be difficult to enter a particular industry because experience or reputation, as well as closeness of relationships between suppliers and customers, is necessary to compete effectively. When entry barriers are high, price increases by the merging firms would not be significantly constrained by entry.
- (525) Overall, non-coordinated effects can take various forms, including negative effects on prices, output, choice or quality or innovation, whereas the expression “increased prices” is often used as shorthand for these various ways in which a merger may result in competitive harm. These effects arise from the increased market power associated with the removal of competitive constraints resulting from the concentration. Generally, the larger the market share of the merged entity, the more likely it is to possess market power and the larger the addition of market share, the more likely it is that a merger will lead to a significant increase in market power and that merging parties will find it profitable to increase prices post-merger. Likewise, significant price increases are more likely in case of high degree of substitutability between the merging firms’ products, when there are few alternative suppliers available to customers, and when other suppliers do not have the ability or incentives to increase their supply substantially in case of price increases.
- (526) In the present case, the Commission concludes that the Transaction would significantly impede effective competition as a result of the creation of a dominant position due to horizontal non-coordinated effects. This conclusion is based on the following elements:
- (a) the Transaction will lead to large combined market shares and a high degree of concentration (Section 7.2.1.1)
 - (b) the Transaction eliminates competition between two close competitors in the RTG market (Section 7.2.1.2)
 - (c) the reaction of competitors to the Merging Parties is unlikely to defeat any price increase by the Merged Entity (Section 7.2.1.3)
 - (d) potential entrants in the RTG market cannot be considered as a sufficient competitive constraint on the Merged Entity (Section 7.2.1.4)
 - (e) terminal operators are unlikely to benefit from countervailing buyer power enabling these customers to counter a price increase that could otherwise stem from the Transaction (Section 7.2.1.5).
- (527) Finally, the Commission will carry out an appraisal of the submission of the Notifying Parties concerning the likelihood that Cargotec would withdraw entirely from the RTG market in the absence of the merger (Section 7.2.1.6). This allegation has been put forward by the Notifying Parties in the light of the alleged decline in competitiveness of Cargotec in RTGs in the recent years.

7.2.1.1. The Merged Entity holds very high market shares in the EEA market for RTGs, which is a very concentrated market.

(A) The Merged Entity holds very high market shares in the EEA and the increment brought by the Transaction is significant

- (528) According to the Horizontal Merger Guidelines, the larger the market share, the more likely a firm is to possess market power; and the larger the addition of market share, the more likely it is that a merger will lead to a significant increase in market power. The larger the increase in the sales base on which to enjoy higher margins after a price increase, the more likely it is that the merging firms will find such a price increase profitable despite the accompanying reduction in output. Although market shares and additions of market shares only provide first indications of market power and increases in market power, they are normally important factors in the assessment.⁴⁶⁹
- (529) Firstly, the Commission's investigation has revealed that the Merged Entity would have very high market shares post-Transaction in the EEA markets for RTGs.
- (530) As regards market shares, the Commission first looked at the last three years under review in order to assess the market position of each player on a relevant time span as there are a limited number of RTG cranes sold in the EEA every year (around [...]). The Commission then assessed these market shares over a longer period (2010-2020), in order to establish how these shares have evolved over a longer time span.
- (531) Table 1 below shows market shares of the Merged Entity for the period 2018-2020 at EEA level, which is the relevant geographic scope of the various gantry cranes markets, including RTGs. These market shares have been submitted by the Notifying Parties.

Table 1 – Market shares RTGs (by volume, 2018-2020)

RTGs	EEA	
	Units	Share
Cargotec	[...]	[10-20]%
Konecranes	[...]	[50-60]%
Combined	[...]	[60-70]%
ZPMC (China)	[...]	[20-30]%
Künz (Austria)	[...]	[0-5]%
Liebherr (Germany)	[...]	[0-5]%
Paceco (Spain)	[...]	[0-5]%
Total market	[...]	100%

Source: Form CO, RFI PN2 – Annex – Q5 – Confidential – market shares.

- (532) At EEA level, the Merged Entity would have a market share of [60-70]% according to the data submitted by the Notifying Parties, over the period 2018-2020. Only ZPMC, Künz, Liebherr and Paceco are or were present in this EEA RTG market with shares below 5% for the last three. Therefore, the Merged Entity appears to be the

⁴⁶⁹ Horizontal Merger Guidelines, paragraph 27.

clear market leader in the EEA market for RTGs, with a market share [...] above 60%. At worldwide level, the combined share of the Merged Entity would be [20-30]% over the same period.

- (533) These shares have been provided in the Form CO for the period 2018-2020. However, as gantry cranes have a relatively long life cycle (on average [...] years), the Commission has also gathered sales and market shares of RTG over a 11-year time span (2010-2020). These market shares are split between two periods of 4 years (2010-2013 and 2014-2017) and one period of three years (2018-2020) and are provided in the Table 2 below.

Table 2 – Market shares RTGs (by volume, 2010-2020)

	EEA			
	Share 2010-2013	Share 2014-2017	Share 2018-2020	Overall 2010-2020
Cargotec	[20-30]%	[50-60]%	[10-20]%	[30-40]%
Konecranes	[40-50]%	[30-40]%	[50-60]%	[40-50]%
Combined	[70-80]%	[90-100]%	[60-70]%	[70-80]%
ZPMC (China)	[10-20]%	[0-5]%	[20-30]%	[10-20]%
Künz (Austria)	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Liebherr (Germany)	[10-20]%	[5-10]%	[0-5]%	[5-10]%
Paceco (Spain)	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Total market	100%	100%	100%	100%

Source: Form CO, RFI PN2 – Annex – Q5 – Confidential – market shares.

- (534) At EEA level, the Merged Entity would have a market share of [70-80]% for the period 2010-2013, [90-100]% for the period 2014-2017 and [60-70]% for the period 2018-2020 according to the data submitted by the Notifying Parties. Only ZPMC, Künz, Liebherr and Paceco are or were present in this EEA RTG market over the previous decade. Therefore, the Merged Entity appears to be the clear market leader in the last decade in the EEA market for RTGs, with a market share [...] above 60% throughout the period and even over 90% during the period 2014-2017.
- (535) The Notifying Parties do not dispute that their combined share in the EEA has historically been significant.⁴⁷⁰ They however argued that market shares and concentration levels can only be a starting point in the assessment of any transaction, and this is particularly true in a case like the one at hand with markets characterised by lumpy demand.⁴⁷¹ Moreover, the Notifying Parties submitted that the correct frame of reference in bidding markets such as RTGs is to assess the ability of prospective suppliers to participate in bids for future opportunities⁴⁷² and that the key factor in assessing the competitive effects of a merger in bidding markets is not historical market shares but the number and strength of viable competitors going forward.⁴⁷³

⁴⁷⁰ Reply to the SO, paragraph 328.

⁴⁷¹ Response to the Article 6(1)(c) Decision, paragraph 56.

⁴⁷² Reply to the SO, paragraph 330.

⁴⁷³ Reply to the SO, paragraph 332.

- (536) The Commission notes that, according to well-established case-law,⁴⁷⁴ a market share above 50% is in itself indicative of a dominant position. Moreover, this market share has remained consistently above 60% across the last ten years, which is indicative of a very stable position of the Merged Entity, in a market that is moreover characterised by a limited number of orders in the EEA.
- (537) Moreover, the Commission agrees that market share assessment is inherently backward looking. But past trends can provide helpful indications on future events, notably when these market shares are assessed over a sufficiently long period of time. In the present case, the Commission has assessed market shares over a period of 11 years and found that the combined market share of the Parties has consistently remained above 65%.
- (538) As regards the argument on bidding markets, the Notifying Parties have explained in the course of the proceedings that not all sales of RTGs are the results of tenders, which is indicative that these markets are not truly bidding in nature and that other factors, such as supplier reputation or customer loyalty, could also play an important role.
- (539) Notably Cargotec explains in its presentation of its tool Salesforce, which records sales opportunities, that “while Salesforce does record sales opportunities in the context of tenders, these are not systematically identified as such by sales staff. In other words, it is not always possible to identify whether a sale is the result of a won tender or of a bilateral negotiation with the customer”.⁴⁷⁵ Similarly, Konecranes acknowledged that not all sales are recorded by its tracking tool ([name of the tracking tool]) as tenders.⁴⁷⁶
- (540) Secondly, the Transaction would lead to a significant or very significant market share increment of [20-30]% during the period 2010-2013, almost [30-40]% for the period 2014-2017 and [10-20]% for the period 2018-2020.
- (541) Thirdly, according to the data submitted by the Notifying Parties, the Merged Entity would be significantly larger as the next largest competitor, ZPMC or Liebherr, depending on the period. Further, according to the Notifying Parties data, there would be over the period 2010-2013 only two competitors to the Merged Entity with a market share of more than 5%, ZPMC ([10-20]%) and Liebherr ([10-20]%). This number is reduced to one rival for the period 2014-2017 (Liebherr during that period with a share of [5-10]%) and 2018-2020 (ZPMC during that period with a share of [20-30]%). Therefore, the Merged Entity would be significantly larger than any of its rivals in the EEA.
- (542) Fourthly, the very significant increase in concentration and the very limited market position of competitors in contrast to the Merged Entity are also reflected in the relevant Herfindahl-Hirschmann index (HHI) values. For the 2010-2013 period, the EEA market for RTGs would have a pre-Transaction HHI value of [2500-3000]. Post-Transaction, this level of concentration would significantly increase. The post-Transaction HHI value for RTGs would be [5000-5500], with a delta of [2300-2400]. The assessment is similar for the period 2014-2017 (HHI value of [8500-9000] with an increment of [4100-4200]) and 2018-2020 (HHI value of [5000-5500] with an

⁴⁷⁴ Horizontal Merger Guidelines, paragraph 17.

⁴⁷⁵ See response to PN RFI 1, paragraph 29. Underlining added by the Commission.

⁴⁷⁶ See response to PN RFI 1, paragraph 43.

increment of [1300-1400]). These values are significantly above the thresholds for which the Commission is unlikely to find competition concerns.⁴⁷⁷

- (543) On the basis of the above elements, the Commission considers that the Transaction would lead to high market shares indicative of dominance. The Commission also considers that the EEA market for RTGs was already concentrated pre-Transaction – and would be even more concentrated after the Transaction.

(B) Only a limited number of suppliers of RTGs are active in the EEA

- (544) The EEA market for RTGs is characterised by the presence of only a limited number of active suppliers. As explained above, the Parties attribute 2010-2020 EEA sales to six companies, namely Cargotec, Konecranes, ZPMC, Liebherr, Künz (for the period 2018-2020 only) and Paceco. The Commission will describe these players in turn.
- (545) **Cargotec's** gantry cranes business is handled by its Kalmar business line. Kalmar sells RTGs, RMGs and ASCs and has been active in the RTG business since 1987.⁴⁷⁸ Cargotec assembles all of its gantry cranes at one location in China from where it supplies its global customer base.⁴⁷⁹ Kalmar is active worldwide and it holds stronger positions in Europe, South America and Oceania. Kalmar considers itself as one of the global leaders in RTGs, as its internal document demonstrates.

Figure 44: Kalmar experience and history in RTGs

[...]

Source: [Internal document reference].

- (546) **Konecranes** is active in gantry cranes through its Port business line. It is active in RTGs, RMGs and ASCs, as well as in quay cranes such as STS and MHC. Konecranes is active worldwide, with [...] in gantry cranes in Europe and North America. Konecranes assembles gantry cranes in [locations].
- (547) **ZPMC** is a Chinese state-owned enterprise listed on the Shanghai Stock Exchange, active in the design, construction, installation and contracting of large port loading and unloading systems and equipment, offshore heavy equipment, engineering machinery, engineering vessels and large metal structural parts. ZPMC was founded in 1992 and is headquartered in Shanghai, with multiple production bases in Shanghai and Nantong, China.⁴⁸⁰
- (548) The manufacturing of container handling equipment is ZPMC's largest business area, representing approximately 60% of its overall commercial activity. In the container handling equipment business, its two main products are ship-to-shore ('STS') cranes and yard cranes; the latter includes RTGs, RMGs and ASCs.⁴⁸¹
- (549) **Liebherr** is a family-owned company. It has been active in the maritime cranes market for 60 years. The company manufactures container handling equipment in

⁴⁷⁷ Horizontal Merger Guidelines, paragraphs 19 and 20. «*The Commission is unlikely to identify horizontal competition concerns in a market with a post-merger HHI below 1000. Such markets normally do not require extensive analysis. The Commission is also unlikely to identify horizontal competition concerns in a merger with a post-merger HHI between 1000 and 2000 and a delta below 250, or a merger with a post-merger HHI above 2000 and a delta below 150, except where special circumstances (...) are present*».

⁴⁷⁸ Cargotec's Main Production in response to RFI 17 CAR-KAU 101519.

⁴⁷⁹ Form CO, Section 8 - Structure of supply and demand in affected markets, paragraph 2.

⁴⁸⁰ Form CO, Sections 1-5 Executive Summary and Introduction, paragraphs 145 and 146.

⁴⁸¹ Non-confidential minutes of a call with ZPMC on 23 April 2021, paragraph 2, Doc. ID 1779.

three locations around Europe. The factory in Killarney (Ireland) produces ship-to-shore (STS) cranes, rail-mounted gantry (RMG) and rubber-tyre gantry (RTG) cranes. The factory in Sunderland (UK) manufactures, inter alia, reach stackers and the factory in Rostock (Germany) manufactures, inter alia, mobile harbour cranes (MHCs). Liebherr overall employs approx. 48,000 people, 4,486 of which are working in the maritime cranes division. In gantry cranes, Liebherr only manufactures RTGs and RMGs, but not ASCs.⁴⁸²

- (550) **Künz** is a medium-size family business located in Austria. It has been active in the market for container handling equipment for a couple of decades. Künz does not manufacture the whole product line of container handling equipment but focuses on intermodal equipment, which includes container cranes operated for intermodal container handling activities, in railroad terminals mainly.⁴⁸³ It does not manufacture quay cranes such as STS or MHCs. Künz is recognised as the EEA market leader in RMGs and a strong challenger of the Parties and ZPMC in ASCs.⁴⁸⁴ In RTGs, however, Künz has a very limited presence, with only 4 units delivered recently to only one customer. Künz has two production sites in Austria and one in Slovakia.⁴⁸⁵
- (551) **Paceco** was a Spanish supplier of yard cranes with production sites in Bilbao, Spain. Paceco is no longer manufacturing port container handling cranes and its last crane was delivered in 2018. Its services cover maintenance, inspection, repair & refurbishment, notably of the installed base in Europe.⁴⁸⁶ Japanese company Mitsui is the current licensee and owner of Paceco, as will be further explained in Section 7.2.1.3.
- (552) The Notifying Parties claim that the Commission's definition of "active suppliers" wrongly excludes competitors such as Sany and Mitsui-Paceco that actively participate in tenders issued by EEA-based customers, and that will continue to exercise a significant competitive constraint on the Merged Entity post-Transaction.⁴⁸⁷ The Commission notes that none of these players have sold RTGs in the EEA in the past ten years. The competitive constraints that they would exert through their participation in EEA RTG tenders (to the extent they participate) will be assessed further in Section 7.2.1.4.
- (553) The Commission is not aware of any other manufacturers having supplied RTGs in the EEA. It therefore appears that the RTG market is not characterised by "*numerous credible alternatives to the Parties in the EEA*"⁴⁸⁸ but rather that the Merged Entity will become one of only five suppliers of RTGs that made sales in the EEA, of which some only have a very minor market presence, or ceased supplying RTGs in the EEA.

⁴⁸² Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 1.

⁴⁸³ Non-confidential minutes of a conference call with Künz dated 29 April 2021, paragraph 2, Doc. ID 1514.

⁴⁸⁴ Form CO, RFI PN2 – Annex – Q5 – Confidential – market shares.

⁴⁸⁵ Non-confidential minutes of a call with Künz dated 16 September 2021, paragraph 10, Doc. ID 4289.

⁴⁸⁶ Response to Q1 – Questionnaire to competitors, Doc. ID 3154, question A1.

⁴⁸⁷ Reply to the SO, paragraph 341.

⁴⁸⁸ Response to the Article 6(1)(c) Decision, d) ii).

- (C) Competitors and customers consider that the EEA RTG market is particularly concentrated and this is confirmed by internal documents of the Notifying Parties
- (554) With five players currently active in the EEA market for RTGs, the market for RTGs in the EEA can be described as particularly concentrated.
- (555) This level of concentration in the RTG market was described by one competitor “The Parties are dominating the European market for yard cranes. Other OEMs including ZPMC, Liebherr and Künz are also active in the European market for yard cranes. Aside of ZPMC, no other Asian competitors are active in the European yard crane markets, because these OEMs (e.g. active in the markets for yard cranes in Japan and China) first, have a limited production capacity that does not allow them to enter the European market. Second, the European standard requirements are too different for some Japanese and Korean players to fulfil. Third, most of the Asian OEMs including ZPMC are unable to offer competitive delivery times to European yard crane customers, in contrast to the Parties”.⁴⁸⁹ The issues related to European standard requirements and delivery times will be discussed further in Section 7.2.1.4.
- (556) Another competitor added that “In the world market for RTGs, the Parties will probably achieve a market share comparable to ZPMC. In Europe, however, the Parties will clearly be the number one player with an expected market share of 70% and more”.⁴⁹⁰
- (557) Customers also confirmed in the market investigation that the EEA gantry cranes market in general, and in particular RTGs, includes a limited number of suppliers. As explained by an EEA customer “*There is a short list of producers of gantry cranes in Europe with a well-developed service network and good maintains system so they have a strong market position*”.⁴⁹¹ While this customer indicated, as submitted by the Notifying Parties, that he would invite a large number of suppliers to tender for RTGs⁴⁹², he has so far only sourced RTGs from Cargotec.⁴⁹³
- (558) EEA customers have a tendency to remain loyal to their RTG suppliers. When asked whether they had a preferred supplier, a short majority of the customers explained that it was not the case. However, some customers who have a preferred supplier mentioned Kalmar and Konecranes regarding RTGs in the EEA. For example, one EEA customer submitted that “*I would not call it preferred supplier but if financial and technical proposals would be equal we would choose Konecranes as we already have experience and knowledge about their cranes*”. This is confirmed by another EEA customer “*No preferred supplier. Long history with Konecranes very much appreciated*”. A third EEA customer flagged that it owns “*STS and RMG from Cargotec tailor made to (the customer) specification*”. A fourth EEA customer answered “*Kalmar, all of our RTGs are Kalmar, and we keep uniform them*”.⁴⁹⁴
- (559) The Parties themselves internally track only a limited number of rivals which they consider to be active in RTGs. In an internal document from Cargotec, where the

⁴⁸⁹ Non-confidential minutes of a conference call with ZPMC on 23 April 2021, paragraph 11, Doc. ID 1779.

⁴⁹⁰ Non-confidential minutes of a conference call with Künz on 29 April 2021, paragraph 34, Doc. ID 1514.

⁴⁹¹ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question B.C.E.1.

⁴⁹² Reply to the SO, paragraph 346.

⁴⁹³ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question B.C.1

⁴⁹⁴ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question B.C.A.5.

Company tracks RTG suppliers at worldwide level, it appears that Cargotec follows only a limited number of rivals, namely ZPMC, Konecranes and Mitsui (mostly for the South-East Asia region). Out of these four tracked suppliers, only three (Kalmar, Konecranes and ZPMC) had deliveries of RTGs in the EEA in the last ten years.

Figure 45: Cargotec’s tracking of RTG suppliers worldwide

[...]

Source: [Internal document reference].

- (560) Similarly, in an internal document [...], as regards yard cranes in general, Konecranes tracks five main suppliers, namely [...]. Konecranes also tracks [...] but this company shares the same characteristics as [...] ([...] units sold in the last ten years, [...] in the EEA).

Figure 46: Konecranes’ competitors analysis in RTGs

[...]

Source: [Internal document reference].

- (D) Customers and competitors consider the Parties to hold important market positions and the Merged Entity to have a very large market share
- (561) Customers, distributors and competitors of the Parties consider that the Parties hold important market positions in the EEA RTG markets and that the Merged Entity would have large or very large market shares, and is leading the market together with ZPMC.
- (562) As explained by one competitor “Cargotec, Konecranes and ZPMC have shared majority of RTG market for many years. Künz in recent years competitive in ASC and RMG. Cargotec have many existing cranes and a number of large ASC installations”.⁴⁹⁵ As regards Konecranes more specifically, this competitor adds “. Konecranes has been a market leader in recent years excluding the Far East.”⁴⁹⁶
- (563) One of the Parties ‘customer flags the high level of market share of the Merged Entity “Negative impacts are expected on the RTG market (and straddle carrier market also) due to the Parties high market shares worldwide and in the EEA”⁴⁹⁷ This customer also adds that “(...) estimates that the combined market shares of the Parties in the EEA is between 70-90%. Apart from smaller competitors (ZPMC and Kunz), there is a lack of many other alternative providers which will potentially lead to price increases from the Parties”.⁴⁹⁸
- (564) Another customer puts forward that “For instance, the merged entity will be the major European player in the RTG market and the only available supplier in Europe besides Chinese brands. This would eliminate an important element of pricing competition which is currently present in the market. The market would essentially be left with one strong European player and Chinese suppliers”.⁴⁹⁹

⁴⁹⁵ Response to Q1 – Questionnaire to Competitors, Doc. ID 3154, question B.C.B.2.

⁴⁹⁶ Response to Q1 – Questionnaire to Competitors, Doc. ID 3154, question B.C.B.1.

⁴⁹⁷ Response to Q5 – PH2 Questionnaire to Customers of cranes and automation software for all cargo handling equipment, Doc. ID 3606, question 43.1.

⁴⁹⁸ Response to Q5 – PH2 Questionnaire to Customers of cranes and automation software for all cargo handling equipment, Doc. ID 3606, question 43.1.

⁴⁹⁹ Non-confidential minutes of a call with a customer, 8 April 2021, paragraph 34, Doc. ID 570.

- (565) The Notifying Parties quote in the Reply to the SO statements from HPH, Rotterdam World Gateway or Belfast Container terminal, in which these customers downplay the relevance of the Merged Entity in RTGs, welcome the Transaction because it would bring additional arms to compete against Chinese rivals, in particular ZPMC, or put the Merged Entity in a better position to extend its offering.⁵⁰⁰ The Commission notes that one of these customers did not source RTGs in the last ten years (Rotterdam World Gateway) and the only tender that HPH ran for RTGs over the last ten years (for its terminal in Gdynia, Poland) was awarded to Cargotec. The Belfast Container terminal, located in Northern Ireland, a province of the United Kingdom, is indeed supportive of the Transaction.
- (566) The limitation of the EEA RTG market to a handful of rivals after the Transaction, including the Merged Entity, was confirmed by another customer who states that the market would be limited to a handful of rivals, including the Merged Entity *“However, for other equipment types, like RTGs, the Company is concerned, as the two of three strongest European companies in this market would merge. Here the proposed transaction would lessen competition and the market would be limited to: the merged entity, Liebherr and Far East manufacturers”*.⁵⁰¹
- (E) The Notifying Parties have a competitive advantage in automation
- (567) The significant relevance of Cargotec and Konecranes in the RTG market, including in the EEA, is further reinforced by their particular strength in automated equipment overall, and in gantry cranes in particular.
- (568) As the Notifying Parties claim in the Form CO,⁵⁰² automation is a growing trend. Especially for the EEA this means mainly “brown-field” automation installations. Due to [...], the Notifying Parties expect that brown-field automation of RTG and Straddle Carrier fleets will [...].⁵⁰³ There are currently only four OEMs that offer Automated RTGs (A-RTGs): the Notifying Parties, Künz and ZPMC. In the EEA only Cargotec and Künz delivered A-RTGs in the last 10 years.⁵⁰⁴ However, Konecranes submitted it would deliver in 2021 [...], as well as to [...].⁵⁰⁵
- (569) In addition to the automated equipment itself, the Notifying Parties also offer their own equipment control system (ECS). 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.⁵⁰⁶ The only other container handling equipment OEM that offers its own ECS is ZPMC. The ECS is a software that monitors and guides the automated equipment fleet to operate in safe and efficient manner. It controls all events and processes at the equipment level and implements all necessary actions based on the job orders created by the Terminal

⁵⁰⁰ Reply to the SO, paragraph 351.

⁵⁰¹ Non-confidential minutes of a call with a customer 8 April 2021, paragraph 34, Doc. ID 675.

⁵⁰² Form CO, Chapter 1, paragraph 162.

⁵⁰³ Response to RFI 18, ARTG – Product Strategy 2019-2025, Doc. ID 3593-14845.

⁵⁰⁴ Response to PN RFI 2, Annex 5.

⁵⁰⁵ Form CO, Chapter 2, paragraph 63, footnote 76.

⁵⁰⁶ Form CO, Chapter 3, paragraphs 139 and 140.

Operating System (TOS).⁵⁰⁷ The ECS is therefore connected to the on-board control software system of the automated equipment⁵⁰⁸ and to the TOS.⁵⁰⁹

- (570) It seems however that the TOS can directly communicate with the automated equipment without an ECS. For example, ABB has supplied automated solutions mainly for ASC but also for A-RTG without an ECS, as it does not develop ECS software.⁵¹⁰ It seems the ECS becomes more critical for equipment, such as straddle carriers or automated guided vehicles (AGVs), which do not move on pre-determined driveways or rail tracks.
- (571) Notwithstanding, the ECS is of great value to coordinate different types of automated equipment. In the words of the Port Equipment Manufacturers Association, “[w]hen it comes to coordinating interactions between different types of automated equipment, an ECS is now an essential part of the terminal software landscape”⁵¹¹. Both Cargotec and Konecranes have therefore a competitive advantage vis-à-vis their OEM competitors when it comes to terminal container automation, notably for RTGs. Unlike the majority of their competitors, both Cargotec and Konecranes not only offer different types of automated equipment but also the software that enables a seamless coordination between them. Moreover, the Notifying Parties’ ECS also enables the coordination between existing and new equipment, giving them the opportunity to expand their footprint with the same customer.
- (572) The broad automated portfolio together with the ECS play even more to the Notifying Parties’ advantage as customers tend to prefer to have one and the same ECS to avoid interoperability issues.⁵¹² In its internal documents, Konecranes is considering [...].

Figure 47: Konecranes’ strategy for Automation

[...]

Source: [Internal document reference].

- (573) As shown in the figure above, Konecranes [...].
- (574) More importantly, due to their wider portfolio in automated equipment and the possibility to coordinate the different types of equipment via their ECS, the Notifying Parties can make joint offers that their OEM competitors cannot meet. Already today, Konecranes offers its ASC and AGVs with its ECS. As a third-party supplier put it, “Konecranes, via TBA, is currently the only supplier that pushes ECS connectivity across AGVs and ASCs”.⁵¹³ Furthermore, customers fear that this will create a dependency on the OEMs, particularly for automated terminals. As one

⁵⁰⁷ 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 – see Form CO, Chapter 3, paragraph 146.

⁵⁰⁸ 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 Equipment Control System (ECS; see below), equipment management information systems, etc.

⁵⁰⁹ Form CO, Chapter 3, paragraph 130.

⁵¹⁰ Agreed Minutes of a call with a Third-Party Supplier on 23 August 2021, Doc. ID 4306.

⁵¹¹ Response to RFI 17, Doc. ID 3711-61196, Container Terminal Automation, a PEMA Information Paper.

⁵¹² Response to Q2 – Questionnaire to Customers, Doc. ID 3153, questions F.C.7, F.C.7.1.

⁵¹³ Agreed minutes with a Third-Party supplier on 23 August 2021, Doc. ID 4306.

customer explained “*Terminals that are automated (e.g., APM Terminals) are more vulnerable to pressure from the OEMs as it is more difficult to switch equipment suppliers. This is a trend that will continue as OEMs offer more integrated systems - this leads to even more customer-lock-in*”.⁵¹⁴

(F) Conclusion

- (575) For the reasons set out in this Section, the Commission considers that the Transaction results in a very large combined market share. The Commission further finds that the Transaction leads to a high degree of concentration in the EEA market for RTGs. Moreover, the Notifying Parties also have a competitive advantage vis-à-vis their OEM competitors when it comes to terminal container automation.
- (576) These elements may constitute in themselves prima facie evidence of the creation of a dominant position.
- 7.2.1.2. The Notifying Parties are intensely competing in the EEA market for RTGs and there are few suppliers to which customers can turn.
- (577) According to the Horizontal Merger Guidelines, customers of the merging parties may have difficulties switching to other suppliers because there are few alternative suppliers or because they face substantial switching costs. Such customers are particularly vulnerable to price increases. The merger may affect these customers' ability to protect themselves against price increases. In particular, this may be the case for customers that have used dual sourcing from the two merging firms as a means of obtaining competitive prices. Evidence of past customer switching patterns and reactions to price changes may provide important information in this respect.⁵¹⁵
- (A) The market investigation has revealed that the Notifying Parties have been closely competing in the EEA market for RTGs
- (578) Respondents to the market investigation have submitted that the Merging Parties have been closely competing in the EEA market for RTGs.
- (579) In particular, when asked for the identity of the close competitors of Cargotec as regards RTGs, a majority of the customers have identified Konecranes and ZPMC as the main alternatives to Cargotec in RTGs. Regarding more specifically customers located in the EEA, the majority of respondents having expressed an opinion have ranked Konecranes as the main alternative to Cargotec in RTGs.⁵¹⁶
- (580) Similarly, when asked for the identity of the close competitors of Konecranes as regards RTGs, a majority of the customers have identified Cargotec and ZPMC as the main alternatives to Konecranes in RTGs. Regarding more specifically customers located in the EEA, the majority of respondents having expressed an opinion have ranked Cargotec as the main alternative to Konecranes in RTGs.⁵¹⁷
- (581) As explained by one customer “Cargotec, Konecranes and Künz are European suppliers with similar geographical cost structures and engineering knowledge. When a gantry crane requires extensive engineering skill and innovation to meet the

⁵¹⁴ Responses to Q5 – PH2 Questionnaire to Customers of cranes and automation software for all cargo handling equipment, Doc. ID 3606, question 43.1.

⁵¹⁵ Horizontal Merger Guidelines, paragraph 31.

⁵¹⁶ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question B.C.B.1.

⁵¹⁷ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question B.C.B.2.

project-specific-parameters, these three companies are typically the closest competitors”.⁵¹⁸

- (582) In the market investigation, customers were also asked about the identity of their top five suppliers of RTGs over the last 10 years (2010-2020). Konecranes is mentioned by 17 respondents, Cargotec by 13 of them, ZPMC by nine of them and Liebherr by nine of them. It is worth noting that ZPMC is mentioned as a supplier of RTGs only by customers located outside the EEA or by GTOs owning several terminals in and outside the EEA but not by smaller European terminals.⁵¹⁹
- (583) One EEA customer has described as follows its recent procurement process of RTGs: “Kalmar, Konecranes, Paceco and Liebherr participated in (the customer)’s RTG tender. Liebherr was not able to offer a competitive price compared to the other OEMs. Paceco was not selected because it did not have previous experience in the Company’s geographic region where specific meteorological conditions (e.g., snowy, icy conditions) affect the operations (since then, the company has disappeared from the market).⁵²⁰ Konecranes was ultimately preferred to Kalmar as it was slightly more advanced from a technical point of view, the manufacturing quality was higher and local support was better”.⁵²¹
- (584) This level of competition between Cargotec and Konecranes was also illustrated in this description of a European customer’s recent procurement process of RTGs: *“During its last tender for 15 RTGs in 2018, Kalmar and Konecranes had the strongest offerings. ZPMC also participated in the tender but was not selected for quality and reliability reasons. They also proposed RTGs that were wider and would consume more fuel.”*⁵²²
- (B) Internal documents of the Parties show closeness of competition between them in RTGs
- (585) A review of internal documents submitted by the Notifying Parties clearly document how fiercely the Parties have been competing in the EEA market for RTGs against each other.
- (586) First, in an internal document of Konecranes named [internal document reference], Konecranes considers that [...].

Figure 48: Competition landscape in RTGs according to Konecranes

[...]

Source: [Internal document reference].

- (587) Secondly, in another internal document from Konecranes named [internal document reference] Konecranes illustrates [...].

⁵¹⁸ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question B.C.B.1.

⁵¹⁹ The Commission sent these questionnaires not only to customers of Cargotec and Konecranes for RTGs, but also to terminals located in the EEA having purchased RTGs in the last ten years (including from other suppliers than Cargotec and Konecranes) and randomly selected by the Notifying Parties. See RFI PN 3 Annex Q1.

⁵²⁰ This point is not entirely correct since Paceco has not fully disappeared from the market but ceased manufacturing and selling gantry cranes. It however remains active in the service of the cranes that it previously sold.

⁵²¹ Non-confidential minutes of a call with a customer dated 7 April 2021, paragraph 14, Doc. ID 675.

⁵²² Non-confidential minutes of a call with a customer dated 8 April 2021, paragraph 13, Doc. ID 570.

Figure 49: [...]

[...]

Source: [Internal document reference].

- (588) In an internal document named [internal document reference]. These options are valid for both cranes and mobile equipment.

Figure 50: [...]

[...]

Source: [Internal document reference].

- (589) In relation more specifically to RTGs, some more specific options were considered in the following slide [...].

Figure 51: [...]

[...]

Source: [Internal document reference].

- (590) The Notifying Parties have argued that Cargotec has the exact same type of document, referred to as [internal document reference].⁵²³
- (591) [Internal document reference].⁵²⁴
- (592) Secondly, in the most recent tenders involving RTGs in the EEA, including from large terminal operators such as [...], internal exchanges within Cargotec show that they consider [...].
- (593) For example, regarding a tender for RTGs to be delivered to [a port], a Cargotec executive noted in an e-mail dated 22 August 2016 [internal document reference]. Such an outcome is viewed as a [...] by another Cargotec executive who noted in an e-mail on the same day [internal document reference].⁵²⁵ This tender was ultimately won by ZPMC.
- (594) Following a visit to a customer in Spain, a Cargotec executive noted in an e-mail dated 10 March 2016 [internal document reference].⁵²⁶
- (595) Regarding a tender for automated RTGs in [location] belonging to the [...], a Cargotec executive noted in an e-mail dated 21 March 2019 [internal document reference]⁵²⁷. Regarding the same tender and another tender launched by [...] in Portugal, a Cargotec executive noted on 21 June 2019 [internal document reference].⁵²⁸

⁵²³ Reply to the SO, paragraph 433.

⁵²⁴ Cargotec's Main Production in response to RFI 17, CAR-KAU 00003007, slide 17.

⁵²⁵ Cargotec's Main Production in response to RFI 17 CAR-COL 00072547. Underlining added by the Commission.

⁵²⁶ Cargotec's Main Production in response to RFI 17 CAR-COL 00075654. Underlining added by the Commission.

⁵²⁷ Cargotec's Main Production in response to RFI 17 CAR-COL 00063823. Underlining added by the Commission.

⁵²⁸ Cargotec's Main Production in response to RFI 17 CAR-COL 00003131. Underlining added by the Commission.

- (596) On 1st December 2019, a Cargotec executive noted in an e-mail regarding these tenders [internal document reference].⁵²⁹ This tender was finally won by Konecranes.
- (597) In an e-mail dated 3 December 2017 regarding a future tender for RTGs in [country], a Cargotec executive noted [internal document reference].⁵³⁰ This tender was finally won by Konecranes.
- (598) In the context of a tender launched by [a port] to purchase semi-automated RTGs later to be operated by [terminal operator], a Cargotec executive required support from its colleagues in Bromma (for the supply of spreaders) in an e-mail dated 16 July 2018 [internal document reference].⁵³¹ This tender was ultimately won by Cargotec-Kalmar.
- (599) Regarding a tender launched by the port of [...] on [country] for four RTGs, Kalmar was informed that it was not short-listed. A Cargotec executive reported this information in an e-mail dated 22 March 2019 [internal document reference].⁵³² This tender was ultimately won by Künz.
- (600) Customers have also used rivalry between Cargotec and Konecranes to bring prices down, even though they had a preferred supplier from the beginning. On 26 March 2018, a Cargotec executive noted in an e-mail related to a tender in [country], ultimately won by Konecranes [internal document reference].⁵³³
- (601) Thirdly, in the most recent tenders for RTGs in the EEA, internal exchanges within Konecranes show that they consider Cargotec-Kalmar as their main challenger.
- (602) Notably, a Konecranes executive reported [internal document reference].⁵³⁴
- (603) In the same vein, a Konecranes manager mentioned [internal document reference].⁵³⁵ [...].
- (604) As regards another tender [internal document reference].⁵³⁶
- (605) [Date], a Konecranes executive [internal document reference].⁵³⁷ [Internal document reference].⁵³⁸ [...].

(C) Conclusion as regard closeness of competition

- (606) It appears therefore that for the main tenders launched for RTGs in the EEA in the last five years, Cargotec-Kalmar and Konecranes were systematically competing against each other and considered the other merging party as one of the main, if not the main, challenger in these tenders. Based on the high degree of substitutability between the Merging Parties' products and the fact that rivalry between the Merging

⁵²⁹ Cargotec's Main Production in response to RFI 17 CAR-COL 00104739. Underlining added by the Commission.

⁵³⁰ Cargotec's Main Production in response to RFI 17 CAR-SCH 00483819. Underlining added by the Commission.

⁵³¹ Cargotec's Main Production in response to RFI 17 - CAR-KAR-00056225. Underlining added by the Commission.

⁵³² Cargotec's Main Production in response to RFI 17) - CAR-PRA-00006271. Underlining added by the Commission.

⁵³³ Cargotec's Main Production in response to RFI 17 CAR-COL 00108163. Underlining added by the Commission.

⁵³⁴ M.10078 Cargotec Konecranes RFI 18-00881609 msg. Underlining added by the Commission.

⁵³⁵ M.10078 Cargotec Konecranes RFI 18-01104675 msg. Underlining added by the Commission.

⁵³⁶ M.10078 Cargotec Konecranes RFI 18-01160367 msg. Underlining added by the Commission.

⁵³⁷ M.10078 Cargotec Konecranes RFI 18-00108180 msg. Underlining added by the Commission.

⁵³⁸ M.10078 Cargotec Konecranes RFI 18-01332245 msg. Underlining added by the Commission.

Parties has been an important source of competition on the market, the Commission considers that the Transaction is more likely to give rise to price increases.

- (607) This contributes to the finding that the Transaction results in the creation of a dominant position by the Merged Entity in the EEA market for RTGs.

7.2.1.3. Competitors' reaction is unlikely to defeat a price increase

- (608) As explained above in Section 7.2.1.1, the main competitors of the Merged Entity that are active in the EEA market for RTGs are ZPMC, Liebherr, Künz, and Paceco. The Commission will assess the capabilities of these players in turn.

(A) ZPMC

- (609) ZPMC is the global leader in the supply of RTG with a worldwide market share of [40-50]% for the period 2018-2020, which has remained quite stable over the last decade (between [30-40]% to [40-50]%). In the EEA however, ZPMC is the number 2 supplier for the period 2018-2020, with a share of [20-30]%, ahead of Cargotec ([10-20]%) but lagging [...] Konecranes ([50-60]%) Over the period 2010-2020, ZPMC is the number 3 supplier with [...] units delivered in the EEA, behind Konecranes ([...]) and Cargotec ([...]).
- (610) The Notifying Parties claim in that regard that ZPMC is the leading supplier globally of RTGs, has gained a strong position in Europe and will continue to exercise intense competitive pressure on the Parties post-Transaction. According to the Notifying Parties, ZPMC's success, both globally and in the EEA, in the neighbouring market of STS cranes is a testament to its aggressive global strategy, a strategy that it continues to pursue for a number of other equipment types including gantry cranes. For example, in RTGs, the Notifying Parties submit that ZPMC has delivered [number of units] RTGs to [a port], as well as [number of units] RTGs to [a port] and [number of units] RTGs to [a port].⁵³⁹
- (611) The Commission notes in that regard that ZPMC has delivered RTGs to a very limited number of customers in the EEA. Between 2013 and 2020, ZPMC has delivered units [...] to [number] customers, namely [name of customers] ([number of units RTGs in [year]])⁵⁴⁰ and [number of units] units in [year] to [name of customers].⁵⁴¹ No deliveries were made between 2014 and 2018, nor in 2019 and 2020.⁵⁴² The Commission also notes that the number of [number of units] RTGs mentioned by the Notifying Parties as delivered by ZPMC since 2010 to [name of customer] is inaccurate since, according to the Notifying Parties “*The figure of [number of units] RTG deliveries to [name of customer] was based on publicly available materials such as World Cargo news reports. The Parties have looked into this further and understand that the correct number of ZPMC deliveries in the EEA between 2010-2020 is indeed [number of units] RTGs*”.⁵⁴³
- (612) This smaller market presence of ZPMC in the EEA can be explained by a number of factors, which would also limit the penetration going forward of ZPMC in the EEA RTG market.

⁵³⁹ Response to the Article 6(1)(c) Decision, paragraph 66. The Commission understands that the RTGs for the port of Piraeus have been ordered in 2021 and not yet delivered.

⁵⁴⁰ Response to RFI 19, WCN yard crane report 2013.

⁵⁴¹ Response to RFI 19, WCN yard crane report 2017.

⁵⁴² Form CO, RFI PN2 – Annex – Q5 – Confidential – market shares.

⁵⁴³ Response to European Commission RFI 21, paragraph 27. [Number of units] is the total number of RTGs delivered to in the EEA by ZPMC between 2010 and 2020.

- (613) In the first place, ZPMC is constrained by the lower size of orders in terms of units sold in the EEA, which prevent it from fully benefiting from its cost advantage in terms of manufacturing and transport. This lower competitiveness of ZPMC due to a smaller size of orders in the EEA is confirmed by one competitor, who explained that: *“ZPMC is trying to enter the RTGs and RMGs market in the EEA and in the UK, but this process will require some time and will not be easy because European orders are smaller in number than the typical order that ZPMC receives from its traditional customers in China or Asia”*.⁵⁴⁴
- (614) In the same vein, another competitor active in Europe noted that “ZPMC is not particularly competitive in RTGs in Europe, unless they are handling large orders or multiple orders in the same or adjacent locality together with STS cranes(...). In fact, ZPMC is less competitive for small cranes where there is less steel, than for larger cranes, such as STS”.⁵⁴⁵
- (615) This point regarding lower competitiveness of ZPMC in pure RTG tenders (which are of a lower size than tenders including RTGs and other types of container cranes such as STS) has been confirmed in the Parties’ internal documents. In an e-mail regarding a tender in [country], dated 12 September 2016, a Cargotec executive noted as a general issue that [internal document reference].⁵⁴⁶ While the starting point of this correspondence relates to a tender in [country], it includes statements on the competitiveness of ZPMC across the board and as such, the Commission considers it relevant.
- (616) The Commission notes moreover that one of the tenders won by ZPMC in the EEA is the one involving [...] units in [year] to [name of customer], which is the largest single order for RTG in the EEA in the last ten years. It appears therefore that ZPMC has been considered as competitive when it comes to (rare) large orders of RTGs in the EEA, potentially coupled with STS. It was much less competitive, or even abstained to bid, for smaller orders.
- (617) The Commission has in that regard assessed the size of orders of RTGs in the EEA and the size of orders won by ZPMC. Overall in the last ten 10 years, a total of 68 orders have been placed by container terminals for RTGs in the EEA. 88% of these orders included less than 10 RTGs, 54% maximum 3 RTGs and 41% only one or two RTGs. The average size of each of these orders in the EEA was 4.4 RTGs per order.
- (618) ZPMC only delivered over that period RTGs to [number] customers in the EEA, namely [name of customers and number of units]. There were only [...] orders of a comparable size ([...] RTGs or more) in the EEA in the last ten years:
- (a) [number of orders] were won by Cargotec: [name of customer and units].
 - (b) [number of orders] were won by Konecranes: [name of customer and units].
 - (c) [number of orders] were won by ZPMC: [name of customer and units].
- (619) ZPMC did not win any of the [...] orders that were placed in the EEA since 2010 and including less than [...] RTGs. These were won by Cargotec ([number of orders]), Konecranes ([number of orders]), Liebherr ([number of orders]), Paceco ([number of

⁵⁴⁴ Non-confidential minutes of a call with Künz dated 16 September 2021, paragraph 15, Doc. ID 4289.

⁵⁴⁵ Non-confidential minutes of a call with Liebherr dated 17 September 2021, paragraph 11, Doc. ID 4077.

⁵⁴⁶ Cargotec’s main response to RFI 17 - CAR-PRA-00125415. Underlining added by the Commission.

orders]) and Künz ([number of orders]).⁵⁴⁷ These numbers show that ZPMC has only won larger orders which were significantly larger than the average order size for RTGs in the EEA.

- (620) In the second place, it appears that there are a number of quality issues pertaining to ZPMC's RTGs that prevent customers to source from ZPMC. 40% of customers having expressed an opinion on this matter see quality of the products as a major weakness of ZPMC: "*Quality is an issue*" "(Main weakness) *Quality level and used components compared to EU manufacturers*" "*Poor quality*" "(Main weakness) *After sales services and some components reliability*".⁵⁴⁸ One customer added that "*At (this customer terminal) we have poor aftersales services and more quality issues with ZPMC*"⁵⁴⁹ and that "*ZPMC was also not able to provide compliant technical answers on certain issues such as the noise level and reeving system*".⁵⁵⁰
- (621) Internal documents of the Parties also confirm their perception of lower quality of ZPMC in RTGs. An internal document of Konecranes identifies [internal document reference] as one of the main weakness of ZPMC.⁵⁵¹ An e-mail from a Cargotec executive notes that [internal document reference] and [internal document reference].⁵⁵²
- (622) In the third place, and as explained above in the geographic market section, suppliers which do not have an after-sales service presence in the EEA are not considered as full alternatives to the suppliers with such presence. The availability of a supplier's after-sales services network appears to be critical in the decision to purchase gantry cranes from that particular manufacturer, as explained in Section 7.2.1.4.
- (623) ZPMC has explained that it has several offices in Europe (e.g., Netherlands, Germany, Spain and Italy) that provide after sales services to customers, which includes maintenance, spare parts and upgrading services. The Company also engages local suppliers or engineers to collaborate with their own personnel to offer services to the customers. Overall, ZPMC considers that the Company's local offices provide servicing to customers which does not put the company at a disadvantage compared to EEA suppliers.⁵⁵³
- (624) The fact however remains that a number of respondents to the market investigation have identified the service network as a relatively weak spot for ZPMC. One customer noted as a main weakness of ZPMC "*After sales services and some components reliability*".⁵⁵⁴ Another customer highlighted "*local service*" as a main weakness of ZPMC.⁵⁵⁵ An EEA customer noted that "*At MFT we have poor aftersales services and more quality issues with ZPMC*"⁵⁵⁶ and even regarding STS "*MFTL has placed an order for two Liebherr STS, having more trust in the design and aftersale service compare to ZPMC*".⁵⁵⁷

⁵⁴⁷ Letter of Facts, paragraphs 52 to 55.

⁵⁴⁸ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question B.C.A.4.

⁵⁴⁹ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question B.C.F.1.

⁵⁵⁰ Non-confidential minutes of a call with a customer dated 8 April 2021, paragraph 13, Doc. ID 570.

⁵⁵¹ Doc. ID 3593-061693 - The Parties' reply to the Commission's request for information RFI 18 - 01118610, [internal document reference] slide 8.

⁵⁵² Cargotec's main response to RFI 17 - CAR-PRA-00125415.

⁵⁵³ Non-confidential minutes of a call with ZPMC dated 23 April 2021, paragraph 26, Doc. ID 1779.

⁵⁵⁴ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question B.C.A.4.

⁵⁵⁵ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question B.C.A.4.

⁵⁵⁶ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question B.C.F.1.

⁵⁵⁷ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question B.C.E.3.

- (625) An after-sales network and local service support is particularly important for smaller terminals that cannot afford to have in-house capabilities and for that reason tend to rely on European suppliers such as the Notifying Parties. As explained by a small European customer *“Buying from China requires a costly engineering team on-site for 24/365 days to check if specs are maintained”*.⁵⁵⁸
- (626) The lack of after-sales and service support has also been identified by an EEA customer as a disincentive to source from non-EEA suppliers such as ZPMC: *“Furthermore, while Asian OEMs are popular in major ports (e.g. Rotterdam) where there are many cranes, the lack of local support through dealers or representatives in Eastern Europe and Nordic countries dissuade terminal operators in that region to source from them. Hence, only a few terminal operators in the Company’s region sourced container handling equipment from Asian brands. Therefore, in practice the Company and other terminal operators in its region essentially rely on supply from only Kalmar, Konecranes and Liebherr.”*⁵⁵⁹
- (627) The Commission has also verified how independent service providers in port cranes, which intervene on different types of cranes and have a deep knowledge of the market as they compete against all OEM for services, evaluate the various OEM in terms of quick reaction times for urgent repair/servicing needs by customers of RTGs (mark 1 being the slowest and mark 5 being the quickest). Cargotec obtained the mark 4 or 5 from 55% of respondents and Konecranes from 46% of respondents. By contrast, ZPMC was noted 4 by 14% of respondents (no respondents gave the mark 5) and was rated 1 or 2 (slow reaction time) by 72% of respondents.⁵⁶⁰
- (628) Internal documents of the Parties also confirm the lack of strength of ZPMC in after sales services. One Konecranes internal document identifies [internal document reference].⁵⁶¹ In another Cargotec internal document, Cargotec considers that [internal document reference] is one of the major flaws of ZPMC.⁵⁶²
- (629) In that regard, the Commission also notes that ZPMC sells gantry cranes in the EEA only to large terminals with significant throughput and which to some extent own internal resources to serve the gantry cranes internally. This is not necessarily the case of smaller terminals which, as explained further in Section 7.2.1.4, are not necessarily in a position to fully serve their gantry cranes with internal capabilities.
- (630) During the period 2010-2020, the minimum throughput of a port buying a ZPMC gantry crane is [...], with just one exception, the [name of terminal].⁵⁶³ All sales of RTGs to these terminals with a throughput [...] in the EEA were made by either Cargotec and Konecranes, and more exceptionally by Künz and Paceco, but not by ZPMC.
- (631) In particular, the Commission sought to verify the percentage that small and medium-sized terminals represent in the sourcing of RTGs in the EEA. The definition of small and medium-sized terminal rests on the level of annual activity. A medium-sized terminal is defined as one handling between 500,000 and 1 million

⁵⁵⁸ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question B.C.F.2.

⁵⁵⁹ Non-confidential minutes of a call with a customer dated 7 April 2021, paragraph 15, Doc. ID 675.

⁵⁶⁰ Response to Q5– Questionnaire to cranes services providers, Doc. ID 3606, question 9.

⁵⁶¹ The Parties’ reply to the Commission’s request for information RFI 18 - 01118610, “Port cranes competition and market 19.05.2020” slide 8.

⁵⁶² Cargotec’s Main Production in response to RFI 17, CAR-KAU 00003007, slide 14.

⁵⁶³ The Notifying Parties’ response to RFI 3, Annex Q1.

TEUs a year and a small terminal as one handling between 100,000 and 500,000 TEUs a year.⁵⁶⁴

- (632) These small and-medium sized terminals that have sourced RTGs since 2010 represent [20-30]% of container throughput in the EEA but they represent [30-40]% of RTG purchases ([40-50]% for the period 2018-2020) and [60-70]% of RTG tenders ([60-70]% for the period 2018-2020). Small and medium-sized terminals are therefore overrepresented in the procurement and tendering of RTGs compared to their importance in container throughput.
- (633) The Table 3 below shows the market share of the Parties and their main competitors in RTGs for small and medium-sized terminals in the EEA.

Table 3 – Automated and manual RTG market shares in small and medium EEA terminals (<1m TEUs)

Manufacturer	2010-2020	2018-2020	2010-2020	2018-2020
Cargotec	[...]	[...]	[20-30]%	[5-10]%
Konecranes	[...]	[...]	[40-50]%	[60-70]%
Combined	[...]	[...]	[70-80]%	[70-80]%
ZPMC	[...]	[...]	[5-10]%	[0-5]%
Liebherr	[...]	[...]	[5-10]%	[5-10]%
Paceco Espana	[...]	[...]	[5-10]%	[0-5]%
Künz	[...]	[...]	[0-5]%	[5-10]%
Total	[...]	[...]	100,0%	100,0%

Source: See RFI 36 annex Q5-1.

- (634) The Merging Parties have a very strong market position for small and medium-sized terminals with a share of [70-80]% for the period 2010-2020 ([70-80]% in the whole market including large terminals) and [70-80]% for the period 2018-2020 ([60-70]% in the whole market including large terminals). ZPMC is much less present for small and mid-sized terminals with a share of [5-10]% for the period 2010-2020 ([10-20]% in the whole market including large terminals) and [0-5]% in 2018-2020 ([20-30]% in the whole market including large terminals). This smaller market share reflects the lower presence and investment of ZPMC for these particular customers, arguably linked to the smaller orders they place, as well as to which extent these small and medium-sized customers are highly dependent on the Parties for their sourcing of RTGs.⁵⁶⁵
- (635) Finally, some EEA customers submit that this lack of presence of non-EEA manufacturers including ZPMC in the EEA gantry cranes also reflects a limited interest in ramping up their presence in the region, especially for smaller and mid-

⁵⁶⁴ Reply to RFI 19, paragraph 28 and https://repositorio.cepal.org/bitstream/handle/11362/37775/1/S1421113_en.pdf (page 2) and https://unctad.org/system/files/non-official-document/dtl_ttl_2012d10_Soberon.pdf (page 17). The Notifying Parties have also classified as large terminals three terminals with a throughput below one million tons because these terminals have been classified as “Global TO” according to the Drewry report from 2019, and as “Regional TO” if the same report mentions the terminal operator as a main regional operator. If a terminal operator is a joint venture where one of the Global TO’s is a shareholder, it was also classified as large by the Notifying Parties. In order to ensure consistency in the definitions, the Commission considers that all these terminals are medium-sized in the light of their throughput below one million tons.

⁵⁶⁵ Letter of Facts, paragraphs 61 to 64.

size terminals. This is mentioned by one customer who noted that “*I think non EEA suppliers are interested and very active in the European countries where they see big market and many orders (for example ports of Netherlands, Belgium or Germany). Of course they are coming with lower purchase price and most important shorter delivery times. In other regions (like Baltic countries or Nordic Europe) none of Chinese players are strong in the market because due to lower market technical support is at very low level [sic] (compared to main suppliers like Cargotec, Konecranes or Liebherr).*”⁵⁶⁶ Another customer noted that ZPMC is mostly focused on Asia as regards automated RTGs.⁵⁶⁷

- (636) On the basis of the above, the Commission takes the view that ZPMC is an active supplier of RTGs in the EEA, but had a limited number of customers in the EEA. There are a number of factors, such as the small size of RTG orders in the EEA, quality issues perceived by EEA customers and a less efficient service network in the EEA, which has inhibited EEA customers to source from ZPMC, or even prevented ZPMC to participate in some EEA tenders. The competitive constraint that ZPMC would impose on the Merged Entity going forward is likely to be limited to large ports with significant throughput, because ZPMC would not be in position (or not be interested) to address smaller orders from the merging Parties’ traditional RTG customers. As these smaller orders represent [40-50]% of the RTG demand in the EEA but nearly [number] of the tenders launched over the last ten years, a significant share of the EEA RTG demand is unlikely to be subject to competition from ZPMC.

(B) Liebherr

- (637) Liebherr is a German-Swiss crane supplier active in the manufacturing and sale of RTGs and RMGs, as well as STS and MHCs for quay cranes. With a global market share of [0-5]%, Liebherr is the fifth supplier of RTGs globally behind ZPMC, Cargotec and Konecranes, and Mitsui for the period 2018-2020. Over the same period in the EEA, Liebherr is the number 4 supplier (on par with Künz), with a share of [0-5]%.
- (638) Looking at a 10 year period, Liebherr has seen its EEA RTG market share declining from [10-20]% during the period 2010-2013 to [0-5]% in 2018-2020. Over that period, Liebherr has delivered [...] units in the EEA, more than [...] times less than Cargotec and more than [...] times less than Konecranes.⁵⁶⁸
- (639) The Notifying Parties submit that Liebherr regularly supplies RTGs on a global basis, and the Notifying Parties view Liebherr as a strong EEA-based supplier with a similar cost structure to the Parties. In particular, the Notifying Parties mentioned examples of recent deliveries of RTGs by Liebherr but none of them occurred in the EEA (Somalia, Uruguay and Egypt).⁵⁶⁹ According to the Notifying Parties, Liebherr is also active in RMGs, as well as ASCs, and in light of the industry trend towards automation, and its significant position as a supplier of automation solutions, Liebherr is expected to have an increasingly significant role going forward.⁵⁷⁰
- (640) EEA customers having responded to the market investigation confirmed that Liebherr is active in the market but also that it is considered as an expensive supplier for RTGs. A customer noted as a weakness of Liebherr that it has “*high price and*

⁵⁶⁶ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question B.C.F.2.

⁵⁶⁷ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question B.C.C.5.

⁵⁶⁸ Form CO, RFI PN2 – Annex – Q5 – Confidential – market shares.

⁵⁶⁹ Reply to the SO, paragraph 395.

⁵⁷⁰ Response to the Article 6(1)(c) Decision, paragraph 66.

expensive spare parts". A customer noted that Liebherr had "*Higher price compared to Cargotec and Konecranes*". "Price" or "*High price*" was also identified as a weakness of Liebherr by EEA customers. A customer also mentioned in relation to Liebherr that "*weaknesses exist regarding more limited track record*".⁵⁷¹

- (641) This lack of competitiveness was also signalled by a customer having recently sourced RTGs. This customer noted that "*Liebherr was not able to offer a competitive price compared to the other OEMs*".⁵⁷² In another procurement process, the concerned customer flagged that "*Liebherr was also involved in the tender but was not able to offer a competitive price and the dimensions of the RTGs did not match the Company's expectations*".⁵⁷³
- (642) One competitor noted that it "(...) does not perceive Liebherr as a strong competitor in RTGs at ports" mainly because "Liebherr produces RTGs for railyards that have different requirements than RTGs at ports and, therefore, result in a design that is cheaper to manufacture". The main focus of Liebherr would be, according to this competitor, on other types of gantry cranes, notably RMGs: "Liebherr adopts an aggressive strategy, notably, in intermodal cranes (RMGs) but not much in the market for port cranes".⁵⁷⁴
- (643) The Notifying Parties do not contest that Liebherr may be considered as an expensive supplier (in terms of one-off purchasing costs), but notes that it suggests that Liebherr's higher price point correlates to a perception of its higher quality.⁵⁷⁵ While this high quality was indeed mentioned by some respondents to the market investigation, it is in general considered as a more expensive supplier than Cargotec and Konecranes and, as a result, Liebherr has often been discarded by customers when they select a RTG supplier.
- (644) In Liebherr's opinion, this lower competitiveness in RTGs stems from higher production costs of cranes as the company manufactures exclusively in the EEA (Killarney, Ireland), and, for some destinations, higher transportation costs. The differences with the Parties is that Konecranes and Cargotec manufactures parts of their cranes in lower production costs areas such as South-East Asia (although Konecranes assembles some parts of the cranes in the EEA, especially for cranes to be delivered in the EEA)
- (645) As explained by Liebherr "Liebherr added that they face higher transportation costs for RTGs with respect to Konecranes and Cargotec. In fact, the Parties can produce RTGs or manufacture big parts of them in China, with lower production costs, and then assemble and ship them to Europe or assemble the big parts in Europe."⁵⁷⁶
- (646) Ultimately, Liebherr is mainly competitive in regions that are close to its manufacturing site in Ireland, also because it can guarantee shorter delivery times: "*Liebherr explained that they have some RTG's in Western Europe i.e. Poland and of course Ireland (where they can ship cranes by road) and the UK, which is a neighbouring market. (...). Slovenia, Malta, Greece, Spain, Portugal etc. are also significant RTG markets but are supplied by the Parties and not Liebherr*".⁵⁷⁷

⁵⁷¹ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question B.C.A.4.

⁵⁷² Non-confidential minutes of a call with a customer dated 8 April 2021, paragraph 14, Doc. ID 675.

⁵⁷³ Non-confidential minutes of a call with a customer dated 7 April 2021, paragraph 13, Doc. ID 570.

⁵⁷⁴ Non-confidential minutes of a call with Mitsui dated 23 September 2021, paragraph 16, Doc. ID 4311.

⁵⁷⁵ Reply to the SO, paragraph 397.

⁵⁷⁶ Non-confidential minutes of a call with Liebherr dated 17 September 2021, paragraph 5, Doc. ID 4077.

⁵⁷⁷ Non-confidential minutes of a call with Liebherr dated 17 September 2021, paragraph 6, Doc. ID 4077.

- (647) In an e-mail dated 3 May 2019 regarding a RTG+RMG tender in [location], a Cargotec executive noted [internal document reference].⁵⁷⁸
- (648) In the EEA, in the last ten years, Liebherr delivered cranes to the ports of [location], [location] and two ports in [location]. In Europe, outside of the EEA, Liebherr also delivered RTG cranes to [location] and [location].⁵⁷⁹ It is indeed the case that Liebherr has not delivered any RTG cranes in the last ten years in [location] ports, which represent a significant share of sourcing of RTGs in the EEA, notably in [location], nor in [location], also an important market.⁵⁸⁰
- (649) It appears therefore that Liebherr is not present in RTGs in some parts of Europe and the parties intend to maintain that situation in these areas that they consider as their home territory. In an e-mail [internal document reference].⁵⁸¹
- (650) The Notifying Parties finally submitted that Liebherr confirmed to the Commission that it is currently designing semi-automatic and remote-controlled RTGs and that in a foreseeable future (i.e., one to two years), Liebherr expects to produce fully automated RTGs. The Notifying Parties submit that this is entirely consistent with the Notifying Parties' past submissions in which they explained that as one of the world's leading specialists in automation systems, Liebherr has or could, extend its offering to A-RTGs and ASCs.⁵⁸² The Commission understands indeed that Liebherr was ordered remote-controlled semi-automatic STS and RTGs for a terminal in [location] to be delivered late 2022, but not in the EEA. Automated RTGs still play a marginal role in the EEA with only [...] units sold between 2010 and 2020, [number of units] by Cargotec and [number of units] by Künz.
- (651) On the basis of the above, the Commission takes the view that Liebherr is a small and declining rival in the EEA RTG market. In the last ten years, its track record for RTGs in Europe is limited to ports located close to its Irish plant due to transport costs, lack of recognition from customers and higher prices. It does not appear therefore that Liebherr would be in a position to impose a sufficient competitive constraint on the merged Entity for RTGs in the EEA.

(C) Künz

- (652) Künz is an Austrian crane supplier active in the manufacturing and sale of RTGs and RMG, as well as STS in quay cranes. With a global market share of [0-5]%, Künz is the ninth supplier of RTGs globally behind ZPMC, Cargotec and Konecranes, Mitsui, Liebherr, Sany, Rainbow-Cargotec and Mitsubishi for the period 2018-2020. Over the same period in the EEA, Künz is the number 5 supplier with a share of [0-5]%.⁵⁸³
- (653) The Notifying Parties claim that they see Künz as an active and strong competitor in RTGs, ARTGs and ASCs. As the industry moves towards increased automation, the Notifying Parties expect that Künz will have an increasingly significant role going forward.⁵⁸³
- (654) Künz has recently entered the RTG market and has just sold [...] units of its RTG product (named the “Freerider”) in the EEA so far, to [name of customer].

⁵⁷⁸ Cargotec's main response to RFI 17 - CAR-COL-00101485. Underlining added by the Commission.

⁵⁷⁹ Response to RFI 19, various WCN yard crane reports between 2011 and 2020.

⁵⁸⁰ Response to RFI 19, various WCN yard crane reports between 2011 and 2020.

⁵⁸¹ M.10078 Cargotec Konecranes RFI 18-01120518 msg. Underlining added by the Commission.

⁵⁸² Reply to the SO, paragraph 405.

⁵⁸³ Response to the Article 6(1)(c) Decision, paragraph 66.

- (655) While this recent entry could be considered as a constraint on the Notifying Parties, Künz itself does not see its RTG as competing with the Notifying Parties' products. As explained by Künz *"The Company developed in 2016 an RTG named 'Freerider', which can be automated. This product is aimed at customers that operate manual RTGs and that may want to switch to automation without incurring the additional costs of installing the rail tracks necessary to operate ASCs. The Company's aspiration is not to compete with the Parties in the market for traditional RTG cranes, as the Freerider is more expensive than the Parties' RTGs and is a niche product developed to answer different demands. The Freerider differs from traditional RTGs as it can undertake gantrying with fully loaded containers, it can operate at a faster speed and its system is very stable because the hoists of the cranes are composed of a specific system of ropes and gearboxes. (...)." ⁵⁸⁴*
- (656) Künz added moreover that *"The Parties are very established players in the traditional RTG market). But Künz considers the Freerider to be a different type of machine."*⁵⁸⁵
- (657) Künz has in particular specified the technical differences between a traditional RTG and the Freerider, noting *"In fact, while being a rubber-tyred crane, the design of the Freerider is based on the concept of an ASC. The main feature that distinguishes the Freerider from other RTGs is the fact that it is possible to easily and quickly move it on longer distances even with a loaded container on the spreader".*⁵⁸⁶
- (658) The Notifying Parties submitted that they disagree with Künz's characterization of its "Freerider" RTG as being a different type of machine to the RTGs offered by the Parties. According to the Notifying Parties, the main differentiating factor is its operational mode, which is more akin to that of an ASC and in their view, the Freerider can be positioned as an alternative to RTGs, ARTGs and ASCs. The Notifying Parties submit that Konecranes has benchmarked its RTG offering against that of Künz, suggesting that it very much does view it as a serious competitor.⁵⁸⁷
- (659) The Notifying Parties noted moreover that when asked about the main innovations in RTGs in the past 10 years, a number of respondents to the Commission's market investigation cited the Freerider RTG, noting that *"Künz is the most innovative company"* and that *"Künz is very innovative and delivered many successful projects [...]"*.⁵⁸⁸
- (660) The Commission does not disagree that Künz was considered by respondents to the market investigation as an innovative player in the gantry cranes markets in general. However, these respondents did not particularly target the Freerider RTG as a breakthrough innovation but rather the concept of single girder cranes that Künz has developed across the whole range of it gantry cranes and that has proven particularly successful in ASCs. As explained by one competitor *"Künz is a strong innovative competitor on the RMG and ASC. Their recent ASC project at Maasvlakte II, Rotterdam shows their innovation strength"*. A second customer noted that *"KUNZ, as in the Morocco Tangier project, in which they used oval shape girder to reduce*

⁵⁸⁴ Non-confidential minutes of a conference call with Künz dated 29 April 2021, paragraph 15, Doc. ID 1514.

⁵⁸⁵ Non-confidential minutes of a conference call with Künz dated 29 April 2021, paragraph 17, Doc. ID 1514.

⁵⁸⁶ Non-confidential minutes of a call with Künz dated 16 September 2021, paragraphs 2 and 3, Doc. ID 4289.

⁵⁸⁷ Response to the Article 6(1)(c) Decision, paragraph 66.

⁵⁸⁸ Reply to the SO, paragraph 411.

wind resistance” (the Tangier project related to ASCs). A third customer mentioned that “Künz has delivered a lot of ASCs for Maasvlakte”.⁵⁸⁹

- (661) In the same vein, one competitor identified Künz as an innovative company in gantry cranes in general, in particular in intermodal terminals where RMGs are more common and RTGs less present “Kuenz have brought new innovations in RMG/ASC/RTG structures, remote control and automation in intermodal.” This is confirmed by another competitor who insisted on innovations brought by Künz in RMGs: “Künz introducing single girder (box type) RMGs and tubular portal structure for RMGs”.⁵⁹⁰
- (662) One competitor confirmed during the investigation the more limited relevance of Künz in RTGs compared to RMGs. In particular, it noted that “Mitsui-Paceco thinks that Kuenz produces cranes that present special features, such as reduced wind loads. According to the Company, Kuenz is stronger in Europe than in the US, and is a particularly relevant actor in the market for RMGs. On the other hand, Kuenz is not perceived by Mitsui-Paceco as a strong competitor for cranes, particularly in RTGs.”⁵⁹¹
- (663) As regards more specifically the Freerider RTG, this characterization of the Freerider as a different machine from a traditional RTG is shared by a number of market observers. As noted in the WCN Yard Crane report for 2019, “The FREERIDER is Künz’s unique and innovative RTG design, with a single girder and an A-frame leg structure, designed for long travel at relatively high speeds (130 m/min). While it travels on rubber tyres with a 16-wheel bogie configuration, the RTG more closely resembles the new ASC that Künz developed for APM Terminals MedPort Tangier in Morocco than a conventional RTG with a rectangular leg structure and two girders”.⁵⁹²
- (664) As regards the benchmark that Konecranes would have carried out and where it would have compared its RTG offering to Künz, the Commission notes that Konecranes lists in this internal document [...] of the Freerider, which cast doubts on the capacity of Künz RTG to become a reliable alternative.⁵⁹³ For example, Konecranes states [internal document reference] or that [internal document reference] or, [internal document reference].
- (665) The Notifying Parties consider that the fact that Konecranes identified certain [...] in the Freerider e.g., [internal document reference] compared to its RTG is “neither here nor there”.⁵⁹⁴ The Commission disagrees with this statement because for a new RTG design that has to be accepted by the customers, any [...] can decrease incentives of customers to adopt the new product.
- (666) The other document provided by Konecranes in which [internal document reference].⁵⁹⁵
- (667) More generally, Konecranes’ internal documents show that they doubt Künz’ RTG would constitute a workable solution for existing terminals. For example, [internal document reference].⁵⁹⁶

⁵⁸⁹ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question B.C.C.5.

⁵⁹⁰ Response to Q1 – Questionnaire to Customers, Doc. ID 3154, question B.C.C.5.

⁵⁹¹ Non-confidential minutes of a call with Mitsui dated 23 September 2021, paragraph 17, Doc. ID 4311.

⁵⁹² Form CO, annex to PN RFI 1, WCN Yard Crane Report 2019. Underlining added by the Commission.

⁵⁹³ Response to European Commission RFI 7, Annex QK 38.2.

⁵⁹⁴ Reply to the SO, paragraph 412.

⁵⁹⁵ Response to European Commission RFI 21, Annex QK 14.1.

- (668) Moreover, Künz does not target the same customers as those traditionally purchasing RTGs “Freerider RTGs mainly target customers with terminals that are already using RTGs and/or reach stackers and are handling increasing volumes, and, therefore, need equipment that can satisfy these new requirements. Reach stackers are very flexible and mobile but with reach stackers, the limit in terms of container throughput is quickly reached.”⁵⁹⁷
- (669) Ultimately, the objective of Künz is to create its own demand for the Freerider and not necessarily to replace traditional RTGs sourced as replacement equipment, especially given that the Freerider is sold at a price premium compared to traditional RTGs “Künz does not consider that the Freerider RTGs is a substitute for traditional RTGs. When customers are happy with relatively slow performance of a traditional RTG at a low price, it is difficult for them to compete with a more elaborated crane at a premium price. But there is also a demand that Künz anticipates of terminals looking for a better product, that can be automated quickly, and could replace a large number of reach stackers. This is the demand (such as the one of the customer in the Netherlands) that Künz is currently targeting, bearing in mind that the Freerider performs even better in automated mode.”⁵⁹⁸
- (670) The Notifying Parties claimed that the Freerider was developed and launched, in Künz's own words, to target “terminals that need to replace existing RTGs” or “customers that operate manual RTGs and that may want to switch to automation”.⁵⁹⁹ As, in the SO, the Commission preliminarily found that EEA demand pertains to replacement and capacity extensions, the Notifying Parties submitted that this is precisely what Künz has indicated its Freerider RTG as targeting.⁶⁰⁰ The first quote of the Notifying Parties is however incomplete as Künz precisely said that “Kuenz also targets terminals that need to replace existing RTGs and reachstackers and are currently moving towards automation”, which is a narrower focus than the one claimed by the Notifying Parties.⁶⁰¹
- (671) Even when customers look at Künz as a potential technical solution, they are somehow discouraged by the price premium they would have to pay for the Freerider, as explained in a Cargotec e-mail regarding the RTG tender in [location] and dated 31 January 2020: [internal document reference].⁶⁰² In an e-mail dated 3 May 2019 regarding a RTG+RMG tender in [country], a Cargotec executive noted [internal document reference].⁶⁰³
- (672) On the basis of the above, the Commission takes the view that Künz is a new entrant in the EEA RTG market, but that it entered with a niche product, more expensive than the Parties’ traditional RTG, and addressing a different, more sophisticated, demand. Its track record has so far been limited to [customer]. It does not appears therefore that Künz would be in a position to impose a sufficient competitive constraint on the Merged Entity for RTGs in the EEA.

⁵⁹⁶ M.10078 Cargotec Konecranes RFI 18-00960504 msg. Underlining added by the Commission.

⁵⁹⁷ Non-confidential minutes of a call with Künz dated 16 September 2021, paragraph 4, Doc. ID 4289.

⁵⁹⁸ Non-confidential minutes of a call with Künz dated 16 September 2021, paragraph 7, Doc. ID 4289.

⁵⁹⁹ Reply to the SO, paragraph 413.

⁶⁰⁰ Reply to the SO, paragraph 414.

⁶⁰¹ Non-confidential minutes of a call with Künz dated 16 September 2021, paragraph 4, Doc. ID 4289.

⁶⁰² Cargotec's Main Production in response to RFI 17 - CAR-MON-00159409.msg. Underlining added by the Commission.

⁶⁰³ Cargotec's main response to RFI 17 - CAR-COL-00101485.

(D) Paceco

- (673) The Notifying Parties claim that Paceco is a subsidiary of Mitsui, and Mitsui continues to take forward Paceco's legacy port cranes business. According to the Notifying Parties, Mitsui / Paceco continues to be a highly active and successful competitor in RTGs. For example, in March 2021, Paceco and Mitsui announced their market release of a near zero emission RTG, and the development of a zero emission RTG. Further, the Notifying Parties understand that Konecranes recently competed against Mitsui for tenders for Automated RTGs and STS cranes [location]. The Notifying Parties therefore consider that Mitsui is, therefore, a credible alternative to the Parties (and other suppliers) in the EEA and beyond.
- (674) Paceco is a Spanish crane supplier which used to be active in the manufacturing and sale of RTGs and RMGs, as well as STS in quay cranes. With a global market share of [0-5]%, Paceco is the eleventh supplier of RTGs globally behind ZPMC, Cargotec and Konecranes, Mitsui, Liebherr, Sany, Rainbow-Cargotec, Mitsubishi, Künz and Mi-Jack for the period 2018-2020. Over the same period in the EEA, Paceco is the number 5 supplier (on par with Künz), with a share of [0-5]%.
- (675) Looking at a 10 year period, Paceco has seen its EEA RTG market share declining from [0-5]% during the period 2010-2013 to [0-5]% in 2018-2020. Over that period, Paceco has delivered only [...] units in the EEA. These units were delivered to [location] ([number of units] RTGs in [year]), [location] ([number of units] RTGs in [year]) and [location] ([number of units] RTGs in [year]).
- (676) Paceco stopped delivering cranes in the EEA and worldwide in 2018. In fact, according to Mitsui, its current owner, Paceco ceased producing any cranes in its manufacturing site in Bilbao and does not participate currently in any tender for RTGs. Mitsui has benefited since the 1960's from a licensor-licensee programme with Paceco as described by Mitsui "*Paceco was a steel manufacturer that remained market leader for port cranes until the 1980s. In the years before, when manufacturing of cranes stopped in the US, Paceco Inc. created a licensees program to increase their production capacity. In fact, through this program, different manufacturers could produce cranes for Paceco. Mitsui became one of these licensees in 1961, Hyundai was also granted a licence in 1963*".⁶⁰⁴
- (677) The production assets for cranes manufacturing of Paceco in Spain were finally handled in 2018 to a new owner, who decided to stop production of cranes in Spain, as described by Mitsui "*The majority of Paceco Espana's shares were sold to URSSA S.A. in 2012 and Mitsui became a minority owner. Paceco España faced bankruptcy mid 2018 two three years ago and their some of their assets (services, spare parts, modifications, and IT services such as TOS and Spyder) were purchased by a new company founded by a previous executive of Paceco, Paceco Momentum. The assets for new cranes were not purchased and still remain with Paceco Espana, a bankrupt company. Paceco Corp. granted a new license for Paceco branding and crane technology to service Paceco Espana cranes.*"⁶⁰⁵

⁶⁰⁴ Non-confidential minutes of a call with Mitsui dated 23 September 2021, paragraph 2, Doc. ID 4311.

⁶⁰⁵ Non-confidential minutes of a call with Mitsui dated 23 September 2021, paragraph 4, Doc. ID 4311.

- (678) The critical situation of Paceco was well known by the Merging Parties, who have seized this opportunity [...], as explained in an e-mail written by a Cargotec executive on 14 February 2018: [internal document reference].⁶⁰⁶
- (679) Mitsui has indicated to the Commission that they are reflecting on resuming cranes production in Paceco's facilities in Spain. Whether Mitsui could restart Paceco cranes production in Spain and reintroduce Paceco as a credible supplier in the EEA RTG market remains particularly uncertain "*Mitsui added that they are envisaging to restart production of cranes in Spain, but the port crane business is particularly tough with very tight margins. In this context, Paceco Momentum would not be able to secure financial support and cash flow for the production of cranes in Spain, hence support from Mitsui would be necessary. However, Mitsui needs time to evaluate this possibility*".⁶⁰⁷
- (680) The Commission therefore takes the view that Paceco is no longer an active bidder and supplier of RTG cranes in the EEA, having delivered its last cranes in 2018 and ceased production of RTG cranes in its manufacturing facility. The EEA market had six suppliers of RTG in 2010 and it is now limited to five active suppliers.
- (681) As regards Mitsui, the current licensee and owner of Paceco, it has not delivered any RTG cranes in the EEA in the last ten years and can only be considered as a potential entrant in the EEA RTG market. It is however present in RTGs globally, notably in South-East Asia and the west coast of North America. The competitive constraints potentially caused by market entry on non-EEA suppliers, including Mitsui, will be assessed in the Section related to entry.
- (E) Conclusion as regards competitors 'ability to defeat a price increase
- (682) Overall as regards RTGs, the Commission takes the view that customers of the Merging Parties may have difficulties switching to other suppliers because there are few alternative suppliers. These customers would be particularly vulnerable to price increases as a result of the Transaction.
- (683) This contributes to the finding that the Transaction results in the creation of a dominant position by the Merged Entity in the EEA market for RTGs.
- 7.2.1.4. Alternative suppliers face barriers to entry and expansion in the EEA markets for RTGs and ASCs
- (684) According to the Horizontal Merger Guidelines, when entering a market is sufficiently easy, a merger is unlikely to pose any significant anti-competitive risk. Therefore, entry analysis constitutes an important element of the overall competitive assessment of a transaction. For entry to be considered a sufficient competitive constraint on the merging parties, it must be shown to be likely, timely and sufficient to deter or defeat any potential anti-competitive effects of the merger.⁶⁰⁸
- (685) In that regard, the Commission notes that the Notifying Parties have identified the following suppliers as being active in RTGs at worldwide level and exerting an actual or potential competitive constraint in the EEA RTG markets ZPMC, Liebherr, Künz, Paceco, Mitsui, Sany, CSSC, Mitsubishi, Hyundai and HDHM. The Commission has already discussed ZPMC, Liebherr, Künz and Paceco as they

⁶⁰⁶ Cargotec's Main Production in response to RFI 17 – CAR-PRA-00097657 msg. Underlining added by the Commission.

⁶⁰⁷ Non-confidential minutes of a call with Mitsui dated 23 September 2021, paragraph 5, Doc. ID 4311.

⁶⁰⁸ Horizontal Merger Guidelines, paragraph 68.

already are (or used to be) active in the EEA RTG market. In relation to the other suppliers, who can be considered as potential entrants, the Commission notes the following.

- (686) Mitsui is a supplier of RTGs, notably in South-East Asia and the west coast of North America. Although it is a sizable supplier in these regions (with a worldwide share of [10-20]% in 2018-2020), it has not delivered any RTGs in the last ten years in the EEA.⁶⁰⁹ Mitsui manufactures its RTGs in Japan, where it is based. According to the Notifying Parties, Mitsui competed against Konecranes for A-RTGs and STS cranes for [customer] and [customer], respectively, [...].⁶¹⁰
- (687) Sany supplies RTGs mainly in Asia and has a market share of [0-5]% at worldwide level for the period 2018-2020.⁶¹¹ Sany has not sold any RTGs in the EEA in the last ten years despite being active in this market in other parts of the world.⁶¹²
- (688) Baltkran is a Russian company, which, according to the Notifying Parties, “*recently launched its line of RTGs in [year], and has already successfully made deliveries e.g., to the [customer]*”⁶¹³. The Commission understands that Baltkran has delivered [number of RTG units] worldwide in the last ten years to [customer]. Baltkran had no sales of RTGs in the EEA in the last ten years.⁶¹⁴ It is mostly active in RMGs in Russia and former CIS countries.
- (689) CSSC is a Chinese company with a market share of [0-5]% worldwide for the period 2018-2020.⁶¹⁵ It has not delivered any RTGs in the EEA in the last ten years.
- (690) Mitsubishi is a Japanese company with a market share of [0-5]% worldwide for the period 2018-2020.⁶¹⁶ It has not delivered any RTGs in the EEA in the last ten years.
- (691) Hyundai is a Korean company which has delivered its last RTG in [year].⁶¹⁷ It has not delivered any RTGs in the EEA in the last ten years.
- (692) HDHM is a Chinese company which has delivered its last RTG in [year].⁶¹⁸ It has not delivered any RTGs in the EEA in the last ten years.
- (693) In this Section, the Commission will discuss the barriers to entry faced by these potential suppliers in the EEA. The Commission considers that the barriers to enter the RTG market are high and has identified five main barriers to entry, namely: (i) availability of a service network (ii) compliance with European regulatory standards; (iii) capacity to meet the quality requirements of EEA customers; (iv) track record in the EEA and (v) transport costs. Responses to the market investigation have all pointed to the existence of these requirements and challenges that crane manufacturers must satisfy and overcome to be considered credible suppliers of RTGs in the EEA. Each of these will be examined in turn below.

⁶⁰⁹ Form CO, RFI PN2 – Annex – Q5 – Confidential – market shares.

⁶¹⁰ Response to the Article 6(1)(c) Decision, paragraph 66.

⁶¹¹ Form CO, RFI PN2 – Annex – Q5 – Confidential – market shares.

⁶¹² Non-confidential minutes of a conference call with Sany on 22 September 2021, paragraph 2, Doc. ID 3983.

⁶¹³ Response to the Article 6(1)(c) Decision, paragraph 66.

⁶¹⁴ Form CO, RFI PN2 – Annex – Q5 – Confidential – market shares.

⁶¹⁵ Form CO, RFI PN2 – Annex – Q5 – Confidential – market shares.

⁶¹⁶ Form CO, RFI PN2 – Annex – Q5 – Confidential – market shares.

⁶¹⁷ Form CO, RFI PN2 – Annex – Q5 – Confidential – market shares.

⁶¹⁸ Form CO, RFI PN2 – Annex – Q5 – Confidential – market shares.

(A) Availability of a service network in the EEA

- (694) EEA customers of RTGs have identified availability of a local service network as an important parameter in the selection process of a gantry crane supplier. Customers consider this criterion as a major requirement for a supplier and a key challenge to overcome in the EEA market for non-EEA suppliers. This is explained by one customer, who identifies the main requirements to be successful in RTGs as “*know how, manufacturing facilities, established service and support network*” and the main challenge as “*Very difficult to establish and keep network when volumes are not big enough*.”⁶¹⁹
- (695) As explained by one customer “As a rule, customer service is an essential award criterion in our tenders. If the crane is defective, it must be repaired within a very short time“.⁶²⁰ A second customer added “The important thing in the choice of the supplier remains of course the price which must remain reasonable but also the after-sales service and maintenance during the life of the machine”.⁶²¹ A third customer noted « location OF THE SUPPLIER effects on access and quality of service”.⁶²²
- (696) A majority of customers having responded to the investigation explained that purchasing RTGs from a supplier that is based in the same region of the world as the location of the port/terminal brings advantages in relation to after sales service, which is a key criteria for them. Notably, “*Close contact with the customer improves the business relation. In the purchase of a crane, brand and price of the crane is a factor but more important is the service assistance.*” As explained by a second customer “*Yes, and it’s big advantage. You can have much better support if supplier is close by and can reach your terminal in short time if needed*”. A third customer noted that “*location of the Supplier effects on access and quality of service and maintenance of the equipment. Supplier from Europe are much more attractive for us than suppliers from other parts of the word*” A fourth customer put forward that proximity of the supplier is important “*From a logistic and service point of view. A gantry crane is an investment that will be used for a long time and it also demands regular inspections*”.⁶²³
- (697) The majority of customers in the market investigation have explained that they expect from the service provider a reaction time of maximum four hours in case of a breakdown of a RTG, and half of them expect a reaction time of maximum two hours, which illustrate how crucial quick response availability of a local service can be.⁶²⁴

⁶¹⁹ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question B.C.G.1.

⁶²⁰ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question B.B.1. The German original reads as follows: “*Im Regelfall ist das Kundenservice ein wesentliches Zuschlagskriterium in unseren Ausschreibungen. Sollte der Kran defekt sein, muss dieser innerhalb kürzester Zeit instandgesetzt werden*”.

⁶²¹ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question B.B.1. The French original reads as follows: « *L’important dans le choix du fournisseur demeure bien sur le prix qui doit rester raisonnable mais le service après-vente et maintenance durant la durée de vie de la machine* ».

⁶²² Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question B.B.1.

⁶²³ Responses to Q2 – Questionnaire to Customers, Doc. ID 3153, question B.B.2.

⁶²⁴ Response to Q5 – PH2 Questionnaire to Customers of cranes and automation software for all cargo handling equipment, Doc. ID 3606, question 7.

- (698) For example, one customer noted that “In port business where we operate very expensive equipment and therefore don't have too much spare equipment we expect from OEM service companies 2-4 hours reaction time”.⁶²⁵
- (699) A second customer noted that “These cranes are very specific equipment that are mission-critical for a terminal. They must be in working order 24/7. ---especially gantry cranes are difficult to substitute if inoperational.” A third customer added “For (this customer), short-time and reliable availability of service is a crucial point when choosing a supplier for cranes. The breakdown of a crane means a (partial) interruption of the terminal operation, which results in financial losses and issues with customers. Therefore, the time needed for repair and maintenance services should be as short as possible”. According to a fourth customer” Availability of spare parts and short time of fixing of the devices is crucial to minimize downtime of the equipment. Having a subsidiary or a dealer/distribution network definitely helps.”⁶²⁶
- (700) The following example illustrates the crucial importance of a fast response to issues arising on a RTG crane in a terminal and how it may affect the reputation of a supplier and its ability to be considered in the context of a tender. In this case, Kalmar-Cargotec was planning to bid on a RTG project for [customer] while at the same time encountering issues to be fixed on a Kalmar RTG in another [customer]. On 3 March 2016, A Kalmar executive explained in an e-mail [internal document reference].⁶²⁷
- (701) The Notifying Parties claimed that this example has no relevance to the issue of availability of a local service network. The Notifying Parties submitted that in this case, following internal discussions, Cargotec decided to fly in a team from Finland for a few days to manage the issue, and the required modifications were done by a local third-party. Rather than highlighting the need for a local presence, according to the Notifying Parties, the facts at issue, which transpired over a course of week, simply showed that OEM can and do deal with such customer requests without having a permanent service presence on the ground (e.g., it is common for OEMs to fly in service personnel if needed).⁶²⁸
- (702) The Commission considers that this example clearly illustrates how important a swift response to issues arising in RTG cranes is for the customer. Whether a local team in Italy or a mobile team located in Finland provides the service appears in the Commission’s view irrelevant. What matters is that service providers for EEA customers relying on OEMs from the EEA are promptly served, which can be done by a local team or service staff sent around from the EEA’s headquarters. A non-EEA supplier does not have a choice to quickly fly people from outside the EEA and has to rely on an EEA-based local team.
- (703) For the same tender, Kalmar considered that it had to [internal document reference], and how it constitutes a differentiating factor compared to other potential bidders. On 7 March 2017, a Kalmar executive wrote in an e-mail [internal document reference].⁶²⁹

⁶²⁵ Response to Q5 – PH2 Questionnaire to Customers of cranes and automation software for all cargo handling equipment, Doc. ID 3606, question 7.1.

⁶²⁶ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question B.B.3.1.

⁶²⁷ Cargotec’s main response to RFI 17 - CAR-PRA-00125487. Underlining added by the Commission.

⁶²⁸ Reply to the SO, paragraph 457.

⁶²⁹ Cargotec’s main response to RFI 17 - CAR-COL – 00061300. Underlining added by the Commission.

- (704) In an external e-mail sent by a Cargotec executive on 26 March 2019 to present Kalmar's quotation for [number of units] RTGs and [number of units] RMGs for [customer], the Cargotec executive wrote [internal document reference].⁶³⁰
- (705) Competitors have confirmed the importance of after sales support, and quick local service, to maintain customer confidence in the supplier's product and solutions. As explained by a competitor "*While technical possibilities for supporting the product remotely are getting better and better, local presence is a strong sign of commitment to customers and makes problem solving much easier*". Another competitor shares this view: "*For container cranes a lot of ports have experienced staff for day to day service requirements, for more detailed technical support. It is important to have a local presence or fast response from the production facility*". According to a third competitor, "*It is important to be near customers*".⁶³¹
- (706) The Notifying Parties disagree on the importance of local service networks and submit that, although several players have established global service networks (including non-EEA suppliers such as ZPMC and Sany), this is not a pre-requisite for being an effective supplier of gantry cranes. Given that port cranes are generally of particular importance to customers' operations, these customers often have in-house stand-by repair capacity, and extensive stocks of spare parts for these types of equipment i.e., in many cases customers do not depend on external crane services in the first place.⁶³² Konecranes notes in that regard that of the [number] countries in which it supplied STS and gantry cranes during the 2010-20 period, Konecranes only had a local service presence in approximately [number] countries and mentions the example of [location], where it sold RTGs and STS without having an established local presence.⁶³³
- (707) Moreover, the Notifying Parties added that after-sales services are usually performed by a wide range of players, including OEMs, but also independent service providers, spare part trading companies, and, as mentioned above, by the customers themselves. Therefore, to the extent customers do not cover such services internally, there is a wide range of options available, and customers do not depend on the OEMs own service network for the servicing of their cranes.⁶³⁴
- (708) The Commission has assessed in the market investigation to which extent i) port operators are able to serve their gantry cranes repair and maintenance requirements internally and ii) they can also rely on external service providers for maintenance and service.
- (709) On the possibility to rely on internal capabilities, while some respondents to the market investigation submitted they could handle all or most RTGs repair internally, a majority of respondents indicated that they had to rely on external service providers for all or the majority of the interventions needed on RTGs. This is notably because interventions in some areas (for example electronics) requires skills and competences

⁶³⁰ Letter of Facts, paragraph 36.

⁶³¹ Response to Q1 – Questionnaire to Competitors, Doc. ID 3154, question B.B.2.1.

⁶³² Response to the Article 6(1)(c) Decision, paragraph 72.

⁶³³ Response to the Article 6(1)(c) Decision, paragraph 73.

⁶³⁴ Response to the Article 6(1)(c) Decision, paragraph 74.

that the port does not have.⁶³⁵ The same was true for the stock of spare parts, on which the majority of ports had to rely on external suppliers.⁶³⁶

- (710) As explained by one EEA customer “This and further replies apply to 2 RTGs in Gliwice terminal: All the electronics need to be maintained and serviced by external service. Small repairs regarding engines and/or hydraulics we can do in house”. A second EEA customer noted that “Our company's maintenance team can handle simple mechanical and electrical repairs. Most of the issues with our RTG's are in electronic area which needs sophisticated knowledge and tools which our company doesn't have”. According to a third customer “Only major retrofits or repairs are needing external cooperation from the OEM or other specialists (E-Room and control system renewal, i.e.)”.⁶³⁷
- (711) The choice of the business model by a port can also influence to which extent they intend to rely on an external service provider, be it an OEM or an independent service provider. An independent service provider explained “*In principle all terminals can carry out their own maintenance and repair for RTGs. It is more a matter of their business model and not only that of size of terminal. If you look at the Northsea Terminal in Bremerhaven, their size is big enough to justify and economically operate own service activities, but due to their business model they have outsourced all service and maintenance (not only for RTG). Others such as all Eurogate Terminal are required to use the inhouse Eurogate Technical Service branch. Other Terminals have a minimum maintenance crew of their own and outsource all work in excess to their own resources.*”⁶³⁸
- (712) For some other ports, the lack of available skills in-house explains that they resort to external intervention. As explained by a crane service provider regarding the capabilities of port operator to carry out repair and maintenance “*yes they can they have most of the time the technical knowledge inhouse, but capacity -wise they are normally short on people*”.⁶³⁹ According to one crane service provider, this explains the growing trend to outsourcing of these activities “*Sub-contracting has grown exponentially in the last two decades for this type of maintenance*”.⁶⁴⁰
- (713) The example provided above regarding an intervention Kalmar had to carry out swiftly in [customer] illustrates how after sales service from the OEM is important for a port operator, including for a GTO that is supposed to possess the required competences in-house.
- (714) One customer located in Lithuania pointed in that regard that “Different elements are taken into consideration by (the customer) when choosing a container handling equipment supplier, such as the location of the OEM’s service centre. For instance, the Company does not currently source from Sany as its service centre in Latvia offers support in a time frame incompatible with the requirements of the Company’s activities”.⁶⁴¹

⁶³⁵ Responses to Q5 – PH2 Questionnaire to Customers of cranes and automation software for all cargo handling equipment, Doc. ID 3606, question 4.

⁶³⁶ Responses to Q5 – PH2 Questionnaire to Customers of cranes and automation software for all cargo handling equipment, Doc. ID 3606, question 5.

⁶³⁷ Responses to Q5 – PH2 Questionnaire to Customers of cranes and automation software for all cargo handling equipment, Doc. ID 3606, question 4.

⁶³⁸ Responses to Q4 – PH2 Questionnaire to cranes service providers, Doc. ID 3610, question 15.1.

⁶³⁹ Responses to Q4 – PH2 Questionnaire to cranes service providers, Doc. ID 3610, question 15.1.

⁶⁴⁰ Responses to Q4 – PH2 Questionnaire to cranes service providers, Doc. ID 3610, question 15.1.

⁶⁴¹ Non-confidential minutes of a call with a customer dated 7 April 2021, paragraph 45, Doc. ID 675.

- (715) In relation to spare parts, it appears that ports keep the most basic ones in inventories but have to purchase from OEM the more structural ones ” *We have stock of spare parts which is coming from different suppliers. Strategic and most expensive parts can be purchased only from OEM and already now Konecranes is keeping very high spare parts prices and their flexibility is very low.*” A second customer noted “*We do have some stock spare parts which we expect to be replaced/damaged within 6-12month (especially engine parts). Usually that contains normal wear and tear*”.⁶⁴²
- (716) The Notifying Parties submitted that it would stem from the Commission’s own market investigation that a clear majority of respondents indicated that they rely primarily on third-party service providers or their in-house capabilities. In other words, the clear majority do not rely on the OEM.⁶⁴³
- (717) The Commission notes that it transpires from the market investigation that whilst customers do not *exclusively* rely on OEM for service provision, they need them in some circumstances. In particular, it appears that EEA ports rely both on OEMs and on external service providers when it comes to interventions requiring a certain degree of technical skills. As explained by a customer “*We have own staff for the maintenance, and we have contract with an independent local service provider, and also the regional representative service of Kalmar*”.⁶⁴⁴ A customer relying primarily on the OEM explains that this is justified by “*THE GUARANTEE THAT THE MANUFACTURER GIVES AND ALSO TO COMPLY WITH THE STANDARDS AND SPANISH PREVENTION MUSTS*”.⁶⁴⁵ As explained by a third customer “*Basic services are done by our maintenance team. When it comes to dealing with issues with electronic systems and serious engine problems we rely on OEM or spare parts suppliers*”.⁶⁴⁶
- (718) This is consistent with the description made by the Notifying Parties regarding the provision of after-sales service for cranes. The Notifying Parties explained in particular that even if ports / terminals organise services in-house, they may to some extent rely on support from OEMs for certain on-demand maintenance,⁶⁴⁷ and that independent service providers have less of a role to play in cranes compared to mobile equipment.⁶⁴⁸
- (719) It appears moreover that some of the maintenance tasks can only be carried out by the OEMs or that some contractual clauses prevent customers to call over third parties operators. The following comment made by a customer, which relies to some extent on an external service provider, Peinemann, relates to ASCs but it would also be applicable for other types of cranes that this customer does not currently source, such as RTGs “*Regarding specific components protected by intellectual property rights (e.g., battery exchange systems, software), the Company is bound by specific contracts prohibiting third parties to operate the maintenance. To be more precise, (the customer) could outsource this maintenance but it would entail risks regarding*

⁶⁴² Responses to Q5 – PH2 Questionnaire to Customers of cranes and automation software for all cargo handling equipment, Doc. ID 3606, question 5.

⁶⁴³ Reply to the SO, paragraph 461.

⁶⁴⁴ Responses to Q5 – PH2 Questionnaire to Customers of cranes and automation software for all cargo handling equipment, Doc. ID 3606, question 4.

⁶⁴⁵ Responses to Q5 – PH2 Questionnaire to Customers of cranes and automation software for all cargo handling equipment, Doc. ID 3606, question 6.

⁶⁴⁶ Responses to Q5 – PH2 Questionnaire to Customers of cranes and automation software for all cargo handling equipment, Doc. ID 3606, question 6.

⁶⁴⁷ Form CO, Chapter 3, other overlapping markets, paragraph 30.

⁶⁴⁸ Form CO, Chapter 3, other overlapping markets, paragraph 28.

*notably the warranty. The Company thus prefers to outsource the maintenance of these components to the OEMs. Despite selling Konecranes' equipment (e.g., reach stackers) and being their preferred dealer for several years, Peinemann is also prohibited to operate the maintenance on Konecranes components protected by intellectual property rights (e.g. software maintenance). The Company believes this is because Konecranes views Peinemann as a competitor in the supply of other harbour equipment as they also supply and lease equipment".*⁶⁴⁹

- (720) The majority of independent service providers that responded to the Commission's market investigation have confirmed that they serve cranes from Cargotec and Konecranes, but also from different OEMs⁶⁵⁰. These service providers have also submitted that they provide all types of repair services (regular maintenance, emergency repairs or upgrades)⁶⁵¹ and that in general their competitors for the servicing of cranes are OEMs (for the majority of them) and other independent service providers (for a strong minority of them).⁶⁵²
- (721) There are however situations where the intervention of the OEM having manufactured the crane is unavoidable, notably on proprietary systems. As explained by one service provider *"If the control system is a proprietary system of the crane manufacturer and in addition not based on Siemens components, then the customer has to rely on the crane manufacturer"*. A second service provider flagged that *"mainly when warranty involved customers want to rely on the OEM"*.⁶⁵³
- (722) Lack of competences or skills can also prevent independent service providers to intervene on some cranes and the OEM's involvement would in this case be required. A service provider noted that *"we can do mechanical maintenance and repair, we can do basic electrical repair but we cannot provide these service for the control system (lack of product knowledge)"*. This is confirmed by another service provider *"There is today difficult (sic) to do service/repair including PLC and other software for brands without agreement with the manufacturer"*.⁶⁵⁴
- (723) The unavailability of a local service network explains why some non-EEA manufacturers of gantry cranes do not manage to acquire a market position in the EEA, whereas they are present in other regions of the world. In particular, a vast majority of customers having responded to the market investigation have mentioned spare parts and service network as well as historical relationships as areas where non-EEA suppliers are not comparable to EEA suppliers. As explained by one customer *"Furthermore, Spare parts management and TCO are notably different for gantry cranes as (the customer) encounters difficulties on spare parts management with some Asian actors which has impacts on operations"*. Another European customer added that *"From (this customer)'s perspective, it might be more difficult for non-EEA suppliers to implement a distributors and service network to be able to provide short-time service. According to a third European customer "To make a good service network is a big challenge"*.⁶⁵⁵

⁶⁴⁹ Responses to Q5 – PH2 Questionnaire to Customers of cranes and automation software for all cargo handling equipment, Doc. ID 3606, question 10.

⁶⁵⁰ Responses to Q4 – PH2 Questionnaire to cranes service providers, Doc. ID 3610, question 2.

⁶⁵¹ Responses to Q4 – PH2 Questionnaire to cranes service providers, Doc. ID 3610, question 4.

⁶⁵² Responses to Q4 – PH2 Questionnaire to cranes service providers, Doc. ID 3610, question 5.

⁶⁵³ Responses to Q4 – PH2 Questionnaire to cranes service providers, Doc. ID 3610, question 4.2.

⁶⁵⁴ Responses to Q4 – PH2 Questionnaire to cranes service providers, Doc. ID 3610, question 10.2.

⁶⁵⁵ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question B.C.F.1.

- (724) Notably, a large customer explained that “Some non-EEA suppliers of RTGC have local offices in Europe which can quickly respond to terminals’ request of services on the cranes. However, there are still non-EEA suppliers of RTGC with their head office located in China who cannot react as fast as EEA suppliers of RTGC due to the time zone difference and limited local representatives in Europe”.⁶⁵⁶ This is confirmed by another large customer” Spare parts management have been difficult with non EEA suppliers with very long delivery time and after sales reactivity is not at the level of EEA suppliers.⁶⁵⁷
- (725) Availability of a service network is not an area where customer expect non-EEA suppliers to improve significantly their offering in the short term, maybe with the exception of ZPMC, which is already present. One customer indicated in that regard that “*Taking into consideration recent tenders, (the customer) does not observe strong improvement on those topics*”.⁶⁵⁸ This customer added that “*Non EEA suppliers should improve not only design and engineering but also i) servicing and spare parts, ii) total cost of ownership and iii) innovation capabilities*”.⁶⁵⁹
- (726) The Notifying Parties submitted that a number of respondents consider that non-EEA suppliers can overcome these challenges.⁶⁶⁰ However, the Commission notes that this is not expected after a certain period of time (one respondent submitted that “*Yes, but this will take probably 7-10 year*”) or this is subject to exogenous factors, which are considered unlikely. By way of example, one respondent put forward that “*I dont think that non EEA players will become alternative credible suppliers of gantry cranes until purchase will increase a lot (which is not realistic looking into projected cargo volumes in our region)*”.⁶⁶¹
- (727) As a conclusion on service network, the Commission takes the view that EEA port operators strongly rely on service provided by the crane manufacturers and availability of a local service network as an important parameter in the selection process of a gantry crane supplier. This is in particular due to the facts that:
- (a) customers expect from the service provider (whether the OEM or an independent service provider) a very quick reaction time of in case of a breakdown of a RTG, due to the fact that this is a crucial equipment for the operation of a terminal,
 - (b) although some ports have internal repair capabilities, they have to rely on external service providers for some specific repairs on RTGs, notably because interventions in some areas (for example electronics) requires skills and competences that the port does not have,
 - (c) The intervention of the OEM instead of an external service provider may be required in some circumstances, notably if the service provider is not an expert in the required field, of if intervention is needed on a proprietary system, or if

⁶⁵⁶ Responses to Q5 – PH2 Questionnaire to Customers of cranes and automation software for all cargo handling equipment, Doc. ID 3606, question 23.

⁶⁵⁷ Responses to Q5 – H2 Questionnaire to Customers of cranes and automation software for all cargo handling equipment, Doc. ID 3606, question 23.

⁶⁵⁸ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question B.C.F.3.

⁶⁵⁹ Responses to Q5 – PH2 Questionnaire to Customers of cranes and automation software for all cargo handling equipment, Doc. ID 3606, question 31.

⁶⁶⁰ Reply to the SO, paragraph 463.

⁶⁶¹ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question B.C.F.3.

contractual clauses prevent the external company to provide service on this particular piece of equipment.

- (728) The relevance of this parameter in the choice of a RTG supplier makes, in the Commission's view, entry or expansion of non-EEA suppliers that do not have this network, or are weaker in that regard (ZPMC or Sany), more difficult.

(B) Compliance with European standards

- (729) A number of customers and competitors have also pointed to compliance with EEA regulation and standards, which would appear as factors making it challenging for non-EEA suppliers to enter the EEA markets. ZPMC has in particular identified this parameter as a key challenge for Japanese and Chinese players active in other parts of the world and willing to enter the EEA market.⁶⁶²
- (730) One customer noted that "The major challenges of some non-EEA crane manufacturers are understanding the EEA regulations in order to ensure their products comply with EEA regulations".⁶⁶³ One competitor added that "Per the criteria above Asian gantry crane suppliers are comparable to EEA suppliers, however EEA standards are different than some countries in Asia and can create a barrier to entry and a lack of relationship with EEA customers also contribute the barrier to entry".⁶⁶⁴ A second customer added that "The most challenging aspect is compliance to EEA regulations and lack of local networks".⁶⁶⁵
- (731) The Notifying Parties have claimed that although gantry cranes need to meet certain regulatory requirements, these standards are very similar across world regions, and all major manufacturers can and do meet these requirements (with self-certification merely forming part of meeting specifications through order specific engineering). Therefore the Notifying Parties do not view these standards as constituting material barriers to trade.⁶⁶⁶
- (732) In general, in the market investigation, the feedback was mixed as regards the importance of EU standards and regulations, notably the CE marking to show that the product is compliant with Directive 2006/42/EC of the European Parliament and of the Council of 17 May 2006 ("The Machinery Directive"), and to which extent these standards make it more difficult/costly for non-EEA suppliers to sell RTGs in the EEA. While some respondents claimed that there *were no major differences*" and that "*Chinese suppliers would know how to comply*", other respondents put forward that "*Directive machines and all protections related to safety are usually an issue for non-EEA suppliers*" and that "*Compared to certain regions in the world, the EEA regulations make equipment more expensive*".⁶⁶⁷
- (733) The following example illustrates how the granting of a CE marking may have an influence on the capacity of a supplier to place a bid. Mitsui explained to the Commission that it recently envisaged to participate in a tender for RTGs in Spain to introduce their near zero-emissions RTGs, which have been recently launched (March 2021).⁶⁶⁸ However, as the design of this RTG had been realised in Japan, it

⁶⁶² Non-confidential minutes of a call with ZPMC dated 23 April 2021, Doc. ID 1779.

⁶⁶³ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question B.C.F.2.

⁶⁶⁴ Response to Q1 – Questionnaire to Competitors, Doc. ID 3154, question B.C.F.1.

⁶⁶⁵ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question B.C.F.2.

⁶⁶⁶ Response to the Article 6(1)(c) Decision, paragraphs 39 and 40.

⁶⁶⁷ Responses to Q5 – PH2 Questionnaire to Customers of cranes and automation software for all cargo handling equipment, Doc. ID 3606, question 9.

⁶⁶⁸ Response to the Article 6(1)(c) Decision, paragraph 66.

satisfied the Japanese standard JIS but not the EU FEM⁶⁶⁹ standard. Hence, some electrical components made in Asia and batteries included in the model had no CE marking. Mitsui-Paceco could not get the CE marking sufficiently on time to be able to participate in the tender. According to Mitsui, these difficulties in satisfying standards in the EU applies to batteries but also to other components.⁶⁷⁰

- (734) In an e-mail dated 21 December 2018, a Cargotec executive noted as regards a RTG tender in [location] [internal document reference].⁶⁷¹ This statement illustrates the relevance of an EU certificate to bid in a tender launched by an EU port.
- (735) The Commission notes, moreover, that it does not appear that standards are completely similar across world regions and in some situations, they could constitute a barrier to entry. In an e-mail dated [...], [internal document reference].⁶⁷² Although this example relates to a different world region, it illustrates the constraints that different standards have on suppliers' ability to sell in various regions. A gantry cranes competitor noted in that regard that [country] is characterised by "*very difficult homologation and legal framework*".⁶⁷³
- (736) As regards competitors having components currently not complying with EEA standards, it appears that Mitsui is preparing a CE certification plan for components such as batteries, and also the necessary calculations and validations to adapt and/or validate the applied JIS standards for current cranes. According to Mitsui, for RTGs, this could take at least six months of intensive engineering and certification works, although if different batteries or components are needed to achieve CE certification, testing would be required, thus extending the time to achieve certification.⁶⁷⁴
- (737) Nevertheless, customers having responded to the market investigation do not expect Mitsui to enter the EEA RTG market within the next three years. One customer submitted in that regard "*The Japanese manufacturers (e.g. Mitsui) routinely indicate their interest to re-enter the market but have not seen them having won any contract.*"⁶⁷⁵
- (738) Based on the above elements, the Commission considers that compliance with EEA regulation and standards can in some circumstances be a challenge for non-EEA suppliers and constitutes a barrier to entry to the EEA RTG market.

(C) Capacity to meet the quality requirements of EEA customers

- (739) As explained above in Section 7.2.1.3, a significant share of customers consider that quality and craftsmanship of RTG cranes manufactured by European suppliers are superior to Asian ones, which reduce their incentives to source from non-EEA manufacturers.
- (740) As explained by one EEA customer "From our experience we see better quality of cranes erected in Europe compared to other regions".⁶⁷⁶ Another EEA customer

⁶⁶⁹ The European Materials Handling Federation (French: Fédération Européenne de la Manutention, FEM).

⁶⁷⁰ Non-confidential minutes of a conference call with Mitsui on 23 September 2021, paragraph 14, Doc. ID 4311.

⁶⁷¹ Cargotec's main response to RFI 17 - CAR-SCH-00068513. Underlining added by the Commission.

⁶⁷² M.10078 Cargotec Konecranes RFI 18-01132860 msg. Underlining added by the Commission.

⁶⁷³ Response to Q1 – Questionnaire to Competitors, Doc. ID 3154, question B.B.7.1.

⁶⁷⁴ Non-confidential minutes of a conference call with Mitsui on 23 September 2021, paragraph 15, Doc. ID 4311.

⁶⁷⁵ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question B.C.G.3.

⁶⁷⁶ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question B.B.1.

noted that it is sourcing from Europe “Because of the transport cost. European quality preferred, aftersale is important”.⁶⁷⁷

- (741) One customer noted in that regard that “in addition to the above mentioned competition parameters, (the customer) estimates that Asian gantry cranes suppliers are not comparable to EEA suppliers in terms of quality of manufacturing. Furthermore, spare parts management and TCO are notably different for gantry cranes as (the customer) encounters difficulties on spare parts management with some Asian actors which has impacts on operations”.⁶⁷⁸ A second customer added that “The main challenge on Chinese cranes is to obtain a proper quality in manufacturing and workmanship”.⁶⁷⁹
- (742) Künz noted in that regard that “(...) the main obstacle to ZPMC entry in the EEA market for RTGs is the fact that European customers have a strong preference for higher quality standards compared to those provided by ZPMC”.⁶⁸⁰
- (743) The Notifying Parties claim that, while non-Western (especially Chinese) suppliers may have historically been perceived as less quality or innovation focused, this is certainly no longer the case. According to the Notifying Parties, many major Chinese suppliers, like ZPMC and Sany, are at the forefront of equipment automation and electrification, fully meeting the high standards of global and European customers. Any perceived quality concerns regarding non-EEA based suppliers, or suggestions that they are less capable from a technological perspective when compared to Western suppliers, are unfounded, according to the Notifying Parties.⁶⁸¹
- (744) The fact remains that the current views of EEA customers of inferior quality for cranes manufactured by non-EEA suppliers can to some extent prevent them from sourcing from non-EEA suppliers. This is in particular relevant for a product with a lifetime of more than 15 years such as RTGs. Given that purchasers commit the terminal for a long period with such a purchase, and the expected life of the products could extend beyond the term of their presence in the terminal, they would tend to remain loyal to well-known suppliers.
- (745) While some respondents consider that RTGs is a commodity product only requiring general engineering skills,⁶⁸² others would be less inclined to source RTGs from non-EEA manufacturers because “(the customer) has encountered many differences in the quality of design and manufacturing between non EEA and EEA suppliers, leading to higher maintenance costs and lower reliability of the equipment”.⁶⁸³ Another customer located in the EEA noted that “Yes, from our knowledge and experience we believe that European manufacturers quality is better, supply of spare parts and services is faster”.
- (746) While some customers consider that there are no specific challenges for non-EEA suppliers as regards quality, other customers have significantly different views. The main challenges identified by one EEA customer were “*aftersales service, local*

⁶⁷⁷ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question B.B.1.

⁶⁷⁸ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question B.C.F.1.

⁶⁷⁹ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question B.C.F.2.

⁶⁸⁰ Non-confidential minutes of a call with Künz dated 16 September 2021, paragraph 16, Doc. ID 4289.

⁶⁸¹ Response to the Article 6(1)(c) Decision, paragraphs 68 and 70.

⁶⁸² Responses to Q5 – PH2 Questionnaire to Customers of cranes and automation software for all cargo handling equipment, Doc. ID 3606, question 18.

⁶⁸³ Responses to Q5 – PH2 Questionnaire to Customers of cranes and automation software for all cargo handling equipment, Doc. ID 3606, question 21.

support, quality level". According to another EEA customer "*The biggest challenge for the supplier is to be able to deliver the crane in terms of specs, cost, timing...and has a subsidiary or a dealer/ distribution network in the region*".⁶⁸⁴

- (747) Where the machines are physically produced does not play a role in that regard, provided that the design and quality remain in the hands of EEA suppliers. "*Generally our views are we continue to need EEA supplier responsibility for the design and quality of RTG's, notwithstanding the fact these machines may be built outside of the EEA*".⁶⁸⁵
- (748) In particular, when asked whether non-EEA suppliers have been involved in their most recent RTG tenders, one EEA customer answered "*Yes they have participated. Price & quality were below expectations*". Another EEA customer mentioned that "*Yes, non EEA-suppliers have participated in our tender. They didn't fulfil formal requirements*".⁶⁸⁶
- (749) Based on the above elements, the Commission considers that non EEA suppliers may have difficulties to meet the quality requirements of EEA customers, and these requirements constitute a barrier to entry to the EEA RTG market.

(D) Successful track record in the EEA

- (750) The Commission takes the view that a successful track record in delivering gantry cranes in the EEA is an important element to be successful in the RTG market. In particular, the customer is looking for references in Europe that would guarantee that the proposed crane is already up and running in a terminal nearby. A successful track record increases confidence in the supplier and a lack of references constitute an obstacle to succeed in tenders.
- (751) Customers have in particular identified lack of track record as one of the main challenges to be overcome by a non-EEA supplier. For example, no customer having responded to the market investigation has ever bought a RTG from a supplier with no existing track record (at the time of the tender) in the EEA.⁶⁸⁷
- (752) For example, one EEA customer noted that "*We purchase equipment via public tenders. We didn't have binding offers from suppliers with no track record of supply of RTG in Europe*". Another customer submitted that this has not happened because of "*WEAK RELIABILITY IN THE SUPPLIER*".⁶⁸⁸
- (753) A strong majority of EEA customers have in that regard indicated that they would not purchase a RTG from a supplier with no track record of successful delivery in the EEA. As explained by one customer "*Full qualification (technical, commercial, quality assessment, financial assessment) must be confirmed with enough return of experience on this category of equipment*". A second customer ruled out this possibility of sourcing from a supplier with no track record because "*No, and even we would not consider seriously such proposal as its very big risk*". A third customer explained that "*We need reliable service, track record of deliveries across Europe*

⁶⁸⁴ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question B.C.F.2.

⁶⁸⁵ Responses to Q5 – PH2 Questionnaire to Customers of cranes and automation software for all cargo handling equipment, Doc. ID 3606, question 21.

⁶⁸⁶ Responses to Q5 – PH2 Questionnaire to Customers of cranes and automation software for all cargo handling equipment, Doc. ID 3606, question 29.

⁶⁸⁷ Responses to Q5 – PH2 Questionnaire to Customers of cranes and automation software for all cargo handling equipment, Doc. ID 3606, question 17.

⁶⁸⁸ Responses to Q5 – PH2 Questionnaire to Customers of cranes and automation software for all cargo handling equipment, Doc. ID 3606, question 17.1.

and proven success in automation". A fourth customer noted that *"We're looking for suppliers whose products are compliant to European norms and have equipment that already works in European terminals"*. Finally, according to a fifth customer *"we would prefer to view equipment that has a track record of supply to Europe to evaluate performance, reliability, durability and after sales support"*.⁶⁸⁹

- (754) Sany explains in particular that it has not been able to deliver RTGs in the EEA because of this lack of references, although it has participated in some tenders: *"The main issue faced by Sany in tenders for RTGs in the EEA was not the lack of compliance with standards, but rather the fact that their Port Equipment division is relatively younger when compared to that of other companies and that they are not able to provide any evidence of successful deliveries of RTG cranes in the EEA"*.⁶⁹⁰ In that regard, and even if they try to extend their market presence in the EEA in general and to enter the RTG market in particular, Sany is facing difficulties as *"Another relevant issue for Sany is the lack of sufficient track record, since, for the moment, they do not have enough cranes in Europe. In fact, they only have STSs in Riga"*.⁶⁹¹
- (755) This is also confirmed by Liebherr who explained that *"References and track record are important in the RTG market in Europe. Customers tend to be loyal to their existing suppliers"*.⁶⁹²
- (756) The relevance of track record has also been highlighted by Künz who stated that *"Kuenz added that for new entrants in the RTGs market, the most relevant factors are good track records and innovation, and not only prices. Kuenz can be considered as having some background experience and track record in Europe, notably in RMGs and ASCs"*.⁶⁹³
- (757) Internal documents of the Parties also confirm the relevance of track record in the yard crane area. This appears for example in a study ordered by Cargotec to a consultant in May 2018 regarding customer value proposition in automated or semi-automated yard cranes, in which Cargotec benchmarks itself to [...].

Figure 52: Key purchasing criteria for RTGs according to Cargotec

[...]

Source: [Internal document reference].

- (758) Competitors have also insisted on the importance of timeframe to develop/ramp up the product and the corresponding services and recouping initial investment. Consistent order quantities are in that regard necessary to justify the investment and failure to secure them can lead to swift market exit for a new entrant. As explained by one competitor, *"[c]rane projects have a lot of risk and potential liquidated damages. Small companies cannot enter into this field due to the risks, and large companies have difficulty as well unless they have years of experience since tenders require proof of past experience. The port crane industry is littered with failed crane*

⁶⁸⁹ Responses to Q5 – PH2 Questionnaire to Customers of cranes and automation software for all cargo handling equipment, Doc. ID 3606, question 18.1.

⁶⁹⁰ Non-confidential minutes of a call with Sany dated 22 September 2021, paragraph 2, Doc. ID 3983.

⁶⁹¹ Non-confidential minutes of a call with Sany dated 22 September 2021, paragraph 7, Doc. ID 3983.

⁶⁹² Non-confidential minutes of a call with Liebherr dated 17 September 2021, paragraph 14, Doc. ID 4077.

⁶⁹³ Non-confidential minutes of a call with Künz dated 16 September 2021, paragraph 18, Doc. ID 4289.

*suppliers and few new suppliers in the past twenty years to justify investment.*⁶⁹⁴ While these statements have been made in general for all types of gantry cranes, as noted by the Notifying Parties⁶⁹⁵, they are also relevant for RTGs. Although there are new entrants in this market (Künz in Europe and the US with a very specific type of product, Baltkran in Russia and Belarus), they are very recent and it is still too soon to speculate on their mid to long term presence on this RTG market for Künz or in the EEA for Baltkran.

- (759) Based on the above elements, the Commission considers that lack of track record and lack of references in supplying RTGs in the EEA constitute a barrier to entry to the EEA RTG market for non-EEA supplier.

(E) Transport costs

- (760) Some respondents to the market investigation brought forward that transport costs could play a role in the lack of market presence of non-EEA suppliers in Europe, as they would have to deliver a small number of RTG cranes to very distant locations. Competitors have also in general identified transport costs as a potential obstacle to supply RTG cranes in the EEA.
- (761) In that regard, a customer explained that “(the customer) estimates that the challenges faced today by non EEA cranes manufacturers are linked to TCO, spare parts management, after sales services and current transport costs for non Asian market”.⁶⁹⁶
- (762) The Notifying Parties claim that crane orders are typically placed many months (and sometimes years) in advance, and the Parties and their competitors frequently ship across the globe. The Parties' current business practices are, therefore, diametrically opposed to the contention that transport costs or delivery times would somehow amount to a barrier to global trade.⁶⁹⁷
- (763) Further the Notifying Parties submit that Konecranes manufactures its RTGs from locations in [location] and [location] whereas all of Cargotec's cranes are shipped globally from China⁶⁹⁸. As far as ZPMC is concerned, ZPMC manufactures its entire container handling equipment portfolio exclusively from its Chinese production sites from where it ships globally using its own fleet of transportation ships (whereas the Parties rely on third-party commercial shipping companies for delivery). According to the Notifying Parties, it is well known that ZPMC uses these same vessels to transport not just STS cranes but also a whole host of container handling equipment, including gantry cranes.⁶⁹⁹
- (764) The contention of the Notifying Parties that transport costs have no appreciable effects on global trade is at odds with the feedback received by the Commission from other RTG manufacturers.
- (765) Liebherr explained that as regards the RTG market in Europe, transportation costs are higher because they significantly depend on the number of machines shipped together and the final destination. In Europe, the size of orders of RTGs is smaller compared to other world regions. Smaller batches are more costly to erect and

⁶⁹⁴ Response to Q1 – Questionnaire to Competitors, Doc. ID 3154, question BC.G.1.

⁶⁹⁵ Reply to the SO, paragraph 488.

⁶⁹⁶ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question B.C.F.2.

⁶⁹⁷ Response to the Article 6(1)(c) Decision, paragraph 36.

⁶⁹⁸ Response to the Article 6(1)(c) Decision, paragraph 35.

⁶⁹⁹ Response to the Article 6(1)(c) Decision, paragraph 37.

transport, since costs are spread over a lower number of units. Normally, small batches include 2-3 RTGs, while large batches include 8-10 units. The transportation cost of a smaller batch of RTGs is typically twice the price per unit as the one of a larger one. As Liebherr has already higher production costs because it manufactures in Ireland, it faces difficulties to be competitive in the EEA RTG market.⁷⁰⁰

- (766) Liebherr added that because of transportation costs, it could not profitably compete in Asia. In Australia, the Company participated to a tender but had a disadvantaged position due to high transportation costs.⁷⁰¹ It does not ship to the West coast of the US due to shipping costs which are prohibitive compared to Far East suppliers.⁷⁰²
- (767) The Notifying Parties claimed that higher transportation costs for Liebherr are not plausible, given that it would suggest that Liebherr would have higher transportation costs to serve the EEA from its facility in Ireland than a number of competitors that manufacture and supply globally from China, including the Parties, ZPMC, and Sany.⁷⁰³ The Commission notes in that regard that in general, transportation costs are higher for deliveries to Europe because of smaller order sizes in the EEA compared to other world regions, which have been confirmed by the Commission's market investigation.⁷⁰⁴ This would apply to Liebherr as well although its factory in Ireland is located closer to EEA customers.
- (768) Künz has submitted that transportation costs are a significant share of the final price of cranes, mainly depending on distance of the final destination and transportation options. The Notifying Parties claimed that transportation costs typically account for on average 10-15% of the cost of the product, which can indeed be considered as significant.⁷⁰⁵ They are also typically increasing at the moment. Currently, demand for transportation is exceeding available capacities due to Covid-19 pandemic outbreak and unstable supply chains. Hence, according to Künz, optimization of transportation is a key element in the market.⁷⁰⁶
- (769) Mitsui has claimed that its activity in cranes is mainly focused on the South-East Asian market and the West Coast of the US and Canada, due to high transportation costs towards other parts of the US (such as the East Coast and the Gulf of Mexico) and particularly Europe.⁷⁰⁷ According to Mitsui *"Costs of transportation to the US West Coast greatly depend on the number of cranes delivered at a time, based on vessel availability and crane mix (if STS and RTG cranes are ordered together). Typically shipping costs are 10% of the crane price to the West Coast, are normally equal to \$ 1.5 million for a crane, but if the crane is shipped to the Gulf of Mexico through the Panama Canal, costs for each crane can increase up to an additional 5-8% per crane on top of the \$ 1.5 million. For Europe, shipping costs from Japan can be even higher and must navigate rough water"*.⁷⁰⁸

⁷⁰⁰ Non-confidential minutes of a call with Liebherr dated 17 September 2021, paragraph 4 and 5, Doc. ID 4077.

⁷⁰¹ Non-confidential minutes of a call with Liebherr dated 17 September 2021, paragraph 7, Doc. ID 4077.

⁷⁰² Response to Q1 – Questionnaire to Competitors, Doc. ID 3154, question B.B.7.1.

⁷⁰³ Reply to the SO, paragraph 476.

⁷⁰⁴ Letter of Facts, paragraph 56.

⁷⁰⁵ Reply to the SO, paragraph 478.

⁷⁰⁶ Non-confidential minutes of a call with Liebherr dated 17 September 2021, paragraph 13, Doc. ID 4077.

⁷⁰⁷ Non-confidential minutes of a call with Mitsui dated 23 September 2021, paragraph 10, Doc. ID 4311.

⁷⁰⁸ Non-confidential minutes of a call with Mitsui dated 23 September 2021, paragraph 11, Doc. ID 4311.

- (770) In that regard, location of the customer and corresponding transport costs have an effect on the decision by Mitsui to bid or not for RTG tenders. This is different for STS, where Mitsui considers it can more easily compete on engineering even taking into account transport costs *“Mitsui produces and sells STS and RTGs but they are differences between both types of cranes. The design of RTGs is quite standardized, while that for STSs is particularly engineering-intensive and even small changes entail relevant detailed design and supporting calculations. Hence, if the terminal requires particular specifications for STSs, costs can significantly increase. Mitsui would decide to bid on STS if the terminal accepts an OEM specification, or they can match specifications that are decided by the terminal (or the consultant) and be competitive on these specifications. For RTGs, which are much more standardised and terminal prone to allow an OEM specification, Mitsui would decide to bid if the location of the terminal enables them to be competitive price-wise and if they can achieve the required lead-time to deliver”*.⁷⁰⁹ This explains why Mitsui has been successful in the recent tender for STS launched by [customer] in the EEA (in [countries]), but not for RTGs, that were awarded to [...].
- (771) Another competitor has explained that *“It is difficult to overcome the physical hurdles such as shipping cost from manufacturing location to destination”*.⁷¹⁰
- (772) High transport costs also appear to be the reason why Sany, despite being active at worldwide level in the provision of gantry cranes and notably RTGs, in particular in South-East Asia, has not managed to sell any gantry cranes (either RTGs or ASCs) in the EEA. According to Sany *“Typically, Sany ships fully-erected RTGs when the final destination has good access to the sea. [...] Sany explained that the advantage of receiving fully-erected RTGs is that they are immediately operational once commissioned. There is also a confidence aspect to the fully-erected crane, as all the test are performed in the factory. However, fully-erected RTGs entail higher costs that EU customers are not always willing to incur. This is in particular due to transportation costs of a fully erected RTG that can be higher as of the space required on a vessel.”*⁷¹¹ The fact that Sany, as submitted by the Notifying Parties,⁷¹² is currently active in a couple of tenders grouping together STS and RTGs in the Baltic States, does not constitute evidence that transport costs barriers would have been overcome. So far, Sany has not won any tenders for RTGs in the Baltic States or the rest of the EEA, whether or not these RTGs have been grouped with STS in a single tender.
- (773) The Commission therefore notes that two RTG suppliers in the EEA and two other RTG suppliers active outside of the EEA have explained that transportation costs have appreciable effects on global trade in the RTG market since they limit competitiveness and the scope of world areas where these competitors can bid.
- (774) Importantly, the contention of the Notifying Parties that transport costs do not constitute somehow a barrier to trade is at odds with their own submissions as regards RTGs.
- (775) In a submission related to Cargotec’s crane business, the Notifying Parties explained that full assembly of gantry cranes in [...] constitute [...]. In particular, [internal document reference]. The Notifying Parties submitted that ZPMC is significantly less

⁷⁰⁹ Non-confidential minutes of a call with Mitsui dated 23 September 2021, paragraph 13, Doc. ID 4311.

⁷¹⁰ Response to Q1 – Questionnaire to Competitors, Doc. ID 3154, question B.C.F.3.

⁷¹¹ Non-confidential minutes of a call with Sany dated 22 September 2021, paragraph 6, Doc. ID 3983.

⁷¹² Reply to the SO, paragraph 480.

affected by increasing and volatile transport costs compared to Cargotec (because the sell larger volumes and have their own fleet of vessels).⁷¹³

- (776) The Commission notes that while this could indeed be the case for ZPMC, because of its larger volumes and the ownership of a fleet of vessels, this increase of transport costs would equally affect non-EEA suppliers that would be trying to enter the EEA market, including in particular Mitsui and Sany, should they decide to do so.
- (777) Moreover, the Notifying Parties also submitted that there is a constant and increasing risk of escalating trade tensions between China and Western countries which may ultimately lead to punitive tariffs imposed on cranes “made in China” by the US and/or the EU. For example, according to the Notifying Parties, the former Trump administration imposed a 20% tariff on products manufactured in China. While port cranes were exempt from these particular tariffs, similar measures, if imposed on cranes, [...].⁷¹⁴ Ultimately, in a subsequent submission, the Notifying Parties later qualified such possible sanctions as “*entirely speculative, and (...) of no relevance to the competitive assessment at hand*”.⁷¹⁵ The Commission notes in any case that if trade sanctions were to be imposed for port cranes, this may affect Cargotec, but also Chinese suppliers, such as Sany, should they decide to enter the EEA market.
- (778) The Commission therefore considers that transport costs have an appreciable effect on the ability of competitors to be active in the EEA market for RTGs and constitute a barrier to entry for non-EEA suppliers.

(F) Conclusion on barriers to entry

- (779) On the basis of the above, the Commission considers that the barriers to enter the RTG market are high and has identified five main barriers to entry, namely: (i) availability of a service network (ii) compliance with European regulatory standards; (iii) capacity to meet the quality requirements of EEA customers; (iv) successful track record in the EEA and (v) transport costs.
- (780) This contributes to the finding that the Transaction results in the creation of a dominant position by the Merged Entity in the EEA market for RTGs.

7.2.1.5. Insufficient countervailing buyer power of customers to prevent price increases

- (781) According to the Horizontal Merger Guidelines, even firms with very high market shares may not be in a position, post-merger, to significantly impede effective competition, in particular by acting to an appreciable extent independently of their customers, if the latter possess countervailing buyer power. Countervailing buyer power in this context should be understood as the bargaining strength that the buyer has vis-à-vis the seller in commercial negotiations due to its size, its commercial significance to the seller and its ability to switch to alternative suppliers.⁷¹⁶
- (782) In particular, countervailing buyer power is relevant if customers could credibly threaten to resort, within a reasonable timeframe, to alternative sources of supply should the supplier decide to increase prices or to otherwise deteriorate quality or the conditions of delivery. This would be the case, for example if the buyer could immediately switch to other suppliers.⁷¹⁷

⁷¹³ Supplemental submission on Cargotec’s crane business, dated 16 September 2021, paragraph 24.

⁷¹⁴ Supplemental submission on Cargotec’s crane business, dated 16 September 2021, paragraph 24.

⁷¹⁵ Reply to the SO, paragraph 482.

⁷¹⁶ Horizontal Merger Guidelines, paragraph 64.

⁷¹⁷ Horizontal Merger Guidelines, paragraph 65.

- (783) The container terminal sector is characterised by a large number of container terminals and a fragmented demand. The Notifying Parties estimated that the total number of container terminals in the EEA is approximately [...].⁷¹⁸
- (784) The Notifying Parties argued that demand for container handling equipment is mainly driven by GTOs that own (or partially own) terminals all around the world. In 2019, according to the Notifying Parties, terminals fully or partially owned by these large operators accounted for over [60-70]% of global container throughput (and over three quarters of container throughput in Europe).⁷¹⁹ These GTOs include PSA International, Cosco, AP Möller, Hutchison, DPW, CMA-CGM and Eurogate, to name just a few. The share of GTOs in the global container terminal market has been dramatically increasing over the past 20 years.⁷²⁰ However, it appears that [20-30]% of container throughput in Europe remains managed by container terminal operators that belong to public port authorities or other private players. These small or mid-size operators do not benefit from the alleged bargaining power of GTOs.
- (785) The Notifying Parties argued such a market structure does not imply that the many other terminal operators who control the remaining [30-40]% of global container throughput ([20-30]% in Europe) do not have buyer power. According to the Notifying Parties, some of the world's largest terminals are operated by large regional terminal operators, such as EQT Infrastructure (operating a terminal at the port of Los Angeles, which is the biggest port in the US), Red Sea Gateway (operating a terminal at the port of Jeddah, Saudi-Arabia, which is the second largest port in the Arab world) as well as Gruppo Investimenti Portuali (operating terminals at the ports of Genoa, Livorno and Venice, in Italy).⁷²¹
- (786) The Commission does not disagree that some large terminal operators may have only a regional dimension and are not considered as GTOs. However, the Commission assesses the degree of countervailing buyer power in the context of the EEA market for RTGs. As explained above in Section 7.2.1.3, small and-medium sized terminals (with a throughput below 1 million tons annually) that have sourced RTGs since 2010 represent [20-30]% of container throughput in the EEA but [30-40]% of RTG purchases ([40-50]% for the period 2018-2020) and [60-70]% of RTG tenders ([60-70]% for the period 2018-2020). Small and medium-sized terminals are therefore overrepresented in the procurement and tendering of RTGs compared to their importance in container throughput. These small and medium-sized terminals do not arguably benefit from the same buyer power of GTOs or even large terminal operators.
- (787) The Commission has provisionally found in Section 7.2.1.1 that the markets for RTGs in the EEA are significantly concentrated (five players in RTGs). It also found, as further explained in Section 7.2.1.4, that the current rivals are not as competitive as the Notifying Parties as regards essential parameters of competition such as local service network and compliance to European standards, as well as quality of the product, high transport costs and lack of a successful track record.
- (788) This limitation of available alternatives directly reduces the ability of terminal operators to switch to rival suppliers and therefore their countervailing buyer power. One customer explained “[t]here is a short list of producers of gantry cranes in

⁷¹⁸ See RFI PN Q3 Annex Q1.

⁷¹⁹ Form CO, Section 1-5, Executive summary and introduction, paragraph 237.

⁷²⁰ Form CO, Section 1-5, Executive summary and introduction, paragraph 237.

⁷²¹ Reply to the SO, paragraph 439.

*Europe with a well-developed service network and good maintains system so they have a strong market position. Terminal operators in our opinion are price takers”.*⁷²² Another customer mentioned, *“In our case we are rather price takers. We purchase small number of devices and there is small number of competitors”.*⁷²³ A third customer insisted on the concentration on the supply-side, which has taken place in the last ten years, for example through the acquisition of Terex by Konecranes:⁷²⁴ *“[c]onsolidation of suppliers makes them price makers. Especially if this oligopoly market consolidates further”.*⁷²⁵

- (789) Customers have also highlighted the differences in the relative power of cranes suppliers and terminal operators depending on whether the procurement relates to greenfield projects (i.e. a new terminal) or brownfield projects/replacement of existing fleet (upgrades or expansions of existing operations). The terminal operator would have more relative bargaining power in greenfield terminals than in brownfield ones, and even more when it comes to pure replacement of existing fleet. As explained by one customer, *“[a]t new green field terminals the terminal Operator is the Price maker, because all manufacturers would like to have the first crane on a new terminal. For small orders or replacement orders of cranes the terminal Operator is the Price taker”*⁷²⁶ This is confirmed by a second customer *“In our view terminal operators have the upper hand when initially buying gantry cranes, however, once a terminal has an existing fleet of one brand, they usually continue with that brand. The suppliers know that and therefore regain profitability over the lifetime of the product. Also, suppliers earn money through spare parts, which they can basically price at free will”.*⁷²⁷
- (790) In that regard, the Notifying Parties have submitted that demand for container handling equipment is currently predominantly driven by brownfield projects (e.g., terminal expansion, fleet replacement, etc.), while greenfield projects are relatively rare at the moment, especially in Europe. The Notifying Parties have only mentioned as recent greenfield projects in Europe the Port of [...], that is currently building a new terminal, and the Port of [...], that has announced terminal expansion plans in late 2019. Given that the latter is a terminal expansion, the Notifying Parties have even put forward that this project could also be considered brownfield.⁷²⁸
- (791) The Commission therefore takes the view that in developed areas such as the EEA, gantry cranes demand is primarily constituted of terminal expansion or equipment replacements. In this type of situation, respondents to the market investigation have indicated that gantry cranes suppliers are considered to have an edge over terminal operators. This is even more the case for well-established competitors such as the Notifying Parties, which have built a solid installed base over the years of market dominance in the EEA (70-90% of combined market share since 2010 in RTGs).
- (792) While competitors that provided a view on this question consider that customers enjoy a large degree of buyer power,⁷²⁹ these statements have to be seen in the context of the EEA RTG market where customers are in general small to mid-sized

⁷²² Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question B.C.E.1.

⁷²³ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question B.C.E.1.

⁷²⁴ Commission decision M.7792 – Konecranes/Terex MHPS of 8 August 2016.

⁷²⁵ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question B.C.E.1.

⁷²⁶ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question B.C.E.1.

⁷²⁷ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question B.C.E.1.

⁷²⁸ Form CO, Section 1-5, Executive summary and introduction, paragraph 109, fn. 69.

⁷²⁹ Reply to the SO, paragraph 444.

terminals sourcing primarily from strong incumbent suppliers with stable and high market shares.

- (793) The Notifying Parties strongly objected this characterization, and maintain that competition is equally fierce in brownfield projects, and that switching does occur. In the views of the Notifying Parties, in a brownfield project, the burden is on the incumbent supplier to maintain its business. Further, according to the Notifying Parties, brownfield projects are typically not one-to-one additions of existing equipment. Indeed, the customer will typically specify the required dimensions (e.g., clearances) and interfaces (e.g., tyre / rail requirements) of the gantry cranes, just like in a greenfield project. Therefore, the incumbent supplier will need to conduct the same engineering customization as any other alternative supplier.⁷³⁰
- (794) The Commission does not disagree that in brownfield terminals, where the terminal is expanded or the gantry cranes are upgraded, there is a certain degree of customization that would provide non-incumbent suppliers with the possibility to bid with potential chances of success. However, at the same time, when the terminal operator is only willing to replace part or all of its fleet, the incumbent supplier benefits from a high degree of loyalty linked to the technical familiarity of the terminal with the supplier or the equipment.
- (795) The importance of customer relationship and customer loyalty is illustrated by the following internal document where Konecranes [internal document reference].

Figure 53: [...]

[...]

Source: [Internal document reference].

- (796) Furthermore, according to paragraph 67 of the Horizontal Merger Guidelines it is not sufficient that buyer power exists prior to the merger, it must also exist and remain effective following the merger. This is because a merger of two suppliers may reduce buyer power if it thereby removes a credible alternative. The Notifying Parties have argued that customers (some of whom operate dozens of ports) typically multi-source and do not source gantry cranes from only one supplier for all the terminals in their portfolio.⁷³¹ However, a removal of a competing rival could be even more detrimental to customers when it occurs in a market where multi-sourcing is gradually taking place, as it eliminates one of the alternatives that customers have tried to put in place in order to limit dependency from one specific supplier. In the present case, the Transaction eliminates one of the few alternatives to Konecranes for RTGs.
- (797) Against this background, the Commission considers that it is unlikely that customers would benefit of any countervailing buyer power post-merger.
- (798) This contributes to the finding that the Transaction results in the creation of a dominant position by the Merged Entity in the EEA market for RTGs.

⁷³⁰ Response to the Article 6(1)(c) Decision, paragraphs 86 and 87.

⁷³¹ Form CO, Chapter 1, paragraph 50.

7.2.1.6. The Commission does not anticipate that Cargotec will exit the RTG market in the absence of the merger

(A) The Notifying Parties' arguments

- (799) In the course of the second phase market investigation, the Notifying Parties explained that the Intelligent Cranes Solutions ('ICS') business of Cargotec has not been profitable in the recent years due to a number of factors that have impaired its competitiveness. ICS stands for "Intelligent Crane Solutions" and encompasses Cargotec's gantry cranes and straddle carriers business. Under this background, while Cargotec [...], the Notifying Parties submit that it has also been considered, and is still an option for the medium/longer term, to withdraw entirely from the market for gantry cranes.⁷³² During a meeting with the Commission on 28 September 2021, the Notifying Parties explained orally that this option would be seriously envisaged if the merger with Konecranes does not proceed.
- (800) According to the Notifying Parties, the prime reason for the decline of Cargotec's ICS business was the rise of low cost Chinese competition, most notably ZPMC's aggressive push into the global port cranes market. ZPMC was able in particular to capture almost all of the additional demand for RTGs (which was taking off in the early nineties), as it was able to compete on unfair terms, which non-State-backed suppliers like the Parties simply could not match.⁷³³
- (801) In 2012, Cargotec entered into a joint venture for the production and sale of port cranes (STS cranes, RTGs, RMGs) and offshore cranes (i.e., MacGregor products) with the Chinese company Jiangsu Rainbow Heavy Industries Co. Ltd. (RHI). This joint venture was called Rainbow-Cargotec Industries (RCI, or the JV). According to the Notifying Parties, Cargotec's decision to enter into this joint venture for the production and sale of port cranes with the Chinese company was an attempt to remedy this situation of declining attractiveness and regain price competitiveness by "*becoming a Chinese supplier*" and benefiting from similar cost advantages.⁷³⁴ The objectives of the JV were to (i) significantly reducing supply chain and overall assembly costs in order to regain price competitiveness in the global market, and (ii) gaining easier access to Chinese customers and hence an increased sales presence in China.⁷³⁵
- (802) However, Cargotec's plans to increase its sales of port cranes in China and reduce its supply chain and assembly costs through the JV did not prosper, particularly because the JV did not succeed in getting access to Chinese demand to any significant extent (the JV ultimately only sold a handful of gantry cranes and no STS cranes at all in China during its lifetime).⁷³⁶ [...].⁷³⁷
- (803) The JV was ultimately dissolved in May 2020.
- (804) Upon dissolution of the JV, RCI employees in product and project management, sourcing, engineering, etc. were transferred to Cargotec, while the assembly facility in China was retained by [...]. Cargotec's crane business has remained closely linked to (and dependent on) [...]: all of Cargotec's gantry cranes are currently assembled

⁷³² Response to RFI 25, paragraph 11.

⁷³³ Reply to the SO, paragraphs 275 and 276.

⁷³⁴ Reply to the SO, paragraph 278.

⁷³⁵ Supplemental submission on Cargotec's crane business, dated 16 September 2021, paragraph 3.

⁷³⁶ Supplemental submission on Cargotec's crane business, dated 16 September 2021, paragraph 7.

⁷³⁷ Supplemental submission on Cargotec's crane business, dated 16 September 2021, paragraph 8.

by [...] as a sub-contractor and [name of the supplier] is almost Cargotec's [...] for steel structures for its port cranes (ca. [...] of all steel structures are purchased from [name of the supplier]).⁷³⁸

- (805) After the dissolution of RCI, Cargotec's crane business is still not profitable [...]. This is due in particular to [...]. Cargotec has been (and still is) assessing potential alternative supply chain and assembly solutions.⁷³⁹
- (806) The Notifying Parties explained that Cargotec considers this current set-up as unsustainable for various reasons, [...]. While no final decisions have been made yet about the future of Cargotec's ICS business, there is consensus in Cargotec's leadership team that the current business model has to be changed.⁷⁴⁰
- (807) [...].⁷⁴¹ [...].

Figure 54: Strategic options for Cargotec's crane business

[...]

Source: [Internal document reference].

- (808) In parallel to these discussions about medium to long-term strategic options for the cranes business, Cargotec is trying to improve the cost position and competitiveness of this business line in the short term. [...]:
- (a) [...].⁷⁴²
 - (b) [...].⁷⁴³
 - (c) [...].⁷⁴⁴
- (809) However, these attempts have not yielded any appreciable results so far according to the Notifying Parties.⁷⁴⁵
- (a) [...].⁷⁴⁶ [...].⁷⁴⁷
 - (b) [...].⁷⁴⁸
 - (c) [...].⁷⁴⁹
- (810) The Notifying Parties note in that regard that these measures cannot be interpreted as evidence that Cargotec will not exit the market for port cranes in the absence of the Proposed Transaction. These cost-cutting measures simply demonstrate, according to the Notifying Parties, how serious the state of Cargotec's ICS business really is and [...].⁷⁵⁰

⁷³⁸ Supplemental submission on Cargotec's crane business, dated 16 September 2021, paragraph 10.

⁷³⁹ Reply to the SO, paragraphs 278-282.

⁷⁴⁰ Supplemental submission on Cargotec's crane business, dated 16 September 2021, paragraphs 1-12.

⁷⁴¹ Supplemental submission on Cargotec's crane business, dated 16 September 2021, paragraph 15.

⁷⁴² Supplemental submission on Cargotec's crane business, dated 16 September 2021, paragraph 20.

⁷⁴³ Supplemental submission on Cargotec's crane business, dated 16 September 2021, paragraph 21.

⁷⁴⁴ Supplemental submission on Cargotec's crane business, dated 16 September 2021, paragraph 25.

⁷⁴⁵ Reply to the SO, paragraph 284.

⁷⁴⁶ Kalmar Automation Solutions, the Cargotec entity managing the ICS business.

⁷⁴⁷ Reply to the SO, paragraph 285.

⁷⁴⁸ Reply to the SO, paragraph 28.7.

⁷⁴⁹ Reply to the SO, paragraph 28.

⁷⁵⁰ Reply to the SO, paragraph 289.

- (811) Cargotec recently announced the successful conclusion of agreements with customers in the field of gantry cranes, notably RTGs. For example, on 22 September 2021 Cargotec 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 2022.⁷⁵¹ The Commission notes in that regard that this order concerns RTGs in the EEA.
- (812) Likewise, on 6 October 2021, Cargotec announced that it received a large repeat order of six Kalmar Automatic Stacking Cranes (ASCs) from Victoria International Container Terminal (VICT) in Australia.⁷⁵² Although the order relates to ASCs outside of the EEA, it shows the vigour of Cargotec's crane business, which is also dealing with ASCs, and the confidence of customers in Cargotec's technology.
- (813) The Notifying Parties contested that these agreements show any intention of Cargotec not to exit the cranes market in the short run. According to the Notifying Parties, the mere fact that Cargotec is still able to win certain gantry crane projects, which is not disputed, has no bearing on the big picture, which is that Cargotec's ICS business has been and still is loss-making and cannot be maintained absent the Proposed Transaction.⁷⁵³
- (814) In particular, the Notifying Parties submitted that [...].⁷⁵⁴ [...].
- (815) In any case, the Notifying Parties argued that the crucial point is that Cargotec has not been able to sell profitably gantry cranes for several years. The ICS business has incurred total losses of approximately EUR [...] between [year] and [year]. While between [year]-[year], losses amounted to approximately EUR [...], they reached EUR [...] in 2018-2020. [...].⁷⁵⁵
- (816) [...].⁷⁵⁶
- (817) In the Reply to the SO the Notifying Parties also submit [internal document reference].
- (818) The Notifying Parties noted that the minutes record this discussion at a very high-level [...].⁷⁵⁷
- (819) Finally, the Notifying Parties explain that Cargotec cannot plausibly be considered an important competitive force in the cranes markets generally or the market for RTGs specifically, even if one were to assume that Cargotec would not exit in the foreseeable future. According to the Notifying Parties, the only reasonable assumption based on the evidence on file would be that – even if Cargotec was not likely to exit the market for gantry cranes absent the Proposed Transaction– its competitive strength will continue to deteriorate and it would not constitute a sufficient competitive constraint on Konecranes.⁷⁵⁸

⁷⁵¹ https://www.kalmarglobal.com/news--insights/press_releases/2021/kalmar-receives-repeat-order-of2/

⁷⁵² https://www.kalmarglobal.com/news--insights/press_releases/2021/kalmar-to-deliver-six-automatic/

⁷⁵³ Reply to the SO, paragraph 293.

⁷⁵⁴ Reply to the SO, paragraph 302.

⁷⁵⁵ Reply to the SO, paragraph 295.

⁷⁵⁶ Reply to the SO, paragraph 300.

⁷⁵⁷ Reply to the SO, paragraph 314, annex C.1.

⁷⁵⁸ Reply to the SO, paragraphs 318 and 319.

(B) Assessment of the Commission

- (820) According to the Horizontal Merger Guidelines, in assessing the competitive effects of a merger, the Commission compares the competitive conditions that would result from the notified merger with the conditions that would have prevailed without the merger. In most cases, the competitive conditions existing at the time of the merger constitute the relevant comparison for evaluating the effects of a merger. However, in some circumstances, the Commission may take into account future changes to the market that can reasonably be predicted. It may, in particular, take account of the likely entry or exit of firms if the merger did not take place when considering what constitutes the relevant comparison.⁷⁵⁹
- (821) The Commission has carefully assessed the elements brought forward by the Notifying Parties, including those submitted in the Reply to the SO and during a closed session at the Oral Hearing. In the light of the arguments submitted, the Commission considers that the competitive condition that would have prevailed without the merger is a situation where Konecranes and Cargotec would continue to compete against each other in the various yard cranes market, including in particular the EEA RTG market. The merger would then eliminate this competition between the merging Parties going forward.
- (822) The following elements are relevant in that regard.
- (B.i) *Cargotec remains a significant player in the gantry cranes market and is not hindered by a lack of scale compared to its main rivals*
- (823) While the Commission agrees that Cargotec has lost market shares in some yard crane markets in the last five years⁷⁶⁰, it remains a sizable competitor, with a market share significantly above other players that are considered by the Notifying Parties as competitive constraints on Konecranes such as Liebherr, Künz or Sany.
- (824) The Commission notes in that regard that if Cargotec has been suffering from “lack of scale” in the last ten years in the gantry cranes markets, as explained by the Notifying Parties, this would also be the case of all the other gantry cranes competitors (except Konecranes and ZPMC) since none of them has sold more gantry cranes than Cargotec in the EEA. Cargotec has delivered [...] gantry cranes overall worldwide (including [...] cranes sold by the RCI JV in China under the Genma brand name which belonged to RCI) since 2010 while Mitsui has delivered [...], Liebherr [...], Künz [...] and Sany [...].⁷⁶¹ Even taking into account STS sales with gantry cranes, the numbers are in favour of Cargotec. Cargotec delivered [...] cranes since 2010, Mitsui [...], Liebherr [...], Künz, [...] and Sany [...]. In terms of scale in the overall port crane universe, Cargotec benefits therefore from a more favourable cost structure than any of its rivals, except Konecranes and ZPMC.⁷⁶²

⁷⁵⁹ Horizontal Merger Guidelines, paragraph 9.

⁷⁶⁰ For yard cranes overall (including RTGs, RMGs and ASC) at worldwide level, the market share of Cargotec has declined from [10-20]% during the period 2014-2017 to [5-10]% during the period 2018-2020. In the EEA, it has declined from [20-30]% in 2014-2017 to [10-20]% in 2018-2020. The Commission notes that if Cargotec’s sales have dropped in RTGs and ASCs, they have increased in RMGs. The loss of market share does not therefore concern all products in the yard crane universe.

⁷⁶¹ Form CO, RFI PN2 – Annex – Q5 – Confidential – market shares.

⁷⁶² Form CO, RFI PN2 – Annex – Q5 – Confidential – market shares.

(B.ii) The dissolution of the RCI JV is an important first step in the resolution of the issues Cargotec is currently facing

- (825) Cargotec has identified as soon as 2018 the origin of its difficulties (the failing partnership with a Chinese company) and recently (May 2020) took the appropriate measures to remedy this problem. These measures include in particular the dissolution of the JV and the return to Cargotec of the intellectual property rights and skilled staff (leaving only the factory to the Chinese partner, which Cargotec still uses as an assembly sub-contractor).
- (826) The Commission's market investigation has revealed that the JV was suffering from significant deficiencies that have ultimately negatively impacted the product and financial performance of the ICS business. The dissolution of the JV is clearly a first step in the path for return to profitability of the business.
- (827) These deficiencies were in particular reflected in a number of internal documents of Cargotec. [Internal document reference].⁷⁶³
- (828) In another internal document dated 11 September 2020, [internal document reference].
- (829) This is particularly relevant given that, in the current cost breakdown of an RTG, [...] % is constituted by direct raw materials, highlighting that material prices have a direct and significant influence on gross margin. In fact, reliance on the JV has led Cargotec to pay steel raw materials at a price which was much higher than the price obtained by its competitors manufacturing in China or sourcing steel structures from China.⁷⁶⁴

Figure 55: [...]

[...]

Source: [Internal document reference].

- (830) [...] ⁷⁶⁵ [...] ⁷⁶⁶. [...].

Figure 56: [...]

[...]

Source: [Internal document reference].

- (831) The following slide is taken from documents prepared for the Cargotec Board meeting that decided the dissolution of the RCI JV in December 2019. [...].

Figure 57: [...]

[...]

Source: [Internal document reference].

- (832) In the same document, Cargotec notes that [internal document reference].⁷⁶⁷ [...].
- (833) Lastly, an internal document prepared by Cargotec in the summer 2021 provide [internal document reference].⁷⁶⁸

⁷⁶³ Cargotec cranes business submission annex 1, slide 4. [...].

⁷⁶⁴ Cargotec cranes business submission annex 2, slide 27.

⁷⁶⁵ Response to RFI 25, annex QC1(e)1 "Project Thor: final report 25 May 2018", slide 99.

⁷⁶⁶ Response to RFI 25, annex QC1(e)1 "Project Thor: final report 25 May 2018", slide 101.

⁷⁶⁷ Response to RFI 25, annex QC1(e)3 [internal document reference], slide 3.

Figure 58: [...]

[...]

Source: [Internal document reference].

- (834) This dissolution seems to have already brought some results in the improvement of the cost structure for RTGs, [internal document reference].

Figure 59: [...]

[...]

Source: [Internal document reference].

- (835) On the basis of these elements, the Commission takes the view that Cargotec has taken a first step in the right direction to regain competitiveness for the ICS business through the dissolution of the RCI JV. It has enabled Cargotec to regain control and full transparency on the cost structure for steel purchase and assembly which is very significant in gantry cranes overall costs. In slightly more than one year, this dissolution has already yielded appreciable results in sourcing savings. This dissolution and the process of regaining control over production costs should enable Cargotec to continue to compete in RTGs against Konecranes.

(B.iii) Cargotec has launched a number of projects to regain profitability and these projects may be accelerated and pushed forward if the merger does not take place

- (836) The Commission notes that the various projects undertaken by Cargotec since September 2020 to regain profitability in the short to medium term ([...]) illustrate that Cargotec is pulling out all the stops to find appropriate solutions for the ICS business. The Commission considers that this significant activity do not seem to be indicating that Cargotec is planning to exit, but rather that the solution may be within reach if the Company manages to solve some cost management issues (notably regarding supply chain and assembly lines), which is in particular the subject matter of [...].
- (837) The Commission cannot reasonably predict the outcome of these various projects, which are still ongoing, and yet have to bear fruit.
- (838) Moreover, the Commission considers, on the basis of internal documents submitted by the Notifying Parties, [...].
- (839) [...] aims at achieving cost reductions of at least [...]% from the current baseline in the supply of RTGs specifically. The objective of [...]% of cost savings is [...].

Figure 60: [...]

[...]

Source: [Internal document reference].

- (840) [...].

Figure 61: [...]

[...]

Source: [Internal document reference].

(841) [Internal document reference].

Figure 62: [...]

[...]

Source: [Internal document reference].

(842) On the basis of these elements, the Commission considers that Cargotec has undertaken ambitious cost savings plans for the ICS business, that are ongoing and have still to bear fruit. One of these projects (“[...]”) [...].

(843) The Commission therefore takes the view that, should the merger not proceed, Cargotec would implement in full [...]. The full implementation of [...] would contribute to maintain fierce competition between Cargotec and Konecranes.

(B.iv) Not only Cargotec has won recent tenders for RTGs and ASCs but it has also launched a new RTG model in June 2019

(844) Cargotec has recently announced the successful conclusion of agreements with customers in the field of gantry cranes, notably RTGs in [location] and ASCs in [location]. While the Notifying Parties have tried to downplay the relevance of these agreements for the future of Cargotec cranes business, they nevertheless show, in the Commission’s view, the vigour of Cargotec’s crane business, which is also dealing with ASCs, and the confidence of customers in Cargotec’s technology.

(845) It appears moreover that in the summer 2021, Cargotec launched its “new generation RTGs”. [...].⁷⁶⁹

(846) The Notifying Parties submitted that so far Cargotec received orders for its “new generation RTG” model from [number] customers amounting to a total of [number] units. Cargotec’s current order intake forecast (which covers the next three months) expects [...]. The first customer that bought a “new generation RTG” was [name], a customer located in the EEA ([location]).⁷⁷⁰

(847) The Notifying Parties submitted that whilst the terminology “new generation RTGs” is used, the products are in fact not new RTG models but rather incorporate incremental changes to the design of Cargotec’s existing models.⁷⁷¹

(848) The Commission considers that while these new models consist in incremental changes in existing designs, these modifications are particularly abundant and result in a product which is presented to potential customers clearly as a new type of RTGs. The selling brochure explains in that regard that in this new RTG “*there have been many significant changes and hundreds of small ones, collectively setting a new standard in what you should expect in your RTG*”.⁷⁷² In particular, the slide below presents all the modifications that have been implemented by Cargotec to the existing models.⁷⁷³

Figure 63: [...]

[...]

Source: [Internal document reference].

⁷⁶⁹ Notifying Parties’ reply to RFI 36, paragraphs 1 and 2.

⁷⁷⁰ Notifying Parties’ reply to RFI 36, paragraph 7.

⁷⁷¹ Notifying Parties’ reply to RFI 36, paragraph 8.

⁷⁷² The Parties’ reply to the Commission’s request for information RFI 36, annex QC1a) 2, page 2.

⁷⁷³ In its internal communication, Cargotec refers to these new models as “RTG 2019”.

(849) [...].

Figure 64: [...]

[...]

Source: [Internal document reference].

- (850) Among the benefits that customers can expect from this new RTG, Cargotec highlights the following [internal document reference].⁷⁷⁴
- (851) In the slide below, taken from an internal sales presentation, Cargotec shows the key benefits for marine and intermodal terminals of this new generation of RTGs in terms of efficiency, safety and performance. The Commission notes in that regard that the new automated RTGs from Kalmar is already [...], illustrating the relevance of the European markets for Cargotec in RTGs.

Figure 65: [...]

[...]

Source: [Internal document reference].

- (852) The Notifying Parties argued, regarding the purchase of a new RTG from [location], that this project [...].⁷⁷⁵ The Commission notes, to the extent that this sale project is the first one of a new concept, this pre-assembly (the costs of which appear to have been partially factored in the initial profitability assessment) appears to be normal. Once that RTG assembly has reached “cruising speed”, these costs are likely to be substantially reduced.
- (853) Finally, the Notifying Parties argued that, while these design measures have helped bringing the costs for the “new generation” models down to a certain extent, this is insufficient to make Cargotec’s cranes business cost competitive and profitable. According to the Parties, [...].⁷⁷⁶
- (854) Given the recent launch of this new generation RTG (June 2021), the Commission considers that it is too early to conclude whether this launch would be helpful to bring back Cargotec to acceptable levels of profitability in the future. The Commission however considers that this launch shows that Cargotec continues to compete in RTGs, notably against Konecranes, the market leader in the EEA, and that the merger would eliminate this existing competition now and in the near future.
- (855) Moreover, the Parties did not substantiate with any documents their claim that [...]. The Commission cannot reasonably predict the outcome of the various cost reduction projects that the Parties have launched in the last two years (including the new generation RTG, [...]), which are still ongoing, and yet have to bear fruit. The Commission in particular is not in a position to conclude that [...]. Moreover, the Commission notes that, [...].
- (856) The Commission also considers that this launch of “new generation RTG” constitutes evidence that Cargotec continues to compete in RTGs, notably against Konecranes.

⁷⁷⁴ The Notifying Parties’ reply to the Commission’s request for information RFI 36, annex QC1a) 2, page 2.

⁷⁷⁵ The Notifying Parties’ reply to the Commission’s request for information RFI 36, annex QC1a) 3.

⁷⁷⁶ The Notifying Parties’ reply to the Commission’s request for information RFI 36, paragraph 9.

(B.v) [...]

(857) [...].

(858) [...].

(859) [...].

(860) [...].

(861) [...].

(862) [...].

(C) Conclusion on risks of Cargotec exiting the EEA RTG market

(863) On the basis of the above, the Commission considers that it has no element allowing to conclude that Konecranes and Cargotec would not continue to compete against each other in the EEA RTG market in the absence of the merger. On the contrary, the dissolution of the RCI JV which has helped Cargotec to regain visibility and control of the gantry cranes cost structure, the full implementation of the ongoing cost-cutting projects, the recent won orders and the launch of the new generation RTG constitute tangible evidence that Cargotec intends to continue to compete in gantry cranes, and notably RTGs.

7.2.1.7. Concerns raised during the market investigation

(864) During the market investigation, several market participants, including terminal operators and gantry cranes manufacturers, expressed concerns referring to a risk of price increases, reduced quality and/or lessening of incentives to innovate due to the consolidation resulting from the Proposed Transaction.

(865) Some customers that responded to the market investigation expected a possible negative price effect given the similar profile of the Merging Parties as gantry cranes suppliers in the market, as explained by the Commission in Section 7.2.1.2. As explained by one EEA customer “*(The customer) estimates that the merger will have a negative impact on prices in the EEA for all types of gantry cranes and that the merger will lead to higher fixed costs due to duplication of some production sites, that could potentially influence Parties' price levels*”. A similar concern was expressed by another EEA customer “*Konecranes and Cargotec are direct competitors at the moment in the market and less competition and available choice in the market most probably will increase prices*”. A third EEA customer put forward that “*(Price) likely to increase based on no major competitors in EEA region*”.⁷⁷⁷

(866) In the same vein, a fourth customer submitted that “I am concerned that prices will escalate as a local monopoly is created.”⁷⁷⁸ Another customer also mentioned that “the merger would see the removal of competing brands of container handling equipment in an already narrow market which would remove competitive tension and see costs rise. The lack of equipment would also remove the pressure to continually improve container handling equipment.”⁷⁷⁹ This is confirmed by another customer

⁷⁷⁷ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question B.D.1.

⁷⁷⁸ Responses to Q5 – PH2 Questionnaire to Customers of cranes and automation software for all cargo handling equipment, Doc. ID 3606, question 44.

⁷⁷⁹ Responses to Q5 – PH2 Questionnaire to Customers of cranes and automation software for all cargo handling equipment, Doc. ID 3606, question 43.

“Negative impacts are expected on the RTG market (and straddle carrier market) due to the Parties high market shares worldwide and in the EEA”⁷⁸⁰.

- (867) One EEA customer described the market as particularly concentrated, with limited constraints stemming from non EEA-suppliers, which corroborates the Commission’s assessment in Section 7.2.1.4. *“the Company is concerned that prices may increase to the detriment of its activities as competition will be significantly reduced. For instance, the merged entity will be the major European player in the RTG market and the only available supplier in Europe besides Chinese brands. This would eliminate an important element of pricing competition which is currently present in the market. The market would essentially be left with one strong European player and Chinese suppliers. The Company does not believe the presence of Chinese players in the RTG market to be sufficient to constitute a serious alternative to the merged entity, should the latter significantly increase its prices post-transaction.”*⁷⁸¹
- (868) Another EEA customer indicated that “The merger would mean that the two dominating companies in the container handling equipment industry in Europe, and especially in Baltic and Nordic countries, would combine and that competition would be reduced”.⁷⁸²
- (869) The same customer considered that his bargaining power for RTG cranes will be significantly reduced by the Transaction, which confirms the assessment of the Commission in Section 7.2.1.5 as regards lack of countervailing buyer power post-Transaction: *“The Company is not concerned with a reduction in container handling equipment quality. However, when an OEM has a monopoly, it can determine the price and quality – this is the situation the Merged Entity will be in for certain types of equipment (e.g., RTGs, forklift trucks) and after sales service. The Merged Entity could simply present customers like (the customer) with the price of the product and there would no longer be any negotiation. If a customer like (the customer) can choose between different suppliers, it is able to settle on the best price – but if the Parties merge and are only facing scattered smaller competitors, prices will likely rise. (The customer) could not say ‘no’ to the Merged Entity, because it lacks effective alternative suppliers. The Company is already in this situation regarding spare parts manufactured by the OEMs, as it cannot chose to source from other suppliers and therefore has to accept the price offered by the OEM”.*⁷⁸³
- (870) This limited bargaining power of customers is also noted by one customer having recently sourced RTGs: “I believe that possible merger would have huge impact to us as we will lose competition between main players in cargo handling equipment market. It is already very difficult to work with OEM and after they become more bigger and dominant in the market customers position would be more complicated”. Another customer added that “We expect higher prices and doubts on the real impact on innovations and aftersales capabilities”⁷⁸⁴
- (871) While certain customers did not express concerns as regards the supply of RTGs in the EEA, the Commission notes these are in general large terminal operators

⁷⁸⁰ Responses to Q5 – PH2 Questionnaire to Customers of cranes and automation software for all cargo handling equipment, Doc. ID 3606, question 43.

⁷⁸¹ Non confidential minutes of a call with a customer dated 8 April 2021, paragraphs 34 and 35, Doc. ID 570.

⁷⁸² Non-confidential minutes of a call with a customer dated 7 April 2021, paragraph 47, Doc. ID 675.

⁷⁸³ Non-confidential minutes of a call with a customer dated 7 April 2021, paragraph 50, Doc. ID 675.

⁷⁸⁴ Responses to Q5 – PH2 Questionnaire to Customers of cranes and automation software for all cargo handling equipment, Doc. ID 3606, question 43.

sourcing port equipment on a worldwide basis (because they carry out large purchases for their terminals located across the globe) and which are better equipped to resist price increases than smaller terminals in the south of Europe or the Baltic States. Moreover, most of these large terminals do not source RTGs but rather rely on ASCs or RMGs because they have enough throughput to afford the purchase of a more expensive machine or they are already automated.

- (872) This is for example the case of Hutchison, a large GTO which sources mainly ASCs in the EEA and has only launched one tender for RTGs in the EEA (in Gdynia, Poland), which was awarded to Cargotec. RTGs do not appear to be relevant for this customer which stated that *“In terms of supply to Hutchison Ports, the merging parties are mainly active in the supply of ASC/ShC/SC/RST. However, there are now alternative suppliers, such as ZPMC and SANY, with a proven track record, from which we can source these products”*.⁷⁸⁵
- (873) This is also the case of Rotterdam World Gateway (RWG), which sources mostly automated products from the Parties (notably AGVs and ASCs), although this customer has a more nuanced view about the effects of the Transaction. While RWG argues that the combined entity would be in a better position to compete against Chinese competitors, notably against ZPMC, it also adds *“Due to its current installed base (in particular Konecranes AGVs and ASCs), its (the customer) tendering options for this expansion are limited, because it cannot switch equipment brands. Konecranes knows that it has a de facto monopoly position in RWG’s terminal – a situation that the merger will not improve”*.⁷⁸⁶
- (874) On the side of gantry cranes manufacturers, one company explained *“A lack of competition in the EEA will create a situation for higher prices. Currently Cargotec and Konecranes are competitively bidding on projects against each other. That will change if they merge”*.⁷⁸⁷ Another company emphasised that *“Lesser competition could reasonably lead to higher average price level.”*⁷⁸⁸ A third competitor argued that *“However, the Company considers that the proposed transaction will have a negative impact on its customers in Europe. The Parties are strong players in the European markets for STS Cranes, yard cranes, straddle carriers, reach stackers and empty container handlers. Post-transaction, the Company assumes that less competition in these markets would naturally lead to worse conditions for customers, including less negotiation and purchasing power as the effective alternatives are very limited”*.⁷⁸⁹
- (875) One competitor also explained that *“Due to the strong position of the Parties for yard cranes in Europe, the Company expects that the transaction will result in less choice for European customers and that European yard crane customers will be negatively affected”*.⁷⁹⁰
- (876) Finally, several customers, notably smaller and mid-size terminals, expressed concerns that they will benefit from less favourable treatment post-merger as regards for example delivery time or ability to respond swiftly to request for support. As

⁷⁸⁵ Responses to Q5 – PH2 Questionnaire to Customers of cranes and automation software for all cargo handling equipment, Doc. ID 3606, question 43.

⁷⁸⁶ Responses to Q5 – PH2 Questionnaire to Customers of cranes and automation software for all cargo handling equipment, Doc. ID 3606, question 43.

⁷⁸⁷ Q1 – Questionnaire to Competitors, Doc. ID 3154, question B.D.1.

⁷⁸⁸ Q1 – Questionnaire to Competitors, Doc. ID 3154, question B.D.1.

⁷⁸⁹ Non-confidential minutes of a call with ZPMC dated 23 April 2021, paragraph 36, Doc. ID 1779.

⁷⁹⁰ Q1 – Questionnaire to Competitors, Doc. ID 3154, question B.D.1.

explained by one EEA customer *“I dont think that it will influence ability but price and other conditions can be not such favorable for the clients like we have today with big competition between these two companies”*. A second EEA customer added that *“it could potentially lead to a cost and lead time increase as options to choose suppliers would be reduced”*.⁷⁹¹ This important in a market where, as identified by the Commission in Section 7.2.1.4, availability of a local service network is crucial for the customer.

- (877) In the same vein, a negative impact on after-sales services was also expected by some customers, on price of spare parts and warranty clauses. As explained by one customer, the Transaction would lead to *“1. One competitor less. 2. Prices for equipment, spare parts and services are expected to raise. 3. Already happening: Terms and Conditions and Warranty clauses get stricter. We expect this will only get worse with a bigger "Future Company"”*.⁷⁹² This is confirmed by a second customer *“The knowledge of maintaining an asset sits with the OEM. Currently Kalmar and Konecranes are the most mature suppliers and competitors, there will be loss of competition in the market which may drive the cost up.”*⁷⁹³ A third customer added that *“Merger will probably have the following impact on after sales service prices: high fixed costs expected and some product lines might be abandoned in a middle term which will oblige further CAPEX investment and constitution of new stocks”*.⁷⁹⁴ According to a fourth customer *“Sure, less competition between main players will increase spare parts and services prices”*.⁷⁹⁵

7.2.1.8. Conclusion on the EEA RTG market

- (878) For the reasons set out in Section 7.2 and in light of the results of the investigation, the Commission considers that the Transaction will result in a significant impediment to effective competition through the creation of a dominant position on the EEA market for RTGs.
- (a) First, the EEA RTG market is characterised by very high concentration with a limited number of players and characterised by recent market exit (Paceco) and a supplier whose share has been declining (Liebherr). This situation would be further exacerbated by the Transaction given the further increase in concentration levels and the Parties’ very high post-Transaction combined market share which would reach [60-70]% and had peaked to more than 90% in the recent past;
 - (b) Second, Cargotec and Konecranes are close competitors on the EEA RTG market;
 - (c) Third, the remaining players on the market post-Transaction will be unable to constitute a sufficient constraint on the Merged Entity in the near future, either because they suffer from specific deficiencies on important parameters of

⁷⁹¹ Q2 – Questionnaire to Customers, Doc. ID 3153, question B.D.4.

⁷⁹² Responses to Q5 – PH2 Questionnaire to Customers of cranes and automation software for all cargo handling equipment, Doc. ID 3606, question 43.

⁷⁹³ Responses to Q5 – PH2 Questionnaire to Customers of cranes and automation software for all cargo handling equipment, Doc. ID 3606, question 45.1.

⁷⁹⁴ Responses to Q5 – PH2 Questionnaire to Customers of cranes and automation software for all cargo handling equipment, Doc. ID 3606, question 45.1.

⁷⁹⁵ Responses to Q5 – PH2 Questionnaire to Customers of cranes and automation software for all cargo handling equipment, Doc. ID 3606, question 45.1.

competition, or because they are not competitive, or because they have a niche product that only addresses a specific fraction of demand;

- (d) Fourth, barriers to entry are high from a technical and economical perspective, and potential new entrants do not appear to be a source of competitive constraint in the near future;
 - (e) Fifth, the ability of customers to exercise countervailing buyer power appears to be limited and would not be sufficient to off-set a price increase as there would not enough alternatives to switch to;
 - (f) Sixth, Cargotec is unlikely to withdraw from the EEA RTG market after the merger.
- (879) In the light of these elements, the Commission concludes that the Transaction is likely to lead to price increases and may impact other parameters of competition.
- (880) Based on the above, the Commission considers that the Transaction leads to a significant impediment of effective competition on the EEA market for RTGs, as a result of the creation of a dominant position.

7.2.2. *Automated stacking cranes (ASCs)*

- (881) For the reasons set out in this Section, the Commission considers that the Transaction is not likely to significantly impede effective competition in the EEA market for ASCs.

7.2.2.1. The ASC market in the EEA is very concentrated but the Merged Entity holds a market share below 30%.

- (882) The Commission's investigation has revealed that the Merged Entity would have post-Transaction market shares below 30% in the EEA markets for ASCs.
- (883) Similarly to RTGs, the Commission first looked at the last three years under review in order to assess the market position of each player on a relevant time span as there were a limited number of ASC cranes sold in the EEA every year during that period (less than 10).
- (884) Table 4 below shows market shares of the Merged Entity for the period 2018-2020 at EEA level, which is the relevant geographic scope of the various gantry cranes markets, including ASCs. These market shares have been submitted by the Notifying Parties.

Table 4 – Market shares ASCs (by volume, 2018-2020)

RTGs	EEA	
	Units	Share
Cargotec	[...]	[5-10]%
Konecranes	[...]	[20-30]%
Combined	[...]	[20-30]%
ZPMC (China)	[...]	[50-60]%
Künz (Austria)	[...]	[20-30]%
Total market	[...]	100%

Source: Form CO, RFI PN2 – Annex – Q5 – Confidential – market shares.

- (885) At EEA level, the merged Entity would have a market share of [20-30]% according to the data submitted by the Notifying Parties, over the period 2018-2020. Only ZPMC and Künz, are present in this EEA ASC market with shares above (ZPMC [50-60]%) or equal (Künz) to those of the merged Entity. Therefore, ZPMC appears to be the clear market leader in the EEA market for ASCs, currently challenged by three EEA competitors, including the Merging Parties.
- (886) At worldwide level, the picture is similar although the market appears to be less concentrated because of the presence of several Chinese suppliers. The combined share of the Merged Entity would be [20-30]%, with [...] increment from Cargotec ([0-5]%). ZPMC is the market leader with a market share of [50-60]%. CSSC ([10-20]%), Künz ([5-10]%) and Sany ([0-5]%) are also present.
- (887) On the basis of the above elements, the Commission considers that the Merged Entity would have post-Transaction relatively moderate market share in the ASCs market.
- 7.2.2.2. The combined share of the Merged Entity in ASCs has been declining over the last ten years
- (888) As gantry cranes have a relatively long life cycle (on average [...] years), the Commission has also gathered sales and market shares of ASCs over a 11-year time span (2010-2020). These market shares are split between two periods of 4 years (2010-2013 and 2014-2017) and one period of three years (2018-2020) and are provided in the Table 5 below. The evolution of these market shares are particularly relevant for ASCs as there were more sales of ASCs until 2017 (on average [...] per year), and the market has particularly grown during the period 2014-2017 (and then subsequently declined).

Table 5 – Market shares ASCs (by volume, 2010-2020)

	EEA			
	Share 2010-2013	Share 2014-2017	Share 2018-2020	Overall 2010-2020
Cargotec	[20-30]%	[0-5]%	[5-10]%	[5-10]%
Konecranes	[40-50]%	[50-60]%	[20-30]%	[40-50]%
Combined	[60-70]%	[50-60]%	[20-30]%	[50-60]%
ZPMC (China)	[30-40]%	[0-5]%	[50-60]%	[10-20]%
Künz (Austria)	[0-5]%	[40-50]%	[20-30]%	[20-30]%
Total market	100%	100%	100%	100%

Source: Form CO, RFI PN2 – Annex – Q5 – Confidential – market shares.

- (889) At EEA level, the Merged Entity would be the market leader for the period 2010-2020 with a significant market share above 50%. However this 10-year market share does not fully reflect the decline of the position of the Merged Entity over this ten-year period: [60-70]% for the period 2010-2013, [50-60]% for the period 2014-2017 and [20-30]% for the period 2018-2020 according to the data submitted by the Notifying Parties. Konecranes' share has declined from [40-50]% in 2010-2013 to [20-30]% in 2018-2020 and Cargotec' share has also dropped from [20-30] to [5-10]%. Despite a small increase of market share (from [0-5] to [5-10]% in 2018-2020), the market share trend as regards Cargotec is also declining

- (890) ZPMC, which is present over the full period, has regained traction in the EEA ASC market at the end of the decade after a lack of sales in the period 2014-2017 and has overall grown in the last ten years from [30-40]% in 2010-2013 to [50-60]% in 2018-2020. Künz entered the EEA market during the period 2014-2017 and swiftly acquired a relevant market position of nearly [50-60]%. It has now stabilized its share around [20-30]%.
- (891) At worldwide level, the situation is similar: the Merged Entity was market leader during the first half of the decade (market share of [50-60]% for the period 2010-2013) but its share has declined to [20-30]% in the last three years. ZPMC has stabilized a leading position in the worldwide ASC market with a share now around [50-60]%. CSSC, Künz and Sany have entered the worldwide ASC market since 2010.
- (892) The Commission therefore considers that the Merged Entity has a significant market share of more than 50% over the last ten years. However, looking at these markets from a dynamic perspective, Konecranes and Cargotec have lost traction over the last ten years, and especially since 2017, despite a limited rebound of Cargotec recently. ZPMC has increased its share in the last decade. Künz has entered and gained a share of [20-30]% at the end of the decade.
- (893) These evolutions are linked to the characteristics of this market, notably its very dynamic nature, and the presence of new entrants such as Künz, which benefited from its strong position in the neighbouring RMG market, as explained in the following Sections.
- 7.2.2.3. The EEA ASC market is considered as dynamic by market observers and prone to new entries
- (894) Market participants tend to consider the ASC market as particularly dynamic, fuelled by automation of existing ports (in the EEA) or greenfield construction, with new entrants that offer innovative technical features, in contrast to the RTG market which is view as flat and mostly consisting of replacement demand.
- (895) This is particularly striking in various WCN annual yard crane reports since 2010. By way of example, the 2012 WCN yard crane reports noted that *“Driven by demand for automated RMGs (ARMGs or ASCs for automated stacking cranes), the demand for RMG (rail-mounted gantry) cranes has also picked up strongly, fuelled by large-scale projects, involving big delivery numbers, which has long contrasted with the port industry’s more universal RTG uptake”*⁷⁹⁶
- (896) The 2014 WCN Yard crane report submitted that “The RMG sector is surging at the moment, driven by several large scale yard automation projects at greenfield terminals. The ASC is fast becoming the yard system of choice for these terminals, and the more terminals that automate the greater the pressure on their competitors to follow suit”⁷⁹⁷
- (897) In the 2016 WCN yard crane report, it is submitted that “The global output of RMG/ASC equipment surged to more than 300 units during that year, which surpassed anything seen previously - or since.”⁷⁹⁸

⁷⁹⁶ Response to RFI 19, WCN yard crane report 2012.

⁷⁹⁷ Response to RFI 19, WCN yard crane report 2014.

⁷⁹⁸ Response to RFI 19, WCN yard crane report 2016.

- (898) The 2017 WCN yard crane report also noted the innovative features brought by Künz to its ASC manufactured for the port of Tangier in Morocco, notably that “ *Hans Künz is continuing to develop its ASC design, and will introduce a number of new features on the 32 units that it is manufacturing for APM Terminals' new Tanger-Med 2 facility in Morocco.*” The report mentioned that “*Künz's first ASCs were based heavily on its RMGs, but the company has now developed a separate and distinct ASC design that better matches the needs of the application.*” While these features have been developed for a contract outside of the EEA, the Commission notes that Künz has during that period also made a breakthrough entry in the ASC market in the EEA, notably for CTB-HHLA in Hamburg and APMT in Rotterdam.
- (899) This dynamism of Künz in ASCs in the EEA, as reflected by its market share, has been noted by many respondents to the market investigation. As explained by one competitor “*Künz is a strong innovative competitor on the RMG and ASC. Their recent ASC project at Maasvlakte II, Rotterdam shows their innovation strength*”. A second customer noted that “*KUNZ, as in the Morocco Tangier project, in which they used oval shape girder to reduce wind resistance*” (the Tangier project related to ASCs). A third customer mentioned that “*Künz has delivered a lot of ASCs for Maasvlakte*”.⁷⁹⁹
- (900) Respondents to the market investigation take the view that this dynamic market trend for ASCs is likely to continue. As explained by one customer “*ASC will become more important in the future. Recently, a new established port terminal has purchased ASCs from ZPMC*”. This is confirmed by a second customer “*ASC's will have a significant growth as many automation brownfield projects will arise in the mid term, mostly in regions where labour cost is high.*” A third customer noted that “*ASCs will grow because of further automation all over the world*”.⁸⁰⁰
- (901) These views are also shared by competitors. One market participant noted that “The demand of ASC is growing globally”. Another rival mentioned “ASC's will continue their importance in new greenfield ports and expansion of existing terminals”.⁸⁰¹ One competitor noted the importance of Künz in ASCs and RMGs “Cargotec, Konecranes and ZPMC have shared majority of RTG market for many years. Kuenz in recent years competitive in ASC and RMG”.⁸⁰²
- (902) On the basis of the above, the Commission therefore considers that the ASC market in the EEA is a dynamic entry where some new players such as Künz have managed to successfully enter with innovations.
- 7.2.2.4. ZPMC and Künz are considered as close alternatives to the Merging Parties in ASCs.
- (903) Respondents to the market investigation submitted that ZPMC and Künz have been closely competing with the Merging Parties in the EEA market for ASCs.
- (904) When asked for the identity of the close competitors of Cargotec as regards ASCs, customers identified Konecranes, ZPMC and Künz as the main alternatives to Cargotec in ASCs, with no strong majority in favour of one of these suppliers. Regarding more specifically customers located in the EEA, the answers are similar.⁸⁰³

⁷⁹⁹ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question B.C.C.5.

⁸⁰⁰ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question B.C.D.1.

⁸⁰¹ Response to Q1 – Questionnaire to Competitors, Doc. ID 3154, question B.C.D.1.

⁸⁰² Response to Q1 – Questionnaire to Competitors, Doc. ID 3154, question B.C.B.2.

⁸⁰³ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question B.C.B.1.

- (905) Similarly, when asked for the identity of the close competitors of Konecranes as regards ASCs, customers have identified Cargotec, ZPMC and Künz as the main alternatives to Cargotec in ASCs, with no strong majority in favour of one of these suppliers. Regarding more specifically customers located in the EEA, the answers are similar.⁸⁰⁴
- (906) In the market investigation, customers were also asked about the identity of their top five suppliers of ASCs over the last 10 years (2010-2020). Konecranes is mentioned by four respondents, Cargotec by three of them, ZPMC by three of them and Künz by just one of them.⁸⁰⁵
- (907) In the light of these elements, the Commission takes the view that ZPMC and Künz are competing as closely with the merging Parties as the merging parties themselves. The merger therefore does not eliminate the main source of rivalry in the EEA ASC market.
- 7.2.2.5. ASC customers are large terminal operators with some degree of countervailing buyer power.
- (908) The Commission has verified the percentage that small and medium-sized terminals represent in the sourcing of ASCs in the EEA. The definition of small and medium-sized terminal rests on the level of annual activity. A medium-sized terminal is defined as one handling between 500 000 and 1 million TEUs a year and a small terminal as one handling between 100 000 and 500 000 TEUs a year.
- (909) All the ASCs customers of the Parties in the EEA are large terminals with a minimum throughput of [...]. This reflects that the conditions of competition in ASCs, where ZPMC is an important European supplier, are significantly different from RTGs, where the customers are smaller terminals ordering batches of equipment that are more limited in size, and where the Parties are the clear leaders in the EEA.⁸⁰⁶ Large terminals with significant throughput purchase ASC because these terminals are already automatized and can afford the purchase of an expensive machine like ASCs.
- (910) As regards order sizes, the Commission notes that this different market structure of ASCs compared to RTGs is also reflected in the order sizes. The average order size in ASCs is much more significant than for RTGs: 59% of the ASC orders in the EEA in the last ten years included more than 10 pieces of equipment, the largest orders comprising 36 units (APMT Barcelona), 32 units (RWG Rotterdam) and 26 units (APMT Rotterdam).⁸⁰⁷
- (911) In the light of the above elements, the Commission considers that the customer base of ASCs in the EEA consist in sizable terminals with a significant throughput, with large orders covering important numbers of ASCs at the same time. Arguably, these terminals should benefit from a certain degree of countervailing buyer power that smaller terminals ordering RTGs do not have.

⁸⁰⁴ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question B.C.B.2.

⁸⁰⁵ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question B.C.1.

⁸⁰⁶ Letter of Facts, paragraph 65.

⁸⁰⁷ Letter of Facts, paragraph 56.

7.2.2.6. Overall conclusion for ASCs

- (912) In the light of the elements described in Sections 7.2.2.1 to 7.2.2.5, and notably the 2018-2020 combined share of the Merged Entity below 30%, the declining market position of the Merged Entity over the last ten years, the competitive constraints of ZPMC and Künz, the dynamic nature of these markets and the customer base consisting in large terminals in terms of throughput, the Commission concludes that the Transaction does not significantly impede effective competition in the EEA market for ASCs.

7.3. Horizontal equipment

- (913) The Notifying Parties' activities overlap in the plausible market(s) for straddle and shuttle carriers. The Commission further assessed potential overlaps in AGVs and terminal tractors as well as a vertical link in terminal tractors.
- (914) The main area of overlap are straddle and shuttle carriers, where the Transaction would lead to a quasi-monopoly post-Transaction in a very highly concentrated market. As explained further below in Section 7.3.1, the Commission found that the Transaction is likely to significantly impede effective competition in the plausible market(s) for straddle and shuttle carriers both in the EEA and globally.
- (915) Moreover, the Commission assessed a potential overlap in Terminal Tractors. However, as explained further below in Section 7.3.2.1, the Commission found that the proposed Transaction would not eliminate the entry of a potential future competitor in terminal tractors or A-TTs, specifically. Likewise, the proposed Transaction would not lead to an ability or incentive for the Merged Entity to foreclose competitors of their distributor base, see Section 7.3.2.2 below.
- (916) Further, the Commission assessed a potential overlap in AGVs. However, as explained further below in Section 7.3.2, the Commission found that the proposed Transaction would not eliminate the entry of a potential future competitor in AGVs.

7.3.1. *Straddle and shuttle carriers*

- (917) Article 2 of the Merger Regulation stipulates that, “[a] concentration which would significantly impede effective competition, in the common market or in a substantial part of it, in particular as a result of the creation or strengthening of a dominant position, shall be declared incompatible with the common market.” In its appraisal, the Commission is required to take into account, among other matters, the need to maintain effective competition in view of the structure of the markets concerned, the market position of the undertakings concerned and their economic and financial power, as well as the development of technical and economic progress provided that it is to consumers' advantage and does not form an obstacle to competition.
- (918) In the following Sections of this decision, the Commission will **first** assess, in line with Article 2 of the Merger Regulation and the Horizontal Merger Guidelines, whether the Transaction will lead to large combined market shares and a high degree of concentration (in line with paragraphs 14 to 21, 27 of the Horizontal Merger Guidelines), see Section 7.3.1.1 below.
- (919) **Second**, the Commission will assess whether the Notifying Parties have an advantage in automation, see Section 7.3.1.2 below.
- (920) **Third**, the Commission will assess whether the Transaction eliminates competition between two close competitors in the straddle and shuttle carrier market(s) (see paragraphs 28 to 30 of the Horizontal Merger Guidelines), see Section 7.3.1.3 below.

- (921) **Fourth**, the Commission will analyse whether the reaction of competitors to the merging Parties is likely to defeat any price increase by the Merged Entity (see paragraphs 32 to 35 of the Horizontal Merger Guidelines), see Section 7.3.1.4 below.
- (922) **Fifths**, the Commission will assess whether customers of the Notifying Parties may have difficulties switching to other suppliers because there are few alternative suppliers and/or because they face substantial switching costs (see paragraph 31 of the Horizontal Merger Guidelines), see Section 7.3.1.5 below.
- (923) **Sixths**, the Commission will determine whether terminal operators benefit from countervailing buyer power to the extent that these customers are in a position to counter a price increase that could otherwise stem from the Transaction, in line with paragraphs 64 to 67 of the Horizontal Merger Guidelines. The Commission will in particular assess whether countervailing buyer power, if it already exists, will remain effective under the post-merger market setup or whether the Transaction, through the elimination of a significant alternative, will reduce the degree of buyer power and render it ineffective, see Section 7.3.1.6 below.
- (924) **Seventh**, the Commission will assess whether potential entrants and expansions in the straddle and shuttle carrier market(s) can be considered as a sufficient competitive constraint on the Merged Entity, in line with paragraphs 68 to 75 of the Horizontal Merger Guidelines. The Commission will describe and assess the various barriers to entry that new players have to face when trying to enter the RTG market, see Section 7.3.1.7 below.
- (925) **Finally**, the Commission will assess concerns as to the possible negative effects of the proposed Transaction raised by market participants in the market investigation, see Section 7.3.1.8 below.
- 7.3.1.1. The merging firms hold very high market shares in the EEA and global markets for straddle and shuttle carriers and the Transaction will lead to the creation of a *de-facto* monopoly in an already highly concentrated market
- (A) The Merged Entity holds very high market shares in the EEA and globally
- (926) According to the Horizontal Merger Guidelines, the larger the market share, the more likely a firm is to possess market power; and the larger the addition of market share, the more likely it is that a merger will lead to a significant increase in market power. The larger the increase in the sales base on which to enjoy higher margins after a price increase, the more likely it is that the merging firms will find such a price increase profitable despite the accompanying reduction in output. Although market shares and additions of market shares only provide first indications of market power and increases in market power, they are normally important factors in the assessment.⁸⁰⁸
- (927) As regards market shares, the Commission first looked at the last three years in order to assess the market position of each player on a relevant time span. The Commission then assessed these market shares over a longer period (2010-2020), in order to establish how these shares have evolved over a longer time span.
- (928) The Commission's investigation has revealed that the Merged Entity would have very high market shares post-Transaction in the EEA (and globally) in all plausible markets and sub-segments for straddle and shuttle carriers discussed in Sections 5.3.1.3 and 6.4.1.3 above.

⁸⁰⁸ Horizontal Merger Guidelines, paragraph 27.

- (929) The Merged Entity would have very high market shares *post*-Transaction. In fact, the Proposed Transaction would lead to a *de-facto* monopoly of the Parties in straddle and shuttle carriers as well as in the plausible sub-segments of straddle carriers and a monopoly in the plausible sub-segment of shuttle carriers in an already highly concentrated market both in the EEA and on a global level. A competitor noted in this regard: “*The merge of Cargotec and Konecranes will de facto create a Monopolist in the Straddle carrier / Shuttle Carrier segment.*”⁸⁰⁹ Similarly, a GTO concluded: “*The merged company will basically be a monopoly*”⁸¹⁰.
- (930) Table 6 below shows market shares (by volume) of the Merged Entity for the period 2018-2020 at EEA and global level as submitted by the Parties. The Merged Entity would have 2018-2020 combined market shares ranging between [90-100]% in straddle carriers globally and [90-100]% in shuttle carriers both globally and at EEA level. The Commission notes that in each of the plausible straddle and shuttle carrier sub-segments one of the Parties already has a market share above 50% which according to paragraph 17 of the Horizontal Merger Guidelines may in itself be evidence of the existence of a dominant position.

Table 6 – Market shares straddle and shuttle carriers (by volume, 2018-2020)

	Straddle carriers		Shuttle carriers		Straddle and shuttle carriers	
	EEA	World	EEA	World	EEA	World
Cargotec	[40-50]%	[50-60]%	[90-100]%	[60-70]%	[40-50]%	[50-60]%
Konecranes	[50-60]%	[40-50]%	[0-5]%	[30-40]%	[50-60]%	[30-40]%
Combined	[90-100]%	[90-100]%	[90-100]%	[90-100]%	[90-100]%	[90-100]%
ZPMC	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Mobicon	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Liebherr	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%

Source: Submission of the Notifying Parties dated 14 June 2021.⁸¹¹

- (931) These shares have been provided in the Form CO for the period 2018-2020. Looking at a broader picture, the Commission has also assessed market shares of straddle and shuttle carriers over a 11-year time span (2010-2020). These market shares demonstrate that the market positions of the Parties have been stable for over a decade. These market shares are split between two periods of 4 years (2010-2013 and 2014-2017) and one period of three years (2018-2020). The timeframes of 2010 to 2013 and 2014 to 2017 are provided in Table 7 and Table 8 below.

⁸⁰⁹ Response to Q1 – Questionnaire to Competitors, Doc. ID 3154, question D.D.2.1.

⁸¹⁰ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question D.D.1.1.

⁸¹¹ RFI PN2 – Annex – Q5.

Table 7 – Market shares combined market for straddle and shuttle carriers (by volume, 2010-2017)

	Straddle and shuttle carriers			
	Share 2010-2013		Share 2014-2017	
	EEA	World	EEA	World
Cargotec	[20-30]%	[30-40]%	[30-40]%	[40-50]%
Konecranes	[60-70]%	[60-70]%	[60-70]%	[40-50]%
Combined	[90-100]%	[90-100]%	[90-100]%	[90-100]%
ZPMC	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Liebherr	[0-5]%	[0-5]%	[0-5]%	[0-5]%

Source: Submission of the Notifying Parties dated 14 June 2021.⁸¹²

Table 8 – Market shares straddle and shuttle carriers (by volume, 2010-2017)

	Straddle carriers (StC)		Shuttle carriers (ShC)		StC	StC	ShC	ShC
	Share 2010-2013				Share 2014-2017			
	EEA	World	EEA	World	EEA	World	EEA	World
Cargotec	[10-20]%	[20-30]%	[90-100]%	[60-70]%	[30-40]%	[40-50]%	[80-90]%	[60-70]%
Konecranes	[70-80]%	[60-70]%	[5-10]%	[30-40]%	[60-70]%	[50-60]%	[10-20]%	[30-40]%
Combined	[90-100] %	[90-100] %	[90-100] %	[90-100] %	[90-100] %	[90-100] %	[90-100] %	[90-100] %
ZPMC	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Mobicon	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Liebherr	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%

Source: Submission of the Notifying Parties dated 14 June 2021.⁸¹³

(932) At EEA level, the Merged Entity would have a market share of [90-100]% for the period 2010-2013, [90-100]% for the period 2014-2017 and [90-100]% for the period 2018-2020 according to the data submitted by the Notifying Parties. At global level, the Merged Entity would have a market of [90-100]% for the period of 2010-2013, [90-100]% for the period of 2014-2017 and [90-100]% for the period of 2018-2020. The market shares in the straddle carrier segment, on the one hand, and the shuttle carrier segment, on the other hand, are similar to the market shares in the overall market for straddle and shuttle carriers throughout the decade. Thus, the market share of over 90% of the Merged Entity was stable throughout the past decade both at EEA and at global level.

(933) Therefore, the Merged Entity appears to be the clear market leader in the last decade in the plausible market(s) for straddle and shuttle carriers, with a market share significantly above 50% throughout the period and, in fact, never below 90% in any plausible straddle and shuttle carrier market both in the EEA and globally. The Commission notes that only ZPMC and Liebherr were present in the plausible EEA

⁸¹² RFI PN2 – Annex – Q5.

⁸¹³ RFI PN2 – Annex – Q5.

straddle and shuttle carrier market(s) over the previous decade. The Commission notes for completeness that the market shares provided by the Notifying Party include market shares of Mobicon, a small manufacturer of mini straddle carriers that do not compete with the Parties offering (see in detail Section 7.3.1.4 (D) below). The Commission notes that Mobicon is not active in the EEA but at global level.

- (934) The Notifying Parties argued that market shares and concentration levels can only be a starting point in the assessment of any transaction, and that this was particularly true in a case like the one at hand with markets characterised by lumpy demand.⁸¹⁴ The Commission notes that, according to well-established case law⁸¹⁵, a market share above 50% is in itself indicative of a dominant position. Moreover, this market share has remained consistently above 90% throughout the last ten years, which is indicative of a stable position of the Merged Entity.

(B) The Transaction leads to a significant level of concentration in the EEA

- (935) **First**, the Transaction would lead to a very significant market share increment in straddle and shuttle carriers in the EEA of [20-30]% during the period 2010-2013, [30-40]% for the period 2014-2017 and [40-50]% for the period 2018-2020, and at global level of [30-40]% during the period of 2010-2013, [40-50]% during the period 2014-2017 and [30-40]% during the period of 2018-2020. The increments in particular during the 2014-2017 period are [40-50]% and, thus, close to as high as an increment could in theory be. Just these increments are close to the 50% market share threshold mentioned in paragraph 17 of the Horizontal Merger Guidelines that may in itself be evidence of the existence of a dominant position.
- (936) **Second**, according to the data submitted by the Notifying Parties, the Merged Entity would be significantly larger as the next largest competitor, depending on the period. Further, according to the Notifying Parties data, there would be over the period 2010-2013 only one competitor, namely Liebherr, to the Merged Entity with a market share of [0-5]% at EEA level and [0-5]% at global level for the overall market and [0-5]% at EEA level and [0-5]% at global level in straddle carriers. During the 2014-2017 period the market share Liebherr disappeared from the EEA and its global market share declined to [0-5]% in the overall straddle and shuttle carrier market and [0-5]% in straddle carriers; while in ZPMC a new competitor in shuttle carriers outside the EEA emerges with a market share of [0-5]% in shuttle carriers globally, amounting to [0-5]% in the overall straddle and shuttle carrier market. In the 2018-2020, Liebherr's market share further declines to [0-5]% in the EEA and [0-5]% at global level. ZPMC, on the other hand, was able to grow its market share in straddle carriers to [0-5]% at EEA level and [0-5]% at global level during the period 2018-2020, equalling [0-5]% at EEA level and [0-5]% at global level in the overall straddle and shuttle carrier market. Further, the Notifying Parties data identifies Mobicon as a competitor in straddle carriers outside the EEA with a global market share of [0-5]% in straddle carriers and [0-5]% in straddle and shuttle carriers during the period of 2018-2020. Therefore, the Merged Entity would be significantly larger than any of its rivals in the EEA.
- (937) Further, the market investigation confirmed that Liebherr has exited the market (see in more detail below Section 7.3.1.4 (B) leaving recent entrant ZPMC as the only competitor in the EEA. The plausible straddle and shuttle carrier markets, thus are characterised by a very high concentration with at present only three active players

⁸¹⁴ Response to the Article 6(1)(c) Decision, paragraph 124.

⁸¹⁵ Horizontal Merger Guidelines, paragraph 17.

with a global presence: namely the Parties and recent Chinese entrant ZPMC. The fourth player in the Notifying Party's data, Mobicon, does not offer a comparable product offering to the Notifying Parties' and ZPMC's product offering and does not seem to be known by customers (see below Section 7.3.1.4 (C)). A fifth player, Mitsubishi, not even contained in the Notifying Parties' data, appears to be exclusively active in Japan and Korea and, similarly, not known to customers (see in more detail Section 7.3.1.4 (D) below).

- (938) **Third**, the very significant increase in concentration and the very limited market position of competitors in contrast to the Merged Entity is also reflected in the HHI values. According to paragraph 20 of the Horizontal Merger Guidelines only a merger with a post-merger HHI below 2000 and HHI delta below 250 is unlikely to raise competition concerns. For the period of 2010-2013 the global market for straddle and shuttle carriers would have a pre-Transaction HHI value of [5000-5500]. Post-Transaction, this concentration would significantly increase. The post-Transaction HHI value for straddle and shuttle carriers at global level would be [9500-10000], with a delta of [4400-4500]. The assessment is similar for the period 2014-2017 (post-Transaction HHI value of [9500-10000] with an increment of [4800-4900]) and 2018-2020 (post-Transaction HHI value of [9000-9500] with an increment of [4400-4500]). The HHI values and deltas for the EEA level as well as all plausible sub-segments are comparable. The post-merger HHI and HHI delta even in the least concentrated plausible sub-segment in the 2018-2020 period, namely straddle carriers on a global level, would be [8500-9000] and [4300-4400] respectively. These values are significantly above the thresholds for which the Commission is unlikely to find competition concerns.⁸¹⁶ Even the smallest HHI delta in the plausible markets for straddle and shuttle carriers in the most recent period of 2018-2020 is seventeen times higher than the threshold identified in the Horizontal Merger Guidelines. The plausible market(s) for straddle and shuttle carriers was therefore already concentrated pre-Transaction – and would be significantly more concentrated post-Transaction.
- (C) The Parties' internal documents and data provided by the Notifying Parties show that only a limited number of suppliers of straddle and shuttle carriers are active, both in the EEA and globally
- (939) As regards competitors, the market investigation has confirmed that today essentially only the Parties and recent entrant ZPMC are active in the plausible market(s) for straddle and shuttle carriers. While there might be some local suppliers in certain Asian countries (Japan, Korea), the Commission's market investigation has confirmed that no customers outside of these have sourced from them.
- (940) The Parties attribute 2010-2020 EEA sales to five companies, namely themselves, Liebherr, ZPMC and Mobicon. On top of this, the Commission found that Mitsubishi appears to be locally active in Japan. The Commission is not aware that any other manufacturers supplied straddle and shuttle carriers in the EEA.

⁸¹⁶ Horizontal Merger Guidelines, paragraphs 19 and 20. «*The Commission is unlikely to identify horizontal competition concerns in a market with a post-merger HHI below 1000. Such markets normally do not require extensive analysis. The Commission is also unlikely to identify horizontal competition concerns in a merger with a post-merger HHI between 1000 and 2000 and a delta below 250, or a merger with a post-merger HHI above 2000 and a delta below 150, except where special circumstances (...) are present*».

- (941) The Commission’s market investigation confirmed that Liebherr, who had an EEA market share of [0-5]% in 2018-2020, is no longer supplying straddle carriers. The Commission further found that Mobicon does not have a product offering comparable to and competing with the Parties’ and ZPMC’s offering in straddle and shuttle carriers. Only ZPMC, a Chinese supplier and recent entrant in supply of straddle and shuttle carriers, is present in the EEA market for straddle and shuttle carriers and the plausible sub-segments, with an EEA market share of [0-5]% and global market share of [0-5]% (by volume) in 2018-2020. It therefore appears that the Merged Entity will be only one of two remaining suppliers of straddle and shuttle carriers active in the EEA. Thus, the Proposed Transaction would essentially result in a 3-to-2 merger in straddle and shuttle carriers and the plausible sub-segments both in the EEA and globally, creating a near-monopoly and leaving only a small recent entrant competing.
- (942) Consequently, the Parties themselves internally track only ZPMC as the only other competitor in straddle and shuttle carriers.⁸¹⁷
- (943) Similarly, in an internal document [internal document reference].⁸¹⁸
- (D) Customers and competitors consider the Parties to hold important market positions and the Merged Entity to have a de-facto monopoly
- (944) Customers, distributors and competitors of the Parties consider that the Parties hold important market positions in the EEA as well as global straddle and shuttle carrier markets and that the Merged Entity would have very large market shares if not a quasi-monopolistic position, and are leading the market together way ahead of the only other competitor and recent entrant ZPMC.
- (945) A competitor noted: “‘If the market is too concentrated to the extent of becoming almost monopolized, like the merge between Kalmar and Konecranes might end up making up the market, then it might result impossible for any newcomer to develop itself, if any customer considering to give business to such newcomer might suffer of consequences from the monopolist.” An international customer said: “Monopolistic market may be created.”⁸¹⁹ Similarly, an EEA customer similarly voiced: “The merger means near-monopoly in Europe.”⁸²⁰ A GTO states: “[...] As indicated before, we fear monopoly in certain product lines, such as Straddle and Shuttle Carriers”⁸²¹. Similarly, this is the main explanation for expected price increases listed by customers: “Due to almost monopoly power.”⁸²² “Yes, they will have the monopoly of well-known and reliable European Cargo Handling Equipment.”⁸²³ “The merger means near-monopoly in Europe.”⁸²⁴ Further, a GTO expressed its concern that: “This merger would lead to a quasi monopolistic situation on the straddle and shuttle carriers markets which the terminal operators will suffer from.”⁸²⁵

⁸¹⁷ See for instance, Cargotec, Competitor Review Q2 2020, Doc. ID 3709-7619, CAR-KAN-00001261.pdf; Konecranes, Doc. ID 3587-11798; M.10078 Cargotec Konecranes RFI 18-00472379.

⁸¹⁸ Doc. ID 3586-34068, M.10078 Cargotec Konecranes RFI 18-00404789.pdf.

⁸¹⁹ Response to Q7 – PH2 Questionnaire to HTE Customers, Doc. ID 3608, question 32.1.

⁸²⁰ Response to Q7 – PH2 Questionnaire to HTE Customers, Doc. ID 3608, question 32.1.

⁸²¹ Response to Q7 – PH2 Questionnaire to HTE Customers, Doc. ID 3608, question 32.1.

⁸²² Response to Q7 – PH2 Questionnaire to HTE Customers, Doc. ID 3608, question 33.1.1.

⁸²³ Response to Q7 – PH2 Questionnaire to HTE Customers, Doc. ID 3608, question 33.1.1.

⁸²⁴ Response to Q7 – PH2 Questionnaire to HTE Customers, Doc. ID 3608, question 33.1.1.

⁸²⁵ Response to Q7 – PH2 Questionnaire to HTE Customers, Doc. ID 3608, question 35.

(E) Conclusion

- (946) For the reasons set out in Sections 7.3.1.1 (A) to (D), the Commission considers that the Transaction results in a very large combined market share, indicative of creating or strengthening a dominant and (close to a monopoly) market position on the market for straddle and shuttle carriers and the possible segments thereof both under the plausible EEA and global geographic market definitions.

7.3.1.2. The Notifying Parties have a competitive advantage in Automation

- (947) Similarly to RTGs, the Notifying Parties have a competitive advantage in the automation of straddle and shuttle carriers, as in automation overall.
- (948) Both Notifying Parties offer the automated equipment and the ECS, which is critical to straddle and shuttle carriers that move freely in the terminal. Although in theory customers can choose another ECS supplier, customers tend to prefer to buy the equipment and software from the same supplier. Moreover, there are not as many alternatives of supply for an ECS for straddle carriers as the Notifying Parties claim. As mentioned above AAB does not offer ECS software and Siemens only has ECS for gantry cranes.⁸²⁶
- (949) More importantly due to their wider portfolio in automated equipment and the possibility to coordinate the different types of equipment via their ECS the Notifying Parties can make joint offers that their OEM competitors cannot meet. Already today Konecranes offers its ASC and AGVs with its ECS. As a third-party supply put it, *“Konecranes, via TBA, is currently the only supplier that pushes ECS connectivity across AGVs and ASCs”*.⁸²⁷ Furthermore, customers fear that this will create a dependency on the OEMs, particularly for automated terminals. As one customer explained *“Terminals that are automated (e.g., APM Terminals) are more vulnerable to pressure from the OEMs as it is more difficult to switch equipment suppliers. This is a trend that will continue as OEMs offer more integrated systems - this leads to even more customer-lock-in”*.⁸²⁸

7.3.1.3. The Merging firms are each other’s closest competitors and there is only one other supplier to which customers can turn

- (950) According to the Horizontal Merger Guidelines, customers of the merging Parties may have difficulties switching to other suppliers because there are few alternative suppliers or because they face substantial switching costs. Such customers are particularly vulnerable to price increases. The merger may affect these customers' ability to protect themselves against price increases. In particular, this may be the case for customers that have used dual sourcing from the two merging firms as a means of obtaining competitive prices. Evidence of past customer switching patterns and reactions to price changes may provide important information in this respect.⁸²⁹

(A) Market participants consider the merging firms to be each other’s closest competitors

- (951) The Commission finds that customers view Cargotec and Konecranes as the closest competitors. In particular, when asked to identify suppliers of straddle and shuttle

⁸²⁶ Agreed minutes with a Third-Party supplier on 4 October 2021, Doc. ID 4176.

⁸²⁷ Agreed minutes with a Third-Party supplier on 23 August 2021. Doc. ID 4306.

⁸²⁸ Responses to Q5 – PH2 Questionnaire to Customers of cranes and automation software for all cargo handling equipment, Doc. ID 3606, question 43.1.

⁸²⁹ Horizontal Merger Guidelines, paragraph 31.

carriers and rate them in a number of competitive factors on a scale of 1 (lowest) to five (highest), customers only identified ZPMC and Liebherr as other competitors. Reading more specifically, Cargotec and Konecranes were rated comparable with average ratings of 4 to 5 across competitive parameters, while the majority of customers who expressed an opinion ranked ZPMC notably lower across competitive factors including key factors⁸³⁰ such as after sales service provision, reliability and quality with ratings mostly in the 1 to 3 range.⁸³¹ Further responses to the Commission's market investigation demonstrate that ZPMC is further not considered by customers to be comparable with the Notifying Parties in relation to key competitive parameter references.⁸³² This shows, that Cargotec and Konecranes are seen as more similar to one another compared to other third suppliers by customers across a number of significant competitive factors than other suppliers. A clear majority of customers further said that it is somewhat easier to switch between straddle and shuttle carriers of Cargotec and Konecranes as compared to those of third supplier ZPMC.⁸³³ One GTO explained: *"Technologies between Cargotech [sic] and Konecranes are more similar and after sales services equivalent while ZPMC aftersales service is inexistent with low expertise and tremendous issues for the supply of spare parts leading to huge stock and stock costs."*⁸³⁴

- (952) In fact, ZPMC appears to be seen as lagging behind across competitive parameters to a degree, where it is not seen by many market participants as an alternative source of supply for straddle and shuttle carriers and the plausible sub-segments both in the EEA and globally (see in more detail below Section 7.3.1.4 (A), as is shown by many market participants viewing the Proposed Transaction as the creation of a quasi-monopoly, see above Section 7.3.1.1 (D). A GTO stated: *"That would mainly be a choice between Kalmar and Konecranes until the point that Liebherr or ZPMC have more competitive products."*⁸³⁵
- (B) Internal documents of the Parties show an intense level of competition between them in straddle and shuttle carriers
- (953) A review of internal documents submitted by the Notifying Parties document fierce competition between the Parties in the plausible EEA as well as global market(s) for the supply of straddle and shuttle carriers. A Konecranes internal document for instance describes [internal document reference] and as [internal document reference].⁸³⁶

Figure 66: [...]

[...]

Source: [Internal document reference].

- (954) Internal documents further show that the Notifying Parties regarded each other as their closest competitors in terms of market position. For instance, Figure 67 below shows an internal document of Konecranes [internal document reference].

⁸³⁰ Responses to Q7 – PH2 Questionnaire to HTE Customers, Doc. ID 3608, questions 20 and 20.1.

⁸³¹ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question D.C.A.1.

⁸³² See for instance responses to Q2 – Questionnaire to Customers, Doc. ID 3153, question D.C.A.4.1.1.

⁸³³ Responses to Q7 – PH2 Questionnaire to HTE Customers, Doc. ID 3608, question 26.

⁸³⁴ Response to Q7 – PH2 Questionnaire to HTE Customers, Doc. ID 3608, question 26.1.

⁸³⁵ Response to Q7 – PH2 Questionnaire to HTE Customers, Doc. ID 3608, question 18.1.

⁸³⁶ Doc. ID 3587-11798, M.10078 Cargotec Konecranes RFI 18-00472379.pptx, slide 22.

Figure 67: Relative market position

[...]

Source: [Internal document reference].

- (955) It appears therefore that for the main tenders launched for straddle and shuttle carriers in the EEA in the past decade, Cargotec-Kalmar and Konecranes were systematically competing against each other and considered the other merging party as one of the main, if not the main, challenger in these tenders. This intense rivalry would disappear as a result of the merger. A GTO expressed in this regard: *“Competition between Kalmar and Konecranes allows us to negotiate better conditions. If this competition disappears we will be in a far worse position than today, especially in the [straddle carrier/shuttle carrier] product lines.”*⁸³⁷

(C) Conclusion

- (956) In light of the above Sections 7.3.1.3 (A) and (B), the Commission considers that the Notifying Parties are each other's closest competitors.

7.3.1.4. Competitors' reaction is unlikely to defeat a price increase

- (957) As explained above in Section 7.3.1.1, the Commission's market investigation confirmed that the only competitor of the Merged Entity active in the EEA market for straddle and shuttle carriers is ZPMC. Liebherr has exited the market. Mobicon does not offer comparable products and is not generally known to customers. Mitsubishi appears to be active in Japan and Korea only and is not generally known to customers. The Commission will assess the capabilities of these players in turn.

(A) ZPMC

- (958) As described above in Section 7.3.1.1, ZPMC is a recent entrant in the supply of straddle and shuttle carriers with an EEA market share of [0-5]% and global market share of [0-5]% in straddle carriers and an EEA market share of [0-5]% and global market share of [0-5]% in straddle and shuttle carriers for the period 2018-2020.

- The Notifying Parties claim in that regard that ZPMC already currently is a significant competitive constraint in the straddle and shuttle carrier market.
- ZPMC was already today regularly invited to straddle and shuttle carrier tenders globally, including by European customers, some of which the company won.
- ZPMC was highly competitive in the supply of straddle and shuttle carriers with respect to all relevant competitive parameters, including quality and innovation, after-sales and price.⁸³⁸

(A.i) Competition from ZPMC today

- (959) The Commission finds that ZPMC is exercising a degree of constraint on the Notifying Parties already today. However, ZPMC is a recent entrant that for a number of factors will still take several years to substantially grow its current very limited market share of [0-5]% in the EEA and [0-5]% globally in straddle and shuttle carriers to compete on par with the Merged Entity. The Commission

⁸³⁷ Responses to Q7 – PH2 Questionnaire to HTE Customers, Doc. ID 3608, question 16.1.

⁸³⁸ Response to the Article 6(1)(c) Decision, paragraphs 140 to 154.

considers that ZPMC is at present unlikely to defeat a price increase by the Notifying Parties.

- (960) **On the one hand**, the Commission notes, that ZPMC is exercising some constraint on the Notifying Parties already today.
- (961) **First**, The Commission finds that ZPMC has entered the market for straddle and shuttle carriers as well as both plausible sub-segments both on a global and at EEA level. Some GTOs confirmed in the market investigation that ZPMC had in the past participated in their tenders for straddle and shuttle carriers.⁸³⁹ It has delivered first units to certain customers, including [number] units of automated straddle carriers to [name of customer] and [number] units of manual shuttle carriers to [name of customer]. Straddle and shuttle carrier customers contacted during pre-notification⁸⁴⁰ as well as customers who responded in the market investigation⁸⁴¹ confirm the entry of ZPMC. Further, ZPMC appears to have received an order for a test unit for one straddle carrier for [name of customer].
- (962) Further, according to a submission by the Notifying Parties, ZPMC appears to have won tenders for straddle and shuttle carriers outside the EEA, namely for
- [number of manual straddle carriers] for [name of customer] in [year];
 - [number of manual straddle carriers] for [name of customer], in [year] (with an option for an additional [number] units);
 - [number of hybrid straddle carriers] for [name of customer] in [year];
 - [number of manual shuttle carriers] for [name of customer] in [year];
 - [number of manual shuttle carriers] for [name of customer].⁸⁴²
- (963) **Second**, according to an internal competitor report of Cargotec, ZPMC might already have set up a straddle production line in China with a capacity of 200 machines per year, which would be able to capture approximately 50% of the current markets with a straddle and shuttle market of approximately 300 to 400 units per year.⁸⁴³ While ZPMC stated to the Commission that it *“is still far from that objective as it has only entered the market recently. The Company is currently participating in several tenders in Europe but, based on its previous experience with STS cranes, it does not expect to be very active in the market for straddle carriers for a couple of years as it requires time to prove to clients the reliability and performance of the products.”*⁸⁴⁴, the Commission agrees with the Notifying Parties that the tenders ZPMC appears to have recently won, would require some production capacity. The Commission was not able to confirm or disprove the public announcement of ZPMC relating to a delivery capacity of 100 straddle carriers mentioned by the Notifying Parties.⁸⁴⁵ Therefore, it cannot be excluded that ZPMC might already have set up or will very soon have set up sufficient production capacity to compete with the Merged Entity.

⁸³⁹ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question D.C.A.4.1.

⁸⁴⁰ Non-confidential minutes of a call with a customer dated 2 March 2021, paragraph 24, Doc. ID 1779.

⁸⁴¹ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question D.C.A.4.1.1.

⁸⁴² Response to the Article 6(1)(c) Decision, paragraph 142; also see Reply to the Letter of Facts, paragraph 65.

⁸⁴³ Doc. ID 3709-7619, CAR-KAN-00001261.pdf, slide 4.

⁸⁴⁴ Non-confidential minutes of a call with a competitor dated 23 April 2021, paragraph 18, Doc. ID 1779.

⁸⁴⁵ Response to the Article 6(1)(c) Decision, paragraph 160.

- (964) **Third**, internal documents of the Notifying Parties show that ZPMC is being taken seriously as a competitor by the Notifying Parties and, therefore, already at present exercised some competitive constraint. Several internal documents refer to ZPMC as [internal document reference] and their products are described as innovative and of decent quality. A supplier of Konecranes notes [internal document reference]⁸⁴⁶. The same internal document shows [internal document reference].⁸⁴⁷ [Internal document reference].⁸⁴⁸

(A.ii) *Constraint by ZPMC is limited*

- (965) However, on the other hand, the Commission considers that ZPMC's competitive constraint on the Notifying Parties in straddle/shuttle carriers is still limited in light of the large positions held by the merging Parties and will remain limited for the next couple of years in light of track records, sufficient maintenance support as well as in light of development and testing that the products still require.

(A.ii.a) *Products are not comparable to the Notifying Parties' products*

- (966) First, the Commission finds that the smaller market presence of ZPMC in the EEA can be explained not only by its relatively recent entry but also by a number of factors that would limit the penetration going forward of ZPMC in the EEA straddle and shuttle carrier market. Several customers voiced that in their view ZPMC is lagging behind the Notifying Parties still in a number of relevant competitive factors and needs to prove itself and were therefore not yet considering ZPMC as an alternative source of supply. One customer described: "*As [our company] is not currently inclined to source straddle carriers from ZPMC, the Company's dependency on the merged entity will be complete as no other serious alternatives for straddle carriers exist.*"⁸⁴⁹
- (967) Customers perceive ZPMC to be lagging behind the Notifying Parties in a number of relevant competitive parameters, in particular in key purchasing criteria such as reliability, track record and aftersales services. Asked to rate the OEMs according to various parameters such as vehicle capabilities, vehicle quality, driver comfort and safety, development of low-emission vehicles, after sales services, resale value of equipment, and ability to offer reliable automated straddle/shuttle carriers, customers who rated both Cargotec and Konecranes attributed similar ratings to them throughout all parameters, while those customers who rated ZPMC in comparison to Cargotec and Konecranes rated ZPMC as considerable worse. While Cargotec and Konecranes received ratings mostly of 4 and 5 throughout parameters, ZPMC receives ratings of mostly 1 to 3.⁸⁵⁰ In this regard, a GTO noted: "*ZPMC is still not mature in the straddle/shuttle carriers business and does not offer competitive conditions on technical and commercial point of view.*"⁸⁵¹ Similarly and international customer voiced: "*ZPMC is making advances with the development of its own straddle carrier, however it is not yet at a point where the physical and performance characteristics are at an acceptable level to be considered for terminal operations in Australia. However, once the product is suitably development, the existence of a*

⁸⁴⁶ Doc. ID 3587-19268; RFI 18, M.10078 Cargotec Konecranes RFI 18-00482556 msg.

⁸⁴⁷ Doc. ID 3587-19268; RFI 18, M.10078 Cargotec Konecranes RFI 18-00482556 msg.

⁸⁴⁸ Doc. ID 3664-67354.

⁸⁴⁹ Non-confidential minutes of a call with a customer dated 23 March 2021, Doc. ID 588, paragraph 47.

⁸⁵⁰ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question D.C.A.1.

⁸⁵¹ Response to Q7 – PH2 Questionnaire to HTE Customers, Doc. ID 3608, question 16.1.

potential substitute straddle option in addition to KONE's Terex straddle will likely act as a constraint on pricing by Kalmar over time."⁸⁵²

- (968) Further, these terminal operators provided various reasons why they had not awarded a business to ZPMC in tenders in which ZPMC had participated. Among the factors mentioned repeatedly in several individual explanations of customers were factors such as lower cost-efficiency/higher energy consumption of their product, lack of shown experience/references and, in line with the previous point, incompatibility with the existing standardisation/design of the terminal.⁸⁵³ For instance, one customer explained: *"The contract was not awarded due to higher price, energy consumption and shown experience in the market."*⁸⁵⁴ A GTO added: *"Standardization on current machine in use at the business unit"*. Another GTO stated: *"No business has been awarded to ZPMC due to quality of the proposed bids and not many long term references."*⁸⁵⁵ A customer responded when being asked if they considered it likely that they would award a tender for straddle/shuttle carriers in the next five years to ZPMC: *"ZPMC would need to proof that they are able to build SC that are designed to fulfill our operational requirements and European safety requirements first. It could take 3-5 years more before they are ready to proof this. Not speaking about the price and the energy consumption."*⁸⁵⁶
- (969) In addition, when asked about ZPMC's ability to compete in the supply of straddle and shuttle carriers in the EEA, customers mentioned various factors as a hindrance for ZPMC to effectively compete in the supply of straddle and shuttle carriers: incumbency/existing design of the terminal, quality and reliability issues, regulatory differences as regards safety and environmental standards, and, as regards the EEA also geographic proximity/after sales service.⁸⁵⁷ An EEA customer noted: *"[WE] estimate[s] the following differences in ZPMC's ability to compete in the supply of straddle / shuttle carriers: spare parts management (strong return of experience not yet available), after sales services constraints and reliability issues."*⁸⁵⁸ A GTO explained in this regard: *"Possible sanctions and general preference for Western suppliers in Western countries. Also, once a terminal has a fleet of automated Straddle Carriers/Shuttle Carriers from Konecranes or Kalmar, then these suppliers can dictate through technical and contractual means the equipment that gets integrated into their system."*⁸⁵⁹
- (970) In light of the Notifying Parties claim that customers' concerns in relation to ZPMC were a perception which was not based on reality as ZPMC was on par with them and very competitive and ZPMC would be able to convince customers once they got a chance to test the actual product⁸⁶⁰, in its in-depths investigation the Commission addressed specifically customers who had already tested and/or purchased a straddle and/or shuttle carrier from ZPMC, and asked them to compare ZPMC's to the Notifying Parties' straddle and shuttle carriers. GTO Hutchison, who bought straddle and shuttle carriers for the EEA terminals in Stockholm and Barcelona rated ZPMC's product as almost comparable in innovation capabilities as well as in quality design

⁸⁵² Response to Q7 – PH2 Questionnaire to HTE Customers, Doc. ID 3608, question 24.1.

⁸⁵³ Responses to Q2 – Questionnaire to Customers, Doc. ID 3153, question D.C.A.4.1.1.

⁸⁵⁴ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question D.C.A.4.1.1.

⁸⁵⁵ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question D.C.A.4.1.1.

⁸⁵⁶ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question D.C.A.4.3.1.

⁸⁵⁷ Responses to Q2 – Questionnaire to Customers, Doc. ID 3153, question D.C.A.4.3.1.

⁸⁵⁸ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question D.C.A.4.3.1.

⁸⁵⁹ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question D.C.A.4.3.1.

⁸⁶⁰ Response to the Article 6(1)(c) Decision, paragraphs 145 et seq.

and engineering, but lagging behind in track record and references as well as production capacity and considerably lagging behind in local aftersales services and maintenance support to a degree where they would not consider purchasing the product. Only one other GTO rated ZPMC's product and rated them likewise as being comparable in innovation capabilities and also almost comparable in lead and delivery times and production capacity, but lagging behind in price competitiveness, TCO and local after-sales servicing and maintenance, and considerably lagging behind in terms of track record and references.

- (971) While there are not a high number of customers who have already had the chance to test ZPMC's product and, thus, the response rate does not allow to draw final conclusions, the responses indicate that ZPMC, while being an innovative player, is still lagging behind several years behind the Notifying Parties.
- (972) **In terms of the quality of the engineering and performance**, the two EEA customers who already tested the product do not agree. While one rated them "almost comparable", the other one reported in the Commission's market investigation that "[...] *ZPMC's machine is not technical mature enough yet.*"⁸⁶¹ The GTO with the negative experience [...]. The GTO told the Commission that it considers the ZPMC straddle carrier as fairly immature and requiring several years of testing and continual improvement and that this was probably the view of the vast majority of people in the container handling equipment industry. It considers the purchases by Hutchinson for its port in Stockholm as well as the order from TPT for its port in Durban, South Africa are exceptions, which do not mean that anybody in the industry consider the ZPMC straddle and shuttle carriers viable products that are a real alternative to the Parties' straddle and shuttle carriers, yet. The vast majority of terminals was waiting to see these products being tested in real life operations before considering purchasing relevant numbers.⁸⁶² This GTO's experience with the first model of the machine part of the ZPMC straddle carrier – the non-automated capabilities - showed that the ZPMC straddle carrier was able to do the basic tasks. However, in the view of this GTO the product is still immature and not comparable to the straddle carriers of Kalmar and Konecranes, which are in operation all over the world since many years. As relates to the automation technology of ZPMC, the same GTO's experience with the ZPMC test unit is similar to the experience with the machine part.⁸⁶³
- (973) This view is shared by a potential competitor who expressed: "The sole real sale achieved by ZPMC in Europe (8 automated Straddles for the HPH Stockholm) has been made to a Hutchison Ports Holding Terminal and HPH is notoriously and vocally pro-Chinese made products and pro-lowest bidder in general. Furthermore, the project is a greenfield one, such that there was no pre-existing brand with a foot in the client. ZPMC clearly "purchased" that deal to enter the EU market, but that strategy is much less than applicable to the vast majority of the existing EU Straddle Carrier customers."⁸⁶⁴

⁸⁶¹ Responses to Q7 – PH2 Questionnaire to HTE Customers, Doc. ID 3608, question 16.1.

⁸⁶² Doc. ID 4820, Non-confidential minutes of a call with a customer dated 22 November 2021, paragraph 7.

⁸⁶³ Doc. ID 4820, Non-confidential minutes of a call with a customer dated 22 November 2021, paragraphs 1 to 5 and 8 to 10.

⁸⁶⁴ Doc. ID 4654, Submission by a competitor, 22 November 2021.

- (974) As regards quality and performance of the ZPMC straddle and shuttle carriers, the Commission further notes that the Notifying Parties themselves in their internal documents [...], see Figure 67 above.
- (975) **As regards track record, references and after-sales and maintenance capabilities**, the responses indicate that those customers who were able to test ZPMC's product agree that ZPMC lags behind in terms of particular track record/references and after-sales services and maintenance.
- (976) In particular, as explained above in Section 6.4.1.3 (E), suppliers which do not have an after-sales service presence in the EEA are not considered reliable alternatives to the suppliers with such presence. Contrary to the Notifying Parties view that after-sales services are not an impediment for ZPMC to effectively compete in Europe⁸⁶⁵, the availability of a supplier's after-sales services network appears to be critical in the decision to purchase straddle and shuttle carriers from that particular manufacturer.
- (977) The Commission notes that ZPMC has explained that it has several offices in Europe (e.g., Netherlands, Germany, Spain and Italy) that provide after sales services to customers, which includes maintenance, spare parts and upgrading services. The company also engages local suppliers or engineers to collaborate with their own personnel to offer services to the customers. Overall, ZPMC considers that the company's local offices provide servicing to customers, which does not put the company at a disadvantage compared to EEA suppliers.⁸⁶⁶
- (978) The fact however remains that a number of respondents to the market investigation have identified the service network as a relatively weak spot for ZPMC, including the limited number of customers who were able to test ZPMC's straddle and shuttle carriers. One GTO explained: *"Technologies between Cargotech and Konecranes are more similar and after sales services equivalent while ZPMC aftersales service is inexistent with low expertise and tremendous issues for the supply of spare parts leading to huge stock and stock costs."*⁸⁶⁷
- (979) Consequently, the Commission finds that ZPMC, while in some factors already more comparable to the Parties' products, is lagging behind in several other relevant factors, in particular in the crucial aspect of after-sales services and maintenance.
- (A.ii.b) ZPMC's straddle and shuttle carriers and related aftersales and service networks require years of development and testing
- (980) Moreover, the Commission finds that it will take ZPMC a couple of years to receive a significant number of orders in light of development and testing periods required generally for the development of the product in real life operations as well as by customers specifically to test the product for their purposes.
- (981) The Commission finds that it will take ZPMC a couple of years to receive a relevant number of orders in light of both the immaturity and development stage of its current straddle and shuttle carrier products and business, its lack of reliable aftersales and maintenance service network as well as the general industry requirement of customers to test straddle and shuttle carriers for an extended time before purchasing relevant numbers of units.

⁸⁶⁵ See, for instance, Reply to the Letter of Facts, paragraphs 66 et seq.

⁸⁶⁶ Non-confidential minutes of a call with a competitor dated 23 April 2021, Doc. ID 1779, paragraph 26.

⁸⁶⁷ Response to Q7 – PH2 Questionnaire to HTE Customers, Doc. ID 3608, question 26.1.

- (982) **In the first place**, an EEA GTO who is currently testing [...] ZPMC straddle carrier explained that the product is immature and will require about three to five years of continual improvements to be a real alternative to the Parties' offering.
- (983) [Third party information].
- (984) The same GTO noted that it takes many years to develop a straddle carrier and new entrants like ZPMC go through several maturity phases. According to this GTO a straddle carrier goes through various development and pilot stages, safety evaluations and long-term and continual testing in real operational conditions for an extended time of about three to five years before it becomes a commercially viable product. Throughout these phases, the product is continuously improved. The GTO explained that ZPMC is at the beginning of this testing phase with its current version of a straddle carrier and [...].
- (985) In relation to the technical machine part of the ZPMC straddle carrier, the same GTO's experience with the first model of the ZPMC straddle carrier shows that the ZPMC straddle carrier is able to do the basic tasks. However, it is immature and not comparable to the straddle carriers of Kalmar and Konecranes, which are in operation all over the world since many years. The GTO considers that it will take ZPMC around three to five years to develop a product that could be a real alternative to the Parties' straddle carriers. According to the GTO, it simply takes a company a certain number of years to develop a straddle carrier and to reach a technical level comparable to the established competition. Kalmar and Konecranes had been in this product market for decades and had very mature products.
- (986) [Third party information].⁸⁶⁸
- (987) **In the second place**, the Commission finds that customers will require testing of the ZPMC straddle and shuttle carriers before considering to purchase relevant numbers of units and are unlikely to purchase relevant numbers of straddle and or shuttle carriers from ZPMC in the next three to five years.
- (988) A vast majority of customers agreed that a testing period is industry standard for straddle and shuttle carriers.⁸⁶⁹ Consequently, a large majority of customers who responded in the market investigation said they test small batches of straddle and/or shuttle carriers before ordering a relevant number. Only the two customers who had already purchased straddle and shuttle carriers from ZPMC for their EEA terminals, namely Terminal Catalunya S.A. and Hutchison Port Sweden AB, said that they did not test.⁸⁷⁰
- (989) The Commission found that testing periods serve to test various aspects such as performance, reliability, energy consumption and after-sales services. A GTO explained in this regard: "*The equipment is Capex intensive, so we need to know if it works.*"⁸⁷¹ Further, most customers who expressed a view said that the testing period takes around one to two years, with few customers indicating shorter timeframes.⁸⁷² One GTO explained: "*It would take 1-2 years in order to check perofrmances, reliability, energy consumption, after sales services.*"⁸⁷³ Another GTO stated: "*The*

⁸⁶⁸ Doc. ID 4820, Non-confidential minutes of a call with a customer dated 22 November 2021, paragraphs 1 to 5 and 8 to 10.

⁸⁶⁹ Responses to Q7 – PH2 Questionnaire to HTE Customers, Doc. ID 3608, question 30.3.

⁸⁷⁰ Responses to Q7 – PH2 Questionnaire to HTE Customers, Doc. ID 3608, question 30.

⁸⁷¹ Response to Q7 – PH2 Questionnaire to HTE Customers, Doc. ID 3608, question 30.4.

⁸⁷² Responses to Q7 – PH2 Questionnaire to HTE Customers, Doc. ID 3608, question 30.2.

⁸⁷³ Response to Q7 – PH2 Questionnaire to HTE Customers, Doc. ID 3608, question 30.2.

*test period lasts at least 2 years. We are testing key performance indicators such as availability, performance, failure rates, diesel consumption, fit for maintenance.*⁸⁷⁴ Another GTO explained: *“6mths to one year Reliability - driver experience - productivity - maintainability - local service - ...”*⁸⁷⁵ A past and a potential competitors who expressed a view on this mentioned comparable timelines of 9 to 18 months in one case and 12 months in the other case.⁸⁷⁶

- (990) Most customers who expressed a view indicated that small batch meant machines in the range of one or two, sometimes up to four or five units, with the exception of one customer indicating a range of four to eight units for testing.⁸⁷⁷ A past competitor and a confirmed this: *“We understand their preference is to test a small no. of units maybe 2-5.”*⁸⁷⁸ Similarly, a potential competitor reported as standard testing volumes: *“One. Sometimes Two.”*⁸⁷⁹
- (991) As regards ZPMC straddle and shuttle carriers specifically and in line with the above finding that the ZPMC straddle and shuttle carrier products are still relatively immature (see Sections 7.3.1.4 (A.ii.a) and (A.ii.b) above), the Commission finds that customers would not be open to purchase relevant numbers but would first test the ZPMC products. In this regard, an EEA GTO [...] that its view of the ZPMC straddle carrier being fairly immature and requiring several years of testing and continual improvement was probably the view of the vast majority of people in the container handling equipment industry. It considers the purchases by Hutchinson for its port in Stockholm as well as the order from TPT for its port in Durban, South Africa are exceptions, which do not mean that anybody in the industry consider the ZPMC straddle and shuttle carriers viable products that are a real alternative to the Parties’ straddle and shuttle carriers, yet. The vast majority of terminals was waiting to see these products being tested in real life operations before considering purchasing relevant numbers.⁸⁸⁰ This view is shared by a potential competitor who expressed: *“The sole real sale achieved by ZPMC in Europe (8 automated Straddles for the HPH Stockholm) has been made to a Hutchison Ports Holding Terminal and HPH is notoriously and vocally pro-Chinese made products and pro-lowest bidder in general. Furthermore, the project is a greenfield one, such that there was no pre-existing brand with a foot in the client. ZPMC clearly “purchased” that deal to enter the EU market, but that strategy is much less than applicable to the vast majority of the existing EU Straddle Carrier customers.”*⁸⁸¹
- (992) In line with these views, a majority of customers who expressed a view in the Commission’s market investigation and who expect to purchase straddle and/or shuttle carriers in the next five years said they expected or would at least be open to test a limited number of straddle and/or shuttle carriers of ZPMC.⁸⁸² One customer noted: *“First we would like to test machines before purchase them and therefore we will see, what kind of deal we will have.”*⁸⁸³ A GTO agreed: *“ZPMC straddle and*

⁸⁷⁴ Response to Q7 – PH2 Questionnaire to HTE Customers, Doc. ID 3608, question 30.2.

⁸⁷⁵ Response to Q7 – PH2 Questionnaire to HTE Customers, Doc. ID 3608, question 30.2.

⁸⁷⁶ Responses to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 64.2.

⁸⁷⁷ Responses to Q7 – PH2 Questionnaire to HTE Customers, Doc. ID 3608, question 30.1.

⁸⁷⁸ Responses to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 64.1.

⁸⁷⁹ Responses to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 64.1.

⁸⁸⁰ Doc. ID 4820, Non-confidential minutes of a call with a customer dated 22 November 2021, paragraph 7.

⁸⁸¹ Doc. ID 4654, Submission by a competitor, 22 November 2021.

⁸⁸² Responses to Q7 – PH2 Questionnaire to HTE Customers, Doc. ID 3608, questions 29 and 29.1.

⁸⁸³ Response to Q7 – PH2 Questionnaire to HTE Customers, Doc. ID 3608, question 29.1.

*shuttle carriers need to be qualified and tested before purchasing high number of machines. [...]*⁸⁸⁴

- (993) **In the third place, as regards specifically aftersales service and maintenance networks**, the Commission found evidence that suggests that the development of this network will likewise require a couple of years. An EEA GTO [...] notes in this regard that it will take ZPMC a couple of years to establish a reliable aftersales service, maintenance and spare parts network, which is crucial for terminals. While the GTO notes that ZPMC already has a network for STS and yard cranes, it still considers that providing a reliable aftersales and maintenance network and capabilities for straddle and shuttle carriers will take ZPMC a couple of years. Without such a support network, it would be too risky for terminal operator to purchase an operational number of straddle carriers, e.g. 20-30 units. In case of a serious defect, the terminal operator's operations would be strongly affected, if the service network was not in place or if the technical/operational reliability of the straddle carriers cannot be ensured. Establishing such a network and technical/operational reliability would take 3 years in a very fast scenario, but 5 years is a more plausible probability.⁸⁸⁵
- (994) **In line with these findings**, the Commission finds that specialised consultancies consider that ZPMC is lagging behind several years. In an internal competitor review of one Notifying Party dated 2020, one of the main bullet points in the slide for ZPMC reports that [...] consider ZPMC overall to be [internal document reference] in straddle and shuttle carriers.⁸⁸⁶ [...] is a consulting firm, which specialises in the support of ports, terminals, inland terminals and rail terminals around the world. [...] can be heavily involved in the tendering, purchasing, commissioning and maintenance process of container handling equipment, as internal documents of the Parties show⁸⁸⁷ and as such has expertise knowledge. [...] is an independent [...] and offers similar services to [...] such as support during tenders, recommendations of potential suppliers, support during contract negotiations, commissioning supervision and so on. The Commission considers that this view of these specialist service providers therefore carries weight. The fact that this is one of the main bullet points in the competitor review slide for ZPMC indicates that the Notifying Party also attributes weight to this opinion.
- (995) Overall, the Commission finds that ZPMC's straddle and shuttle carriers require several years of development and testing to become commercially viable products which compete on par with the Notifying Parties' straddle and shuttle carriers.
- (A.ii.c) Tenders won are small and mostly equal the size of testing batches
- (996) In line with the above findings that customers are only just starting to test ZPMC's straddle and shuttle carriers, the Commission finds that the tenders won by ZPMC so far both in the EEA and globally are still relatively small and equal mostly the size of testing batches.

⁸⁸⁴ Response to Q7 – PH2 Questionnaire to HTE Customers, Doc. ID 3608, question 29.1.

⁸⁸⁵ Doc. ID 4820, Non-confidential minutes of a call with a customer dated 22 November 2021, paragraph 6.

⁸⁸⁶ Konecranes internal document, Doc. ID 3587-11798, M.10078 Cargotec Konecranes RFI 18-00472379.pptx, slide 21.

⁸⁸⁷ See for instance, Minutes of a Meeting relating to the delivery of STS from ZPMC, where the attendees were the terminal, the supplier ZPMC and HPC, Doc. ID -3667-14762; CAR-PRA-00136096.pdf.

(997) The Commission notes in that regard that ZPMC has delivered straddle and shuttle carriers to a very limited number of customers in the EEA as of yet, namely [number of units of automated straddle carriers] to [name of customer] as well as [number of manual shuttle carriers] to [name of customer] and [number of straddle carriers] to [name of customer]. In this regard, the Commission notes that Hutchison Ports Stockholm is “[...]a new terminal of straddle yard design which needs new straddle carriers for its commercial operation”, and as thus a Greenfield project, which is more uncommon in straddle and shuttle carriers.

(998) Likewise, most of the tenders ZPMC appears to have won outside the EEA (see above Section 7.3.1.4 (A.i), are still small in volume. Overall, customers are ordering [number] units of straddle/shuttle carrier per tender which equals the number of units usually ordered as testing batches. The only exception is the more relevant order of [number] manual straddle carriers for a [location] port with the option for [number] further units.

(A.ii.d) Customers do not negotiate better conditions because of ZPMC

(999) Moreover, the Commission finds that the presence of ZPMC does not appear to help customers to negotiate better conditions today.

(1000) When asked whether ZPMC’s participation in tenders for straddle and shuttle carriers had helped them to negotiate better conditions with the Notifying Parties, a majority of customers responded negatively.⁸⁸⁸ While a vast majority of customers said that they systematically invited all potential suppliers for a quote in tenders in order to negotiate in particular better prices⁸⁸⁹, ZPMC’s participation so far does not appear to have led to better competitive offerings from the Notifying Parties in the perception of customers. A GTO expressed: “*We have invited ZPMC on past tenders, but we have not negotiated a better deal with Cargotec/ Konecranes [...]*”.⁸⁹⁰ Another GTO stressed, when asked about being able to negotiate better conditions vis-à-vis the Notifying Parties through inviting ZPMC to tenders: “*Competition between Kalmar and Konecranes allows us to negotiate better conditions. If this competition disappears we will be in a far worse position than today, especially in the [straddle carrier/shuttle carrier] product lines.*”⁸⁹¹

(A.ii.e) Customers consider the Parties to be a quasi-duopoly despite ZPMC’s presence

(1001) The Commission finds that customers and competitors regard the Notifying Parties today as a *quasi*-duopoly and the Proposed Transaction as the creation of a *quasi*-monopoly, further confirming that ZPMC is not being considered as a viable alternative source of supply at present.

(1002) A significant number of market participants referred to the Proposed Transaction as the creation of a ‘monopoly position’. In this regard a competitor noted: “*“If the market is too concentrated to the extent of becoming almost monopolized, like the merge between Kalmar and Konecranes might end up making up the market, then it might result impossible for any newcomer to develop itself, if any customer considering to give business to such newcomer might suffer of consequences from the monopolist.”*” An international customer summarised: “*Monopolistic market may be*

⁸⁸⁸ Responses to Q7 – PH2 Questionnaire to HTE Customers, Doc. ID 3608, question 16.

⁸⁸⁹ Responses to Q7 – PH2 Questionnaire to HTE Customers, Doc. ID 3608, questions 15 and 15.1.

⁸⁹⁰ Responses to Q7 – PH2 Questionnaire to HTE Customers, Doc. ID 3608, question 16.1.

⁸⁹¹ Responses to Q7 – PH2 Questionnaire to HTE Customers, Doc. ID 3608, question 16.1.

created.”⁸⁹² Similarly, an EEA customer similarly voiced: “*The merger means near-monopoly in Europe.*”⁸⁹³ A GTO states: “[...] *As indicated before, we fear monopoly in certain product lines, such as Straddle and Shuttle Carriers*”⁸⁹⁴. Similarly, this is the main explanation for expected price increases listed by customers: “*Due to almost monopoly power.*”⁸⁹⁵ “*Yes, they will have the monopoly of well-known and reliable European Cargo Handling Equipment.*”⁸⁹⁶ “*The merger means near-monopoly in Europe.*”⁸⁹⁷ “*This merger would lead to a quasi monopolistic situation on the straddle and shuttle carriers markets which the terminal operators will suffer from.*”⁸⁹⁸

- (1003) In addition, internal documents of the Notifying Parties show that the Notifying Parties are aware that customers do not yet see ZPMC as an equal alternative to the Notifying Parties’ straddle and shuttle carriers, as can be seen for instance in Figure 68 below. The internal document shows that [internal document reference].

Figure 68: [...]

[...]

Source: [Internal document reference].

- (1004) Similarly, an internal document of Konecranes shows that [internal document reference]. ZPMC is in fact so little regarded by this customer, a GTO, that it expressed to Konecranes that [internal document reference].

Figure 69: [...]

[...]

Source: [Internal document reference].

- (1005) In conclusion, the Commission takes the view that ZPMC at present would not be able to offset a price increase post-Transaction and the Notifying Parties are aware of this.

(A.ii.f) Interim conclusion on ZPMC’s constraint at present

- (1006) Overall and in conclusion, ZPMC appears to exercise a limited degree of constraint on the Notifying Parties at present. The constraint exercised still seems to be limited especially in light of the large and historical market positions held by the Notifying Parties. The proposed Transaction therefore leads to a near-monopoly in straddle and shuttle carriers, which alternatively could be characterised as a three-to-two merger, with one player (ZPMC) lagging far behind the merging Parties.

(B) Liebherr

- (1007) The Commission finds that Liebherr is no competitive constraint on the Merged Entity.

⁸⁹² Response to Q7 – PH2 Questionnaire to HTE Customers, Doc. ID 3608, question 32.1.

⁸⁹³ Response to Q7 – PH2 Questionnaire to HTE Customers, Doc. ID 3608, question 32.1.

⁸⁹⁴ Response to Q7 – PH2 Questionnaire to HTE Customers, Doc. ID 3608, question 32.1.

⁸⁹⁵ Response to Q7 – PH2 Questionnaire to HTE Customers, Doc. ID 3608, question 33.1.1.

⁸⁹⁶ Response to Q7 – PH2 Questionnaire to HTE Customers, Doc. ID 3608, question 33.1.1.

⁸⁹⁷ Response to Q7 – PH2 Questionnaire to HTE Customers, Doc. ID 3608, question 33.1.1.

⁸⁹⁸ Response to Q7 – PH2 Questionnaire to HTE Customers, Doc. ID 3608, question 35.

(1008) **First**, the market investigation confirmed that Liebherr is no longer supplying straddle carriers. Liebherr has been active in straddle carriers throughout the past decade both in the EEA and globally with declining market shares from [0-5]% in straddle carriers in 2010-2013 to [0-5]% in 2018-2020 globally and similar market shares in the EEA and the overall straddle and shuttle carrier market (see above Tables 4 to 6). It never offered shuttle carriers. However, Liebherr confirmed to the Commission that it had exited the market for straddle carriers due to being not cost-competitive with the Notifying Parties and that it stopped its production in 2017.⁸⁹⁹ It explained: *“The decision to stop the production of straddle carriers was taken as Kalmar and Konecranes offer significantly more competitive prices than the Company’s. Producing straddle carriers in the United Kingdom and in Ireland is substantially costlier than subcontracting in Poland or China, and Liebherr is not able to offer a competitive price. For instance, the Company’s market price for straddle carriers is approximately 20% higher than the market price of competitors.”*⁹⁰⁰

(1009) **Second**, Liebherr further confirmed that it had no intention of re-entering the market for straddle and shuttle carriers in the foreseeable future even in case of a price increase in light of its lack of price competitiveness: *“Liebherr does not believe that it would be able to re-enter the straddle carriers market if, post-transaction, there was a price increase. As Liebherr has not relocated its production to Asia, it would always be difficult to compete with the suppliers that have production facilities there. Given that the market price for Liebherr’s straddle carrier is greater than [...] while the market price of competitors is circa [...], the Company does not believe that a price increase resulting from the transaction would be sufficient to re-enter that market.”*⁹⁰¹

(C) Mitsubishi/TCM/Logisnext

(1010) TCM/Logisnext is a Japanese supplier of straddle carriers belonging to the Mitsubishi group. The company acquired TCM (UniCarriers) in 2017. The Commission finds that Mitsubishi is no competitive constraint on the Merged Entity.

(1011) **First, TCM has been active in the straddle and shuttle carrier market with a regional focus.** In fact, a 2017 dated market report of DS Research, an independent market research company for the container terminal industry, ranks TCM as the “no. 3” in straddle carriers globally and describes TCM as a “*regional champion on the Far East (mainly Taiwan and Japan)*”.⁹⁰² Therefore, the Commission finds, that Mitsubishi through TCM would have past experience and it appears to have at least a straddle carrier product.

(1012) **Second and however**, the Commission finds that Mitsubishi appears to have a very limited activities in the supply of straddle and shuttle carriers both in volume and in geographic reach. According to the Notifying Parties’ submission and the DS Research market report, it is or was predominantly active in Japan and Taiwan. The market shares provided by the Notifying Party have no data for Mitsubishi/TCM.⁹⁰³ The Parties submit they are not aware of any straddle carrier business won by

⁸⁹⁹ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, questions 63 and 65.1 and Minutes of a Call with a Competitor dated 22 March 2021, Doc. ID 598, paragraphs 25 to 27.

⁹⁰⁰ Minutes of a Call with a Competitor dated 22 March 2021, Doc. ID 598, paragraph 28.

⁹⁰¹ Minutes of a Call with a Competitor dated 22 March 2021, Doc. ID 598, paragraph 33.

⁹⁰² Internal document, Doc. ID 3664-28680 - CAR-MON-00126921.pdf, slide 7.

⁹⁰³ PN RFI 2 – Annex – Q5.

TCM/Logisnext.⁹⁰⁴ Mitsubishi/Logisnext responded in the Commission’s market investigation and confirmed that they were selling straddle carriers, but only had a distribution network in Japan.⁹⁰⁵ Further, they confirmed that at least until 2025 they have very limited production capacity that would only be able to capture a fraction of the global annual demand and would be tiny compared to the Merged Entity. Further, Mitsubishi/Logisnext confirmed that they do not supply to or accept orders from the EEA.⁹⁰⁶ Further, asked whether they would be able to expand their supply of straddle/shuttle carriers in case of a price increase, Mitsubishi/Logisnext responded with a “No”.⁹⁰⁷

(1013) **Second and consequently,** Mitsubishi is not known by market participants and/or not perceived as an active supplier of straddle and or shuttle carriers or as a competitor of the Notifying Parties. Not a single competitor or customer identified Mitsubishi as an alternative source of supply or as a competitor to the Notifying Parties in straddle and shuttle carriers in the Commission’s market investigation.⁹⁰⁸ Further the Notifying Parties do not seem to consider Mitsubishi as a relevant competitor in light of their lack of any data. In line with this, a Konecranes internal presentation [internal document reference].⁹⁰⁹

(1014) In light of the above, the Commission finds that Mitsubishi/TMC is no constraint on the Notifying Party and highly unlikely to offset a price increase in straddle and shuttle carriers post-Transaction.

(D) Mobicon, Combilift and Isolader

(1015) Mobicon Systems is an Australian supplier of so-called “mini straddle carriers”, meaning carriers for carrying single containers able to stack one over one or one over two and in low duty and low speed, very simple and with almost no electronics (see Figure 70 below). According to an internal assessment of the Notifying Parties, [...].⁹¹⁰ The Commission finds that Mobicon, Combilift and Isolader each are no competitive constraint on the Merged Entity and highly unlikely to offset price increases.

⁹⁰⁴ Form CO, Chapter 2, paragraph 157.

⁹⁰⁵ Response to Q1 – Questionnaire to Competitors, Doc. ID 3154, questions C.A.3.1. and D.B.5.1.

⁹⁰⁶ Responses to Q1 – Questionnaire to Competitors, Doc. ID 3154, questions D.C.A.1 and D.C.A.2.

⁹⁰⁷ Response to Q1 – Questionnaire to Competitors, Doc. ID 3154, question D.C.A.3.

⁹⁰⁸ See in particular responses to Q2 – Questionnaire to Customers, Doc. ID 3153, question D.C.A.1.

⁹⁰⁹ Doc. ID 3587-11798, M.10078 Cargotec Konecranes RFI 18-00472379.pptx, slide 22.

⁹¹⁰ Cargotec-Kalmar internal document, Doc. ID 3661-32386, slide 4.

Figure 70: Mini Straddle Carrier offering of Mobicon

MOBICON 2HL



Features:

> Stacks containers two high (1 over 1)

Source: Screenshot from Mobicon's website (last accessed on 20 October 2021), Doc. ID 4223.

- (1016) **First**, the product offering is not comparable to the Notifying Parties' and ZPMC's product offering in straddle carriers and or shuttle carriers. As a past competitor described: "[...] *Other suppliers known for carrying single containers in low duty and low speed applications such as Mobicon and Combilift do not supply comparable shuttle carriers and thus cannot be compared to this situation.*"⁹¹¹ Similarly, a market report of DS Research, an independent market research company for the container terminal industry, does not cover Combilift/Mobicon design in its market overview report as these products "*are mainly used at small or inland ports, warehouses or distribution centers, rather than maritime container terminals*"⁹¹². A Konecranes internal document [internal document reference].⁹¹³ A Cargotec internal presentation on Mobicon describes Mobicon's activity as: [internal document reference].⁹¹⁴
- (1017) **Second and consequently**, Mobicon, Combilift and Isolader are not known to market participants and/or not perceived as competitors of the Notifying Parties. Not a single competitor or customer identified Mobicon, Combilift or Isolader as an alternative source of supply or as a competitor to the Notifying Parties in the Commission's market investigation.⁹¹⁵ In line with this, an internal document of the Notifying Parties' shows that [internal document reference].⁹¹⁶
- (1018) **Third**, the company's main market is Australia and New Zealand, where they have approximately [80-90]% of their sales according to an internal document of the Notifying Parties. Further, it is a very small operation with just [number] employees.
- (1019) In conclusion, the Commission finds that Mobicon, Combilift and Isolader are no constraint on the Notifying Parties and highly unlikely to offset a price increase.

⁹¹¹ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 40.1.

⁹¹² Internal document, Doc. ID 3664-28680 - CAR-MON-00126921.pdf.

⁹¹³ Doc. ID 3587-11798, M.10078 Cargotec Konecranes RFI 18-00472379.pptx, slide 22.

⁹¹⁴ Cargotec-Kalmar internal document, Doc. ID 3661-32386, CAR-KAU-00043653.pptx, slide 2.

⁹¹⁵ See in particular responses to Q2 – Questionnaire to Customers, Doc. ID 3153, question D.C.A.1.

⁹¹⁶ Cargotec-Kalmar internal document, Doc. ID 3661-32386, CAR-KAU-00043653.pptx, slide 2.

(E) Conclusion on present competition's ability offset a price increase

(1020) In light of the findings in Sections 7.3.1.4 (A) to (D), the Commission concludes that competitors do not constrain the Notifying Parties in the supply of straddle and shuttle carriers and all plausible sub-segments both in the EEA and globally at all or at least not to sufficient degree and are therefore unlikely to defeat a price increase post-Transaction.

7.3.1.5. Customers have limited possibilities of switching supplier

(1021) Contrary to the Notifying Parties' claims⁹¹⁷, the Commission finds that terminal operators face important impediments to switching both in terms of alternative suppliers, with only one existing alternative to the Parties, as well as in terms of switching costs, in particular for smaller terminals, smaller volume replacement demand and customers of automated straddle and shuttle carriers.

(1022) Paragraph 31 of the Horizontal Merger Guidelines note that such customers are particularly vulnerable to price increases as the merger may affect their ability to protect themselves against price increases. In particular, this may be the case for customers who have used dual sourcing from the two merging firms as a means of obtaining competitive prices.

(1023) The Commission finds that while switching supplier is possible in theory for manual straddle and shuttle carriers, in practice smaller terminals as well as terminals with smaller numbers of replacement demand have a limited incentive to switch supplier and/or integrate a new supplier in light of the additional maintenance costs and training of engineers this would incur. Further, the Commission finds that there are significant obstacles to switching suppliers in particular for automated straddle and shuttle carriers.

(1024) **First**, the Commission's market investigation showed that switching suppliers and operating a mixed fleet, meaning fleets of straddle and shuttle carriers from different suppliers, is possible at least in theory for manual straddle and shuttle carriers. Contrary to the finding in the market investigation, this switching is at least in theory possible for manual straddle and shuttle carriers not just before but also after the initial design stage of the terminal.

(1025) Asked whether the terminal design predetermined the choice of the manual straddle and shuttle carrier supplier, market participants agreed that this was not the case. A potential competitor noted that switching was possible at least in theory: "*In theory, set the after sale service issues aside, if a supplier is able to meet the specific requirements of the customers, they could buy from any supplier. [...]*".⁹¹⁸ Likewise, a vast majority of customers responded that they could purchase manual straddle and shuttle carriers from any supplier in a cost-effective way.⁹¹⁹ An international customer phrased: "*A straddle is a straddle they all operate in very similar ways. Only slight manufacture differences [sic]. Unliess [sic] of course we are talking about automated shuttles, that is a whole different kettle of fish.*"⁹²⁰

(1026) However, several customers⁹²¹ stressed that the supplier had to meet their individual customisation requests. A GTO explained: "*Each competitive tender includes a*

⁹¹⁷ See, for instance, Reply to the Letter of Facts, paragraphs 74 et seq.

⁹¹⁸ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 59.1.

⁹¹⁹ Responses to Q7 – PH2 Questionnaire to HTE Customers, Doc. ID 3608, question 22.

⁹²⁰ Response to Q7 – PH2 Questionnaire to HTE Customers, Doc. ID 3608, question 22.1.

⁹²¹ Responses to Q7 – PH2 Questionnaire to HTE Customers, Doc. ID 3608, question 22.1.

*technical specification compatible with the terminal design/layout which the supplier must comply with in order to be awarded the contract.”*⁹²² Another GTO terminal explained: *“There are some dimensions on the Straddle / Shuttle design that shall be consistent with ASC (interchange area) or yard dimensions that shall be considered.”*⁹²³ The Commission notes that incompatibility with existing standardisation of a terminal has been an issue at least in individual cases. A GTO reported⁹²⁴ that they had not awarded tenders to ZPMC because of an incompatibility of their straddle carrier with the existing standardisation in use at the respective terminal.

- (1027) **Second**, the Commission found that, in fact, a majority of customers operate terminals with mixed fleets, indicating that switching is possible. A potential competitor stated: *“normally mixed fleets of carriers”*⁹²⁵ were the norm. A competitor explained in this regard: *“The terminal operators normally operate the straddle/shuttle carriers sourced from different suppliers because they normally purchase straddle/shuttle carriers from different suppliers depending on circumstances.”*⁹²⁶ The Commission found that about two thirds of fleets appear to be mixed. Another potential competitor quantified: *“Some 2/3 of the users have mixed fleets”*⁹²⁷ This was confirmed by customers, about two thirds of which reported to operate mixed fleets.⁹²⁸
- (1028) **Third** and however, the Commission’s market investigation also showed that there are significant advantages to operating a single fleet relating in particular to maintenance and spare parts leading to smaller terminals more often relying on a single supplier. This gives a significant competitive advantage to the incumbent supplier in smaller terminals as well as for smaller volume replacement demand/brownfield projects. Brownfield projects represent the majority of demand for the straddle carrier sub-segment. A 2017 dated market report of DS Research, an independent market research company for the container terminal industry, reports that *“In the years before 2008 delivery numbers 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.”*⁹²⁹.
- (1029) An international customer explained the advantage of operating a single fleet: *“Homogenous fleet delivers maintenance and parts synergies [...]”*⁹³⁰ A GTO stated in this regard: *“Usually we try to keep the brand of the supplier the same in a given terminal (mainly due to maintenance reasons). [...]”*⁹³¹ Another international customer further explained: *[...] Some fleet composition is reliant on the OEM and local support in that specific region. There is also the fleet preference due to the*

⁹²² Response to Q7 – PH2 Questionnaire to HTE Customers, Doc. ID 3608, question 22.1.

⁹²³ Response to Q7 – PH2 Questionnaire to HTE Customers, Doc. ID 3608, question 22.1.

⁹²⁴ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question D.C.A.4.1.1.

⁹²⁵ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 58.

⁹²⁶ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 58.

⁹²⁷ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 58.

⁹²⁸ Responses to Q7 – PH2 Questionnaire to HTE Customers, Doc. ID 3608, question 14.

⁹²⁹ Internal document, Doc. ID 3664-28680 - CAR-MON-00126921.pdf, slide 5.

⁹³⁰ Response to Q7 – PH2 Questionnaire to HTE Customers, Doc. ID 3608, question 14.1.

⁹³¹ Response to Q7 – PH2 Questionnaire to HTE Customers, Doc. ID 3608, question 14.1.

terminal engineering staff that is well trained and have good knowledge of a specific manufacturer.”⁹³²

- (1030) The advantage of operating a mixed fleet or at least being open to a mixed fleet, on the other hand, appear to be more price competitive tenders and an avoidance of dependency on one supplier. A GTO stated: “[...] *in general our purchasing policy is to purchase by competitive tender which leads to a potentially mixed fleet.*”⁹³³ An international customer likewise mentioned: “[...] *competitive tender procedures*”⁹³⁴ Another GTO explained: “*We are trying to prevent a single source situation. Plus prices and lead times led to mixed fleets.*”⁹³⁵ And an EEA customer said: “*If we receive more attractive offer, we will change supplier of machines.*”⁹³⁶
- (1031) In light of this, looking at the demand-side, smaller terminals appear to tend towards single fleets as the maintenance advantages outweigh the single supplier dependency disadvantage, while larger terminals tend to operate mixed fleets. A GTO reported: “[*We*] *face[s] both scenario depending on the terminals. For small fleet [we] prefer[s] to have one supplier to minimize spare parts costs and training when for bigger fleet [we] do[es] not want to rely on only one supplier and want to avoid situations of dependency.*”⁹³⁷ In line with this, a smaller EEA terminal reported as factors hindering them from operating a mixed fleet: “*Double cost of spare parts and lower availability.*”⁹³⁸ Further, the high costs and effort required to switch supplier after the initial design of the terminal was mentioned several times as a factor hindering ZPMC to effectively compete with the incumbent OEMs during the Commission’s market investigation.⁹³⁹ Thus, while switching is technically possible, the Commission considers that there are relevant impediments to switching for a not insignificant number of customers, in particular smaller terminals and smaller volume replacement demand.
- (1032) **Fourth**, a potential competitor noted that required standardisation in an existing terminal might be an obstacle from a supply-side perspective to supplying smaller quantities of straddle and shuttle carriers. The additional costs of customisations to the customer’s terminal standardisation might render a supply of straddle and/or shuttle carriers unattractive in case the requested volume of straddle and/or shuttle carriers to be delivered was too low: “*In theory, set the after sale service issues aside, if a supplier is able to meet the specific requirements of the customers, they could buy from any supplier. It remains to be seen if the required customization is economically sustainable for the supplier, based on the entity of the investment required and the business volume that could be achieved in the medium term, through that investment.*”⁹⁴⁰ Thus, not all present suppliers and also potentially new entrants might be available as alternative sources of supply to those customers requesting smaller volumes and, thus, in particular smaller terminals. In this regard

⁹³² Response to Q7 – PH2 Questionnaire to HTE Customers, Doc. ID 3608, question 14.1.

⁹³³ Response to Q7 – PH2 Questionnaire to HTE Customers, Doc. ID 3608, question 14.1.

⁹³⁴ Response to Q7 – PH2 Questionnaire to HTE Customers, Doc. ID 3608, question 14.1.

⁹³⁵ Response to Q7 – PH2 Questionnaire to HTE Customers, Doc. ID 3608, question 14.1.

⁹³⁶ Response to Q7 – PH2 Questionnaire to HTE Customers, Doc. ID 3608, question 14.2.

⁹³⁷ Response to Q7 – PH2 Questionnaire to HTE Customers, Doc. ID 3608, question 14.1.

⁹³⁸ Response to Q7 – PH2 Questionnaire to HTE Customers, Doc. ID 3608, question 14.1.

⁹³⁹ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question D.C.A.4.3.1.

⁹⁴⁰ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 59.1.

an EEA customer expects: *“I don't believe, that ZPMC could give us better offer, because we order only few machines at same time”*.⁹⁴¹

- (1033) **Fifth**, while a majority of customers said they operated mixed fleets, investigating past behaviour, the Commission found that switching to a new supplier has not been as common in the past decade. Only a minority reported to have ordered straddle and shuttle carriers from a supplier with no existing equipment at their terminal in the past decade. Of this minority, one was a greenfield project, thus, no incumbent supplier.⁹⁴² An even smaller percentage consisting of only GTOs reported to have ordered straddle and/or shuttle carriers from a supplier with no track record of supply of straddle and/or shuttle carriers in the EEA for their EEA-based terminals.⁹⁴³ While these findings of past behaviour might in part be explained by the limited number of suppliers to switch to during the past decade, the Commission considers that this is nonetheless indicative of a certain advantage for incumbent suppliers.
- (1034) However, the Commission notes that when asked whether they would be ready to order straddle and/or shuttle carriers from a supplier with no existing equipment at their terminal, a vast majority of customers responded affirmatively.⁹⁴⁴ While one GTO said that they were investigating ZPMC as an alternative supplier of straddle and shuttle carriers, another GTO explained that they did not mean a third supplier: *“That would mainly be a choice between Kalmar and Konecranes until the point that Liebherr or ZPMC have more competitive products.”*⁹⁴⁵
- (1035) **Sixth**, responses to the Commission’s market investigations suggest that it is easier to switch between straddle and shuttle carriers of the Notifying Parties than between either product of the Notifying Parties and ZPMC’s straddle and shuttle carriers. This suggests that as a result of the Transaction not only would the number of suppliers be reduced but the switching to the remaining alternative supplier would be more difficult than switching between the products of the Merged Entity. A clear majority of customers said that it is somewhat easier to switch between straddle and shuttle carriers of Cargotec and Konecranes as compared to those of ZPMC.⁹⁴⁶ One GTO explained: *“Technologies between Cargotech [sic] and Konecranes are more similar and after sales services equivalent while ZPMC aftersales service is inexistent with low expertise and tremendous issues for the supply of spare parts leading to huge stock and stock costs.”*⁹⁴⁷
- (1036) **Seventh**, as a result of the above mentioned limitations to switching, a large majority of customers said that they would continue purchasing at least some straddle and/or shuttle carriers from the Merged Entity and only switch some purchases to a competitor in case of a post-Transaction price increase. Some customers even said they would still purchase all straddle and/or shuttle carriers from the Merged Entity.⁹⁴⁸ And a GTO explained in this regard: *“[...] worldwide and in the EEA and there are a very limited amount of other straddle carrier providers on the market. Dependency towards the merged entity will be highly critical for shipping companies as customers will not have any leverage on prices, which are likely to increase post-*

⁹⁴¹ Response to Q7 – PH2 Questionnaire to HTE Customers, Doc. ID 3608, question 16.1.

⁹⁴² Responses to Q7 – PH2 Questionnaire to HTE Customers, Doc. ID 3608, question 17.

⁹⁴³ Responses to Q7 – PH2 Questionnaire to HTE Customers, Doc. ID 3608, question 19.

⁹⁴⁴ Responses to Q7 – PH2 Questionnaire to HTE Customers, Doc. ID 3608, question 18.

⁹⁴⁵ Response to Q7 – PH2 Questionnaire to HTE Customers, Doc. ID 3608, question 18.1.

⁹⁴⁶ Responses to Q7 – PH2 Questionnaire to HTE Customers, Doc. ID 3608, question 26.

⁹⁴⁷ Response to Q7 – PH2 Questionnaire to HTE Customers, Doc. ID 3608, question 26.1.

⁹⁴⁸ Responses to Q2 – Questionnaire to Customers, Doc. ID 3153, question D.C.A.6.

Transaction.”⁹⁴⁹ Another customer similarly states: “As [we] are not currently inclined to source straddle carriers from ZPMC, the Company’s dependency on the merged entity will be complete as no other serious alternatives for straddle carriers exist.”⁹⁵⁰ Another customer explained: “[...] We already see in the current situation, that it is very difficult to negotiate a different price. [...]”⁹⁵¹ The same customer further stated: “Depending on the pricing, service and quality of the merged entity, we would need to re-consider our operations mode completely.”⁹⁵²

- (1037) **Eighths**, the Commission finds that there are significantly higher impediments for switching suppliers of automated straddle and/or shuttle carriers because of incompatibilities between automated operating systems creating a lock-in effect, in particular after the initial design stage of the terminal.
- (1038) Half of the customers who expressed an opinion said that they could not purchase automated straddle and/or shuttle carriers from another supplier or, while this was possible in theory, it was in practice not possible in a cost-effective way.⁹⁵³ An international customer described the incompatibilities rendering the integration of another supplier’s straddle or shuttle carrier into the current system impossible: “[Our] fleet is the current reference solution (Kalmar OneTerminal, now KalmarOne) encompassed an integrated system between the Navis Terminal Operating System, and Kalmar’s Terminal Logistics System. The horizontal transport carriers from Konecranes cannot work alongside the Kalmar Automated Container Carriers (referred to as shuttle carriers in this instance), due to software and hardware design limitations of the system integration and also the automated waterside area of work. [...]”⁹⁵⁴ The same international customer further described that switching supplier would require the “willing assistance” of Kalmar and that in general required adjustments would render supplier switching cost-ineffective for customers of automated solutions for straddle and shuttle carriers: “[Our] terminal design is specific to Kalmar’s Horizontal Transport Control System, within their Equipment Control System. As stated previously interfacing into the shuttle routing and work order handling would present an almost impossible task without the willing assistance of Kalmar. Setting aside this challenge it would also provide for interesting problems with the support of existing equipment within the Service Level Agreement. On a global level or other terminal operation, in theory, ICTSI could purchase automated straddle and shuttle carriers from other suppliers, but the required adjustments would render this cost-ineffective as we can only purchase terminal specific automated OEM equipment due to the operating system design of the OEM.”⁹⁵⁵
- (1039) An international customer described the single supplier situation for automated Kalmar straddle carriers as a necessity: “Homogenous fleet [...] is also a current necessity given compatibility issues with Kalmar automation technology which controls the Kalmar straddles.”⁹⁵⁶ A GTO reported in this regard, that automated terminals limited the supplier selection to a single supplier: “[...] If it is an automated terminal (with automated Strads/Shuttle and a supplier ECS), then that

⁹⁴⁹ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question D.D.1.1.

⁹⁵⁰ Non-confidential minutes of a call with a customer dated 23 March 2021, Doc. ID 588, paragraph 47.

⁹⁵¹ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question D.D.1.1.

⁹⁵² Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question D.C.A.6.1.

⁹⁵³ Responses to Q7 – PH2 Questionnaire to HTE Customers, Doc. ID 3608, question 23.

⁹⁵⁴ Response to Q7 – PH2 Questionnaire to HTE Customers, Doc. ID 3608, question 14.1.

⁹⁵⁵ Response to Q7 – PH2 Questionnaire to HTE Customers, Doc. ID 3608, question 23.1.

⁹⁵⁶ Response to Q7 – PH2 Questionnaire to HTE Customers, Doc. ID 3608, question 14.1.

*basically limits the supplier selection, meaning that you choose the suppliers that provide the ECS system (e.g. TLS / Kalmar One / TEAMS)."*⁹⁵⁷ The same GTO further stated: *"Having a manual mixed fleet is not a big problem, but having a mixed fleet in an automated straddle carrier or shuttle carrier system is difficult – not to say impossible right now."*⁹⁵⁸

- (1040) In this regard, a GTO [...] explained to the Commission that they expected it to become a common practice that suppliers will provide a platform in the first phase and then change it into a subscription-based model. There was full dependency on the supplier and switching costs for the automation platform were substantial and in the view of the GTO practically not implementable. Therefore, the GTO considers that switching supplier of the automated platform and its products was currently not realistic and the supplier dependency risk ran until the end of the operational lifetime of the terminal. The GTO explained that a terminal design lifespan could go up to 30-40 years. Thus, the GTO considers that terminals may experience a lock-in effect for many years, once a fully automated terminal design was setup and if no sufficient technical and contractual countermeasures were to be defined. The GTO argues that for suppliers, thus, automation platforms were potential gold mines as they guaranteed maintenance and support revenue for a very long period of time.⁹⁵⁹
- (1041) Likewise, those past, actual and potential competitors who expressed a view agreed that mixed fleets were unusual in case of automated straddle and/or shuttle carriers.⁹⁶⁰ One of them explained: *"Both the youth of the application and the high integration between the equipment and the automation management system make it hard and costly to mix fleets."*⁹⁶¹ Another competitor explained why customers needed to source from only one supplier in case of automated solutions: *"Automated straddle/shuttle carriers need the unique system therefore terminal operators need to source from only one supplier."*⁹⁶²
- (1042) In relation to past switching behaviour, a GTO explained that switching supplier of an automated straddle and or shuttle carrier had as to their never happened: *"The wording 'in theory' is important. That is what the suppliers (Kalmar and Konecranes) promise, but it has so far not happened ever in our industry."*⁹⁶³
- (1043) Consequently, the Commission's market investigation shows that customers of automated straddle and shuttle carriers tend to operate single supplier fleets. An automation competitor reported: *"We see that most terminals are only relying on one brand when going to automation."*⁹⁶⁴ Likewise, a potential competitor noted: *"[...] At the moment mixed fleets of Automated SC/ShC are quite rare."*⁹⁶⁵
- (1044) As a result, automated solution customers are particularly vulnerable to price increases due to customer-lock-in effects. One customer described: *"Terminals that are automated (e.g., APM Terminals) are more vulnerable to pressure from the OEMs as it is more difficult to switch equipment suppliers. This is a trend that will*

⁹⁵⁷ Response to Q7 – PH2 Questionnaire to HTE Customers, Doc. ID 3608, question 14.2.

⁹⁵⁸ Response to Q7 – PH2 Questionnaire to HTE Customers, Doc. ID 3608, question 27.1.

⁹⁵⁹ Doc. ID 4820, Non-confidential minutes of a call with a customer dated 22 November 2021, paragraphs 15-16.

⁹⁶⁰ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 58.1.

⁹⁶¹ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 58.2.

⁹⁶² Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 58.2.

⁹⁶³ Responses to Q7 – PH2 Questionnaire to HTE Customers, Doc. ID 3608, question 23.1.

⁹⁶⁴ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 60.1.

⁹⁶⁵ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 58.1.

continue as OEMs offer more integrated systems - this leads to even more customer-lock-in."⁹⁶⁶

- (1045) In conclusion, the Commission finds that terminal operators face important impediments to switching both in terms of alternative suppliers, with only one existing alternative to the Parties, as well as in terms of switching costs, in particular for smaller terminals, smaller volume replacement demand and customers of automated straddle and shuttle carriers.
- 7.3.1.6. Insufficient countervailing buyer power of customers to prevent price increases
- (1046) According to the Horizontal Merger Guidelines, even firms with very high market shares may not be in a position, post-merger, to significantly impede effective competition, in particular by acting to an appreciable extent independently of their customers, if the latter possess countervailing buyer power. Countervailing buyer power in this context should be understood as the bargaining strength that the buyer has vis-à-vis the seller in commercial negotiations due to its size, its commercial significance to the seller and its ability to switch to alternative suppliers.⁹⁶⁷
- (1047) In particular, countervailing buyer power is relevant if customers could credibly threaten to resort, within a reasonable timeframe, to alternative sources of supply should the supplier decide to increase prices or to otherwise deteriorate quality or the conditions of delivery. This would be the case, for example if the buyer could immediately switch to other suppliers.⁹⁶⁸
- (1048) Contrary to the Notifying Parties' view⁹⁶⁹, the Commission finds that the ability of customers to exercise countervailing buyer power appears to be very limited and would not be sufficient to offset a price increase.
- (1049) The container terminal sector is characterised by a large number of container terminals and a fragmented demand. The Notifying Parties have estimated that the total number of terminals in the EEA is approximately [...].⁹⁷⁰
- (1050) The Notifying Parties argued that demand for container handling equipment is mainly driven by GTOs that own (or partially own) terminals all around the world. In 2019, according to the Notifying Parties, terminals fully or partially owned by these large operators accounted for over [60-70]% of global container throughput (and over three quarters of container throughput in Europe).⁹⁷¹ These GTOs include PSA International, Cosco, AP Möller, Hutchison, DPW, CMA-CGM and Eurogate, to name just a few. The share of GTOs in the global container terminal market has been dramatically increasing over the past 20 years.⁹⁷² However, it appears that [20-30]% of container throughput in Europe remains managed by container terminal operators that belong to public port authorities or other private players, including those operating inland intermodal terminal such as Deutsche Bahn, Rhenus and Hupac. These small or mid-size operators do not benefit from the alleged bargaining power of GTOs.

⁹⁶⁶ Non-confidential minutes of a call with a customer dated 11 March 2021, Doc. ID 508, paragraph 42.

⁹⁶⁷ Horizontal Merger Guidelines, paragraph 64.

⁹⁶⁸ Horizontal Merger Guidelines, paragraph 65.

⁹⁶⁹ See, for instance, Reply to the Letter of Facts, paragraphs 74 et seq.

⁹⁷⁰ See RFI PN Q3 Annex Q1.

⁹⁷¹ Form CO, Section 1-5, paragraph 237.

⁹⁷² Form CO, Section 1-5, paragraph 237.

- (1051) In Sections 7.3.1.1 and 7.3.1.4 the Commission has found that the market for the supply of straddle and shuttle carriers and all plausible sub-segments thereof in the EEA as well as globally are significantly concentrated (2 players, 1 recent entrant with yet small market share). It also found that the current rival is not as competitive as the Notifying Parties as regards essential parameters of competition such as quality of the product, proof of reliability/existing references, maturity of product/technology and aftersales service network and spare parts network, see Section 7.3.1.4 (A). It further found that customers are facing significant difficulties when trying to switch suppliers due to lack of alternative suppliers and switching costs of integrating a new supplier after the initial design of the terminal, in particular in automated terminals, see Section 7.3.1.5. This limitation of available alternatives directly reduces the ability of terminal operators to switch to rival suppliers and therefore their countervailing buyer power.
- (1052) Customers have also highlighted the differences in the relative power of straddle and shuttle carrier suppliers and terminal operators depending on whether the procurement relates to Greenfield projects (i.e. a new terminal) or brownfield projects (upgrades or expansions of existing operations). The terminal operator would have more relative bargaining power in Greenfield terminals than in brownfield ones.
- (1053) In that regard, the Notifying Parties have submitted that demand for container handling equipment is currently predominantly driven by brownfield projects (e.g., terminal expansion, fleet replacement, etc.), while greenfield projects are relatively rare at the moment, especially in Europe.⁹⁷³ A 2017 dated market report of DS Research, an independent market research company for the container terminal industry, confirms this in particular for straddle carriers: *“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.”*⁹⁷⁴
- (1054) The Commission therefore takes the view that in developed areas such as the EEA, straddle and shuttle carrier demand is primarily constituted of terminal expansion or equipment replacements, where straddle and shuttle suppliers are considered to have an edge over terminal operators. This is even more the case for well-established competitors such as the Notifying Parties, which have built a solid installed base over the years of market dominance in the EEA and globally (>90% of combined market share since 2010 in straddle and shuttle carriers), as explained in Section 7.3.1.1.
- (1055) Furthermore, according to paragraph 67 of the Horizontal Merger Guidelines it is not sufficient that buyer power exists prior to the merger, it must also exist and remain effective following the merger. This is because a merger of two suppliers may reduce buyer power if it thereby removes a credible alternative. The Notifying Parties have argued that customers (some of whom operate dozens of ports) typically multi-source and do not source straddle and shuttle carriers from only one supplier for all the terminals in their portfolio.⁹⁷⁵ However, a removal of a competing rival could be even more detrimental to customers when it occurs in a market where multi-sourcing is gradually taking place, as it eliminates one of only two alternatives that customers have tried to put in place in order to limit dependency from one specific supplier.

⁹⁷³ Form CO, Section 1-5, paragraph 109, fn 69.

⁹⁷⁴ Internal document, Doc. ID 3664-28680 - CAR-MON-00126921.pdf slide 5.

⁹⁷⁵ Form CO, Chapter 12, paragraph 138.

- (1056) Further, the Commission was made aware of an example that shows that the Notifying Parties have the ability to impose stricter conditions even on large GTOs, which further shows that there is not strong countervailing buyer power. A GTO reported: “[...] *Already happening: Terms and Conditions and Warranty clauses get stricter. We expect this will only get worse with a bigger "Future Company [...]"*”⁹⁷⁶.
- (1057) Against this background, the Commission considers that it is unlikely that customers would benefit of any countervailing buyer power post-merger
- 7.3.1.7. Very high barriers to entry and expansion will not allow sufficient and timely entries and expansions that sufficiently constrain the Merged Entity post-Transaction
- (1058) According to the Horizontal Merger Guidelines, when entering a market is sufficiently easy, a merger is unlikely to pose any significant anti-competitive risk. Therefore, entry analysis constitutes an important element of the overall competitive assessment of a transaction. For entry to be considered a sufficient competitive constraint on the merging Parties, it must be shown to be likely, timely and sufficient to deter or defeat any potential anti-competitive effects of the merger.⁹⁷⁷
- (1059) As regards likelihood of the entry, the Commission examines whether entry is likely or whether potential entry is likely to constrain the behaviour of incumbents post-merger. The Commission examines whether entry is likely or whether potential entry is likely to constrain the behaviour of incumbents post-merger. Potential entrants may encounter barriers to entry which determine entry risks and costs and thus have an impact on the profitability of entry. Barriers to entry are specific features of the market, which give incumbent firms advantages over potential competitors. When entry barriers are low, the merging parties are more likely to be constrained by entry. Conversely, when entry barriers are high, price increases by the merging firms would not be significantly constrained by entry. Historical examples of entry and exit in the industry may provide useful information about the size of entry barriers. Scale economies or network effects may make entry unprofitable unless the entrant can obtain a sufficiently large market share.⁹⁷⁸ The Commission notes that in particular in a market with shares consistently at or close to 100% as the market for straddle and shuttle carriers both in the EEA and globally, the likelihood of entrants and expansions and the constraint they exercise needs to be certain to be able to remedy with sufficient likelihood the situation created by the monopolistic market structure as a result of the Proposed Transaction.
- (1060) As regards timeliness of the entry, the Commission examines whether entry would be sufficiently swift and sustained to deter or defeat the exercise of market power. What constitutes an appropriate time period depends on the characteristics and dynamics of the market, as well as on the specific capabilities of potential entrants. However, entry is normally only considered timely if it occurs within two years.⁹⁷⁹ The Commission notes that in particular in a market with shares consistently at or close to [90-100]% as the Notifying Parties have in the market for straddle and shuttle carriers both in the EEA and globally, the timeliness of entries and expansions and the constraint they exercise needs to be immediate to be able to remedy the monopolistic market structure as a result of the Proposed Transaction.

⁹⁷⁶ Response to Q7 – PH2 Questionnaire to HTE Customers, Doc. ID 3608, question 32.1.

⁹⁷⁷ Horizontal Merger Guidelines, paragraph 68.

⁹⁷⁸ Horizontal Merger Guidelines, paragraphs 69 et seq.

⁹⁷⁹ Horizontal Merger Guidelines, paragraph 74.

- (1061) As regards sufficiency of the entry, the entry must be of sufficient scope and magnitude to deter or defeat the anti-competitive effects of the merger. Small-scale entry may not be considered sufficient.⁹⁸⁰ The Commission notes that in particular in a market with shares consistently at or close to [90-100]% as the Notifying Parties have in the market for straddle and shuttle carriers both in the EEA and globally, the prospect of entrants and expansions and the constraint they exercise needs to be very strong to fulfil the criterion of sufficiency, as a monopolistic market structure as a result of the Proposed Transaction would be otherwise too harmful to competition to be remedied with sufficient likelihood.
- (1062) Contrary to the Parties' view⁹⁸¹, the Commission concludes that potential entries are not likely, sufficient and/or timely in order to be considered a sufficient constraint on the Merged Entity. Barriers to entry are very high, as shown also by historical examples. Consequently, potential entries of new entrants are unlikely to be sufficient or timely nor will the expansion of the recent entry ZPMC be timely to be considered a sufficient constraint.
- (A) High barriers to entry and expansion
- (1063) The Commission concludes that the plausible market(s) for straddle and shuttle carriers have very high barriers to entry. Responses to the market investigation as well as historical examples have all pointed to the existence of numerous requirements and challenges that straddle and shuttle carrier manufacturers must satisfy and overcome to be considered credible suppliers.
- (1064) Market participants in the market investigation named and explained a multitude of very high barriers to entry to enter the market for the supply of straddle/shuttle carriers such as: high investment costs, high level of required technical know-how and expertise, high economies of scale, compliance with safety and environmental regulations, need for references/shown expertise, maturity of technology product with high reliability, a difficulty of customers to switch supplier after the initial design of the terminal in terms of costs and time, reputation/brand loyalty, broad portfolio offering (i.e. controls, electrification), a well-functioning regional after-sales and spare parts service network and delays caused by required testing periods. A customer stated: *"Very high start-up costs/high level of technical knowledge/economies of scale required. Necessary to have established safety design systems and expertise. Difficult to drive switch to new manufacturer given high capital costs for terminal operator of not succeeding. High level of brand loyalty. Very high switching costs for existing terminals."*⁹⁸²
- (1065) **First**, there appear to be barriers to entry resulting from required technical know-how and expertise, even more with regard to automation solutions.
- (1066) **Second**, the Commission finds that straddle and shuttle carriers require several years to be developed, first to reach the stage where customers are willing to test the product and then second, several years to be developed in real life operations before they become a commercially viable and competitive product (see in detail Section 7.3.1.4 (A.ii.b) above. First, a potential competitor notes that it takes approximately five years to get to the stage where customers might be willing to test the product: *"Overall, entering the straddle carriers market requires significant*

⁹⁸⁰ Horizontal Merger Guidelines, paragraph 75.

⁹⁸¹ See, for instance, Reply to the SO, paragraphs 652 et seq.

⁹⁸² Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question D.C.A.3.1.

*investments and is associated with a lot of risks as OEMs need to be very accurate technically, marketing-wise to gain new customers. It takes approximately five years for an OEM to enter the market for straddle carriers, from the day of the initial contact with the customers to having customers willing to test and try the products.”*⁹⁸³ Second, as regards the customer testing stage, a GTO explained that it takes many years to develop a straddle carrier and new entrants go through several development and maturity phases. According to this GTO a straddle carrier goes through various pilot stages, safety evaluations and long-term and continual testing in real operational conditions for an extended time of about three to five years before it becomes a commercially viable product. Throughout these phases, the product is continuously improved.⁹⁸⁴

- (1067) **Third**, there are barriers to entry in light of the required testing periods specific to the specific customer. The testing periods require suppliers to invest upfront in customisations requested by customers, which they might eventually not be able to produce on scale, which poses a financial risk. Further, testing periods delay proper market entry by approximately two years (see Section 7.3.1.4 (A.ii.b) above).
- (1068) **Fourth**, the Commission finds that in straddle and shuttle carriers there are particularly high barriers to entry in relation to economies of scale. All container handling equipment competitors expressing a view in the Commission’s market investigation agreed that economies of scale were very difficult to achieve for companies not active in the supply of straddle and shuttle carriers in the EEA if they tried to start supplying these products to the EEA.⁹⁸⁵ For instance, one GTO explained: *“Limited barriers on technology for manual straddle / shuttle carriers for those new entrants who have been in the container handling equipment business. Main barrier is volume of sales to create the economy of scale. For new entrants from another industrial sector, the infrastructure, capability and experience of design engineers, skill & experience of workforce would be the key barriers they face to allow them to enter the market.”*⁹⁸⁶
- (1069) **Fifth**, there appear to be barriers to entry in relation to broad product portfolios. The Notifying Parties appear to have particular advantages resulting from offering a wide variety of container handling equipment. A potential competitor noted in this regard: *“The almost exclusive presence of a merged Kalmar+Kone player also active in other business lines, would become too strong for current customers to facilitate the entrance of the market of a new player without risking to pay an immediate price to the meged [sic] entity.”*⁹⁸⁷
- (1070) **Sixth**, the Commission finds that there are significant barriers to entry in having to establish a regional sales, maintenance and spare parts network.
- (1071) As explained above in Section 6.4.1.3 (E), EEA customers of straddle and shuttle carriers have identified availability of a local service network as an important if not crucial parameter in the selection process of a straddle and/or shuttle carrier supplier. It is also thoroughly tested during the usual testing periods (see Section 7.3.1.4 (A.ii.b) above). Customers consider this criterion a major

⁹⁸³ Non-confidential minutes with a competitor dated 3 May 2021, Doc. ID 1773, paragraph 19.

⁹⁸⁴ Doc. ID 4820, Non-confidential minutes of a call with a customer dated 22 November 2021, paragraph 3.

⁹⁸⁵ Responses to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 54.

⁹⁸⁶ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question D.C.A.3.1.

⁹⁸⁷ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 54.1.

requirement for a supplier and a key challenge to overcome in the EEA market for non-EEA suppliers.

- (1072) Finding qualified staff for the local networks seems to be a particular obstacle faced at present by potential competitors. One potential competitor admitted that: *“qualified people not easy to find”*⁹⁸⁸ A second potential competitor likewise noted: *“Scarce availability of specific product competence on local markets. Where such competence was to become available, the time and investments for the development of an effective loca[sic] service would significantly be reduced.”*⁹⁸⁹
- (1073) **Seventh**, the Commission further finds that there are significant barriers to entry related to track record, references, brand recognition and reputation and overall the maturity of the products of the Notifying Parties. Track record in providing safe and reliable equipment is one of the most significant factors for customers when deciding to purchase a straddle and/or shuttle carrier.⁹⁹⁰ It is particularly difficult for new entrants to compete against the historically well established Merged Entity with decades of track record. A GTO noted: *“[The Notifying Parties] have likely produced over 10 000 shuttle and straddle carriers over the last 35 years and thereby ironed out any insufficiencies of their equipment. For a new supplier to enter and overcome the ‘child diseases’ of its new shuttle and straddle carriers is therefore very difficult.”*⁹⁹¹ One past and two potential competitors agreed that track record was very difficult to achieve for companies not active in the supply of straddle and shuttle carriers if they tried to start supplying these products.⁹⁹² One of the potential competitors named as a hindrance to entering the straddle and shuttle carrier market: *“competition well established in the market. High entry barrier because of unknown ‘brand’ [...] for this kind of product”*⁹⁹³ A past competitor reported: *“[...] In our experience mainstream ports are very slow to change from existing suppliers due to proven track record/reliability, driver and maintenance familiarity, spares parts stock and concerns regarding future supply etc.”*⁹⁹⁴
- (1074) **Eighths**, ramping up production to scale, developing an innovative product and establishing local service networks further requires high upfront investments, which constitute another high barrier to entry, as confirmed by a potential supplier: *“The investment to enter the market are significant. We are estimating an investment of not less than 10 Million Euro.”*⁹⁹⁵ While another potential competitor said that they would require no costs and investments to enter the market⁹⁹⁶, upon further investigation by the Commission this potential supplier was not able to substantiate this claim (see below Section 7.3.1.7 (D.ii)).
- (1075) **Ninth**, the Commission finds that there might be a further barrier in terms of “critical mass” of market position. A past and potential competitor of the Parties indicated that it needed to acquire at least 10 to 15% of the market share to be perceived as a

⁹⁸⁸ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 50.1.

⁹⁸⁹ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 50.1.

⁹⁹⁰ See for instance responses to Q7 – PH2 Questionnaire to HTE Customers, questions 18, 19.1, 20.1 and responses to Q2 – Questionnaire to Customers, Doc. ID 3153, question D.C.A.4.1.1.

⁹⁹¹ Non-confidential minutes of a call with a customer dated 10 March 2021, Doc. ID 508, paragraph 24.

⁹⁹² Responses to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 54.

⁹⁹³ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 52.1.

⁹⁹⁴ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 61.1.

⁹⁹⁵ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 51.1.

⁹⁹⁶ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 51.1.

serious alternative to the Parties.” Internal documents of the Parties acknowledge this as well. A Kalmar internal document states: [internal document reference] .⁹⁹⁷

- (1076) In view of the above, the Commission takes the view that the plausible straddle and shuttle carrier markets are characterised by high barriers to entry and to expansion.

(B) Long time to market

- (1077) The findings of the market investigation further show that in light of these high barriers to entry and expansion, it takes a long time and is very challenging to enter the market for the supply of straddle and shuttle carriers.
- (1078) **First**, a potential competitor notes that it takes approximately five years to get to the stage where customers might be willing to test the product: *“Overall, entering the straddle carriers market requires significant investments and is associated with a lot of risks as OEMs need to be very accurate technically, marketing-wise to gain new customers. It takes approximately five years for an OEM to enter the market for straddle carriers, from the day of the initial contact with the customers to having customers willing to test and try the products.”*⁹⁹⁸
- (1079) **Second**, an EEA GTO further explained that, once customers are willing to test a product, a product goes through several pilot and maturity stages, which are being developed in real life operations before the product becomes commercially viable. The GTO explained that it takes many years to develop a straddle carrier and new entrants go through several development and maturity phases. According to this GTO a straddle carrier goes through various pilot stages, safety evaluations and long-term and continual testing in real operational conditions for an extended time of about three to five years before it becomes a commercially viable product. Throughout these phases, the product is continuously improved.⁹⁹⁹
- (1080) **Consequently**, a majority of market participants indicated that it would take a new supplier of straddle and shuttle carriers at least five years to enter the market and to effectively compete with established suppliers, with several market participants expecting even longer timeframes of more than 10 years. The timeframe expected by customers is on average a bit longer for automated straddle and shuttle carriers than for manual ones.¹⁰⁰⁰ One customer explained in this regard: *“There are very high barriers to entry for both manual and automated straddle carriers. The barriers are higher for automated straddle carriers due to the need to establish associated new operating technology or interface capability. It is estimated that this would take more than 10 years.”*¹⁰⁰¹
- (1081) **Third**, the Commission’s market investigation showed that building a track record and references as well as a regional aftersales services and maintenance network as well as required testing periods by customers of about one to two years and the difficulties of overcoming incumbent players in brownfield projects, are only some barriers amongst many which take time to overcome.

⁹⁹⁷ Cargotec-Kalmar internal document, Doc. ID 3670-20334, CAR-VEH-00129051.pptx, slide 8.

⁹⁹⁸ Non-confidential minutes with a competitor dated 3 May 2021, Doc. ID 1773, paragraph 19.

⁹⁹⁹ Doc. ID 4820, Non-confidential minutes of a call with a customer dated 22 November 2021, paragraph 3.

¹⁰⁰⁰ Responses to Q2 – Questionnaire to Customers, Doc. ID 3153, question D.C.A.3.

¹⁰⁰¹ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question D.C.A.3.

(1082) This is also demonstrated by the historical example of recent entry by ZPMC, who has been trying to enter the market since 2016¹⁰⁰² and at present still has not gained a sizeable market position. In fact, a 2017 market report of DS Research, an independent market research company for the container terminal industry, reports that ZPMC had delivered “*pilot production*” as early as 2005 and 2011.”¹⁰⁰³ In 2018-2020, more than a decade after apparent pilot production, ZPMC was still below 5% market share in straddle and shuttle carriers and both plausible sub-segments, both in the EEA and globally, see above Section 7.3.1.1 (A).

(C) Historical examples of unsuccessful entries

(1083) The Commission finds that historical examples of unsuccessful entries into the supply of straddle and shuttle carriers further demonstrate the high barriers to entry and that it is very difficult for new entrants to sufficiently, timely and sustainably compete in the market for straddle and shuttle carriers and the plausible sub-segments both in the EEA and globally. A past competitor reported: “*A number of competitors have tried to break in into this market unsuccessfully. Cargotec (Kalmar) and Konecranes (Noell) have dominated this market for decades.*”¹⁰⁰⁴

(1084) For instance, as described above in Section 7.3.2.3 (B), Liebherr tried to establish itself in the supply of straddle carriers for over a decade but was not able to gain significant market share. Liebherr confirmed to the Commission that it had exited the market for straddle carriers due to being not cost-competitive with the Notifying Parties and that it stopped its production in 2017.¹⁰⁰⁵ It explained: “*The decision to stop the production of straddle carriers was taken as Kalmar and Konecranes offer significantly more competitive prices than the Company’s. Producing straddle carriers in the United Kingdom and in Ireland is substantially costlier than subcontracting in Poland or China, and Liebherr is not able to offer a competitive price. For instance, the Company’s market price for straddle carriers is approximately 20% higher than the market price of competitors.*”¹⁰⁰⁶

(1085) A GTO explained in this regard: “[Liebherr] was unable to overcome the difficulties of entering a market with dominant players that have acquired an important know-how through the acquisition of multiple straddle carrier OEMs. Konecranes’ straddle carriers are the result of a previous acquisition of the company Noell; and Kalmar’s straddle carriers are the products of the acquisition of Valmet Ltd and Sisu Ltd. These suppliers have likely produced over 10 000 shuttle and straddle carriers over the last 35 years and thereby ironed out any insufficiencies of their equipment. For a new supplier to enter and overcome the ‘child diseases’ of its new shuttle and straddle carriers is therefore very difficult.”¹⁰⁰⁷

(1086) Liebherr further confirmed that it had no intention of re-entering the market for straddle and shuttle carriers in the foreseeable future even in case of a price increase in light of its lack of price competitiveness: “*Liebherr does not believe that it would be able to re-enter the straddle carriers market if, post-transaction, there was a price increase. [...] Given that the market price for Liebherr’s straddle carrier is greater than [...] while the market price of competitors is circa [...], the Company does not*

¹⁰⁰² See PN RFI 2 – Annex – Q5.

¹⁰⁰³ Internal document, Doc. ID 3664-28680 - CAR-MON-00126921.pdf, slide 7.

¹⁰⁰⁴ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 54.1.

¹⁰⁰⁵ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, questions 63 and 65.1 and Minutes of a Call with a Competitor dated 22 March 2021, Doc. ID 598, paragraphs 25 to 27.

¹⁰⁰⁶ Minutes of a Call with a Competitor dated 22 March 2021, Doc. ID 598, paragraph 28.

¹⁰⁰⁷ Non-confidential minutes of a call with a customer dated 10 March 2021, Doc. ID 508, paragraph 24.

*believe that a price increase resulting from the transaction would be sufficient to re-enter that market.”*¹⁰⁰⁸

(1087) Also CVS had already tried to enter the straddle and shuttle carrier market in the past unsuccessfully due to financial troubles.¹⁰⁰⁹

(D) Potential entries and expansion are unlikely to constrain the Merged Entity in a sufficient and timely manner

(1088) When asked whether they planned to enter the supply of straddle and shuttle carriers in the EEA in the next three years, two container handling equipment suppliers responded affirmatively, namely CVS and Sany.¹⁰¹⁰ While these two suppliers of container handling equipment say that they plan to enter the plausible market(s) for straddle and shuttle carriers within the next three years, the Commission finds that in light of the high barriers to entry and expansion identified in Sections 7.3.1.7 (A) to (C), both of these potential entries as well as other potential entries are highly unlikely to constrain the Merged Entity sufficiently and timely post-Transaction.

(D.i) No sufficient or timely entry by CVS

(1089) The Notifying Parties’ submit that CVS could sufficiently and timely re-enter the straddle/shuttle carrier markets, in particular since customers were keen to have a broad base of alternative suppliers which would foster entry conditions for CVS.¹⁰¹¹

(1090) CVS stated that they plan to re-enter the market for straddle carriers/shuttle carriers and to offer in a foreseeable future both automated and manual, diesel-hybrid and electric straddle carriers/shuttle carriers. The company was active in the market for straddle carriers 12 years ago but stopped the production two years after due to financial problems. The re-entry of CVS Ferrari in the straddle carriers market was decided by the new ownership of the company. The company said that it was at the very early stages of its re-entry plans and has not yet communicated this decision to its customers.¹⁰¹²

(1091) It further stated CVS calculates with a timeframe of approximately five years to enter the market for straddle carriers, from the day of the initial contact with the customers to having customers willing to test and try the products. *“By way of illustration, CVS Ferrari estimates that it will be able to deliver its first straddle carrier to a customer in 2024/2025.”*¹⁰¹³ CVS told the Commission that it expected to have a certain production capacity by 2024/25. The Commission notes that this production capacity is small to moderate, would only be able to capture a smaller part of annual demand and would be considerably smaller than the Merged Entity’s production capacity.

(1092) CVS noted in terms of barriers to entry that that “Overall, entering the straddle carriers market requires significant investments and is associated with a lot of risks as OEMs need to be very accurate technically, marketing-wise to gain new customers.”¹⁰¹⁴ And that it “[...] first needs to establish itself in the straddle carriers market and is worried that the merged entity could block it from entering.”¹⁰¹⁵ “The

¹⁰⁰⁸ Minutes of a Call with a Competitor dated 22 March 2021, Doc. ID 59998, paragraph 33.

¹⁰⁰⁹ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 52.1.

¹⁰¹⁰ Responses to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 51.

¹⁰¹¹ Reply to the SO, paragraphs 683 et seq.

¹⁰¹² Minutes of a call with a competitor dated 3 May 2021, Doc. ID 1773, paragraph 17.

¹⁰¹³ Minutes of a call with a competitor dated 3 May 2021, Doc. ID 1773, paragraph 19.

¹⁰¹⁴ Minutes of a call with a competitor dated 3 May 2021, Doc. ID 1773, paragraph 19.

¹⁰¹⁵ Minutes of a call with a competitor dated 3 May 2021, Doc. ID 1773, paragraph 18.

Company is also concerned as, post-transaction, the Parties' dominant position would be difficult to compete with. Any attempt by CVS Ferrari to enter the market could potentially be blocked by the merged entity as they benefit from a large customer base. The Company believes that it will need to acquire at least 10 to 15% of the market share to be perceived as a serious alternative to the Parties.”¹⁰¹⁶ “The Company is aware that the Parties already adopt commercial strategies to exercise [...] bundling pressure on their customers. By way of illustration, CVS Ferrari participated to a bid for a project in spring 2021 and submitted a very competitive offer. The deal was called off in favor of Kalmar, as Kalmar argued to the customer that it had rented them equipment when their financial capacities deterred other OEMs to supply them container handling equipment. More generally, the Company submits that the type of relationships a very large supplier like the merged entity could agree on with port customers would be very hard to challenge by smaller suppliers like CVS Ferrari.”¹⁰¹⁷

- (1093) In light of the expected production capacity, which would be considerably smaller than the Merged Entity's production capacity, and in light of the expected timeframe of having customers willing to test and try the product only by 2024/25 as well as the overall high barriers to entry and expansion, which CVS will have to face and overcome, the Commission finds that its potential entry in the supply of straddle and shuttle carriers is unlikely to be sufficient and timely enough constrain the Merged Entity post-Transaction and deter or defeat any potential anti-competitive effects of the merger.

(D.ii) No likely, sufficient or timely entry by Sany

- (1094) The Notifying Parties submit that the entry seems likely as Sany has recently entered the RTG market and this would allow Sany to quickly and easily expand in the neighbouring straddle/shuttle carrier segment.¹⁰¹⁸
- (1095) While Sany indicated in its response to the Commission's market investigation that it intended to enter the market(s) for straddle and shuttle carriers within the next three years, including in the EEA, the Commission was not able to further substantiate this potential entry. Providing further explanations on their response to the Commission's in-depth market investigation, Sany stated that they had no information on the stage of development of any straddle/shuttle carrier product of Sany nor the planned capacity nor which customers or geographical regions would be primarily targeted for market entry nor on plans of any customer to test the product at a certain stage. Sany explained that the information provided in Sany's response to the Commission's in-depth market investigation was based on a roadmap document, in which the product was mentioned.¹⁰¹⁹
- (1096) In light of this and the above described high barriers to entry and expansion in straddle and shuttle carriers, the Commission does not consider that Sany's entry is sufficiently likely to offset the significant anti-competitive risks of the Proposed Transaction. In any case, even Sany was to enter the market for straddle and shuttle carriers in the EEA and/or globally in the next three years with a developed straddle and/or shuttle carrier product, in light of the very high barriers to entry set out in Sections 7.3.1.7 (A) to (C) above such as the long development and testing stages,

¹⁰¹⁶ Minutes of a call with a competitor dated 3 May 2021, Doc. ID 1773, paragraph 23.

¹⁰¹⁷ Minutes of a call with a competitor dated 3 May 2021, Doc. ID 1773, paragraph 27.

¹⁰¹⁸ Reply to the SO, paragraph 693.

¹⁰¹⁹ Minutes of a call with a competitor dated 22 September 2021, Doc. ID 3983, paragraph 8.

Sany would be highly unlikely to constrain the Merged Entity in a sufficient and timely manner to deter or defeat any potential anti-competitive effects of the Proposed Transaction in the market for straddle and shuttle carriers.

(D.iii) No sufficient or timely entry by Liebherr

(1097) While the Parties acknowledge that Liebherr has no immediate intention to re-enter, they stress that Liebherr cannot reasonably be ruled out as a constraint on the pricing behaviour of the Merged Entity. Most notably, the Commission's market investigation had shown that customers are keen to maintain a broad base of alternative suppliers and sometimes even foster entry of new suppliers. Against this background, Liebherr might very well find it profitable to re-enter the straddle/shuttle carrier market, should customers switch to an alternative supplier post-Transaction.¹⁰²⁰

(1098) However, in light of Liebherr's explanations for its exit to the Commission and in particular the considerable lower profitability in terms of profit margins and no present strategy on how to address the lower profitability issue or any intent to address it (see above Section 7.3.1.4 (B)), the Commission considers that an sufficient and timely re-entry by past competitor Liebherr that would sufficiently constrain the Merged Entity is unlikely.

(D.iv) No sufficient or timely entry by other potential competitors

(1099) In light of the above described high barriers to entry and expansion and the timeframes required to establish themselves on the market and gain relevant market share, the Commission considers that any other potential entry or expansion by smaller but unknown suppliers, is highly unlikely to constrain the Merged Entity in a sufficient and timely manner to deter or defeat any potential anti-competitive effects of the Proposed Transaction.

(D.v) No timely expansion by recent entry ZPMC

(1100) In light of the Parties' claim that competition from ZPMC would increase in the future in light of ZPMC's massive capacity expansion and ZPMC's alleged aim for market leadership¹⁰²¹, the Commission investigated to what extent competition between the Parties and ZPMC for sales of straddle and shuttle carriers is likely, as well as sufficient and timely to constrain Merged Entity post-Transaction, both in the EEA and globally. The Commission takes the view that ZPMC is very likely to expand its current market position and will become a growing and ever more relevant constraint on the Merged Entity in the future. In light of ZPMC's abilities, ramping up of production capacity and possible additional funding by China, the Commission cannot exclude that ZPMC will become a sufficient constraint on the Parties at some point. However, the Commission finds that ZPMC's expansion is unlikely to be timely within the meaning of paragraph 75 of the Horizontal Merger Guidelines. It will take ZPMC several of years – at least more than three years - to overcome barriers to expansion and gain relevant market share. The Commission notes, further, that in any case, ZPMC will be the only remaining competitor to the Merged Entity.

¹⁰²⁰ See for instance: Reply to the SO, paragraph 681.

¹⁰²¹ Form CO, Chapter 2, paragraphs 149 et seq.; Reply to the SO, paragraphs 696 et seq.

- (D.v.a) ZPMC is lagging behind the Notifying Parties and will take several years of development and testing to offer a commercially viable and competitive product
- (1101) The Commission finds that ZPMC's current straddle and shuttle carrier products are relatively immature with regard to several key competitive parameters such as quality and performance as well as track record and references and the aftersales and maintenance network (see in detail Section 7.3.1.4 (A.ii.a) above) and that it will take several years of development and testing to mature the offering into a commercially viable and competitive product (see in detail Section 7.3.1.4 (A.ii.b) above).
- (1102) **First**, the Commission finds that it will take ZPMC several years to develop the product. In particular, an EEA GTO who is currently testing a ZPMC straddle carrier said that the product still requires years of development, see Sections 7.3.1.4 (A.ii.a) and (A.ii.b) above. Further, market participants stated that ZPMC's delivered straddle carriers are currently still in testing phase and therefore they (as well as their lifespan, resale value etc.) are yet unproven. Irrespective of whether customers are officially testing a product, the small number of units for which ZPMC seems to have won tenders so far (see above Section 7.3.1.4 (A.ii.b)) has in all but one case not exceeded the number of one to eight units, which the market investigation has shown are typical for testing batches (see above Section 7.3.1.4 (A.ii.b)). This further indicates that customers are at present generally still trialing ZPMC's straddle and shuttle carriers.
- (1103) **Second**, the Commission finds that it will take ZPMC several years to build a track record and sufficient proof of reliability and references to be in a position to sufficiently compete with the Merged Entity. Several market participants indicated that lack of reference/proof of reliability was a reason for them not to award a tender in which ZPMC had participated to ZPMC or which they considered a factor hindering ZPMC's ability to effectively compete with the Parties, see above Section 7.3.1.4 (A.ii.a).
- (1104) **Third**, the Commission considers that it will further take ZPMC a couple of years to build a reliable and sufficient aftersales and maintenance network and, further, to also establish a sufficient track record for this. As shown in Section 7.3.1.4 (A.ii.a), this is one of ZPMC's weakest points at present in the EEA. Building such a maintenance network appears additionally difficult at present due to shortages in qualified staff, see Section 7.3.1.7 (A) above.
- (1105) **In line with this**, the Commission finds that specialised consultancies consider that ZPMC is lagging behind several years. In an internal competitor review of one Notifying Party dated [...], one of the main bullet points in the slide for ZPMC reports that [...] consider ZPMC overall to be [internal document reference] in straddle and shuttle carriers.¹⁰²² [...] is a consulting firm, which specialises in the support of ports, terminals, inland terminals and rail terminals around the world. [...] can be heavily involved in the tendering, purchasing, commissioning and maintenance process of container handling equipment, as internal documents of the Parties show¹⁰²³ and as such has expert knowledge. [Internal document reference]

¹⁰²² Konecranes internal document, Doc. ID 3587-11798, M.10078 Cargotec Konecranes RFI 18-00472379.pptx, slide 21.

¹⁰²³ See for instance, Minutes of a Meeting relating to the delivery of STS from ZPMC, where the attendees were the terminal, the supplier ZPMC and HPC, Doc. ID 3667-14762: CAR-PRA-00136096.pdf.

and located in [...] and offers similar services to [...] such as support during tenders, recommendations of potential suppliers, support during contract negotiations, commissioning supervision and so on. The Commission considers that this view of these specialist service providers therefore carries weight. The fact that this is one of the main bullet points in the competitor review slide for ZPMC indicates that the Notifying Party attributes weight to this opinion.

(D.v.b) No orders for relevant numbers from customers in the next 3-5 years

- (1106) Consequently, the Commission finds that ZPMC is unlikely to receive orders for relevant numbers of straddle and shuttle carriers in the next three to five years.
- (1107) No EEA customer has committed to a large order, yet. Only a single international customer appears to have committed to a sizeable order of 22 units. The Commission finds that customers would not be open to purchase relevant numbers but would first test the ZPMC products. In this regard, an EEA GTO that is currently testing an automated ZPMC straddle carrier stated that its view of the ZPMC straddle carrier being fairly immature and requiring several years of testing and continual improvement was probably the view of the vast majority of people in the container handling equipment industry. It considers the purchases by Hutchinson for its port in Stockholm as well as the order from TPT for its port in Durban, South Africa are exceptions, which do not mean that anybody in the industry consider the ZPMC straddle and shuttle carriers viable products that are a real alternative to the Parties' straddle and shuttle carriers, yet. The vast majority of terminals was waiting to see these products being tested in real life operations before considering purchasing relevant numbers.¹⁰²⁴ This view is shared by a potential competitor who expressed: *"The sole real sale achieved by ZPMC in Europe (8 automated Straddles for the HPH Stockholm) has been made to a Hutchison Ports Holding Terminal and HPH is notoriously and vocally pro-Chinese made products and pro-lowest bidder in general. Furthermore, the project is a greenfield one, such that there was no pre-existing brand with a foot in the client. ZPMC clearly "purchased" that deal to enter the EU market, but that strategy is much less than applicable to the vast majority of the existing EU Straddle Carrier customers."*¹⁰²⁵
- (1108) In their Reply to the SO the Parties stress that the vast majority of customers that responded to the Commission's Phase II market investigation had confirmed that they expect to purchase straddle and/or shuttle carriers from ZPMC in the next five years. This alone confirmed that customers were willing, and actually expect, to source straddle/shuttle carriers from ZPMC in the near future.¹⁰²⁶ However, the Commission finds that, in line with the above findings, that testing is required by the vast majority of customers, that all potential customers except for the terminals who had already ordered from ZPMC, clearly said that they would first test about one to eight units of ZPMC's straddle and/or shuttle carriers for about six months to two years, before ordering a larger number of units, see Section 7.3.1.4 (A.ii.b) above.
- (1109) One of these five GTOs, indicated in the questionnaire that they would purchase 1-2 units only for testing for a period of 1-2 years. While this GTO is currently testing a ZPMC straddle carrier unit they confirmed that they consider the product to be fairly immature and that it will take ZPMC around three to five years to develop a

¹⁰²⁴ Doc. ID 4820, Non-confidential minutes of a call with a customer dated 22 November 2021, paragraph 7.

¹⁰²⁵ Doc. ID 4654, Submission by a competitor, 22 November 2021.

¹⁰²⁶ Reply to the SO, paragraphs 540 and 611 et seq.

product that could be a real alternative to the Parties' straddle carriers. The GTO also expressed that in their view the Parties would have "*virtually 100% market share post-Transaction*".¹⁰²⁷

- (1110) Another of these five GTOs stated that they would only purchase limited numbers for testing and qualified these limited numbers as 1-2 units and the testing period as 1-2 years. This GTO had already invited ZPMC to tenders, considered the quality of the proposed bids and lack of long-term references as an obstacle and rates ZPMC considerably worse across key purchasing criteria compared to the Parties. It also expects a price increase post-Transaction and noted that "*terminal operators will suffer*".¹⁰²⁸
- (1111) Another of the five GTO's who indicated that they would purchase limited numbers for testing also indicated that it would require testing and that it expects a price increase post-Transaction, considered the Parties that it had a "*genuine concern*" that the Transaction "*will affect customers in a negative way*".¹⁰²⁹
- (1112) Another GTO who indicated that it would purchase limited numbers for testing qualified the testing batch as 4-8 units and the testing period as "*at least 2 years*". It likewise expects a price increase post-Transaction due to "*less competition*".¹⁰³⁰
- (1113) A sixth terminal who indicated that it would purchase limited numbers for testing, qualified the testing batch as a "very small percentage" and the testing period as "*one year*". It likewise expects a price increase post-Transaction.¹⁰³¹
- (1114) One of the two terminal operators who indicated that they expect to purchase relevant numbers, one of them, a GTO still stated in response to other questions that it would test 4 to 5 units for 1-2 years before purchasing larger numbers of units. Further, internal documents of the Parties show that this GTO [...].
- (1115) In this regard, the Commission notes that some customers explained that they were not open to test ZPMC's product because the offer was so competitive but rather to avoid dependency situations and in light of the Proposed Transaction. The same GTO went on to explain that they were open to test ZPMC's product in order to avoid a dependency situation:" [...] *[Our company] needs to ensure to have enough manufacturers and competition for this type of equipment and avoid dependency situations.*"¹⁰³² Another GTO explained its readiness to test ZPMC straddle and shuttle carriers: "*After the merger, we will need an alternative*"¹⁰³³.

(D.v.c) ZPMC's Strategic Alliance with a certain GTO will not affect demand

- (1116) Further, the Commission finds that a certain GTO's recently announced Strategic Alliance with ZPMC covering also automation in straddle carriers, does not affect the GTO's demand for straddle carriers in the next three to five years.

¹⁰²⁷ Doc. ID 4820, Non-confidential minutes of a call with a customer dated [...], paragraphs 5 and 10.

¹⁰²⁸ Responses to Q7 – PH2 Questionnaire to HTE Customers, Doc. ID 3608, questions 30, 30.1, 30.2, 35. Response to Q2 – Questionnaire to Customers, Doc. ID 3153, questions D.C.A.1., D.C.A.4.1.1, D.D.1.

¹⁰²⁹ Responses to Q7 – PH2 Questionnaire to HTE Customers, Doc. ID 3608, questions 30, 30.1, 30.2, 35. Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question D.D.1.

¹⁰³⁰ Responses to Q7 – PH2 Questionnaire to HTE Customers, Doc. ID 3608, questions 30, 30.1, 30.2. Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question D.D.1.

¹⁰³¹ Responses to Q7 – PH2 Questionnaire to HTE Customers, Doc. ID 3608, questions 30, 30.1, 30.2. Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question D.D.1.

¹⁰³² Response to Q7 – PH2 Questionnaire to HTE Customers, Doc. ID 3608, question 29.1.

¹⁰³³ Response to Q7 – PH2 Questionnaire to HTE Customers, Doc. ID 3608, question 29.1.

- (1117) [Third party information].
- (1118) [Third party information].
- (1119) [Third party information].¹⁰³⁴
- (1120) While the Notifying Parties submit that it would make sense for this GTO to source straddle and shuttle carriers from ZPMC in light of this GTO's existing relationship with ZPMC¹⁰³⁵, the Commission considers that the GTO's explanations on why the strategic alliance would not affect demand, make sense and are credible.
- (D.v.d) Incumbent advantage of Notifying Parties in brownfield projects
- (1121) The Commission considers that the advantages of the Notifying Parties as incumbents in mostly brownfield projects and, thus, hurdles for switching (see above Section 7.3.1.5), will additionally slow ZPMC's growth in particularly in the straddle carrier sub-segment.
- (D.v.e) Potential capacity expansion and subsidies
- (1122) The Commission finds that information regarding ZPMC's production capacity indicates that ZPMC might already have set up or be in the process of significantly ramping up its production capacity for straddle carriers to more than 100 and potentially 200 units, which would allow it to produce and supply around 40-75% or more of annual straddle carrier demand and around 25-50% of the worldwide annual straddle and shuttle carrier demand.¹⁰³⁶ While ZPMC stated to the Commission that it *"is still far from that objective as it has only entered the market recently. The Company is currently participating in several tenders in Europe but, based on its previous experience with STS cranes, it does not expect to be very active in the market for straddle carriers for a couple of years as it requires time to prove to clients the reliability and performance of the products."*¹⁰³⁷, the Commission agrees with the Notifying Parties that the tenders ZPMC appears to have recently won, would require some production capacity. The Commission was not able to confirm the public announcement of ZPMC relating to a delivery capacity of 100 straddle carriers mentioned by the Notifying Parties.¹⁰³⁸ The Commission finds that it cannot exclude such rapid expansion of ZPMC production capacity.
- (1123) Further, the Commission can further not exclude that ZPMC might receive subsidies and other forms of governmental support from China, in particular as *"Maritime Equipment and high—tech ships"* is one of the ten priority sectors of China's *"Made in China 2025"* Industrial Policy, including subsidies to ramp up production capacity or subsidies supporting innovation. The Commission notes that internal documents of the Parties make references to government subsidies which might give ZPMC a competitive advantage. One internal document notes: [internal document reference]¹⁰³⁹ Another internal document notes as a [internal document reference].¹⁰⁴⁰

¹⁰³⁴ Doc. ID 4820, Non-confidential minutes of a call with a customer dated [...], paragraphs 11-13.

¹⁰³⁵ Reply to the Letter of Facts, paragraph 72.

¹⁰³⁶ See delivery numbers in PN RFI 2 – Annex Q5. In 2018 to 2020, deliveries for straddle carriers ranged between 226 and 268 units. Annual straddle and shuttle carrier demand is around 300 to 400 units per year.

¹⁰³⁷ Non-confidential minutes of a call with a competitor dated 23 April 2021, Doc. ID 1779, paragraph 18.

¹⁰³⁸ Response to the Article 6(1)(c) Decision, paragraph 160.

¹⁰³⁹ Doc. ID 3587-19268: RFI 18, M.10078 Cargotec Konecranes RFI 18-00482556 msg

¹⁰⁴⁰ Cargotec internal document, Doc. ID 3661-27449, CAR-KAU-00043272.pptx, slide 23.

(D.v.f) Conclusion on ZPMC's potential expansion in the next three to five years

- (1124) In light of the above findings, the Commission takes the view that ZPMC is likely to expand its current market position and is likely become a growing and ever more relevant constraint on the Merged Entity in the future. The Commission cannot exclude that ZPMC will develop into a sufficient constraint at some point.
- (1125) The Notifying Parties submit that the competitive constraint imposed by ZPMC, thus, is immediate in the sense that ZPMC already has the ability and incentive to increase output today.¹⁰⁴¹
- (1126) However, the Commission finds that ZPMC's expansion is unlikely to be timely within the meaning of paragraph 75 of the Horizontal Merger Guidelines. It will take ZPMC several years – and at the very least more than three years - to overcome barriers to expansion and gain relevant market share, in particular in light of the immaturity of its straddle and shuttle carrier products and the required developments and testing which are unlikely to be subject of orders of more than testing batches within the next three to five years. While the Notifying Parties submit that ZPMC does not have to gain relevant market share before it can sufficiently constrain the Merged Entity¹⁰⁴², the Commission considers it unlikely that ZPMC will act as a significant constrain on the Merged Entity during a period where customers are not ready to order more than testing batches of straddle/shuttle carriers.
- (1127) The Commission notes that in any case, ZPMC will be the only remaining competitor.

(E) Conclusion

- (1128) The Commission finds that barriers to entry are very high from a technical and economical perspective, and potential entries and expansions will not be a source of sufficient competitive constraint in a timely manner. While the Commission cannot exclude that ZPMC might develop into a sufficient competitive constraint of the Notifying Parties, it is unlikely to happen in a timely manner. In any case, the Commission notes that ZPMC is the only somewhat competitive constraint left on the market for straddle and shuttle carriers in the foreseeable future. Even if ZPMC was a significant constraint today, the Proposed Transaction would still constitute a 3-to-2 merger.

7.3.1.8. Concerns raised during the market investigation

- (1129) Based on the Commission's assessment of the horizontal overlap for straddle and shuttle carriers and the feedback received from market participants, the Transaction will likely lead to an increase in prices for straddle and shuttle carriers in the EEA and reduce the number of alternative suppliers for terminal operators. It is likely that it would also impact other parameters of competition such as quality and innovation competition.
- (1130) **First**, due to combined entity's dominant market position and the highly-concentrated and quasi-duopolistic structure of the market for straddle and shuttle carriers, the Transaction is likely to result in higher prices and reduced number of alternative suppliers. The Transaction would lead to the combination of the two main competitors for the supply of straddle and shuttle carriers in the EEA and as such a quasi-monopoly with a very high combined market share well above 90%. The

¹⁰⁴¹ Reply to the SO, paragraphs 696 et seq., in particular 699.

¹⁰⁴² Reply to the SO, paragraph 699.

market for straddle and shuttle carriers is highly concentrated and customers would be left with one recent entrant with at present very limited market share post-Transaction. It can be assumed that this position, market structure and lack of competitive constraints will allow the Merged Entity to impose or generate significant price increases for straddle and shuttle carriers in the EEA and globally.

- (1131) **Second**, already pre-Transaction the Parties enjoy leading positions and significant pricing power, which will only increase as a result of the Transaction. As explained in Section 7.3.1.1, Cargotec and Konecranes are market leaders in the EEA and globally, being the largest producer of straddle and shuttle carriers in the EEA and globally both in terms of sales in value and volume. By merging with each their closest and most important competitor, the Parties would each lose their biggest competitive constraint and expand their pricing power further. Internal documents of Konecranes show that [internal document reference].¹⁰⁴³ Another internal document of Konecranes shows that [internal document reference]. This constraint would be eliminated through the Proposed Transaction.

Figure 71: [...]

[...]

Source: [Internal document reference].

- (1132) **Third**, a large number of market participants indicated their specific concern about the impact of the Transaction on the straddle and shuttle carrier market(s). Market participants express the view that the Transaction may lead to (i) a reduction of price, quality and innovation competition and longer delivery times, and (ii) the Merged Entity to operate independently on the market due to its dominant and quasi-monopolistic position.
- (1133) **In the first place**, in relation to the impact on prices, in the Commission's market investigation, a large majority of customers said that they expect a price increase both in straddle carriers and shuttle carriers as an impact of the Proposed Transaction.¹⁰⁴⁴ In the Commission's in-depth market investigation a vast majority of customers said they expected price increases both in manual straddle and shuttle carriers as well as automated straddle and shuttle carriers.¹⁰⁴⁵ Similarly, large majorities of customers expect price increases in the related after-sales services.¹⁰⁴⁶ Explanations provided are, inter alia, "Due to almost monopoly power."¹⁰⁴⁷ "Because there is no proper alternative."¹⁰⁴⁸ As regards potential price increases, one union of customers noted: "reduced competition and/or overseas competition will result in higher prices at least for straddle carriers, but also other custom built equipment"¹⁰⁴⁹ Another customer notes: "Cargotec's pricing is currently constrained by KONE as customers can threaten to move their business to KONE in the event that Cargotec increases its pricing. The proposed merger is likely to have an impact on prices in the Australian market as post-transaction there would be no alternative

¹⁰⁴³ Konecranes internal document, Doc. ID 3591-35023, RFI 18, M.10078 Cargotec Konecranes RFI 18-00888900 msg.

¹⁰⁴⁴ Responses to Q2 – Questionnaire to Customers, Doc. ID 3153, question D.D.1.

¹⁰⁴⁵ Responses to Q7 – PH2 Questionnaire to HTE Customers, Doc. ID 3608, questions 33.1 and 33.2.

¹⁰⁴⁶ Responses to Q7 – PH2 Questionnaire to HTE Customers, Doc. ID 3608, questions 34.1 and 34.2.

¹⁰⁴⁷ Response to Q7 – PH2 Questionnaire to HTE Customers, Doc. ID 3608, question 33.1.1.

¹⁰⁴⁸ Response to Q7 – PH2 Questionnaire to HTE Customers, Doc. ID 3608, question 33.1.1.

¹⁰⁴⁹ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question D.D.1.1.

supplier of straddle carriers.”¹⁰⁵⁰ And a GTO explained: “[We] estimate[s] that on the Straddle carrier market in particular, the merged entity will have very high market shares worldwide and in the EEA and there are a very limited amount of other straddle carrier providers on the market. Dependency towards the merged entity will be highly critical for shipping companies as customers will not have any leverage on prices, which are likely to increase post-Transaction.”¹⁰⁵¹ Another GTO expressed: “[Our company] estimates that the combined market shares of the Parties in the EEA is between 90-100% coupled with strong dependency from [our company] to the Parties. Apart from smaller competitors (ZPMC and Liebherr), there is a lack of many other alternative providers which will potentially lead to price increases from the Parties.”¹⁰⁵² Another customer said: “is likely to increase based on no major competitors in EEA region”.¹⁰⁵³ Similarly a potential competitor described: “[We are] especially concerned regarding the impact of the proposed transaction on the market for straddle carriers where the merged entity would be a monopoly. If Kalmar and Konecranes were to merge, customers would only receive one competitive offer with respect to straddle carriers and would depend on one supplier – customers would in effect have to accept whatever price they are presented with.”¹⁰⁵⁴

- (1134) **In the second place**, in relation to the impact on delivery times, a customer clarified its concern: “If it is left with only one effective supplier of straddle carriers post-Merger, the Company expects a negative effect on the delivery times and, therefore, a negative impact for its business. To be more precise, the current deliver time for straddle carriers is between 36 weeks and 52 weeks. The Company expects the delivery time to increase to 60 or 65 weeks post- transaction.”¹⁰⁵⁵
- (1135) **In the third place**, a number of respondents also expressed concerns about the impact of the Transaction on quality competition and innovation competition. An EEA customer voiced concerns in relation to product quality: “Please WATCH the product quality level as both companies provide lower and lower quality products each time we buy. [...] My fear is that after the merger there will be little competition within the EU, thus higher prices for everything they do AND lower quality. We may switch entirely to non-EU suppliers (i.e. China) if this trend continues!!!”¹⁰⁵⁶ Another customer voiced innovation related concerns: “We believe that there will be less competition particularly in automation, hybridization and electrification as the merging Parties are investing and competing against each other in those areas.”¹⁰⁵⁷ Another GTO stated: “Increased prices and less innovation power.”¹⁰⁵⁸
- (1136) **In the fourth place**, asked about the impact of the Transaction overall, a majority of customers said they expected a negative impact.¹⁰⁵⁹ Another GTO concluded: “1. One competitor less 2. Prices for equipment, spare parts and services are expected to raise 3. Already happening: Terms and Conditions and Warranty clauses get stricter. We expect this will only get worse with a bigger "Future Company" 4. As indicated

¹⁰⁵⁰ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question D.D.1.1.

¹⁰⁵¹ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question D.D.1.1.

¹⁰⁵² Response to Q7 – PH2 Questionnaire to HTE Customers, Doc. ID 3608, question 33.1.1.

¹⁰⁵³ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question D.D.1.1.

¹⁰⁵⁴ Minutes of a call with a competitor dated 3 May 2021, Doc. ID 1773, paragraph 27.

¹⁰⁵⁵ Non-confidential minutes of a call with a customer dated 23 March 2021, Doc. ID 588, paragraph 46.

¹⁰⁵⁶ Responses to Q7 – PH2 Questionnaire to HTE Customers, Doc. ID 3608, question 35.

¹⁰⁵⁷ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 67.1.

¹⁰⁵⁸ Response to Q7 – PH2 Questionnaire to HTE Customers, Doc. ID 3608, question 32.1.

¹⁰⁵⁹ Responses to Q7 – PH2 Questionnaire to HTE Customers, Doc. ID 3608, question 32.

before, we fear monopoly in certain product lines, such as Straddle and Shuttle Carriers”¹⁰⁶⁰. A GTO summarises: “We have a genuine concern that this merger will affect customers in a negative way.”¹⁰⁶¹ A potential competitor voiced: “The lack of competition would also allow the merged entity to exercise pressure on the customers, for instance by bundling their offer of straddle carriers with other types of equipment (‘if you do not by my empty container handler, I will raise my prices for straddle carriers’).”¹⁰⁶²

- (1137) **In the fifth place**, several market participants expressed concerns about losing a competitor in this already highly concentrated market. One customer states: “Losing one supplier will lead to incomplete competition in the market. [...]”¹⁰⁶³ A GTO lists as his concern: “1. One competitor less [...]”¹⁰⁶⁴. Another GTO explained: “Negative impacts are expected on the straddle carrier market due to the Parties high market shares worldwide and in the EEA, coupled with a strong dependency from [our company] to the Parties and lack of reliable alternative suppliers. [Our company] estimates that the merger may lead to potential price increases and, post transaction, the panel of suppliers will be strongly reduced and alternative purchasing sources will have to enter the market to compensate.”¹⁰⁶⁵
- (1138) **In the sixth place**, a significant number of respondents refer to the combined entity’s dominance or even ‘monopoly position’ post-Transaction. In this regard a competitor noted: “If the market is too concentrated to the extent of becoming almost monopolized, like the merge between Kalmar and Konecranes might end up making up the market, then it might result impossible for any newcomer to develop itself, if any customer considering to give business to such newcomer might suffer of consequences from the monopolist.” An international customer summarised: “Monopolistic market may be created.”¹⁰⁶⁶ Similarly, an EEA customer similarly voiced: “The merger means near-monopoly in Europe.”¹⁰⁶⁷ A GTO states: “[...] As indicated before, we fear monopoly in certain product lines, such as Straddle and Shuttle Carriers”¹⁰⁶⁸. Similarly, this is the main explanation for expected price increases listed by customers: “Due to almost monopoly power.”¹⁰⁶⁹ “Yes, they will have the monopoly of well-known and reliable European Cargo Handling Equipment.”¹⁰⁷⁰ “The merger means near-monopoly in Europe.”¹⁰⁷¹ “This merger would lead to a quasi monopolistic situation on the straddle and shuttle carriers markets which the terminal operators will suffer from.”¹⁰⁷²

¹⁰⁶⁰ Response to Q7 – PH2 Questionnaire to HTE Customers, Doc. ID 3608, question 32.1.
¹⁰⁶¹ Response to Q7 – PH2 Questionnaire to HTE Customers, Doc. ID 3608, question 35.
¹⁰⁶² Minutes of a call with a competitor dated 3 May 2021, Doc. ID 1773, paragraph 27.
¹⁰⁶³ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question D.D.1.1.
¹⁰⁶⁴ Response to Q7 – PH2 Questionnaire to HTE Customers, Doc. ID 3608, question 32.1.
¹⁰⁶⁵ Response to Q7 – PH2 Questionnaire to HTE Customers, Doc. ID 3608, question 32.1.
¹⁰⁶⁶ Response to Q7 – PH2 Questionnaire to HTE Customers, Doc. ID 3608, question 32.1.
¹⁰⁶⁷ Response to Q7 – PH2 Questionnaire to HTE Customers, Doc. ID 3608, question 32.1.
¹⁰⁶⁸ Response to Q7 – PH2 Questionnaire to HTE Customers, Doc. ID 3608, question 32.1.
¹⁰⁶⁹ Response to Q7 – PH2 Questionnaire to HTE Customers, Doc. ID 3608, question 33.1.1.
¹⁰⁷⁰ Response to Q7 – PH2 Questionnaire to HTE Customers, Doc. ID 3608, question 33.1.1.
¹⁰⁷¹ Response to Q7 – PH2 Questionnaire to HTE Customers, Doc. ID 3608, question 33.1.1.
¹⁰⁷² Response to Q7 – PH2 Questionnaire to HTE Customers, Doc. ID 3608, question 35.

7.3.1.9. Conclusion on the Commission's competitive assessment for straddle and shuttle carriers

(1139) **In conclusion**, the Commission finds that:

- (a) the plausible straddle and shuttle carrier market(s) are characterised by very high concentration with a very limited number of players, namely a quasi-duopoly of Cargotec and Konecranes and a still small recent entrant from China – this situation would be further exacerbated by the Transaction given the further increase in concentration levels and the Parties' very high post-Transaction combined market share which would surpass 90% both in value and volume and would essentially establish a quasi-monopoly under any of the plausible market definitions (global or EEA-wide);
- (b) Cargotec and Konecranes are the two clear market leaders and each other's closest competitors, on any of the plausible market(s) for straddle and shuttle carriers (global and EEA-wide) and can be differentiated from the only other player competing on the market;
- (c) switching suppliers is difficult for customers, and therefore seems to occur to a limited extent in practice;
- (d) the only remaining player on the market post-Transaction is at present not a significant competitive constraint on the Merged Entity and would likely need several years – at the very least more than three years - to grow its market position sufficiently to offset any potential price increase post-Transaction;
- (e) the ability of customers to exercise countervailing buyer power appears to be very limited and would not be sufficient to off-set a price increase;
- (f) barriers to entry are very high from a technical and economical perspective, and new entrants and potential expansions will not be a source of competitive constraint in a sufficient and timely manner as to offset anti-competitive effects of the merger.

(1140) In addition, the Commission finds that the Transaction is likely to have negative effects. It is particularly likely to lead to price increases and may impact other parameters of competition. Many market participants have raised specific concerns regarding the perceived negative impact the Transaction could have on the market for straddle and shuttle carriers in terms of price, quality and innovation competition as well as regards delivery times.

(1141) Based on the above, Commission considers that the Transaction leads to a significant impediment of effective competition on the plausible EEA market(s) for straddle and shuttle carriers, in particular by the creation or strengthening of a dominant position.

7.3.2. *Terminal tractors*

(1142) With regard to terminal tractors, the Commission assessed both whether Cargotec was merging with a potential competitor and whether it had the ability and incentive to hinder the expansion of a competitor. With regard to both aspects, the Commission finds that the proposed Transaction does not raise competition concerns.

7.3.2.1. Merger with a potential competitor

(1143) While Cargotec is an established supplier in terminal tractors, Konecranes is currently not active with its own terminal tractor product. Konecranes discontinued its production of terminal tractors in [year] when it closed its factory in [location]. Today, Konecranes only supplies manual terminal tractors as a distributor of the

Dutch special vehicle supplier Terberg, which means that Konecranes resells ([...]) of Terberg's terminal tractors, primarily in [country].

- (1144) Konecranes claims that [...].¹⁰⁷³
- (1145) Concentrations where an undertaking already active on a relevant market merges with a potential competitor in this market can have similar anti-competitive effects to mergers between two undertakings already active on the same relevant market and, thus, significantly impede effective competition, in particular through the creation or the strengthening of a dominant position (see paragraph 58 of the Horizontal Merger Guidelines).
- (1146) For a merger with a potential competitor to have significant anti-competitive effects, two basic conditions must be fulfilled (see paragraph 59 of the Horizontal Merger Guidelines).
- (1147) *First*, the potential competitor must already exert a significant constraining influence or there must be a significant likelihood that it would grow into an effective competitive force. Evidence that a potential competitor has plans to enter a market in a significant way could help the Commission to reach such a conclusion.
- (1148) *Second*, there must not be a sufficient number of other potential competitors, which could maintain sufficient competitive pressure after the merger.
- (1149) In light of this, the Commission investigated Konecranes' claim that it does not pursue any further terminal tractor business in order to see whether the Proposed Transaction would eliminate the entry of a potential future competitor in terminal tractors.
- (1150) *First*, the Commission finds that Konecranes is not active in terminal tractors or more specifically A-TTs at present and, therefore, does not exert a significant constraining influence in the market for terminal tractors or the plausible sub-segment for A-TTs.
- (1151) *Second*, the Commission does not find that there is a significant likelihood that Konecranes would grow into an effective competitive force in terminal tractors or A-TTs specifically.
- (1152) The Commission finds that internal documents of Konecranes¹⁰⁷⁴ confirm [...]¹⁰⁷⁵. In an internal assessment, Konecranes analysed that in the future, [...]. Another internal document dated [...] notes: [internal document reference].¹⁰⁷⁶ Another internal document dated [...], foresees [internal document reference].

Figure 72: [...]

[...]

Source: [Internal document reference].

- (1153) Another internal document further notes that [internal document reference]¹⁰⁷⁷. [Internal document reference]. The documents also foresees that [internal document reference].¹⁰⁷⁸

¹⁰⁷³ Form CO, Chapter 2, paragraph 23.

¹⁰⁷⁴ Form CO, 5.4 Submissions, Annex QK 5.4.117, slides 27 and 31 and Annex QK 5.4.126.

¹⁰⁷⁵ Form CO, Chapter 2, Tables 33 and 34.

¹⁰⁷⁶ Annex QK 1.14, slide 6.

¹⁰⁷⁷ Annex QK 5.4.189, slide 12.

- (1154) However, the Commission further finds that internal documents of Konecranes support Konecranes' claim that [...].¹⁰⁷⁹ Internal documents show that [...].¹⁰⁸⁰ [...] ¹⁰⁸¹, [...]. On the one hand, the Commission notes that internal documents do not show [internal document reference]¹⁰⁸². Internal documents also do not show [...]. On the other hand, the Commission notes [...].
- (1155) However, the Commission finds that, [...].
- (1156) In the second place, there is a sufficient number of other potential competitors both in terminal tractors and A-TTs specifically, which could maintain sufficient competitive pressure after the merger. In terminal tractors, as regards the plausible EEA market, Terberg has a strong market position of around [70-80]% in volume 2018-2020¹⁰⁸³ and the Commission considers that Terberg would remain the significant constraint on Cargotec, who has a market share of [10-20]% in volume in the EEA in 2018-2020, in the foreseeable future. As regards the plausible global market for terminal tractors, Terberg had a [20-30]% market share globally in volume in 2018-2020. Further there is another US-based manufacturer, namely Capacity, with a 2018-2020 market share of [5-10]%, which is a market share equivalent to the market share of the US-based manufacturer [...] as well as three other competitors with market shares ranging between [0-5]% and [5-10]% in 2020.¹⁰⁸⁴ As regards the plausible market for A-TTs, the Commission finds that, as submitted by the Parties¹⁰⁸⁵, there are several players currently developing A-TTs, such as Westwell Lab, Terberg, Volvo, Einride, Sinotruk, Sany, ZPMC/Shaanxi (with some of the products falling under SAE level 3, meaning an on-board driver would still be necessary for intervention). Some of these companies already have products in the pilot and testing stage such as Westwell Lab, Einride, Sinotruk, and ZPMC/Shaanxi, while Cargotec appears to still lag behind several of these potential entries.¹⁰⁸⁶ The Commission considers that Cargotec would face sufficient competitive constraints from several of these suppliers, in particular from Westwell Lab, whose product is on a comparable automation level but much more advanced in the development stage and considered as the [internal document reference] by Cargotec, see Figure 73 below.

Figure 73: [...]

[...]

Source: [Internal document reference].

- (1157) Further, a review of the internal documents did neither show any evidence of [...].
- (1158) While Konecranes had acquired MHPS's terminal tractor business as part of its 2017 acquisition, MHPS had only recently [...]. This production was closed and the MHPS facility in [location] rented out to another business. The Commission considers, first, that it is unlikely that Cargotec would restart this business in light of the described history of MHPS' plant in [location], and second, that Cargotec is

¹⁰⁷⁸ Konecranes Annex QK 7(c).4, slides 12 et seq.

¹⁰⁷⁹ RFI PN7 Annex QK23.

¹⁰⁸⁰ See, for instance: Doc. ID 3767-177, Notifying Party ID RFI 18-01524553 msg.

¹⁰⁸¹ Doc. ID 3592-86275, Notifying Parties ID RFI 18 Part 10 - RFI 18-01020240.

¹⁰⁸² Konecranes Annex QK 5.4.189, slide 65.

¹⁰⁸³ Form CO, Chapter 2, Table 34.

¹⁰⁸⁴ Form CO, Chapter 2, Table 33.

¹⁰⁸⁵ Form CO, Chapter 2, paragraph 220; Response to the Article 6(1)(c) Decision, paragraph 201.

¹⁰⁸⁶ Form CO, Chapter 2, paragraph 220.

unlikely to grow into an effective competitive force in terminal tractors in a sufficient and timely manner, even if it were to restart the MHPS terminal tractor business.

- (1159) As regards A-TTs specifically, Konecranes had entered into a framework agreement with Terberg in 2019, whereby [...]. An internal review of Konecranes' internal documents [...].
- (1160) The Commission therefore concludes that it is unlikely that Konecranes would grow into an effective competitive force in terminal tractors or A-TTs specifically in a timely manner post-Transaction. Therefore, the Proposed Transaction would not eliminate the entry of a potential future competitor in terminal tractors (and A-TTs in particular).

7.3.2.2. Hindering of expansion of competitors

- (1161) Only Cargotec is active in terminal tractors. However, a [...] EEA competitor of Cargotec in terminal tractors voiced the concern that it may lose access to “several” distributors it currently relies on in the EEA to distribute its terminal tractor products, because these are associated with Konecranes and post-Transaction the Merged Entity would have the Cargotec terminal tractors in its portfolio along with the Konecranes distributor base which are partially Terberg's terminal tractor distributor base.¹⁰⁸⁷ A customer took a similar view, stating: “[...] *Some dealers may be forced to give up Terberg dealership if they want to continue with the new company.*”¹⁰⁸⁸
- (1162) According to Paragraph 36 of the Horizontal Merger Guidelines, the proposed mergers would, if allowed to proceed, significantly impede effective competition by leaving the merged firm in a position where it would have the ability and incentive to make the expansion of smaller firms and potential competitors more difficult or otherwise restrict the ability of rival firms to compete. In such a case, competitors may not, either individually or in the aggregate, be in a position to constrain the merged entity to such a degree that it would not increase prices or take other actions detrimental to competition. For instance, the merged entity may have such a degree of control, or influence over, the supply of inputs or distribution possibilities that expansion or entry by rival firms may be more costly.
- (1163) In light of this, the Commission investigated whether the Merged Entity might be able to hinder the expansion of competitors in terminal tractors in line with paragraph 36 of the Horizontal Merger Guidelines.
- (1164) The Commission assessed whether the Merged Entity would have the ability and incentive to foreclose Terberg of its distributor base by pressuring distributors into stopping to sell Terberg terminal tractors. While Konecranes does not offer terminal tractors and thus there was no conflict of interest when distributors were selling both Konecranes equipment and Terberg's terminal tractors, this might change post-Transaction as Cargotec has terminal tractors in its portfolio.
- (1165) First, the Commission assessed whether the Merged Entity would have the ability to foreclose Terberg of its distributor base, see Section 7.3.2.2 (A) below. Second, the Commission assessed whether the Merged Entity would have the incentive to foreclose Terberg of its distributor base, see Section 7.3.2.2 (B) below. Third, the Commission assessed whether such a foreclosure would raise the costs or decrease

¹⁰⁸⁷ Non-confidential minutes of a call with a competitor dated 9 April 2021, paragraphs 31 to 33, as well as Q1 – Questionnaire to Competitors, question D.D.4.1.

¹⁰⁸⁸ Q2 – Questionnaire to Customers, question D.D.1.1.

the service quality of Terberg to a point that Terberg could no longer effectively constrain the Merged Entity's pricing, see Section 7.3.2.2 (C) below.

- (1166) The Commission notes in this regard that for terminal tractors, distributors and sales agents play a more prominent role than for other heavy container handling equipment. Terminal tractors are often not tendered out but purchased directly, either from OEM or distributors, in particular in the non-port segment (e.g. distribution centres). A local sales and service presence can generally be a plus factor for selling terminal tractors.¹⁰⁸⁹

(A) Ability to foreclose

- (1167) The Commission assessed whether the Merged Entity would have the ability to foreclose Terberg of its distributor base by pressuring distributors into stopping to sell Terberg terminal tractors.
- (1168) The Commission finds that, even if Konecranes' distribution network for mobile equipment was fully maintained post-Transaction, the Merged Entity would not be able to effectively foreclose Terberg. As the Parties submit themselves¹⁰⁹⁰, the structure of supply for terminal tractors, which are relatively commoditised high-volume products, differ from other horizontal transport equipment markets and is more similar to the mobile equipment markets. Due to their commoditised nature, terminal tractors are very often supplied via distributors and/or sales agents. They are often sold by distributors who also distribute mobile equipment. Distributors are typically independent but usually focus on one brand per equipment type in their portfolio.¹⁰⁹¹ Out of Terberg's 15 independent distributors in the EEA, only [number] also offer Konecranes mobile equipment. Thus, the Commission finds that in case of a foreclosure strategy, the Merged Entity could only affect [...] of Terberg's current independent distributors. The Commission notes that Terberg also sells directly to end-customers with local offices in Austria, Belgium, Germany, Hungary and the Netherlands, thus a foreclosure strategy would affect even a smaller percentage of Terberg's overall sales.
- (1169) The Commission further notes that an ability to pressure distributors into stopping to sell Terberg terminal tractors appears limited in light of Terberg's market leading position in terminal tractors. Terberg is not a small or potential competitor in the sense of paragraph 36 of the Horizontal Merger Guidelines. In the EEA, Terberg is the clear market leader in terminal tractors with a market share above 70% in 2018-2020¹⁰⁹² and, thus, with a strong market position. The Commission notes that in terms of production capacity, distributors would not even be able to replace sales of Terberg terminal tractors with Cargotec terminal tractors, who currently has a market share of approximately [10-20]% in the EEA in 2018-2020¹⁰⁹³.
- (1170) The Commission considers the Merged Entity's ability to foreclose Terberg of its distributor base as limited from a commercial perspective, even when considering a scenario in which the Merged Entity would pressure the distributors with the choice of either no longer selling Terberg terminal tractors or no longer having access to Konecranes' mobile equipment. Terberg's estimated total terminal tractor revenues in the EEA are similar to Konecranes' overall mobile equipment sales in the EEA

¹⁰⁸⁹ Form CO, Chapter 2, paragraphs 121 et seq.

¹⁰⁹⁰ Form CO, Chapter 2, paragraphs 121 et seq.

¹⁰⁹¹ Form CO, Chapter 2, paragraph 213.

¹⁰⁹² Form CO, Chapter 2, Table 34.

¹⁰⁹³ Form CO, Chapter 2, Table 34.

between 2018 and 2020.¹⁰⁹⁴ It does not seem plausible that the independent distributors would find it profitable to substitute Terberg's terminal tractors with those of Cargotec.

(B) Incentive to foreclose

- (1171) The Commission considers that the Merged Entity would have a very limited incentive to foreclose Terberg of its distributor base.
- (1172) First, while the Parties submit that it would be uncommon for a distributor to sell Cargotec and Terberg terminal tractors¹⁰⁹⁵, the Commission notes that Cargotec currently sells the vast majority of its terminal tractors and mobile equipment directly and not through independent distributors.¹⁰⁹⁶ A change of this sales channel structure after the merger is uncertain. Second, given Terberg's strong market position of Terberg and the high percentage of sales channels, which could not be affected by the Merged Entity, namely the majority of the distributor base and direct sales outlets in Austria, Belgium, Germany, Hungary and the Netherlands, the Merged Entity's ability to harm Terberg's business appears limited. Third, the likelihood that the distributors which could theoretically be pressured by the Merged Entity to stop selling Terberg terminal tractors would not fall in line appears high from a commercial perspective. The Merged Entity would even run a high risk that these distributors would stop relations with the Merged Entity instead when being pressured.

(C) Raise of costs and deterioration of services of rival firm

- (1173) For completeness, the Commission notes that any hypothetical foreclosure strategy is unlikely to lead to significant cost increases for Terberg to a point where Terberg would no longer be able to effectively constrain the Merged Entity in light of Terberg's strong market position and number of sales channels that could not even be affected in theory.

(D) Conclusion

- (1174) The Commission concludes that the Merged Entity would have neither the ability nor the incentive to restrict the ability of rival firms to compete through foreclosing the distributor base.

7.3.3. *AGVs*

- (1175) While Konecranes is an established supplier and was first-to-market with an AGV product, Cargotec only supplied a total of [...].
- (1176) [...].¹⁰⁹⁷ The Commission investigated [...] in order to see whether the Proposed Transaction would eliminate the entry of a potential future competitor in AGV.
- (1177) Concentrations where an undertaking already active on a relevant market merges with a potential competitor in this market can have similar anti-competitive effects to mergers between two undertakings already active on the same relevant market and, thus, significantly impede effective competition, in particular through the creation or the strengthening of a dominant position (see paragraph 58 of the Horizontal Merger Guidelines).

¹⁰⁹⁴ See Response to the Article 6(1)(c) Decision, paragraph 191.

¹⁰⁹⁵ Form CO, Chapter 2, paragraph 213.

¹⁰⁹⁶ Response to the Article 6(1)(c) Decision, paragraph 191.

¹⁰⁹⁷ Form CO, Chapter 2, paragraphs 32 and 231.

- (1178) For a merger with a potential competitor to have significant anti-competitive effects, two basic conditions must be fulfilled (see paragraph 59 of the Horizontal Merger Guidelines).
- (1179) *First*, the potential competitor must already exert a significant constraining influence or there must be a significant likelihood that it would grow into an effective competitive force. Evidence that a potential competitor has plans to enter a market in a significant way could help the Commission to reach such a conclusion.
- (1180) *Second*, there must not be a sufficient number of other potential competitors, which could maintain sufficient competitive pressure after the merger.
- (1181) Accordingly, the Commission investigated whether Cargotec has plans to enter the market in a significant way. The Commission's market investigation has not shown that Cargotec would enter the market for AGVs sufficiently timely and effectively.
- (1182) [...].
- (1183) The assembly of the [...].
- (1184) A review of the internal documents did not contradict Cargotec's claim [...].¹⁰⁹⁸ The review of the internal documents supports this statement.¹⁰⁹⁹
- (1185) A review of the internal document does not contradict Cargotec's claim [...].
- (1186) In any case, the Commission did not find indications that Cargotec would be able to enter the AGV market in a sufficient and timely manner.
- (1187) Therefore, the Commission finds that the proposed Transaction does not have significant anti-competitive effects in relation to the plausible market(s) for AGVs.

7.4. Mobile Equipment

7.4.1. Reach stackers

- 7.4.1.1. The Transaction leads to a very large combined market share in an already concentrated market
- (1188) The Transaction will lead to a very large combined market share in the already concentrated EEA market for reach stackers.
- (A) The Transaction leads to a very large market share, with a very significant increment
- (1189) The Transaction would lead to a very large combined market share in the EEA market for reach stackers.
- (1190) According to market share estimates submitted by the Notifying Parties, shown in Table 9, the Merged Entity would have a 2018-2020¹¹⁰⁰ combined EEA volume share of [70-80]%.

¹⁰⁹⁸ Form CO, Chapter 2, paragraph 32, footnote 21.

¹⁰⁹⁹ Notifying Parties' response to RFI PN7 Annex QC34(b).1 and RFI PN7 Annex QC34(b).2.

¹¹⁰⁰ While the demand for reach stackers is not as lumpy as for example for gantry cranes, it nevertheless appears to be appropriate to consider a multi-year span to accurately account for market participants' market positions, as year-on-year sales do vary.

Table 9 – Form CO: Reach stackers EEA market shares in volume

Reach stackers, EEA market shares in volume (units), 2018-2020, Form CO		
	Share	Units
Cargotec	[40-50]%	[...]
Konecranes	[30-40]%	[...]
<i>Parties combined</i>	<i>[70-80]%</i>	<i>[...]</i>
Sany	[0-5]%	[...]
Hyster	[5-10]%	[...]
CVS	[10-20]%	[...]
Others	[5-10]%	[...]
Total market	100%	[...]

Source: Form CO, RFI PN2 – Annex – Q5 – Confidential – market shares.

(1191) According to the Commission's market reconstruction,¹¹⁰¹ shown in Table 10, the Merged Entity would have a 2018-2020 combined EEA volume share of [70-80]% in reach stackers.

Table 10 – Market reconstruction: Reach stackers EEA market shares in volume

Reach stackers, EEA market shares in volume (units), 2018-2020, market reconstruction		
	Share	Units
Cargotec	[40-50]%	[...]
Konecranes	[30-40]%	[...]
<i>Parties combined</i>	<i>[70-80]%</i>	<i>[...]</i>
Sany	[0-5]%	[...]
Hyster	[5-10]%	[...]
CVS	[10-20]%	[...]
Liebherr	[0-5]%	[...]
FTMH	[0-5]%	[...]
CES	[0-5]%	[...]
Uplifting	[0-5]%	[...]
Total market	100%	1256

Source: The Commission's market reconstruction.

(1192) Therefore, the Merged Entity is the clear market leader in the EEA market for reach stackers. Irrespective of whether data submitted by the Notifying Parties or data from the Commission's market reconstruction is considered, the Merged Entity would have an EEA market share of over 70%.

(1193) While the Notifying Parties point out that firms with over 50% market share 'may nevertheless not have market power',¹¹⁰² according to the Horizontal Merger

¹¹⁰¹ The Commission sent requests for EEA sales data for reach stackers to 15 companies and to the two Parties. 13 companies and the two Parties provided replies. For the data for the two companies that could not be obtained (FTMH and CES), estimates provided by the Notifying Parties in Reply to Request for information RFI 35, question 1 were used instead.

Guidelines, ‘very large market shares – 50% or more – may in themselves be evidence of the existence of a dominant market position’.¹¹⁰³ Therefore, while other factors need to be taken into account (e.g. ability of (potential) competitors to effectively constrain the Merged Entity), the Merged Entity’s market share of over 70% is an indication for a dominant market position.

(B) Only a limited number of suppliers of reach stackers are active in the EEA

(B.i) *The Parties’ internal documents and data provided by the Notifying Parties show that only a limited number of suppliers of reach stackers are active in the EEA*

- (1194) The EEA market for reach stackers is characterised by the presence of only a limited number of active suppliers. The Parties attribute 2018-2020 EEA sales to five companies by name, namely Cargotec, Konecranes, CVS, Hyster and Sany.¹¹⁰⁴ In addition, the Commission is aware that also Liebherr, FTMH, Uplifting and CES have supplied reach stackers in the EEA. It therefore appears that instead of continuing ‘to face competition from many well-established players’,¹¹⁰⁵ the Merged Entity, will be one of only eight suppliers of reach stackers active in the EEA, of which some only have a very minor market presence, as shown below.
- (1195) The Notifying Parties submit that in bidding markets, effective competition is ensured ‘if buyers can secure quotes from three or more credible competitors’ and that ‘[m]arket share figures only take into account the activity of the winners of past tenders, but do not show how many credible competitors actually participated as bidders and thus created competitive constraints’.¹¹⁰⁶ As discussed further below in Section 7.4.1.2, customers indeed often have access to only a very limited subset of suppliers of reach stackers, far smaller than the overall number of suppliers active in the EEA market.
- (1196) The Parties themselves internally track only a limited number of rivals which they consider to be active in Europe. For example, in an internal Cargotec document, [internal document reference].¹¹⁰⁷ Further, when considering the product portfolio it benchmarks its own reach stacker products against, Kalmar appears to primarily do so against the limited number of main competitors active in the EEA. As seen in the extract from an internal Kalmar document captioned in Figure 74, [internal document reference].

Figure 74: Kalmar benchmarking of reach stacker against competitor products

[...]

Source: [Internal document reference].

- (1197) Similarly, Konecranes, when benchmarking its Lift Trucks (mobile equipment overall) product portfolio against that of competitors, only considers a limited number of players. In the slide from an internal document captioned in Figure 75, Konecranes [...].

¹¹⁰² Response to the Article 6(1)(c) Decision, paragraph 242.

¹¹⁰³ Horizontal Merger Guidelines, paragraph 17.

¹¹⁰⁴ Reply to RFI 2, Annex Q5.

¹¹⁰⁵ Form CO, Chapter 2, paragraph 293.

¹¹⁰⁶ Reply to the SO, paragraph 808.

¹¹⁰⁷ Doc. ID 3667-54102 (The Parties’ reply to the Commission’s request for information RFI 17, CAR-PRA-00060446.pptx), slide 40.

Figure 75: Konecranes benchmarking of Lift Truck portfolio against competitors

[...]

Source: [Internal document reference].

(1198) Further, in a document considering mobile equipment overall, of which reach stackers are a part, Konecranes analyses that [internal document reference].¹¹⁰⁸ While the Notifying Parties submit that the document says [...],¹¹⁰⁹ it is apparent that, as competition with [...] is highlighted in [location] and [location] and [location] regions and competition with [...] highlighted in [location], this suggests that in the EEA market for reach stackers Konecranes considers only [...].

(B.ii) Introduction to the companies active in reach stackers in the EEA

(1199) As discussed in Section 7.4.1.1 (B.i), and as seen in the market share tables, only a limited number of companies aside of the Parties are active in the supply of reach stackers in the EEA.

(1200) **First**, Cargotec (via its business unit Kalmar) is a supplier of mobile equipment, including reach stackers. It serves EEA demand for reach stackers from its factory in Stargard, Poland. In addition, it also has a factory in China. It has an EEA 2018-2020 reach stacker market share of [40-50]% according to the data provided by the Notifying Parties, and of [40-50]% according to the market reconstruction. It considers itself to be [internal document reference] in reach stackers,¹¹¹⁰ and to have [internal document reference].¹¹¹¹ Market participants consider Cargotec to be significantly stronger than its competitors in relation to key customer purchase criteria such as brand reputation, vehicle quality, product range and after-sales network.¹¹¹²

(1201) **Second**, Konecranes (via its Lift Trucks business unit) is a supplier of mobile equipment, including reach stackers. It serves EEA demand for reach stackers from its factory in [location]. In addition, it also has a factory in [country]. It has an EEA 2018-2020 reach stacker market share of [30-40]% according to the data provided by the Notifying Parties, and of [30-40]% according to the market reconstruction. It considers itself to be [internal document reference]¹¹¹³ in the lift trucks industry (of which reach stackers are a part) and to have [internal document reference].¹¹¹⁴ Market participants consider Konecranes to be second only to Cargotec in relation to key customer purchase criteria such as brand reputation, vehicle quality, product range and after-sales network.¹¹¹⁵

¹¹⁰⁸ Form CO, Pre-notification RFI 2 – Annex QK89.1, slide 5.

¹¹⁰⁹ Reply to the SO, paragraph 811.

¹¹¹⁰ Doc. ID 3660-61559 (The Parties' reply to the Commission's request for information RFI 17, CAR-KAR-00164580.docx).

¹¹¹¹ Reply to Request for information RFI 24, Annex QC7.9, slide 2.

¹¹¹² See Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 14.1, Responses to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 19.1 and Responses to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 82.1.

¹¹¹³ Doc. ID 3586-81225 (The Parties' reply to the Commission's request for information RFI 18, M.10078 Cargotec Konecranes RFI 18-00351209.docx).

¹¹¹⁴ Form CO, PN RFI 4, Annex QK4.c.3, slide 15.

¹¹¹⁵ See Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 14.1, Responses to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 19.1 and Responses to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 82.1.

- (1202) **Third**, CVS Ferrari ('CVS') is an Italy-based manufacturer of mobile equipment, including reach stackers. It has an EEA 2018-2020 reach stacker market share of [10-20]% according to the data provided by the Notifying Parties, and of [10-20]% according to the market reconstruction. Market participants consider CVS to be significantly weaker than the Parties in relation to key customer purchase criteria such as brand reputation, vehicle quality, product range and after-sales network.¹¹¹⁶
- (1203) **Fourth**, Hyster is a US-based manufacturer of mobile equipment (including reach stackers), with a long established production site in the Netherlands (it also has reach stacker producing subsidiaries in e.g. India and China, which largely serve other world regions). It has an EEA reach stacker 2018-2020 market share of [5-10]% according to the data provided by the Notifying Parties, and of [5-10]% according to the market reconstruction. Market participants consider Hyster to be weaker than the Parties in relation to key customer purchase criteria such as brand reputation, vehicle quality, product range and after-sales network.¹¹¹⁷
- (1204) **Fifth**, Liebherr is a manufacturer of a range of container and material handling equipment, including reach stackers (but not other types of mobile equipment). Liebherr has a reach stacker production facility in the UK. The company has an EEA 2018-2020 reach stacker market share of [0-5]% according to the data provided by the Notifying Parties, and of [0-5]% according to the market reconstruction. Market participants consider Liebherr to be significantly weaker than the Parties in relation to key customer purchase criteria such as brand reputation, vehicle quality, product range and after-sales network.¹¹¹⁸
- (1205) **Sixth**, Sany is a Chinese manufacturer of construction equipment and material handling equipment, including mobile equipment and reach stackers. Sany has an assembly facility in Germany. The company has an EEA 2018-2020 reach stacker market share of [0-5]% according to the data provided by the Notifying Parties, and of [0-5]% according to the market reconstruction. Market participants consider Sany to be significantly weaker than the Parties in relation to key customer purchase criteria such as brand reputation, vehicle quality, product range and after-sales network.¹¹¹⁹
- (1206) **Seventh**, Fantuzzi Team Material Handling ('FTMH') is an Italy-based manufacturer of mobile equipment, including reach stackers. It was founded by staff of the former mobile equipment manufacturer Fantuzzi, which was acquired by Terex (and in turn Konecranes). The company has an EEA 2018-2020 reach stacker market share of [0-5]% according to the marker reconstruction. Market participants consider FTMH to be significantly weaker than the Parties in relation to key customer purchase

¹¹¹⁶ See Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 14.1, Responses to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 19.1 and Responses to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 82.1.

¹¹¹⁷ See Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 14.1, Responses to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 19.1 and Responses to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 82.1.

¹¹¹⁸ See Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 14.1, Responses to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 19.1 and Responses to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 82.1.

¹¹¹⁹ See Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 14.1, Responses to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 19.1 and Responses to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 82.1.

criteria such as brand reputation, vehicle quality, product range and after-sales network.¹¹²⁰

- (1207) **Eighth**, Uplifting is a Spanish manufacturer of mobile equipment, including reach stackers. The company has an EEA 2018-2020 reach stacker market share of [0-5]% according to the marker reconstruction. Uplifting is not mentioned by any customer as one of the top five reach stacker suppliers in the EEA according to any parameter (e.g. quality, product range, after-sales, etc.).¹¹²¹
- (1208) **Ninth**, CES is an Italian manufacturer of reach stackers (but no other mobile equipment). The company has an EEA 2018-2020 reach stacker market share of [0-5]% according to the marker reconstruction. CES is not mentioned by any customer as one of the top five reach stacker suppliers in the EEA according to any parameter (e.g. quality, product range, after-sales, etc.).¹¹²²
- (1209) The competitive positions of these companies, and competitors' limitations when compared with Cargotec and Konecranes, are further discussed below – including in Section 7.4.1.4.
- (C) The Transaction would lead to a significant increase in concentration in an already concentrated market
- (1210) The Transaction would lead to a significant increase in concentration in an already concentrated EEA market for reach stackers.
- (1211) **First**, the Transaction would lead to a very significant market share increment of over 30%.
- (1212) **Second**, according to the data submitted by the Notifying Parties, the Merged Entity would be around [...] times as large the next largest competitor, CVS. Further, according to the Notifying Parties' data, there would only be two competitors to the Merged Entity with a market share of over 5%, CVS ([10-20]%) and Hyster ([5-10]%). Therefore, the Merged Entity would be significantly larger than any of its rivals in the EEA.
- (1213) **Third**, the very significant increase in concentration and the very limited market position of competitors in contrast to the Merged Entity is also expressed in the relevant HHI values. Based on data from the Commission's market reconstruction, the EEA market for reach stackers would have a pre-Transaction HHI value of [2500-3000]. Post-Transaction, this concentration would significantly increase. The post-Transaction HHI value for reach stackers would be [5500-6000], with a delta of [2500-2600]. These values are significantly above the thresholds for which the Commission is unlikely to find competition concerns.¹¹²³ The EEA market for reach stackers was therefore already concentrated pre-Transaction – and would be significantly more so post-Transaction.

¹¹²⁰ See Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 14.1, Responses to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 19.1 and Responses to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 82.1.

¹¹²¹ Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 14.1.

¹¹²² Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 14.1.

¹¹²³ Horizontal Merger Guidelines, paragraphs 19-21.

(D) The EEA market for reach stackers has consolidated over the past ten years

- (1214) The Notifying Parties submit that the Commission's Article 6(1)(c) Decision 'takes a static view and fails to consider the strength of numerous other suppliers of reach stackers who are in a position to expand further post-Proposed Transaction'.¹¹²⁴ While the issue of potential expansion by competitors is discussed in Section 7.4.1.3, it is clear that when considering a longer timeframe, in particular the last ten years, no indications of an overall expansion by competitors vis-à-vis the Parties are observable. In fact, according to the data submitted by the Notifying Parties,¹¹²⁵ the market share of Cargotec increased from [30-40]% in 2010 to [40-50]% in 2020, and of Konecranes from [20-30]% in 2010 to [20-30]% 2020. The Parties' combined share therewith increased from [50-60]% in 2010 to [70-80]% in 2020. At the same time, the market share of the EEA competitors that the Notifying Parties grouped under 'Other' (i.e. all competitors except for CVS, Hyster and Sany), declined from [20-30]% in 2010 to [5-10]% in 2020. This is another clear indicator showing that even when taking a longer term view, the 'strength of numerous other suppliers of reach stackers' appears to be very limited in contrast to the very large – and increasing – market share of the Merged Entity.
- (1215) The Notifying Parties submit that competitor CVS has significantly increased its market share in the past years.¹¹²⁶ Indeed, according to the data submitted by the Notifying Parties, CVS increased its market share from [0-5]% in 2010 to [10-20]% in 2020. With respect to Sany, the Notifying Parties state that the Commission's Article 6(1)(c) Decision '*fails to consider the growing market share of Sany in Europe on the market for reach stackers [...] by referring to an EEA-wide market which disregards Sany's already successful footprint in the UK*'.¹¹²⁷ Indeed, according to the data provided by the Notifying Parties,¹¹²⁸ Sany increased its market share in the hypothetical market the Notifying Parties refer to as 'Europe'¹¹²⁹ from [0-5]% in 2010 to [5-10]% in 2020. This has however not substantially altered the market structure, as also on this hypothetical 'Europe' market for reach stackers, the Parties' combined market share over the past ten years fluctuated around [70-80]% ([60-70]% in 2020). In any case, when considering the EEA market for reach stackers, Sany's market position has not changed substantially in the past ten years according to the data provided by the Notifying Parties¹¹³⁰ – in 2010 Sany's market share was [0-5]%, in 2020 it was [0-5]%.
- (1216) The Notifying Parties submit that such an assessment considering market share development over the past ten years 'is erroneous as, rather than considering a longer historic period, a forward-looking assessment should look into the future and take into account the possibility of existing players expanding or of new players entering the market'.¹¹³¹ The Commission however observes that an assessment of past market share developments can provide a first indication of dynamics in the market in question. In any event, questions of potential entry and expansion in turn are considered in Sections 7.4.1.3 and 7.4.1.4.

¹¹²⁴ Response to the Article 6(1)(c) Decision, paragraph 243.

¹¹²⁵ Form CO, RFI PN2 – Annex – Q5 – Confidential – market shares.

¹¹²⁶ Response to the Article 6(1)(c) Decision, paragraph 245.

¹¹²⁷ Response to the Article 6(1)(c) Decision, paragraph 244.

¹¹²⁸ Form CO, RFI PN2 – Annex – Q5 – Confidential – market shares.

¹¹²⁹ EEA and UK, Switzerland, Turkey and Ukraine.

¹¹³⁰ Form CO, RFI PN2 – Annex – Q5 – Confidential – market shares.

¹¹³¹ Reply to the SO, paragraph 797.

(1217) Therefore, market share developments beyond the 2018-2020 timeframe reveal the increasing consolidation of the EEA market for reach stackers. In the last ten years competitors were not able to expand at the expense of the market leaders Cargotec and Konecranes – on the contrary, the Notifying Parties’ market share has increased to their competitors’ detriment.

(E) The Notifying Parties’ consider themselves and each other to hold important market positions pre-Transaction

(1218) The Notifying Parties’ large market shares pre-Transaction are confirmed by the Notifying Parties’ internal documents.

(1219) For example, a Cargotec internal document, captioned in Figure 76, assesses that Cargotec has a 2020 CCH (umbrella term for all counterbalanced container handlers, i.e. reach stackers, full container handlers, empty container handlers) market share of [30-40]% in North-East Europe and of [40-50]% in South-West Europe.

Figure 76: Counterbalanced container handlers 2020-2024 market share projection

[...]

Source: [Internal document reference].

(1220) The Notifying Parties in relation to this document observe that it also contains the assessment on another slide that [internal document reference].¹¹³² The Commission observes that Sany is indeed a significant player globally in relation to reach stackers (likely no.2 in global deliveries of reach stackers after Cargotec). However, this is contrasted by its still very minor market position in the EEA (2018-2020 of [0-5]% according to the data submitted by the Notifying Parties).

(1221) Considering its 2019 market share in reach stackers, Cargotec in another internal document considers that in North East Europe and in South West Europe it each has a market share of [40-50]%.¹¹³³

(1222) In another internal document, Cargotec considers the 2017 reach stacker market share of itself and its main competitors in different world regions. Captioned in Figure 77, [internal document reference].

Figure 77: Cargotec assessment of 2017 reach stacker market shares by world region

[...]

Source: [Internal document reference].

(1223) Interestingly, an internal Cargotec document also includes an assessment considering the Kalmar (Cargotec) reach stacker market share by region – based on the respective regions’ emission standards. Captioned in Figure 78, this assessment shows that in the ‘Europe’ region that requires EU4-EU5 compliant machines, the 2018-2019 Kalmar (Cargotec) market share would be [40-50]%.

Figure 78: [...]

[...]

Source: [Internal document reference].

¹¹³² Response to the Article 6(1)(c) Decision, paragraph 247.

¹¹³³ Doc. ID 3660-45954 (The Parties’ reply to the Commission’s request for information RFI 17, CAR-KAR-00164783.pptx), slide 25.

- (1224) Considering its reach stacker market share in Norway, Cargotec in an internal document assesses: [internal document reference].¹¹³⁴
- (1225) In another document, Cargotec assesses with a view of the proposed merger with Konecranes, that [internal document reference].¹¹³⁵ The same document considers Kalmar's (Cargotec's) market share to be [60-70]% in Belgium, [60-70]% in Germany (with Konecranes at [0-5]% but a large new announced order) and [60-70]% in France (with Konecranes at [20-30]%).
- (1226) In a document analysing [internal document reference].¹¹³⁶
- (1227) The Notifying Parties submit that in some internal documents the Notifying Parties also observe falling global market shares and an increase in competition, e.g. from Chinese manufacturers.¹¹³⁷ With respect to the observed market shares in Europe (of which the EEA is a part) however, the Notifying Parties continue to observe large own market shares and overall very limited presence of Chinese competitors.
- (1228) Therefore, while the Parties' internal estimates of their own and each others' market shares and market positions vary across documents, they all confirm that the Parties are the European market leaders in reach stackers and that the Merged Entity would have a very large combined market share of over 50% in the EEA market for reach stackers, which is indicative of a dominant position.
- (F) Market participants consider the Parties to hold important market positions and the Merged Entity to have a very large market share
- (1229) Customers, distributors and competitors of the Notifying Parties consider that the Notifying Parties hold important market positions in the EEA reach stackers market and that the Merged Entity would have a very large market share.
- (1230) For example, a customer describes that '[r]egarding reach stackers, only few suppliers are left on the market: essentially Cargotec, Konecranes and Hyster' and that it it 'only regards the Parties and Hyster as real alternatives for its needs'.¹¹³⁸
- (1231) A competitor of the Notifying Parties submits that '[d]espite Konecranes and Kalmar's strong positioning on the European reach stackers market (i.e., approximately one third each of the market), Sany is emerging as a serious alternative (i.e., approximately 10% of the worldwide market share) because its production of sub components in China allows it to offer competitive prices. Sany currently has around 10% market share worldwide. It is assumed that the EU market share is similar'.¹¹³⁹
- (1232) Another competitor explains that 'Hyster is the third in Europe in terms of market share in lifttrucks overall. The Parties have together more than 60 percent of market share in heavy-duty forklifts, reach stackers and empty container handlers'.¹¹⁴⁰
- (1233) Yet another competitor submits that 'Sany's market share in the markets for reach stackers, empty container handlers and heavy-duty forklift trucks in Europe is below

¹¹³⁴ Doc. ID 3738-2362 (The Parties' reply to the Commission's request for information RFI 17, CAR-
GRA-00008231.docx).

¹¹³⁵ Doc. ID 3670-26331 (The Parties' reply to the Commission's request for information RFI 17, CAR-
VEH-00129399.pptx), slides 7 and 16.

¹¹³⁶ Form CO, RFI PN7 Annex QK22.1, slide 16.

¹¹³⁷ Reply to the SO, paragraphs 804-806.

¹¹³⁸ Doc. ID 257, Minutes of a call with a customer, 9 March 2021.

¹¹³⁹ Doc. ID 598, Minutes of a call with a competitor, 22 March 2021.

¹¹⁴⁰ Doc. ID 932, Minutes of a call with a competitor, 20 April 2021.

10%, but the Company is in a growing mode. The market for reach stackers in Europe is the most concentrated, as aside of the Parties, only Hyster appears to be focusing significantly on this segment and other suppliers, like CVS Ferrari only have a minor presence'.¹¹⁴¹

- (1234) A further competitor explains: 'Regarding the OEMs' presence in the different mobile equipment markets (i.e., reach stackers, empty container handlers, full container handlers and heavy-duty forklift trucks), the northern European market is dominated by Kalmar and Konecranes. With regards to the Scandinavian market specifically, Kalmar and Konecranes are perceived as by far the market leaders. [...] Hyster is a sizeable competitor in the Netherlands, Benelux and the United Kingdom but its presence is limited in Germany. CVS Ferrari is active in Germany, but is not perceived as having a strong market position. Chinese players are perceived as having a limited presence, or even quasi non-existent in the Northern European and German markets'. Further, this competitor submits that '[i]n the Southern-European markets (i.e., France, Italy and Spain), Kalmar and Konecranes are perceived as major players but are not as strong as in Northern Europe, notably because Hyster has a larger presence. While CVS Ferrari is not perceived as a strong player in France and is only starting to be active in Spain, it is very active in Italy (its home market) where it is perceived as stronger than the Parties. Konecranes has a very limited presence in Italy'.¹¹⁴²
- (1235) A distributor describes Kalmar (Cargotec) as '*clearly dominant*' in the supply of mobile equipment, of which reach stackers are a part, in Spain.¹¹⁴³
- (1236) Another distributor 'estimates that Konecranes and Kalmar hold each a 40% market share across all mobile equipment combined (i.e., forklifts, reach stackers and empty container handlers) in the Netherlands. Hyster would hold the remaining shares in the mobile equipment market, with Sany, Liebherr and CVS Ferrari representing only a small percentage'.¹¹⁴⁴
- (1237) Considering the competitive situation in Belgium and the Netherlands overall, another distributor explains that '[t]he two main suppliers in Belgium and in the Netherlands across forklifts, empty container handlers and reach stackers are Kalmar and Konecranes, Kalmar has an estimated share of 40% and Konecranes has an estimated share of 30% in Benelux. Kalmar's position is a little stronger than Konecranes because of historical reasons. Kalmar has a factory owned branch selling directly its products in Belgium. It used to be a dealer, but Cargotec purchased the company from the owner. Hyster has an estimated share of 20%. The remaining suppliers hold an aggregate share of 10%, which includes Sany and Svetruck'.¹¹⁴⁵
- (1238) Another distributor describes specifically for Italy, that '[t]he two main suppliers in Italy across forklifts, reach stackers and empty containers are Kalmar and Hyster, each one with an estimated share of 30%. Konecranes (via [its distributor]) and CVS have each an estimated share of 15%. CVS is however currently struggling to survive in the Italian market. The remaining suppliers hold an aggregated share of 10%, which includes FTMH (an Italian local manufacturer), Sany, Svetruck and Liebherr. These estimates vary from year to year, as they may depend on a very few orders

¹¹⁴¹ Doc. ID 657, Minutes of a call with a competitor, 22 April 2021.

¹¹⁴² Doc. ID 1773, Minutes of a call with a competitor, 3 May 2021.

¹¹⁴³ Doc. ID 261, Minutes of a call with a distributor, 24 February 2021.

¹¹⁴⁴ Doc. ID 673, Minutes of a call with a distributor, 26 February 2021.

¹¹⁴⁵ Doc. ID 502, Minutes of a call with a distributor, 14 April 2021.

from a very few customers: the supplier winning that customers may increase its share from 15% to 45% in one year'. Further, this customer 'perceives a small difference in these market positions when considering specific types of mobile equipment products in Italy' and 'CVS has a share of slightly above 15% in reach stackers'.¹¹⁴⁶

- (1239) Another distributor, with respect to Northern Europe submits that '[t]he two main suppliers in Denmark, Norway and Sweden across heavy-duty forklifts and reach stackers are Kalmar and Konecranes. In these countries, the Parties have a combined share of approximately 75% of the market. The remaining suppliers hold an aggregate share of 25%, which includes CVS Ferrari, Hyster, Sany and Svetruck. Svetruck is not active in reach stackers'.¹¹⁴⁷
- (1240) Yet another distributor explains that '[w]ith regards to the market positions of the different players active in the Swedish market for mobile equipment supplied for port operations, the main players are Konecranes, Kalmar and Svetruck. The Parties have a dominant position and hold each approximately 20 – 30 % of the market share. In the market for mobile equipment supplied for sawmills applications, Svetruck holds about 40% of the market share while the Parties both hold approximately 25% each. Hyster, CVS Ferrari and Sany have a minor presence in these markets for mobile equipment'. Svetruck is however not active in reach stackers. The same distributor submits that '[i]n the Norwegian market for mobile equipment, Kalmar has around 40% of the market share, and Konecranes could have up to 25-30%. In any case the Parties together have at least 60% of the market. Svetruck is perceived as a smaller player in this market and holds approximately 20% of the share. The remaining suppliers hold the rest of the share, which includes Hyundai, Ferrari, Hyster and other OEMs'.¹¹⁴⁸ Again, it is important to note that Svetruck is not active in reach stackers.
- (1241) Therefore many market participants consider that the Merged Entity would have a combined market share of over 50%, which is indicative of a dominant position.

(G) Conclusion

- (1242) For the reasons set out in this Section 7.4.1.1, the Commission considers that the Transaction results in significant further consolidation (expressed in a very high HHI delta of [2500-2600]) in a market with only a limited number of suppliers that has already seen significant consolidation over the past ten years. The Transaction would lead to a very large combined market share of above 70%, indicative of a dominant market position in the EEA market for reach stackers. Market participants and the Notifying Parties internally share this understanding of the market structure.
- 7.4.1.2. The Transaction eliminates competition between the Notifying Parties that pre-Transaction compete intensely and closely
- (1243) The Transaction eliminates competition between the Notifying Parties that pre-Transaction compete intensely and closely in the EEA market for reach stackers. The Notifying Parties submit that '*on a market where only a few large competitors are present (Cargotec, Konecranes, Hyster and CVS), all competitors are by definition close to a certain extent*'.¹¹⁴⁹ This Section will demonstrate that even in a field of a

¹¹⁴⁶ Doc. ID 558, Minutes of a call with a distributor, 24 March 2021.

¹¹⁴⁷ Doc. ID 881, Minutes of a call with a distributor, 19 April 2021.

¹¹⁴⁸ Doc. ID 1765, Minutes of a call with a distributor, 11 May 2021.

¹¹⁴⁹ Response to the Article 6(1)(c) Decision, paragraph 254.

limited number of rivals, the proposed Transaction constitutes ‘*a merger between two producers offering products which a substantial number of customers regard as their first and second choices*’.¹¹⁵⁰ This Section will further show that some rivals of the Notifying Parties cannot be considered to offer ‘*close substitutes to the products of the merging firms*’.¹¹⁵¹ This finding of the Notifying Parties as particularly close and important competitors in the EEA reach stacker market further supports the finding that the Merged Entity would have a dominant market position – the Merged Entity’s combined market shares are very large and the Proposed Transaction is not bringing together distant competitors that are active among other players with equal capabilities. To the contrary: the Proposed Transaction brings together two companies that are close rivals competing intensely, and which are facing competitors that in various respects are more distant competitors to them.

(A) Pre-Transaction, both Notifying Parties are important and particularly close competitors

- (1244) Pre-Transaction, both Notifying Parties are important and close competitors in the EEA market for reach stackers.
- (1245) **First**, and as described in Section 7.4.1.1, the Notifying Parties are pre-Transaction the two clear market leaders in the EEA market for reach stackers, with a market share of over 40% for Cargotec and over 30% for Konecranes.
- (1246) **Second**, competitors to the Notifying Parties also regard them as important suppliers in the EEA market for reach stackers, and consider the Notifying Parties to be close competitors to each other.
- (1247) All competitors responding to the market investigation submit that Kalmar (Cargotec) is the competitor they encounter most often when submitting bids to supply reach stackers in the EEA. All but one competitor responding to the market investigation submit that Konecranes is the competitor they encounter the second most often when submitting bids to supply reach stackers in the EEA.¹¹⁵²
- (1248) Further, competitors responding to the market investigation consider Cargotec to be the closest competitor to Konecranes and Konecranes to be the closest competitor to Cargotec for reach stackers.¹¹⁵³
- (1249) **Third**, customers of the Notifying Parties also consider the Notifying Parties to be close competitors. Specifically, customers responding to the market investigation consider the Notifying Parties to be each other’s closest competitors, with parameters such as quality and service network named as important factors.¹¹⁵⁴
- (1250) Further, when asked to rank the top five reach stacker suppliers active in the EEA according to a number of parameters, majorities of customers consider Cargotec and Konecranes to be the strongest/best and second strongest/second best in relation to brand reputation, vehicle quality, product characteristics, product range, after-sales service network and the development of new products.¹¹⁵⁵ This further suggests that the Notifying Parties are particularly close competitors in the EEA market for reach stackers.

¹¹⁵⁰ Horizontal Merger Guidelines, paragraph 28.

¹¹⁵¹ Horizontal Merger Guidelines, paragraph 28.

¹¹⁵² Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 81.1.

¹¹⁵³ Response to Q1 – Questionnaire to Competitors, Doc. ID 3154, questions E.C.A.1 and E.C.A.2.

¹¹⁵⁴ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, questions E.C.A.1 and E.C.A.2.

¹¹⁵⁵ Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 14.1.

- (1251) **Fourth**, as further explained for example in Sections 7.4.1.1 (B.iii) and (F.i), also the Notifying Parties internally consider themselves and each other to be important and close competitors.
- (B) Tender events for reach stackers show that the Notifying Parties are competing particularly closely and sometimes are the only credible alternatives for customers
- (1252) When considering evidence of bidding interactions between suppliers of reach stackers, it becomes further apparent that the Notifying Parties are competing closely and intensely on the EEA market for reach stackers and in certain cases are the only credible alternatives for reach stacker customers.
- (B.i) *The analysis of the Notifying Parties' bidding data on the EEA market for reach stackers is consistent with the qualitative evidence on closeness of competition*
- (1253) The Commission performed an analysis of the bidding data information submitted by the Notifying Parties.¹¹⁵⁶
- (1254) The main exercise performed by the Commission consists in checking the magnitude of the loss ratios between Cargotec and Konecranes based on their bidding data. This is to confirm that in addition to the significant market shares in reach stackers the Notifying Parties are also competing closely in the tenders in which they participate, losing frequently to each other.
- (1255) The Commission also compared the loss ratios from the bidding analysis against some 'benchmark loss ratios', that is, the loss ratios that one would expect between the Notifying Parties based on their market shares (that is, assuming that the volumes or revenues lost by each Party are won by its rivals in proportion to their respective market shares).
- (1256) With respect to reach stackers, when looking at the tenders lost by Cargotec, the loss ratio to Konecranes is high ([...]%). The Commission notes that the loss ratio to Konecranes is smaller than expected based on market share and reconstruction based loss ratios. However, these loss ratios still indicate a high degree of closeness, as Cargotec loses to Konecranes more than a third of its bids – more than to any other competitor.
- (1257) CVS and Hyster also appear to be competitive constraints to Cargotec, based on the bidding data, with loss ratios of [...] % and [...] % respectively. However, the Commission notes that a more granular analysis at the country level (see Annex I, Section 4.1) suggests that the wins of CVS and Hyster are rather concentrated only in certain countries. This is different from Konecranes, who appears to win tenders lost by Cargotec in a broader set of countries.
- (1258) When looking at the tenders lost by Konecranes, Cargotec seems by a wide margin the most important competitive constraint, with loss ratio close to [...] %. This loss ratio is broadly in line with the expectation based on Cargotec's high market share of circa [...] %.¹¹⁵⁷

¹¹⁵⁶ See Annex I.

¹¹⁵⁷ Based on the Notifying Parties' data.

(B.ii) *Customers of the Notifying Parties describe tender events where only the Notifying Parties or a very limited number of suppliers participated*

- (1259) A significant number of the Notifying Parties' customers appears to have access to a very limited number of suppliers of reach stackers that submit offers to them or participate in their tender processes. In many cases the Notifying Parties are among only four or three competing suppliers – in some cases only the Notifying Parties are named as alternatives. This suggests that the Notifying Parties compete particularly closely for certain customers, that competitor products are not close substitutes and that overall competitors are unlikely to be able to effectively constrain the Merged Entity.
- (1260) One customer describes that during the last instances when it purchased reach stackers (2015 and 2020), the business was awarded to Cargotec and Konecranes, with Liebherr, Hyster and Sany as unsuccessful bidders. Reasons for choosing the Notifying Parties are described as '*procurement costs, full service costs, availability, warranties...*'.¹¹⁵⁸
- (1261) Another customer describes that during the last instance when it purchased reach stackers (2018), the business was awarded to Konecranes, with Kalmar as the only other bidder. Reasons for choosing Konecranes are described as '*Price and delivery time*'.¹¹⁵⁹
- (1262) Another customer describes that during the last instance when it purchased reach stackers (2018), the business was awarded to Kalmar, with Konecranes as the only other bidder.¹¹⁶⁰
- (1263) Another customer describes that during the last instance when it purchased reach stackers (2020), the business was awarded to Kalmar France, with Heavy Handling SPRL (a Konecranes distributor) as the only other bidder.¹¹⁶¹
- (1264) Another customer describes that during the last instance when it purchased reach stackers (2017), the business was awarded to Kalmar, with Hyster and Konecranes as the only other bidders. Reasons for choosing Kalmar are described as '*Price and service*'.¹¹⁶²
- (1265) Another customer describes that during the last instance when it purchased reach stackers (2021), the business was awarded to Konecranes and Hyster, with Cargotec and CVS-Ferrari as the only other bidders.¹¹⁶³
- (1266) Another customer describes that during the last instance when it purchased reach stackers (2019), the business was awarded to Konecranes and Hyster, with CVS, Kalmar and Hyster named as the only other bidders. Reasons for choosing Konecranes and Hyster are described as '*price, the technical specification was comparable*'.¹¹⁶⁴

¹¹⁵⁸ Courtesy Translation. The original German text reads: 'Anschaffungskosten, Full Service Kosten, Verfügbarkeit, Garantieleistungen ...'. Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 15.1.

¹¹⁵⁹ Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 15.1.

¹¹⁶⁰ Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 15.1.

¹¹⁶¹ Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 15.1.

¹¹⁶² Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 15.1.

¹¹⁶³ Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 15.1.

¹¹⁶⁴ Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 15.1.

- (1267) Another customer describes that during the last instance when it purchased reach stackers (2021), the business was awarded to Konecranes, with Kalmar as the only other bidder. The customer explains that this *‘was an EU tender’*.¹¹⁶⁵
- (1268) Another customer describes that during the last instance when it leased reach stackers, the business was awarded to Kalmar, with five other bidders. The reason given by the customer for choosing Kalmar is described as *‘price’*.¹¹⁶⁶
- (1269) Another customer describes that during the last instance when it purchased reach stackers (2021), the business was awarded to Kalmar, with no other regular offers received.¹¹⁶⁷
- (1270) Another customer describes that during the last instance when it purchased reach stackers (2020), the business was awarded to Sany, with CVS, Konecranes and Kalmar as the only other bidders. Reasons for choosing Sany are described as *‘Lowest Price & Technical Compliance’*.¹¹⁶⁸
- (1271) Another customer describes that during the last instance when it purchased reach stackers (2021), the business was awarded to Movincar (a Konecranes distributor), with no other bidder. Reasons for choosing Movincar are described as *‘Oepv (according to European and internal law)’*.¹¹⁶⁹
- (1272) Another customer describes that during the last instance when it purchased reach stackers (2018), the business was awarded to Liebherr and Konecranes, with Kalmar and Hyster as the only other bidders. Reasons for choosing Liebherr and Konecranes are described as *‘Price, quality, servicing, availability, spare parts price, parts quality, TEST ON SITE’*.¹¹⁷⁰
- (1273) Another customer describes that during the last instance when it purchased reach stackers (2019), the business was awarded to Kalmar, with Konecranes as the only other bidder. Reasons for choosing Kalmar are described as *‘Price, range of manufacturers on the various terminals, support of the local market (dealer) through a fair distribution of orders’*.¹¹⁷¹
- (1274) Another customer describes that during the last instance when it purchased reach stackers (2014), the business was awarded to Konecranes, with Hyster and Kalmar as the only other bidders. Reasons for choosing Konecranes are described as *‘price and service’*.¹¹⁷²
- (1275) Another customer describes that during the last instance when it purchased reach stackers (2019), the business was awarded to Konecranes, with Kalmar as the only other bidder.¹¹⁷³
- (1276) Another customer describes that during the last instance when it purchased reach stackers (2021), the business was awarded to Kalmar, with Konecranes, Liebherr and

¹¹⁶⁵ Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 15.1.

¹¹⁶⁶ Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 15.1.

¹¹⁶⁷ Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 15.1.

¹¹⁶⁸ Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 15.1.

¹¹⁶⁹ Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 15.1.

¹¹⁷⁰ Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 15.1.

¹¹⁷¹ Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 15.1.

¹¹⁷² Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 15.1.

¹¹⁷³ Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 15.1.

Hyster as the only other bidders. Reasons for choosing Kalmar are described as ‘*Operating cost – Service*’.¹¹⁷⁴

- (1277) Another customer describes that during the last instance when it purchased reach stackers (2020), the business was awarded to Hyster, with Kalmar, Konecranes and Liebherr as the only other bidders. Reasons for choosing Hyster are described as ‘*Price and service proposal*’.¹¹⁷⁵
- (1278) While the Notifying Parties submit that these submissions from customers show that there are regularly also suppliers other than the Notifying Parties that participate in tenders and in some cases also win them,¹¹⁷⁶ these examples in fact show that regularly significantly fewer than all players that in 2018-2020 made reach stacker sales in the EEA compete for sales with customers. Customers in fact often only have access to a very small number of companies bidding for their reach stacker business. A significant number of customers appears to rely only on the Notifying Parties or only the Notifying Parties and one or two other competitors. Further, instances in which customers report that Sany was among the bidding companies appear to be rare.¹¹⁷⁷
- (1279) In addition, a customer explains that ‘the transaction is a three-to-two merger in mobile container handling equipment, at least in Germany’ and that it considers it ‘essential to have a few hours response time from suppliers. That is the reason why already today the number of capable suppliers is limited and would be further reduced to the merged entity and Hyster post-Transaction’.¹¹⁷⁸ Another customers submits that ‘[t]he Parties are not only the largest competitors in reach stackers, they are also each other’s closest rivals. In particular, [the Company] considers that price, quality, vehicle lifetime, and after-sales service levels are the most important criteria when selecting a supplier of reach stackers, and on all these parameters [the Company] considers the Parties as each other’s closest rivals’.¹¹⁷⁹
- (1280) A distributor of Konecranes also submits with respect to the competitive situation in Spain that ‘[t]here are many instances where Air Rail in Spain only faces Kalmar in the supply of equipment, and in most cases the only competition in the market are Kalmar and Konecranes’.¹¹⁸⁰
- (1281) It therefore follows, based on representations from market participants, that the Notifying Parties compete particularly closely with each other, and in a significant number of cases are the only two alternatives for customers, or part of a very small group of alternatives for customers.

(B.iii) The Notifying Parties are aware that in a considerable number of instances they are customers’ only effective alternatives

- (1282) The Notifying Parties appear to be aware that in a considerable number of instances EEA customers only have access to a very limited number of effective suppliers of reach stackers, in some cases only the two Notifying Parties are considered as serious competitors able to fulfil customer requirements.

¹¹⁷⁴ Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 15.1.

¹¹⁷⁵ Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 15.1.

¹¹⁷⁶ Reply to the SO, paragraph 958.

¹¹⁷⁷ Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 15.1.

¹¹⁷⁸ Doc. ID 311, Minutes of a call with a customer, 2 March 2021.

¹¹⁷⁹ Doc. ID 1332, Submission by a customer, 7 June 2021.

¹¹⁸⁰ Doc. ID 261, Minutes of a call with a distributor, 24 February 2021.

- (1283) **First**, Cargotec in a number of instances considers that it is competing for the supply of reach stackers in the EEA only with Konecranes and at most one other competitor.
- (1284) For example, in the internal Cargotec communication captioned in Figure 79, [...].

Figure 79: [...]

[...]

Source: [Internal document reference].

- (1285) In another example, [internal document reference].¹¹⁸¹ This shows that in a situation when Kalmar is in competition only with Konecranes for the sale of reach stackers, the presence of Konecranes has a constraining effect on Kalmar's pricing considerations.
- (1286) With respect [internal document reference].¹¹⁸² This again shows that the Parties are often part of a very small group of competitors that are competing for customers' business, and – at least in certain cases – also have information on the rivals they are competing against.
- (1287) In an internal email, [internal document reference].

Figure 80: [...]

[...]

Source: [Internal document reference].

- (1288) In an internal email, [internal document reference].¹¹⁸³
- (1289) In an internal email, [internal document reference].¹¹⁸⁴ This example again shows that while no other competitor is mentioned in this internal email, there is significant competition, also on price, between Kalmar and Konecranes.
- (1290) The Notifying Parties in the Reply to the SO submit that '*the Parties also face other competitors in reach stacker tenders*'¹¹⁸⁵ instead of only each other. The Commission does not dispute this fact (which is also evidenced in the outcome of the bidding analysis presented in Annex I to the SO). The Notifying Parties present in Figure 48 of the Reply to the SO an extract from a Kalmar internal email chain [internal document reference]. The Commission however finds that in other emails of the same email chain, also Konecranes is considered as a competitor at an early stage of the process.¹¹⁸⁶ [...].¹¹⁸⁷

¹¹⁸¹ Doc. ID 3716-34267 (The Parties' reply to the Commission's request for information RFI 17, CAR-WUR-00015062 msg).

¹¹⁸² Doc. ID 3705-23392 (The Parties' reply to the Commission's request for information RFI 17, CAR-COL-00089916.msg).

¹¹⁸³ Doc. ID 3716-7888 (The Parties' reply to the Commission's request for information RFI 17, CAR-WUR-00056811 msg).

¹¹⁸⁴ Doc. ID 3706-21176 (The Parties' reply to the Commission's request for information RFI 17, CAR-COL-00116015.msg).

¹¹⁸⁵ Reply to the SO, paragraph 963.

¹¹⁸⁶ Reply to Request for information RFI 37, Annex QC1.1.

¹¹⁸⁷ Reply to Request for information RFI 37, Annex QC1.2.

- (1291) The Notifying Parties in the Reply to the SO Figure 49 note that [internal document reference]¹¹⁸⁸ [internal document reference].¹¹⁸⁹ [Internal document reference].¹¹⁹⁰ [Internal document reference].¹¹⁹¹
- (1292) In an internal email, [internal document reference].¹¹⁹²
- (1293) Even in a case where Kalmar is not invited to participate in a tender, and Konecranes is the successful bidder, [...].¹¹⁹³ [...].¹¹⁹⁴
- (1294) **Second**, Konecranes in a number of instances considers that it is competing for the supply of reach stackers in the EEA only with Cargotec and at most one other competitor.
- (1295) For example, in an internal email [...], Konecranes assesses [internal document reference].

Figure 81: [...]

[...]

Source: [Internal document reference].

- (1296) Similarly, also with respect to [...], Konecranes, in the internal email captioned in Figure 82, assesses that [internal document reference].

Figure 82: [...]

[...]

Source: [Internal document reference].

- (1297) In yet another example related to [internal document reference]. This instance therefore shows that Konecranes and Kalmar are in head-to-head competition at customers [...] and are competing also on aspects of equipment modifications.

Figure 83: [...]

[...]

Source: [Internal document reference].

- (1298) In a case of the [internal document reference].¹¹⁹⁵ This exchange also shows that Konecranes and Kalmar are competing closely and intensely for certain customers, [...].

¹¹⁸⁸ Reply to the SO, paragraph 965.

¹¹⁸⁹ Reply to Request for information RFI 37, question 2.

¹¹⁹⁰ Reply to Request for information RFI 37, Annex QC2.4.

¹¹⁹¹ Reply to Request for information RFI 37, Annex QC2.3.

¹¹⁹² Doc. ID 3665-57651 (The Parties' reply to the Commission's request for information RFI 17, CAR-PAT-00077060.msg). The Notifying Parties (Reply to the Letter of Facts, paragraph 90) submit that Linde is also mentioned as a relevant supplier in this document. However in fact, Linde is mentioned in conjunction with NC Nielsen, i.e. in its capacity as a dealer, not as a manufacturer.

¹¹⁹³ Doc. ID 3659-79629 (The Parties' reply to the Commission's request for information RFI 17, CAR-KAR-00001064.msg).

¹¹⁹⁴ Doc. ID 3738-12102 (The Parties' reply to the Commission's request for information RFI 17, CAR-GRA-00008920.docx).

¹¹⁹⁵ Doc. ID 3584-41604 (The Parties' reply to the Commission's request for information RFI 18, M.10078 Cargotec Konecranes RFI 18-00205733 msg).

Figure 84: [...]

[...]

Source: [Internal document reference].

(1299) In an internal Konecranes email from [year], it is discussed [internal document reference].¹¹⁹⁶ [...].

(1300) In an internal Konecranes email from [year], it is reported [internal document reference].¹¹⁹⁷ [...].

(1301) In an internal Konecranes email, [internal document reference].¹¹⁹⁸ [...].

Figure 85: [...]

[...]

Source: [Internal document reference].

(1302) [Internal document reference].

Figure 86: [...]

[...]

Source: [Internal document reference].

(1303) In an email [internal document reference].¹¹⁹⁹ [...].

(1304) In an internal email, captioned in Figure 87, a Konecranes employee reports [...].

Figure 87: [...]

[...]

Source: [Internal document reference].

(1305) In a follow up email to the one captioned in Figure 87, [internal document reference]. This exchange, further shows that only Konecranes and Kalmar appear to exert a significant constraint on each other with respect to this reach stacker opportunity, and that the Notifying Parties are in intense price competition.

Figure 88: [...]

[...]

Source: [Internal document reference].

(1306) In an email, [internal document reference].¹²⁰⁰ [...]. This further shows intense and close competition between the Notifying Parties – on price and new product models.

¹¹⁹⁶ Doc. ID 3591-90639 (The Parties' reply to the Commission's request for information RFI 18, M.10078 Cargotec Konecranes RFI 18-00844050 msg).

¹¹⁹⁷ Doc. ID 3591-7018 (The Parties' reply to the Commission's request for information RFI 18, M.10078 Cargotec Konecranes RFI 18-00839025 msg).

¹¹⁹⁸ Doc. ID 3594-59279 (The Parties' reply to the Commission's request for information RFI 18, M.10078 Cargotec Konecranes RFI 18-01223734 msg).

¹¹⁹⁹ Doc. ID 3584-22339 (The Parties' reply to the Commission's request for information RFI 18, M.10078 Cargotec Konecranes RFI 18-00142927 msg).

¹²⁰⁰ Doc. ID 3585-87926 (The Parties' reply to the Commission's request for information RFI 18, M.10078 Cargotec Konecranes RFI 18-00235080 msg).

- (1307) The Notifying Parties submit that all of these instances ‘show that tenders for reach stackers are highly competitive and that customers have considerable negotiation power, which allows them to drive bidding processes and effectively play off suppliers against each other, in particular based on price. This will remain unchanged post-Transaction considering the number of alternative suppliers active on the market, including Sany which is particularly price-competitive, or Hyster which is another price-competitive alternative frequently facing the Parties in tenders’.¹²⁰¹ However, these instances actually show that in a considerable number of cases the Notifying Parties are constrained by only very few other competitors, and sometimes are only aware of each other as relevant competitors in a tender event.
- (1308) Therefore, it appears that also the Parties internally regularly consider that they are only competing against a very limited number of rivals for the supply of reach stackers in the EEA – in many instances also only against each other.
- (C) The Parties are particularly close competitors, because they have extensive and strong distribution and after-sales networks
- (1309) The Parties are particularly close competitors, because they have the most extensive and strongest distribution and after-sales networks in the EEA. As their networks are more extensive and stronger than those of their EEA rivals, the Parties compete particularly closely for customers – some of whom as a result only have few available suppliers to turn to. Other suppliers of reach stackers in the EEA have weaker distribution and after-sales networks, are more distant competitors to the Notifying Parties, and are therefore unlikely to be able to effectively constrain the Merged Entity.
- (C.i) Distribution and after-sales networks are very important to compete effectively in the EEA reach stackers market*
- (1310) Manufacturers of reach stackers supply the reach stackers to customers largely either via local distributors/dealers (that are independent of the manufacturer, but associated via a distribution agreement), or via directly owned local sales unit. In the EEA, Konecranes largely relies on distributors/dealers, whereas Kalmar largely relies on sales via its own local entities. While customers to some degree perform maintenance on reach stackers in-house, they also source after-sales services for reach stackers from the manufacturers or associated dealers/distributors.
- (1311) The Notifying Parties argue that ‘local distribution and after-sales networks are not a pre-requisite to enter the market for reach stackers’ and that ‘suppliers in fact have a range of options in order to achieve effective access to customers’.¹²⁰² The Notifying Parties further submit that for example direct sales¹²⁰³ and/or online sales¹²⁰⁴ are an option for manufacturers to access customers.
- (1312) The Commission however observes that local distribution and after-sales networks are of crucial importance for effective customer access.
- (1313) **First**, customers consider local distribution and after-sales presence of manufacturers of reach stackers to be of high importance and to be key purchase criteria.

¹²⁰¹ Reply to the Letter of Facts, paragraph 88.

¹²⁰² Response to the Article 6(1)(c) Decision, paragraph 294.

¹²⁰³ Response to the Article 6(1)(c) Decision, paragraph 295.

¹²⁰⁴ Response to the Article 6(1)(c) Decision, paragraph 313.

- (1314) A majority of customers expressing their view submit that they consider the availability of maintenance and service provision in their region by the equipment supplier (directly or via associated dealers/distributors) as very important for their purchasing decision.¹²⁰⁵ In this context, a customer explains that *‘[i]t’s important that the equipment can operate according to the needs of the factory (high availability / capability factor). Therefore having the option of a close by maintenance / service provider is key’*.¹²⁰⁶ Another customer submits that local distribution and after-sales presence *‘is very important considering two factors. First due to the high technology incorporated in all the modern Reach stackers, at many electronic malfunctions only the authorized dealer has access for unlocking the systems, and second for the availability and quick purchase of spare parts. Otherwise, for the malfunctions we are forced to communicate via email or phone with the manufacturer which means a lot of waste of time, and for the spare parts we are forced to keep high stock in our warehouse, with all the financial consequences’*.¹²⁰⁷ Another customer states that *‘[w]e are 24/7 operational and dow[n]time must be minimized’*.¹²⁰⁸
- (1315) The Notifying Parties submit that customers *‘resort to several alternative sources to cover their after-sales needs’*.¹²⁰⁹ While many customers indeed may opt to address different service needs by turning to different service providers, overall customers rely to a significant extent on OEMs and their associated distributors for after-sales services. In particular, a large majority of customers expressing their view submit that across the entire lifetime of mobile equipment (to which reach stackers belong), they have to rely on the maintenance and repair services of the equipment supplier or their associated dealer/distributor, at least for some maintenance and repair needs. A considerable number of responding customers even have to rely on the equipment supplier or their associated dealer/distributor for most or all of their maintenance and repair needs.¹²¹⁰ In this context one customer states: *‘We neither have the internal capacities nor technical capabilities to perform such services and repairs in-house’*.¹²¹¹ A GTO submits that *‘[s]upport on repair and maintenance may be required from the OEM/associated dealer/distributor due warranty obligations or lack of skilled in-house technicians at specific locations’*.¹²¹² Another customer explains its reliance on equipment suppliers and their associated dealers/distributors by stating that *‘[w]e are a container terminal. We do not have employees to maintain or to repair stacker’*.¹²¹³ Another customers says that it *‘does not have any captive maintenance and repair capabilities. Independent maintenance and repair services are not available’*.¹²¹⁴ Another customer explains that *‘due to the individual position of the supplier, we are dependent on this maintenance throughout the entire service life. Nowhere else can we order spare parts’*.¹²¹⁵ A terminal operators further explains: *‘We get better prices for spare parts from the supplier/dealer. The response time of the service is significantly shorter, even the delivery time for the parts. The*

¹²⁰⁵ Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 7.1.
¹²⁰⁶ Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 7.1.1.
¹²⁰⁷ Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 7.1.1.
¹²⁰⁸ Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 7.1.1.
¹²⁰⁹ Reply to the SO, paragraphs 866-872.
¹²¹⁰ Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 8.
¹²¹¹ Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 8.1.
¹²¹² Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 8.1.
¹²¹³ Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 8.1.
¹²¹⁴ Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 8.1.
¹²¹⁵ Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 8.1.

manufacturer's diagnostic software is often required for newer equipment'.¹²¹⁶ Another customer explains that *'the procurement of original spare parts is in most cases only possible via the manufacturers'*.¹²¹⁷ Yet another customer submits that *'[t]here is also continuous progress in the field of industrial trucks. The devices are increasingly turning into computers on wheels, with the mechanical part being fully developed by almost all manufacturers. The knowledge and thus the unique selling point is therefore located in the brain of the machine, which is very well shielded by the manufacturer. Service by the manufacturer is therefore necessary mainly in the areas of fault diagnosis, software errors, updates, operating data, etc.'*¹²¹⁸

- (1316) Consequently, a large majority of customers expressing their view submit that in the past five years they have not bought reach stackers from a supplier that does not have a local after-sales/servicing presence (either directly or via an associated distributor/dealer) in the area where they are using the equipment.¹²¹⁹ Similarly, a large majority of customers expressing their view submit that for their next purchase of reach stackers, they would not consider a supplier that does not have a local after-sales/servicing presence (either directly or via an associated distributor/dealer) in the area where they are using the equipment.¹²²⁰ One customer explains this by explaining that it only procures equipment with *'Full Service'* and therefore has *'high availability, guarantees, reaction times, etc.'*¹²²¹ Another customer states that *'[i]t will be mandatory to buy only equipment which can be serviced afterwards. If the OEM would not be present by themselves then the equipment could be purchased / serviced through a local distributor'*.¹²²²
- (1317) The fact that a local after-sales presence is considered essential by customers is further underlined by the majority of customers expressing their views submitting that in case of a break down of a mobile equipment unit (e.g. a reach stacker), they expect a reaction time of 12 hours or less from the OEM or an associated distributor/dealer.¹²²³ In this context one customer explains that that it *'expects a response within one 1 hour and the necessary action within another 2 hours'*.¹²²⁴ Another customer states: *'We expect a response time of 12 to 24 hours. We have a minimal fleet and need the equipment, therefore repairs at short notice are extremely important [for] us'*.¹²²⁵

¹²¹⁶ Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 8.1.

¹²¹⁷ Courtesy Translation. The original German text reads: *'Die Originalersatzteilbeschaffung ist in den meisten Fällen nur über der Hersteller möglich'*. Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 8.1.

¹²¹⁸ Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 8.1.

¹²¹⁹ Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 10.1.

¹²²⁰ Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 11.1.

¹²²¹ Courtesy Translation. The original German text reads: *'Weil nur Geräte inclusive Full Service angeschafft werden (dadurch hohe Verfügbarkeit, Garantien, Reaktionszeiten, etc.)'*. Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 11.1.1.

¹²²² Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 11.1.1.

¹²²³ Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 12.

¹²²⁴ Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 12.1.

¹²²⁵ Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 12.1.

- (1318) A customer describes the importance of local service presence in the following way: '[The Company] uses its mobile container handling equipment on 250 days a year on 6 days a week and 10 to 12 hours per day (in two shifts). [The Company] does not have any backup machines and does not plan for any downtime due to failures of the machines. Since the machines weigh 30 to 60 tons, any necessary replacement is far from being effortless and takes four to five weeks. These circumstances form the premise from which [the Company] looks at potential suppliers' reaction time, i.e. the necessity for quick and effective maintenance service'. The customer goes on to explain that '[f]or [the Company] it is important to have a contact person immediately available, when repair or maintenance is needed. [The Company] expects to be serviced within three to four hours on a weekday'. This is in particular relevant, because '[the Company] does not have its own personnel for the maintenance of its mobile container handling equipment'.¹²²⁶
- (1319) Another customer explains that 'after-sales service levels are a key criterion when selecting suppliers. This is especially so for reach stackers, which – when they break down – affect terminal operations directly. After-sales service levels and response times are thus critical for reach stackers, which makes suppliers without an EEA presence and after-sales network simply not a credible option'.¹²²⁷
- (1320) **Second**, distributors consider local distribution and after-sales presence of manufacturers of reach stackers to be of high importance and to be key purchase criteria for customers.
- (1321) Majorities of dealers/distributors expressing their view submit that in the region in the EEA where they are active, they compete against other local distributors/dealers and against direct sales of OEMs with a local distribution presence in the supply of reach stackers.¹²²⁸ One distributor explains in this context that '*[s]ome manufacturers don't have an exclusive distribution network. That's the reason why, in some cases, we compete against other local distributors/dealers. Generally speaking, the customers don't feel confident to deal with OEMS which don't have a local distribution presence. They want local support for schedule maintenance and repair operations*'.¹²²⁹
- (1322) A large majority of dealers/distributors expressing their view consider that the availability of maintenance and service provision in their region in the EEA by the equipment manufacturer or associated dealers/distributors is very important for the purchasing decision of mobile equipment customers.¹²³⁰ A distributor explains that '*[i]t is in the daily after-sales that customer satisfaction is won or lost. Therefore access to service and maintenance is essential for any given customer, because it is the basis for a smooth daily operation*'.¹²³¹ Another distributor submits that '*[l]oading and unloading containers are very sensible tasks. Any delay can cost a lot to the operator. That's why the reactivity to maintain and repair is a very important skill for the customers*'.¹²³² Another respondent explains: '*Downtimes are very expensive and often there is no substitute equipment available. Therefore, maintenance and services must be available on very short notice, i.e. service*

¹²²⁶ Doc. ID 311, Minutes of a call with a customer, 2 March 2021.

¹²²⁷ Doc. ID 1332, Submission from a customer, 7 June 2021.

¹²²⁸ Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 14.1.

¹²²⁹ Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 14.1.1.

¹²³⁰ Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 16.1.

¹²³¹ Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 16.1.1.

¹²³² Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 16.1.1.

provider needs to be close by'.¹²³³ Yet another distributor states that '*[p]rompt availability of spare parts and good service are key to the choice of supplier*'.¹²³⁴ A further distributor submits: '*It is simply crucial: no customer would buy anything without the awareness to can count on a professional and efficient service*'.¹²³⁵ Another distributor explains that '*[a]ll customers, including self-repairers, rely much more on distributors who have a structured maintenance service (service + spare parts), so it is very important to have and maintain a high level of quality in the after-sales service*'.¹²³⁶

- (1323) The majority of distributors/dealers and service providers expressing their view submit that customers typically expect a reaction time of 12 hours or less from them in case of breakdown of a mobile equipment unit (of which reach stackers are a part).¹²³⁷
- (1324) Further, the large majority of distributors/dealers expressing their view submit that they do not consider online direct sales of mobile equipment by the OEMs to significantly grow in importance as a route-to-market in the EEA.¹²³⁸ One distributor in this context submits that '*[o]n-line sales are interesting and have already been adopted on very standardized products and accessories. On mobile equipment however, there are so many technically complex issues which we as specialists need to convey to the customer. This cannot be done by the customer himself on-line. I think that this area will gradually evolve and we may see some impact in the long run*'.¹²³⁹ Another distributor however states that '*[t]hose equipments and their attachment are so specific, that the online purchase won't grow in the next years*'.¹²⁴⁰ A further respondent explains: '*Selling big trucks requires intensive consulting. It is very important to understand the customer application to make sure to provide the right product with the right material handling options*'.¹²⁴¹ Yet another distributor submits: '*Too complicated product to be bought online. Moreover: service issues are too important, and often are discussed on a taylor made basis*'.¹²⁴²
- (1325) **Third**, competitors consider local distribution and after-sales presence of manufacturers of reach stackers to be of high importance and to be key purchase criteria for customers.
- (1326) A majority of competitors expressing their view estimate the share of mobile equipment customers (of which reach stacker customers are a part) in the EEA that they supply some type of after-sales/maintenance services (directly or via associated dealers/distributors) to, to be at least 60% or higher.¹²⁴³ A competitor in this context submits: '*In relation to the Reachstacker business: After-sales is very important for OEM and the customer. The customers need spare parts quickly in case of machine*

¹²³³ Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 16.1.1.
¹²³⁴ Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 16.1.1.
¹²³⁵ Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 16.1.1.
¹²³⁶ Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 16.1.1.
¹²³⁷ Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 17.
¹²³⁸ Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 18.
¹²³⁹ Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 18.1.
¹²⁴⁰ Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 18.1.
¹²⁴¹ Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 18.1.
¹²⁴² Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 18.1.
¹²⁴³ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 70.

*failure and relies on OEM support. It is also important for the customers to purchase original spare parts’.*¹²⁴⁴

- (1327) A large majority of competitors expressing their view considers a local service /after-sales presence (either directly or via associated dealers/distributors) to be very important to be able to generate reach stacker sales in a certain region in the EEA.¹²⁴⁵ A competitor in this context submits that ‘[a] local service/ after service station ensures short reaction times which the customer expects within the high-density markets of the EEA (E.g. Netherlands or Belgium). A reaction time of 3-5h after a machine failure is mandatory in those markets’.¹²⁴⁶ Another competitor states: ‘Reach Stackers are often sold to companies that do not have their own internal service organization and in any case an effective After Sale Service organization with local presence is always required to be successful in this product market /segment’.¹²⁴⁷ Yet another competitor explains: ‘Without well trained and equipped local support you do not even qualify to bid on tenders of major customers like CMA/CGM, APMT, DPW, MSC. Due to the relative low volume of the global market (compared to for example Excavators, Wheel loaders) one can't assume independent service is available and competent. As much is specialized expensive equipment uptime is important, generally back up equipment availability is limited. RST are often used in a 24/7 operation with big impact on logistic performance when equipment is down’.¹²⁴⁸ Another competitor states that ‘[m]aintenance provision and after sales service is an important factor for customers which require suppliers to provide local support in a short reaction time’.¹²⁴⁹
- (1328) **Fourth**, the Notifying Parties internally consider local distribution and after-sales presence of manufacturers of reach stackers to be of high importance and to be key purchase criteria for customers.
- (1329) For example, in a presentation [...] is quoted in relation to reach stackers: [internal document reference].¹²⁵⁰
- (1330) In an internal email [internal document reference].¹²⁵¹
- (1331) In an internal document (captioned in Figure 89) assessing its own market presence for cargo handling equipment in Sweden (and in particular, mobile equipment, terminal tractors and straddle carriers), Kalmar assesses that [internal document reference].

Figure 89: [...]

[...]

Source: [Internal document reference].

¹²⁴⁴ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 70.1.

¹²⁴⁵ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 78.1.

¹²⁴⁶ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 78.3.1.

¹²⁴⁷ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 78.3.1.

¹²⁴⁸ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 78.3.1.

¹²⁴⁹ Doc. ID 657, Minutes of a call with a competitor, 22 April 2021.

¹²⁵⁰ Doc. ID 77-40, Annex QK 5.4.71.pdf.

¹²⁵¹ Doc. ID 3586-55619, (The Parties’ reply to the Commission’s request for information RFI 18, M.10078 Cargotec Konecranes RFI 18-00998668 msg).

- (1332) In an internal document (captioned in Figure 90) analysing the service market relevant for Kalmar Mobile Solutions overall (of which reach stackers are a part), Kalmar assesses that globally its ‘own business’, i.e. ‘*Kalmar (incl. parts to dealers)*’ accounts for [20-30]% market share. Kalmar dealers ‘*(excl. Kalmar Parts)*’ are said to account for [30-40]% market share. ‘*Part Providers (e.g. [...])*’ are said to account for [30-40]% market share and ‘*Local Services Companies (labour)*’ for [10-20]% market share. The key purchasing criteria listed are [internal document reference] and [internal document reference]. Kalmar regards the following as competitive advantages: [...]. As its main obstacles to growth in services for mobile equipment, Kalmar notes the following: [internal document reference]. This clearly shows that Kalmar considers after-sales provision by the equipment manufacturer (and associated dealers) to be important to compete effectively and to account for the majority of service needs of Kalmar’s mobile equipment customers.

Figure 90: Kalmar mobile solutions service market analysis

[...]

Source: [Internal document reference].

- (1333) In addition, both Notifying Parties regularly benchmark their own distribution and after-sales performance against competitors¹²⁵² – this further indicates that they consider these to be parameters of key competitive importance.
- (1334) Overall, it therefore appears that a local distribution and after-sales presence is of high importance to customers, and therefor is critical for manufacturers of reach stackers to ensure effective access to customers. Indeed, other than submitted by the Notifying Parties,¹²⁵³ having a local after-sales service network (and a local distribution network), either via directly owned entities and/or via a network of associated dealers/distributors, for reach stackers is not just ‘*merely a beneficial factor for equipment suppliers*’, but rather a prerequisite for reach stacker suppliers to compete effectively in a given region in the EEA. This is because, while customers may rely in part on third-party service providers or on inhouse capabilities,¹²⁵⁴ they consider after-service provision by suppliers very important and rely on it at least for some of their servicing needs.
- (C.ii) *The Notifying Parties have the strongest distribution and after-sales network in the EEA and therefore compete closely*
- (1335) The Notifying Parties argue that the Parties do not have a particularly strong position because of their distribution and service network, as ‘*there are [...] a number of players with effective service offerings*’¹²⁵⁵ and because ‘*there are 339 distributors active in the EEA which are selling the mobile equipment of not only established players such as Hyster, CVS and Svetruck, but also of smaller (non-European) competitors such as Komatsu, Doosan, Hyundai and Mitsubishi*’.¹²⁵⁶

¹²⁵² See e.g. Doc. ID 3667-724, (The Parties’ reply to the Commission’s request for information RFI 17, CAR-PRA-00056809.pptx); Doc. ID 3586-79989, (The Parties’ reply to the Commission’s request for information RFI 18, M.10078 Cargotec Konecranes RFI 18-00351519.pdf).

¹²⁵³ Response to the Article 6(1)(c) Decision, paragraph 300.

¹²⁵⁴ See also the Notifying Parties’ follow-up submission to technical meeting on MEQ, 13 October 2021, 2-6.

¹²⁵⁵ Response to the Article 6(1)(c) Decision, paragraph 261.

¹²⁵⁶ The Notifying Parties’ supplemental submission on distribution networks, 1 September 2021, paragraph 3.

- (1336) The Commission however observes that the Notifying Parties have the strongest distribution and after-sales networks among reach stacker suppliers in the EEA and therefore compete particularly closely in the supply of reach stackers across different EEA regions.¹²⁵⁷ Other suppliers in turn are more distant competitors.
- (1337) The Notifying Parties further submit that ‘the Parties apply inherently different routes to market. While Cargotec largely relies on sales via own dealerships, Konecranes relies on a network of third-party distributors’.¹²⁵⁸ This is accurate – these are different distribution approaches. Cargotec’s sales staff and distributors acting for Konecranes however compete intensely in distributing Cargotec and Konecranes reach stackers respectively.
- (1338) **First**, customers consider the Notifying Parties to have particularly strong distribution and after-sales networks.
- (1339) When asked to rank the top five reach stacker suppliers active in the EEA according to their after-sales/service network, customers clearly consider the Notifying Parties to be the strongest. As shown in Table 11, which summarises customers’ answers, customers consider Cargotec to have the strongest after-sales/service network, followed by Konecranes and then Hyster. Other competitors’ after-sales/service networks are considered clearly inferior.

¹²⁵⁷ With respect to after-sales networks as well as the criteria of vehicle quality, brand reputation and product range further considered below, the Notifying Parties (in the Reply to the SO, paragraph 944) claims that the Commission ‘pre-selected’ these criteria and did not ask customers what parameters they consider to be key purchase criteria. In fact, for example in Q2 – Questionnaire to Customers, Doc. ID 3153, question E.A.2.1. (reported on for example in Section 7.4.1.3), customers were asked about which criteria they consider important for their purchase decisions. Quality, after-sales service networks and brand reputation were clearly considered to be important purchasing criteria. A broad product range is not relevant as such for a customer, but it is essential for any given customer, that the supplier in question can offer the type of reach stacker that it requires. Therefore, to service a broad demand, a broad product range is essential.

The Notifying Parties further submit that price is also a key purchase criterion (Reply to the SO, paragraphs 944-949). Indeed price is a relevant purchase criterion for customers – and in as far as the price competition between the Notifying Parties is concerned, it is addressed in Section 7.4.1.5 (B). In as far as the price competitiveness of companies such as Sany is concerned (which is a lower price, lower quality player than the Notifying Parties, and therefore a more distant competitor), it is considered in Section 7.4.1.4.

¹²⁵⁸ Reply to the SO, paragraph 967.

Table 11 – Customers’ ranking of reach stacker suppliers’ after-sales/service network

Customers’ ranking of the top five reach stacker suppliers active in the EEA according to their after-sales/service network					
Company	1 (strongest/best)	2	3	4	5 (weakest/worst)
Cargotec	XXXXXXXXXXXXXXXX	X	XX		
Konecranes	XXXXXX	XXXXXX	XX		
Hyster	XX	XXXXXX	XXXX		
Liebherr	X	X	X	XXXXX	
CVS Ferrari	X	X	X	X	XX
Sany				X	XXXX
Linde				X	
FTMH				X	X
Svetruck		X			

Source: Responses to Q6 – Questionnaire to Mobile equipment customers, Doc. ID 3607, question 14.1. The Commission’s evaluation of non-confidential responses.

- (1340) When asked which mobile equipment suppliers (directly or via associated dealers/distributors) they consider to be able to meet certain servicing reaction times in the regions where they use the equipment, e.g. in case of urgent repairs, customers consider Cargotec to be able to offer the fastest servicing reaction times, followed by Konecranes and then Hyster.¹²⁵⁹ Similarly, the highest numbers of responding customers indicate that they consider Cargotec to have the requisite after-sales/maintenance service presence in their local area to address their service needs, followed by Konecranes and then Hyster.¹²⁶⁰
- (1341) A customer explains that because it ‘has a large number of widely spread terminals in Germany, it is essential to have a few hours response time from suppliers. That is the reason why already today the number of capable suppliers is limited and would be further reduced to the merged entity and Hyster post-Transaction’.¹²⁶¹
- (1342) Another customer explains that during its last tender ‘[f]ive OEMs submitted offers: Kalmar, Konecranes, Hyster, Sany and CVS-Ferrari. Both CVS-Ferrari’s and Sany’s offerings were not accepted as they did not offer any local service in Lithuania (Sany has a service offering in Latvia, but this is too far away). The Company’s choice is therefore limited to Hyster, Kalmar and Konecranes which have local dealers in Lithuania’.¹²⁶²
- (1343) Another customer explains: ‘When purchasing reach stackers, the Company is not only buying the machine, but also enters a long-term/full-service contract. It therefore requires not only a good quality machine, but also a regional and well-functioning service provision (in short reaction time), in order to guarantee the machines’ required running hours. Kalmar and Konecranes are the only OEMs with a Germany-wide coverage of service provision. Kalmar offers maintenance services directly, Konecranes offers it through certified dealers. In some regions the Parties are able to offer response times of 30 minutes’. Further this customer explains that ‘[t]his quick reaction time is important to the Company, because it does not have any

¹²⁵⁹ Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 23.

¹²⁶⁰ Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 25.

¹²⁶¹ Doc. ID 311, Minutes of a call with a customer, 2 March 2021.

¹²⁶² Doc. ID 675, Minutes of a call with a customer, 7 April 2021.

spare machines on standby, as this would be very costly'. As a consequence of the Notifying Parties' service networks, 'Kalmar and Konecranes always participate [in the Company's tenders]. Depending on the region others like Ferrari and Liebherr may also participate. The region depends on the existence of licensed technical service providers'.¹²⁶³

- (1344) **Second**, distributors consider the Notifying Parties to have particularly strong distribution and after-sales networks.
- (1345) When asked to rank the top five reach stacker suppliers active in the EEA according to their after-sales/service network, distributors/dealers clearly consider the Notifying Parties to be the strongest. As shown in Table 12, which summarises distributors'/dealers' answers, distributors/dealers consider Cargotec to have the strongest after-sales/service network, followed by Konecranes and then Hyster. Other competitors' after-sales/service networks are considered clearly inferior.

Table 12 – Distributors'/dealers' ranking of reach stacker suppliers' after-sales/service network

Distributors'/dealers' ranking of the top five reach stacker suppliers active in the EEA according to their after-sales/service network					
Company	1 (strongest/best)	2	3	4	5 (weakest/worst)
Cargotec	xxxxxxxxxxxx	xxxxxxxxxx	xxxxxxx	x	
Konecranes	xxxxxxxxxxxx	xxxxxxxxxx	xxx	xx	xxx
Hyster	xxx	xxxxxxxxxx	xxxxxxxxxxx	xx	
Liebherr		x	xxx	xxxx	x
CVS Ferrari	x		xx	xxxxxxxxxx	xxx
Sany				x	xxxxxx
Linde	xxx			x	
FTMH	x			xxx	xxxxxxx
Svetruck				x	x
Toyota			x	x	

Source: Responses to Q8 – Questionnaire to Distributors of mobile equipment, Doc. ID 3609, question 19.1. The Commission's evaluation of non-confidential responses.

- (1346) When asked to explain which manufacturers of mobile equipment (of which reach stackers are a part) have the strongest after-sales/maintenance service presence in the region in which they are active, distributors/dealers clearly consider the Notifying Parties to have the strongest after-sales/maintenance service presence. In particular, the replies summarised in Table 13 show that Konecranes is considered to have the strongest after-sales/maintenance service presence, followed by Cargotec and then Hyster. Kion is also considered to have a strong presence, is however not active in reach stackers (but rather only in heavy-duty forklift trucks (>10 tonne capacity)).

¹²⁶³ Doc. ID 1117, Minutes of a call with a customer, 21 April 2021.

Table 13 – Distributors'/dealers' ranking of mobile equipment manufacturers' after-sales/maintenance service presence

Distributors'/dealers' ranking of the after-sales/maintenance service presence of mobile equipment manufacturers					
Company	1 (weakest/worst)	2	3	4	5 (strongest/best)
Cargotec	xxx	xxx	xxxxxxxxxx	xxxxxxxxxxxxxxxxxx	xxxxxxxxxxxxxxxxxx
Konecranes	xxx	xxxxxx	xxxxxxxxxx	xxxxxxxxxxxxxxxxxx	xxxxxxxxxxxxxxxxxx
Hyster	xx	xxxxxx	xxxxxxxxxx	xxxxxxxxxxxxxxxxxx	xxxxxxxxxxxxxx
Sany	xxxxxxxxxxxxxxxxxx	xxxx	xx		x
Svetruck	xxxxxxxxxxxxxxxxxx	xxxxxx	xxxxxx	xxxxxx	xxx
CVS Ferrari	xxxxxxxxxxxxxx	xxxxxx	xxxxxx	xxx	xx
Liebherr	xxxxxxxxxx	xxxxxxxxxx	xxxxxxxxxx	xxx	xxx
FTMH	xxxxxxxxxxxxxxxxxx	xx	xxxx		x
Taylor	xxxxxxxxxxxxxxxxxx		x		
Kion	xxxxxx	x	xxx	xxxx	xxxxxxxxxxxxxxxxxx
Other European OEM	xxxx		xxx	xxxx	x
Other non-European OEM	xxxx	xxx	x		xx

Source: Responses to Q8 – Questionnaire to Distributors of mobile equipment, Doc. ID 3609, question 22. The Commission's evaluation of non-confidential responses.

- (1347) When asked to explain which manufacturers of mobile equipment (of which reach stackers are a part) have the strongest distribution presence in the region in which they are active, distributors/dealers clearly consider the Notifying Parties to have the strongest distribution presence. In particular, the replies summarised in Table 14 show that Cargotec is considered to have the strongest distribution presence, followed by Konecranes and then Hyster. Kion is also considered to have a strong presence, is however not active in reach stackers (but rather only in heavy-duty forklift trucks (>10 tonne capacity)).

Table 14 – Distributors'/dealers' ranking of mobile equipment manufacturers' distribution presence

Distributors'/dealers' ranking of the distribution presence of mobile equipment manufacturers					
Company	1 (weakest/worst)	2	3	4	5 (strongest/best)
Cargotec	xxx	xxx	xxxx	xxxxxxxxxxxx xxxx	xxxxxxxxxxxxxxxx xxxxx
Konecranes	xxxx	xxxxxx	xxxxxxxxxx	xxxxxxxxxxxx	xxxxxxxxxxxxxxxx
Hyster	xxx	xxxx	xxxxxxxxxxxx xxxx	xxxxxxxxxxxx	xxxxxxxxxxxx
Sany	xxxxxxxxxxxxxxxx xx	xxxxxxxxxxxx	xxx		
Svetruck	xxxxxxxxxxxx	xxxxxxxxxxxx x	xxxxxx	xxxxx	xxx
CVS Ferrari	xxxxxxxxxx	xxxxxxxxxx	xxxxxx	xxx	xxx
Liebherr	xxxxxxxxxx	xxxxxxxxxxxx xxx	xxxxxx	xxx	xx
FTMH	xxxxxxxxxxxxxxxx x	xx	xxxx		xx
Taylor	xxxxxxxxxxxxxxxx xxxxx		x		
Kion	xxxxxxxxxx	xxxxxx	xx	xxx	xxxxxxxxxxxxxxxx
Other European OEM	xxxxxx		x	xxxxx	
Other non-European OEM	xxxxxx	xx	xx	x	x

Source: Responses to Q8 – Questionnaire to Distributors of mobile equipment, Doc. ID 3609, question 21. The Commission's evaluation of non-confidential responses.

- (1348) **Third**, competitors consider the Notifying Parties to have particularly strong distribution and after-sales networks.
- (1349) When asked to rank the top five reach stacker suppliers active in the EEA (including their own company) according to their after-sales/service network, competitors clearly consider the Notifying Parties to be the strongest. In particular, the replies summarised in Table 15 show that Cargotec is considered to have the strongest after-sales/service network, followed by Konecranes and then Hyster. Other competitors' after-sales/service networks are considered clearly inferior.

Table 15 – Competitors’ ranking of reach stacker suppliers’ after-sales/service network

Competitors’ ranking of the top five reach stacker suppliers active in the EEA according to their after-sales/service network					
Company	1 (strongest/best)	2	3	4	5 (weakest/worst)
Cargotec	xxxxxx	xx			
Konecranes	xx	xxxx		x	
Hyster		xx	xxxxxx		
Liebherr				xx	
CVS Ferrari				xxx	xxx
Sany			xx	xx	xxx
Uplifting					x

Source: Response to Q3 – Questionnaire to competitors, Doc. ID 3582, question 82.1. The Commission’s evaluation of non-confidential responses.

- (1350) A competitor to the Notifying Parties explains that ‘[t]he Parties therefore today occupy the two best distribution channels for mobile equipment in Europe and through this, hold strongly a substantial part of the market and block other OEMs from accessing parts of the market. When it comes to capable distributors in Europe, the Parties have essentially either bought or bound to themselves the ‘cherries of the cake’’.¹²⁶⁴
- (1351) **Fourth**, the Notifying Parties consider themselves and each other to have particularly strong distribution and after-sales networks.
- (1352) For example, Konecranes assesses that [internal document reference] in an internal document¹²⁶⁵ and, in another internal document, that [internal document reference].¹²⁶⁶ In another document, Konecranes notes [internal document reference]¹²⁶⁷ [...], Konecranes assesses internally that it has [internal document reference].¹²⁶⁸
- (1353) Cargotec, in comparing its own mobile equipment (of which reach stackers are a part) strengths against Konecranes’, assesses in the document captioned in Figure 91 that Konecranes has [internal document reference]. This clearly shows that the service and distribution presence of both players is considered as a key competitive parameter – and that both Parties have strengths in this field.

Figure 91: [...]

[...]

Source: [Internal document reference].

- (1354) In another internal Cargotec document, captioned in Figure 92, [internal document reference].

¹²⁶⁴ Doc. ID 1773, Minutes of a call with a competitor, 3 May 2021.

¹²⁶⁵ Form CO, RFI PN7 Annex QK4(c).2 – Confidential, slide 20.

¹²⁶⁶ Form CO, RFI PN7 Annex QK22.1 – Confidential, slides 6 and 15.

¹²⁶⁷ Form CO, RFI PN4 Annexes QK4.3, slide 17.

¹²⁶⁸ Form CO, RFI PN7 Annex QK22.1 – Confidential, slide 16.

Figure 92: [...]

[...]

Source: [Internal document reference].

- (1355) Cargotec also relies on its distribution and service presence in order to promote its reach stacker offering. In a letter to a potential customer, Cargotec states that [internal document reference].¹²⁶⁹

(C.iii) Conclusion

- (1356) Therefore, local distribution and after-sales presence are considered to be important by customers when considering reach stacker purchases, and therefore it is important for suppliers to have strong distribution and after-sales networks.

- (1357) The Notifying Parties are recognised as having the strongest distribution and after-sales networks by a range of market participants (customers, distributors, competitors). The strong distribution and after-sales networks allow the Parties to compete in regions in the EEA where less competitors are active (because of a lack of local presence) and to compete at customers that have particularly stringent service requirements (that not all of the Parties' competitors can meet). The Parties' strong position in distribution and after-sales therefore limits the substitutability between the products of the Parties and those supplied by rival producers. The Notifying Parties' strong position in distribution and after-sales therefore leads them to compete particularly closely and intensely.

- (D) The Notifying Parties are particularly close competitors, because they offer a full range of reach stacker models

- (1358) As indicated above in Recital (138), the market for reach stackers is differentiated, as reach stackers are differentiated in function of specific applications. In that context, the Notifying Parties are particularly close competitors, also because they offer a full range of reach stacker models. They are therefore able to compete for a wide set of customers that have different specification requirements.

- (1359) The Notifying Parties submit that reach stackers other than those used for standard container handling (mainly stacking), '*are associated with extremely low volumes and clearly constitute a small niche area*',¹²⁷⁰ and that in any case '*other competitors [are] active in each of these (niche) areas*'.¹²⁷¹ The Notifying Parties further submit that considering the Notifying Parties' positions according to product range is not warranted, because '*a majority of market participants submitted that they can use all types of reach stackers for the applications for which they are typically used*'.¹²⁷²

- (1360) The Commission however observes that while the bulk of demand for reach stackers is in models for standard container handling, there are various product niches in which significantly less competitors than in the overall market are active. Therefore, the fact that the Notifying Parties offer a full range of reach stacker models further

¹²⁶⁹ Courtesy translation. The original German text reads: '*Die Fa. Kalmar ist als einziges Unternehmen mit eigenem Vertriebs- und vor allem eigenem Servicenetzwerk in diesem Segment in Deutschland vertreten. Dies ist die Basis unseres Erfolgs und garantiert unseren Kunden flächendeckend höchste Verfügbarkeit im Containerumschlag*'. Doc. ID 3738-1523 (The Parties' reply to the Commission's request for information RFI 17, CAR-GRA-00009473.docx).

¹²⁷⁰ Response to the Article 6(1)(c) Decision, paragraph 259.

¹²⁷¹ Response to the Article 6(1)(c) Decision, paragraph 258.

¹²⁷² Reply to the SO, paragraph 983.

contributes to the close competition between them. While many customers may only require ‘standard’ reach stackers for typical container stacking operations, some customers also require particular ‘niche’ reach stackers or heavily modified reach stackers – the fact that the Notifying Parties compete closely and without many other competitors present in these niches is therefore of great relevance to such customers.

- (1361) **First**, customers consider the Notifying Parties to have particularly broad product ranges that compete closely with each other. While no sub-segmentation of the reach stackers market appears appropriate, there is nevertheless considerable differentiation along metrics relevant for customers (e.g. lifting capacities, wheelbase, etc.)
- (1362) When asked to rank the top five reach stacker suppliers active in the EEA according to their product range, customers clearly consider the Notifying Parties to have the best product range. In particular, the replies summarised in Table 16 show that Cargotec is clearly considered to have the best/strongest product range, followed by Konecranes. All other suppliers are considered to have significantly weaker product ranges.

Table 16 – Customers’ ranking of reach stacker suppliers’ product ranges

Customers’ ranking of the top five reach stacker suppliers active in the EEA according to their product range					
Company	1 (strongest/best)	2	3	4	5 (weakest/worst)
Cargotec	XXXXXXXXXXXXXX				
Konecranes	XXXXX	XXXXX		XX	
Hyster	XX	X	XXXXXX	X	
Liebherr	X	X	X	X	XXX
CVS Ferrari	X		XXX		
Sany		X	X	X	XXX
Linde				X	
FTMH				XX	
Svetruck		X			

Source: Responses to Q6 – Questionnaire to Mobile equipment customers, Doc. ID 3607, question 14.1. The Commission’s evaluation of non-confidential responses.

- (1363) This view is also reflected in the response of customers to the question which suppliers of reach stackers can meet all their technical equipment requirements (e.g. in terms of lifting capacity, load-handling away from centre of gravity, drive type, data-readout, etc.). In particular, the replies, summarised in Table 17 show that Cargotec and Konecranes are considered by most responding customers expressing their view to be able to meet all of their equipment requirements. Overall, aside from the Notifying Parties, only Hyster is also considered by a majority of customers expressing their view to be able to meet all of their equipment requirements.

Table 17 – Customers’ view on which reach stacker supplier can meet their equipment requirements

Customers’ indication of which reach stacker supplier can meet their equipment requirements				
Company	Can meet all of my equipment requirements	Can meet most of my equipment requirements	Can meet some of my equipment requirements	Can meet none of my equipment requirements
Cargotec	XXXXXXXXXXXXXXXXXXXX	XXXXXX	X	X
Konecranes	XXXXXXXXXXXXXXXXXXXX	XXXXXXXX	X	X
Hyster	XXXXXXXXXXXXXXXXXXXX	XXXXXXXX	XXX	XX
Sany	XXX	XXXXXX	XXXXXX	XX
Svetruck	XXXX	XX	XX	XXXXX
CVS Ferrari	XXXXXXXXXX	XXXXXX	XXXX	XXX
Liebherr	XXXXXXXX	XXXXXX	XXXX	XXX
FTMH	XXXX	X	X	XXX
Taylor			X	XX
Kion				XXX
Other European OEM	X	X		XXX
Other non-European OEM	X			XX

Source: Responses to Q6 – Questionnaire to Mobile equipment customers, Doc. ID 3607, question 18.1. The Commission’s evaluation of non-confidential responses. Excluding replies indicating ‘I do not know’.

- (1364) It follows that when considering specific reach stacker product types – and in particular reach stackers, which are not only used for the handling of standard capacity (45 tonnes) full containers, but sometimes also for empty or semi-laden container handling, barge loading, very high capacity applications, or the handling of industrial components – the Notifying Parties appear to be among a very small number of players offering certain types of reach stackers in the EEA. Asked which OEMs they consider to be effective suppliers in their region of reach stackers with 45 tonne stacking capability in the second row, barge handlers, very high capacity reach stackers with a capacity above 85 tonnes, reach stackers for industrial applications and reach stackers with a wheelbase of above 8 meters, customers ascribed best capabilities to the Notifying Parties, followed by Hyster. All other competitors are only considered capable suppliers by a significantly smaller number of customers.¹²⁷³
- (1365) In this context, customers also indicate that in the past ten years, they have bought barge handlers, reach stackers for industrial applications and reach stackers with a wheelbase of above 8 meters from both Notifying Parties, but not from all reach stacker competitors of the Notifying Parties.¹²⁷⁴
- (1366) **Second**, distributors consider the Notifying Parties to have particularly broad product ranges that compete closely with each other.

¹²⁷³ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question E.C.A.3.1.

¹²⁷⁴ Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 19.1.

- (1367) When asked to rank the top five reach stacker suppliers active in the EEA according to their product range, distributors/dealers clearly consider the Notifying Parties to have the best product range. In particular, the replies summarised in Table 18 show that Cargotec is clearly considered to have the best/strongest product range, followed by Konecranes. All other competitors are considered to have significantly weaker product ranges.

Table 18 – Distributors’/dealers’ ranking of reach stacker suppliers’ product ranges

Distributors’/dealers’ ranking of the top five reach stacker suppliers active in the EEA according to their product range					
Company	1 (strongest/best)	2	3	4	5 (weakest/worst)
Cargotec	xxxxxxxxxxxxxxxxxxxxxx	xxxxxxx		x	
Konecranes	xxxxxx	xxxxxxxxxxxxxxxxxxxx	xxxxxx		
Hyster	xx	xxx	xxxxxxxxxxxxxx	xxxx	xx
Liebherr		x	xx	x	xxxxx
CVS Ferrari			xxxxx	xxxxxx	xx
Sany				xxxxx	xxx
Linde			xx		xx
FTMH		x	x	xxx	xxxxx
Svetruck				xx	
Toyota			x	x	

Source: Responses to Q8 – Questionnaire to Distributors of mobile equipment, Doc. ID 3609, question 19.1. The Commission’s evaluation of non-confidential responses.

- (1368) When considering specific reach stacker product types, responding distributors/dealers indicate that in the past ten years they have sold/distributed certain reach stacker product types only from very few suppliers including the Notifying Parties. E.g. considering barge stackers, very high capacity reach stackers (with a capacity above 85 tonnes) and reach stackers with a wheelbase of above 8 meters, not all competitors active also in standard reach stackers are listed among those whose products have been sold/distributed.¹²⁷⁵
- (1369) A distributor explains that ‘only few players are able to serve a specific segment of demand by meeting the required specifications. In addition to Konecranes and Kalmar, Hyster may be able to meet the specifications (e.g., machines able to reach 46t in the second row, machines with sliding cabin)’.¹²⁷⁶
- (1370) **Third**, competitors consider the Notifying Parties to have particularly broad product ranges that compete closely with each other.
- (1371) When asked to rank the top five reach stacker suppliers active in the EEA (including their own company) according to their product range, competitors clearly consider the Notifying Parties to have the best product range. In particular, the replies summarised in Table 19 show that Cargotec is clearly considered to have the best/strongest product range, followed by Konecranes. All other competitors are considered to have significantly weaker product ranges.

¹²⁷⁵ Responses to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 20.1.

¹²⁷⁶ Doc. ID 261, Minutes of a call with a distributor, 24 February 2021.

Table 19 – Competitors’ ranking of reach stacker suppliers’ product ranges

Competitors’ ranking of the top five reach stacker suppliers active in the EEA according to their product range					
Company	1 (strongest/best)	2	3	4	5 (weakest/worst)
Cargotec	xxxxxxx	x			
Konecranes	xx	xxxx	x		
Hyster		xx	xx	xx	xx
Liebherr					xx
CVS Ferrari				xxxx	xx
Sany			xxxx	xx	x
Uplifting			x		

Source: Responses to Q3 – Questionnaire to competitors, Doc. ID 3582, question 82.1. The Commission’s evaluation of non-confidential responses.

- (1372) When considering specific reach stacker product types, no competitor responding to the market investigation indicated that it currently supplies very high capacity reach stackers or reach stackers with a wheelbase of above 8 meters in the EEA. Only one competitor indicated that it currently supplies reach stackers with 45 tonne stacking capabilities in the second row in the EEA.¹²⁷⁷
- (1373) With respect to barge stackers, a competitor explains that ‘[i]t is difficult for an OEM to be competitive in [barge stackers], if it does not have a good base volume of sales in the regular/standard reach stacker market’ and that its ‘market share is probably a little lower to that in the overall reach stacker market as we lack the very high capacity units that some terminals require’.¹²⁷⁸ Another competitor explains that ‘[r]egarding barge loading activities in the inland waterway areas, Konecranes and Cargotec offer an eight to nine metres wheelbase reach stacker with a telescoping boom for laden container handling operations. Hyster is the only other OEM active in this equipment. [The Company] is concerned that post transaction, there will only be two players in this market: Hyster and the Merged Entity’.¹²⁷⁹
- (1374) A competitor also submits that when considering very high capacity reach stackers, it cannot compete at present: ‘[The Company] offers reach stackers with a hook that offers a lifting capacity of 50 tonnes. However, the market is shifting towards even higher required capacities such as above 55-65 tonnes, which [the Company] cannot currently offer. [The Company] receives some requests for such very high capacity reach stackers but cannot compete in this segment. The Parties are active in the market for these very high capacity reach stackers - they even offer reach stackers with lifting capacities up to as high as 160 tonnes (Konecranes via Nielsen)’.¹²⁸⁰ On the subject of these very high capacity reach stackers, a distributor explains: ‘The Company, in collaboration with Konecranes, converts some of the Konecranes reach stackers into heavy-duty equipment with a lifting capacity up to 158 tonnes, for use in the windmill industry (including a lifting hook). The Company supplies this equipment worldwide through Konecranes’ sales organisation (e.g., Europe, China, Taiwan) but has a very limited production capacity of approximately 25 units per

¹²⁷⁷ Response to Q1 – Questionnaire to Competitors, Doc. ID 3154, question E.C.A.3.1.

¹²⁷⁸ Doc. ID 932, Minutes of a call with a competitor, 20 April 2021.

¹²⁷⁹ Doc. ID 657, Minutes of a call with a competitor, 22 April 2021.

¹²⁸⁰ Doc. ID 657, Minutes of a call with a competitor, 22 April 2021.

*year. Cargotec offers a similar product with a lifting capacity of up to 130 tonnes. The Italian brand CEES also supplied this equipment. They were bankrupt several times but are active again. Overall, there are only three OEMs active in this business: Cargotec, Konecranes and Cees’.*¹²⁸¹

- (1375) The Notifying Parties submit there is very limited demand for very high capacity reach stackers and reach stackers with a wheelbase of above 8 meters – and that therefore the Notifying Parties only sell very few units, if any per year.¹²⁸² The Commission notes that there are nevertheless customers that require these specific types of machines, and that therefore – limited – demand for these machines exists. This demand can in the EEA currently only be addressed by the Notifying Parties, and at most a very limited set of other players.
- (1376) **Fourth**, the Notifying Parties consider themselves and each other to have particularly broad product ranges that compete closely with each other.
- (1377) For example, in an internal document, Cargotec [internal document reference].¹²⁸³ [Internal document reference].¹²⁸⁴ [Internal document reference].¹²⁸⁵ While the Notifying Parties note that demand for these specific types of reach stackers is very low,¹²⁸⁶ there are therefore only very limited available suppliers for these types of reach stackers.
- (1378) Further, the Notifying Parties are also competing closely and across the entire reach stacker product range when considering their different brands and value propositions to customers. Both Parties have a more budget/value oriented brand/product as well as a premium line. Konecranes offers the premium ‘Konecranes Blue’ or SMV branded reach stackers, as well as the cheaper ‘Konecranes Liftace’ brand. Kalmar offers the premium ‘Premium’ and ‘Eco’ lines, as well as the cheaper ‘Essential’ line.
- (1379) The Konecranes internal document captioned in Figure 93 illustrates [...].

Figure 93: Konecranes Blue and Konecranes Liftace

[...]

Source: [Internal document reference].

- (1380) The Cargotec internal document captioned in Figure 94 [...].

Figure 94: Cargotec benchmarking of different reach stacker value propositions

[...]

Source: [Internal document reference].

- (1381) In another internal Cargotec document, captioned in Figure 95, [...].

¹²⁸¹ Doc. ID 881, Minutes of a call with a distributor, 19 April 2021.

¹²⁸² Response to the Article 6(1)(c) Decision, paragraph 258.

¹²⁸³ Form CO, RFI PN4 – Annex – QC15.a.1 – Confidential, page 102.

¹²⁸⁴ Response to the Article 6(1)(c) Decision, paragraph 258.

¹²⁸⁵ Doc. ID 3659-28269 (The Parties’ reply to the Commission’s request for information RFI 17, CAR-KAR-00017733.msg).

¹²⁸⁶ Reply to the SO, paragraph 984.

Figure 95: [...]

[...]

Source: [Internal document reference].

(1382) The internal Konecranes document captioned in Figure 96 shows [...].

Figure 96: Konecranes benchmarking of premium and value proposition against competitors

[...]

Source: [Internal document reference].

(1383) Further, in an internal Cargotec email, Sany's newly launched allegedly fully-electrical reach stacker is discussed. [Internal document reference].¹²⁸⁷ [...].

(1384) In a Konecranes internal email, captioned in Figure 97, it is reported that [internal document reference]. This further shows that the Notifying Parties have a differentiated reach stacker product portfolio and as a consequence primarily consider each other as main rivals.

Figure 97: [...]

[...]

Source: [Internal document reference].

(1385) In a Konecranes internal document, Konecranes is considering [internal document reference].¹²⁸⁸ [...].

(1386) The Notifying Parties are active in what they themselves consider to be the 'Premium' segment of the reach stacker market, while certain competitors (e.g. Hyster, Sany) are considered to only offer lower quality reach stacker products (e.g. 'Low-Premium'). Therefore, the Notifying Parties' product portfolios are particularly close substitutes, whereas competitor products are more distant substitutes. This finding is further supported by the market share estimates based on value submitted by the Notifying Parties. While the Notifying Parties submit that Cargotec has a 2018-2020 EEA volume market share of [40-50]%, the Notifying Parties estimate Cargotec's 2018-2020 EEA value market share to be [40-50]%. For Konecranes the estimates are [30-40]% (volume) and [30-40]% (value), for the Merged Entity [70-80]% (volume) and [70-80]% (value). Each Notifying Party's and the Merged Entity's value share estimate is therefore higher than the respective volume market share. In contrast, the Notifying Party's estimates for competitors show the inverse trend. For example: Hyster [5-10]% (volume) and [5-10]% (value); Sany [0-5]% (volume) and [0-5]% (value).¹²⁸⁹ Value-based market shares capture better differences in differentiated product markets. Therefore, the fact that according to the Notifying Parties the Parties' value-based shares are higher than their volume-based shares while competitors' value-based shares are lower than their volume-based shares further shows that the Notifying Parties compete more closely with each

¹²⁸⁷ Doc. ID 3659-84753 (The Parties' reply to the Commission's request for information RFI 17, CAR-KAR-00000992.msg).

¹²⁸⁸ Doc. ID 3584-45019 (The Parties' reply to the Commission's request for information RFI 18, M.10078 Cargotec Konecranes RFI 18-00211437.docx).

¹²⁸⁹ Form CO, Reply to Request for information RFI 7, Annex Q2.

other (in particular in the premium segment) than with other competitors in the EEA reach stacker market.

- (1387) Therefore, overall, both Notifying Parties consider themselves and each other to be active with reach stacker products across different value proposition segments. At the same time, they consider their other competitors not to be active across all these segments. The Notifying Parties therefore compete with each other across the entire reach stacker product range along the value-premium scale, whereas other competitors do not. This further indicates that the Notifying Parties compete particularly closely.
- (1388) In conclusion, the Parties are offering a full reach stacker product range, while most competitors do not. In the context of the differentiated reach stackers market, the fact that the Notifying Parties are able to compete for a wide set of customers that have different specification requirements gives them a competitive advantage over other competitors and further contributes to the close competition between them. They are able to compete in segments and niches of the reach stacker market in the EEA, in which no or only few competitors are active and customers therefore only have limited ability to substitute the Notifying Parties' products.

(E) The Notifying Parties closely compete in developing new products

- (1389) The Notifying Parties submit that '*Chinese suppliers are at the forefront of innovation in Mobile Equipment*' (of which reach stackers are a part).¹²⁹⁰ They further, by referencing an internal Konecranes document, explain that [internal document reference].¹²⁹¹
- (1390) The Commission does not dispute that manufacturers like Kalmar and Konecranes are also offering more budget oriented reach stacker product lines (e.g. Konecranes Liftace and Kalmar Essential) and that Chinese manufacturers like Sany provide reach stacker products positioned above the most budget oriented ones (see e.g. Figure 95 for what Kalmar refers to as Sany's 'Low-Premium' offering).
- (1391) It nevertheless appears that the Notifying Parties are two particularly innovative reach stacker suppliers – and that they compete closely in the supply of newly developed reach stacker products (e.g. in terms of lifting capacities, electrification, remote-control/automation, data-readout and –usage, etc.) into the EEA market.
- (1392) **First**, customers consider the Notifying Parties to be particularly innovative manufacturers of reach stackers.
- (1393) When asked to indicate which supplier of mobile equipment (of which reach stackers are a part) they consider to be particularly innovative, customers consider the Notifying Parties to be the most innovative. In particular, the replies summarised in Table 20 show that Cargotec is considered to be most innovative, followed by Konecranes, Liebherr and Hyster. Other competitors are considered considerably less innovative.

¹²⁹⁰ The Notifying Parties' supplemental submission on mobile equipment, 24 September 2021, paragraph 20.

¹²⁹¹ The Notifying Parties' supplemental submission on mobile equipment, 24 September 2021, paragraph 21.

Table 20 – Customers’ ranking of particularly innovative mobile equipment suppliers

Customers’ ranking of particularly innovative mobile equipment suppliers					
Company	1 (weakest/worst)	2	3	4	5 (strongest/best)
Cargotec			XXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXX
Konecranes		X	XXXXXXXXXX	XXXXXXXXXXXX	XXXXXX
Hyster		X	XXXXXXXXXX	XXXXXXXXXXXX	XXXX
Sany	XX	XXXXXX	XXXXXX	XXX	
Svetruck	X	XXXXXXX	XXXXXXXXXX	XXX	
CVS Ferrari	XX	XXX	XXXXXXX	XXXX	X
Liebherr	X	XX	XXXXXXX	XXXXXX	XXXXXX
FTMH	X	XXXX	XXXX		XX
Taylor	X	X	XXXXXX		
Kion	X	X	XXXX		X
Other European OEM	X	X	XXX	X	X
Other non-European OEM	X	X	XXX		

Source: Responses to Q6 – Questionnaire to Customers of mobile equipment, Doc. ID 3607, question 20. The Commission’s evaluation of non-confidential responses.

- (1394) In addition, when asked to rank the top five reach stacker suppliers according to which one is best/strongest in the development of new products, customers consider Cargotec to be the strongest, followed by Konecranes. All other competitors are considered significantly weaker in the development of new products.¹²⁹²
- (1395) In this context a customer explains that ‘Konecranes is particularly innovative with respect to electric versions of RS [reach stackers], as it already has an e-version RS in its portfolio. Konecranes and Cargotec are particularly innovative with respect to data processing and application of data for optimization of equipment usage, including in relation to RS. Both offer advanced fleet management systems. Suppliers of RS in the EEA other than Konecranes and Cargotec tend to be generally less innovative. While some suppliers have made certain notable developments (e.g. Hyster offers a hydrogen-powered RS), they arguably do not qualify as trendsetters in new innovation trends’.¹²⁹³
- (1396) Asked to identify the innovative products that suppliers of reach stackers have brought to the market in the last five years, multiple customers name examples for Cargotec, Konecranes, Hyster and Liebherr, while only one customer names an example for Sany. For Cargotec, customers for example name the Eco reach stacker (also hybrid reach stacker), a fully electric reach stacker, and smart fleet/data processing functionalities, as well as K-motion software which ‘claims to measure the weight of the load and adjust power generation to the right level’. For Konecranes, customers for example name the hybrid reach sacker, its true connect software, and remote services. For Hyster, customers for example name the hydrogen

¹²⁹² Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 14.1.

¹²⁹³ Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 20.1.

reach stacker and remote services. For Liebherr, customers for example name the hydraulic energy storage and the hydrostatic drive and the ‘*reachstacker design*’. For Sany, one customer names the electric reach stacker.¹²⁹⁴

- (1397) **Second**, competitors consider the Notifying Parties to be particularly innovative manufacturers of reach stackers.
- (1398) When asked to rank the top five reach stacker suppliers according to which one is best/strongest in the development of new products, competitors consider the Notifying Parties to be the strongest. In particular, the replies summarised in Table 21 show that Cargotec is considered to be the strongest in the development of new products, followed by Konecranes and Hyster. The other competitors are considered to be significantly weaker.

Table 21 – Competitors’ ranking of reach stacker suppliers’ development of new products

Competitors’ ranking of the top five reach stacker suppliers active in the EEA according to their development of new products					
Company	1 (strongest/best)	2	3	4	5 (weakest/worst)
Cargotec	XXXX	XXX	X		
Konecranes	X	XX	XXX		
Hyster	X	XX	XXX		X
Liebherr					XX
CVS Ferrari	X			XXX	XX
Sany			X	XXXXX	X
Uplifting	X				
FTMH		X			

Source: Responses to Q3 – Questionnaire to Competitors, Doc. ID 3582, question 82.1. The Commission’s evaluation of non-confidential responses.

- (1399) A competitor to the Notifying Parties submits that ‘Konecranes has presented to the market a hybrid (diesel-electric) reach stacker in 2017’ and that ‘Kalmar is rumoured to be announcing to the market their Fully Electric Reach Stacker upcoming launching in the next month or so’.¹²⁹⁵
- (1400) Considering their own planned reach stacker product innovations, competitors explain that they are developing electric and fuel cell reach stackers.¹²⁹⁶
- (1401) **Third**, the Notifying Parties internally consider themselves and each other to be particularly innovative manufacturers of reach stackers.
- (1402) The Notifying Parties submit that ‘[...] yet and cannot be considered as particularly innovative’¹²⁹⁷ and that Sany is a particularly innovative competitor. This is said to be recognised in the Parties internal documents (e.g. a Cargotec document stating that [internal document reference]).¹²⁹⁸ Further, The Notifying Parties submit that

¹²⁹⁴ Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 21.1.

¹²⁹⁵ Doc. ID 4654, Submission by a competitor, 22 November 2021.

¹²⁹⁶ Responses to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 91.1.

¹²⁹⁷ Reply to the SO, paragraph 993.

¹²⁹⁸ Response to the Article 6(1)(c) Decision, paragraph 257.

(potential) competitors are developing electrical reach stacker offerings.¹²⁹⁹ The Commission however finds that internal documents of the Notifying Parties provide a more nuanced picture. In fact, the Notifying Parties appear to actively pursue further developments in reach stackers, and to track each other's developments closely.

- (1403) Electrification, and more broadly the development of low/zero emissions vehicles, appears to be the main development trend with respect to reach stackers. Other development trends include the inclusion of software for smart data usage and remote control features.¹³⁰⁰
- (1404) With respect to electrification/low emissions, Cargotec submits that it currently does not supply fully electric, hybrid or fuel-cell versions of reach stackers. However, Cargotec expects to launch a fully electric reach stacker still in 2021. The Notifying Parties submit that [internal document reference].¹³⁰¹ The Commission however notes that [internal document reference].¹³⁰² [...].¹³⁰³
- (1405) Konecranes submits that it currently supplies a hybrid-electric reach stacker [internal document reference].¹³⁰⁴
- (1406) **In the first instance**, in observing competitor developments, in particular Sany's electric reach stacker offering, the Notifying Parties consider that competitors are in fact not ahead of them in a meaningful way.
- (1407) For example, in relation to Sany's electric reach stacker development, it appears from recent internal documents of the Notifying Parties, that other than having indeed a significant head start, Sany currently is active with a hybrid reach stacker, similar to Konecranes' current offering. In the Cargotec internal document (from [date]) captioned in Figure 98, Sany's product is assessed to be [internal document reference]. In summary, the document assesses that this Sany hybrid [internal document reference], but also that [internal document reference].

Figure 98: [...]

[...]

Source: [Internal document reference].

- (1408) In fact, in comparing its own planned electric reach stacker product against the Sany hybrid electric reach stacker, Cargotec finds that while the Sany machine has [internal document reference],¹³⁰⁵ Kalmar, as indicated in the slide captioned in Figure 99, is planning to offer [number] different sizes.

Figure 99: [...]

[...]

Source: [Internal document reference].

¹²⁹⁹ See e.g. the Notifying Parties' supplemental submission on mobile equipment, 24 September 2021 and the Reply to the SO, paragraph 993.

¹³⁰⁰ For example, Kalmar is developing a Remote Control reach stacker, see e.g. Doc. ID 3669-76233 (The Parties' reply to the Commission's request for information RFI 17, CAR-VEH-00055097.msg).

¹³⁰¹ Reply to the SO, paragraph 902.

¹³⁰² Reply to Request for information RFI 37, question 4.

¹³⁰³ Reply to Request for information RFI 37, Annex QC4.

¹³⁰⁴ Reply to Request for information RFI 21, questions 17 c and d.

¹³⁰⁵ Reply to Request for information RFI 24, Annex QC7.12, slide 2.

- (1409) Kalmar, in an internal document captioned in Figure 100, assesses for CCH (of which reach stackers are part), that excluding the expected Kalmar market share increase until 2024 its equipment will cause [...] % less CO₂ emissions. Including the expected Kalmar market share increase, it will cause [...] % more CO₂ emissions. Yet including the expected Kalmar market share increase and emissions from competitor equipment which in the future will be Kalmar, it will cause [...] % less CO₂ emissions. This is due to the [internal document reference]. This shows that Kalmar considers its products to have lower CO₂ emissions than competitor products and therefore its own products to be particularly innovative.

Figure 100: [...]

[...]

Source: [Internal document reference].

- (1410) **In the second instance**, in internal documents, the Notifying Parties are tracking each other's development efforts for electric reach stackers.
- (1411) For example, in an internal document, Cargotec discusses [internal document reference] and identifies one action point to be [internal document reference].¹³⁰⁶ This suggests that in part Cargotec is focusing on developing its electric portfolio in order to effectively compete with Konecranes.
- (1412) In another internal document, Cargotec assesses that [internal document reference].¹³⁰⁷
- (1413) In an internal document from [year], Konecranes has [internal document reference].¹³⁰⁸
- (1414) In an internal email from [year], [internal document reference].¹³⁰⁹
- (1415) In a [year] email a Konecranes employee inquires [internal document reference].¹³¹⁰ This exchange further shows that Konecranes is actively monitoring Kalmar's reach stacker electrification efforts.
- (1416) Overall, therefore, the Notifying Parties are important and close competitors in the development of new reach stacker products, in particular also hybrid and electric reach stackers. Customers and competitors clearly consider the Notifying Parties to be the two most important players in the development of new reach stacker products. While other reach stacker manufacturers are also developing and launching electric/hybrid reach stackers, it does not appear that these would be ahead of the Notifying Parties in a meaningful way.
- (F) Absent the Transaction, the Notifying Parties would have continued to compete intensely for customers and market share
- (1417) Absent the Transaction, the Notifying Parties would have continued to compete intensely for customers and market share in the EEA market for reach stackers.

¹³⁰⁶ Doc. ID 3659-35011 (The Parties' reply to the Commission's request for information RFI 17, CAR-KAR-00011713.pptx), slide 9.

¹³⁰⁷ Reply to Request for information RFI 24, Annex QC7.1, slide 5.

¹³⁰⁸ Doc. ID 3586-23975 (The Parties' reply to the Commission's request for information RFI 18, M.10078 Cargotec Konecranes RFI 18-00343107.pptx), slide 30.

¹³⁰⁹ Doc. ID 3590-82044 (The Parties' reply to the Commission's request for information RFI 18, M.10078 Cargotec Konecranes RFI 18-00283743 msg).

¹³¹⁰ Doc. ID 3584-48175 (The Parties' reply to the Commission's request for information RFI 18, M.10078 Cargotec Konecranes RFI 18-00209562 msg).

(F.i) The Notifying Parties consider each other as the main competitors in the EEA

- (1418) The Notifying Parties appear to consider each other as each other's main competitors in the EEA reach stackers market. The Notifying Parties regularly benchmark against each other, consider the price pressure from the other Party, and fight for market share.
- (1419) **First**, Konecranes appears to consider Cargotec as its main competitor in the EEA.
- (1420) In an internal document, Konecranes summarises [internal document reference].¹³¹¹ [...].
- (1421) [Internal document reference], Konecranes clearly considers [internal document reference].

Figure 101: Konecranes view of mobile equipment competitors in Europe

[...]

Source: [Internal document reference].

- (1422) In a document that summarises Konecranes' Lift Trucks business unit's (which includes reach stackers) discussion with some of Konecranes' distributors, the following suggestions [internal document reference].¹³¹² This suggests that there is significant price competition between the Notifying Parties and that Konecranes dealers perceive Kalmar as a main competitor.
- (1423) In a [year] internal Konecranes document [internal document reference].¹³¹³
- (1424) [Internal document reference].¹³¹⁴
- (1425) **Second**, Cargotec considers Konecranes as its main competitor in the EEA.
- (1426) For example, Cargotec benchmarks its reach stacker portfolio against Konecranes' across various internal documents.¹³¹⁵
- (1427) In an internal document, Cargotec considers that Konecranes is taking [internal document reference].¹³¹⁶ Similarly, in an internal document and specific to the situation in France, Cargotec notes [internal document reference].¹³¹⁷
- (1428) In an email exchange after the announcement of the proposed Transaction, a Kalmar vice president for South Europe states that [internal document reference].¹³¹⁸

¹³¹¹ Form CO, PN RFI2, Annex QK89.1, slide 5.

¹³¹² Doc. ID 3584-4720 (The Parties' reply to the Commission's request for information RFI 18, M.10078 Cargotec Konecranes RFI 18-00162988.pdf), slides 23 and 25.

¹³¹³ Doc. ID 3586-81225 (The Parties' reply to the Commission's request for information RFI 18, M.10078 Cargotec Konecranes RFI 18-00351209.docx).

¹³¹⁴ Doc. ID 3586-69893 (The Parties' reply to the Commission's request for information RFI 18, M.10078 Cargotec Konecranes RFI 18-01153171 msg).

¹³¹⁵ See e.g. Doc. ID 3661-35084 (The Parties' reply to the Commission's request for information RFI 17, CAR-KAU-00050275.pptx); Form CO, PN RFI 4, Annex QC15.a.1.

¹³¹⁶ Form CO, PN RFI7, Annex QC39.1, slide 19.

¹³¹⁷ Doc. ID 3660-25258 (The Parties' reply to the Commission's request for information RFI 17, CAR-KAR-00165069.pptx), slide 6.

¹³¹⁸ Courtesy Translation. The original German text reads: 'Aktuell arbeiten beide Konzerne "normal" weiter und sind am Markt blutige Konkurrenten'. Doc. ID 3716-9371 (The Parties' reply to the Commission's request for information RFI 17, CAR-WUR-00019739.msg).

(1429) The fact that Cargotec considers Konecranes as an important rival is further evidenced in a Cargotec internal email, captioned in Figure 102. Cargotec is considering to acquire the [internal document reference]. This clearly shows that Cargotec considers Konecranes as a significant rival and even considers the acquisition of a company in order to prevent Konecranes from acquiring it and becoming also a stronger reach stacker rival in a certain region.

Figure 102: [...]

[...]

Source: [Internal document reference].

(1430) Further, Figure 103 shows [internal document reference].

Figure 103: [...]

[...]

Source: [Internal document reference].

(F.ii) Both Notifying Parties have growth plans in reach stackers

(1431) Both Cargotec and Konecranes pre-Transaction have plans to grow their mobile equipment and reach stacker business and to increase their respective market shares.

(1432) The Notifying Parties submit that ‘it is natural for companies to have growth plans’ and that surely ‘the Parties’ competitors have similar growth plans’.¹³¹⁹

(1433) The Commission however considers that growth plans specifically by the merging Parties mean that an increase in potential competition (due to growth ambitions of both, in part at expense of each other) would be lost due to the proposed Transaction. This is an issue separate from whether or not competitors have growth ambitions. Given the Parties’ growth plans, absent the proposed Merger, competition and pricing pressure between the Parties would increase.

(1434) **First**, Konecranes has plans to [business plan].

(1435) Figure 104 captions a Konecranes internal document that [internal document reference].

Figure 104: [...]

[...]

Source: [Internal document reference].

(1436) Konecranes in addition [internal document reference].

Figure 105: [...]

[...]

Source: [Internal document reference].

(1437) Figure 106 captions another slide from Konecranes’ internal document [internal document reference].

¹³¹⁹ Response to the Article 6(1)(c) Decision, paragraph 273.

Figure 106: [...]

[...]

Source: [Internal document reference].

(1438) Konecranes in its [internal document reference].¹³²⁰

(1439) Konecranes' Lift Trucks business unit leadership continued with its [internal document reference] strategy efforts also after the announcement of the Proposed Transaction. For example, in a draft of an end-of-year [internal document reference]. The letter goes on to state that [internal document reference].¹³²¹

(1440) Further, in an internal presentation [internal document reference].

Figure 107: [...]

[...]

Source: [Internal document reference].

(1441) The Konecranes lift trucks [internal document reference]¹³²², [internal document reference].

Figure 108: [...]

[...]

Source: [Internal document reference].

(1442) [Business plan]. Therefore, absent the Proposed Transaction, it appears likely that the Notifying Parties would have competed even more intensely on the EEA market for reach stackers.

(1443) In addition to this specific initiative, Konecranes assessed [internal document reference].¹³²³

(1444) **Second**, Cargotec has plans to grow its market share in reach stackers in the coming years, also at the expense of Konecranes.

(1445) In particular, Cargotec has a plan [internal document reference].

Figure 109: [...]

[...]

Source: [Internal document reference].

(1446) The Notifying Parties note that the document captioned in Figure 109 also assesses that [internal document reference].¹³²⁴ The Commission in this context notes that Sany is indeed an important competitor in reach stackers in different markets globally (and particularly in Asia), and has been growing its market share in recent years. However the Commission is not aware of any internal document of the

¹³²⁰ Form CO, RFI PN4 Annexes QK4(c).1, slide 13.

¹³²¹ Doc. ID 3586-87250 (The Parties' reply to the Commission's request for information RFI 18, M.10078 Cargotec Konecranes RFI 18-00317142.docx).

¹³²² Doc. ID 3586-62316 (The Parties' reply to the Commission's request for information RFI 18, M.10078 Cargotec Konecranes RFI 18-00354050.pptx), slide 6.

¹³²³ Form CO, RFI PN7 Annexes QK22.1, slide 11. TFC: Range of Konecranes [...] Liftace reach stackers; DRU: Range of Kalmar's [...] Essential Range reach stackers.

¹³²⁴ Response to the Article 6(1)(c) Decision, paragraph 275.

Cargotec (or the Parties generally) that would consider Sany to be the likely main competitor in the EEA in the coming years. Instead, internal documents related to Europe generally prescribe a currently small European presence to Sany.

(1447) Cargotec's plan [internal document reference].

Figure 110: [...]

[...]

Source: [Internal document reference].

(1448) Overall, Cargotec appears to [internal document reference].¹³²⁵ [Internal document reference].

Figure 111: [...]

[...]

Source: [Internal document reference].

(1449) [Internal document reference].

Figure 112: [...]

[...]

Source: [Internal document reference].

(1450) [Internal document reference].

Figure 113: [...]

[...]

Source: [Internal document reference].

(1451) [Internal document reference].¹³²⁶

(1452) In addition, Cargotec appears to have its own dedicated strategy to try and [internal document reference] – specifically also in mobile equipment and reach stackers.¹³²⁷

(1453) In an internal Cargotec document [internal document reference].¹³²⁸ This suggests a willingness on the side of Cargotec to go specifically after current Konecranes customers and to price competitively against Konecranes in order to gain market share against Konecranes.

(1454) [Internal document reference].¹³²⁹ [Internal document reference].¹³³⁰

¹³²⁵ Other potential names that were floated among Kalmar managers were 'All-in-to-Dominate', 'Invest-to-Dominate', 'Devote-and-Dominate' and 'defeat-the-competition'. Doc. ID 3659-83290 (The Parties' reply to the Commission's request for information RFI 17, CAR-KAR-00035779 msg).

¹³²⁶ Form CO, RFI PN7 – Annex QC39.1 – Confidential, slide 19.

¹³²⁷ See for example Doc. ID 3662-28275 (The Parties' reply to the Commission's request for information RFI 17, CAR-KAU-00141887.pptx).

¹³²⁸ Doc. ID 3662-28275 (The Parties' reply to the Commission's request for information RFI 17, CAR-KAU-00141887.pptx), slide 5.

¹³²⁹ Doc. ID 3662-28275 (The Parties' reply to the Commission's request for information RFI 17, CAR-KAU-00141887.pptx), slide 23.

¹³³⁰ Doc. ID 3662-28275 (The Parties' reply to the Commission's request for information RFI 17, CAR-KAU-00141887.pptx), slide 25.

Figure 114: [...]

[...]

Source: [Internal document reference].

(1455) In another internal document, captioned in Figure 115, under the heading [internal document reference].

Figure 115: [...]

[...]

Source: [Internal document reference].

(1456) [Business plan].

(1457) Overall, therefore both Notifying Parties consider each other as main competitors in the EEA market for reach stackers and both Notifying Parties have plans to increase their reach stacker market shares – in part at the expense of each other and in part also based on the same or similar strategies. Absent the Proposed Transaction, the Notifying Parties' plans to increase their reach stacker market shares would result in continued and further intensified competition between the Notifying Parties in the EEA market for reach stackers.

(G) Conclusion

(1458) For the reasons set out in this Section 7.4.1.2, the Commission considers that the Transaction eliminates competition between the Notifying Parties that pre-Transaction compete closely and intensely on the EEA market for reach stackers. The analysis of the Notifying Parties' bidding data and tender interactions generally shows that the Notifying Parties compete closely. Views from market participants as well the Notifying Parties' internal documents further demonstrate that the Notifying Parties compete particularly closely due to strong distribution and service networks and a broad product range, and that they are important innovators in reach stackers. Other suppliers of reach stackers in the EEA are generally more distant competitors to the Notifying Parties – and are therefore unlikely to be able to effectively constrain the Merged Entity post-Transaction. Further, the Notifying Parties would absent the Transaction have competed intensely, as they consider each other as main rivals and have plans to each increase their reach stacker market shares.

7.4.1.3. Competitors face significant barriers to entry and expansion

(1459) The Commission will examine whether entry or potential entry is likely to constrain the behaviour of incumbents post-merger. In this case, it is to be assessed whether entry is likely to effectively constrain the Merged Entity, which has a very large market share indicative of a dominant position. For entry to be likely, it must be sufficiently profitable, timely and it must be of sufficient scope and magnitude to deter or defeat the anti-competitive effects of the merger. Barriers to entry give incumbent firms advantages over potential competitors, as they determine entry risks and costs for potential entrants.¹³³¹

(1460) The Notifying Parties submit that there are no significant barriers to entry and expansion, in particular because there has been successful entry into the reach stacker market in the recent past. Further, they state that as '*evidenced by the successful global expansion of Chinese players in a few short years, safety and regulatory*

¹³³¹ See Horizontal Merger Guidelines, paragraphs 69-75.

*standards worldwide for reach stackers are easily met’. Also, ‘[m]ost of the critical components used to produce reach stackers are readily available and commonly sourced from third Parties’. In addition, the Parties submit that ‘reach stackers are often sold through knowledgeable dealer networks, which work together with suppliers to demonstrate the quality of their offering’. Further, ‘there are even fewer obstacles to geographic expansion of players already active in reach stackers, as demonstrated by the successful expansion strategies of Chinese suppliers of mobile equipment, including reach stackers’.*¹³³²

- (1461) In addition, the Notifying Parties state that local service and distribution networks are not a pre-requisite to successfully supply in the reach stacker market,¹³³³ but that in any case sufficient independent distributors and service providers are available for potential entrants to partner with.¹³³⁴
- (1462) The Notifying Parties further submit that brand reputation is not a decisive factor, that new distribution channels (e.g. online sales) are gaining in importance, and that changing markets (e.g. environmentally friendly solutions) are giving room for market entry.¹³³⁵
- (1463) The Notifying Parties also submit that the Parties are concerned about the expansion of Chinese competitor Sany in Europe,¹³³⁶ and that other – mostly Chinese – reach stacker competitors could enter the supply of reach stackers in Europe without great difficulties.¹³³⁷
- (1464) Contrary to the submissions by the Notifying Parties, the Commission finds that significant barriers to entry and expansion exist in the EEA market for reach stackers. While some companies indicate that they have entry or expansion plans, no entry on significant scale has occurred over the past ten years – instead the market has consolidated further. Future entry and expansion are made difficult by the benefits of a European assembly presence, the need of a local distribution and after-sales network, the benefits incumbents have due to their installed base, and the need to develop high-quality, well perceived products.
- (1465) The Notifying Parties further submit that in assessing the likelihood of entry and expansion, a timeframe longer than 2-3 years would be appropriate, e.g. due to the characteristics of the market such as long-term investments and relatively low and lumpy order volumes.¹³³⁸ However, such a timeframe appears to be appropriate to account for the lumpiness of demand in the reach stacker industry – it is therefore also a three-year timeframe that is considered when assessing market shares (an approach also advanced by the Notifying Parties in the Form CO). Further, given an average eight-year lifespan of reach stackers, a 2-3 year timeframe to consider potential entry and expansion already accounts for on average 25% to 38% of replacement demand – a significant portion of demand for which customers would be exposed to the (adverse) effects of the Proposed Transaction. If one were to consider entry and expansion on a 5-year timeframe, this affected proportion of replacement demand would even be 63%. Therefore, a 2-3 year timeframe is appropriate to consider entry and expansion in this case.

¹³³² Form CO, paragraphs 310-314.

¹³³³ Response to the Article 6(1)(c) Decision, paragraph 294.

¹³³⁴ Response to the Article 6(1)(c) Decision, paragraphs 302-310.

¹³³⁵ Response to the Article 6(1)(c) Decision, paragraphs 311-317.

¹³³⁶ Response to the Article 6(1)(c) Decision, paragraphs 318-323.

¹³³⁷ See e.g. Supplemental submission on mobile equipment, 24 September 2021.

¹³³⁸ Reply to the SO, paragraphs 847-848.

- (1466) Overall, it appears unlikely that any potential entry or expansion would be sufficient in scope and magnitude to effectively deter and defeat the anti-competitive effects of the Proposed Transaction.
- (A) Some companies have entry or expansion ambitions in relation to the EEA reach stacker market
- (1467) The Commission has become aware of some companies that have entry or expansion plans in relation to the EEA reach stacker market.
- (1468) A company from Sweden, Camblift, that is currently not active in the production of reach stackers, plans to enter the EEA reach stacker market in 2022. The Company was founded in 2019. This Company *‘considers that there is always room for a small new company in the market. As a small company it would focus on a different set of reach stacker customers than the large competitors. A large customer who wants to order 20 reach stackers will probably buy them from one of the large established suppliers. Therefore Camblift will focus on small customers first to build reputation and also because it considers that it will be difficult to enter successfully in the big ports in e.g. Germany and make a first sale there’*.¹³³⁹
- (1469) In addition, a company currently active in the supply of reach stackers only outside of the EEA submits that it plans to enter the EEA market for reach stackers in the next 2-3 years. This competitor submits: *‘Yes, we are concentrating on the western hemisphere but will expand our distribution in the future’*.¹³⁴⁰ The company further explains that while *‘currently has no specific plans of market entry in Europe/in the EEA, it considers it likely that it will seek to compete there in the future as well’*.¹³⁴¹ However, this competitor notes in relation to the time and cost related to such entry plans that *‘[i]t is a monumental task because of the two major players konecrane and kalmar. jointly it would be a monopoly in my opinion’*.¹³⁴² The company also explains that profitable entry is not easy to achieve since initially relatively low number of units could be expected to be sold. Accordingly, *“it would not be worth the expense to undertake the necessary CE certificate registration for the products”*. The company estimates that the cost of the CE certificate would be mid six figures at least and if one were to certify the entire product line, this would probably reach into the seven figures. Other costs related to market entry would be linked to the installation of offices in Europe and the creation of marketing campaigns to present the product. In addition, the current design of this competitor’s container handling equipment would require certain modifications to meet European customer preferences.¹³⁴³
- (1470) A further company currently active in the supply of reach stackers only outside the EEA and based in India submits that it plans to enter the supply of reach stackers in the EEA in the next 2-3 years.¹³⁴⁴ The company also submits that it has *‘to invest significant amounts to establish a distribution and service network in the EEA’*.¹³⁴⁵ The company further submits: *‘We currently supply mobile equipment per Indian*

¹³³⁹ Doc. ID 3788, Minutes of a call with a competitor, 18 August 2021.

¹³⁴⁰ Response to Q1 – Questionnaire to Competitors, Doc. ID 3154, questions E.C.B.1.1.

¹³⁴¹ Doc. ID 4133, Minutes of a call with a competitor, 19 August 2021.

¹³⁴² Response to Q1 – Questionnaire to Competitors, Doc. ID 3154, question E.C.B.3.3.

¹³⁴³ Doc. ID 4133, Minutes of a call with a competitor, 19 August 2021.

¹³⁴⁴ Response to Q3 – PH2 Questionnaire to competitors, Doc. ID 3582, question 84.1.

¹³⁴⁵ Response to Q3 – PH2 Questionnaire to competitors, Doc. ID 3582, question 84.1.1.

*Standards. As EU regulations are generally stricter, we may have challenges to supply mobile equipment’.*¹³⁴⁶

- (1471) A competitor already active in the supply of reach stackers in the EEA, Sany, submits that it is ‘*in a growing mode*’.¹³⁴⁷
- (1472) The Notifying Parties submit that as ‘[t]he supply of container handling equipment is an assembly business [...] the production capacity can therefore easily expanded in response to a price increase’.¹³⁴⁸ Indeed, capacity expansion appears to be possible for many suppliers. For example, asked if they could expand supply in case of an increase in prices for reach stackers in the EEA, two competitors said yes, in a short matter of time, one said yes, in 2-3 years and two said no.¹³⁴⁹ Competitors generally also submit that they could increase their production capacity for reach stackers.¹³⁵⁰
- (1473) The Notifying Parties submit that ‘in a market with excess capacity, the presence of a few competitors is sufficient to guarantee effective price competition, as any attempt to increase prices would be defeated by competitors who have sufficient capacity to expand production’.¹³⁵¹ However, production capacity does not appear to be a metric of immediate relevance for the competitive success of players in the EEA reach stackers market. Unlike other parameters (price, quality, distribution and service network, etc.) the Parties do not track competitors’ production capacities, and ‘Konecranes does not view it as a relevant metric’.¹³⁵² Rather than available capacity, factors such as customer access (via a strong distribution and after-sales network) and the ability to fulfil customer requirements (e.g. with respect to quality, reputation and product range) appear to be relevant for the success of (potential) suppliers. The fact that many customers effectively only have access to a limited number of reach stacker suppliers is not due to other suppliers’ lack of capacity, but rather other suppliers’ inability to fulfil certain customer requirements (e.g. quality, reputation, distribution and after-sales network).
- (B) No significant entry into the EEA reach stacker market in past ten years
- (1474) The EEA market for reach stacker has seen no significant entry in the past ten years. In fact, rather than the entry and expansion of competitors, the main defining trend in the EEA market for reach stackers was one of concentration. As explained in Section 7.4.1.1 (D), the market share of the EEA competitors the Notifying Parties in the data provided by them group under ‘Other’ (i.e. all competitors except for CVS, Hyster and Sany), declined from [20-30]% in 2010 to [5-10]% in 2020. This shows that market concentration in this time has significantly increased.
- (1475) The Parties submit that in the past ten years (since 2011), six companies have entered into the EEA market for reach stackers, namely Camblift, CES, FTMH, Sany, Uplifting and Socma.¹³⁵³
- (1476) The Commission observes the following in relation to these companies and their presence in the EEA reach stackers market:

¹³⁴⁶ Response to Q3 – PH2 Questionnaire to competitors, Doc. ID 3582, question 75.1.

¹³⁴⁷ Doc. ID 657, Minutes of a call with a competitor, 22 April 2021.

¹³⁴⁸ Reply to the SO, paragraph 845.

¹³⁴⁹ Response to Q1 – Questionnaire to Competitors, Doc. ID 3154, question E.C.B.7.1.

¹³⁵⁰ See Responses to Q3 – PH2 Questionnaire to competitors, Doc. ID 3582, question 80.1.1.

¹³⁵¹ Reply to the SO, paragraph 844.

¹³⁵² Reply to request for information RFI 30, question 10.

¹³⁵³ Reply to request for information RFI 26, Annex Q7.

- (1477) Camblift: This company is not yet active on the EEA reach stackers market and has yet to deliver its first unit.¹³⁵⁴
- (1478) CES: This is a small Italian company active in reach stackers. In the years 2018-2020, the Notifying Parties in the tender data provided to the Commission do not record a single EEA instance where they lost a reach stacker tender to this company.¹³⁵⁵ No customer explaining its last purchase of reach stackers indicates that this company submitted a bid.¹³⁵⁶
- (1479) FTMH: This is an Italian mobile equipment supplier, founded by former Fantuzzi staff (which was acquired by Konecranes). In the years 2018-2020, the Notifying Parties in the tender data provided to the Commission record of one EEA instance (from Konecranes) where they lost a reach stacker tender to this company.¹³⁵⁷ Further, Konecranes in a recent documents notes [internal document reference].¹³⁵⁸
- (1480) Sany: A Chinese manufacturer of construction and port/material handling equipment, is said by the Notifying Parties to have entered the reach stacker market in 2012. However, the Notifying Parties in their market share estimates submitted to the Commission already assign Sany an EEA reach stacker market share since 2010.¹³⁵⁹ In any case, the EEA reach stacker market share of Sany has according to the Notifying Parties not materially changed in the years observed in the data provided by the Notifying Parties (2010 share of [0-5]%, 2020 share of [0-5]%).
- (1481) Uplifting: A small Spanish manufacturer of mobile equipment. In the years 2018-2020, the Notifying Parties in the tender data provided to the Commission record of two EEA instances (from Konecranes) where they lost a reach stacker tender to this company.¹³⁶⁰ No customer explaining its last purchase of reach stackers indicates that this company submitted a bid.¹³⁶¹ [...] in an internal email states [internal document reference].¹³⁶²
- (1482) Socma: A Chinese manufacturer of mobile and construction equipment. In the years 2018-2020, the Notifying Parties in the tender data provided to the Commission do not record a single EEA instance where they lost a reach stacker tender to this company.¹³⁶³ The Notifying Parties submit that ‘*Socma has recently entered the European market for reach stackers*’.¹³⁶⁴ However, the Notifying Parties also submit that they ‘*are not aware whether and where Socma has already sold its mobile equipment in Europe*’, but point out that Socma is offering its products online in different European languages and on online platforms such as Alibaba, as well as that according to a colour-coded map on Socma’s Facebook page it has a dealer in

¹³⁵⁴ See Doc. ID 3788, Minutes of a call with a competitor, 18 August 2021.

¹³⁵⁵ See data provided in Reply to request for information RFI 16.

¹³⁵⁶ See Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 15.1.

¹³⁵⁷ See data provided in Reply to request for information RFI 16.

¹³⁵⁸ Doc. ID 3586-62316 (The Parties’ reply to the Commission’s request for information RFI 18, M.10078 Cargotec Konecranes RFI 18-00354050.pptx), slide 7.

¹³⁵⁹ See Form CO, RFI PN2 – Annex – Q5.

¹³⁶⁰ See data provided in Reply to request for information RFI 16.

¹³⁶¹ See Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 15.1.

¹³⁶² Doc. ID 3594-57552 (The Parties’ reply to the Commission’s request for information RFI 18, M.10078 Cargotec Konecranes RFI 18-01218532 msg).

¹³⁶³ See data provided in Reply to request for information RFI 16.

¹³⁶⁴ Reply to the SO, paragraph 808.

Germany.¹³⁶⁵ The Commission reiterates that online sales are not considered to be an important or growing route to market in the EEA (see e.g. Recital (1324)), and that further no customer responding to the Commission's market investigation plans to purchase mobile equipment for EEA operations from Socma in the next 2-3 years (see Table 25).

- (1483) This assessment therefore confirms that there has not been any significant entry in the EEA reach stacker market in the past ten years.
- (1484) Further, when asked whether when prices for reach stackers in the EEA increased while they were not supplying them in the EEA, they tried to start supplying them in the EEA, a majority of competitors expressing their view indicate that they either did not try to start supplying reach stackers in the EEA following a price increase, or that they did not observe a price increase. Only one competitor expressing its views submits that following a price increase in the EEA it successfully started supplying reach stackers in the EEA.¹³⁶⁶
- (1485) Overall, therefore, there has not been significant entry into the EEA market for reach stackers in the past ten years.
- (C) The lack for a European assembly presence constitutes a barrier to entry
- (1486) The lack of a European assembly presence for reach stackers constitutes a barrier to entry.
- (1487) While it is in principle possible to be active in the supply of reach stackers in the EEA without a European assembly factory for reach stackers, this has significant disadvantages that would prevent the company in question from competing effectively in the EEA. The Commission is in any case not aware of any competitor active in the EEA market for reach stackers that does not have a European assembly presence.¹³⁶⁷
- (1488) The Notifying Parties each have reach stacker manufacturing presences in China and the EEA. The EEA factories of the Parties (Stargard, Poland for Cargotec and Markaryd, Sweden for Konecranes) also receive certain parts from the respective Parties' Chinese factory. However, the Notifying Parties serve the EEA demand exclusively with assembled reach stacker units from their EEA factories.¹³⁶⁸
- (1489) The importance the Notifying Parties ascribe to assembly in Europe is for example documented in a Cargotec internal document in which, in relation to another mobile equipment product, empty container handlers, it is assessed that there is a demand for machines [business plan].¹³⁶⁹ As reach stackers are manufactured in the same facilities as empty container handlers and are sold through the same sales channels (often to the same or similar customer groups), a similar rationale likely also applies to reach stackers. This shows that there is a clear understanding for customer preferences for machines that can be described as having been 'made in Europe'.

¹³⁶⁵ Reply to Request for information RFI 37, question 3.

¹³⁶⁶ Responses to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 86.1.

¹³⁶⁷ See also Responses to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 74. No competitor submits that mobile equipment supplied in the EEA is exclusively manufactured outside the EEA.

¹³⁶⁸ With the exception of three Cargotec units from its Chinese plant. See Reply to request for information 13, Annex QC16 and Annex QK16.

¹³⁶⁹ Doc. ID 3739-16199 (The Parties' reply to the Commission's request for information RFI 17, CAR-HEI-00018875 msg).

- (1490) Customers indeed have a preference for reach stackers manufactured in Europe. In relation to mobile equipment overall (of which reach stackers are a part), the majority of customers expressing their view submit that they generally consider suppliers with mobile equipment manufacturing facilities in the EEA, while only minorities of responding customers consider suppliers only headquartered in the EEA and suppliers located outside the EEA.¹³⁷⁰
- (1491) Further, also competitor Sany assembles most mobile equipment for EEA customers at its assembly site in Germany (from kits delivered from China). In many cases, certain modifications to adhere to European customers' requirements are done at the site in Germany, and sometimes particular local component installed that are not available in China. Further, having stock kits (which then can be assembled according to customer modification requirements upon order receipt) in Europe, allows for shorter lead times to European customers, in contrast with deliveries from China.¹³⁷¹
- (1492) This further confirms that it is very difficult to enter the EEA market for reach stackers simply by delivering units from a production facility in Asia. Some form of European assembly presence is necessary in order to be competitive in terms of lead times and to be able to adequately fulfil customisation requirements of European customers.
- (D) The need for an effective local distribution and after-sales network constitutes a barrier to entry and expansion
- (1493) The Commission finds a local distribution and after-sales network is essential in order to be able to effectively supply reach stackers in the EEA market. As explained in Section 7.4.1.2 (C.i), customers, distributors, competitors and the Notifying Parties themselves ascribe great importance to local distribution and after-sales presence for effective customer access. This stands in contrast to the Notifying Parties' claim that local distribution and after-sales presence are not a barrier to entry, because '*local distribution and after-sales networks are not a pre-requisite to enter the market for reach stackers in the first place*'.¹³⁷²
- (D.i) *Potential entrants do not have alternatives to setting up local distribution and after-sales networks*
- (1494) Potential entrants into the EEA market for reach stackers do not have alternatives to setting up a local distribution and after-sales network in order to effectively access customers of reach stackers in the EEA.
- (1495) **First**, online direct sales of mobile equipment (of which reach stackers are a part) are not, contrary to the submission by the Notifying Parties,¹³⁷³ an effective alternative avenue for (potential) suppliers of reach stackers in the EEA to access customers.
- (1496) The large majority of distributors expressing their view submit that they do not consider online direct sales of mobile equipment by the OEMs to significantly grow in importance as a route-to-market in the EEA.¹³⁷⁴ One distributor explains in this context that '*there are so many technically complex issues which we as specialists need to convey to the customer. This cannot be done by the customer himself on-line.*

¹³⁷⁰ Responses to Q2 – Questionnaire to Customers, Doc. ID 3153, question E.B.1.

¹³⁷¹ Doc. ID 3983, Minutes of a call with a competitor, 22 September 2021.

¹³⁷² Response to the Article 6(1)(c) Decision, paragraph 294.

¹³⁷³ Response to the Article 6(1)(c) Decision, paragraph 313.

¹³⁷⁴ Responses to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 18.

I think that this area will gradually evolve and we may see some impact in the long run'.¹³⁷⁵ Another distributor states: *'Those equipments and their attachment are so specific, that the online purchase won't grow in the next years'*.¹³⁷⁶ A further distributor submits: *'Online offers yes, but no online direct sales with putting something into your "purchasing-basket", like AMAZON. Always a lot of questions needs to be cleared before, lots of explanation / checking, operating and so on'*.¹³⁷⁷ Yet another distributor says that *'reach stackers always need a competent local consultation, due to the high complexity of the application and the high prices'*.¹³⁷⁸

- (1497) Further, with respect to servicing of equipment, while remote service offerings are indeed gaining in importance,¹³⁷⁹ such offerings of course can only address certain servicing needs. Most mechanical servicing needs still and will continue to require physical presence of service technicians.
- (1498) **Second**, customers do not consider suppliers that do not have a local after-service presence. The large majority of customers expressing their view submit that they would not consider a supplier that does not have a local after-sales/servicing presence (either directly or via an associated distributor/dealer) in the area in which they are active for their next purchase of reach stackers.¹³⁸⁰ In the past five years, the large majority of customers has similarly also not bought reach stackers from a supplier that does not have a local after-sales/servicing presence in their region.¹³⁸¹ Similarly, the fact that most customers at some point rely on the servicing of equipment by the OEM or an associated dealer/distributor¹³⁸² and require fast reaction times,¹³⁸³ further excludes potential reach stacker suppliers without a local after-sales presence in the EEA from contention for EEA customers.
- (1499) Therefore, potential entrants into the EEA market for reach stackers must establish a local distribution and after-sales network in order to effectively access customers.
- (D.ii) *It is difficult to establish a network of reach stacker distributors and service providers in the EEA*
- (1500) Establishing a network of reach stacker distributors and service providers in the EEA is very difficult, in particular when considering a network that would allow a new entrant to rival the networks of the Notifying Parties. This however would be necessary in order to effectively constrain the Merged Entity across the different regions of the EEA.
- (1501) **First**, the lack of sufficient available potential distributors/service providers makes it difficult for potential entrants to establish a strong distribution and after-sales network in the EEA.

¹³⁷⁵ Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 18.1.

¹³⁷⁶ Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 18.1.

¹³⁷⁷ Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 18.1.

¹³⁷⁸ Courtesy translation. The original German text reads: 'Reachstacker benötigen grundsätzlich eine kompetente Vor-Ort-Beratung aufgrund der hohen Komplexität der Anwendung und des hohen Preises'. Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 18.1.

¹³⁷⁹ Reply to the SO, paragraph 865.

¹³⁸⁰ Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 11.1.

¹³⁸¹ Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 10.1.

¹³⁸² Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 8.

¹³⁸³ Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 12.

- (1502) A number of competitors submit that there are not enough appropriate distributors/service providers available to work with in the EEA in order to establish an after-sales/maintenance network that covers all or almost all of the EEA.¹³⁸⁴ While one reach stacker manufacturer active in India states that *‘Yes, there may be companies who meet our criteria and who are not associated with our competitors’*,¹³⁸⁵ and another company that has yet to sell its first reach stacker says that *‘Yes, there are many companies that are in the mobile equipment business and have no reach stacker in their product portfolio’*,¹³⁸⁶ two established European reach stacker competitors consider the availability of distributors in the EEA not yet associated with manufacturers to be limited. One competitor states about the distributor availability: *‘Very few to none, at least among those with a potential interest in this business’*.¹³⁸⁷ Another competitor says *‘Yes, but very limited [are available]’*.¹³⁸⁸
- (1503) Discussing the establishment of a distribution and service network that goes beyond single dealers, a competitor further explains that *‘[t]he investment required to build up a significative and economically viable presence in several EEA markets which are very well presidiated by certain brands/distributors, makes it basically impossible for new entrants, wheather distributors or directly suppliers, to enter these markets. Often the incumbent suppliers/distriubutors also strenuously protect their market with any mean they have from the entrance of new players’*.¹³⁸⁹
- (1504) Competitors also describe that they have specific requirements for entering into agreements with distributors/service providers. One competitor states that it *‘would only enter into agreements with distributors if they would be willing to make thenecessary investments to effectively sell and - more than anything - support the product in the local market and that can substantiate with facts such will’*.¹³⁹⁰ Another competitor states that its *‘[d]ealer agreements are comprehensive. We have many criteria that are aimed to have consistent high quality customer coverage meeting our standards also on business ethics (code of conduct)’*.¹³⁹¹
- (1505) A competitor identifies ‘the establishment of a distribution network as one of the main difficulties when entering the EEA mobile equipment markets’ due to ‘the need to provide good coverage (i.e., dealers and services located close to customers), and capital requirements, as the mobile equipment industry is particularly capital-intensive (and the bigger the machines, the bigger these requirements, e.g. in terms of financing, stocking, etc.)’.¹³⁹²
- (1506) Another competitor summarises the lack of appropriate distributors that (potential) competitors of the Notifying Parties could turn to by stating that *‘[t]here are few distributors available given the substantial investments in terms of sales representatives, service technicians, spare parts stock and supporting equipment this activity requires. Small local dealers or servicing outfits do not have the competence level in terms of sales and services to compete against specialised distributors.*

¹³⁸⁴ Responses to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 89.

¹³⁸⁵ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 90.1.

¹³⁸⁶ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 90.1.

¹³⁸⁷ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 90.1.

¹³⁸⁸ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 90.1.

¹³⁸⁹ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 89.1.

¹³⁹⁰ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 90.

¹³⁹¹ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 90.

¹³⁹² Doc. ID 4278, Minutes of a call with a competitor, 23 August 2021.

*Moreover, the successive acquisitions of the Parties over time have restricted the choice of available distributors. While Kalmar acquired Valmet and Ottawa, Konecranes acquired SMV, Linde, Terex and Fantuzzi. Over time, the Parties rationalised their distribution network by selecting the best distributors of the acquired OEMs and prevented them to offer the other brands available. Kalmar has gone a further step by taking over some of the local distributors and turning them into Kalmar branches, thereby absorbing the know-how and infrastructure of the distributors. The Parties therefore today occupy the two best distribution channels for mobile equipment in Europe and through this, hold strongly a substantial part of the market and block other OEMs from accessing parts of the market. When it comes to capable distributors in Europe, the Parties have essentially either bought or bound to themselves the ‘cherries of the cake’.*¹³⁹³

- (1507) While the Notifying Parties submit that there is a very large number of companies in the EEA active as distributors or service providers for mobile equipment (that includes reach stackers), or could become active in this field,¹³⁹⁴ it appears that there is in fact not a large number of available distributor/servicing new entrants in the EEA reach stacker market could turn to. In particular, the Notifying Parties’ claim that companies currently active as distributors and/or service providers in neighbouring markets to mobile equipment (such as construction equipment) could easily start distributing and/or servicing also reach stackers,¹³⁹⁵ is contradicted by distributors’ and service providers’ submissions.
- (1508) The large majority of distributors submit that distributors/dealers providers currently solely active in neighbouring product areas (for example construction equipment or low capacity forklifts) could not easily and in a short matter of time become effective distributors/dealers for reach stackers in the EEA.¹³⁹⁶ This is due in particular due to lack of expertise with the product and lack of contacts among customers who typically buy this product.
- (1509) While one distributor submits that ‘[i]n general if they have a solid business, with high level of service coverage, competence and strong growth/ business results then there, then a business in a neighbouring industry could be a candidate as a distributor/ dealer’, it also states that ‘[h]owever in the area of ports, the language is very different from lets say construction business, so this would need learning’.¹³⁹⁷ Another distributor clearly submits: ‘A transition from a neighboring industry has almost never been seen. It takes decades to establish a track-record in the heavy-duty segments and most often a player from a neighboring trade would not be willing to invest the necessary time and ressources’.¹³⁹⁸ Another distributor states that ‘the distributor of other mobile equipment/machines (e.g. construction machines) does

¹³⁹³ Doc. ID 1773, Minutes of a call with a competitor, 3 May 2021.

¹³⁹⁴ See e.g. Supplemental submission on distribution networks, 1 September 2021, paragraph 6.

¹³⁹⁵ Response to the Article 6(1)(c) Decision, paragraph 306.

¹³⁹⁶ Responses to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 12.1. The Notifying Parties (Reply to the SO, paragraphs 859-860) submit that the Commission ‘*bases its allegations on responses from distributors and dealers already active in mobile equipment*’ and that it instead ‘*should have requested information directly from a large and representative sample of such potential distributors (i.e. from neighbouring industries). The Parties had provided contact details for such companies*’. The Commission has in fact sent its questionnaire also to these companies, and therefore its findings are also based on the responses received from companies currently only active as distributors in ‘neighbouring’ markets.

¹³⁹⁷ Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 12.1.1.

¹³⁹⁸ Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 12.1.1.

not have the network/contacts to provide reach stackers in a short matter of time'.¹³⁹⁹ Another company with distribution activities states: 'Knowledge and network needs to be built up which takes a lot of time'.¹⁴⁰⁰ Yet another distributor says that '[p]eople who sell low-capacity forklifts or construction equipments normally have no experience in port and heavy-duty handling and little technical knowledge of heavy-duty handling equipments and port equipments'.¹⁴⁰¹

- (1510) The large majority of distributors submit that maintenance/service providers currently solely active in neighbouring product areas for example construction equipment or low capacity forklifts) could not easily and in a short matter of time become effective maintenance/service providers for reach stackers in the EEA.¹⁴⁰² This is due in particular due to lack of expertise with the product and lack of contacts among customers who typically buy this product.
- (1511) A distributor explains in this context: 'There will be an obstacle in the form of lack of product knowledge, lack of experience which will make it very difficult to make the transition. The basic competences are similar, but due to differences in both application and electronic architecture it is a very difficult transition'.¹⁴⁰³ Another distributor submits: 'Technician skills and capacity are totally different. It is very complicated to let a low capacity forklift technician to work on reach stackers. It is also a physical strength issue'.¹⁴⁰⁴
- (1512) By suggesting that a number of distributors/dealers currently associated to the Notifying Parties or established competitors in the EEA are engaging in 'multi-branding', i.e. distribute overlapping mobile equipment products from different OEMs, the Notifying Parties submit that new entrants in the EEA reach stacker market can easily find an established distributor that in addition also starts distributing their product.¹⁴⁰⁵
- (1513) However, the Commission finds that multi-branding by distributors in the EEA is at most a niche phenomenon. When considering reach stackers in particular, distributors overwhelmingly appear to only distribute one brand.
- (1514) Cargotec's EEA distributors do not engage in the distribution of reach stackers from Cargotec rivals.¹⁴⁰⁶ [Business plan].¹⁴⁰⁷
- (1515) The large majority of distributors expressing their view submit that they do not distribute reach stackers from competing brands.¹⁴⁰⁸
- (1516) With respect to distributors of competing brands, the Notifying Party lists one company that supposedly distributes both Hangcha and Sany reach stackers in the

¹³⁹⁹ Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 12.1.1.

¹⁴⁰⁰ Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 12.1.1.

¹⁴⁰¹ Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 12.1.1.

¹⁴⁰² Responses to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 13.1.

¹⁴⁰³ Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 13.1.1.

¹⁴⁰⁴ Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 13.1.1.

¹⁴⁰⁵ See e.g. Supplemental submission on distribution networks, 1 September 2021, paragraph 6 and Presentation at EC expert session, 23 September 2021, slide 7.

¹⁴⁰⁶ Reply to Request for information RFI 30, Annex QC6.

¹⁴⁰⁷ Reply to Request for information RFI 30, Annex QK6.

¹⁴⁰⁸ Responses to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 5.1.

EEA.¹⁴⁰⁹ It is however not clear whether Hangcha has sold any reach stacker units in the EEA – in the tender data submitted by the Notifying Parties, [tender data].¹⁴¹⁰

- (1517) The Notifying Parties also submit that the example of Sany shows that ‘*OEMs can effectively grow their distribution networks*’.¹⁴¹¹ However, in addition to market participants considering Sany’s after-sales network as significantly inferior to the Notifying Parties’ networks (see e.g. Table 27), also the Notifying Parties internally themselves do not consider Sany to have a strong after-sales network in the EEA. This is shown in an internal Konecranes email [internal document reference].¹⁴¹²
- (1518) Overall it therefore appears that there are only a limited number of effective distributors and service providers readily available that new entrants in the EEA reach stacker market could turn to in order to set up a strong distribution and after-sales network.
- (1519) **Second**, the large installed base of reach stacker units of the Notifying Parties across the EEA is an inherent advantage and a barrier to entry and expansion for (potential) competitors.
- (1520) In order to profitably maintain a distribution and after-sales network in the EEA, not only in the main centres of reach stacker demand (e.g. around important terminals in Benelux and Germany), but also in regions where demand is less concentrated (and consist more out of low unit number orders), a significant installed base is important.
- (1521) One of the main EEA competitors of the Parties explains this by stating: ‘Competing in the Nordic countries is difficult as Kalmar and KoneCranes have dominant share there and it is difficult to get critical mass supporting the distribution/service channel in the many smaller ports/terminals’.¹⁴¹³ This competitor further explains that ‘[a]s to the density and homogeneity of the dealer network, [the Company] has dealers in almost all countries of Europe. Offering local service, especially in 24/7 port equipment, is paramount for end-customers. Some of the dealers are very good in small equipment product lines due to their traditional activity, but they are not so strong in the container handling equipment sector. This influences their results, especially where the competition is strong, i.e. where it is difficult to break into a port where 24/7 service is needed. In these cases a critical mass is needed to be able to deliver the requested activity: team, bridging equipment and knowledge represent the biggest challenges. [The Company] aims to have dealers appointed to cover all of the EU Member States, which is the case currently or becomes the target when a dealer replacement is needed’.¹⁴¹⁴
- (1522) The fact that established local presence with an installed base of units is an advantage in being able to offer after-sales services to new prospective customers is also evidences in an internal Konecranes email, an excerpt of which is captioned in Figure 116. [Internal document reference].

¹⁴⁰⁹ The Notifying Parties also refer to Velaborg EHF, which is however located outside the EEA in Iceland. Reply to Request for information RFI 26, question 5.

¹⁴¹⁰ See data provided in Reply to request for information RFI 16.

¹⁴¹¹ Reply to the SO, paragraph 883.

¹⁴¹² Courtesy Translation. The original Swedish reads: [internal document reference]. Doc. ID 3590-10327 (The Parties’ reply to the Commission’s request for information RFI 18, M.10078 Cargotec Konecranes RFI 18-00182902.msg).

¹⁴¹³ Response to Q1 – Questionnaire to Competitors, Doc. ID 3154, question E.B.4.1.

¹⁴¹⁴ Doc. ID 932, Minutes of a call with a competitor, 20 April 2021.

Figure 116: [...]

[...]

Source: [Internal document reference].

- (1523) **Third**, competitors consider a local distribution and after-sales presence as an important barrier to entry and expansion.
- (1524) Large majorities of competitors expressing their view submit that a local distribution network and a local after-servicing network are essential for companies that seek to newly enter the supply of reach stackers in the EEA.¹⁴¹⁵ In this context a competitor explains that ‘[i]n order to reach the customer in a high competitive environment a local distribution network is also mandatory’ and that ‘[i]n case of failure [the reach stacker] must be repaired quickly in order to keep the business run, which is connected, to the local after-sales and service network’.¹⁴¹⁶ Another competitor states: ‘You can sell direct to large customers but you need local service (24/7)’.¹⁴¹⁷
- (1525) Large majorities of competitors expressing their view submit that it is either somewhat or even very difficult to achieve a local distribution network and a local after-sales/servicing network for companies that seek to newly enter the supply of reach stackers in the EEA.¹⁴¹⁸ A competitor in that context explains that ‘[t]he lack of good local Sale and After Sale Service is most unsourmountable problem that a newcomer would have to go by’.¹⁴¹⁹
- (1526) A competitor of the Notifying Parties submits with respect to mobile equipment (of which reach stackers are a part) that ‘Cargotec and Konecranes have stated that in the MEQ segment there is a multitude of players that are active or intend to become active on the EU marketplace, thus alleging that customers have a lot of choices besides them. This assertion is not acceptable as the market share of most of these other players is negligible and – even more important – it is not set to grow in the foreseeable future. These brands cannot count and will not be able to count for a long while, on strong and influential key distributors in any of the main (and even in any of the less important) national EU markets’. The competitor further submits that ‘[t]o this extent, the assumption of the Concerned Parties according to which there would be over 300 dealers in the EU that could effectively sell and service Container Handling and Heavy Duty Lift-trucks is just not true. All the key few dealers capable to provide professional, reliable and profitable After Sale Services on Mobile Equipment are owned or linked to the Concerned Parties and not available to other competitors. In fact even the so much feared Chinese brand Sany, which has injected millions of euros over the last decade attempting to break through in the EU market of Mobile equipment, has so far failed, despite having appointed many dealers in the whole continent over this period of time’.¹⁴²⁰
- (1527) The competitor elaborates further: ‘The downplay of the importance of the After Sale and Service Network made by the Concerned Parties in their Oral Hearing presentation is totally non convincing. They stated that “on-line sales” are becoming more and more popular, because a growing share of the spare parts sale is nowadays

¹⁴¹⁵ Responses to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 87.1.

¹⁴¹⁶ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 87.1.1.

¹⁴¹⁷ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 87.1.1.

¹⁴¹⁸ Responses to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 88.1.

¹⁴¹⁹ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 88.1.1.

¹⁴²⁰ Doc. ID 4654, Submission by a competitor, 22 November 2021.

managed through internet portals and because some buyers are adopting an internet bidding process. In reality, spare parts are basically entirely sold through the official sales network of every principal and internet bidding is only the last stage of contest at which only pre-qualified bidder make it. Needless to say, the reliability of an After Sale Service is always a pre-requisite to be pre-qualified in these internet bidding processes that remain a very tiny minority of the whole cases. No small and medium size buyer in fact adopts such a buying process and this class of customers in the MEQ market represents by far the largest group'.¹⁴²¹

- (1528) Therefore, competitors both deem local distribution and after-sales network to be essential for new entrants in to the EEA reach stacker market, and at the same time consider the establishment of these networks to be difficult to achieve for potential entrants.
- (1529) **Fourth**, the Notifying Parties consider local distribution and after-sales presence as an important barrier to entry and expansion.
- (1530) While the Notifying Parties submit that they internally do not '*consider local service networks a significant barrier to entry*',¹⁴²² the Notifying Parties evidently do consider local distribution and after-sales presence in the EEA to be of high importance for effective customer access, and therefore also to constitute a significant barrier to entry and a significant barrier to expansion of existing competitors.
- (1531) For example, in a Cargotec internal document, captioned in Figure 117, in addition to other parameters of competition, it is assessed that with respect to reach stackers Kalmar has the [internal document reference]. In comparison with competitor Hyster, Kalmar is said to have a [internal document reference]. This evidences that Cargotec considers a strong service network to be of key competitive importance – and assesses that certain competitors are limited in their abilities to compete because of their service network limitations.

Figure 117: Cargotec assessment of competitors' reach stacker service network

[...]

Source: [Internal document reference].

- (1532) In another Cargotec internal document from 2020, it is stated with respect to Sany: [internal document reference].¹⁴²³ This further shows that even a company like Sany, which according to the Notifying Parties has been active in the EEA reach stackers market for at least the last ten years, is still searching for dealers and struggling to be successful in a meaningful way with port and terminal customers in Europe. Similarly, in an internal Konecranes it is reported in 2021, that Sany is '[a]dvertising that they are searching for dealers in Europe (Linkdin)'.¹⁴²⁴
- (1533) [Internal document reference].

¹⁴²¹ Doc. ID 4654, Submission by a competitor, 22 November 2021.

¹⁴²² Reply to the SO, paragraph 875.

¹⁴²³ Doc. ID 3665-61568 (The Parties' reply to the Commission's request for information RFI 17, CAR-PAT-00092221.pptx), slide 4.

¹⁴²⁴ Doc. ID 3586-23975 (The Parties' reply to the Commission's request for information RFI 18, M.10078 Cargotec Konecranes RFI 18-00343107.pptx), slide 30.

Figure 118: [...]

[...]

Source: [Internal document reference].

- (1534) These exchanges show that the Notifying Parties internally consider a local distribution and in particular after-sales network to be of importance. In particular, they appear to regard their competitor Sany to be lacking a strong distribution and after-sales network in the EEA, also in particular in relation to reach stackers.
- (1535) **Fifth**, competitors already present in the EEA reach stacker market are constrained in their ability to expand their market presence, due to their weak distribution and after-sales presence.
- (1536) The need to establish a strong local distribution and after-sales presence in the EEA is not only a barrier to entry for potential new suppliers of reach stackers, but it also constitutes a significant barrier to expansion for those competitors already present in the EEA. In addition to the Notifying Parties' assessment of Sany's weak after-sales presence in the EEA (described in Recitals (1531) - (1534)), market participants also deem other competitors that are already present on the EEA reach stacker market to have weak after-service networks.
- (1537) Table 22 below reproduces Table 11, which shows that, all competitors of the Notifying Parties already present in the EEA reach stacker market are considered by customers to have significantly weaker after-sales networks than the Notifying Parties (which have by far the strongest ones). As shown in Table 12 and Table 15 above, distributors and competitors have a similar view of the relative strengths of the different players' after-service networks. Given the importance of strong distribution and after-sales networks in order to compete effectively and broadly across the different regions of the EEA, it therefore follows that small EEA reach stacker players like Liebherr, CVS Ferrari, Sany, FTMH and even Hyster face significant barriers to expand their market presence (Linde and Svetruck are not active in reach stackers).

Table 22 – Customers' ranking of reach stacker suppliers' after-sales/service network

Customers' ranking of the top five reach stacker suppliers active in the EEA according to their after-sales/service network					
Company	1 (strongest/best)	2	3	4	5 (weakest/worst)
Cargotec	XXXXXXXXXXXXXXXX	X	XX		
Konecranes	XXXXXX	XXXXXXX	XX		
Hyster	XX	XXXXXX	XXXX		
Liebherr	X	X	X	XXXXX	
CVS Ferrari	X	X	X	X	XX
Sany				X	XXXX
Linde				X	
FTMH				X	X
Svetruck		X			

Source: Responses to Q6 – Questionnaire to Mobile equipment customers, Doc. ID 3607, question 14.1. The Commission's evaluation of non-confidential responses.

- (1538) In relation to Sany's challenges in the EEA due to its after-sales network, a competitor further explains: 'For non-EEA competitors, entering the European markets for mobile equipment would entail difficulties in establishing distribution and service networks. [The Company] explained some non-EEA suppliers have already entered the EEA market, including Sany. To [the Company]'s knowledge, Sany has entered multiple dealership agreements for mobile equipment. However, the Company believes that, despite Sany having competitive prices, obtaining good coverage requires significant volumes, skills, investments and a suitable approach. Hence, achieving market shares in the EEA that are similar to the ones in the Chinese market will be challenging for Sany'.¹⁴²⁵
- (1539) Overall, therefore the need for an effective local distribution and after-sales network constitutes a significant barrier to entry and expansion in the EEA reach stacker market.
- (E) Customers' quality, product range and reputation requirements constitute a barrier to entry and expansion
- (1540) Customers of reach stackers in the EEA have certain requirements related to the quality of reach stackers, specific reach stacker models (and therefore the product range of the manufacturer), and also consider brand reputation as a factor (which also determines important factors such as drivers' acceptance of the vehicle and the vehicles' resale value).
- (1541) The Notifying Parties submit that there are also other relevant competitive parameters, in particular price.¹⁴²⁶ Indeed price is a relevant parameter of competition. Price-competitiveness alone however does not enable effective access to customers (as shown in the example of Sany and its struggles to significantly expand its share of supply in the EEA in the past ten years). Other parameters, such as the ones considered in detail in this Section 7.4.1.3 (E), are critical in order to be considered by customers as a potential supplier.
- (1542) **First**, quality requirements of customers constitute a barrier to entry and expansion.
- (1543) A large majority of competitors expressing their view submit that they consider it essential for a company seeking to enter the EEA market for reach stackers to have a high-quality reach stacker product.¹⁴²⁷ A competitor in this context explains that '*the customer priority lies on the return of investment for a Reachstacker. Therefore, a machine must be reliable which is connected to the product quality*'.¹⁴²⁸
- (1544) A majority of competitors expressing their view however submit that they consider it either somewhat or even very difficult for a company seeking to enter the EEA reach stacker market to achieve a high quality product.¹⁴²⁹
- (1545) A large majority of customers expressing their view consider quality to be a very important or important criteria when selecting a reach stacker supplier.¹⁴³⁰
- (1546) Assessing the vehicle quality offered by reach stacker suppliers currently active in the EEA, customers clearly consider the Notifying Parties' to offer the highest quality vehicles. As shown in Table 23, Cargotec is considered to be the best in

¹⁴²⁵ Doc. ID 4278, Minutes of a call with a competitor, 23 August 2021.

¹⁴²⁶ Reply to the SO, paragraph 889.

¹⁴²⁷ Responses to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 87.1.

¹⁴²⁸ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 87.1.1.

¹⁴²⁹ Responses to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 88.1.

¹⁴³⁰ Responses to Q2 – Questionnaire to Customers, Doc. ID 3153, question E.A.2.1.

vehicle quality, followed by Konecranes. Even established EEA reach stacker players like Hyster, Liebherr, FTMH and CVS, and in particular Sany are considered significantly inferior to the Notifying Parties in terms of vehicle quality. Given that this is an important purchase criterion for customers, weakness in vehicle quality likely is a barrier to expansion for these EEA reach stacker players.

Table 23 – Customers’ ranking of reach stacker suppliers’ vehicle quality

Customers’ ranking of the top five reach stacker suppliers active in the EEA according to their vehicle quality					
Company	1 (strongest/best)	2	3	4	5 (weakest/worst)
Cargotec	XXXXXXXXXX	XXX	XXX		
Konecranes	XXXXXX	XXXXXXX	X		
Hyster	XXX	XXX	XXXX	X	
Liebherr	X	XX	XXX	XX	
CVS Ferrari	XX		X	XXX	
Sany			X		XXXXX
Linde				X	
FTMH				X	X
Svetruck	XX				
Toyota				X	

Source: Responses to Q6 – Questionnaire to Mobile equipment customers, Doc. ID 3607, question 14.1. The Commission’s evaluation of non-confidential responses.

- (1547) The Notifying Parties submit that some customers consider suppliers other than the Notifying Parties to have the highest quality reach stackers.¹⁴³¹ Indeed, for example three customers consider Hyster to have the highest quality reach stackers. Nevertheless significantly more customers consider the Notifying Parties’ reach stackers to be of the highest quality.
- (1548) An issue connected but separate from customers’ quality requirements, is the need for new entrants to comply with certain regulations applicable to the supply in the EEA. This pertains in particular to certain emissions regulations (e.g. necessity for mobile equipment to be delivered with stage V engines, whereas lower engine ratings are sufficient in some other world regions) and to the necessary CE certification. A competitor to the Parties describes the CE mark as a main obstacle to supply in the EEA,¹⁴³² and that the costs necessary for CE marking are only worth to incur when one can expect to sell a meaningful number of units in the EEA.¹⁴³³
- (1549) **Second**, product range requirements of customers constitute a barrier to entry and expansion.
- (1550) A majority of competitors expressing their view submit that they consider it essential for a company seeking to enter the EEA market for reach stackers to have a broad product range of reach stackers.¹⁴³⁴

¹⁴³¹ Reply to the SO, paragraph 890.

¹⁴³² Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 85.1.1.

¹⁴³³ Doc. ID 4133, Minutes of a call with a competitor, 19 August 2021.

¹⁴³⁴ Responses to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 87.1.

- (1551) A majority of competitors expressing their view however submit that they consider it either somewhat or even very difficult for a company seeking to enter the EEA reach stacker market to achieve a broad product range.¹⁴³⁵
- (1552) Customers do not necessarily consider it necessary for suppliers of reach stackers to offer a broad range of different reach stacker types – however customers require the supplier in question to be able to deliver the specific reach stacker type they require. As discussed in 7.4.1.2 (D), the Notifying Parties are considered to have the broadest product range. The smaller product range of even certain established EEA competitors constitutes a barrier to expansion for them, as they are not able to effectively compete for certain customers (i.e. customers that require reach stacker types not in their portfolio).
- (1553) The Notifying Parties in this context state that it is not apparent ‘why market entrants must be able to respond to the demand for certain niche applications which is, compared to the overall demand for standardized reach stackers, very small in any event’.¹⁴³⁶ While even relatively ‘standard’ reach stackers often require some customisation by the supplier, indeed demand for certain highly specific reach stacker versions is relatively low. A new entrant may be able to serve certain customers without having all types of reach stackers in its portfolio – however this means that this new entrant will not be able to constrain the Merged Entity across the entire reach stacker portfolio, but only a part of it.
- (1554) **Third**, brand reputation requirements of customers constitute a barrier to entry and expansion.
- (1555) A large majority of customers expressing their view submit that the reputation and the previous experience of the reach stacker supplier are very important or important criteria when selecting a reach stacker supplier. Similarly, already having an installed base on their premise is considered to be a very important or important criterion by a large majority of customers.¹⁴³⁷
- (1556) These customer preferences clearly grant a significant advantage to the incumbents in the EEA reach stacker market, as they have an established reputation, and – at least in the case of the Notifying Parties, also a large installed base of units.
- (1557) Assessing the brand reputation of reach stacker suppliers currently active in the EEA, customers clearly consider the Notifying Parties’ to have the best brand reputation. As shown in Table 24, Cargotec is considered to have the best brand reputation, followed by Konecranes, and then Hyster and Liebherr. Other established EEA suppliers like CVS, Sany and FTMH are considered significantly inferior to the Notifying Parties in terms of brand reputation. Given that this is an important purchase criterion for customers, weakness in brand reputation likely is a barrier to expansion for these EEA reach stacker players.

¹⁴³⁵ Responses to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 88.1.

¹⁴³⁶ Reply to the SO, paragraph 891.

¹⁴³⁷ Responses to Q2 – Questionnaire to Customers, Doc. ID 3153, question E.A.2.1.

Table 24 – Customers’ ranking of reach stacker suppliers’ brand reputation

Customers’ ranking of the top five reach stacker suppliers active in the EEA according to their brand reputation					
Company	1 (strongest/best)	2	3	4	5 (weakest/worst)
Cargotec	XXXXXXXXXXXXXXXX	XX	X		
Konecranes	XXXX	XXXXXXXXXX		XX	
Hyster	XX	XXX	XXXXXXXX		
Liebherr	X	XX	XXXXX		X
CVS Ferrari	X			XXXXX	
Sany					XXXXXX
Linde				X	
FTMH					XX
Svetruck	X	X			

Source: Responses to Q6 – Questionnaire to Mobile equipment customers, Doc. ID 3607, question 14.1. The Commission’s evaluation of non-confidential responses.

- (1558) The Notifying Parties submit that ‘customers named *inter alia* Hyster, Liebherr, CVS Ferrari and Svetruck as having strong reputation’.¹⁴³⁸ As shown in Table 24, this however is true for only one or two customers responding to the market investigation each. The Proposed Transaction in turn would be the combination of the reach stacker supplier with by far the strongest brand reputation (Cargotec), with the reach stacker supplier with the second strongest brand reputation (Konecranes).
- (1559) The fact that some companies that already do have sales in the EEA are named by only very few customers (and when named, are given low brand reputation ratings), further shows that these companies are not well known and do not have a well-established brand reputation among customers. This therefore constitutes a further barrier to expansion even for those companies that are already active in the EEA as reach stacker suppliers.
- (1560) Among the existing competitors in the EEA reach stacker market, in particular Sany appears to have reputation problems and as a consequence is likely constrained in its ability to expand its presence.
- (1561) A market participant explains in relation to Sany: ‘Customers have been confronted with technical difficulties when sourcing Sany equipment. For instance, the hooks to attach chains on Sany’s spreaders are placed too high, preventing the workers from accessing them easily. Overall, Chinese players are perceived as offering equipment of lower quality. This lower quality entails a lower residual value of the equipment, which is disadvantageous for customers’.¹⁴³⁹
- (1562) Another market participant explains in relation to Sany that ‘Sany had a very good reputation in Africa and Latin America but was and is still perceived as a second-level brand in Europe. Hence, even though Sany’s sales volume increased, the increment was not as large as that expected by European competitors. This proved that customers give significant importance to after-sales services, even when they can choose suppliers that offer lower prices’. This company further submits that

¹⁴³⁸ Reply to the SO, paragraph 892.

¹⁴³⁹ Doc. ID 502, Minutes of a call with a distributor, 14 April 2021.

Kalmar, Konecranes and Hyster are ‘considered as the three “trippie A” brands in mobile equipment’.¹⁴⁴⁰

- (1563) A distributor, writing an email to part of Konecranes Lifttrucks business unit division (of which reach stackers are a part), explains [internal document reference].

Figure 119: [...]

[...]

Source: [Internal document reference].

- (1564) Another distributor, in explaining Sany’s reputation problems in the Netherlands, explains: ‘Sany has tried to enter the Dutch market for mobile equipment but faced difficulties. Sany struggles to offer a good service organisation, which makes it difficult to enter the terminals in Rotterdam in competition with the Company. In the past, Sany offered some free test units to customers (some of which had been [the Company]’s customers for years), but it would take weeks or months for Sany to solve a technical problem. As a result, customers today prefer not to work with Sany’.¹⁴⁴¹
- (1565) Another customer explains that it ‘is not inclined to purchase from [Sany]’. This is because ‘[a] customer of the Company bought three Sany reach stackers eight to ten years ago and the quality was very poor. The Company is not aware of a meaningful number of Sany reach stackers being in operation in Belgium. The Company believes that the poor quality of the first Sany reach stackers deterred Belgium customers from sourcing from them. In fact, there is no Sany dealer in Belgium. There is no Sany dealer anymore in Belgium’.¹⁴⁴²
- (1566) Another distributor, in explaining the Notifying Parties’ strong position in Scandinavia – and thereby also describing why other players find it more difficult to be successful in that region, submits: ‘*The Parties have a strong positioning in the heavy-duty forklift and reach stackers markets in Scandinavia mainly because of their strong reputation. Although, Kalmar has recently moved its production to Stargrad in Poland, both Parties are still perceived as Scandinavian companies and customers in this region have a preference for the Parties’ brands. For example, Konecranes’ SMV brand is still highly regarded among customers. This also results in the equipment models of the Parties being very similar*’.¹⁴⁴³
- (1567) Overall, therefore, customers’ quality, product range and reputation requirements constitute barriers to entry and expansion in the EEA reach stackers market.
- (F) No entry sufficient in scope and magnitude to constrain the Merged Entity appears likely
- (1568) In light of the significant barriers to entry, but also based on the specific evidence on entry ambitions available to the Commission, it appears that no entry sufficient in scope and magnitude to constrain the Merged Entity is likely in the next 2-3 years.

¹⁴⁴⁰ Doc. ID 4110, Minutes of a call with a customer, 27 August 2021.

¹⁴⁴¹ Doc. ID 673, Minutes of a call with a distributor, 26 February 2021.

¹⁴⁴² Doc. ID 257, Minutes of a call with a distributor, 9 March 2021.

¹⁴⁴³ Doc. ID 881, Minutes of a call with a distributor, 19 April 2021.

(F.i) *No companies with specific entry plans sufficient in scope and magnitude to constrain the Merged Entity*

- (1569) The Commission in the questionnaire sent to actual and potential competitors on the EEA market for reach stackers (as identified by the Notifying Parties) asked whether those companies currently not active in the supply of reach stackers in the EEA plan to enter the supply of reach stackers in the EEA in the next 2-3 years. In reply, four companies responded with yes: Loadstar, Uplifting, Camblift, Taylor.¹⁴⁴⁴
- (1570) It however appears that these companies either do not have at present specific entry plans or are unlikely to enter in a scope and magnitude sufficient to constrain the Merged Entity.
- (1571) **First**, Loadstar is an Indian company and submits that it is ‘engaged in the design, manufacture, and supply of state-of-the-art Container-Handling Equipment like Reach Stackers for Loaded Container- (45 Tonnes) handling, Side-Lift Trucks for Empty Container- (8 Tonnes) handling, and Medium- and Heavy-Duty Forklifts in the 12 to 35 Tonnes capacity range’.¹⁴⁴⁵
- (1572) [Internal document reference].¹⁴⁴⁶ [Internal document reference].¹⁴⁴⁷ [Internal document reference].¹⁴⁴⁸ [Internal document reference].¹⁴⁴⁹ [Internal document reference].
- (1573) Loadstar is not named by any customer as a potential entrant into the EEA.¹⁴⁵⁰
- (1574) In any case, any attempted entry would be made challenging by the significant entry barriers described in this Section 7.4.1.3. This is also acknowledged by Loadstar itself. For example, the Company explains: ‘*We currently supply mobile equipment per Indian Standards. As EU regulations are generally stricter, we may have challenges to supply mobile equipment*’.¹⁴⁵¹ The Company further submits that differences in customer preferences make it difficult/costly to supply in the EEA.¹⁴⁵² The Company also says that ‘[a]s we are remotely located in India, it is very important to have an excellent local service/after-sales entity, either directly owned or through association, in the EEA’¹⁴⁵³ and that ‘*significant amount of time, investment, & manpower will be required to establish a presence [in the EEA]*’.¹⁴⁵⁴ It further clarifies: ‘*We will have to invest significant amounts to establish a distribution and service network in the EEA*’.¹⁴⁵⁵
- (1575) The Company also expects that the Proposed Transaction would further increase barriers to entry in the EEA: ‘If there is a merger between the Parties, we can expect

¹⁴⁴⁴ Responses to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 84.1.

¹⁴⁴⁵ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 1.

¹⁴⁴⁶ Doc. ID 3712-31597 (The Parties’ reply to the Commission’s request for information RFI 17, CAR-PET-00016615.msg).

¹⁴⁴⁷ See e.g. Doc. ID 3710-6858 (The Parties’ reply to the Commission’s request for information RFI 17, CAR-LAM-00018512.pptx), slide 1.

¹⁴⁴⁸ It also appears that [...].

¹⁴⁴⁹ Doc. ID 3669-88001 (The Parties’ reply to the Commission’s request for information RFI 17, CAR-VEH-00014338 msg).

¹⁴⁵⁰ See responses to Q2 – Questionnaire to Customers, Doc. ID 3153, and to Q6 – Questionnaire Customers of mobile equipment, Doc. ID 3607.

¹⁴⁵¹ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 75.1.

¹⁴⁵² Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 76.

¹⁴⁵³ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 78.1.1.

¹⁴⁵⁴ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 79.1.1.

¹⁴⁵⁵ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 84.1.1.

further barriers through higher input costs dictated by the large merged entity. This will affect our price competitiveness in the EEA markets'.¹⁴⁵⁶

- (1576) Therefore, an entry by Loadstar into the EEA reach stacker market in the next 2-3 years appears unlikely, and in any case is not likely to be sufficient in scope and magnitude to constrain the Merged Entity.
- (1577) **Second**, Uplifting is a Spanish company and describes itself as a manufacturer of reach stackers and forklift trucks.¹⁴⁵⁷ This company therefore is already active in EEA market for reach stackers (and therefore is also included in the Commission's market reconstruction of the EEA reach stackers market). This company is therefore not a potential or likely entrant.
- (1578) In any case, as explained for example in Figure 119 above, this company is considered [internal document reference]. In the years 2018-2020, the Notifying Parties in the tender data provided to the Commission record [tender data]) where they lost a reach stacker tender to this company.¹⁴⁵⁸ No customer explaining its last purchase of reach stackers indicates that this company submitted a bid.¹⁴⁵⁹ A Konecranes Lift Trucks sales director in an internal email states the following [internal document reference].¹⁴⁶⁰
- (1579) Therefore, Uplifting is not a potential entrant into the EEA reach stacker market, nor a significant constraint on the Notifying Parties.
- (1580) **Third**, Camblift is a Swedish company founded in 2019. The Company plans to enter the EEA reach stacker market with its first delivered unit in 2022. Camblift '*considers that there is always room for a small new company in the market. As a small company it would focus on a different set of reach stacker customers than the large competitors. A large customer who wants to order 20 reach stackers will probably buy them from one of the large established suppliers. Therefore Camblift will focus on small customers first to build reputation and also because it considers that it will be difficult to enter successfully in the big ports in e.g. Germany and make a first sale there*'. The Company further '*considers that there is always some space in the market for a small company like itself*'.¹⁴⁶¹
- (1581) Therefore, the planned entry by Camblift into the EEA reach stacker market in 2022 is unlikely to be sufficient in scope and magnitude to constrain the Merged Entity.
- (1582) **Fourth**, Taylor is a US-based manufacturer of mobile equipment.
- (1583) The Company explains that it 'has no specific plans of market entry in Europe/in the EEA',¹⁴⁶² and is 'not currently selling in the EEA today but plan on a presence there in the future. There would be a time at some point either through acquisition or organically that we would consider producing and supplying in the EEA and the price going up would help but there would be other determining factors'.¹⁴⁶³

¹⁴⁵⁶ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 88.1.1.

¹⁴⁵⁷ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 1.

¹⁴⁵⁸ See data provided in Reply to request for information RFI 16.

¹⁴⁵⁹ See Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 15.1.

¹⁴⁶⁰ Doc. ID 3594-57552 (The Parties' reply to the Commission's request for information RFI 18, M.10078 Cargotec Konecranes RFI 18-01218532 msg).

¹⁴⁶¹ Doc. ID 3983, Minutes of a call with a competitor, 18 August 2021.

¹⁴⁶² Doc. ID 4133, Minutes of a call with a competitor, 19 August 2021.

¹⁴⁶³ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 68.1.

- (1584) The Company further explains that differences in regulations make it difficult and costly to supply inside the EEA,¹⁴⁶⁴ and specifically explains that *‘the CE stamp certification is the main one for us’*.¹⁴⁶⁵ The Company further submits that differences in customer preferences would make it difficult and costly to supply inside the EEA.¹⁴⁶⁶ The Company further submits that having a local after-sales presence is very important to successfully sell reach stackers in a certain region.¹⁴⁶⁷ The Company also deems it difficult to establish a local after-sales network and very difficult to establish a local distribution network in the EEA for companies seeking to enter the EEA reach stacker market.¹⁴⁶⁸ Overall, the Company submits in reply to the question what costs and time would be required to enter the EEA reach stacker market: *‘It is a monumental task because of the two major players konecrane and kalmar. jointly it would be a monopoly in my opinion’*.¹⁴⁶⁹ While it has no specific market entry plans, it *‘estimates that 2-4 years would be necessary to properly begin sales in Europe’*.¹⁴⁷⁰
- (1585) Summarising why so far Taylor is supplying largely in North America, the Company explains that *‘with the initially relatively low number of units [the Company] could expect to sell in Europe, it would not be worth the expense to undertake the necessary CE certificate registration for the products. While the Company does not have recent quotes for the costs of the CE certificate, it estimates it would cost mid six figures to achieve at least – if one were to certify the entire product line, this would probably reach into the seven figures. Other costs related to market entry would be linked to the installation of offices in Europe and the creation of marketing campaigns to present the product. Finally, the current design of [the Company]’s container handling equipment would require certain modifications to meet European customer preferences, especially in relation to ergonomic features that are of importance to equipment operators in Europe. Operators in North America typically have less demanding requirements than those in Europe’*.¹⁴⁷¹
- (1586) No customer responding to the market investigation expects to purchase mobile equipment from Taylor for its EEA operations in the next 2-3 years.¹⁴⁷²
- (1587) Therefore, an entry by Taylor into the EEA reach stacker market in the next 2-3 years that is sufficient in scope and magnitude to constrain the Merged Entity is unlikely.
- (1588) Therefore, overall it appears that those companies that submitted in response to the Commission’s questionnaire that they plan to enter the EEA reach stacker market in the next 2-3 years are unlikely to enter or unlikely to enter in a way that is sufficient in scope and magnitude to constrain the Merged Entity.
- (1589) In addition, the Notifying Parties suggest that Mitsubishi, Hyundai and Doosan are active outside of Europe in reach stackers and therefore are potential market entrants.¹⁴⁷³ However, the Commission finds that Doosan and Hyundai do not appear

¹⁴⁶⁴ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 75.

¹⁴⁶⁵ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 75.1.

¹⁴⁶⁶ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 76.

¹⁴⁶⁷ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, questions 78.1. and 78.1.1.

¹⁴⁶⁸ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 88.1.

¹⁴⁶⁹ Response to Q1 – Questionnaire to Competitors, Doc. ID 3154, question E.C.B.3.1.

¹⁴⁷⁰ Doc. ID 4133, Minutes of a call with a competitor, 19 August 2021.

¹⁴⁷¹ Doc. ID 4133, Minutes of a call with a competitor, 19 August 2021.

¹⁴⁷² Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 27.

¹⁴⁷³ Reply to the SO, paragraph 918.

to offer reach stackers. Doosan describes itself as ‘a forklift manufacturer’¹⁴⁷⁴ and the ‘third-party report’ which according to the Notifying Parties ‘lists Doosan as one of the “key players influencing the reach stackers market”’ does not appear to provide an accurate market view (e.g. in 2020 it still refers to Terex as an independent player).¹⁴⁷⁵ Hyundai according to the Notifying Parties ‘offers a great variety of forklifts, forklift trucks, pallet trucks and stackers as well as reach and tow trucks’.¹⁴⁷⁶ This list does not include reach stackers. The Notifying Parties submit that a Mitsubishi subsidiary offers reach stackers in Japan and that Cargotec has lost one reach stacker sales opportunity to Mitsubishi in Japan in 2016.¹⁴⁷⁷ Mitsubishi submits in response to the Commission’s market investigation that it does not plan to enter the supply of reach stackers in the EEA in the next 2-3 years.¹⁴⁷⁸

- (1590) Overall the Notifying Parties claim that ‘pre-transaction there were at least nine OEMs providing reach stackers in Europe, the Commission’s investigation confirmed that post-transaction there will be at least twelve reach stacker suppliers active in Europe (and then including Taylor, Loadstar, ZPMC and Camblift)’.¹⁴⁷⁹ However, as discussed above and further below in this Section 7.4.1.3, entry sufficient in scale and scope to constrain the Merged Entity by these four additional companies appears unlikely in the foreseeable future.

(F.ii) Potential entrants identified by the Notifying Parties are largely unknown to customers and distributors

- (1591) The Notifying Parties have submitted a list of companies they consider to be likely entrants in the EEA markets for mobile equipment (of which the EEA reach stacker market is a part).¹⁴⁸⁰ These companies are largely unknown to customers and distributors.
- (1592) In any case, the companies the Notifying Parties submit are potential entrants into the EEA mobile equipment markets (of which reach stackers are a part), are not recognised by customers and distributors as likely entrants. As seen in Table 25, most companies submitted as likely entrants by the Notifying Parties are unknown to most customers – in two cases do customers indicate that they have purchased from these companies for EEA operations (though in the two cases – Heli and Toyota/Hoist – this likely relates to sales of low capacity forklifts). Only in one case, do two customers expect to source mobile equipment in the next 2-3 years from one of the companies identified as likely entrants by the Notifying Parties. Distributors provide a very similar response.¹⁴⁸¹

¹⁴⁷⁴ Response to Q3 – PH2 Questionnaire to competitors, Doc. ID 3582, question 1.

¹⁴⁷⁵ Reply to Request for information RFI 37, Annex QC5a.

¹⁴⁷⁶ Reply to Request for information RFI 37, question 5a.

¹⁴⁷⁷ Reply to Request for information RFI 37, question 5a.

¹⁴⁷⁸ Response to Q3 – PH2 Questionnaire to competitors, Doc. ID 3582, question 84.1.

¹⁴⁷⁹ Reply to the SO, paragraph 927.

¹⁴⁸⁰ Reply to Request for information RFI 19, question 9b (RFI 19 Annex Q9).

¹⁴⁸¹ Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 26.

Table 25 – Customers’ knowledge of potential mobile equipment entrants

Customers’ knowledge of companies identified as likely entrants into the EEA mobile equipment markets							
Company	I am aware of this company	I am aware that this company is active in mobile equipment	I have approached this company to purchase mobile equipment for my operations in the EEA	This company has approached me to sell mobile equipment for my operations in the EEA	I have successfully purchased mobile equipment from this company for my operations in the EEA in the next 2-3 years	I expect to purchase mobile equipment from this company for my operations in the EEA in the next 2-3 years	I have not heard of this company
Camblift	xx	xx					xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxx
Dalian Forklift Co. Ltd	xxxxxx						xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xx
Goodsence	xx						xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxx
Hangzhou – Hangcha Forklift	xxxx						xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxx
Heli	xxxx	xx			xx		xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
Socma	xxxx						xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxx
Taylor	xxxxxx	xxxxxxx x	x				xxxxxxxxxxxxxxxxxxxxxxxxxxxx
Toyota/Hoist	xxxxxxxxxxxxxxxx xxx	xxxxxxx x	xx		xx		xxxxxxxxxx
XCMG	xxxx						xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
ZPMC	xxxxxxxxxxxxxxxx	xxxxxxx x	xx	x		xx	xxxxxxxxxxxxxx

Source: Responses to Q6 – Questionnaire to Mobile equipment customers, Doc. ID 3607, question 27. The Commission’s evaluation of non-confidential responses.

- (1593) While some customers explain that they expect new entrants in the EEA reach stackers market in the next 2-3 years (e.g. stating they expect ‘Chinese’, or ‘ZPMC and Chinese producers’ to enter, or submitting: ‘Taking into account our tender procedures Sany has already started participating in public tenders. We think that other Asian companies will enter EEA market in near future’), other customers say they do not expect entry. For example, one customer states that it ‘is not aware of any new entrants that are likely to enter the market for reach stackers in the EEA in the next 2-3 years. Moreover, as explained in the response to question E.B.5, there are significant barriers for suppliers without any presence in the EEA to supply reach stackers into the EEA. These barriers include, most notably, the lack of an after-sales network in the EEA, and the significant time and cost required to roll out such a network across the EEA. Additional barriers are their lack of brand reputation, and the lack of any evident presence in the EEA (they are simply not on customers’ radar)’. Another customer submits that it ‘does not expect any new market entrants within the next 2-3 years’.¹⁴⁸²
- (1594) Generally, customers submit that they are not inclined to start purchasing reach stackers from manufacturers that are not yet established in the EEA. The large

¹⁴⁸² Responses to Q2 – Questionnaire to Customers, Doc. ID 3153, question E.C.B.1.1.

majority of customers expressing their view that did observe a price increase in reach stackers submit that they did not try to purchase reach stackers from a supplier that at that time was not yet established in the EEA.¹⁴⁸³ In this context a customer explains that *‘[t]he local factor is very important for us and in general we don't use equipment if we don't know the quality’*.¹⁴⁸⁴ Another customer states: *‘We have a 24/7 operational and must work with reliable equipment/service’*.¹⁴⁸⁵

- (1595) In any case, large majorities of customers have not and do not plan to consider buying reach stackers from suppliers that do not have an established local after-sales network in their region.¹⁴⁸⁶
- (1596) In addition to the companies assessed in Table 25 which the Notifying Parties submitted as potential entrants, the Notifying Parties have in response to the SO named further companies they consider as potential entrants into the EEA reach stacker market, such as Svetruck (active in heavy-duty forklift trucks (>10 tonnes) and construction equipment makers such as Caterpillar, John Deere, Ljungby Maskin and Volvo Construction Equipment.¹⁴⁸⁷ Aside of the barriers to entry considered in this Section 7.4.1.3, no market participants considered these companies as likely entrants in response to the Commissions market investigation.
- (1597) Therefore, overall, the potential entrants identified by the Notifying Parties are largely unknown to customers and distributors – and customers do not have plans to start sourcing for EEA operations from them. In any case, customers appear not to be inclined to start purchasing reach stackers for use in the EEA from suppliers which are not yet established in the EEA.

(F.iii) The Notifying Parties internally do not track immediate and specific plans of entry into the EEA reach stacker market

- (1598) The Notifying Parties internally – with only one apparent exception – do not track immediate and specific plans of entry into the EEA reach stacker market.
- (1599) While the Notifying Parties internally do appear to have concerns related to entry and expansion of rivals in reach stackers, these concerns appear to largely relate to geographic areas other than the EEA. The fact that the Notifying Parties perceive entry and expansion of competitors particularly in non-EEA regions therefore further suggests that competitors of the Parties face certain barriers to entry and expansion in the EEA.
- (1600) The Notifying Parties submit, for example in the Supplemental submission on mobile equipment by Konecranes of 24 September 2021, that there are many credible mobile equipment competitors and specifically, that *‘low-cost Chinese suppliers, who are investing heavily to be at the forefront of the industry-wide mega trends of electrification and digitization, continue to enter and expand on a global basis’*.¹⁴⁸⁸

¹⁴⁸³ Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 17.1.

¹⁴⁸⁴ Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 17.1.1.

¹⁴⁸⁵ Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 17.1.1.

¹⁴⁸⁶ See Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, questions 10.1 and 11.1.

¹⁴⁸⁷ Reply to the SO, paragraph 905.

¹⁴⁸⁸ Supplemental submission on mobile equipment, 24 September 2021, paragraph 4.

- (1601) The Commission finds that indeed there are a number of Chinese reach stacker manufacturers (and indeed other Asian reach stacker manufacturers). However, the only one to have made sales of reach stackers in the EEA so far is Sany. Sany is not a potential and also not a recent entrant in the EEA, but according to the market share estimates provided by the Notifying Parties, was already active in 2010 with reach stacker sales in the EEA. Since then, Sany's market share has only marginally increased in the EEA. All other Chinese suppliers (e.g. XCMG, ZPMC, etc.), while active in reach stackers, are not active in the EEA. Internal documents of both Notifying Parties contain assessments about the entry and expansion of Chinese and other reach stacker companies – given that Kalmar is the global market leader in reach stackers and Konecranes another important global supplier of reach stackers, it is not surprising that these companies assess the capabilities of the companies against which they compete in different global regions. This internal assessment of entry and expansion is however in almost all cases not related to entry and expansion in the EEA.
- (1602) On the contrary, in tracking Sany's activities, while Cargotec internally notes that [internal document reference]¹⁴⁸⁹, [internal document reference]¹⁴⁹⁰ and that [internal document reference]¹⁴⁹¹ it also states in an internal document that [internal document reference]¹⁴⁹². While the Notifying Parties submit that documents also state that [internal document reference] and that [internal document reference]¹⁴⁹³ this does not show any specific concern related to Sany in the EEA. The Commission does not doubt that Sany is winning tenders in Western Europe, as Sany has a meaningful market presence in the UK and also has made limited reach stacker sales in the EEA since at least 2010. It is to be expected that the Notifying Parties refer to Sany (a significant global player) across internal documents, and also refer in certain documents to Sany's present EEA activities, given that Sany is a competitor presently active in the EEA (although only with limited sales).
- (1603) Konecranes in an internal document formulates the aim to [internal document reference]¹⁴⁹⁴. In another document Konecranes similarly states [internal document reference]¹⁴⁹⁵ – this again suggests that competitors like Sany (and Taylor) are not seen as expanding significantly in the EEA. Cargotec in another internal document assesses a [internal document reference] but further states that [internal document reference]¹⁴⁹⁶. This further suggests that while expansion from Sany is indeed perceived by Cargotec as a challenge, this appears to be mainly a factor in Asia, and China in particular, rather than in the EEA. Similarly, Konecranes deems [internal document reference]¹⁴⁹⁷.
- (1604) With respect to [...], Konecranes notes in an internal document [internal document reference]¹⁴⁹⁸.
- (1605) [Internal discussions]¹⁴⁹⁹.

¹⁴⁸⁹ Form CO, 5.4 Submission 1 – Annex C5.40230, slide 4.

¹⁴⁹⁰ Form CO, 5.4 Submission 1 – Annex C5.40011, slide 3.

¹⁴⁹¹ Form CO, RFI PN7 – Annex QC39.1 – Confidential, slide 19.

¹⁴⁹² Form CO, 5.4 Submission 1 – Annex C5.4.0120, slide 42.

¹⁴⁹³ Response to the Article 6(1)(c) Decision, paragraph 318.

¹⁴⁹⁴ Form CO, RFI PN4 Annexes QK4(c).1, slide 6.

¹⁴⁹⁵ Form CO, Pre-notification RFI 2 – Annex QK89.1, slide 5.

¹⁴⁹⁶ Form CO, 5.4 Submission 1 – Annex C5.4.0284, slide 3.

¹⁴⁹⁷ Form CO, RFI PN7 Annexes QK22.1 – Confidential, slide 16.

¹⁴⁹⁸ Reply to Request for information RFI 24 QK7.3, slide 25.

(1606) Overall, therefore the Notifying Parties internally, with only one apparent exception, do not track immediate and specific plans of entry into the EEA reach stacker market.

(G) Conclusions

(1607) For the reasons set out in this Section 7.4.1.3, the Commission considers that significant barriers to entry and expansion exist in the EEA market for reach stackers. No entry on significant scale has occurred over the past ten years – instead the market has consolidated further. Future entry and expansion are made difficult by the benefits of a European assembly presence, the need of a local distribution and after-sales network, the benefits incumbents have due to their installed base, and the need to develop high-quality, well perceived products. In addition, no specific and timely entry or expansion plans appear to exist that would be sufficient in scope and magnitude to effectively constrain the Merged Entity.

7.4.1.4. Competitors to the Notifying Parties are unlikely to be able to effectively constrain the Merged Entity

(1608) Post-Merger, competitors to the Notifying Parties in the EEA market for reach stackers are unlikely to be able to effectively constrain the Merged Entity.

(1609) The very large market share of the Merged Entity post-Transaction (indicative of a dominant position), and the highly concentrated EEA reach stacker market in general (expressed in the HHI values), in themselves suggest that competitors' of the Notifying Parties only have weak market positions and lack the competitive strength to constrain the Merged Entity.

(1610) In addition, customers' ability to credibly threaten to switch away from the Merged Entity is very limited, due to competitors' weak positions in relation to certain key customer purchase criteria (such as brand reputation, vehicle quality, installed base and previous experience, product range, distribution and after-sales network, etc.).

(A) The Notifying Parties are the strongest suppliers of reach stackers in the EEA according to key customer purchase criteria

(1611) The Notifying Parties are the strongest suppliers of reach stackers in the EEA according to key customer purchase criteria.

(1612) As discussed in Sections 7.4.1.2 and 7.4.1.3, customers consider vehicle quality, distribution and after-sales networks, product range, and brand reputation and experience to be important purchase criteria. On all of these parameters, customers, distributors and competitors deem Cargotec and Konecranes to be particularly strong players in the EEA.¹⁵⁰⁰

(1613) An internal slide (captioned in Figure 120) shows that also Cargotec considers parameters such as [internal document reference]. Cargotec evidently also considers itself to be in a strong position to meet these customer criteria, by listing as its own reach stacker competitive advantages for example: [internal document reference].

¹⁴⁹⁹ See e.g. Doc. ID 3585-49560 (The Parties' reply to the Commission's request for information RFI 18, M.10078 Cargotec Konecranes RFI 18-00224099 msg).

¹⁵⁰⁰ See e.g. Responses to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 82.1, Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 14.1, Responses to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 19.1.

Figure 120: Reach stacker key purchase criteria and Kalmar's competitive advantage

[...]

Source: [Internal document reference].

- (1614) Similarly, Konecranes in an internal document describes [internal document reference].¹⁵⁰¹
- (1615) Therefore, for competitors of the Notifying Parties to be able to effectively constrain the Merged Entity post-Transaction, they would need to be able to rival the Notifying Parties on the key purchase criteria that are important to customers. Otherwise, customers would be limited in their ability to switch (or credibly threaten to switch) away from the Merged Entity.
- (B) Customers submit that switching supplier would be difficult if the Merged Entity were to increase prices
- (1616) Customers submit that switching suppliers would be difficult if the Merged Entity were to increase prices for reach stackers in the EEA post-Transaction.
- (1617) Switching is made difficult by the fact that only a limited number of suppliers is active in the EEA market for reach stackers with a meaningful market position (as discussed in Section 7.4.1.1). Certain customer groups who require specific types of reach stackers will find it particularly difficult to switch, because even fewer suppliers are active in certain segments of the reach stacker market (as discussed in Section 7.4.1.2). For example, if a customer active in windmill construction requires new reach stackers with very high lifting capacities, it would find it very difficult to switch away from the Merged Entity, as only very few of the Notifying Parties rivals are at present active in this segment.
- (1618) Overall, when asked how difficult they would consider it to switch supplier for reach stackers, if the Merged Entity were to increase its prices in the EEA post-Transaction, a majority of customers expressing an opinion consider it very difficult or somewhat difficult.¹⁵⁰²
- (1619) While one customer explains in relation to its ability to switch suppliers of mobile equipment (of which reach stackers are a part) that *'due to EU-wide tenders, supplier changes are always possible'*¹⁵⁰³ and another customer submits that *'[a]lternative manufacturers as HYSTER, SANY, ZPMC, LIEBHERR or LINDE could supply in similar terms of specifications, quality, delivery times, etc.'*,¹⁵⁰⁴ other customers mention a number of challenges related to switching suppliers. One customer simply states that the Proposed Transaction would result in *'NO MORE COMPETITION'*,¹⁵⁰⁵ another customer describes practical challenges: *'Always there is a possibility to change suppliers but it creates some issues from operational point of view and technical point of view (more spare parts, more trainings and etc).'*¹⁵⁰⁶ Yet another customer submits that *'Konecranes and Cargotec are our main suppliers of the products mentioned. The level of knowledge of the employees is high and the*

¹⁵⁰¹ Doc. ID 3585-3887 (The Parties' reply to the Commission's request for information RFI 18, M.10078 Cargotec Konecranes RFI 18-00267645.pptx), slide 15.

¹⁵⁰² Responses to Q2 – Questionnaire to Customers, Doc. ID 3153, question E.C.A.4.

¹⁵⁰³ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question E.C.A.4.1. Courtesy translation. The original German reads: *'Durch EU-weite Ausschreibungen sind Bieterwechsel ständig möglich'*.

¹⁵⁰⁴ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question E.C.A.4.1.

¹⁵⁰⁵ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question E.C.A.4.1.

¹⁵⁰⁶ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question E.C.A.4.1.

*supply of replacement parts has been optimized over the years. The factories reserve production windows and communicate reserves and bottlenecks. Mergers and price increases are common practice and our operations are geared towards them. Nonetheless, ending the collaboration through an unacceptable increase in prices would affect every imaginable process’.*¹⁵⁰⁷

- (1620) A distributor describes what it expects to be the consequence of a supplier change for its business model: ‘We’ve built quite a big reputation for our company and the brandname Kalmar. I might lose credibility at my clients if I have to switch to a different / new brand or start promoting a competing brand. This breaks down everything we’ve built in the past. I think this has a very high risk for my company’.¹⁵⁰⁸
- (1621) A customer further explains that its ability to switch suppliers is limited because it ‘has a large number of widely spread terminals in Germany, [and therefore] it is essential to have a few hours response time from suppliers. That is the reason why already today the number of capable suppliers is limited and would be further reduced to the merged entity and Hyster post-Transaction’.¹⁵⁰⁹ Therefore, the Proposed Transaction would further reduce this customers’ already very limited ability to switch suppliers.
- (1622) Another customer describes its limited ability to switch suppliers, in particular for reach stackers, by stating that if it ‘*had to consider another supplier of reach stackers in the EEA post-transaction, Hyster and Liebherr would be the most credible options available. However, these much smaller rivals would not be able to provide a sufficiently competitive alternative to the merged entity. In particular, Hyster tends to be more expensive and – to [the Company]’s knowledge based on observation and market intelligence – offers lower quality reach stackers than Cargotec and Konecranes. For instance, [the Company] understands that Hyster uses lighter lifting cylinders, which would result in lower quality reach stackers compared to the Parties. And Liebherr, for its part, does not yet have the required range of reach stackers with the requisite capacity’.*¹⁵¹⁰
- (1623) Another customer describes that ‘[f]rom a customer perspective, there is currently only a small number of players offering reach stackers. [...] Cargotec and Konecranes are two of the three main western suppliers of this product, together with Hyster. The Company needs high quality equipment for their activities and would have post-transaction virtually no other quality vendors to turn to’.¹⁵¹¹ Another customer submits with respect to Sany: ‘[The Company] is not inclined to purchase from Sany, as they are relatively new to the market and the quality of their offering does not currently meet the general specifications of the Company’.¹⁵¹²
- (1624) A distributor active in Spain describes customers’ limited switching ability by submitting that ‘[f]inal customers of mobile container handling equipment have a reason to be concerned about the proposed merger. There are many instances where [the Company] in Spain only faces Kalmar in the supply of equipment, and in most cases the only competition in the market are Kalmar and Konecranes. Customers

¹⁵⁰⁷ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question E.C.A.4.1.

¹⁵⁰⁸ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question E.C.A.4.1.

¹⁵⁰⁹ Doc. ID 311, Minutes of a call with a customer, 2 March 2021.

¹⁵¹⁰ Doc. ID 1332, Submission by a customer, 7 June 2021.

¹⁵¹¹ Doc. ID 257, Minutes of a call with a customer, 9 March 2021.

¹⁵¹² Doc. ID 508, Minutes of a call with a customer, 10 March 2021.

would lose the ability to generate competition between Kalmar and Konecranes and would need to start sourcing from Hyster, which is a company currently not relied upon by customers'.¹⁵¹³

- (1625) Another distributor submits that 'Hyster's equipment is however of a lower quality and the Company believes that customers operating with Konecranes or Kalmar equipment would not source from Hyster. The difference of quality can be explained by the lower level of the components used by Hyster in its equipment (e.g., they are using the same type of transmission as the Parties, but use a less advanced iteration of it). In addition, the finishing and welding on Hyster machines is not quite up to the same standard as on the Parties' machines. Overall, while Kalmar's and Konecranes' equipment has a lifespan of approximately 10 years, Hyster's equipment has a lifespan of seven to eight years'.¹⁵¹⁴ This implies that while some customers consider Hyster to be a potential alternative to the Parties, some other customers may not due to quality reservations.
- (1626) Yet another distributor again points to the importance of an effective after-sales network by explaining that '[i]n this market, competition occurs at the distribution/sales level. Therefore, by itself the merger does not have a large effect because there are still other competitors that can manufacture heavy-duty forklifts and reach stackers. However, without a significant service network these competitors will not be able to take a large share of the market and the merged entity will clearly stay the market leader'.¹⁵¹⁵ This further underlines that customers would be limited in their ability to switch away from the Merged Entity, due to competitors' after-sales network limitations.
- (1627) The view that customers are limited in their ability to switch supplier post-Transaction is therefore supported by customers and distributors.
- (1628) The Notifying Parties in this context submit that the existence of mixed fleets (i.e. customers that own reach stackers from more than one supplier) and past instances of switching between suppliers would support the finding that switching by customers is generally easy, or at least a viable option in reaction to a price increase.¹⁵¹⁶ First, the existence of mixed fleets and the general ability of (certain) customers to switch is not in itself informative on the question of whether switching would be an effective strategy for customers to avoid a post-Merger price increase by the Merged Entity. If switching and mixed fleets were entirely absent from the reach stacker market, the Proposed Transaction's potential effect on competition would be very limited (as all existing customers would be looked-in and could not be contested – i.e. there would be no competition between the Notifying Parties pre-Transaction for existing customers. Existing customers are however clearly contested). Switching suppliers is in principle possible for various customers, yet because the Notifying Parties are competing closely in this market, many customers are likely to consider the other Notifying Party when switching away from one of them. This choice would disappear post-Transaction. Further, switching opportunities are limited for many customers, as – as described in this Section 7.4.1.4 (B) – other suppliers of reach stackers cannot fulfil all their requirements. Therefore, switching is not an effective option for many customers in response to a price increase by the Merged Entity.

¹⁵¹³ Doc. ID 261, Minutes of a call with a distributor, 24 February 2021.

¹⁵¹⁴ Doc. ID 502, Minutes of a call with a distributor, 14 April 2021.

¹⁵¹⁵ Doc. ID 881, Minutes of a call with a distributor, 19 April 2021.

¹⁵¹⁶ Reply to the SO, paragraphs 929-937.

- (C) Each competitor currently present on the EEA reach stacker market is limited in its ability to constrain the Merged Entity
- (1629) To recall, the competitors presently active in the EEA market for reach stackers are: CVS Ferrari, Hyster, Liebherr, Sany, FTMH, Uplifting and CES. All of these companies are significantly limited in their ability to constrain the Merged Entity post-Transaction.
- (1630) **First**, very small firms such as Uplifting and CES are unlikely to be able to effectively constrain the Merged Entity.
- (1631) Uplifting: The company has a very small EEA 2018-2020 market share of [0-5]%. No customer explaining its last purchase of reach stackers indicates that Uplifting submitted a bid.¹⁵¹⁷ Overall, Uplifting is not mentioned by any customer as one of the top five reach stacker suppliers in the EEA according to any parameter (e.g. quality, product range, after-sales, etc.)¹⁵¹⁸ In the years 2018-2020, the Notifying Parties in the tender data provided to the Commission [tender data] where they lost a reach stacker tender to this company.¹⁵¹⁹ A Konecranes Lift Trucks sales director in an internal email states the following [internal document reference].¹⁵²⁰
- (1632) CES: The company has a very small EEA 2018-2020 market share of [0-5]%. No customer explaining its last purchase of reach stackers indicates that CES submitted a bid.¹⁵²¹ Overall, CES is not mentioned by any customer as one of the top five reach stacker suppliers in the EEA according to any parameter (e.g. quality, product range, after-sales, etc.)¹⁵²² In the years 2018-2020, the Notifying Parties in the tender data provided to the Commission [tender data] where they lost a reach stacker tender to this company.¹⁵²³
- (1633) **Second**, FTMH is unlikely to be able to effectively constrain the Merged Entity.
- (1634) The company has a very small EEA 2018-2020 market share of [0-5]%. In the years 2018-2020, the Notifying Parties in the tender data provided to the Commission [tender data] where they lost a reach stacker tender to this company.¹⁵²⁴
- (1635) Considering certain customer key purchase criteria for reach stackers, as shown in Table 26, customers consider Cargotec and Konecranes to be significantly stronger than FTMH in relation to brand reputation, vehicle quality, product range and after-sales network. Very few customers consider FTMH to belong to the top five players in the EEA in relation to these parameters. Distributors and Competitors provide similar responses.¹⁵²⁵

¹⁵¹⁷ See Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 15.1.

¹⁵¹⁸ Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 14.1.

¹⁵¹⁹ See data provided in Reply to request for information RFI 16.

¹⁵²⁰ Doc. ID 3594-57552 (The Parties' reply to the Commission's request for information RFI 18, M.10078 Cargotec Konecranes RFI 18-01218532 msg).

¹⁵²¹ See Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 15.1.

¹⁵²² Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 14.1.

¹⁵²³ See data provided in Reply to request for information RFI 16.

¹⁵²⁴ See data provided in Reply to request for information RFI 16.

¹⁵²⁵ See Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 19.1 and Responses to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 82.1.

Table 26 – FTMH comparison with the Notifying Parties according to key purchase criteria

Customers' ranking of the top five reach stacker suppliers active in the EEA according to key purchase criteria (The Parties and FTMH)					
Company	1 (strongest/best)	2	3	4	5 (weakest/worst)
Brand reputation					
Cargotec	xxxxxxxxxxxxxxxx	xx	x		
Konecranes	xxxx	xxxxxxxxxx		xx	
FTMH					xx
Vehicle quality					
Cargotec	xxxxxxxxxxx	xxx	xxx		
Konecranes	xxxxxx	xxxxxxx	x		
FTMH				x	x
Product range					
Cargotec	xxxxxxxxxxxxxxxx				
Konecranes	xxxxx	xxxxx		xx	
FTMH				xx	
After-sales network					
Cargotec	xxxxxxxxxxxxxxxx	x	xx		
Konecranes	xxxxxx	xxxxxxx	xx		
FTMH				x	x

Source: Responses to Q6 – Questionnaire to Mobile equipment customers, Doc. ID 3607, question 14.1. The Commission's evaluation of non-confidential responses.

- (1636) Further, as shown in Table 17 above, significantly more customers submit that the Notifying Parties can meet all of their reach stacker equipment requirements, than indicate that FTMH can do so.
- (1637) The Notifying Parties internally also appear to not consider FTMH as a significant competitor in the EEA.
- (1638) Konecranes in a recent documents notes [internal document reference].¹⁵²⁶
- (1639) Cargotec describes FTMH as a 'small player based in Italy jeopardizing limited number of units'.¹⁵²⁷
- (1640) The Notifying Parties further submit that FTMH only has a limited distribution presence (direct distribution in Italy and dealers/distributors in Romania, Germany and Italy).¹⁵²⁸
- (1641) Therefore, FTMH is unlikely to be able to effectively constrain the Merged Entity post-Transaction.
- (1642) **Third**, Sany is unlikely to be able to effectively constrain the Merged Entity.

¹⁵²⁶ Doc. ID 3586-62316 (The Parties' reply to the Commission's request for information RFI 18, M.10078 Cargotec Konecranes RFI 18-00354050.pptx), slide 7.

¹⁵²⁷ Doc. ID 3666-857 (The Parties' reply to the Commission's request for information RFI 17, CAR-PAT-00121990.pptx), slide 4.

¹⁵²⁸ The Notifying Party's presentation from EC expert session, 23 September 2021, slide 7.

- (1643) The company has a very small EEA 2018-2020 market share of [0-5]% (according to the Notifying Parties' data; [0-5]% according to the Commission's market reconstruction). In the past ten years, Sany's market share has not substantially increased in the EEA. In the years 2018-2020, the Notifying Parties in the tender data provided to the Commission record [tender data] EEA instances from Cargotec [tender data].¹⁵²⁹
- (1644) Considering certain customer key purchase criteria for reach stackers, as shown in Table 27, customers consider Cargotec and Konecranes to be significantly stronger than FTMH in relation to brand reputation, vehicle quality, product range and after-sales network. Distributors and Competitors provide similar responses.¹⁵³⁰

Table 27 – Sany comparison with the Notifying Parties according to key purchase criteria

Customers' ranking of the top five reach stacker suppliers active in the EEA according to key purchase criteria (The Parties and Sany)					
Company	1 (strongest/best)	2	3	4	5 (weakest/worst)
Brand reputation					
Cargotec	XXXXXXXXXXXXXXXX	XX	X		
Konecranes	XXXX	XXXXXXXXXX		XX	
Sany					XXXXXX
Vehicle quality					
Cargotec	XXXXXXXXXXXX	XXX	XXX		
Konecranes	XXXXXX	XXXXXXX	X		
Sany			X		XXXXX
Product range					
Cargotec	XXXXXXXXXXXXXXXX				
Konecranes	XXXXX	XXXXX		XX	
Sany		X	X	X	XXX
After-sales network					
Cargotec	XXXXXXXXXXXXXXXX	X	XX		
Konecranes	XXXXXX	XXXXXXX	XX		
Sany				X	XXXX

Source: Responses to Q6 – Questionnaire to Mobile equipment customers, Doc. ID 3607, question 14.1. The Commission's evaluation of non-confidential responses.

- (1645) Further, as shown in Table 17 above, significantly more customers submit that the Parties can meet all of their reach stacker equipment requirements, than indicate that Sany can do so.
- (1646) The Notifying Parties submit that while market participants may consider the Notifying Parties' to be superior to Sany according to parameters such as brand reputation, vehicle quality, product range and after-sales network, Sany is seen as particularly price competitive.¹⁵³¹ Sany is indeed seen as generally having a lower

¹⁵²⁹ See data provided in Reply to request for information RFI 16.

¹⁵³⁰ See Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 19.1 and Responses to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 82.1.

¹⁵³¹ Reply to the SO, paragraph 833.

quality, lower price offering than the Notifying Parties – this remains the case, even though Sany is described by some as having improved the quality of its offering.¹⁵³² In any case, if a supplier is not able to fulfil customers’ requirements, e.g. in relation to local after-sales service, it will likely not be able to secure a sale with a low equipment price.

- (1647) While Sany itself states that it is ‘*in a growing mode*’ in Europe,¹⁵³³ market participants further explain why they consider Sany to be only a limited constraint on the Notifying Parties. One customer refers to Sany as a ‘*second-level brand in Europe*’,¹⁵³⁴ another states that ‘*Sany has never participated in a tender*’.¹⁵³⁵ A distributor explains that ‘*Sany is not very popular, due to the lower quality of its equipment and lack of servicing options*’.¹⁵³⁶ Another customer explains that it ‘*believes that the poor quality of the first Sany reach stackers deterred Belgium customers from sourcing from them. In fact, there is no Sany dealer in Belgium. There is no Sany dealer anymore in Belgium*’.¹⁵³⁷
- (1648) The Notifying Parties internally also appear to not consider Sany as a significant competitor in the EEA. The Notifying Parties submit that various internal documents show that Sany is considered to be a significant threat to the Notifying Parties’ position in reach stackers.¹⁵³⁸ Indeed, Sany is considered across various documents of both Notifying Parties as an increasing competitive threat – however almost all of these documents either generically refer to an overall global situation, or specifically deal with the market situation in a range of non-European markets. Considering the market situation specifically in the EEA, it is evident that the Notifying Parties do not consider Sany to be significant constraint.
- (1649) Cargotec in an internal document states that Sany is [internal document reference].¹⁵³⁹
- (1650) Generally with a view on Chinese competitors overall, in an internal document considering Western Europe, Kalmar assesses that [internal document reference].¹⁵⁴⁰
- (1651) In assessing Sany’s reach stacker offering, Cargotec finds that [internal document reference]¹⁵⁴¹ [internal document reference].¹⁵⁴² In another slide of the same document, captioned in Figure 121, Cargotec finds in relation to the Sany reach stackers: [internal document reference].

Figure 121: [...]

[...]

Source: [Internal document reference].

¹⁵³² Reply to the SO, paragraph 834.

¹⁵³³ Doc. ID 657, Minutes of a call with a competitors, 22 April 2021.

¹⁵³⁴ Doc. ID 4110, Minutes of a call with a customer, 27 August 2021.

¹⁵³⁵ Doc. ID 1117, Minutes of a call with a customer, 21 April 2021.

¹⁵³⁶ Doc. ID 502, Minutes of a call with a distributor, 14 April 2021.

¹⁵³⁷ Doc. ID 257, Minutes of a call with a customer, 9 March 2021. The Notifying Parties submit that has again appointed a distributor responsible for Belgium – The Reply to the SO, paragraph 835.

¹⁵³⁸ Reply to the SO, paragraphs 826-829.

¹⁵³⁹ Doc. ID 3711-37122 (The Parties’ reply to the Commission’s request for information RFI 17, CAR-MAL-00011591.pptx), slide 95.

¹⁵⁴⁰ Doc. ID 3665-22169 (The Parties’ reply to the Commission’s request for information RFI 17, CAR-PAT-00091396.pptx), slide 3.

¹⁵⁴¹ [...].

¹⁵⁴² Doc. ID 3705-11768 (The Parties’ reply to the Commission’s request for information RFI 17, CAR-COL-00042474.pptx), slide 2.

- (1652) In another internal document, Cargotec [internal document reference].¹⁵⁴³
- (1653) Konecranes in assessing [internal document reference].¹⁵⁴⁴
- (1654) These sentiments are further mirrored in a Cargotec internal document containing feedback from a Chinese customer on Kalmar's reach stacker (in Chinese and a machine translated English version). The customer is quoted as stating the following: [internal document reference].¹⁵⁴⁵ This customer evidently considers the Kalmar reach stacker to be of superior quality.
- (1655) The Notifying Parties argue that 'by referring to an EEA-wide market' the position of Sany is 'artificially *diminishe[d]*', as it 'disregards Sany's already successful footprint in the UK'.¹⁵⁴⁶ Further, the Notifying Parties state that 'in the UK, Sany has grown from a [5-10]% market share in 2017 to being the most successful competitor, with a market share of over [40-50]% (2019), in just three years. Indeed, the SO entirely fails to consider that Sany is already the market leader in the UK, with a market share in 2019 that is almost [5-10]% larger than the Parties' combined share post-transaction. The SO provides no sound reasoning as to why Sany would not be able to replicate its demonstrated success in the UK vis-à-vis the rest of Europe in the next two to three years (especially as the UK is often used by Chinese suppliers as a launch pad for operations in the rest of Europe), thereby reaching a market share of [40-50]% in 2023'.¹⁵⁴⁷
- (1656) The Commission notes the following specifically with respect to Sany's position in the UK and why Sany is nevertheless unlikely to be able to effectively constrain the Merged Entity.
- (1657) A significant portion of Sany's reach stacker orders in the UK appear to have been due [...]. In particular, [internal document reference]¹⁵⁴⁸ ([internal document reference]¹⁵⁴⁹). [Internal document reference].¹⁵⁵⁰
- (1658) The Notifying Parties appear to be aware of certain concerns among UK Sany customers with respect to Sany, and even among [...], the demand of which appears to be a central driver for the increase in Sany sales in 2019 and 2020. For example, in a Konecranes internal email (captioned in Figure 122), [internal document reference].

Figure 122: [...]

[...]

Source: [Internal document reference].

- (1659) In a [year] email [internal document reference].¹⁵⁵¹ [...].

¹⁵⁴³ Doc. ID 3660-29373 (The Parties' reply to the Commission's request for information RFI 17, CAR-KAR-00161361.pptx), slide 33.

¹⁵⁴⁴ Reply to Request for information RFI 24, Annex QK7.3, slide 19.

¹⁵⁴⁵ Doc. ID 3660-14736 (The Parties' reply to the Commission's request for information RFI 17, CAR-KAR-00160939.xlsx).

¹⁵⁴⁶ Reply to the SO, paragraph 823.

¹⁵⁴⁷ Reply to the SO, paragraph 824.

¹⁵⁴⁸ Doc. ID 3584-22232 (The Parties' reply to the Commission's request for information RFI 18, M.10078 Cargotec Konecranes RFI 18-00158484 msg).

¹⁵⁴⁹ The Notifying Parties' presentation during the Oral Hearing on 16 November 2021, '3. M.10078 – Oral hearing – MEQ', slide 8.

¹⁵⁵⁰ Doc. ID 3584-22232 (The Parties' reply to the Commission's request for information RFI 18, M.10078 Cargotec Konecranes RFI 18-00158484 msg).

Figure 123: [...]

[...]

Source: [Internal document reference].

(1660) [Internal document reference].¹⁵⁵²

(1661) [Tender data].¹⁵⁵³ [Tender data].¹⁵⁵⁴

(1662) This shows that in the specific case of Maritime Transport, which is a UK customer that is responsible for a significant share of Sany's recent UK sales of reach stackers, concerns related to Sany's offering exist, the Notifying Parties are actively being (re-)considered as suppliers, and Kalmar has already made recent reach stacker sales to this customer. The Notifying Parties submit that Maritime Transport's decision to re-consider the Notifying Parties cannot be seen as a decision against sourcing Sany products in the future.¹⁵⁵⁵ Indeed this customer may also purchase Sany reach stackers in the future, but the evidence here presented clearly shows that it's demand (responsible for a significant share of Sany's sales in the UK) cannot be treated as in any way captive for Sany. Therefore Sany's future position in the UK may well be smaller than e.g. in 2019 and 2020.

(1663) Internal documents of the Notifying Parties also mention further concerns related to Sany in the UK. For example, in an internal Konecranes email, it is noted: [internal document reference].¹⁵⁵⁶ [Internal document reference].¹⁵⁵⁷

(1664) In addition, the Notifying Parties are active also in the UK in segments of the reach stacker market in which Sany is not active, and therefore also cannot address customers' demand. For example, [...].¹⁵⁵⁸ Sany is presently not active in reach stackers with this lifting capacity.¹⁵⁵⁹

(1665) Finally, Konecranes internally appears [internal document reference].¹⁵⁶⁰

(1666) Overall, this shows that Sany's recent increase in sales in the UK, in particular in 2019 and 2020 was to a significant extent driven by a specific customer, that this customer however has recently had concerns with respect to Sany and its UK distributor – and has recently (re-)engaged with and ordered from the Notifying Parties, and that the Notifying Parties themselves do not consider it likely that Sany will replicate its reach stacker sale success in the UK in other European countries (in particular due to their lack of an effective and stable distribution/service network).

¹⁵⁵¹ Courtesy Translation. The original Swedish reads: [internal document reference].

¹⁵⁵² Doc. ID 3585-40318 (The Parties' reply to the Commission's request for information RFI 18, M.10078 Cargotec Konecranes RFI 18-00224590 msg).

¹⁵⁵³ Reply to Request for information RFI 37, Annex Q13.

¹⁵⁵⁴ Reply to Request for information RFI 37, question 13.

¹⁵⁵⁵ Reply to the Letter of Facts, paragraph 113.

¹⁵⁵⁶ Doc. ID 3584-70839 (The Parties' reply to the Commission's request for information RFI 18, M.10078 Cargotec Konecranes RFI 18-00152191 msg).

¹⁵⁵⁷ Doc. ID 3584-60156 (The Parties' reply to the Commission's request for information RFI 18, M.10078 Cargotec Konecranes RFI 18-00156620 msg).

¹⁵⁵⁸ Doc. ID 3584-35707 (The Parties' reply to the Commission's request for information RFI 18, M.10078 Cargotec Konecranes RFI 18-00210825 msg).

¹⁵⁵⁹ Doc. ID 657, Minutes of a call with a competitor, 22 April 2021.

¹⁵⁶⁰ Courtesy Translation. The original Swedish reads: [internal document reference]. Doc. ID 3590-10327 (The Parties' reply to the Commission's request for information RFI 18, M.10078 Cargotec Konecranes RFI 18-00182902.msg).

- (1667) Therefore, overall, Sany is unlikely to be able to effectively constrain the Merged Entity post-Transaction in the EEA.
- (1668) **Fourth**, Liebherr is unlikely to be able to effectively constrain the Merged Entity.
- (1669) The company has a very small EEA 2018-2020 market share of [0-5]% according to the Commission's market reconstruction. In the years 2018-2020, the Notifying Parties in the tender data provided to the Commission record [tender data] EEA instances from Cargotec and [...].¹⁵⁶¹
- (1670) Considering certain customer key purchase criteria for reach stackers, as shown in Table 28, customers consider Cargotec and Konecranes to be significantly stronger than Liebherr in relation to brand reputation, vehicle quality, product range and after-sales network. Distributors and Competitors provide similar responses.¹⁵⁶²

Table 28 – Liebherr comparison with the Notifying Parties according to key purchase criteria

Customers' ranking of the top five reach stacker suppliers active in the EEA according to key purchase criteria (The Parties and Liebherr)					
Company	1 (strongest/best)	2	3	4	5 (weakest/worst)
Brand reputation					
Cargotec	xxxxxxxxxxxxxxxx	xx	x		
Konecranes	xxxx	xxxxxxxxxx		xx	
Liebherr	x	xx	xxxxx		x
Vehicle quality					
Cargotec	xxxxxxxxxxx	xxx	xxx		
Konecranes	xxxxxx	xxxxxxx	x		
Liebherr	x	xx	xxx	xx	
Product range					
Cargotec	xxxxxxxxxxxxxxxx				
Konecranes	xxxxx	xxxxx		xx	
Liebherr	x	x	x	x	xxx
After-sales network					
Cargotec	xxxxxxxxxxxxxxxx	x	xx		
Konecranes	xxxxxx	xxxxxxx	xx		
Liebherr	x	x	x	xxxxx	

Source: Responses to Q6 – Questionnaire to Mobile equipment customers, Doc. ID 3607, question 14.1. The Commission's evaluation of non-confidential responses.

- (1671) Further, as shown in Table 17 above, significantly more customers submit that the Parties can meet all of their reach stacker equipment requirements, than indicate that Liebherr can do so.
- (1672) Liebherr submits that it *'is not able to be price competitive'*.¹⁵⁶³ A customer similarly submits that while Liebherr has innovative reach stacker products, it *'does not source from them as their price range and the aftersales service are not in line with its*

¹⁵⁶¹ See data provided in Reply to request for information RFI 16.

¹⁵⁶² See Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 19.1 and Responses to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 82.1.

¹⁵⁶³ Doc. ID 598, Minutes of a call with a competitor, 22 March 2021.

requirements (e.g., hydrostatic drive line very expensive)'.¹⁵⁶⁴ With respect to the reach stacker product range offered by Liebherr, a distributor states that 'Liebherr only offers standard 46-32 reach stackers and does not offer heavier models'.¹⁵⁶⁵

- (1673) The Notifying Parties internally also appear to not consider Liebherr as a significant competitor in the EEA. Cargotec with respect to southern Europe notes: [internal document reference].¹⁵⁶⁶
- (1674) Therefore, Liebherr is unlikely to be able to effectively constrain the Merged Entity post-Transaction.
- (1675) **Fifth**, Hyster is unlikely to be able to effectively constrain the Merged Entity.
- (1676) The company has a small EEA 2018-2020 market share of [5-10]% (according to the Notifying Parties' data; [5-10]% according to the Commission's market reconstruction). In the past ten years, according to the market share estimates provided by the Notifying Parties, Hyster's market share has remained stable in the EEA.¹⁵⁶⁷ In the years 2018-2020, the tender data provided to the Commission shows a considerable degree of tender interaction between Hyster and the Notifying Parties.¹⁵⁶⁸
- (1677) Considering certain customer key purchase criteria for reach stackers, as shown in Table 29, customers consider Cargotec and Konecranes to be stronger than Hyster in relation to brand reputation, vehicle quality, product range and after-sales network. Distributors and Competitors provide similar responses.¹⁵⁶⁹

Table 29 – Hyster comparison with the Notifying Parties according to key purchase criteria

Customers' ranking of the top five reach stacker suppliers active in the EEA according to key purchase criteria (The Parties and Hyster)					
Company	1 (strongest/best)	2	3	4	5 (weakest/worst)
Brand reputation					
Cargotec	xxxxxxxxxxxxxxxx	xx	x		
Konecranes	xxxx	xxxxxxxxxx		xx	
Hyster	xx	xxx	xxxxxxxx		
Vehicle quality					
Cargotec	xxxxxxxxxxx	xxx	xxx		
Konecranes	xxxxxx	xxxxxxx	x		
Hyster	xxx	xxx	xxxx	x	
Product range					
Cargotec	xxxxxxxxxxxxxxxx				
Konecranes	xxxxx	xxxxx		xx	
Hyster	xx	x	xxxxxx	x	

¹⁵⁶⁴ Doc. ID 257, Minutes with a customer, 9 March 2021.

¹⁵⁶⁵ Doc. ID 673, Minutes of a call with a distributor, 26 February 2021.

¹⁵⁶⁶ Doc. ID 3711-37122 (The Parties' reply to the Commission's request for information RFI 17, CAR-MAL-00011591.pptx), slide 95.

¹⁵⁶⁷ Form CO, RFI PN2 – Annex – Q5 – Confidential – market shares.

¹⁵⁶⁸ See data provided in Reply to request for information RFI 16.

¹⁵⁶⁹ See Responses to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 19.1 and Responses to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 82.1.

Customers' ranking of the top five reach stacker suppliers active in the EEA according to key purchase criteria (The Parties and Hyster)					
Company	1 (strongest/best)	2	3	4	5 (weakest/worst)
After-sales network					
Cargotec	XXXXXXXXXXXXXXXX	X	XX		
Konecranes	XXXXXX	XXXXXX	XX		
Hyster	XX	XXXXXX	XXXX		

Source: Responses to Q6 – Questionnaire to Mobile equipment customers, Doc. ID 3607, question 14.1. The Commission's evaluation of non-confidential responses.

- (1678) Further, as shown in Table 17 above, more customers submit that the Parties can meet all of their reach stacker equipment requirements, than indicate that Hyster can do so. The Notifying Parties submit that most respondents to the Commission's market investigation consider that Hyster can meet all or most of their reach stacker requirements.¹⁵⁷⁰ Indeed, Hyster is considered to be one of the most capable reach stacker competitors of the Notifying Parties in the EEA. Nevertheless, the Notifying Parties are considered by even more respondents to be able to meet all of their reach stacker requirements.
- (1679) Hyster submits that its 'main challenge is in regions in Europe where the Parties already pre-merger have a very large market share and it is therefore difficult for Hyster to gain market share there. Further, customers may have some concerns, as the market is divided by only a small number of players'.¹⁵⁷¹
- (1680) Hyster further states that '[t]he merged entity will have a dominant fleet size and service presence in some countries/regions/ports in the EEA. This will make it more difficult for competitors like Hyster to start/expand supply in these countries with smaller dealers, because one would lack the necessary scale of service capabilities. This issue would be particularly severe in the Nordics, where the Parties' combined market share across the different mobile equipment product types would be above 60%. Similarly, certain ports around the Mediterranean and some areas in Germany would face a similar concentration'.¹⁵⁷² The Company further explains this point by stating that '[t]he merged company will have a very dominant position in many geographic area's. Examples are ports in Norway, Sweden, Finland, Denmark. The combined service team size and fleet size will provide a significant hurdle to become competitive'.¹⁵⁷³
- (1681) One distributor states with respect to Italy that '*Hyster is well organised and provides a good service level*'.¹⁵⁷⁴
- (1682) However, a customer submits that Hyster does '*not impose [a] sufficient competitive constraint[...]* on the Notifying Parties' because it '*lack[s] the necessary product quality*'.¹⁵⁷⁵
- (1683) A distributor submits: 'Hyster manufactures equipment with more or less the same standard lifting capacity ranges than the Parties but is more price competitive.'

¹⁵⁷⁰ Reply to the SO, paragraph 817.

¹⁵⁷¹ Doc. ID 932, Minutes of a call with a competitors, 20 April 2021.

¹⁵⁷² Doc. ID 4278, Minutes of a call with a competitors, 23 August 2021.

¹⁵⁷³ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 97.1.

¹⁵⁷⁴ Doc. ID 558, Minutes of a call with a distributor, 24 March 2021.

¹⁵⁷⁵ Doc. ID 1332, Submission by a customer, 7 June 2021.

Hyster's equipment is however of a lower quality and the Company believes that customers operating with Konecranes or Kalmar equipment would not source from Hyster. The difference of quality can be explained by the lower level of the components used by Hyster in its equipment (e.g., they are using the same type of transmission as the Parties, but use a less advanced iteration of it). In addition, the finishing and welding on Hyster machines is not quite up to the same standard as on the Parties' machines. Overall, while Kalmar's and Konecranes' equipment has a lifespan of approximately 10 years, Hyster's equipment has a lifespan of seven to eight years'.¹⁵⁷⁶

- (1684) A customer submits that 'maintenance service requirements are one of the reasons why smaller OEMs like Hyster. have problems to capture a larger share of the reach stacker market. They struggle to run a service network that would cover e.g. the entirety of Germany and/or Europe. Similarly, other competitors like Hyster, are typically able to offer services in some regions, but in most regions, they do not have a service offering'.¹⁵⁷⁷
- (1685) The Notifying Parties internally appear to consider Hyster as one of their main EEA competitors. For example, they benchmark against Hyster in various internal documents,¹⁵⁷⁸ [internal document reference].¹⁵⁷⁹
- (1686) However, the Notifying Parties internally also discuss limitations in Hyster's product portfolio and service presence.
- (1687) For example, Cargotec in an internal document compares its reach stacker portfolio against Hyster's and notes that other than Kalmar, Hyster [internal document reference].¹⁵⁸⁰ In another document, Cargotec finds that Hyster's reach stacker offering [internal document reference].¹⁵⁸¹
- (1688) Further, Cargotec on a slide of an internal document, captioned in Figure 124, explains that its wide product range and high resale value are strong points compared to Hyster. Specifically, it is also said: [internal document reference].

Figure 124: [...]

[...]

Source: [Internal document reference].

- (1689) [Internal document reference].

Figure 125: [...]

[...]

Source: [Internal document reference].

- (1690) [Internal document reference].¹⁵⁸²

¹⁵⁷⁶ Doc. ID 502, Minutes of a call with a distributor, 14 April 2021.

¹⁵⁷⁷ Doc. ID 1117, Minutes of a call with a customer, 21 April 2021.

¹⁵⁷⁸ See e.g. Reply to Request for information RFI 24, Annex QC7.2 and Annex QC7.8.

¹⁵⁷⁹ See e.g. Doc. ID 3584-81328 (The Parties' reply to the Commission's request for information RFI 18, M.10078 Cargotec Konecranes RFI 18-00124931 msg).

¹⁵⁸⁰ Reply to Request for information RFI 24, Annex QC7.8, slide 9.

¹⁵⁸¹ Reply to Request for information RFI 24, Annex QC7.9, slide 12.

¹⁵⁸² Doc. ID 3660-29373 (The Parties' reply to the Commission's request for information RFI 17, CAR-KAR-00161361.pptx), slide 33.

- (1691) Konecranes notes [...] in an internal document [internal document reference]¹⁵⁸³ [internal document reference].¹⁵⁸⁴
- (1692) Therefore, while Hyster will post-Transaction be one of the two main EEA rivals of the Merged Entity (together with CVS), it is unlikely to be able to effectively constrain the Merged Entity post-Transaction. It has a small market share, and is regarded by market participants and the Notifying Parties themselves to lag behind Cargotec and Konecranes with respect to certain key customer purchase criteria.
- (1693) **Sixth**, CVS Ferrari is unlikely to be able to effectively constrain the Merged Entity.
- (1694) The company has a small to moderate EEA 2018-2020 market share of [10-20]% (according to the Notifying Parties' data; [10-20]% according to the Commission's market reconstruction). Since 2010, according to the market share estimates provided by the Notifying Parties, CVS' market share has grown significantly in the EEA, but has remained stable in the past five years.¹⁵⁸⁵ In the years 2018-2020, the tender data provided to the Commission shows a considerable degree of tender interaction between CVS and the Parties.¹⁵⁸⁶
- (1695) Considering certain customer key purchase criteria for reach stackers, as shown in Table 30, customers consider Cargotec and Konecranes to be significantly stronger than CVS in relation to brand reputation, vehicle quality, product range and after-sales network. Distributors and Competitors provide similar responses.¹⁵⁸⁷

Table 30 – CVS comparison with the Notifying Parties according to key purchase criteria

Customers' ranking of the top five reach stacker suppliers active in the EEA according to key purchase criteria (The Parties and CVS)					
Company	1 (strongest/best)	2	3	4	5 (weakest/worst)
Brand reputation					
Cargotec	xxxxxxxxxxxxxxxxxx	xx	x		
Konecranes	xxxx	xxxxxxxxxx		xx	
CVS	x			xxxxx	
Vehicle quality					
Cargotec	xxxxxxxxxxxxx	xxx	xxx		
Konecranes	xxxxxx	xxxxxxx	x		
CVS	xx		x	xxx	
Product range					
Cargotec	xxxxxxxxxxxxxxxxxx				
Konecranes	xxxxx	xxxxx		xx	
CVS	x		xxx		

¹⁵⁸³ RV = resale value

¹⁵⁸⁴ Form CO, RFI PN7 Annex QK22.1 – Confidential, slide 16.

¹⁵⁸⁵ Form CO, RFI PN2 – Annex – Q5 – Confidential – market shares.

¹⁵⁸⁶ See data provided in Reply to request for information RFI 16.

¹⁵⁸⁷ See Responses to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 19.1 and Responses to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 82.1.

Customers' ranking of the top five reach stacker suppliers active in the EEA according to key purchase criteria (The Parties and CVS)					
Company	1 (strongest/best)	2	3	4	5 (weakest/worst)
After-sales network					
Cargotec	XXXXXXXXXXXXXXXX	X	XX		
Konecranes	XXXXXX	XXXXXX	XX		
CVS	X	X	X	X	XX

Source: Responses to Q6 – Questionnaire to Mobile equipment customers, Doc. ID 3607, question 14.1. The Commission's evaluation of non-confidential responses.

- (1696) Further, as shown in Table 17 above, a significantly larger number of customers submit that the Parties can meet all of their reach stacker equipment requirements, than the number of customers indicating that CVS can do so.
- (1697) CVS submits that its reach stacker product portfolio is more limited than that of the Notifying Parties, e.g. it does not offer 'very high-capacity reach stackers or barge handlers'. CVS submits that it is 'perceived as stronger than the Parties' in its home market Italy, but that it 'is not perceived as having a strong market position' in Germany.¹⁵⁸⁸
- (1698) CVS further submits that '[t]he Parties therefore today occupy the two best distribution channels for mobile equipment in Europe and through this, hold strongly a substantial part of the market and block other OEMs from accessing parts of the market. When it comes to capable distributors in Europe, the Parties have essentially either bought or bound to themselves the "cherries of the cake"'.¹⁵⁸⁹
- (1699) In contrast to the submission of CVS, a distributor states that 'CVS is [...] currently struggling to survive in the Italian market'.¹⁵⁹⁰ Another distributor with respect to the situation in Spain states: 'CVS Ferrari has one distributor. [...]. Notice CVS Ferrari dealer is very small company, has not sold any machine in the past 10 years'.¹⁵⁹¹
- (1700) A customer explains: 'During its last tender for empty container handlers (for reach stackers and forklifts the market situation is broadly the same), the Company invited all available players on the mobile equipment market to bid. Five OEMs submitted offers: Kalmar, Konecranes, Hyster, Sany and CVS-Ferrari. Both CVS-Ferrari's and Sany's offerings were not accepted as they did not offer any local service in Lithuania (Sany has a service offering in Latvia, but this is too far away)'.¹⁵⁹²
- (1701) The Notifying Parties submit that CVS only has a distribution presence (directly or via dealers/distributors) in eight EEA countries.¹⁵⁹³
- (1702) The Notifying Parties internally also appear to not consider CVS as a significant competitor in the EEA.
- (1703) While Konecranes in an internal document states that [internal document reference].¹⁵⁹⁴ Konecranes also in a another recent documents notes [internal document reference].¹⁵⁹⁵

¹⁵⁸⁸ Doc. ID 1773, Minutes of a call with a competitor, 3 May 2021.

¹⁵⁸⁹ Doc. ID 1773, Minutes of a call with a competitor, 3 May 2021.

¹⁵⁹⁰ Doc. ID 558, Minutes of a call with a distributor, 24 March 2021.

¹⁵⁹¹ Doc. ID 261, Minutes of a call with a distributor, 24 February 2021.

¹⁵⁹² Doc. ID 675, Minutes of a call with a customer, 7 April 2021.

¹⁵⁹³ The Notifying Party's presentation from EC expert session, 23 September 2021, slide 7.

- (1704) Cargotec finds that in Italy (CVS' home market), it faces [internal document reference] like CVS.¹⁵⁹⁶ In another document CVS is found to be a [internal document reference]'.¹⁵⁹⁷ [...].¹⁵⁹⁸
- (1705) [Internal document reference].¹⁵⁹⁹
- (1706) Therefore, while CVS will post-Transaction be one of the two main EEA rivals of the Merged Entity (together with Hyster), it is unlikely to be able to effectively constrain the Merged Entity post-Transaction. It has a small to moderate market share, and is regarded by market participants and the Notifying Parties themselves to lag behind Cargotec and Konecranes with respect to certain key customer purchase criteria, and its activities are concentrated only on certain EEA countries/regions.
- (1707) Therefore, overall the reach stacker competitors presently active in the EEA are unlikely to be able to effectively constrain the Merged Entity post-Transaction.
- (D) The Transaction leads to a reduction of competitive pressure on the remaining competitors
- (1708) As explained above, post-Transaction, the remaining competitors would not be able to effectively constrain the Merged Entity. This is mainly due to their limited market presence and limitations with respect to certain customer key purchase criteria (e.g. distribution and after-sales network, brand reputation, vehicle quality, product range).
- (1709) In addition, the Transaction is likely to reduce the competitive pressure on the remaining competitors of the Merged Entity. As further explained above in Section 7.4.1.2 (F) and below in Section 7.4.1.5 (B), pre-Merger the Notifying Parties compete intensely with each other, also on price. This aggressive competitive behaviour, in which the Notifying Parties in part engage in order to 'beat' each other and gain market share from each other, also acts as a competitive constraint on their competitors currently active in the EEA reach stacker market. Post-Transaction, the incentive for the Merged Entity to compete and price aggressively will be reduced. This also limits the need for competitors to compete and price aggressively.
- (1710) Therefore, the Transaction is likely to lead to a reduction of competitive pressure on the remaining competitors.
- (E) Conclusion
- (1711) For the reasons set out in this Section 7.4.1.4, the Commission considers that post-Merger, competitors to the Notifying Parties in the EEA market for reach stackers are unlikely to be able to effectively constrain the Merged Entity. The Merged Entity has a very large combined market share (indicative of a dominant position) and in addition, customers' ability to credibly threaten to switch away from the Merged Entity is very limited, due to competitors' weak positions in relation to certain key customer purchase criteria (such as brand reputation, vehicle quality, installed base

¹⁵⁹⁴ Reply to Request for information RFI 24, Annex QK7.3, slide 7.

¹⁵⁹⁵ Doc. ID 3586-62316 (The Parties' reply to the Commission's request for information RFI 18, M.10078 Cargotec Konecranes RFI 18-00354050.pptx), slide 7.

¹⁵⁹⁶ Doc. ID 3666-26870 (The Parties' reply to the Commission's request for information RFI 17, CAR-PAT-00121489.pptx), slide 5.

¹⁵⁹⁷ Doc. ID 3666-857 (The Parties' reply to the Commission's request for information RFI 17, CAR-PAT-00121990.pptx), slide 4.

¹⁵⁹⁸ Reply to Request for information RFI 24, Annex QC7.2, slide 14.

¹⁵⁹⁹ Reply to Request for information RFI 24, Annex QC7.2, slide 25.

and previous experience, product range, distribution and after-sales network (as customers consider local after-sales provision essential, yet competitors of the Notifying Parties have inferior after-sales networks), etc.), and because competitors' products are not close substitutes to the Notifying Parties'. In addition, the Transaction is also likely to lead to a reduction of competitive pressure on the Notifying Parties' competitors.

- 7.4.1.5. The Transaction is likely to have a negative impact on the EEA reach stacker market and lead to higher prices
- (1712) The Transaction is likely to have a negative impact on the EEA reach stacker market, by significantly reducing competition, leading to higher prices and increasing barriers to entry and expansion. As explained in Sections 7.4.1.1 to 7.4.1.4, the Transaction leads to very large combined market shares, and removes competition between the Notifying Parties that pre-Transaction compete closely and intensely. Neither new entrants nor existing competitors are likely to constrain the Merged Entity. Therefore, it is likely that the Transaction will have a negative impact on competition in the EEA and lead to higher prices.
- (1713) In addition, market participants also expect the Transaction to lead to a negative impact on competition and higher prices in the EEA market for reach stackers. Further, the Notifying Parties' pre-Merger pricing strategies also show that a price increase is likely.
- (A) Market participants expect the Transaction to lead to a negative impact and higher prices
- (1714) Market participants expect the Transaction to lead to a negative impact and higher prices. The Notifying Parties submit however that the Commission is merely *'quoting selectively from responses to the market investigation and internal documents in order to create the impression that a consensus exists among market participants that the Merged Entity will increase prices and harm customers in other ways'* and that this *'disregards the views of many customers and competitors who have said that they expect that the Proposed Transaction would be unlikely to have negative effects (or have been neutral on the matter), thus providing clear and ample evidence to the contrary'*.¹⁶⁰⁰ Indeed some market participants do not expect the Proposed Transaction to have a negative impact on competition and lead to higher prices. This may be the case because a larger number of suppliers can address their specific reach stacker requirements, or because reach stackers are only a minor part of their container handling equipment needs (this is for example the case for certain very GTOs). However, as explained in further detail in this Section 7.4.1.5 (A), the majority of customers, as well as various other market participants, expect the Proposed Transaction to lead to price increases in the EEA reach stackers market.
- (1715) **First**, customers expect the Transaction to lead to a negative impact and higher prices in the EEA market for reach stackers.
- (1716) The majority of customers expressing their opinion expect that the Proposed Transaction would lead to price increases in the EEA for reach stackers.¹⁶⁰¹
- (1717) While one customer submits that 'European manufacturers, plus Asian competitors with a larger and increasing presence, will lead to maintain similar prices',¹⁶⁰² and

¹⁶⁰⁰ Reply to the SO, paragraph 1220.

¹⁶⁰¹ Responses to Q2 – Questionnaire to Customers, Doc. ID 3153, question E.D.1. and Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 29.1.

another customer states that ‘[t]he future trade volumes, global and local economy, COVID recovery, etc. and the number of alternative Parties active in the market are all factors contributing to equipment prices which we consider will outweigh any price increases that the merged entity may try to introduce’,¹⁶⁰³ other customers describe their concerns.

- (1718) For example, another customer explains that ‘Cargotec and Konecranes are the leading competitors in reach stackers in the EEA, and each other’s closest rivals. Prior to the transaction, these two rivals keep each other in check, and if one were to raise prices then [the Company] could easily switch to the other. The Parties thus impose a significant competitive constraint on each other, which prevents them from raising their prices. This constraint would disappear as a result of the transaction, and the merged entity would no longer be materially constrained by other – much smaller – reach stacker competitors in the EEA, or by potential entrants from outside the EEA. [...] By eliminating the competitive constraint that the Parties currently exercise on each other, the transaction would thus lead to significant price increases for reach stackers in the EEA’.¹⁶⁰⁴ Another customer submits that ‘The merged entity would very well know, their position in the market. Why should they not try to maximise their profit? We already see in the current situation, that it is very difficult to negotiate a different price’.¹⁶⁰⁵ A further customer states that ‘Cargotec and Konecrane are both with strong market position. If the merger will be made on market there will be one strong supplier less’.¹⁶⁰⁶
- (1719) Another customer explains that ‘[i]f Kalmar and Konecranes were to merge, the Company would only receive one competitive offer with respect to reach stackers and heavy-duty forklifts. While a number of its terminals operate fleets of only one supplier, in the future the market would lack competition with respect to price’.¹⁶⁰⁷ Similarly, another customer states that ‘as a result of the proposed Transaction, [the Company] expects prices to increase for mobile container handling equipment and maintenance services (in particular reach stackers). OEMs know the situation in which customers such as [the Company] are and would likely increase prices given customers’ dependency on the very limited number of remaining suppliers’.¹⁶⁰⁸
- (1720) Yes another customers submits: ‘The unification of the two manufacturers can only lead to an impoverishment of the market. A kind of monopoly position will even emerge locally because the competition cannot offer service and spare parts supply everywhere. Experience shows that a monopoly position of a company (local) and a general impoverishment of the market undoubtedly reduce the urge and the need to innovate. With regard to the price policy of the combined company, it is likely that prices will at least remain stable due to the synergy effect. afterwards, however, it should be added that the prices for the products will rise more extremely because the opposite pole is missing with regard to a large part of the products’.¹⁶⁰⁹ A further

¹⁶⁰² Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question E.D.1.1.

¹⁶⁰³ Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 29.1.1.

¹⁶⁰⁴ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question E.D.1.1.

¹⁶⁰⁵ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question E.D.1.1.

¹⁶⁰⁶ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question E.D.1.1.

¹⁶⁰⁷ Doc. ID 1117, Minutes of a call with a customer, 21 April 2021.

¹⁶⁰⁸ Doc. ID 311, Minutes of a call with a customer, 2 March 2021.

¹⁶⁰⁹ Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 29.1.1.

customer states: ‘Less competition in reach-stacker production will lead to price-increases’.¹⁶¹⁰

- (1721) Some customers consider that the Transaction could lead to an increase in innovation, while others expect no change or a decrease in innovation.¹⁶¹¹ For example, while one customer states: ‘*Hopefully the innovation would increase due to the merger assuming the R&D departments of the merging companies will start sharing knowledge*’,¹⁶¹² another customer says: ‘*You could think that joint development departments have the potential for more innovation – but it’s the opposite, the lack of competition leads to less innovation*’.¹⁶¹³ Yet another customer states: ‘*In the future there will be increased demand for electric reach stackers – it could occur that in Europe it is only the merged entity which could effectively offer (and provide maintenance for) electric reach stackers*’.¹⁶¹⁴
- (1722) A significant number of customers explain that they consider that the Proposed Transaction would lead to an increase in after-sales prices.¹⁶¹⁵ While one customer submits: ‘*We believe that will not have any major impact at the labor and spare parts cost at the after-sale services*’,¹⁶¹⁶ another customer expects ‘*higher spare parts prices. Maybe higher service costs, when Kalmar takes over the service for all Kalmar + Konecranes SMV equipment. (Konecranes currently handles the service through a dealer network)*’.¹⁶¹⁷ Yet another customer states that ‘*as Kalmar and Konecranes also have the best service networks in Germany, the merged entity would be able to use this position and increase the rates it charges for maintenance*’.¹⁶¹⁸
- (1723) More broadly, customers overall expect a negative impact as a consequence of the Proposed Transaction. While one customer of reach stackers states that it is not concerned about the Transaction and ‘*believes that Chinese OEMs, such as Sany, would come and fill the hole left by the proposed transaction in the market*’,¹⁶¹⁹ other customers express concerns. For example a customer states that ‘*[i]f Kalmar and Konecranes were to merge, the Company would only receive one competitive offer with respect to reach stackers and heavy-duty forklifts. While a number of its terminals operate fleets of only one supplier, in the future the market would lack competition with respect to price*’.¹⁶²⁰ Another customer explains generally for mobile equipment (of which reach stackers are a part): ‘*We lose one of only a few suppliers. This leads to severe restrictions on free competition with negative consequences for price and also for the technical development*’.¹⁶²¹ Another

¹⁶¹⁰ Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 33.

¹⁶¹¹ Responses to Q2 – Questionnaire to Customers, Doc. ID 3153, question E.D.2. and Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 30.1.

¹⁶¹² Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 30.1.1.

¹⁶¹³ Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 30.1.1.

¹⁶¹⁴ Doc. ID 1117, Minutes of a call with a customer, 21 April 2021.

¹⁶¹⁵ Responses to Q2 – Questionnaire to Customers, Doc. ID 3153, question E.D.3. and Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 31.1.

¹⁶¹⁶ Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 31.1.1.

¹⁶¹⁷ Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 31.1.1.

¹⁶¹⁸ Doc. ID 1117, Minutes of a call with a customer, 21 April 2021.

¹⁶¹⁹ Doc. ID 575, Minutes of a call with a customer, 16 April 2021.

¹⁶²⁰ Doc. ID 1117, Minutes of a call with a customer, 21 April 2021.

¹⁶²¹ Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 28.1.

customer with respect to mobile equipment (of which reach stackers are a part) states: ‘Cargotec [and] Kone are the two biggest suppliers in the Netherlands. After the merge the competition is gone’.¹⁶²² Yet another customer with respect to mobile equipment (of which reach stackers are a part) states that ‘[t]he possibility to source Equipment, service and aftersales modifications will be affected as there are no European manufacturers around to be able to provide the Service and or Modifications where needed for a compatible price and quality’.¹⁶²³

- (1724) **Second**, competitors expect the Transaction to lead to a negative impact in the EEA market for reach stackers.
- (1725) Some competitors expect the Transaction to lead to higher prices in the EEA market for reach stackers.¹⁶²⁴
- (1726) While some competitors expect prices not to change or to decrease and explain that ‘Cargotec and Konecranes have the same price level today and they will continue with that’¹⁶²⁵ or submit that ‘it could go either way. I believe the two would be a monopoly which could increase price or as more asian influence comes in they could combine their economies of scale and lower prices creating an even bigger monopoly’,¹⁶²⁶ others expect price increases.
- (1727) For example, a competitor explains: ‘In relation to the Reachstacker business the future company (Konecranes and Cargotec) would have much more room to manoeuvre as a result of the merger. Due to massive synergy effects, it would be possible to compete against low-budgeted providers in terms of price on the one hand. On the other hand, with over 60% market share, prices can be determined within a certain framework, in certain regions where there is hardly any competition. This could apply especially to remote areas with low Reachstacker densities’.¹⁶²⁷
- (1728) Another competitor states: ‘The reduction of the competition and progressively of the diversity of product offering, would inevitably lead to an increase of the price rather than a reduction. To overcome it, it would be necessary that one of the two Sales Channels currently occupied by one of the two merging companies in each market would be set free for one of the players that are currently struggling to enter or establish themselves in that market. That would restore a proper competitive dynamic that would keep price level under control’.¹⁶²⁸
- (1729) Yet another competitor submits that ‘[t]he combined volume will create the biggest player in the market by far (50-60% share) 2nd player would be only 1/3 of that size. There will be price increases in area's where the new company will be dominant in the service space and there will be really no choice for the customers there. On large global deals the new company can use it's large volume leverage to push out competition when needed by offering lower prices. Longer term average price will go up due to reduction of competition in the EEA, estimation on when that will be hitting the market is speculation’.¹⁶²⁹

¹⁶²² Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 28.1.
¹⁶²³ Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 28.1.
¹⁶²⁴ Responses to Q1 – Questionnaire to Competitors, Doc. ID 3154, question E.D.1, and Responses to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 94.1.
¹⁶²⁵ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 94.1.1.
¹⁶²⁶ Response to Q1 – Questionnaire to Competitors, Doc. ID 3154, question E.D.1.1.
¹⁶²⁷ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 94.1.1.
¹⁶²⁸ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 94.1.1.
¹⁶²⁹ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 94.1.1.

- (1730) While some competitors expect innovation to increase or not change as a result of the Transaction, others expect a decrease in innovation.¹⁶³⁰ For example, one competitor submits that *‘[t]he merged entity will have to continue the current product development program of the two merging entities that - for mobile equipment - is very similar’*.¹⁶³¹ and another one states that *‘to stay market leader, innovation is unavoidable’*.¹⁶³² In contrast another competitor submits that *‘[t]his depends on the total spend on R&D of the new company. Generally the total spend in € goes down as R&D teams are merged and double functions are cut. If the new company decides to also rationalize the product line (merge the models of RS, ECH, FLT) a lot of effort will go into that rather than creating new innovative solutions’*.¹⁶³³
- (1731) Similarly, while some competitors expect no change or a decrease of after-sales prices, others expect after-sales prices to increase as a consequence of the Transaction.¹⁶³⁴ One competitor submits that *‘[d]ue to massive synergy effects and increased sales volume, the future company has a much stronger position for the purchase of components and supply of localized service. This cost advantage will increase the margins achieved and further improve the future company's market position’*.¹⁶³⁵ Another competitor states: *‘In area's where the fleet size and service team of the combined company is dominant the pricing will go up as there will be no real viable competitors’*.¹⁶³⁶
- (1732) More broadly, competitors overall expect a negative impact of the Proposed Transaction – on their own business and on customers of reach stackers. Describing the expected impact of the Transaction on its own competitiveness in the EEA reach stackers market, a competitor submits: *‘Due to the increased sales volume the future company is able to purchase component parts on better conditions. Furthermore Cargotec has a lot of manufacturing capacity in China which might be used to further decrease the machine manufacturing costs. This gives them significant pricing flexibility to the disadvantage of other competitors. It might be possible that the future company increases the machine market prices once other competitors gave up their business due to the high pricing pressure. Further, it is possible that European labour capacities will be relocated to China in order to save production and therefore product costs as well’*.¹⁶³⁷ Another competitor submits that *‘[c]ustomers that today may have two or three effective choices of suppliers of mobile equipment will post-merger have less choice and, depending on their location, be concerned’*.¹⁶³⁸
- (1733) Some competitors also expect the Transaction to raise barriers for entry and expansion.
- (1734) For example, one company currently not active inside the EEA states: *‘Larger market entities tend to have greater market-making ability. We expect that an entry into the*

¹⁶³⁰ Responses to Q1 – Questionnaire to Competitors, Doc. ID 3154, question E.D.4, and Responses to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 95.1.

¹⁶³¹ Response to Q1 – Questionnaire to Competitors, Doc. ID 3154, question E.D.4.1.

¹⁶³² Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 95.1.1.

¹⁶³³ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 95.1.1.

¹⁶³⁴ Responses to Q1 – Questionnaire to Competitors, Doc. ID 3154, question E.D.2, and Responses to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 96.1.

¹⁶³⁵ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 96.1.1.

¹⁶³⁶ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 96.1.1.

¹⁶³⁷ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 97.1.1.

¹⁶³⁸ Doc. ID 932, Minutes of a call with a competitor, 20 April 2021.

EEA may be barred by a large private entity, such as will be formed by the merger'.¹⁶³⁹

- (1735) Another competitor explains that 'if they finally merge, this group will get more than 80% of the reachstacker market, so we will be facing an Oligopoly where it will be impossible for small companies like us to survive. Such a merger will be the death of the small industry which are manufacturing in Europe'.¹⁶⁴⁰
- (1736) Another competitor states that it 'also has concerns with respect to the impact of the proposed transaction on the markets for mobile equipment. The threats to competition in the market for mobile equipment do not lie in the non-availability of alternative producers but in the access to the market for these producers. The Company is very concerned about the merger as it believes that the merged entity might keep two different brands under the same company to artificially keep the sales and service network of both OEMs'. The Competitor further explains that '[t]his would block other OEMs from accessing the sales channel of the container handling equipment markets, as it would prevent them from finding serious distributors'.¹⁶⁴¹
- (1737) Another competitor, explains that also '[c]onsidering automation, the merged entity will become a big powerhouse, controlling a lot of technical knowledge and locking in a large installed base, which will strongly discourage new entrants and expansion plans for existing smaller players in this market'.¹⁶⁴² It further submits that it 'believes that the proposed transaction might significantly limit competition and increase barriers to entry in the market for mobile equipment'.¹⁶⁴³ This is in particular because '[t]he merged entity will have a dominant fleet size and service presence in some countries/regions/ports in the EEA. This will make it more difficult for competitors like [the Company] to start/expand supply in these countries with smaller dealers, because one would lack the necessary scale of service capabilities'.¹⁶⁴⁴
- (1738) **Third**, also some distributors expect the Transaction to lead to a negative impact and higher prices in the EEA market for reach stackers.
- (1739) Some distributors expect the Transaction to lead to higher prices in the EEA market for reach stackers.¹⁶⁴⁵ While one distributor submits that '*this merger will force the other manufacturers to improve the quality of their products and to invest in the extension of the distributors and after sales network*',¹⁶⁴⁶ another submits that: '*Less competition means higher prices*'.¹⁶⁴⁷ A further distributor states that there is a '*danger of a dominant position after the Merger of Konecranes and Cargotec*'.¹⁶⁴⁸

¹⁶³⁹ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 97.1.1.

¹⁶⁴⁰ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 97.1.1.

¹⁶⁴¹ Doc. ID 1773, Minutes of a call with a competitor, 3 May 2021.

¹⁶⁴² Doc. ID 932, Minutes of a call with a competitor, 20 April 2021.

¹⁶⁴³ Doc. ID 4278, Minutes of a call with a competitor, 23 August 2021.

¹⁶⁴⁴ Doc. ID 4278, Minutes of a call with a competitor, 23 August 2021.

¹⁶⁴⁵ Responses to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 31.1.

¹⁶⁴⁶ Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 31.1.1.

¹⁶⁴⁷ Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 31.1.1.

¹⁶⁴⁸ Courtesy Translation. The original German text reads: '*Gefahr einer marktbeherrschenden Position nach Fusion von Konecranes und Cargotec*'. Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 31.1.1.

Another distributor states that *‘[t]ogether, Konecranes and Cargotec will be the largest and stronger OEM in the world’*.¹⁶⁴⁹

- (1740) Considering the perspective of customers, a distributor states that *‘if I put myself in the position of a customer, I would be disappointed that I am forced to make my choice between the new merged company and Hyster’*¹⁶⁵⁰ and further that *‘[t]he customers in Europe would have no choice but to purchase equipment from the merged entity. The Company assumes that this situation would naturally lead to higher prices and worse conditions for customers’*.¹⁶⁵¹
- (1741) Similarly, another distributor explains with respect to mobile equipment overall (of which reach stackers are a part) that *‘[t]he Parties would have around 80% combined market share in mobile equipment. Some customers may switch away, e.g., to Sany, as they prefer not to deal with large suppliers. Nevertheless, the Company is concerned that prices may increase to the detriment of its customers. However, the Company’s customers would continue to rely on the good servicing work that it provides today and, as such, the merger would not have a direct impact on its business (but its customers may face increased prices)’*.¹⁶⁵²
- (1742) A significant number of distributors also expect that the Transaction would have a negative impact on the ability of competitors of the Parties in the EEA reach stacker market to compete in the supply of reach stackers.¹⁶⁵³ While one distributor states that *‘[i]f Konecranes and Kalmar merge, it will be easier for the competition to sell there product’*,¹⁶⁵⁴ another distributor states: *‘Competitors will have a difficult job to compete with a merged company from that high level’*.¹⁶⁵⁵ With respect to Italy another distributor submits that *‘[t]he merge[r] will strength their position in the market making more complicated the business to competitor. Especially on reach stacker business the only strong competitor in Italy would be CVS’*.¹⁶⁵⁶
- (1743) Further, a significant number of distributors also expect that the Transaction would have a negative impact on their own business¹⁶⁵⁷ and on their ability to compete in the distribution of reach stackers.¹⁶⁵⁸ While one distributor submits: *‘On positive side we think they can leverage product development, and as we are a long standing distributor of Kalmar would hope to benefit from this by maintaining/ developing our relations as a distributor’*,¹⁶⁵⁹ and another distributor states: *‘We believe that the union of two manufacturers such as Cargotec and Konecranes will improve the positioning of European products against Asian brands and may be favorable for the end user thanks to the synergies and unusual elements of both products, producing higher quality equipment without need to increase prices’*,¹⁶⁶⁰ yet another distributor submits: *‘Besides Konecranes only Cargotec and Hyster is active on our market. Svetruck has a small product line, no reachstackers and low pressence on our*

¹⁶⁴⁹ Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 31.1.1.

¹⁶⁵⁰ Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 35.

¹⁶⁵¹ Doc. ID 502, Minutes of a call with a distributor, 14 April 2021.

¹⁶⁵² Doc. ID 673, Minutes of a call with a distributor, 26 February 2021.

¹⁶⁵³ Responses to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 30.1.

¹⁶⁵⁴ Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 30.1.1.

¹⁶⁵⁵ Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 30.1.1.

¹⁶⁵⁶ Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 30.1.1.

¹⁶⁵⁷ Responses to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 27.

¹⁶⁵⁸ Responses to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 28.1.

¹⁶⁵⁹ Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 27.1.

¹⁶⁶⁰ Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 27.1.

market. Sany is not present anymore since some months'.¹⁶⁶¹ Another distributor submits that it is *'not sure if the Konecranes brand will be kept active or if all will be branded as Kalmar*'.¹⁶⁶² A further distributor states: *'Merger will make one huge Producer who has no actual competition*'.¹⁶⁶³ Another distributor says that *'[t]he merged company will have the most part of the market [and that t]here will be great disparity between them and other competitors in the market*'.¹⁶⁶⁴ Another distributor finds that the Transaction would lead to a *'concentration of important market participants and the danger of a high pricing power in an oligopoly. The existing business model of [the Company] is endangered*'.¹⁶⁶⁵ Yet another distributor states: *'Regarding the effect of the proposed merger in Spain (where Kalmar is clearly dominant), [the Company] is concerned that the Cargotec product line and business model (direct to market) will prevail in case of a full merger of brands of the Parties. This would mean that companies like [the Company] (and those with a similar business model) would be pushed out of the market. A similar effect may also occur in other countries*'.¹⁶⁶⁶

(1744) Therefore, overall, most market participants expect the Transaction to have a negative impact on the EEA market for reach stackers by significantly reducing competition, leading to an increase in prices and by increasing barriers to entry and expansion.

(B) The Notifying Parties' pre-Merger pricing behaviour suggests a price increase is likely post-Transaction

(1745) The Notifying Parties' pre-Merger pricing behaviour suggests that a price increase is likely post-Transaction in the EEA reach stackers market.

(1746) Konecranes internally considers [internal document reference].¹⁶⁶⁷ Further, Konecranes considers [internal document reference].¹⁶⁶⁸ In another internal document [internal document reference].¹⁶⁶⁹

(1747) Cargotec in an internal document considering how to [internal document reference].¹⁶⁷⁰

(1748) In another internal Cargotec document considering mobile equipment, Konecranes in southern Europe is said to become [internal document reference].¹⁶⁷¹

¹⁶⁶¹ Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 27.1.

¹⁶⁶² Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 27.1.

¹⁶⁶³ Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 27.1.

¹⁶⁶⁴ Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 27.1.

¹⁶⁶⁵ Courtesy Translation. The original German text reads: *'Konzentration wesentlicher Marktteilnehmer sowie Gefahr einer hohen Preissetzungsmacht im Oligopol. Das bestehende Geschäftsmodell [des Unternehmens] ist gefährdet'*. Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 27.1.

¹⁶⁶⁶ Doc. ID 261, Minutes of a call with a distributor, 24 February 2021.

¹⁶⁶⁷ Doc. ID 3586-62316 (The Parties' reply to the Commission's request for information RFI 18, M.10078 Cargotec Konecranes RFI 18-00354050.pptx), slide 6.

¹⁶⁶⁸ Doc. ID 3586-71912 (The Parties' reply to the Commission's request for information RFI 18, M.10078 Cargotec Konecranes RFI 18-00349884.pptx), slide 7.

¹⁶⁶⁹ Reply to Request for information RFI 24, Annex QK7.4, slide 30.

¹⁶⁷⁰ Doc. ID 3662-28275 (The Parties' reply to the Commission's request for information RFI 17, CAR-KAU-00141887.pptx), slides 5 and 6.

¹⁶⁷¹ Doc. ID 3666-857 (The Parties' reply to the Commission's request for information RFI 17, CAR-PAT-00121990.pptx), slide 4.

- (1749) In another internal document Cargotec considers Konecranes to be [internal document reference].¹⁶⁷²
- (1750) In a 2018 internal Kalmar email, it is reported with respect to mobile equipment (of which reach stackers are a part): [internal document reference]¹⁶⁷³ [internal document reference].¹⁶⁷⁴ This further shows that there is significant price competition between the Notifying Parties pre-Transaction.
- (1751) Therefore, both Notifying Parties pursue aggressive pricing strategies – also vis-à-vis each other.
- (1752) In addition, Kalmar also has the specific strategy with respect to reach stackers to [internal document reference].¹⁶⁷⁵ This shows that Cargotec uses aggressive pricing to achieve its strategic goal to increase its reach stacker market share.
- (1753) Therefore, there is significant price competition between the Notifying Parties pre-Merger, which would be lost post-Transaction. In addition, Cargotec has a strategy to try to increase its market share by pricing aggressively. The Proposed Transaction allows Cargotec to grow its market share inorganically instead, without the need to price aggressively against Konecranes. It is therefore likely that the Proposed Transaction will lead to a price increase in the EEA reach stackers market.

(C) Conclusion

- (1754) For the reasons set out in this Section 7.4.1.5, the Commission considers that the Transaction is likely to have a negative impact on the EEA market for reach stackers by significantly reducing competition, leading to an increase in prices and by increasing barriers to entry and expansion. The Transaction leads to very large combined market shares (indicative of a dominant position) and removes competition between the Notifying Parties that pre-Transaction compete closely and intensely. Neither new entrants nor existing competitors are likely to sufficiently constrain the Merged Entity. This conclusion is supported by market participants that also expect the Transaction to lead to a negative impact and higher prices in the EEA market for reach stackers. This conclusion is further corroborated by the Notifying Parties' pre-Merger pricing strategies, which also suggest that a price increase is likely. In addition, the Transaction is likely to further limit competitors' ability of entry and expansion.

7.4.1.6. Conclusion

- (1755) For the reasons set out in this Section 7.4.1, the Commission concludes that the Proposed Transaction would significantly impede effective competition in the EEA reach stackers market, by creating a dominant position. The following factors in particular support the finding of a creation of a dominant position:
- (a) The Transaction would lead to a very large market share of the Merged Entity (over 70%) in an already concentrated EEA reach stacker market (pre-Transaction HHI of [2500-3000], post-Transaction HHI of [5500-6000], delta of [2500-2600]);

¹⁶⁷² Doc. ID 3660-36954 (The Parties' reply to the Commission's request for information RFI 17, CAR-KAR-00165055.pptx), slide 10.

¹⁶⁷³ KCI = Konecranes

¹⁶⁷⁴ Doc. ID 3739-38037 (The Parties' reply to the Commission's request for information RFI 17, CAR-HEI-00031094 msg).

¹⁶⁷⁵ Doc. ID 3739-16623 (The Parties' reply to the Commission's request for information RFI 17, CAR-HEI-00035324.pptx), slide 8.

- (b) The Transaction would eliminate competition between the Notifying Parties, which pre-Transaction compete intensely and closely, and both have plans to further grow their reach stacker market share;
 - (c) The Merged Entity is unlikely to be constrained by new competitors, due to significant barriers to entry and expansion, and unlikely to be constrained by existing competitors, due to their limited market presence, weaker performance on key customer purchase criteria compared to the Notifying Parties, and because their products are not close substitutes to the Notifying Parties’;
 - (d) The Transaction is likely to have a negative impact on the EEA market for reach stackers by significantly reducing competition, leading to an increase in prices and by further increasing barriers to entry and expansion.
- (1756) Therefore, the Commission considers that the Transaction would significantly impede effective competition in the EEA reach stackers market, by creating a dominant position.

7.4.2. *Empty container handlers*

7.4.2.1. The EEA market for the supply of empty container handlers

- (A) The market for the supply of empty container handlers in the EEA is characterised by the presence of only limited number of suppliers
- (1757) The EEA market for empty container handlers is a concentrated market. According to the Notifying Parties’ data, four players, namely Cargotec, Konecranes, Hyster and Svetruck, accounted for [90-100]% of the units delivered in 2018-2020. The Notifying Parties have identified a limited number of other players in the market, such as CVS Ferrari, FTMH and Sany, with minor sales for the same period.¹⁶⁷⁶
- (1758) According to the Notifying Parties, ‘the number of empty container handler suppliers is in fact not limited’, in particular if one considers that in bidding markets ‘the market remains effectively competitive if buyers can secure quotes from three or more credible competitors’.¹⁶⁷⁷ As further explained in Section 7.4.2.3, the Proposed Transaction will significantly further limit customers’ ability to secure quotes from a significant number of credible bidders.
- (1759) Customers confirmed this view about the market. They could point to a handful of suppliers of empty container handlers in the EEA for the past ten years.¹⁶⁷⁸

(A.i) Cargotec

- (1760) Cargotec offers standard and electric empty container handlers. It defines itself as a provider of the broadest range of empty container handlers with single stackers of 8-11 tons capacities and double stackers of 10-11 tons capacities. Cargotec’s empty container handlers are mostly manufactured in Poland and China from where the company supplies its entire global customer base. Cargotec sells its equipment to customers directly via own subsidiaries and to a lesser extent through distribution

¹⁶⁷⁶ Reply to RFI 2, Annex Q5.

¹⁶⁷⁷ Reply to the SO, paragraph 1008.

¹⁶⁷⁸ Response to Q2 – Questionnaire to customers, Doc. ID 3153, questions E.C.1 and E.C.1.1; see also Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, questions 19.2 and 19.2.1; see also the Commission’s market reconstruction.

partners. Apart from the subsidiaries, it has distributors in 21 EEA countries. Cargotec provides after-sales services directly or through its distribution partners.¹⁶⁷⁹

(A.ii) *Konecranes*

- (1761) Konecranes provides empty container handlers with capacity of 8-11 tons and available as single or double stacking. Konecranes manufactures empty container handlers in Sweden and China. Its production facilities deliver container handling equipment to customers around the world. For its sales, Konecranes relies more on distributors compared to Cargotec. In the EEA, Konecranes has [number] distributors in [number] EEA countries. [...].¹⁶⁸⁰

(A.iii) *Hyster*

- (1762) Hyster is a US-based manufacturer. It manufactures a range of empty container handlers similar to the one of the Notifying Parties, including electric versions. Hyster's main factory for empty container handlers is located in the Netherlands. In 2021, Hyster began manufacturing a limited range of empty container handlers in China for supplying the Asian market only. Hyster sells its equipment through independent distributors but it deals directly with the biggest ports and terminals. The actual delivery, warranty, commissioning, service and maintenance of the equipment are ensured via Hyster's distribution network. Hyster has distributors in all EEA countries.¹⁶⁸¹

(A.iv) *Svetruck*

- (1763) Svetruck determines itself as a small manufacturer, which competes with the Notifying Parties mostly in Sweden. It supplies standard empty container handlers with capacity of 8-11 tons and versions with single and double stacking. Svetruck's production facility is located in Sweden. Svetruck sells its equipment through distributors and own subsidiary. It provides after-sales services directly and via its distribution network, which however is developed in only some EEA countries.¹⁶⁸²

(A.v) *CVS Ferrari*

- (1764) CVS Ferrari (CVS) manufactures empty container handlers in its two factories located in Italy. It provides standard empty container handlers with capacity of 10 tons and versions with single and double stacking. CVS is very active in Italy and it has just entered the Spanish market. In Germany and France, it is not perceived as having a strong market position. CVS sells the equipment mainly through

¹⁶⁷⁹ Form CO, Chapter 2, paragraphs 61, 116, 263, 267; Reply to RFI 30, Annex QC6; Presentation for Expert session with the European Commission, 23 September 2021, slide 5; and at <https://www.kalmarglobal.com/equipment-services/masted-container-handlers/empty-container-handler-DCG80/>, Doc. ID 4213.

¹⁶⁸⁰ Form CO, Chapter 2, paragraphs 61, 116, 263, 267; Presentation for Expert session with the European Commission, 23 September 2021, slides 5 and 10; and at <https://www.kclifttrucks.com/products/container-lift-trucks/empty-container-handlers-8-11-tons>, Doc. ID 4215.

¹⁶⁸¹ Only in Lichtenstein Hyster provides after-sales services via a distributor from a neighbouring country. Doc. ID 932, Minutes of a call with a competitor, 20 April 2021; Doc. ID 4278, Minutes of a call with a competitor, 23 August 2021; Response to Q1 – Questionnaire to competitors, Doc. ID 3154, questions A.1, E.A.7, E.C.A.3.2, E.C.A.4.

¹⁶⁸² Response to Q1 – Questionnaire to competitors, Doc. ID 3154, questions A.1, E.A.7, E.C.A.3.2, E.C.A.4; and at <https://www.svetruck.se/en/discover-svetruck-2/#heart>, Doc. ID 4227.

distributors. It also provides after-sale services via its distribution network, which is well developed only in Italy.¹⁶⁸³

(A.vi) FTMH

- (1765) FTMH is a company based in Italy and established in 2014. It is composed of former Fantuzzi employees.¹⁶⁸⁴ It manufactures empty container handlers with capacity of 8-11 tons and versions with single and double stacking. The production facility is located in Italy. Sales and after-sale services are provided directly and to a very limited extent via distributors, established in two EEA countries.¹⁶⁸⁵

(A.vii) Sany

- (1766) The manufacturer of container handling equipment, Sany Europe (Sany), is part of the China-based Sany Group. Since 2011, Sany has been headquartered in Germany. Sany entered the EEA market for empty container handlers in 2014 - 2015. While Sany is offering empty container handlers as part of its portfolio, for certain model types it has not acquired yet a CE certification to commercialise these products in Europe, as it needs to implement certain product adjustments. In particular, Sany is still working to certify models with stage V engines and from January 2022, only equipment with stage V engines can be brought to the European market. In addition, when Sany implements changes to model types (e.g. a new emission stage engine being integrated into the model), these changes have to be certified through the CE certification process. The company is however participating in tenders. Sany provides standard empty container handlers with capacity of 8-11 tons and versions with double stacking and is planning to provide electric versions in the next two-three years. Sany manufactures its equipment in China while sourcing many of the components from European suppliers. The produced equipment is transported as kits to Sany's facility in Germany where it is assembled. Sany sells its equipment and provides after-sale services only through distributors, which have been established in 17 EEA countries.¹⁶⁸⁶

(A.viii) Uplifting

- (1767) Uplifting is a small Spanish-based manufacturer of mobile equipment. It supplies equipment produced mostly in the EEA.¹⁶⁸⁷ In an internal email, [internal document reference].¹⁶⁸⁸ In another email, [internal document reference].¹⁶⁸⁹

¹⁶⁸³ Response to Q1 – Questionnaire to competitors, Doc. ID 3154, questions A.1, E.A.7, E.C.A.3.2, E.C.A.4; Doc. ID 1773, Doc. ID 1773, Minutes of a call with a competitor, 3 May 2021; and at <https://www.cvsferrari.it/products/empty-container-handling-lift-trucks/>, Doc. ID 4217 and Doc. ID 4216.

¹⁶⁸⁴ Doc. ID 257, Minutes of a call with a customer, 9 March 2021.

¹⁶⁸⁵ About the company, see at <https://ftmh.it/about/>, Doc. ID 4218; about the empty container handler products, see at <https://ftmh.it/empty-container-lift-trucks/>, Doc. ID 4214; Presentation for Expert session with the European Commission, 23 September 2021, slide 7.

¹⁶⁸⁶ Response to Q1 – Questionnaire to competitors, Doc. ID 3154, questions E.A.7, E.C.A.3.2, E.C.A.4; Doc. ID 657, Minutes of a call with a competitor, 22 April 2021; Doc. ID 3983, Minutes of a call with a competitor, 22 September 2021; Doc. ID 4195, Minutes of a call with a competitor 18 October 2021.

¹⁶⁸⁷ Responses to Q3 – PH2 Questionnaire to competitors, Doc. ID 3582, questions 1 and 74.

¹⁶⁸⁸ Doc. ID 3594-57552 (The Notifying Parties' reply to the Commission's request for information RFI 18, M.10078 Cargotec Konecranes RFI 18-01218532 msg).

¹⁶⁸⁹ Doc. ID 3584-28771 (The Notifying Parties' reply to the Commission's request for information RFI 18, M.10078 Cargotec Konecranes RFI 18-00148453 msg).

- (B) The market for supply of empty container handlers is a market with high entry and expansion barriers
- (1768) The market for supply of empty container handlers is characterised by very high barriers to entry and expansion, resulting from several factors similar to those in the market for supply of reach stackers (see Section 7.4.1.3). Below, the Commission will present the main of these factors in the context of the empty container handlers market noting that most of the arguments and supporting evidence are repetitive.
- (1769) **First**, manufacturing or assembly facilities located in the EEA are an important factor for the suppliers in terms of their ability to compete in the EEA. All suppliers of empty container handlers in the EEA use local production facilities for the supply of their EEA customers. The Notifying Parties, which manufacture empty container handlers also in sites in China, serve the EEA customers from their EEA factories, acknowledging that the demand is for machines [internal document reference].¹⁶⁹⁰ Notifying Parties' competitors explicitly recognise the advantage of having an European assembly factory in order to compete on the EEA market: "*the main competitors in [...] empty container handlers in the EEA are Cargotec, Konecranes, Hyster and CVS Ferrari. All of them have an assembly site in Europe. Taylor is also a significant player in this market, but not in the EEA*".¹⁶⁹¹ The majority of customers, respondents in the market investigation, also submit that when purchasing mobile equipment (including empty container handlers), they consider suppliers with manufacturing facilities in the EEA.¹⁶⁹²
- (1770) **Second**, a local distribution and after-sales network is an essential factor for competitor's ability to compete effectively in the EEA market for empty container handlers. Rolling out such a network with suitable dealers/distributors is a difficult and lengthy process while it is important for both entry and expansion in the market.
- (1771) As confirmed by the large majority of customers – respondents in the market investigation, when purchasing empty container handlers, customers do not consider suppliers, which do not have local after-sale service presence. Most customers rely on servicing the equipment by the OEM or their associated dealers/distributors and require fast reaction times.¹⁶⁹³ Accordingly, local presence is needed to respond to these customers' demands.
- (1772) Competitors confirm that establishing a distribution and after-sales network is one of the main difficulties to enter the EEA mobile equipment markets due to a number of factors, including the large number of customers, the need to provide good coverage (distributors and services located close to the customers) and the necessary investments, as the mobile equipment industry is particularly capital-intensive. In their opinion, significant investments are needed in terms of sales representatives, service technicians, spare parts stock and supporting equipment. Competitors submit that finding dealers that are suitable to represent the brand is also difficult and lengthy process, driven by availability of knowledgeable service technicians and delivery possibilities. Establishing or replacing an interrupted dealership relation can take several years. Competitors do not consider small local dealers or servicing

¹⁶⁹⁰ Reply to request for information 13, Annex QC16 and Annex QK16; see also Doc. ID 3739-16199 (The Notifying Parties' reply to the Commission's request for information RFI 17, CAR-HEI-00018875 msg).

¹⁶⁹¹ Doc. ID 3983, Minutes of a call with a competitor, 22 September 2021.

¹⁶⁹² Responses to Q2 – Questionnaire to Customers, Doc. ID 3153, question E.B.1.

¹⁶⁹³ Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 10.2 and question 11.2 and question 8 and question 12.

outfits to have the competence level in terms of sales and services to compete against specialised distributors.¹⁶⁹⁴ In that context, a competitor explains that “[t]he lack of good local Sale and After Sale Service is most unsourmountable problem that a newcomer would have to go by”.¹⁶⁹⁵

- (1773) The Notifying Parties submit that some distributors point out in response to the Commission’s market investigation that distributors from neighbouring industries could also supply empty container handlers.¹⁶⁹⁶ However the clear majority does not consider this possible. A transition of distributors and service providers from neighbouring product areas (for example construction equipment or low capacity forklifts) into the empty container handler market could not take place easily and in a short matter of time. This, in distributors’ opinion, is due in particular to the lack of expertise with the product and contacts among customers who typically buy these products. *“There will be an obstacle in the form of lack of product knowledge, lack of experience which will make it very difficult to make the transition. The basic competences are similar, but due to differences in both application and electronic architecture it is a very difficult transition”*.¹⁶⁹⁷
- (1774) The possibility for new market entrants and active players to supply their products through established distributors of other competing suppliers, including those of the Notifying Parties, is also limited. Distributors do not typically engage in multi-branding sale strategies, that is distributing the same type of empty container handlers from different OEMs. This is due to distributors’ commitment and preferences to focus on distributing products of a particular supplier.¹⁶⁹⁸ As one distributor explains, *“it has always been clear that such a move [engaging in multi-branding sale strategy] would have compromised the relationship with Konecranes. Now: it would be impossible to substitute Konecranes or to find similar products: there are no alternatives”*.¹⁶⁹⁹ The Notifying Parties’ EEA distributors also do not engage in the distribution of empty container handlers of competing OEMs.¹⁷⁰⁰
- (1775) Online direct sales of mobile equipment (including empty container handlers) are not an effective alternative avenue for (potential) suppliers in the EEA to access customers. This view has been explicitly confirmed by the majority of distributors – respondents in the market investigation.¹⁷⁰¹
- (1776) **Third**, quality requirements of customers constitute a barrier to entry and expansion. The large majority of customers - respondents in the market investigation consider the quality of the equipment as an important criterion when selecting a supplier of empty container handlers.¹⁷⁰² The majority of competitors also consider that for new

¹⁶⁹⁴ Doc. ID 4278, Minutes of a call with a competitor, 23 August 2021; Doc. ID 1773, Minutes of a call with a competitor, 3 May 2021; Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 84.2.1 and question 88.2 and question 88.2.1 and question 89.1 and question 90.1 and question 87.2.

¹⁶⁹⁵ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 88.1.1.

¹⁶⁹⁶ Reply to the SO, paragraph 1032.

¹⁶⁹⁷ Responses to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, questions 12.2 and 12.2.1 and questions 13.2 and 13.2.1.

¹⁶⁹⁸ Responses to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 6.1 and question 6.2.

¹⁶⁹⁹ Responses to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 6.2.

¹⁷⁰⁰ Reply to Request for information RFI 30, Annex QC6 and Annex QK6.

¹⁷⁰¹ Responses to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 18 and question 18.1.

¹⁷⁰² Responses to Q2 – Questionnaire to Customers, Doc. ID 3153, question E.A.2.2.

entrants in the EEA it is essential to offer high-quality empty container handlers while considering that this is difficult to achieve.¹⁷⁰³ In this context, a supplier, which is currently not active in the EEA, submits that the current design of its container handling equipment would require certain modifications to meet European customer preferences, especially in relation to ergonomic features that are of importance to equipment operators in Europe.¹⁷⁰⁴

- (1777) **Fourth**, brand reputation requirements of customers constitute a barrier to entry and expansion. The large majority of customers - respondents in the market investigation consider the brand reputation as an important criterion when selecting a supplier of empty container handlers. A majority of competitors – respondents in the market investigation also recognises that brand plays an important role in the customers’ choice of a supplier.¹⁷⁰⁵
- (1778) **Fifth**, difficulties for suppliers of empty container handlers to address differences in the regulatory environment¹⁷⁰⁶ also constitute a barrier to entry. Competitors that are not EEA-based explicitly confirm this view.¹⁷⁰⁷ For some of them obtaining “*the CE stamp certification is the main*” difficulty that would involve significant cost.¹⁷⁰⁸ A competitor, which entered the EEA market in 2014-2015, has not acquired yet a CE certification to commercialise some model types of empty container handlers in Europe, in particular those, which can be brought to the European market from January 2022, as it needs to implement certain product adjustments.¹⁷⁰⁹ As provided by the Notifying Parties, for the past three years, 2018 – 2020, that supplier sold insignificant quantities of empty container handlers in the EEA.¹⁷¹⁰

(C) Conclusion

- (1779) In view of the above, the Commission considers that the market for supply of empty container handlers in the EEA is a concentrated market with a very limited number of suppliers. The market is also characterised by significantly high barriers to entry and expansion resulting from the need: (i) to have EEA manufacturing / assembly facilities, (ii) to have established local distribution and after-sales networks with suitable dealers and service providers, (iii) to offer high quality equipment, (iv) to have built up brand reputation and (v) to address differences in the regulatory environment.
- 7.4.2.2. The Transaction leads to large combined market shares in an already concentrated market
- (1780) In this Section, the Commission analyses the market shares of the Notifying Parties and their competitors in the relevant market for empty container handlers. The presented market shares are based on a three-year period before the notification of

¹⁷⁰³ Responses to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 87.2 and question 88.2.

¹⁷⁰⁴ Doc. ID 4133, Minutes of a call with a competitor, 19 August 2021.

¹⁷⁰⁵ Responses to Q2 – Questionnaire to Customers, Doc. ID 3153, question E.A.2.2; Responses to Q1 – Questionnaire to Competitors, Doc. ID 3154, question E.B.9.2.

¹⁷⁰⁶ As provided by the Notifying Parties, there are differences between the EU, US and China/Asia with regards to emission regulations for engines and certain safety standards, etc., see the Response to the Article 6(1)(c) Decision, paragraph 227.

¹⁷⁰⁷ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 75.

¹⁷⁰⁸ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 75.1; Doc. ID 4133, Minutes of a call with a competitor, 19 August 2021.

¹⁷⁰⁹ Doc. ID 657, Minutes of a call with a competitor, 22 April 2021; Doc. ID 4195, Minutes of a call with a competitor 18 October 2021.

¹⁷¹⁰ Reply to RFI 2, Annex Q5.

the Transaction, that is, they comprise the period from 2018 until the end of 2020. The Commission has also conducted a market reconstruction by requesting sales data from competitors and the Notifying Parties.

- (1781) In the Response to the Article 6(1)(c) Decision the Notifying Parties argue that the Commission places undue reliance on the Notifying Parties' (historic) market shares and fails to consider the dynamic nature of the market and the growing presence of other suppliers of empty container handlers, such as FTMH and Sany.¹⁷¹¹
- (1782) As explained in paragraph 15 of the Horizontal Merger Guidelines, changes in historic market shares "may provide useful information about the competitive process and the likely future importance of the various competitors, for instance, by indicating whether firms have been gaining or losing market shares".
- (1783) To address the Notifying Parties' claim, the Commission also examines the Notifying Parties and their competitors' market shares over a ten-year period (2010-2020).
- (A) The Transaction leads to large combined market share
- (1784) The Transaction would lead to a large combined market share in the EEA market for empty container handlers.
- (1785) According to market share estimates submitted by the Notifying Parties, shown in Table 31 below, the Merged Entity would have had a 2018-2020¹⁷¹² combined EEA volume share of [40-50]%.

Table 31 – Form CO: Empty container handlers, EEA market shares in volume

Empty container handlers, EEA market shares in volume (units), 2018-2020, Form CO		
	Share	Units
Cargotec	[20-30]%	[...]
Konecranes	[10-20]%	[...]
Notifying Parties combined	[40-50]%	[...]
Sany	[0-5]%	[...]
Hyster	[30-40]%	[...]
Svetruck	[10-20]%	[...]
FTMH	[0-5]%	[...]
CVS	[0-5]%	[...]
Others	[0-5]%	[...]
Total market	100%	[...]

Source: Form CO, RFI PN2 – Annex – Q5 – Confidential – market shares.

- (1786) According to the Commission's market reconstruction,¹⁷¹³ shown in Table 32 below, the Merged Entity would have had a 2018-2020 combined volume share of [40-50]% in the EEA market for empty container handlers.

¹⁷¹¹ Response to the Article 6(1)(c) Decision, paragraphs 334-335.

¹⁷¹² As year-on-year sales do vary, while the demand for empty container handlers is not as lumpy as, for example, for gantry cranes, it nevertheless appears appropriate to consider a multi-year span to account accurately for market participants' market positions.

Table 32 – Market reconstruction: Empty container handlers, EEA market shares in volume

Empty container handlers, EEA market shares in volume (units), 2018-2020, market reconstruction		
	Share	Units
Cargotec	[20-30]%	[...]
Konecranes	[20-30]%	[...]
<i>Notifying Parties combined</i>	<i>[40-50]%</i>	<i>[...]</i>
Sany	[0-5%]	[...]
Hyster	[30-40%]	[...]
Svetruck	[0-5%]	[...]
FTMH	[0-5%]	[...]
CVS	[5-10%]	[...]
Uplifting	[0-5%]	[...]
Total market	100%	[...]

Source: The Commission's market reconstruction.

- (1787) As indicated in paragraph 17 of the Horizontal Merger Guidelines, “a merger involving a firm whose market share will remain below 50 % after the merger may also raise competition concerns in view of other factors such as the strength and number of competitors, the presence of capacity constraints or the extent to which the products of the merging Parties are close substitutes”.
- (1788) While other factors will be taken into account (e.g. ability of (potential) competitors to effectively constrain the Merged Entity), the above market shares evidence that the Merged Entity would be the largest supplier of empty container handlers in the EEA market in terms of supplied units. The supplier that pre-Transaction occupies the leading position in the market, namely Hyster, would have smaller market share and none of the remaining competitors would have a sizable market presence. The Transaction would result in a duopolistic market structure with the Merged Entity as the new market leader.
- (B) The Transaction would lead to a significant increase in concentration in an already concentrated market
- (1789) The Transaction would lead to a significant market share increment of [20-30]%. According to the data submitted by the Notifying Parties, the Merged Entity would be the market leader, followed by Hyster ([30-40]%). Other competitors would have considerably smaller market shares.¹⁷¹³
- (1790) The increase in concentration is also expressed in the relevant HHI values. Based on data from the Commission's market reconstruction, the EEA market for empty

¹⁷¹³ The Commission sent requests for EEA sales data for empty container handlers to 15 companies and to the two Notifying Parties. 13 companies and the two Notifying Parties provided replies. For the data for the two companies that could not be obtained (FTMH and CES), estimates provided by the Notifying Parties in Reply to Request for information RFI 35, question 1 were used instead.

¹⁷¹⁴ In the Commission's market reconstruction, the individual market positions of certain competitors differ from those estimated by the Notifying Parties and some of their market shares are lower than the shares provided by the Notifying Parties.

container handlers would have a pre-Transaction HHI value of [2500-3000]. The post-Transaction HHI value for empty container handlers would be [3500-4000], with a delta of [1000-1100]. These values are significantly above the thresholds for which the Commission is unlikely to find competition concerns.¹⁷¹⁵ The EEA market for empty container handlers is therefore concentrated pre-Transaction and would be significantly more concentrated post-Transaction.

(1791) In fact, the Transaction would lead to a duopolistic market, where the Merged Entity would be the market leader, followed by Hyster and then by a limited number of significantly smaller suppliers.

(C) The EEA market for empty container handlers consolidated over the past ten years

(1792) When considering the evolution of the market shares in the EEA market for empty container handlers over a longer timeframe, in particular the last ten years, no indications for competitor's expansion vis-à-vis the Notifying Parties are observable.

(1793) As can be seen at the chart below (Figure 126), based on data submitted by the Notifying Parties, for the period 2010-2020 the market shares of the Notifying Parties' competitors either declined or, after an initial increase, remained unchanged. Some competitors have also ceased supplying empty container handlers in the EEA market.

Figure 126: Empty container handlers: Market shares based on delivered units in 2010-2020

[...]

Source: [Internal document reference].

(1794) As shown above, the market share of Cargotec increased from [10-20]% in 2010 to [20-30]% in 2020 and that of Konecranes increased from [5-10]% in 2010 to [20-30]% in 2020. The Notifying Parties' combined share therewith increased from [20-30]% in 2010 to [40-50]% in 2020. The market share of the Notifying Parties' largest competitor, namely Hyster, decreased from [30-40]% in 2010 to [30-40]% in 2020. Despite that in 2014-2015 Sany entered the EEA market for empty container handlers and that it supplies these products in other markets, its market share in the EEA remains very small. The market shares of other suppliers, such as CVS, Svetruck and FTMH, remained almost unchanged after an initial increase around the middle of the period. At the same time, the competitors, which the Notifying Parties group under 'Other', ceased to supply empty container handlers in the EEA after having accounted for [30-40]% share of the market during the first six years of the period. This clearly shows that the market for empty container handlers in the EEA consolidated over the last ten years.

(1795) The Notifying Parties submit that an assessment that considers a ten year timeframe to evaluate whether market positions of players are prone to change *'is erroneous as, rather than considering a longer historic period, a forward-looking assessment should look into the future and take into account the possibility of existing players to expand or of new players to enter the market'*.¹⁷¹⁶ Entry and expansion are considered for example in Section 7.4.2.4. A backward-looking assessment of actually observable market share developments however provides valuable additional

¹⁷¹⁵ Horizontal Merger Guidelines, paragraphs 19-21.

¹⁷¹⁶ Reply to the SO, paragraph 1005.

insights into whether the market positions in the market in question have been prone to significant changes – and in particular how the Notifying Parties’ market position has developed.

- (1796) Overall, it therefore follows that even when taking a longer-term view, the presence of other suppliers appears very limited and not growing further in contrast to the large and increasing market share of the Merged Entity. In the last ten years, competitors were not able to expand at the expense of Cargotec and Konecranes; on the contrary, the Notifying Parties’ combined market share has increased.

(D) Conclusion

- (1797) In view of the above, the Commission concludes that the Transaction would lead to a duopolistic market structure for empty container handlers in the EEA, where the Merged Entity would be the market leader with a large market share close to 50%, followed by only one remaining large competitor (Hyster). The Transaction would significantly increase the degree of concentration in an already concentrated market.

7.4.2.3. The Transaction eliminates competition between the Notifying Parties that pre-Transaction compete particularly closely

- (1798) The Transaction would eliminate competition between the Notifying Parties that pre-Transaction compete particularly closely in the EEA market for empty container handlers. They compete as close as, or even closer than, their individual market shares would suggest.

- (1799) The Notifying Parties submit that ‘on a market where only a few large competitors are present (Cargotec, Konecranes, Hyster and CVS), all competitors are by definition close to a certain extent’.¹⁷¹⁷ This Section will demonstrate that the Proposed Transaction constitutes ‘a merger between two producers offering products which a substantial number of customers regard as their first and second choices’.¹⁷¹⁸ This Section will also show that some rivals of the Notifying Parties cannot be considered to offer ‘close substitutes to the products of the merging firms’.¹⁷¹⁹

(A) Pre-Transaction, both Notifying Parties are important and particularly close competitors

- (1800) Pre-Transaction, both Notifying Parties are particularly close competitors in the EEA market for empty container handlers.
- (1801) The Commission’s market reconstruction has shown that pre-Transaction the Notifying Parties have the second and third largest market share in the EEA market for empty container handlers of respectively [20-30]% for Cargotec and [20-30]% for Konecranes. Even though pre-Transaction Hyster is the largest supplier in this market, competitors and customers consider the Notifying Parties to compete particularly closely with each other.
- (1802) Competitors responding to the market investigation point to Cargotec and Konecranes as the two competitors (the first and the second one respectively) which they meet most often when submitting bids to supply empty container handlers in the EEA.¹⁷²⁰ They also consider Cargotec to be the closest competitor to Konecranes, while out of five competitors three submit that Hyster is the closest competitor to

¹⁷¹⁷ Response to the Article 6(1)(c) Decision, paragraph 338 referring to paragraph 254.

¹⁷¹⁸ Horizontal Merger Guidelines, paragraph 28.

¹⁷¹⁹ Horizontal Merger Guidelines, paragraph 28.

¹⁷²⁰ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 81.1.

Cargotec and two that Konecranes is the closest competitor to Cargotec for empty container handlers.¹⁷²¹

- (1803) Customers responding to the market investigation also consider the Notifying Parties to be each other's closest competitors, with parameters such as quality and service network named as important factors.¹⁷²² When asked to rank the top five suppliers of empty container handlers in the EEA, the majorities of customers consider Cargotec and Konecranes to be respectively the first and second strongest/best supplier in relation to brand reputation, vehicle quality, product characteristics, product range, after-sales service network and the development of new products.¹⁷²³ This also suggests that the Notifying Parties are particularly close competitors in the EEA market for empty container handlers and that competitor's products are not as close substitutes.
- (B) Tender events for empty container handlers show that the Notifying Parties are particularly closely competing and sometimes the only credible alternatives for customers
- (1804) When considering evidence of bidding interactions between suppliers of empty container handlers, it becomes apparent that the Notifying Parties are competing closely in the EEA market for empty container handlers.
- (B.i) The analysis of the Notifying Parties' bidding data on the EEA market for empty container handlers is consistent with the qualitative evidence on closeness of competition*
- (1805) The main exercise performed by the Commission consists in checking the magnitude of the loss ratios between Cargotec and Konecranes based on their bidding data. This is to confirm that in addition to the significant market shares in empty container handlers the Notifying Parties are also competing closely in the tenders in which they participate, losing frequently to each other.
- (1806) The Commission also compared the loss ratios from the bidding analysis against some 'benchmark loss ratios', that is, the loss ratios that one would expect between the Notifying Parties based on their market shares (that is, assuming that the volumes or revenues lost by each Party are won by its rivals in proportion to their respective market shares).
- (1807) With respect to empty container handlers, when looking at the tenders lost by Cargotec, Cargotec's most important competitor is Hyster, with a loss ratio of circa [...]%. Konecranes is the second strongest constraint to Cargotec (and only significant constraint other than Hyster), with a loss ratio around [...]%, in line with the expectation based on market shares.
- (1808) When looking at the tenders lost by Konecranes, Cargotec captures [tender data]. These are significantly above the expected loss ratios based on market-shares. The only significant additional constraint to Konecranes is Hyster.
- (B.ii) Only the Notifying Parties or a very limited number of suppliers provided offers to customers or participated in tender events*
- (1809) A significant number of customers responding to the market investigation submit that they received offers or bids in their tender processes from a very limited number of

¹⁷²¹ Response to Q1 – Questionnaire to Competitors, Doc. ID 3154, questions E.C.A.1 and E.C.A.2.

¹⁷²² Response to Q2 – Questionnaire to Customers, Doc. ID 3153, questions E.C.A.1 and E.C.A.2.

¹⁷²³ Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 14.2.

suppliers of empty container handlers. In many cases, the Notifying Parties were among only three competing suppliers (together with Hyster) and in some cases, only the Notifying Parties were possible alternatives. Competitors, such as FTMH, Sany, Svetruck and CVS are mentioned as having provided offers in not more than one or two cases. Among the reasons for choosing the Notifying Parties' products, customers point to after-sale service, price, technical specifications and quality.¹⁷²⁴ This suggests that the Notifying Parties compete particularly closely with each other for certain customers. The Notifying Parties submit that this analysis '*fails to consider a number of tenders for which there were other participants (and winners)*' and the Notifying Parties and Hyster.¹⁷²⁵ Indeed few customers also mention other suppliers – however it is by far the Notifying Parties and Hyster that are mentioned the most often – and in many cases with no or only one other supplier contesting the tender.

- (1810) In this context, a customer explains that “the transaction is a three-to-two merger in mobile container handling equipment, at least in Germany”. It considers that the main issue is “the lack of suppliers in Germany with a sufficiently short response time for maintenance, repair and other after-sales services” since it is “essential to have a few hours response time from suppliers. That is the reason why already today the number of capable suppliers is limited and would be further reduced to the merged entity and Hyster post-Transaction”.¹⁷²⁶
- (1811) The view that the Notifying Parties compete particularly closely with each other, and that in a number of cases they are the only two alternatives for customers, is also confirmed by the Notifying Parties' internal documents.
- (1812) In an email correspondence [internal document reference].¹⁷²⁷
- (1813) From an email correspondence between Cargotec's employees discussing a lost tender by Cargotec with respect to a [internal document reference].¹⁷²⁸
- (1814) An internal Cargotec's document concerning tenders for empty container handlers and reach stackers that will be organised by [internal document reference].¹⁷²⁹ The Notifying Parties submit in this context that the document in question is likely from 2016 or before, and that it does in fact acknowledge tender participation of other suppliers.¹⁷³⁰ However the document clearly shows that in this instance Cargotec considered Konecranes as the closest rival.
- (1815) In an email correspondence of February 2019 between a customer and Cargotec, [internal document reference].¹⁷³¹
- (1816) In an email correspondence between Cargotec's employees of April 2018, [internal document reference].¹⁷³²

¹⁷²⁴ Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 15.2.

¹⁷²⁵ Reply to the SO, paragraphs 1075-1076.

¹⁷²⁶ Doc. ID 311, Minutes of a call with a customer, 2 March 2021.

¹⁷²⁷ Doc. ID 003584-043897 (The Notifying Parties' reply to the Commission's request for information RFI 18-00135749-RE_R_).

¹⁷²⁸ Doc. ID 003659-087693 (The Notifying Parties' reply to the Commission's request for information RFI 17-CAR-KAR-00002043-Re_ offer for delivery Kalmar emp).

¹⁷²⁹ Doc. ID 3712-004635 (The Parties' reply to the Commission's request for information RFI 17, CAR-PET-00031301-ECT case – background).

¹⁷³⁰ Reply to the Letter of Facts, paragraph 118.

¹⁷³¹ Doc. ID 3705-029061 (The Parties' reply to the Commission's request for information RFI 17, CAR-COL-00104231-Re_KALMAR - ECH Quotation – FINL).

- (1817) From an internal correspondence between Cargotec’s employees of October 2018, it transpires that [internal document reference].¹⁷³³
- (1818) Therefore, the Notifying Parties are often competing against each other for the supply of empty container handlers to customers in the EEA – and evidently do so while facing only very few (and sometimes no) other competitors.
- (C) The Notifying Parties are particularly close competitors, because they have extensive and strong distribution and after-sales networks
- (1819) The Notifying Parties are particularly close competitors, because they have the most extensive and strongest distribution and after-sales networks in the EEA. As their networks are significantly more extensive and stronger than those of almost all EEA rivals, the Notifying Parties compete particularly closely for customers – some of whom as a result only have few available suppliers to turn to.
- (C.i) *Distribution and after-sales networks are very important to compete effectively in the EEA market for empty container handlers*
- (1820) The Commission observes that local distribution and after-sales networks are of crucial importance for effective access to customers.
- (1821) As explained in Section 7.4.2.1 (A), manufacturers largely supply empty container handlers to customers either via local distributors/dealers (that are independent of the manufacturer, but associated via a distribution agreement), or via directly owned local sales unit. In the EEA, Konecranes largely relies on distributors/dealers, whereas Cargotec largely relies on sales via its own local entities. While customers to some degree perform maintenance on empty container handlers in-house, they also source after-sales services for empty container handlers from the manufacturers or associated dealers/distributors.
- (1822) The Notifying Parties argue that distribution and service networks “*are not a prerequisite for the supply of mobile equipment*”.¹⁷³⁴
- (1823) The Commission’s assessment and supporting evidence are similar to those concerning reach stackers market. In the following, the Commission will provide the main elements of its argumentation.
- (1824) **First**, customers consider local distribution and after-sales presence of manufacturers of empty container handlers to be of high importance and to be key purchase criteria.
- (1825) The majority of customers – respondents in the market investigation submit that they consider the availability of maintenance and service provision in their region by the equipment supplier (directly or via associated dealers/distributors) as a very important criterion for their purchasing decision.¹⁷³⁵ In this context, a customer submits that “[a]vailability of spares and after sales support is an important parameter for shortlisting OEM for equipment purchase”.¹⁷³⁶
- (1826) Further, all customers expressing their view submit that across the entire lifetime of mobile equipment (including empty container handlers), they have to rely on the

¹⁷³² Doc. ID 3706-025367 (The Parties’ reply to the Commission’s request for information RFI 17, CAR-COL-00116055-Re_Medlog SPAIN - ECH Quotation).

¹⁷³³ Doc. ID 3665-026935 (The Parties’ reply to the Commission’s request for information RFI 17, CAR-PAT-00063079-Re_Info needed).

¹⁷³⁴ Response to the Article 6(1)(c) Decision, paragraph 342 referring to paragraph 261.

¹⁷³⁵ Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 7.2.

¹⁷³⁶ Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 7.2.1.

maintenance and repair services of the equipment supplier or their associated dealer/distributor, at least for some maintenance and repair needs. Customers explain for example that spare parts can sometimes be procured only from a supplier or dealer and that suppliers/dealers can provide better prices for spare parts, they are equipped with manufacturer's diagnostic software and the response time of the service is significantly shorter.¹⁷³⁷

- (1827) A large majority of customers submit that in the past five years they have not bought empty container handlers from a supplier that does not have a local after-sales servicing presence (either directly or via an associated distributor/dealer) in the area where they are using the equipment.¹⁷³⁸ Similarly, a large majority of customers submit that for their next purchase, they would not consider a supplier that does not have a local after-sales servicing presence in the area where they are using the equipment.¹⁷³⁹ The fact that a local after-sales presence is considered essential by customers, is further underlined by the majority of customers submitting that in case of a break down of a mobile equipment unit, they expect a reaction time of 12 hours or less from the OEM or an associated distributor.¹⁷⁴⁰ In this context, a customer explains the importance of local service presence in the following way: *“on-time maintenance provision is essential in this industry, due to the need to operate trains and container vessels on time. Every disruption is costly”*.¹⁷⁴¹
- (1828) **Second**, distributors consider local distribution and after-sales presence of manufacturers of empty container handlers to be of high importance and to be key purchase criteria for customers.
- (1829) The majority of distributors – respondents in the market investigation submit that in the region in the EEA where they are active, they compete against other local distributors and against direct sales of OEMs with a local distribution presence in the supply of empty container handlers.¹⁷⁴² One distributor explains in this context that *“Generally speaking, the customers don't feel confident to deal with OEMS which don't have a local distribution presence. They want local support for schedule maintenance and repair operations”*.¹⁷⁴³
- (1830) The majority of distributors also consider that the availability of maintenance and service provision in their region in the EEA by the equipment manufacturer or associated distributors is very important for the purchasing decision of mobile equipment customers.¹⁷⁴⁴ They also submit that customers typically expect a reaction time of 12 hours or less from them in case of breakdown of a mobile equipment unit.¹⁷⁴⁵ A distributor explains in this context that *“[g]etting empty containers to storage or loading locations is a critical task for productivity. Any delay can cost a*

¹⁷³⁷ Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, questions 8 and 8.1.

¹⁷³⁸ Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 10.2.

¹⁷³⁹ Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 11.2.

¹⁷⁴⁰ Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 12; see also comments in reply to question 12.1.

¹⁷⁴¹ Doc. ID 311, Minutes of a call with a customer, 2 March 2021.

¹⁷⁴² Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 14.2.

¹⁷⁴³ Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 14.2.1.

¹⁷⁴⁴ Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 16.2.

¹⁷⁴⁵ Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 17.

lot to the operator. That's why the reactivity to maintain and repair is a very important skill for the customers".¹⁷⁴⁶

- (1831) Further, the large majority of distributors/dealers – respondents in the market investigation submit that they do not consider online direct sales of mobile equipment by the OEMs to grow significantly in importance as a route-to-market in the EEA.¹⁷⁴⁷ Among the considered underlying reasons is the fact that the products are too complicated *"to be bought online. Moreover: service issues are too important, and often are discussed on a tailor made basis"*.¹⁷⁴⁸
- (1832) **Third**, competitors consider local distribution and after-sales presence of manufacturers of empty container handlers to be of high importance and key purchase criteria for customers.
- (1833) A majority of competitors – respondents in the market investigation estimate the share of mobile equipment customers in the EEA to which they provided some type of after-sales services (directly or via associated dealers/distributors) to be at least 60% or higher.¹⁷⁴⁹
- (1834) A large majority of competitors considers that local service/after-sales presence is very important for them to be able to generate sales of empty container handlers in a certain region in the EEA.¹⁷⁵⁰ A competitor submits that empty container handlers *"are often sold to companies that do not have their own internal service organization and in any case an effective After Sale Service organization with local presence is always required to be successful in this product market /segment"*.¹⁷⁵¹ Another competitor states that *"[m]aintenance provision and after sales service is an important factor for customers which require suppliers to provide local support in a short reaction time"*.¹⁷⁵²
- (1835) **Fourth**, the Notifying Parties internally consider local distribution and after-sales presence of manufacturers of empty container handlers to be of high importance and to be key purchase criteria for customers.
- (1836) In an internal email [internal document reference].¹⁷⁵³
- (1837) In addition, both Notifying Parties regularly benchmark their own distribution and after-sales performance against competitors¹⁷⁵⁴ – this further indicates that they consider these to be parameters of key competitive importance.
- (1838) In an internal presentation of Cargotec, [internal document reference].¹⁷⁵⁵ In another presentation of Cargotec, [internal document reference].¹⁷⁵⁶

¹⁷⁴⁶ Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 16.2.1.

¹⁷⁴⁷ Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 18.

¹⁷⁴⁸ Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 18.1.

¹⁷⁴⁹ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 70.

¹⁷⁵⁰ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 78.2.

¹⁷⁵¹ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 78.2.1.

¹⁷⁵² Doc. ID 657, Minutes of a call with a competitor, 22 April 2021.

¹⁷⁵³ Doc. ID 3586-55619, (The Notifying Parties' reply to the Commission's request for information RFI 18, M.10078 Cargotec Konecranes RFI 18-00998668 msg).

¹⁷⁵⁴ See e.g. Doc. ID 3667-724, (The Notifying Parties' reply to the Commission's request for information RFI 17, CAR-PRA-00056809.pptx); Doc. ID 3586-79989, (The Notifying Parties' reply to the Commission's request for information RFI 18, M.10078 Cargotec Konecranes RFI 18-00351519.pdf).

¹⁷⁵⁵ Doc. ID 003667-066645, slide 4 (The Notifying Parties' reply to the Commission's request for information RFI 17 - CAR-PRA-00139943-D_PBM - Empty container handlers).

- (1839) In an internal document (captioned above in Figure 89) assessing its own market presence for cargo handling equipment in Sweden (and in particular, mobile equipment, terminal tractors and straddle carriers), Kalmar assesses that [internal document reference].
- (1840) An internal Cargotec's document concerning tenders for empty container handlers and reach stackers (discussed above in Recital (1814)) shows that [...].¹⁷⁵⁷
- (1841) Consequently, a local distribution and after-sales presence is of high importance to customers, and therefore it is critical for providing manufacturers of empty container handlers with access to customers. A local after-sales service network (and a local distribution network) is a prerequisite for a supplier of empty container handlers to compete effectively in a given region in the EEA. This is because, while customers may rely in part on third-party service providers or on in-house capabilities,¹⁷⁵⁸ they consider after-sale service provision by suppliers very important and rely on it at least for some of their servicing needs.
- (C.ii) The Notifying Parties have the strongest distribution and after-sales network in the EEA and therefore compete closely*
- (1842) The Notifying Parties argue that they do not have a particularly strong position because of their distribution and service network, as '*there are [...] a number of players with effective service offerings*'¹⁷⁵⁹ and because '*there are 339 distributors active in the EEA which are selling the mobile equipment of not only established players such as Hyster, CVS and Svetruck, but also of smaller (non-European) competitors such as Komatsu, Doosan, Hyundai and Mitsubishi*'.¹⁷⁶⁰
- (1843) The Commission however observes that the Notifying Parties have the strongest distribution and after-sales networks among suppliers of empty container handlers in the EEA and therefore compete particularly closely across different EEA regions.¹⁷⁶¹ The fact that pre-Transaction Hyster is the largest supplier of empty container handlers in terms of delivered units does not affect this observation since, as

¹⁷⁵⁶ Doc. ID 003707-007897 slide 3 (The Notifying Parties' reply to the Commission's request for information RFI 17--CAR-ERI-00026969-Konecranes - Empty Container Handlers).

¹⁷⁵⁷ Doc. ID 3712-004635 (The Parties' reply to the Commission's request for information RFI 17, CAR-PET-00031301-ECT case – background).

¹⁷⁵⁸ See also the Notifying Parties' follow-up submission to technical meeting on MEQ, 13 October 2021, 2-6.

¹⁷⁵⁹ Response to the Article 6(1)(c) Decision, paragraph 342 referring to paragraph 261.

¹⁷⁶⁰ The Notifying Parties' supplemental submission on distribution networks, 1 September 2021, paragraph 3.

¹⁷⁶¹ With respect to after-sales networks as well as the criteria of vehicle quality, brand reputation and product range further considered below, the Notifying Parties (in the Reply to the SO, paragraph 1063) claim that the Commission 'pre-selected' these criteria and did not ask customers what parameters they consider to be key purchase criteria. In fact, for example in Q2 – Questionnaire to Customers, Doc. ID 3153, question E.A.2.2. (reported on for example in Section 7.4.2.1 (B)), customers were asked about which criteria they consider important for their purchase decisions. Quality, after-sales service networks and brand reputation were clearly considered to be important purchasing criteria. A broad product range is not relevant as such for a customer, but it is essential for any given customer, that the supplier in question can offer the type of empty container handler that it requires. Therefore, to service a broad demand, a broad product range is essential.

The Notifying Parties further submit that price is also a key purchase criterion (Reply to the SO, paragraphs 1064-1068). Indeed price is a relevant purchase criterion for customers – and in as far as the price competition between the Notifying Parties is concerned, it is addressed in Section 7.4.2.6 (B). In as far as the price competitiveness of companies such as Sany is concerned (which is a lower price, lower quality player than the Notifying Parties, and therefore a more distant competitor), it is considered in Section 7.4.2.5.

explained in Section 7.4.2.2 (C) above, over the past ten years Hyster was not able to expand its market share at the expense of Cargotec and Konecranes or other competitors. On the contrary, starting with much smaller market shares at the beginning of the period, the market presence of each of the Notifying Parties has grown significantly. This is particularly relevant for Konecranes whose market share increased from [5-10]% in 2010 to [20-30]% in 2020. At the same time, Hyster's market share remained unchanged and even slightly decreased. Hyster itself acknowledges that both Notifying Parties are the strongest suppliers of empty container handlers in terms of their after-sales service networks.¹⁷⁶² When put into a post-Transaction perspective, Hyster further considers that “[t]he combined service team size [...] will provide a significant hurdle to become competitive”.¹⁷⁶³

- (1844) Market participants responding to the market investigation support the Commission's observation that the Notifying Parties are particularly close competitors in the market for empty container handlers since they consider the Notifying Parties as operating the strongest distribution and after-sales networks.
- (1845) The Notifying Parties submit that ‘the Parties apply inherently different routes to market. While Cargotec largely relies on sales via own dealerships, Konecranes relies on a network of third-party distributors’.¹⁷⁶⁴ This is accurate – these are different distribution approaches. Cargotec's sales staff and distributors acting for Konecranes however compete intensely in distributing Cargotec and Konecranes empty container handlers respectively.
- (1846) **First**, customers consider the Notifying Parties to have particularly strong distribution and after-sales service networks.
- (1847) When asked to rank the top five suppliers of empty container handlers in the EEA according to their after-sales service network, customers clearly consider the Notifying Parties to be the strongest. Customers consider Cargotec to have the strongest after-sales service network, followed by Konecranes and then Hyster. Other competitors' after-sales service networks, such as Sany and CVS, are considered clearly inferior.¹⁷⁶⁵
- (1848) When asked which mobile equipment suppliers (directly or via associated dealers/distributors) they consider to be able to meet certain servicing reaction times in the regions where they use the equipment, e.g. in case of urgent repairs, customers consider Cargotec to be able to offer the fastest servicing reaction times, followed by Konecranes and then Hyster.¹⁷⁶⁶ Similarly, the highest number of responding customers indicate that they consider Cargotec to have the requisite after-sales/maintenance service presence in their local area to address their service needs, followed by Konecranes and then Hyster.¹⁷⁶⁷
- (1849) In this context, a customer explains that during its last tender for empty container handlers, ‘[f]ive OEMs submitted offers: Kalmar, Konecranes, Hyster, Sany and CVS-Ferrari. Both CVS-Ferrari's and Sany's offerings were not accepted as they did not offer any local service in Lithuania (Sany has a service offering in Latvia, but

¹⁷⁶² Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 82.2.

¹⁷⁶³ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 97.2.1.

¹⁷⁶⁴ Reply to the SO, paragraph 1079.

¹⁷⁶⁵ Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 14.2.

¹⁷⁶⁶ Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 23.

¹⁷⁶⁷ Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 25.

this is too far away). The Company's choice is therefore limited to Hyster, Kalmar and Konecranes which have local dealers in Lithuania'.¹⁷⁶⁸

- (1850) **Second**, distributors consider the Notifying Parties to have particularly strong distribution and after-sales networks.
- (1851) When asked to rank the top five suppliers of empty container handlers in the EEA according to their after-sales service network, distributors clearly consider the Notifying Parties to be the strongest. Distributors consider Cargotec to have the strongest after-sales service network, followed by Konecranes and then Hyster. Other competitors' after-sales service networks are considered clearly inferior.¹⁷⁶⁹
- (1852) In the region in which they are active, distributors clearly consider that Konecranes, as a manufacturer of mobile equipment, has the strongest after-sales service presence, followed by Cargotec and then Hyster.¹⁷⁷⁰ With respect to the distribution presence, distributors consider that Cargotec has the strongest distribution presence, followed by Konecranes and then Hyster.¹⁷⁷¹
- (1853) **Third**, competitors also consider the Notifying Parties to have particularly strong distribution and after-sales networks.
- (1854) When asked to rank the top five suppliers of empty container handlers in the EEA (including their own company) according to their after-sales service network, competitors clearly consider the Notifying Parties to be the strongest. Cargotec is considered to have the strongest after-sales service network, followed by Konecranes and then Hyster. The after-sales service networks of other competitors, such as Sany and CVS, are considered clearly inferior.¹⁷⁷²
- (1855) A competitor of the Notifying Parties explains that '[t]he Parties therefore today occupy the two best distribution channels for mobile equipment in Europe and through this, hold strongly a substantial part of the market and block other OEMs from accessing parts of the market. When it comes to capable distributors in Europe, the Parties have essentially either bought or bound to themselves the 'cherries of the cake''.¹⁷⁷³
- (1856) **Fourth**, the Notifying Parties consider themselves and each other to have particularly strong distribution and after-sales networks.
- (1857) For example, Konecranes assesses that [internal document reference]¹⁷⁷⁴ [internal document reference].¹⁷⁷⁵ In another document, Konecranes notes [internal document reference].¹⁷⁷⁶ With respect to [...], Konecranes assesses internally that [internal document reference] and [...] is given the comment [internal document reference].¹⁷⁷⁷

¹⁷⁶⁸ Doc. ID 675, Minutes of a call with a customer, 7 April 2021.

¹⁷⁶⁹ Responses to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 19.2.

¹⁷⁷⁰ Responses to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 22.

¹⁷⁷¹ Responses to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 21.

¹⁷⁷² Response to Q3 – PH2 Questionnaire to competitors, Doc. ID 3582, question 82.2.

¹⁷⁷³ Doc. ID 1773, Minutes of a call with a competitor, 3 May 2021.

¹⁷⁷⁴ Form CO, RFI PN7 Annex QK4(c).2 – Confidential, slide 20.

¹⁷⁷⁵ Form CO, RFI PN7 Annex QK22.1 – Confidential, slides 6 and 15.

¹⁷⁷⁶ Form CO, RFI PN4 Annexes QK4.3, slide 17.

¹⁷⁷⁷ Form CO, RFI PN7 Annex QK22.1 – Confidential, slide 16.

- (1858) Cargotec, in comparing its own mobile equipment strengths against those of Konecranes, assesses that Konecranes has [internal document reference].¹⁷⁷⁸ In another internal document, Cargotec assesses that Konecranes' empty container handlers are [internal document reference].¹⁷⁷⁹ This clearly shows that the service and distribution presence of both players is considered as a key competitive parameter – and that both Notifying Parties are particularly strong in this field.

(C.iii) Conclusion

- (1859) It follows from the above that local distribution and after-sales presence is an important factor, which guides customers' decisions when purchasing empty container handlers. In order to access the customers effectively and have a sizable and strong market presence it is important for suppliers to have strong distribution and after-sales networks. The Notifying Parties' growing presence in the market for empty container handlers in the past ten years, in contrast to the stable and even slightly decreasing share of the pre-Transaction market leader, further supports this conclusion.
- (1860) In a market where distribution and after-sales networks are of high importance and where they constitute key purchase criteria for customers, the fact that the Notifying Parties are considered as having the strongest distribution and after-sales networks by a range of market participants (customers, distributors, competitors), reinforces the finding that they are particularly close competitors. The strong distribution and after-sales networks allow the Notifying Parties to compete with each other in regions in the EEA where less competitors are active (because of a lack of local presence) or to compete for customers which have particularly strict service requirements (which not all of the Notifying Parties' competitors can meet). The Notifying Parties' strong position in distribution and after-sales services therefore limits the degree of substitutability between the products of the Notifying Parties and those supplied by rival producers.
- (D) The Notifying Parties are particularly close competitors, because they offer a broad range of empty container handlers
- (1861) The Notifying Parties are particularly close competitors, because they offer a broad range of empty container handler models. They are therefore able to compete for a wide set of customers that have different specification requirements.
- (1862) While the Notifying Parties submit that, according to the Commission, not a lot of product differentiation appears to exist with regard to empty container handlers,¹⁷⁸⁰ the market investigation has confirmed that the range of products offered by the Notifying Parties provides them with a competitive advantage vis-à-vis their competitors.
- (1863) **First**, customers consider the Notifying Parties to have particularly broad product ranges that compete closely with each other.
- (1864) When asked to rank the top five suppliers of empty container handlers in the EEA according to their product range, customers clearly consider the Notifying Parties to have the best product range. According to this criterion, Cargotec is considered to be

¹⁷⁷⁸ Doc. ID 3667-724, slide 6 (The Notifying Parties' reply to the Commission's request for information RFI 17, CAR-PRA-00056809.pptx).

¹⁷⁷⁹ Doc. ID 3707-7897 (The Notifying Parties' reply to the Commission's request for information RFI 17, CAR-ERI-00026969.pptx), slide 3.

¹⁷⁸⁰ Response to the Article 6(1)(c) Decision, paragraph 340; Reply to the SO, paragraph 1089.

in the lead followed by Konecranes. All other suppliers, including Hyster, are considered as having significantly weaker product ranges.¹⁷⁸¹

- (1865) Furthermore, most of the customers responding to the market investigation consider that the Notifying Parties' empty container handlers can meet all of their technical requirements (e.g. in terms of lifting capacity, load-handling away from centre of gravity, drive type, data-readout, etc.). Hyster's and CVS' products are considered as lagging behind those of the Notifying Parties based on this criterion.¹⁷⁸² The Notifying Parties submit that also several customers responding to the Commission's market investigation consider e.g. Hyster and CVS to be able to meet all their technical requirements.¹⁷⁸³ This is indeed the case – however significantly more customers consider the Notifying Parties to be able to meet all of their technical requirements.
- (1866) **Second**, distributors consider the Notifying Parties to have particularly broad ranges of empty container handlers that compete closely with each other.
- (1867) When asked to rank the top five suppliers of empty container handlers in the EEA according to their product range, distributors clearly consider Cargotec to have the best/strongest product range, followed by Konecranes. Hyster's product range is considered much weaker and all other competitors are lagging further behind based on this criterion.¹⁷⁸⁴
- (1868) Responding distributors also indicate that in the past ten years they have sold/distributed various types of empty containers handlers mostly from the Notifying Parties with Konecranes' products being in the lead, followed by those of Cargotec.¹⁷⁸⁵
- (1869) **Third**, competitors also consider the Notifying Parties to have broad product ranges.
- (1870) When asked to rank the top five suppliers of empty container handlers in the EEA (including their own company) according to their product range, competitors clearly consider that Cargotec is in the lead. The second place is occupied by Hyster, which has defined itself as having the broadest product range, followed by Konecranes. Other competitors are considered to have significantly weaker product ranges.¹⁷⁸⁶
- (1871) **Fourth**, the Notifying Parties consider themselves to have particularly broad product ranges that compete closely with each other.
- (1872) In an internal presentation (captioned in Figure 127), [...].

Figure 127: [...]

[...]

Source: [Internal document reference].

- (1873) The Notifying Parties submit that in other internal documents, the Notifying Parties also benchmark their empty container handler offering against that of other competitors, such as Hyster. In particular, Cargotec also benchmarks its empty container handler offering against Hyster in a document very similar to the one

¹⁷⁸¹ Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 14.2.

¹⁷⁸² Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 18.2.

¹⁷⁸³ Reply to the SO, paragraphs 1092-1093.

¹⁷⁸⁴ Responses to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 19.2.

¹⁷⁸⁵ Responses to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 20.2.

¹⁷⁸⁶ Responses to Q3 – PH2 Questionnaire to competitors, Doc. ID 3582, question 82.2.

presented in Figure 127.¹⁷⁸⁷ Indeed, as Hyster will post-Transaction be the only large competitor to the Merged Entity, it is not surprising, that the Notifying Parties also consider their product portfolio in comparison with Hyster's. However, in the document referred to by the Notifying Parties, it is for example apparent, that in the 'essential' category, Hyster's offering is not seen as overlapping directly with Cargotec's, whereas as seen in Figure 127, Konecranes' offering is seen as directly overlapping with Cargotec's.

- (1874) An internal Konecranes' document (captioned above in Figure 96) shows [internal document reference].¹⁷⁸⁸
- (1875) In an internal email, captioned in Figure 128, a Kalmar employee benchmarks the Kalmar empty container handler offering (including a broad range of features and modification possibilities), against Konecranes' empty container handler offering. No other competitors are considered in this comparison.

Figure 128: [...]

[...]

Source: [Internal document reference].

- (1876) The Notifying Parties are active in what they themselves consider to be the 'Premium' segment of the empty container handler market, while certain competitors (e.g. Hyster, Sany) are considered to only offer lower quality empty container handler products. Therefore, the Notifying Parties' product portfolios are particularly close substitutes, whereas competitor products are more distant substitutes. This finding is further supported by the market share estimates based on value submitted by the Notifying Parties. While the Notifying Parties submit that Cargotec has a 2018-2020 EEA volume market share of [20-30]%, the Notifying Parties estimate Cargotec's 2018-2020 EEA value market share to be [20-30]%. For Konecranes the estimates are [10-20]% (volume) and [20-30]% (value), for the Merged Entity [40-50]% (volume) and [40-50]% (value). Each Notifying Party's and the Merged Entity's value share estimate is therefore higher than the respective volume market share. In contrast, the Notifying Party's estimates for competitors show the inverse trend. For example for the main remaining competitor post-Transaction: Hyster [30-40]% (volume) and [30-40]% (value).¹⁷⁸⁹ Value-based market shares capture better differences in differentiated product markets. Therefore, the fact that according to the Notifying Parties the Parties' value-based shares are higher than their volume-based shares while Hyster's value-based shares is lower than its volume-based shares further shows that the Notifying Parties compete in the premium segment of the EEA empty container handler market, in which Hyster is not or less present. It follows that the Notifying Parties compete more closely with each other than with Hyster.
- (1877) While the Notifying Parties argue that Hyster's offering is comparable to that of Cargotec,¹⁷⁹⁰ the internal document relied upon to support that conclusion in fact related to a brand of empty container handlers in the essential segment which Hyster sells in the Indian market, not in the EEA market.¹⁷⁹¹

¹⁷⁸⁷ Reply to the SO, paragraph 1090.

¹⁷⁸⁸ Reply to Request for information RFI 24, Annex QK9.1, slide 30.

¹⁷⁸⁹ Form CO, Reply to Request for information RFI 7, Annex Q2.

¹⁷⁹⁰ Reply to the SO, paragraph 1090 and Figure 50.

¹⁷⁹¹ Reply to request for information RFI 37, reply to question 8.

- (1878) Therefore, both Notifying Parties consider themselves and each other to be active with empty container handler products across different value proposition segments. The Notifying Parties therefore compete with each other across the entire empty container product range. This further indicates that the Notifying Parties compete particularly closely.
- (E) The Notifying Parties compete closely in developing new products
- (1879) The Notifying Parties submit that “*Chinese suppliers are at the forefront of innovation in Mobile Equipment*”¹⁷⁹² and while they have not sold yet electric empty container handlers, the Chinese manufacturer Sany received repeated order from customers.¹⁷⁹³
- (1880) The Commission finds that the Notifying Parties are two particularly innovative suppliers that compete closely in the supply of newly developed empty container handler products in the EEA market.
- (1881) **First**, customers responding to the market investigation consider the Notifying Parties to be particularly innovative manufacturers of empty container handlers. When asked to indicate which supplier of mobile equipment (including empty container handlers) they consider to be the most innovative they point to Cargotec in the lead, followed by Konecranes and Hyster. Other competitors are considered considerably less innovative.¹⁷⁹⁴
- (1882) In addition, when asked to rank the top five suppliers of empty container handlers based on the development of new products, customers consider Cargotec to be the strongest, followed by Konecranes. Hyster lags behind and Sany is considered as a weak innovator.¹⁷⁹⁵
- (1883) When asked to identify the innovative products that suppliers of empty container handlers have brought to the market in the last five years, multiple customers name examples for Cargotec, Konecranes and to a much lesser extent for Hyster. Only one customer names an example for Sany. For Cargotec and Konecranes, customers name for example “*hybrid empty handlers*” and “*telematic, carbon dioxide reduction, productivity enhancement*”. For Cargotec, also fully electric empty container handler is included in the list of innovations. For Hyster, customers name electric empty handlers and for Sany, one customer names the electric empty handlers as an innovative product.¹⁷⁹⁶
- (1884) **Second**, competitors consider the Notifying Parties to be innovative manufacturers of empty container handlers.
- (1885) While all competitors, when asked to rank the top five suppliers of empty container handlers (including their own company), consider themselves to be innovative, they point to Cargotec as being the strongest in the development of new products,

¹⁷⁹² The Notifying Parties’ supplemental submission on mobile equipment, 24 September 2021, paragraphs 20 and 21.

¹⁷⁹³ Response to the Article 6(1)(c) Decision, paragraph 341.

¹⁷⁹⁴ Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 20.

¹⁷⁹⁵ Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 14.2.

¹⁷⁹⁶ Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 21.2.

followed by Hyster (Hyster defines itself as an innovative supplier) and Konecranes.¹⁷⁹⁷

- (1886) Competitors, including Sany, have not indicated that they are currently supplying electric empty container handlers (only CVS has mentioned that it supplies a hybrid version) but explain that they are developing fully electric, hybrid or fuel-cell versions. Sany is currently testing its versions in China.¹⁷⁹⁸
- (1887) In this context, with respect to fuel-cell (hydrogen) versions of container handling equipment, a competitor submits that “*technology is still immature and volumes are very low*”.¹⁷⁹⁹
- (1888) **Third**, Notifying Parties internally consider themselves and each other to be particularly innovative manufacturers of empty container handlers.
- (1889) While the Notifying Parties submit that the Chinese competitor, Sany, is a particularly innovative, including in the field of electrification,¹⁸⁰⁰ the Commission finds that internal documents of the Notifying Parties provide a more nuanced picture. The Notifying Parties actively pursue further developments in empty container handlers and track each other’s developments closely.
- (1890) As already explained with respect to reach stackers, Recital (1403), electrification, and in particular the development of low/zero emissions vehicles, is the main development trend including for empty container handlers.
- (1891) With respect to electrification/low emission equipment, Cargotec and Konecranes submit that [...] of empty container handlers. [...]. Konecranes submits that [...].¹⁸⁰¹
- (1892) The Notifying Parties submit that [...].¹⁸⁰² [...].¹⁸⁰³ [...].¹⁸⁰⁴
- (1893) Internally, the Notifying Parties appear to monitor each other’s potential development of electric empty container handlers. For example, in an internal Cargotec’s document, [...].¹⁸⁰⁵
- (1894) It therefore follows that the Notifying Parties are important and close competitors in the development of new empty container handler products, in particular also hybrid and electric versions. Customers clearly consider the Notifying Parties to be the two most important players in the development of new products. While other manufacturers are also developing and launching electric empty container handlers, it does not appear that they would be ahead of the Notifying Parties in a meaningful way.

¹⁷⁹⁷ Responses to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 82.2.

¹⁷⁹⁸ Responses to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, questions 91.2.1 and 91.2.2.

¹⁷⁹⁹ Doc. ID 932, Minutes of a call with a competitor, 20 April 2021.

¹⁸⁰⁰ Response to the Article 6(1)(c) Decision, paragraph 339 referring to paragraph 257.

¹⁸⁰¹ Reply to Request for information RFI 21, questions 17 c and d.

¹⁸⁰² Reply to request for information RFI 37, reply to question 9.

¹⁸⁰³ Reply to request for information RFI 37, to RFI 37 Annex QC4 (see in particular page 2) and Annex QC9 slide 2.

¹⁸⁰⁴ Doc. ID 3660-022888, slide 43 (The Parties’ reply to the Commission’s request for information RFI 17, CAR-KAR-00162269-EC Roadmap Final 2019-06-10).

¹⁸⁰⁵ Doc. ID 3708-9474 (The Notifying Parties’ reply to the Commission’s request for information RFI 17, CAR-HUL-00027501.pptx), slide 15.

- (F) Absent the Transaction, the Notifying Parties would have continued to compete intensely for customers and market share
- (1895) Absent the Transaction, the Notifying Parties would have continued to compete intensely for customers and market share in the EEA market for empty container handlers.
- (F.i) *The Notifying Parties consider each other as the main competitors in the EEA*
- (1896) The Notifying Parties consider each other as the main competitors in the EEA market for empty container handlers. The Notifying Parties regularly benchmark against each other, consider the price pressure from the other Notifying Party, and fight for market share.
- (1897) For detailed argumentation on this point, the Commission refers to Section 7.4.1.2 (F.i) since the arguments and underlying evidence also apply to the empty container handler market.
- (1898) In addition, as shown in Figure 129, [...].

Figure 129: [...]

[...]

Source: [Internal document reference].

- (F.ii) *Both Notifying Parties have growth plans in empty container handlers*
- (1899) Pre-Transaction, both Cargotec and Konecranes have plans to grow their mobile equipment business and to increase their respective market shares, including in relation to empty container handlers.
- (1900) While the Notifying Parties submit that “*it is natural for companies to have growth plans*” and that surely “*the Parties’ competitors have similar growth plans*”,¹⁸⁰⁶ the Commission considers that growth plans, specifically of the merging Notifying Parties, mean that an increase in competition (due to growth ambitions of both Notifying Parties, in part at the expense of each other) would be lost due to the proposed Transaction. This issue is separate from the question of whether or not competitors have growth ambitions. Given the Notifying Parties’ growth plans, absent the proposed Merger, competition and pricing pressure between the Notifying Parties would increase.
- (1901) Overall, both Notifying Parties consider each other as main competitors in the EEA market for empty container handlers and they both have plans to increase their market shares – in part at the expense of each other and in part based on the same or similar strategies. Absent the Proposed Transaction, this would result in continued and further intensified competition between the Notifying Parties in the EEA market for empty container handlers.
- (1902) For detailed argumentation on this point, the Commission refers to Section 7.4.1.2 (F.ii) since the arguments and underlying evidence also apply to the empty container handler market. For example, Konecranes’ plan [...]. Cargotec’s

¹⁸⁰⁶ Response to the Article 6(1)(c) Decision, paragraph 350. In the Reply to the SO, Figure 51, the Notifying Parties also point to the tracking of growth plans of other competitors – however this figure relates only to a worldwide situation, not to Europe or the EEA in particular.

specific growth targets for empty container handlers are also listed in Figure 113 above.

(G) Conclusion

- (1903) The Commission considers that the Transaction eliminates competition between the Notifying Parties that pre-Transaction compete particularly closely and intensely on the EEA market for empty container handlers. Views of market participants, as well as the Notifying Parties' internal documents show that the Notifying Parties compete particularly closely due to strong distribution and service networks and broad product ranges, and that they are important innovators in empty container handlers. Further, absent the Transaction, the Notifying Parties would compete intensely, as they consider each other as main rivals and each has plans to increase its share in the EEA empty container handler market. The analysis of the Notifying Parties' bidding data and tender interactions is consistent with the qualitative evidence on closeness of competition and generally suggests that the Notifying Parties compete as close as, or even closer than what their market shares would suggest.

7.4.2.4. Competitors face significant barriers to entry and expansion

- (1904) In this Section, the Commission will examine whether market entry is likely to constrain the behaviour of incumbents post-merger. For an entry to be likely, it must be sufficiently profitable, timely and of sufficient scope and magnitude to deter or defeat the anti-competitive effects of the merger. Barriers to entry give incumbent firms advantages over potential competitors, as they determine entry risks and costs for potential entrants.¹⁸⁰⁷
- (1905) The Notifying Parties argue that barriers to entry and expansion in the empty container handler market are low, as evidenced by Sany's successful entry and (alleged) subsequent expansion.¹⁸⁰⁸ They maintain that market entry is possible within a reasonable timeframe and with reasonable investment cost as local networks are not a pre-requisite, reputation can be built up and changing market dynamics give room for new entrants.¹⁸⁰⁹
- (1906) As explained in Section 7.4.2.1 (B) above, the Commission finds that significant barriers to entry and expansion exist in the EEA market for empty container handlers. No entry on significant scale has occurred over the past ten years and instead the market has consolidated further. Future market entry and expansion are made difficult by the benefits of a European assembly presence, the need for a local distribution and after-sales service network, the benefits incumbents have due to their brand reputation, the need to develop high-quality and well perceived products. Regulatory requirements also constitute a barrier to entry.
- (1907) The Notifying Parties further submit that in assessing the likelihood of entry and expansion, a timeframe longer than 2-3 years would be appropriate, e.g. due to the characteristics of the market such as long-term investments and relatively low and lumpy order volumes.¹⁸¹⁰ However, such a timeframe appears to be appropriate to account for the lumpiness of demand in the empty container handler industry – it is therefore also a three-year timeframe that is considered when assessing market shares (an approach also advanced by the Notifying Parties in the Form CO). Further, given

¹⁸⁰⁷ See HMG, paragraphs 69-75.

¹⁸⁰⁸ Form CO, Chapter 2, paragraph 338.

¹⁸⁰⁹ Response to the Article 6(1)(c) Decision, paragraph 359.

¹⁸¹⁰ Reply to the SO, paragraph 1028.

an average eight-year lifespan of empty container handlers, a 2-3 year timeframe to consider potential entry and expansion already accounts for on average 25% to 38% of replacement demand – a significant portion of demand for which customers would be exposed to the (adverse) effects of the Proposed Transaction. If one were to consider entry and expansion on a 5-year timeframe, this affected proportion of replacement demand would even be 63%. Therefore, a 2-3 year timeframe is appropriate to consider entry and expansion in this case.

- (1908) Therefore, it does not appear likely that any potential entry or expansion would be sufficient in scope and magnitude to effectively deter and defeat the anti-competitive effects of the Proposed Transaction.
- (A) Limited number of companies have entry or expansion plans in relation to the EEA market for empty container handlers
- (1909) Only a limited number of companies indicate in the market investigation that they have entry or expansion plans in relation to the EEA market for empty container handlers.
- (1910) A competitor currently active in the supply of mobile equipment only outside the EEA, namely the US-based Taylor, submits that it plans to enter the EEA market for empty container handlers in the next 2-3 years. It clarifies: *‘Yes, we are concentrating on the western hemisphere but will expand our distribution in the future’*.¹⁸¹¹ The company further explains that while *‘currently has no specific plans of market entry in Europe/in the EEA, it considers it likely that it will seek to compete there in the future as well’*.¹⁸¹² However, this competitor notes in relation to the time and cost related to such entry plans that *‘[i]t is a monumental task because of the two major players konecrane and kalmar. jointly it would be a monopoly in my opinion’*.¹⁸¹³ The company also explains that profitable entry is not easy to achieve since initially relatively low number of units could be expected to be sold. Accordingly, *“it would not be worth the expense to undertake the necessary CE certificate registration for the products”*. The company estimates that the cost of CE certificate would be mid six figures at least and if one were to certify the entire product line, this would probably reach into the seven figures. Other costs related to market entry would be linked to the installation of offices in Europe and the creation of marketing campaigns to present the product. In addition, the current design of this competitor’s container handling equipment would require certain modifications to meet European customer preferences.¹⁸¹⁴
- (1911) Another company currently active in the supply of mobile equipment only outside the EEA and based in India submits that it plans to enter the supply of empty container handlers in the EEA in the next 2-3 years.¹⁸¹⁵ The company also submits that it has *‘to invest significant amounts to establish a distribution and service network in the EEA’*.¹⁸¹⁶ The company further submits: *‘We currently supply mobile equipment per Indian Standards. As EU regulations are generally stricter, we may have challenges to supply mobile equipment’*.¹⁸¹⁷

¹⁸¹¹ Response to Q1 – Questionnaire to Competitors, Doc. ID 3154, question E.C.B.2.1.

¹⁸¹² Doc. ID 4133, Minutes of a call with a competitor, 19 August 2021.

¹⁸¹³ Response to Q1 – Questionnaire to Competitors, Doc. ID 3154, question E.C.B.3.2.

¹⁸¹⁴ Doc. ID 4133, Minutes of a call with a competitor, 19 August 2021.

¹⁸¹⁵ Response to Q3 – PH2 Questionnaire to competitors, Doc. ID 3582, question 84.2.

¹⁸¹⁶ Response to Q3 – PH2 Questionnaire to competitors, Doc. ID 3582, question 84.2.1.

¹⁸¹⁷ Response to Q3 – PH2 Questionnaire to competitors, Doc. ID 3582, question 75.1.

- (1912) A competitor, which has entered the EEA market for empty container handlers in 2014-2015, namely Sany, submits that as of October 2021 it had not yet acquired a CE certification to commercialise certain model types of empty container handlers in Europe, in particular those that can be brought to the European market from January 2022, as it needs to implement certain product adjustments.¹⁸¹⁸
- (1913) The Notifying Parties submit that ‘in a market with excess capacity, the presence of a few competitors is sufficient to guarantee effective price competition, as any attempt to increase prices would be defeated by competitors who have sufficient capacity to expand production’.¹⁸¹⁹ However, production capacity does not appear to be the main feature limiting suppliers’ ability to compete in the EEA empty container handler market. Rather, the ability to address customers’ specific purchase criteria (e.g. such as quality, after-sales network, etc.), in the first instance determines whether a supplier is able to increase its sales of empty container handlers. Further, when asked if competitors could expand supply in case of an increase in prices for empty container handlers in the EEA, only the current market leader in terms of supplied units, namely Hyster, confirms that that would be possible in a short matter of time. The US-based manufacturer, Taylor, which is not active in the EEA, submits that expand of supply would be possible in two-three years and competitors active in the EEA market, such as Sany and CVS submit that expansion of supply would not be possible.¹⁸²⁰ In that context, CVS clarifies that “[w]ithout a proper and credible Sale and After Sale Network it will not be possible to expand supply”.¹⁸²¹
- (B) There was no significant entry into the EEA market for empty container handlers in the past ten years
- (1914) As explained in Section 7.4.2.2 (C) above, the EEA market for empty container handlers has seen no significant entry in the past ten years. In fact, rather than the entry and expansion of competitors, the main trend in the EEA market was one of concentration.
- (1915) The Notifying Parties submit that in the past ten years (since 2011), three companies have entered the EEA market for empty container handling equipment, namely FTMH, Sany and Uplifting, and Dalian at some point in the last 20 years. At the same time, Konecranes has acquired two other suppliers, namely Fantuzzi and Terex.¹⁸²²
- (1916) In addition to the description, provided in Section 7.4.2.1 (A) above, the Commission observes the following in relation to these companies and their presence in the EEA market for empty container handlers:
- (1917) **FTMH:** FTMH is an Italian mobile equipment supplier, founded by former Fantuzzi staff (which was acquired by Konecranes). Based on the Commission’s market reconstruction, for the last three years, FTMH’s market share in the EEA market for empty container handlers was in the range of 0-5%. In a recent document, in relation

¹⁸¹⁸ Doc. ID 657, Minutes of a call with a competitor, 22 April 2021; Doc. ID 4195, Minutes of a call with a competitor 18 October 2021.

¹⁸¹⁹ Reply to the SO, paragraph 1026.

¹⁸²⁰ Response to Q1 – Questionnaire to Competitors, Doc. ID 3154, question E.C.B.7.2.

¹⁸²¹ Response to Q1 – Questionnaire to Competitors, Doc. ID 3154, question E.C.B.7.2.1.

¹⁸²² Reply to request for information RFI 26, Annex Q7.

to FTMH, as well as to other smaller competitors, such as CVS and Svetruck, Konecranes notes: [internal document reference].¹⁸²³

- (1918) **Sany:** The Chinese manufacturer Sany has not acquired yet a CE certification to commercialise certain model types of empty container handlers in Europe, as it needs to implement certain product adjustments.¹⁸²⁴ In particular, Sany in October 2021 was still working to certify models with stage V engines and from January 2022, only equipment with stage V engines can be brought to the European market. In addition, when Sany implements changes to model types (e.g. a new emission stage engine being integrated into the model), it has to certify these changes through the CE certification process. Based on the Commission's market reconstruction, for the last three years, Sany's market share in the EEA market for empty container handlers was in the range of 0-5%. In an internal presentation, [internal document reference].¹⁸²⁵
- (1919) **Uplifting:** This is a small Spanish manufacturer of mobile equipment.¹⁸²⁶ No customer responding to the market investigation indicates that this company submitted a bid with respect to its last purchase of empty container handlers.¹⁸²⁷ Based on the Commission's market reconstruction, for the last three years, Uplifting's market share in the EEA market for empty container handlers was in the range of 0-5%. In an internal email, [internal document reference].¹⁸²⁸ In another email, [internal document reference].¹⁸²⁹
- (1920) **Dalian:** Dalian is a Chinese manufacturer of mobile equipment. No customer responding to the market investigation indicates that this company submitted a bid with respect to its last purchase of empty container handlers.¹⁸³⁰
- (1921) Further, when asked whether competitors, which were not supplying empty container handlers in the EEA, tried to start supplying them when prices in the EEA had increased, a majority of competitors responding to the market investigation indicates that they either did not try to start supplying these products or did not observe a price increase in the EEA. Only Sany submits that following a price increase it started supplying empty container handlers in the EEA.¹⁸³¹
- (1922) The above overview confirms that there was no any significant entry in the EEA market for empty container handlers in the past ten years.

¹⁸²³ Doc. ID 3586-62316 (The Notifying Parties' reply to the Commission's request for information RFI 18, M.10078 Cargotec Konecranes RFI 18-00354050.pptx), slide 7.

¹⁸²⁴ Doc. ID 657, Minutes of a call with a competitor, 22 April 2021; Doc. ID 4195, Minutes of a call with a competitor 18 October 2021.

¹⁸²⁵ Reply to Request for information RFI 24, Annex QK9.1, slide 25.

¹⁸²⁶ See data provided in Reply to request for information RFI 16.

¹⁸²⁷ See Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 15.2.

¹⁸²⁸ Doc. ID 3594-57552 (The Notifying Parties' reply to the Commission's request for information RFI 18, M.10078 Cargotec Konecranes RFI 18-01218532 msg).

¹⁸²⁹ Doc. ID 3584-28771 (The Notifying Parties' reply to the Commission's request for information RFI 18, M.10078 Cargotec Konecranes RFI 18-00148453 msg).

¹⁸³⁰ See Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 15.2.

¹⁸³¹ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, questions 86.2 and 86.2.1.

(C) Barriers to entry and expansion

(C.i) *The need for a European assembly presence constitutes a barrier to entry*

- (1923) As explained in Section 7.4.2.1 (B), the lack of European assembly presence for empty container handlers constitutes a barrier to entry. The Commission is not aware of any competitor active in the EEA market for empty container handlers that does not have a European assembly presence. Accordingly, without assembly facilities in Europe, it will be very difficult for a new entrant to supply the EEA market for empty container handlers.

(C.ii) *The need for an effective local distribution and after-sales network constitutes a barrier to entry and expansion*

- (1924) As explained in Section 7.4.2.1 (B), the Commission finds that a local distribution and after-sales network is essential for a competitor to effectively supply empty container handlers in the EEA market. Customers, distributors, competitors and the Notifying Parties themselves ascribe great importance to local distribution and after-sales presence for an effective access to customers. At the same time, it is difficult to establish a network of suitable distributors and after-sales service providers for empty container handlers in the EEA. In that context, a competitor explains that “[t]he lack of good local Sale and After Sale Service is most unsourmountable problem that a newcomer would have to go by”.¹⁸³²
- (1925) Developing an effective distribution and after-sales network by (potential) suppliers is even more difficult when considering the networks of the Notifying Parties. In this context, the Commission also refers to Section 7.4.2.3 (C) and Recital (1843). As explained by one competitor, “the successive acquisitions of the Parties over time have restricted the choice of available distributors. [...] Over time, the Parties rationalised their distribution network by selecting the best distributors of the acquired OEMs and prevented them to offer the other brands available. The Parties therefore today occupy the two best distribution channels for mobile equipment in Europe and through this, hold strongly a substantial part of the market and block other OEMs from accessing parts of the market. When it comes to capable distributors in Europe, the Parties have essentially either bought or bound to themselves the ‘cherries of the cake’”.¹⁸³³ The pre-Transaction market leader in terms of delivered units, namely Hyster, also acknowledges that the Notifying Parties are the strongest suppliers of empty container handlers in terms of their after-sales service networks¹⁸³⁴ and that “[t]he combined service team size [of the Merged Entity] [...] will provide a significant hurdle to become competitive”.¹⁸³⁵
- (1926) The Notifying Parties themselves consider that their distribution and after-sales networks are stronger than those of the competitors and provide them with a competitive advantage. Cargotec’s internal document suggests that vis-à-vis customers one of their main selling arguments against competitors (Konecranes, Hyster, Sany) is the [internal document reference]. In the same document, Sany is said to be a [internal document reference] and to be [internal document reference]. In comparison with competitor Hyster, Cargotec (Kalmar) is said to have a [internal

¹⁸³² Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 88.1.1.

¹⁸³³ Doc. ID 1773, Minutes of a call with a competitor, 3 May 2021.

¹⁸³⁴ Response to Q3 – PH2 Questionnaire to Competitors, question 82.2.

¹⁸³⁵ Response to Q3 – PH2 Questionnaire to Competitors, question 97.2.1.

document reference].¹⁸³⁶ Similarly, in an internal presentation [year], Konecranes reports that [internal document reference].¹⁸³⁷

- (1927) In relation to Sany's after-sales network, a competitor explains: "[f]or non-EEA competitors, entering the European markets for mobile equipment would entail difficulties in establishing distribution and service networks. [...] some non-EEA suppliers have already entered the EEA market, including Sany. [...] Sany has entered multiple dealership agreements for mobile equipment. However [...] despite Sany having competitive prices, obtaining good coverage requires significant volumes, skills, investments and a suitable approach. Hence, achieving market shares in the EEA that are similar to the ones in the Chinese market will be challenging for Sany".¹⁸³⁸
- (1928) A competitor of the Notifying Parties submits with respect to mobile equipment (of which empty container handlers are a part) that '*Cargotec and Konecranes have stated that in the MEQ segment there is a multitude of players that are active or intend to become active on the EU marketplace, thus alleging that customers have a lot of choices besides them. This assertion is not acceptable as the market share of most of these other players is negligible and – even more important – it is not set to grow in the foreseeable future. These brands cannot count and will not be able to count for a long while, on strong and influential key distributors in any of the main (and even in any of the less important) national EU markets*'. The competitor further submits that '*[t]o this extent, the assumption of the Concerned Parties according to which there would be over 300 dealers in the EU that could effectively sell and service Container Handling and Heavy Duty Lift-trucks is just not true. All the key few dealers capable to provide professional, reliable and profitable After Sale Services on Mobile Equipment are owned or linked to the Concerned Parties and not available to other competitors. In fact even the so much feared Chinese brand Sany, which has injected millions of euros over the last decade attempting to break through in the EU market of Mobile equipment, has so far failed, despite having appointed many dealers in the whole continent over this period of time*'.¹⁸³⁹
- (1929) The competitor elaborates further: 'The downplay of the importance of the After Sale and Service Network made by the Concerned Parties in their Oral Hearing presentation is totally non convincing. They stated that "on-line sales" are becoming more and more popular, because a growing share of the spare parts sale is nowadays managed through internet portals and because some buyers are adopting an internet bidding process. In reality, spare parts are basically entirely sold through the official sales network of every principal and internet bidding is only the last stage of contest at which only pre-qualified bidder make it. Needless to say, the reliability of an After Sale Service is always a pre-requisite to be pre-qualified in these internet bidding processes that remain a very tiny minority of the whole cases. No small and medium size buyer in fact adopts such a buying process and this class of customers in the MEQ market represents by far the largest group'.¹⁸⁴⁰

¹⁸³⁶ Doc. ID 3667-66645 (The Notifying Parties' reply to the Commission's request for information RFI 17, CAR-PRA-00139943-D_PBM - Empty container handlers), slide 4.

¹⁸³⁷ Doc. ID 3586-23975 (The Notifying Parties' reply to the Commission's request for information RFI 18, M.10078 Cargotec Konecranes RFI 18-00343107.pptx), slide 30.

¹⁸³⁸ Doc. ID 4278, Minutes of a call with a competitor, 23 August 2021.

¹⁸³⁹ Doc. ID 4654, Submission by a competitor, 22 November 2021.

¹⁸⁴⁰ Doc. ID 4654, Submission by a competitor, 22 November 2021.

(1930) It therefore follows that given the importance of strong distribution and after-sales networks in order to compete effectively and across the different regions of the EEA, small EEA market players, like CVS, FTMH, Sany and Uplifting face significant barriers to expand their market presence. It also implies that even Hyster, which is the pre-Transaction market leader in terms of delivered units, is constrained in effectively competing with the Notifying Parties as it has an inferior distribution and after-sales network than those of the Notifying Parties.

(C.iii) Customers' quality and reputation requirements constitute barriers to entry and expansion

(1931) **First**, as explained in Section 7.4.2.1 (B), quality requirements of customers, including product ranges, constitute a barrier to entry and expansion.

(1932) In this context, when assessing the vehicle quality offered by suppliers of empty container handlers currently active in the EEA, customers clearly consider that the Notifying Parties' offer the highest quality vehicles. The leader in this respect is Cargotec, followed by Konecranes and then Hyster. Sany's products are considered as being significantly inferior to those of the Notifying Parties in terms of quality.¹⁸⁴¹

(1933) With respect to product ranges, smaller product range constitutes a barrier to expansion, as competitors are not able to effectively compete for certain customers.

(1934) Competitors responding to the market investigation submit that having a broad product range is among the essential factors for a new entry into the EEA market for empty container handlers.¹⁸⁴² The majority of competitors also submits that it is somewhat or even very difficult for a company seeking to enter the EEA market for empty container handlers to achieve a broad product range.¹⁸⁴³

(1935) **Second**, as explained in Section 7.4.2.1 (B) customers' requirements concerning brand reputation constitute a barrier to entry and expansion. These requirements clearly grant the incumbent suppliers in the EEA market for empty container handlers a significant competitive advantage due to their established reputation.

(1936) When assessing the brand reputation of the currently active suppliers of empty container handlers in the EEA, customers clearly consider the Notifying Parties' to have the best brand reputation. In view of this criterion, Cargotec is in the lead, followed by Konecranes, and then Hyster. Other EEA suppliers like CVS and Sany are considered as being significantly inferior to the Notifying Parties in terms of brand reputation.¹⁸⁴⁴ The fact that some companies, which already have had supplies in the EEA, are named by only few customers (and when named, are given low brand reputation ratings), further shows that these companies do not have a well-established brand reputation among customers.

(1937) Among the existing competitors in the EEA mobile equipment markets, in particular Sany appears to have reputation problems and as a consequence is likely constrained in its ability to expand its presence. A market participant explains in relation to Sany: "*Chinese players are perceived as offering equipment of lower quality*", "*Sany is*

¹⁸⁴¹ Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 14.2.

¹⁸⁴² Responses to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 87.2.

¹⁸⁴³ Responses to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 88.2.

¹⁸⁴⁴ Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 14.2.

*facing difficulties to compete with the Parties, as it does not have an established reputation in European markets”.*¹⁸⁴⁵

- (1938) In view of the above, the Commission finds that customers’ requirements with respect to quality, product range and reputation constitute barriers to entry and expansion in the EEA market for empty container handlers. The Notifying Parties’ strength with respect to these factors make the market entry and expansion even more difficult.

(C.iv) Regulatory requirements constitute a barrier to entry and expansion

- (1939) As explained in Section 7.4.2.1 (B), difficulties for suppliers of empty container handlers to address differences in the regulatory environment also constitute a barrier to entry. The insignificant presence of Sany in the EEA market and the fact that Taylor is concerned by the significant cost it has to incur to obtain the necessary certification in order to commercialise its products in the EEA, confirm the competitive advantage, which the active players in the EEA market have over potential new entrants active in other geographic markets.

(D) No entry sufficient in scope and magnitude to constrain the Merged Entity appears likely

- (1940) In view of the significant barriers to entry and based on the evidence available to the Commission concerning entry ambitions, no entry sufficient in scope and magnitude to constrain the Merged Entity is likely to take place in the next two-three years.

(D.i) No companies with specific entry plans sufficient in scope and magnitude to constrain the Merged Entity

- (1941) In reply to the Commission’s questionnaire sent to the Notifying Parties’ competitors in the EEA market for empty container handlers, as identified by the Notifying Parties, three companies respond that currently they are not active in the EEA market for empty container handlers but plan to enter the market in the next two-three years. These companies are: Loadstar, Uplifting and Taylor.¹⁸⁴⁶

- (1942) It appears, however, that either at present, these companies do not have specific entry plans or the scope and magnitude of their entry in the EEA market are unlikely to be sufficient to constrain the Merged Entity.

- (1943) **First**, Loadstar is an Indian company which is engaged in “design, manufacture, and supply of state-of-the-art Container-Handling Equipment like Reach Stackers for Loaded Container- (45 Tonnes) handling, Side-Lift Trucks for Empty Container- (8 Tonnes) handling, and Medium- and Heavy-Duty Forklifts in the 12 to 35 Tonnes capacity range”.¹⁸⁴⁷

- (1944) The Commission refers to Recital (1572) for the description of Cargotec’s interactions with Loadstar.

- (1945) Loadstar is not named by any customer as a potential entrant into the EEA.¹⁸⁴⁸

- (1946) In any case, any attempted entry would be made difficult by the significant entry barriers described above in Section 7.4.2.1 (B). This is also acknowledged by

¹⁸⁴⁵ Doc. ID 502, Minutes of a call with a distributor, 14 April 2021.

¹⁸⁴⁶ Responses to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 84.2.

¹⁸⁴⁷ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 1.

¹⁸⁴⁸ See responses to Q2 – Questionnaire to Customers, Doc. ID 3153, and to Q6 – Questionnaire Customers of mobile equipment, Doc. ID 3607.

Loadstar itself. For example, the company explains: “*We currently supply mobile equipment per Indian Standards. As EU regulations are generally stricter, we may have challenges to supply mobile equipment*”.¹⁸⁴⁹ The Company further submits that differences in customer preferences make it difficult/costly to supply in the EEA.¹⁸⁵⁰ The Company also says that “[a]s we are remotely located in India, it is very important to have an excellent local service/after-sales entity, either directly owned or through association, in the EEA”¹⁸⁵¹ and that “*significant amount of time, investment, & manpower will be required to establish a presence [in the EEA]*”.¹⁸⁵² It further clarifies: “*We will have to invest significant amounts to establish a distribution and service network in the EEA*”.¹⁸⁵³

- (1947) The Company also expects that the Proposed Transaction would further increase barriers to entry in the EEA: ‘If there is a merger between the Parties, we can expect further barriers through higher input costs dictated by the large merged entity. This will affect our price competitiveness in the EEA markets’.¹⁸⁵⁴
- (1948) Therefore, an entry by Loadstar into the EEA market for empty container handlers in the next 2-3 years does not appear likely, and in any case is not likely to be sufficient in scope and magnitude to constrain the Merged Entity.
- (1949) **Second**, Uplifting is a Spanish company and describes itself as a manufacturer of reach stackers and forklift trucks.¹⁸⁵⁵ This company therefore is already active in EEA markets for mobile equipment (and it is also included in the Commission’s market reconstruction of the EEA empty container handler market). This company is therefore not a potential or likely entrant.
- (1950) In any event, as explained in Section 7.4.2.1 (A.viii) this company is considered to be “*a brand of second / third level*”. No customer explaining its last purchase of empty container handlers indicates that this company submitted a bid.¹⁸⁵⁶ In an internal email, a sales director of Konecranes states the following with respect to this company: “*It’s a Spanish company but we don’t consider them as competition in Europe. They only sell a few machines every year*”.¹⁸⁵⁷
- (1951) Therefore, Uplifting is not a potential entrant into the EEA market for empty container handlers, nor a significant competitive constraint to the Notifying Parties.
- (1952) **Third**, Taylor is a US-based manufacturer of mobile equipment.
- (1953) The Company explains that it is “not currently selling in the EEA today but plan on a presence there in the future. There would be a time at some point either through acquisition or organically that we would consider producing and supplying in the EEA and the price going up would help but there would be other determining factors”.¹⁸⁵⁸

¹⁸⁴⁹ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 75.1.

¹⁸⁵⁰ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 76.

¹⁸⁵¹ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 78.2.1.

¹⁸⁵² Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 79.2.1.

¹⁸⁵³ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 84.2.1.

¹⁸⁵⁴ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 88.1.1.

¹⁸⁵⁵ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 1.

¹⁸⁵⁶ See Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 15.2.

¹⁸⁵⁷ Doc. ID 3594-57552 (The Notifying Parties’ reply to the Commission’s request for information RFI 18, M.10078 Cargotec Konecranes RFI 18-01218532 msg).

¹⁸⁵⁸ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 68.1.

- (1954) The company further explains that differences in regulations make it difficult and costly to supply inside the EEA,¹⁸⁵⁹ and specifically explains that “*the CE stamp certification is the main one for us*”.¹⁸⁶⁰ The company further submits that differences in customer preferences would make it difficult and costly to supply inside the EEA.¹⁸⁶¹ The company further submits that having a local after-sales presence is very important to successfully sell empty container handlers in a certain region.¹⁸⁶² For companies seeking to enter the EEA market for empty container handlers, Taylor deems that it is difficult to establish a local distribution and after-sales network in the EEA.¹⁸⁶³ Overall the Company submits in reply to the question what costs and time would be required to enter the EEA market for empty container handlers: ‘*It is a monumental task because of the two major players konecrane and kalmar. jointly it would be a monopoly in my opinion*’.¹⁸⁶⁴
- (1955) For other details concerning the difficulties that Taylor considers with respect to entering the EEA market for empty container handlers, the Commission refers to Recital (1910).
- (1956) Therefore, in the next 2-3 years an entry into the EEA market for empty container handlers on the part of Taylor that will be sufficient in scope and magnitude to constrain the Merged Entity does not appear likely.
- (1957) Therefore, market entry by those companies, which, in response to the Commission’s questionnaire, submitted that they plan to enter the EEA market for empty container handlers in the next 2-3 years appears either unlikely or insufficient in scope and magnitude to constrain the Merged Entity.
- (D.ii) *Potential entrants identified by the Notifying Parties are largely unknown to customers and distributors*
- (1958) The Notifying Parties have provided a list of companies, which they consider as likely entrants in the EEA markets for mobile equipment.¹⁸⁶⁵ These companies are largely unknown to customers and distributors. In two cases, customers indicate that they have purchased equipment from these companies for EEA operations (though in these two cases – Heli and Toyota/Hoist – this likely relates to sales of low capacity forklifts). Only in one case, two customers expect to source mobile equipment in the next 2-3 years from one of the companies identified as likely entrants by the Notifying Parties.¹⁸⁶⁶ Distributors provide a very similar response.¹⁸⁶⁷
- (1959) While some customers explain that they expect new entrants in the EEA market for empty container handlers in the next 2-3 years (e.g. stating that they expect ‘*Chinese*’, or ‘*ZPMC and Chinese producers*’), other customers submit that they do not expect market entry.¹⁸⁶⁸
- (1960) Generally, customers submit that they are not inclined to start purchasing empty container handlers from manufacturers that are not yet established in the EEA. The

¹⁸⁵⁹ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 75.

¹⁸⁶⁰ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 75.1.

¹⁸⁶¹ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 76.

¹⁸⁶² Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 78.2.

¹⁸⁶³ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 88.2.

¹⁸⁶⁴ Response to Q1 – Questionnaire to Competitors, Doc. ID 3154, question E.C.B.3.2.

¹⁸⁶⁵ Reply to Request for information RFI 19, question 9b (RFI 19 Annex Q9).

¹⁸⁶⁶ Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 27.

¹⁸⁶⁷ Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 26.

¹⁸⁶⁸ Responses to Q2 – Questionnaire to Customers, Doc. ID 3153, question E.C.B.1.2.

large majority of customers expressing their view submit that when prices in the EEA had increased they did not try to purchase empty container handlers from a supplier that at that time was not yet established in the EEA.¹⁸⁶⁹ In this context a customer explains that *‘[t]he local factor is very important for us and in general we don't use equipment if we don't know the quality’*.¹⁸⁷⁰ Another customer states: *‘We have a 24/7 operational and must work with reliable equipment/service’*.¹⁸⁷¹

- (1961) In any event, large majorities of customers have not planned to consider buying empty container handlers from suppliers that do not have an established local after-sales network in their region.¹⁸⁷²
- (1962) While in Reply to the SO, the Notifying Parties provided the names of companies which in their view may have entry and expansion plans,¹⁸⁷³ the Notifying Parties were not able to point to any internal document which assesses and/or relates to the potential entry into the EEA market for empty container handlers of these companies.¹⁸⁷⁴ The Notifying Parties acknowledge themselves that they discuss their competitors' development and market activities.¹⁸⁷⁵ Consequently, the fact that the Notifying Parties were not able to point to any documents relating to the market entry of these potential competitors further shows that it cannot be expected such entry to be timely, likely or sufficient to constrain the Merged Entity.
- (1963) ZPMC submits that it “has not yet sold any units [of empty container handlers] in Europe, as clients are not willing to switch suppliers (as they are unfamiliar with the equipment from new suppliers) and the Parties offer a strong service network in Europe for the mobile equipment”.¹⁸⁷⁶
- (1964) Heli, is a company which belongs to the Heli Group and is authorised to act for the territories of Bulgaria, Romania and Serbia only.¹⁸⁷⁷
- (1965) Companies like Liebherr, Hyundai, Mitsubishi have explicitly stated that they do not produce empty container handlers or that do not have expertise to answer questions of the Commission related to these products as they do not conduct any empty container handlers business in EEA.¹⁸⁷⁸ Other companies, such as Doosan, which are not active in the empty container handlers market, have not provided replies to questions of the Commission related to the empty container handlers market.¹⁸⁷⁹ Komatsu is also not producing empty container handlers.¹⁸⁸⁰

¹⁸⁶⁹ Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 17.2.

¹⁸⁷⁰ Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 17.2.1.

¹⁸⁷¹ Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 17.2.1.

¹⁸⁷² See Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, questions 10.2 and 11.2.

¹⁸⁷³ Reply to the SO, paragraphs 1039, 1047 and 1049.

¹⁸⁷⁴ Reply to request for information RFI 37, reply to question 7.

¹⁸⁷⁵ Doc. ID 3669-048849 (The Parties' reply to the Commission's request for information RFI 17, US_PRIV_CAR-VEH-00000041_ocr).

¹⁸⁷⁶ Doc. ID 1779, Minutes of call with a competitor, 23 April 2021.

¹⁸⁷⁷ Doc. ID 4704, <http://www.heliromania.ro/en/content/about>, last accessed on 29 November 2021.

¹⁸⁷⁸ Responses to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 78.2.1.

¹⁸⁷⁹ Responses to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, questions 1 and 79.1.1.

¹⁸⁸⁰ Doc. ID 4705, <https://www.komatsu.eu/en>, last accessed on 29 November 2021.

- (1966) The Notifying Parties submit that Camblift ‘may expand its product portfolio and start supplying empty container handlers in Europe’.¹⁸⁸¹ While Camblift has confirmed that “[i]t cannot be excluded that, together with reach stackers, the Company will start producing other material handling equipment such as forklifts and empty container handlers in the future”, it has also explicitly underlined that “[a]s a small company however, Camblift sees the need to concentrate on only one product initially”.¹⁸⁸² The Notifying Parties further state that as Camblift was only founded in 2019 and already developed a reach stacker ‘within a relatively short timeframe’, ‘it could credibly add empty container handlers in a short timeframe, likely less than 2-3 years’.¹⁸⁸³ Camblift is however yet to even deliver its first reach stacker – the product for the supply of which the company was founded. It therefore cannot be considered likely that the company will enter the EEA empty container handler market in the foreseeable future – and in any case (as in the case with reach stackers), not to do so in a scope and scale sufficient to effectively constrain the main remaining incumbents on the EEA empty container handler market post-Transaction (the Merged Entity and Hyster).
- (1967) In addition to the companies considered above which the Notifying Parties submitted as potential entrants, the Notifying Parties have in response to the SO named further companies they consider as potential entrants into the EEA empty container handler market, namely construction equipment makers such as Caterpillar, John Deere, Ljungby Maskin and Volvo Construction Equipment.¹⁸⁸⁴ Aside of the barriers to entry considered in this Section 7.4.2.4, no market participants considered these companies as likely entrants in response to the Commissions market investigation.
- (1968) Therefore, overall, the potential entrants identified by the Notifying Parties are largely unknown to customers and distributors – and customers do not have plans to start sourcing from them for EEA operations. In any case, customers appear not to be inclined to start purchasing empty container handlers for use in the EEA from suppliers which are not yet established in the EEA.
- (D.iii) The Notifying Parties internally do not track immediate and specific plans of entry into the EEA market for empty container handlers*
- (1969) The Notifying Parties internally do not track immediate and specific plans of entry into the EEA market. For detailed argumentation on this point, the Commission refers to Section 7.4.1.3 (F.iii). With respect to empty container handlers, the Commission again points out that the Chinese supplier Sany as of October 2021 had not obtained yet the necessary CE certification to commercialise certain model types of its products in the EEA, in particular those that can be brought to the European market from January 2022. Its electric empty container handlers are undergoing testing in China. Since 2014, Sany has had only minor sales of empty container handlers in the EEA.
- (E) Conclusions
- (1970) For the reasons set out above, the Commission considers that significant barriers to entry and expansion exist in the EEA market for empty container handlers. No entry on significant scale has occurred over the past ten years; instead, the market has consolidated further. Future entry and expansion are made difficult by the need for

¹⁸⁸¹ Reply to the SO, paragraph 1046.

¹⁸⁸² Doc. ID 3788, Minutes of call with a competitor, 18 August 2021.

¹⁸⁸³ Reply to the Letter of Facts, paragraph 132.

¹⁸⁸⁴ Reply to the SO, paragraph 1039.

European assembly presence, compliance with regulatory requirements, the need for a local distribution and after-sales network, the benefit the incumbents have in terms of their brand reputation, the customers' requirements with respect to product quality. No specific and timely entry or expansion plans appear to exist that would be sufficient in scope and magnitude to effectively constrain the Merged Entity.

- 7.4.2.5. The Transaction is to lead to a reduction of competitive pressure on the Notifying Parties' remaining competitors, which are unlikely to effectively constrain the Merged Entity
- (1971) Post-Transaction, customers in the EEA market will have fewer alternatives to procure empty container handlers.
- (1972) The highly concentrated EEA market for empty container handlers (expressed in the HHI values), the high barriers to entry and expansion and the large market share of the Merged Entity post-Transaction, suggest that the presence of the Notifying Parties' competitors is not likely to counteract the reduction of alternatives resulting from the merger of the Notifying Parties.
- (1973) Customers' ability to credibly threaten to switch away from the Merged Entity is very limited, due to competitors' weaker position in relation to key customer purchase criteria, such as brand reputation, vehicle quality, product range, distribution and after-sales network.
- (1974) The Transaction is also likely to reduce the competitive pressure on the remaining competitors of the Merged Entity. Post-Transaction, the incentive for the Merged Entity to compete and price aggressively will be reduced. This will also limit the need for competitors to compete and price aggressively. Faced with a windfall increase in their demand, competitors will have the ability and incentive to raise profitably their prices.
- (A) The Notifying Parties are the strongest suppliers of empty container handlers in the EEA according to key customer purchase criteria
- (1975) The Notifying Parties are the strongest suppliers of empty container handlers in the EEA according to key customer purchase criteria.
- (1976) As discussed in Sections 7.4.2.3 and 7.4.2.4, customers consider vehicle quality, distribution and after-sales networks, product range, brand reputation and experience to be important purchase criteria. With respect to all these parameters, customers and distributors deem Cargotec and Konecranes to be particularly strong players in the EEA. On some of these criteria, some competitors consider Hyster, which is the pre-Transaction market leader in terms of delivered units, to have slight precedence over Konecranes. When excluding Hyster's ranking of its own company, then the ranking of Hyster's strength on these criteria is commensurate with that of Konecranes and the latter is clearly considered to be a stronger supplier in terms of after-sales service network.¹⁸⁸⁵
- (1977) An internal presentation shows that Cargotec considers parameters such as [internal document reference]. Cargotec evidently also considers itself to be in a strong

¹⁸⁸⁵ See e.g. Responses to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 82.2, Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 14.2, Responses to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 19.2.

position to meet these customer criteria, by listing as its own competitive advantages for example: [internal document reference].¹⁸⁸⁶

- (1978) Similarly, Konecranes in an internal document describes [internal document reference].¹⁸⁸⁷
- (1979) Therefore, in order to be able to effectively constrain the Merged Entity post-Transaction, competitors of the Notifying Parties would need to be able to rival the Notifying Parties on the key purchase criteria that are important for customers. Otherwise, customers would be limited in their ability to switch (or credibly threaten to switch) away from the Merged Entity.
- (B) Customers submit that switching supplier would be difficult if the Merged Entity were to increase prices
- (1980) Customers submit that switching suppliers would be difficult if the Merged Entity were to increase prices for empty container handlers in the EEA post-Transaction.
- (1981) Switching is difficult due to the fact that only a limited number of suppliers is active in the EEA market for empty container handlers (as discussed in Section 7.4.2.1). With only one large player post-Transaction left to compete with the Merged Entity in a duopolistic market setting, customers' ability to threaten to switch away from the Merged Entity is inherently limited. When asked how difficult they would consider it to switch supplier of empty container handlers if the Merged Entity were to increase its prices in the EEA post-Transaction, a majority of customers expressing an opinion consider it very difficult or somewhat difficult.¹⁸⁸⁸ For a summary of customers' views the Commission refers to Recitals (1619)-(1621).¹⁸⁸⁹
- (1982) With respect to Hyster, which pre-Transaction is the market leader in terms of delivered units, a distributor active in Spain describes customers' limited switching ability by submitting that *'[f]inal customers of mobile container handling equipment have a reason to be concerned about the proposed merger. There are many instances where [the Company] in Spain only faces Kalmar in the supply of equipment, and in most cases the only competition in the market are Kalmar and Konecranes. Customers would lose the ability to generate competition between Kalmar and Konecranes and would need to start sourcing from Hyster, which is a company currently not relied upon by customers'*.¹⁸⁹⁰
- (1983) Another distributor submits that 'Hyster's equipment is however of a lower quality and the Company believes that customers operating with Konecranes or Kalmar equipment would not source from Hyster. The difference of quality can be explained by the lower level of the components used by Hyster in its equipment (e.g., they are using the same type of transmission as the Parties, but use a less advanced iteration of it). In addition, the finishing and welding on Hyster machines is not quite up to the same standard as on the Parties' machines. Overall, while Kalmar's and Konecranes' equipment has a lifespan of approximately 10 years, Hyster's equipment has a lifespan of seven to eight years'.¹⁸⁹¹ This implies that while some customers consider

¹⁸⁸⁶ Reply to Request for information RFI 24, Annex QC7.4., slide 3.

¹⁸⁸⁷ Doc. ID 3585-3887 (The Notifying Parties' reply to the Commission's request for information RFI 18, M.10078 Cargotec Konecranes RFI 18-00267645.pptx), slide 15.

¹⁸⁸⁸ Responses to Q2 – Questionnaire to Customers, Doc. ID 3153, question E.C.A.4.

¹⁸⁸⁹ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question E.C.A.4.1.

¹⁸⁹⁰ Minutes of a call with a distributor, 24 February 2021.

¹⁸⁹¹ Minutes of a call with a distributor, 14 April 2021.

Hyster to be a potential alternative to the Notifying Parties, other customers may not due to quality reservations.

- (1984) Yet another distributor again points to the importance of an effective after-sales network by explaining that ‘[i]n this market, competition occurs at the distribution/sales level. Therefore, by itself the merger does not have a large effect because there are still other competitors that can manufacture heavy-duty forklifts and reach stackers. However, without a significant service network these competitors will not be able to take a large share of the market and the merged entity will clearly stay the market leader’.¹⁸⁹²
- (1985) Customers would therefore be limited in their ability to switch supplier post-Transaction.
- (1986) The Notifying Parties in this context submit that the existence of mixed fleets (i.e. customers that own empty container handlers from more than one supplier) and past instances of switching between suppliers would support the finding that switching by customers is generally easy, or at least a viable option in reaction to a price increase.¹⁸⁹³ First, the existence of mixed fleets and the general ability of (certain) customers to switch is not in itself informative on the question of whether switching would be an effective strategy for customers to avoid a post-Merger price increase by the Merged Entity. If switching and mixed fleets were entirely absent from the empty container handler market, the Proposed Transaction’s potential effect on competition would be very limited (as all existing customers would be looked-in and could not be contested – i.e. there would be no competition between the Notifying Parties pre-Transaction for existing customers. Existing customers are however clearly contested). Switching suppliers is in principle possible for various customers, yet because the Notifying Parties are competing closely in this market, many customers are likely to consider the other Notifying Party when switching away from one of them. This choice would disappear post-Transaction. Further, switching opportunities are limited for many customers, as – as described in this Section 7.4.2.5 (B) – other suppliers of empty container handlers cannot fulfil all their requirements. Therefore, switching is not an effective option for many customers in response to a price increase by the Merged Entity
- (C) Competitors currently present in the EEA market for empty container handlers are limited in their ability to constrain the Merged Entity
- (1987) As explained in Section 7.4.2.1 (A), the competitors currently active in the EEA market for empty container handlers are: Hyster, CVS, Sany, FTMH, Uplifting and Svetruck. All these companies, except to some extent Hyster, are significantly limited in their ability to constrain the Merged Entity post-Transaction. Although Hyster is the pre-Transaction market leader in terms of delivered units, it would also not be a sufficiently strong commercial alternative, as even at present it is lagging behind Cargotec and Konecranes in terms of certain key customer purchase criteria.
- (1988) **First**, very small companies, such as Uplifting, are unlikely to effectively constrain the Merged Entity. On this point, the Commission refers to Section 7.4.2.1 (A.viii) and Recitals (1949)-(1951) for further argumentation.

¹⁸⁹² Minutes of a call with a distributor, 19 April 2021.

¹⁸⁹³ Reply to the SO, paragraphs 1052-1056.

- (1989) **Second**, FTMH is unlikely to be able to effectively constrain the Merged Entity. According to the Commission’s market reconstruction, for 2018-2020 in the EEA the company had very small market share in the range of [0-5]%.
- (1990) In view of key purchase criteria for empty container handlers, customers consider Cargotec and Konecranes to be significantly stronger than FTMH in relation to brand reputation, vehicle quality, product range and after-sales network. Very few customers consider FTMH to belong to the top five players in the EEA market in view of these parameters. Distributors and competitors provide similar responses.¹⁸⁹⁴ The number of customers, which consider that the Notifying Parties rather than FTMH can meet all their requirements with respect to empty container handlers is significantly larger.¹⁸⁹⁵ Internally, the Notifying Parties also do not appear to consider FTMH as a significant competitor in the EEA.
- (1991) For further details and arguments, the Commission refers to Section 7.4.2.1 (A.vi) and Recitals (1638)-(1640) and (1919).
- (1992) **Third**, Sany is unlikely to be able to effectively constrain the Merged Entity. According to the Commission’s market reconstruction, for 2018-2020 in the EEA the company had very small market share in the range of [0-5]%.
- (1993) In view of key purchase criteria for empty container handlers, customers consider Cargotec and Konecranes to be significantly stronger than Sany in relation to brand reputation, vehicle quality, product range and after-sales network. Distributors and Competitors provide similar responses.¹⁸⁹⁶ The number of customers, which consider that the Notifying Parties rather than Sany can meet all their requirements with respect to empty container handlers is significantly larger.¹⁸⁹⁷ Internally, the Notifying Parties also do not appear to consider Sany as a significant competitor in the EEA.
- (1994) The fact that Sany is unlikely to be able to effectively constrain the Merged Entity in the EEA market for empty container handlers is further substantiated in the internal assessment by Kalmar of its empty container handler competitors. For Sany it notes: [internal document reference].¹⁸⁹⁸ This analysis further shows that Sany due to a range of factors where it lags behind Kalmar (quality, after-sales, 2nd hand value, etc.) is unlikely to be able to effectively constrain the Merged Entity.
- (1995) While in the Reply to the SO the Notifying Parties refer to Sany’s sales of mobile equipment in the UK as an indication for its “*growth trajectory*”,¹⁸⁹⁹ Konecranes

¹⁸⁹⁴ See Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 14.2, Responses to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 19.2 and Responses to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 82.2.

¹⁸⁹⁵ Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 18.2.

¹⁸⁹⁶ See Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 14.2, Responses to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 19.2 and Responses to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 82.2.

¹⁸⁹⁷ Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 18.2.

¹⁸⁹⁸ Doc. ID 3660-34424, slide 43 (The Parties’ reply to the Commission’s request for information RFI 17, CAR-KAR-00162270.docx).

¹⁸⁹⁹ Reply to the SO, paragraph 1017 referring to paragraphs 822-823.

internally appears [internal document reference]. Specifically, in an internal Konecranes email [internal document reference].¹⁹⁰⁰

- (1996) The Notifying Parties submit that while market participants may consider the Notifying Parties' to be superior to Sany according to parameters such as brand reputation, vehicle quality, product range and after-sales network, Sany is seen as particularly price competitive.¹⁹⁰¹ Sany is indeed seen as generally having a lower quality, lower price offering than the Notifying Parties – this remains the case, even though Sany is described by some as having improved the quality of its offering.¹⁹⁰² In any case, if a supplier is not able to fulfil customers' requirements, e.g. in relation to local after-sales service, it will likely not be able to secure a sale with a low equipment price.
- (1997) For further details and arguments, the Commission refers to Section 7.4.2.1 (A.vii) and Recitals (1918), (1927), (1936)-(1937) and (1969).
- (1998) **Fourth**, Svetruck is unlikely to be able to effectively constrain the Merged Entity. While the Notifying Parties submit that '*Svetruck has been recognised as a "main player" in the market for empty container handlers*',¹⁹⁰³ according to the Commission's market reconstruction, in the EEA the company had very small market share in the range of [0-5]% for 2018-2020.
- (1999) In view of key purchase criteria for empty container handlers, customers consider Cargotec and Konecranes to be significantly stronger than Svetruck in relation to brand reputation, vehicle quality, product range and after-sales network. Distributors provide similar responses and no competitor has included Svetruck in its ranking of the top five suppliers of empty container handlers in the EEA.¹⁹⁰⁴ The number of customers, which consider that the Notifying Parties rather than Svetruck can meet all their requirements with respect to empty container handlers is significantly larger.¹⁹⁰⁵ In a recent document, in relation to [...], Konecranes notes: [internal document reference].¹⁹⁰⁶
- (2000) With respect to Svetruck, see also Section 7.4.2.1 (A.iv).
- (2001) **Fifth**, CVS Ferrari is unlikely to be able to effectively constrain the Merged Entity. According to the Commission's market reconstruction, for 2018-2020 in the EEA the company had small to moderate market share in the range of [5-10]%.
- (2002) In view of key purchase criteria for empty container handlers, customers consider Cargotec and Konecranes to be significantly stronger than CVS in relation to brand reputation, vehicle quality, product range and after-sales network. Distributors and

¹⁹⁰⁰ Courtesy Translation. The original Swedish reads: [internal document reference]. Doc. ID 3590-10327 (The Parties' reply to the Commission's request for information RFI 18, M.10078 Cargotec Konecranes RFI 18-00182902.msg).

¹⁹⁰¹ Reply to the SO, paragraph 1020.

¹⁹⁰² Reply to the SO, paragraph 1021.

¹⁹⁰³ Reply to the SO, paragraph 1016.

¹⁹⁰⁴ See Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 14.2, Responses to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 19.2 and Responses to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 82.2.

¹⁹⁰⁵ Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 18.2.

¹⁹⁰⁶ Doc. ID 3586-62316 (The Notifying Parties' reply to the Commission's request for information RFI 18, M.10078 Cargotec Konecranes RFI 18-00354050.pptx), slide 7.

competitors provide similar responses.¹⁹⁰⁷ The number of customers, which consider that the Notifying Parties rather than CVS can meet all their requirements with respect to empty container handlers is significantly larger.¹⁹⁰⁸ Internally, the Notifying Parties also do not appear to consider CVS as a significant competitor in the EEA. In a recent document, in relation to [...], Konecranes notes: [internal document reference].¹⁹⁰⁹

- (2003) The Notifying Parties state that the ‘Commission entirely fails to consider price competitiveness as a relevant key criterion for customers’ purchasing decisions which renders its analysis of other suppliers’ – including CVS’ – competitive strength and ability to effectively constrain the Merged Entity incomplete and flawed’.¹⁹¹⁰ However, if a supplier is not able to fulfil customers’ requirements, e.g. in relation to local after-sales service, it will likely not be able to secure a sale with a low equipment price.
- (2004) For further details and arguments, the Commission refers to Section 7.4.2.1 (A.v) and Recitals (1697)-(1705).
- (2005) **Sixth**, Hyster is unlikely to be able to effectively constrain the Merged Entity.
- (2006) According to the Commission’s market reconstruction, Hyster is the pre-Transaction leader in the EEA market for empty container handlers in terms of delivered units with a market share in the range of [30-40]%. In the past ten years, according to the market share estimates provided by the Notifying Parties, Hyster’s market share remained stable in the EEA and even slightly decreased. At the same time, both Notifying Parties have increased their market shares in the EEA market for empty container handlers.
- (2007) In view of key purchase criteria for empty container handlers, customers consider Cargotec to be significantly stronger than Hyster in relation to brand reputation, vehicle quality, product range and after-sales network. Konecranes is also considered to be much stronger on these criteria than Hyster. Distributors provide similar responses. As explained above, on some of these criteria, some competitors consider Hyster to have slight precedence over Konecranes. When eliminating Hyster’s ranking of its own company, then the competitors’ ranking of Hyster’s strength is commensurate with that of Konecranes and the latter is clearly considered to be stronger in terms of its after-sales service network.¹⁹¹¹
- (2008) The number of customers, which consider that each of the Notifying Parties rather than Hyster can meet all their requirements with respect to empty container handlers is significantly larger.¹⁹¹²

¹⁹⁰⁷ See Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 14.2, Responses to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 19.2 and Responses to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 82.2.

¹⁹⁰⁸ Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 18.2.

¹⁹⁰⁹ Doc. ID 3586-62316 (The Notifying Parties’ reply to the Commission’s request for information RFI 18, M.10078 Cargotec Konecranes RFI 18-00354050.pptx), slide 7.

¹⁹¹⁰ Reply to the SO, paragraph 1025.

¹⁹¹¹ See Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 14.2, Responses to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 19.2 and Responses to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 82.2.

¹⁹¹² Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 18.2.

- (2009) Hyster states that ‘[t]he merged entity will have a dominant fleet size and service presence in some countries/regions/ports in the EEA. This will make it more difficult for competitors like Hyster to start/expand supply in these countries with smaller dealers, because one would lack the necessary scale of service capabilities. This issue would be particularly severe in the Nordics, where the Parties’ combined market share across the different mobile equipment product types would be above 60%. Similarly, certain ports around the Mediterranean and some areas in Germany would face a similar concentration’.¹⁹¹³ The company further explains this point by stating that ‘[t]he merged company will have a very dominant position in many geographic area's. Examples are ports in Norway, Sweden, Finland, Denmark. The combined service team size and fleet size will provide a significant hurdle to become competitive’.¹⁹¹⁴
- (2010) A distributor submits: ‘Hyster manufactures equipment with more or less the same standard lifting capacity ranges than the Parties but is more price competitive. Hyster’s equipment is however of a lower quality and the Company believes that customers operating with Konecranes or Kalmar equipment would not source from Hyster. The difference of quality can be explained by the lower level of the components used by Hyster in its equipment (e.g., they are using the same type of transmission as the Parties, but use a less advanced iteration of it). In addition, the finishing and welding on Hyster machines is not quite up to the same standard as on the Parties’ machines. Overall, while Kalmar’s and Konecranes’ equipment has a lifespan of approximately 10 years, Hyster’s equipment has a lifespan of seven to eight years’.¹⁹¹⁵
- (2011) The Notifying Parties internally appear to consider Hyster as one of their main EEA competitors. For example, they benchmark against Hyster in various internal documents.¹⁹¹⁶
- (2012) However, the Notifying Parties internally also discuss limitations in Hyster’s product portfolio and service presence.
- (2013) For example, Cargotec in an internal document compares its empty container handler portfolio against that of Hyster. When discussing Hyster’s presentation of the capabilities of its 11-ton machine, Cargotec notes that the information provided is not correct as [internal document reference].¹⁹¹⁷
- (2014) In an internal presentation, Cargotec [internal document reference].¹⁹¹⁸
- (2015) Konecranes notes with respect to [...] in an internal document [internal document reference]¹⁹¹⁹ [internal document reference].¹⁹²⁰
- (2016) The Notifying Parties submit that Hyster is considered by the Notifying Parties as a main competitor, and that Hyster would not have been able to ‘*reach its position as market leader, should it be unable to perform on these (alleged) key customer criteria*’.¹⁹²¹ In this context it is important to note that Hyster is not ‘unable to

¹⁹¹³ Doc. ID 4278, Minutes of a call with a competitor, 23 August 2021.

¹⁹¹⁴ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 97.1.

¹⁹¹⁵ Doc. ID 502, Minutes of a call with a distributor, 14 April 2021.

¹⁹¹⁶ See e.g. Reply to Request for information RFI 24, Annex QC7.8.

¹⁹¹⁷ Reply to Request for information RFI 24, Annex QC7.8, slide 16.

¹⁹¹⁸ Reply to Request for information RFI 24, Annex QC7.8, slide 32.

¹⁹¹⁹ [...].

¹⁹²⁰ Form CO, RFI PN7 Annex QK22.1 – Confidential, slide 16.

¹⁹²¹ Reply to the SO, paragraph 1011.

perform' on key purchase criteria, but is considered to perform weaker than the Notifying Parties on some of these criteria. Further, Hyster will continue to be a large competitor to the Merged Entity post-Transaction – the only one in a duopolistic market setting where all other competitors are significantly smaller. The Proposed Transaction is in any case likely to reduce the competitive pressure on Hyster – making it even more unlikely that Hyster will be a sufficiently strong constraint on the Merged Entity post-Transaction (see 7.4.2.5 (D)).

- (2017) Overall, the fact that post-Transaction Hyster, the present market leader and main competitor of the Merged Entity, would not be able to effectively constrain the Merged Entity is also evidenced by Hyster's participation in tenders in competition with the Parties. As indicated by the Parties' internal documents referred to above in Recital (1814), due to weaker service capabilities, [...]. Together with the lower product quality, more distant product range from those of the Notifying Parties, the weaker distribution networks and after-sales services, which Hyster itself considers as a barrier to expand supply, the weaker competitive pressure exercised by Hyster on the Notifying Parties in tenders also shows that post-Transaction Hyster would not be able to respond in a way that would counteract the merger effects and would rather follow a price increase.
- (2018) Therefore, while Hyster will post-Transaction be the only main EEA rival of the Merged Entity, it is unlikely to be able to effectively constrain the Merged Entity post-Transaction. It would have a smaller market share, and is regarded by market participants and the Notifying Parties themselves to lag behind Cargotec and Konecranes with respect to certain key customer purchase criteria, such as brand reputation and previous experience, vehicle quality, product range, distribution and after-sales network, etc. On this basis and in view of the fact that unlike the Notifying Parties, in the past ten years Hyster could not enlarge its presence in the market for empty container handlers, Hyster is unlikely to constitute a sufficiently strong commercial alternative to the Merged Entity.
- (2019) In any case, customers' ability to credibly threaten to switch away from the Merged Entity is limited in a duopolistic market structure.
- (D) The Transaction leads to a reduction of competitive pressure on the remaining competitors
- (2020) As explained above, post-Transaction, the remaining competitors would not be able to constrain effectively the Merged Entity. This is mainly due to their limited or non-expanding market presence and limitations with respect to certain customer key purchase criteria (e.g. distribution and after-sales network, brand reputation, vehicle quality, product range).
- (2021) In addition, the Transaction is likely to reduce the competitive pressure on the remaining competitors of the Merged Entity. As explained above in Section 7.4.2.3 (F) and further below in Section 7.4.2.6 (B), pre-Merger the Notifying Parties compete intensely with each other, also on price. This aggressive competitive behaviour, in which the Notifying Parties in part engage in order to 'beat' each other and gain market share from each other, also acts as a competitive constraint on their competitors currently active in the EEA market for empty container handlers. Post-Transaction, the incentive for the Merged Entity to compete and price aggressively will be reduced. This also limits the need for competitors to compete and price aggressively.

- (2022) Specifically, in case of a price increase by the Merged Entity post-Transaction, competitors of the Merged Entity offering products that at least for some customers are substitutes to the Merged Entity's products, will experience a demand increase. In an oligopolistic competition setting, a player faced with such a windfall increase in its demand has the ability to raise profitably its prices.¹⁹²²
- (2023) In the case of the EEA empty container handlers market, Hyster would be the main remaining competitor to the Merged Entity. While the Notifying Parties appear to offer products that are closer substitutes to each other's than to Hyster's products, the Notifying Parties are nevertheless engaged in significant pre-Transaction competition with Hyster. This is evidenced in the bidding data analysis, submissions from customers, competitors, and the Notifying Parties' internal documents.
- (2024) The bidding data analysis (see Section 7.4.2.3 (B.i)) shows significant loss ratios from Cargotec and Konecranes to Hyster. This diversion implies a likely demand increase for Hyster in case the Merged Entity increases prices. There is a strong probability that in this oligopolistic market Hyster would react to this with a second order price increase: Faced with the windfall increase in its demand, Hyster would face the choice between (i) a market share increase and a profitable price increase, and (ii) a larger market share increase with a less profitable, lower price increase – Hyster would have a greater incentive to pursue option (i). In any case, Hyster's ability to aggressively compete to gain market share following a price increase by the Merged Entity is limited, due to Hyster being considered to offer lower product quality and because Hyster does not have a strong distribution and after-sales network in all regions of the EEA.
- (2025) The Notifying Parties submit that 'there is no basis to automatically assume this price increase [by Hyster] would be significant[, as o]ther factors, such as buyers' negotiating power and how buyers organise competition between suppliers, also influence the extent to which the firm will be able to increase its price'.¹⁹²³ It has to be noted that in the context of the EEA empty container handler market – which post-Transaction will have a duopolistic market structure with only the Merged Entity and Hyster remaining as large competitors, the ability of buyers to organise competition between suppliers will be significantly limited.
- (2026) Further, the Notifying Parties state that the assessment of a likely second order price increase by Hyster is '*outright contradictory*' to the finding '*that Hyster would be limited in its ability to constrain the Merged Entity and that customers would be limited in their ability to switch*'.¹⁹²⁴ As explained in detail above (e.g. in Sections 7.4.2.3 and 7.4.2.5), Hyster is indeed trailing the Notifying Parties according to certain key customer purchase criteria – and therefore will be limited in its ability to effectively constrain the Merged Entity post-Transaction. Put simply, some customers will not consider Hyster (and its products) as an adequate substitute to the Notifying Parties' (and their products). However, (and as explained e.g. in Section 7.4.2.3 (B.i)), there is significant bidding interaction between the Notifying Parties and Hyster pre-Transaction (as evidently certain customers do consider Hyster's products as substitutes to the Notifying Parties'). Therefore, the finding that a second order price increase by Hyster is likely, is not in contradiction to the finding that Hyster's ability to constrain the Merged Entity post-Transaction is limited.

¹⁹²² Horizontal Merger Guidelines, paragraph 24.

¹⁹²³ Reply to the Letter of Facts, paragraphs 138-139.

¹⁹²⁴ Reply to the Letter of Facts, paragraph 140.

(2027) Customers responding to the Commission's market investigation report tender events in which only the Notifying Parties and Hyster (and in some cases few others) participated.¹⁹²⁵ Competitors also confirm this view.¹⁹²⁶ Similar instances are reported in the Notifying Parties' internal documents (see e.g. Section 7.4.2.3 (B.ii)). In these specific cases of oligopolistic competition, following a post-Transaction price increase by the Merged Entity, Hyster would find it profitable to increase its own prices as well.

(2028) Therefore, the Transaction is likely to lead to a reduction of competitive pressure on the remaining competitors.

(E) Conclusion

(2029) In view of the above, the Commission considers that post-Transaction, competitors of the Notifying Parties in the EEA market for empty container handlers are unlikely to be able to constrain effectively the Merged Entity. The Merged Entity would have large combined market share of almost 50% in an essentially duopolistic market formed by the Merged Entity and by only one other relevant competitor. Customers' ability to threaten credibly to switch away from the Merged Entity is very limited, due to the smaller competitors' weak positions in relation to certain key customer purchase criteria (such as brand reputation, vehicle quality and previous experience, product range, distribution and after-sales network, etc.). Even Hyster, the other large supplier of empty container handlers in the EEA post-Transaction, would not be an effective alternative for various customers, as at present, it is also lagging behind Cargotec and Konecranes in terms of certain key customer purchase criteria. In those circumstances, the Transaction is likely to lead to a reduction of competitive pressure on the Notifying Parties' remaining competitors, principally on Hyster, whose need to compete and price aggressively will decrease. Faced with a windfall increase in their demand (as at least some customers may turn to the products offered by the Notifying Parties' remaining competitors notwithstanding their weaker distribution and service networks, as well as product ranges), competitors will have the ability and incentive to raise profitably their prices.

7.4.2.6. The Transaction is likely to have a negative impact on the EEA empty container handlers market and lead to higher prices

(2030) The Transaction is likely to have a negative impact on the EEA market for empty container handlers, by significantly reducing competition, leading to higher prices and increasing barriers to entry and expansion. As explained in Sections from 7.4.2.1 to 7.4.2.5, the Transaction would lead to a duopolistic market structure, where the Merged Entity would be the market leader with a market share of [50-60]%, followed by one other large competitor (Hyster) and a fringe of few significantly smaller players. The Transaction would remove competition between the Notifying Parties that pre-Transaction compete particularly closely and intensely. Neither new entrants nor existing competitors are likely to be able to constrain the Merged Entity.

(2031) Market participants also appear to expect the Transaction to lead to a negative impact and higher prices in the EEA market. Pre-Transaction pricing strategies of the Notifying Parties also suggest that a price increase is likely.

¹⁹²⁵ Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 15.2.

¹⁹²⁶ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 81.2.

- (A) Market participants expect the Transaction to lead to a negative impact and higher prices
- (2032) Market participants expect the Transaction to lead to a negative impact and higher prices. The Notifying Parties submit however that the Commission is merely *‘quoting selectively from responses to the market investigation and internal documents in order to create the impression that a consensus exists among market participants that the Merged Entity will increase prices and harm customers in other ways’* and that this *‘disregards the views of many customers and competitors who have said that they expect that the Proposed Transaction would be unlikely to have negative effects (or have been neutral on the matter), thus providing clear and ample evidence to the contrary’*.¹⁹²⁷ Indeed some market participants do not expect the Proposed Transaction to a negative impact on competition and higher prices. This may be the case because a larger number of suppliers can address their specific empty container handler requirements, or because empty container handlers are only a minor part of their container handling equipment needs (this is for example the case for certain very large GTOs). However, as explained in further detail in this Section 7.4.2.6 (A), a significant number of customers, as well as various other market participants, expect the Proposed Transaction to lead to price increases in the EEA empty container handler market.
- (2033) **First**, customers expect the Transaction to lead to a negative impact and higher prices in the EEA market for empty container handlers.
- (2034) A significant number of customers responding to the market investigation expect that the Proposed Transaction would lead to price increases in the EEA market for empty container handlers.¹⁹²⁸
- (2035) While one customer submits that “European manufacturers, plus Asian competitors with a larger and increasing presence, will lead to maintain similar prices”¹⁹²⁹ and another customer states that “[t]he future trade volumes, global and local economy, COVID recovery, etc. and the number of alternative Parties active in the market are all factors contributing to equipment prices which we consider will outweigh any price increases that the merged entity may try to introduce”,¹⁹³⁰ other customers describe their concerns about the impact of the Transaction.
- (2036) For example, a customer explains that price increase “is the main concern of users of this type of equipment like us”.¹⁹³¹ Another customer submits that “[t]he merged entity would very well know, their position in the market. Why should they not try to maximise their profit? We already see in the current situation, that it is very difficult to negotiate a different price”.¹⁹³² A further customer states “Cargotec and Konecrane are both with strong market position. If the merger will be made on market there will be one strong supplier less”.¹⁹³³

¹⁹²⁷ Reply to the SO, paragraph 1220.

¹⁹²⁸ Responses to Q2 – Questionnaire to Customers, Doc. ID 3153, question E.D.1. and Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 29.2.

¹⁹²⁹ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question E.D.1.1.

¹⁹³⁰ Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 29.2.1.

¹⁹³¹ Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 29.2.1.

¹⁹³² Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question E.D.1.1.

¹⁹³³ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question E.D.1.1.

- (2037) Another customer states that “as a result of the proposed Transaction, [the Company] expects prices to increase for mobile container handling equipment and maintenance services (in particular reach stackers). OEMs know the situation in which customers such as [the Company] are and would likely increase prices given customers’ dependency on the very limited number of remaining suppliers”.¹⁹³⁴
- (2038) Another customer submits: “The unification of the two manufacturers can only lead to an impoverishment of the market. A kind of monopoly position will even emerge locally because the competition cannot offer service and spare parts supply everywhere. Experience shows that a monopoly position of a company (local) and a general impoverishment of the market undoubtedly reduce the urge and the need to innovate. With regard to the price policy of the combined company, it is likely that prices will at least remain stable due to the synergy effect. afterwards, however, it should be added that the prices for the products will rise more extremely because the opposite pole is missing with regard to a large part of the products”.¹⁹³⁵ A further customer states: “Hyster still in the loop, probably prices will increase”.¹⁹³⁶
- (2039) Some customers consider that the Transaction could lead to an increase in innovation, while others expect no change or a decrease in innovation.¹⁹³⁷ For example, while one customer states: “*Hopefully the innovation would increase due to the merger assuming the R&D departments of the merging companies will start sharing knowledge*”,¹⁹³⁸ another customer submits: “*You could think that joint development departments have the potential for more innovation – but it's the opposite, the lack of competition leads to less innovation*”.¹⁹³⁹ Another customer submits: “*Competition stimulates business. The less competition in the market, the less the need to innovate*”.¹⁹⁴⁰
- (2040) Some customers consider that the Proposed Transaction would lead to an increase in after-sales prices, while others expect no change.¹⁹⁴¹ For example, while one customer submits: “*We believe that will not have any major impact at the labor and spare parts cost at the after-sale services*”,¹⁹⁴² another customer expects “*higher spare parts prices. Maybe higher service costs, when Kalmar takes over the service for all Kalmar + Konecranes SMV equipment. (Konecranes currently handles the service through a dealer network)*”.¹⁹⁴³
- (2041) More broadly, customers overall expect a negative impact as a consequence of the Proposed Transaction. For example a customer states: “*We lose one of only a few suppliers. This leads to severe restrictions on free competition with negative*

¹⁹³⁴ Minutes of a call with a customer, 2 March 2021.

¹⁹³⁵ Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 29.2.1.

¹⁹³⁶ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question E.D.1.1.

¹⁹³⁷ Responses to Q2 – Questionnaire to Customers, Doc. ID 3153, question E.D.2. and Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 30.2.

¹⁹³⁸ Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 30.2.1.

¹⁹³⁹ Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 30.2.1.

¹⁹⁴⁰ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question E.D.2.1.

¹⁹⁴¹ Responses to Q2 – Questionnaire to Customers, Doc. ID 3153, question E.D.3. and Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 31.2.

¹⁹⁴² Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 31.2.1.

¹⁹⁴³ Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 31.2.1.

consequences for price and also for the technical development".¹⁹⁴⁴ Another customer with respect to mobile equipment states: "*Cargotec [and] Kone are the two biggest suppliers in the Netherlands. After the merge the competition is gone*".¹⁹⁴⁵ Yet another customer with respect to mobile equipment states that "[t]he possibility to source Equipment, service and aftersales modifications will be affected as there are no European manufacturers around to be able to provide the Service and or Modifications where needed for a compatible price and quality".¹⁹⁴⁶

- (2042) **Second**, competitors expect the Transaction to lead to a negative impact in the EEA market for empty container handlers.
- (2043) Some competitors expect the Transaction to lead to higher prices in the EEA market for empty container handlers.¹⁹⁴⁷
- (2044) While some competitors expect prices not to change or to decrease and explain that "it could go either way. I believe the two would be a monopoly which could increase price or as more asian influence comes in they could combine their economies of scale and lower prices creating an even bigger monopoly",¹⁹⁴⁸ others expect price increases.
- (2045) For example, a competitor explains: "The reduction of the competition and progressively of the diversity of product offering, would inevitably lead to an increase of the price rather than a reduction. To overcome it, it would be necessary that one of the two Sales Channels currently occupied by one of the two merging companies in each market would be set free for one of the players that are currently struggling to enter or establish themselves in that market. That would restore a proper competitive dynamic that would keep price level under control".¹⁹⁴⁹
- (2046) Yet another competitor submits that "[t]he combined volume will create the biggest player in the market (40-50% share) There will be price increases in area's where the new company will be dominant in the service space and there will be really no choice for the customers there. On large global deals the new company can use it's large volume leverage to push out competition when needed. Longer term average price will go up due to reduction of competition in the EEA, estimation on when that will be hitting the market is speculation".¹⁹⁵⁰
- (2047) While some competitors expect innovation to increase or not change as a result of the Transaction, others expect a decrease in innovation.¹⁹⁵¹ For example, one competitor submits that "*to stay market leader, innovation is unavoidable*".¹⁹⁵² In contrast another competitor submits that "[t]his depends on the total spend on R&D of the new company. Generally the total spend in € goes down as R&D teams are merged and double functions are cut. If the new company decides to also rationalize the

¹⁹⁴⁴ Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 28.1.
¹⁹⁴⁵ Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 28.1.
¹⁹⁴⁶ Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 28.1.
¹⁹⁴⁷ Responses to Q1 – Questionnaire to Competitors, Doc. ID 3154, question E.D.1, and Responses to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 94.2.
¹⁹⁴⁸ Response to Q1 – Questionnaire to Competitors, Doc. ID 3154, question E.D.1.1.
¹⁹⁴⁹ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 94.2.1.
¹⁹⁵⁰ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 94.2.1.
¹⁹⁵¹ Responses to Q1 – Questionnaire to Competitors, Doc. ID 3154, question E.D.4, and Responses to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 95.2.
¹⁹⁵² Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 95.2.1.

product line (merge the models of RS, ECH, FLT) a lot of effort will go into that rather than creating new innovative solutions”.¹⁹⁵³

- (2048) Similarly, while some competitors expect no change or a decrease of after-sales prices, others expect after-sales prices to increase as a consequence of the Transaction.¹⁹⁵⁴ One competitor submits that after-sales price increase “*would particularly be true if the merge will not free existing After Sale Service Channels occupied by the merging entities*”.¹⁹⁵⁵ Another competitor states: “*In area's where the fleet size and service team of the combined company is dominant the pricing will go up as there will be no real viable competitors*”.¹⁹⁵⁶ Another competitor explains: “*The price policy of Cargotec and Konecranes are well known and if their profit is reduced on machines it is on the contrary very large on service and spare parts.. Obviously if they merge they will not double their services... They will eliminate a good part of their services and increase their prices because they will have to become bigger and therefore their costs will increase*”.¹⁹⁵⁷
- (2049) More broadly, competitors overall expect a negative impact of the Proposed Transaction – on their own business and on customers of empty container handlers. A competitor submits that “[c]ustomers that today may have two or three effective choices of suppliers of mobile equipment will post-merger have less choice and, depending on their location, be concerned”.¹⁹⁵⁸
- (2050) Some competitors also expect the Transaction to raise barriers to entry and expansion. For example, one company currently not active inside the EEA states: “*Larger market entities tend to have greater market-making ability. We expect that an entry into the EEA may be barred by a large private entity, such as will be formed by the merger*”.¹⁹⁵⁹
- (2051) Another competitor explains that “if they is finally merge, this group will get more than 90% of the container handler market, so we will be facing an Oligopoly where it will be impossible for small companies like us to survive. Such a merger will be the death of the small industry which are manufacturing in Europe”.¹⁹⁶⁰
- (2052) Another competitor states that it “also has concerns with respect to the impact of the proposed transaction on the markets for mobile equipment. The threats to competition in the market for mobile equipment do not lie in the non-availability of alternative producers but in the access to the market for these producers. The Company is very concerned about the merger as it believes that the merged entity might keep two different brands under the same company to artificially keep the sales and service network of both OEMs”. The competitor further explains that “[t]his would block other OEMs from accessing the sales channel of the container handling equipment markets, as it would prevent them from finding serious distributors”.¹⁹⁶¹

¹⁹⁵³ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 95.2.1.

¹⁹⁵⁴ Responses to Q1 – Questionnaire to Competitors, Doc. ID 3154, question E.D.2, and Responses to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 96.2.

¹⁹⁵⁵ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 96.2.1.

¹⁹⁵⁶ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 96.2.1.

¹⁹⁵⁷ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 96.2.1.

¹⁹⁵⁸ Doc. ID 932, Minutes of a call with a competitor, 20 April 2021.

¹⁹⁵⁹ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 97.2.1.

¹⁹⁶⁰ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 97.2.1.

¹⁹⁶¹ Doc. ID 1773, Minutes of a call with a competitor, 3 May 2021.

- (2053) Another competitor explains that it “believes that the proposed transaction might significantly limit competition and increase barriers to entry in the market for mobile equipment”.¹⁹⁶² This is in particular because “[t]he merged entity will have a dominant fleet size and service presence in some countries/regions/ports in the EEA. This will make it more difficult for competitors like [the Company] to start/expand supply in these countries with smaller dealers, because one would lack the necessary scale of service capabilities”.¹⁹⁶³
- (2054) **Third**, also some distributors expect the Transaction to lead to a negative impact and higher prices in the EEA market for empty container handlers.
- (2055) Some distributors expect the Transaction to lead to higher prices in the EEA market for empty container handlers.¹⁹⁶⁴ While one distributor submits that “*this merger will force the other manufacturers to improve the quality of their products and to invest in the extension of the distributors and after sales network*”,¹⁹⁶⁵ another submits that: “*Less competition means higher prices*”.¹⁹⁶⁶ A further distributor states that there is a “*danger of a dominant position after the Merger of Konecranes and Cargotec*”.¹⁹⁶⁷ Another distributor states that “[t]ogether, Konecranes and Cargotec will be the largest and stronger OEM in the world”.¹⁹⁶⁸ Yet another distributor states: “*the merged company will have the most part of the market*”.¹⁹⁶⁹
- (2056) Considering the perspective of customers, a distributor states that “if I put myself in the position of a customer, I would be disappointed that I am forced to make my choice between the new merged company and Hyster”¹⁹⁷⁰ and further that “[t]he customers in Europe would have no choice but to purchase equipment from the merged entity. The Company assumes that this situation would naturally lead to higher prices and worse conditions for customers”.¹⁹⁷¹
- (2057) Similarly, another distributor explains with respect to mobile equipment overall that “[t]he Parties would have around 80% combined market share in mobile equipment. Some customers may switch away, e.g., to Sany, as they prefer not to deal with large suppliers. Nevertheless, the Company is concerned that prices may increase to the detriment of its customers. However, the Company’s customers would continue to rely on the good servicing work that it provides today and, as such, the merger would not have a direct impact on its business (but its customers may face increased prices)”.¹⁹⁷²
- (2058) A significant number of distributors also expect that the Transaction would have a negative impact on the ability of competitors of the Parties in the EEA market for empty container handlers to compete.¹⁹⁷³ While one distributor states that the merger

¹⁹⁶² Doc. ID 4278, Minutes of a call with a competitor, 23 August 2021.

¹⁹⁶³ Doc. ID 4278, Minutes of a call with a competitor, 23 August 2021.

¹⁹⁶⁴ Responses to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 31.2.

¹⁹⁶⁵ Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 31.2.1.

¹⁹⁶⁶ Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 31.2.1.

¹⁹⁶⁷ Courtesy translation. The original German text reads: ‘*Gefahr einer marktbeherrschenden Position nach Fusion von Konecranes und Cargotec*’. Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 31.2.1.

¹⁹⁶⁸ Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 31.2.1.

¹⁹⁶⁹ Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 31.2.1.

¹⁹⁷⁰ Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 35.

¹⁹⁷¹ Doc. ID 502, Minutes of a call with a distributor, 14 April 2021.

¹⁹⁷² Doc. ID 673, Minutes of a call with a distributor, 26 February 2021.

¹⁹⁷³ Responses to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 30.2.

“will clearly force competitors to improve their products”,¹⁹⁷⁴ another distributor states that “[c]ompetitors will have a difficult job to compete with a merged company from that high level”.¹⁹⁷⁵ Another distributor submits that “the merged company will have the most part of the market There will be great disparity between them and other competitors in the market”.¹⁹⁷⁶

- (2059) Further, a significant number of distributors also expect that the Transaction would have a negative impact on their own business¹⁹⁷⁷ and on their ability to compete in the distribution of empty container handlers.¹⁹⁷⁸ While one distributor submits: “On positive side we think they can leverage product development, and as we are a long standing distributor of Kalmar would hope to benefit from this by maintaining/developing our relations as a distributor”,¹⁹⁷⁹ and another distributor states: “We believe that the union of two manufacturers such as Cargotec and Konecranes will improve the positioning of European products against Asian brands and may be favorable for the end user thanks to the synergies and unusual elements of both products, producing higher quality equipment without need to increase prices”,¹⁹⁸⁰ yet another distributor submits: “Besides Konecranes only Cargotec and Hyster is active on our market. Svetruck has a small product line, no reachstackers and low pressence on our market. Sany is not present anymore since some months”.¹⁹⁸¹ Another distributor submits that it is “not sure if the Konecranes brand will be kept active or if all will be branded as Kalmar”.¹⁹⁸² A further distributor states: “Merger will make one huge Producer who has no actual competition”.¹⁹⁸³ Another distributor says that “[t]he merged company will have the most part of the market [and that t]here will be great disparity between them and other competitors in the market”.¹⁹⁸⁴ Another distributor finds that the Transaction would lead to a “concentration of important market participants and the danger of a high pricing power in an oligopoly. The existing business model of [the Company] is endangered”.¹⁹⁸⁵ Yet another distributor states: “Regarding the effect of the proposed merger in Spain (where Kalmar is clearly dominant), [the Company] is concerned that the Cargotec product line and business model (direct to market) will prevail in case of a full merger of brands of the Parties. This would mean that companies like [the Company] (and those with a similar business model) would be pushed out of the market. A similar effect may also occur in other countries”.¹⁹⁸⁶
- (2060) Therefore, overall, most market participants expect the Transaction to lead to a negative impact and higher prices in the EEA market for empty container handlers.

¹⁹⁷⁴ Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 30.2.1.

¹⁹⁷⁵ Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 30.2.1.

¹⁹⁷⁶ Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 30.2.1.

¹⁹⁷⁷ Responses to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 27.

¹⁹⁷⁸ Responses to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 28.2.

¹⁹⁷⁹ Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 27.1.

¹⁹⁸⁰ Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 27.1.

¹⁹⁸¹ Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 27.1.

¹⁹⁸² Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 27.1.

¹⁹⁸³ Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 27.1.

¹⁹⁸⁴ Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 27.1.

¹⁹⁸⁵ Courtesy Translation. The original German text reads: ‘Konzentration wesentlicher Marktteilnehmer sowie Gefahr einer hohen Preissetzungsmacht im Oligopol. Das bestehende Geschäftsmodell [des Unternehmens] ist gefährdet’. Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 27.1.

¹⁹⁸⁶ Doc. ID 261, Minutes of a call with a distributor, 24 February 2021.

- (B) The Notifying Parties' pre-Transaction pricing behaviour suggests a price increase is likely post-Transaction
- (2061) As explained in Section 7.4.2.3, bidding data and tender interactions, internal documents and growth plans of the Notifying Parties, as well as views from market participants indicate that pre-Transaction the Notifying Parties compete particularly closely and intensely in the EEA market for empty container handlers.
- (2062) The Notifying Parties' pre-transaction pricing behaviour suggests that a price increase is likely post-Transaction in the EEA empty container handlers market.
- (2063) Konecranes internally considers [internal document reference].¹⁹⁸⁷ Further, Konecranes considers [internal document reference].¹⁹⁸⁸ In another internal document [internal document reference].¹⁹⁸⁹
- (2064) Cargotec in an internal document considering how to [internal document reference] formulates the strategy to have an [internal document reference] and [internal document reference], and thereby to [internal document reference].¹⁹⁹⁰
- (2065) In another internal Cargotec document considering mobile equipment, Konecranes is said to become in Southern Europe [internal document reference].¹⁹⁹¹
- (2066) In another internal document, Cargotec considers Konecranes to be [internal document reference].¹⁹⁹²
- (2067) It therefore appears that both Notifying Parties pursue aggressive pricing strategies – also vis-à-vis each other.
- (2068) In an internal Kalmar email, it is reported with respect to mobile equipment (of which empty container handlers are a part): [internal document reference]¹⁹⁹³ [internal document reference]. It is further reported that [internal document reference].¹⁹⁹⁴ This further shows that there is significant price competition between the Notifying Parties pre-Transaction.
- (2069) In addition, Kalmar also has the specific strategy with respect to empty container handlers to [internal document reference].¹⁹⁹⁵ This shows that Cargotec uses aggressive pricing to achieve its strategic goal to increase its empty container handler market share.
- (2070) The aggressive pricing behaviour of the Notifying Parties is confirmed by their efforts to win orders for supply of empty container handlers. The evidence discussed above in Recitals (1814)-(1816) point to Cargotec's readiness to reduce the price of

¹⁹⁸⁷ Doc. ID 3586-62316 (The Notifying Parties' reply to the Commission's request for information RFI 18, M.10078 Cargotec Konecranes RFI 18-00354050.pptx), slide 6.

¹⁹⁸⁸ Doc. ID 3586-71912 (The Notifying Parties' reply to the Commission's request for information RFI 18, M.10078 Cargotec Konecranes RFI 18-00349884.pptx), slide 7.

¹⁹⁸⁹ Reply to Request for information RFI 24, Annex QK7.4, slide 30.

¹⁹⁹⁰ Doc. ID 3662-28275 (The Notifying Parties' reply to the Commission's request for information RFI 17, CAR-KAU-00141887.pptx), slides 5 and 6.

¹⁹⁹¹ Doc. ID 3666-857 (The Notifying Parties' reply to the Commission's request for information RFI 17, CAR-PAT-00121990.pptx), slide 4.

¹⁹⁹² Doc. ID 3660-36954 (The Notifying Parties' reply to the Commission's request for information RFI 17, CAR-KAR-00165055.pptx), slide 10.

¹⁹⁹³ KCI = Konecranes

¹⁹⁹⁴ Doc. ID 3739-38037 (The Parties' reply to the Commission's request for information RFI 17, CAR-HEI-00031094 msg).

¹⁹⁹⁵ Doc. ID 3739-16623 (The Notifying Parties' reply to the Commission's request for information RFI 17, CAR-HEI-00035324.pptx), slide 8.

its offers in order to win the orders and eliminate Konecranes. It also shows that by eliminating the aggressive pricing behaviour of the Notifying Parties, the Transaction would also lead to reducing the competitive pressure on the remaining competitors, namely Hyster (see above Section 7.4.2.5 (D)).

- (2071) Therefore, there is significant price competition between the Notifying Parties pre-Merger, which would be lost post-Transaction. In addition, Cargotec has a strategy to try to increase its market share by pricing aggressively. The Proposed Transaction allows Cargotec to grow its market share inorganically instead, without the need to price aggressively against Konecranes. It is therefore likely that the Proposed Transaction will lead to a price increase in the EEA empty container handler market.

(C) The Transaction is likely to reduce the competitive pressure on the remaining competitors which will also contribute to price increase

- (2072) As indicated above, in Section 0, the Transaction is likely to reduce the competitive pressure on the remaining competitors of the Merged Entity in the EEA market for empty container handlers, which will contribute to price increase.

- (2073) Pre-Transaction the Notifying Parties compete intensely with each other, including on price. Post-Transaction, the incentive for the Merged Entity to compete and price aggressively will be reduced. This also limits the need for the Notifying Parties' main remaining competitor, Hyster, to compete and price aggressively, while having the ability and incentive to raise its prices profitably.

- (2074) Since pre-Transaction the Notifying Parties are engaged in significant competition with Hyster, there is a strong probability that in the post-Transaction oligopolistic market, faced with the windfall increase in its demand, Hyster would have a greater incentive to increase profitably its price at the expense of a smaller increase of its market share.

(D) Conclusion

- (2075) Based on the above, the Commission considers that the Transaction is likely to have a negative impact on the EEA market for empty container handlers by significantly reducing competition, leading to higher prices and by increasing barriers to entry and expansion. The Transaction would lead to a duopolistic market structure, where the Merged Entity would be the market leader with a market share of almost [50-60]%. The Transaction would remove competition between the Notifying Parties that pre-Transaction compete closely and intensely. Only one large competitor (Hyster) to the Merged Entity would remain and neither new entrants nor existing smaller competitors are likely to be able to constrain the Merged Entity and Hyster post-Transaction. In addition to eliminating important competitive constraints that the merging parties exert upon each, the Transaction is likely to reduce the competitive pressure on the remaining competitors – in particular also on Hyster, which is likely to have an incentive to increase profitably its price. The Transaction will further limit competitors' ability of entry and expansion. Market participants also appear to expect the Transaction to lead to a negative impact and higher prices in the EEA market for empty container handlers. Further, pre-Transaction pricing strategies of the Notifying Parties also suggest that a price increase is likely.

7.4.2.7. Conclusion

- (2076) For the reasons set out in this Section 7.4.2, the Commission concludes that the Proposed Transaction would significantly impede effective competition in the EEA empty container handlers market, by eliminating important competitive constraints that the Notifying Parties had exerted upon each other and by reducing competitive

pressure on the remaining competitors. The following factors in particular support the finding of the elimination of important competitive constraints:

- (a) The Transaction reduces the number of suppliers with a significant position in the EEA empty container handlers market from three to two, creating a duopolistic market situation. The Merged Entity would be the market leader with a large market share ([50-60]%), with only one other large competitor remaining (Hyster);
 - (b) The Transaction would eliminate competition between the Notifying Parties, which pre-Transaction compete particularly intensely and closely, and which are for many customers two of a very small group of viable suppliers. The one large remaining competitor post-Transaction (Hyster), is a more distant competitor to the Notifying Parties according to certain key purchase criteria. Overall, the Notifying Parties compete as closely, and according to some parameters even closer, as their market shares would suggest;
 - (c) The Merged Entity is unlikely to be constrained by new or existing competitors. The Transaction is likely to reduce competitive pressure on remaining competitors, mainly on Hyster, making a second order price increase likely;
 - (d) The Transaction is likely to have a negative impact on the EEA market for empty container handlers by significantly reducing competition, leading to an increase in prices and by further increasing barriers to entry and expansion.
- (2077) Therefore, the Commission considers that the Transaction would significantly impede effective competition in the EEA empty container handlers market, by eliminating important competitive constraints.

7.4.3. *Heavy-duty forklift trucks (>10 tonne capacity)*

7.4.3.1. The Transaction leads to a very large combined market share in an already concentrated market

(2078) The Transaction will lead to a very large combined market share in the already concentrated EEA market for heavy-duty forklift trucks (>10 tonne capacity).

(A) The Transaction leads to a very large market share, with a very significant increment

(2079) The Transaction would lead to a very large combined market share in the EEA market for heavy-duty forklift trucks (>10 tonne capacity).

(2080) According to market share estimates submitted by the Notifying Parties, shown in Table 33, the Merged Entity would have a 2018-2020¹⁹⁹⁶ combined EEA volume share of [50-60]%.

¹⁹⁹⁶ While the demand for heavy-duty forklift trucks (>10 tonne capacity) is not as lumpy as for example for gantry cranes, it nevertheless appears to be appropriate to consider a multi-year span to accurately account for market participants' market positions, as year-on-year sales do vary.

Table 33 – Form CO: Heavy-duty forklift trucks (>10 tonne capacity) EEA market shares in volume

Heavy-duty forklift trucks (>10 tonne capacity), EEA market shares in volume (units), 2018-2020, Form CO		
	Share	Units
Cargotec	[30-40]%	[...]
Konecranes	[10-20]%	[...]
Parties combined	[50-60]%	[...]
Sany	[0-5]%	[...]
Hyster	[10-20]%	[...]
Svetruck	[10-20]%	[...]
Other Fem ¹⁹⁹⁷	[10-20]%	[...]
Other Jiva (incl. Mitsubishi) ¹⁹⁹⁸	[5-10]%	[...]
Other Kocema ¹⁹⁹⁹	[0-5]%	[...]
Total market	100%	[...]

Source: Form CO, RFI PN2 – Annex – Q5 – Confidential – market shares.

(2081) According to the Commission's market reconstruction,²⁰⁰⁰ shown in Table 34, the Merged Entity would have a 2018-2020 combined EEA volume share of [50-60]% in heavy-duty forklift trucks (>10 tonne capacity).

Table 34 – Market reconstruction: Heavy-duty forklift trucks (>10 tonne capacity) EEA market shares in volume

Heavy-duty forklift trucks (>10 tonne capacity), EEA market shares in volume (units), 2018-2020, market reconstruction		
	Share	Units
Cargotec	[30-40]%	[...]
Konecranes	[10-20]%	[...]
Parties combined	[50-60]%	[...]
Sany	[0-5]%	[...]
Hyster	[20-30]%	[...]
Svetruck	[10-20]%	[...]
Kion (Linde)	[5-10]%	[...]

¹⁹⁹⁷ Fem: European Materials Handling Federation

¹⁹⁹⁸ Jiva: Japan Industrial Vehicles Association

¹⁹⁹⁹ Kocema: Korean Construction Equipment Manufacturers Association

²⁰⁰⁰ The Commission sent requests for EEA sales data for heavy-duty forklift trucks (>10 tonne capacity) to 15 companies and to the two Parties. 13 companies and the two Parties provided replies. For the data for the two companies that could not be obtained (FTMH and CES), estimates provided by the Notifying Parties in Reply to Request for information RFI 35, question 1 were used instead.

Heavy-duty forklift trucks (>10 tonne capacity), EEA market shares in volume (units), 2018-2020, market reconstruction		
	Share	Units
FTMH	[0-5]%	[...]
CVS	[0-5]%	[...]
Doosan	[0-5]%	[...]
Hyundai	[0-5]%	[...]
Total market	100%	[...]

Source: The Commission's market reconstruction.

(2082) Therefore, the Merged Entity is the clear market leader in the EEA market for heavy-duty forklift trucks (>10 tonne capacity). Irrespective of whether data submitted by the Notifying Parties or data from the Commission's market reconstruction is considered, the Merged Entity would have an EEA market share of over 50%.

(2083) According to the Horizontal Merger Guidelines, '*very large market shares – 50% or more – may in themselves be evidence of the existence of a dominant market position*'.²⁰⁰¹ Therefore, while other factors need to be taken into account (e.g. ability of (potential) competitors to effectively constrain the Merged Entity), the Merged Entity's market share of over 50% is an indication for a dominant market position.

(B) Only a limited number of suppliers of heavy-duty forklift trucks (>10 tonne capacity) have a meaningful presence in the EEA

(B.i) *The Notifying Parties' internal documents show that only a limited number of suppliers of heavy-duty forklift trucks (>10 tonne capacity) have a meaningful presence in the EEA*

(2084) The EEA market for heavy-duty forklift trucks (>10 tonne capacity) is characterised by the presence of only a limited number of active suppliers with a meaningful presence. The Notifying Parties attribute 2018-2020 EEA sales to five companies by name, namely Cargotec, Konecranes, Svetruck, Hyster and Sany, as well as to three industry associations.²⁰⁰² In addition to these five companies, the Commission is also aware that Kion, CVS, Doosan and Hyundai, and likely also FTMH²⁰⁰³ have supplied heavy-duty forklift trucks (>10 tonne capacity) in the EEA.

(2085) The Notifying Parties submit that in bidding markets, effective competition is ensured 'if buyers can secure quotes from three or more credible competitors' and that '[m]arket share figures only take into account the activity of the winners of past tenders, but do not show how many credible competitors actually participated as bidders and thus created competitive constraints'.²⁰⁰⁴ As discussed further below in Section 7.4.3.2, customers often have access to only a very limited subset of suppliers of heavy-duty forklift trucks (>10 tonne capacity), far smaller than the overall number of suppliers active in the EEA market.

(2086) The Notifying Parties submit that at 'the European level, the Parties have a relatively strong position but there are a few other competitors with a strong position as well as a few other competitors which have a strong position globally and have recently

²⁰⁰¹ Horizontal Merger Guidelines, paragraph 17.

²⁰⁰² Form CO, RFI PN2 – Annex – Q5 – Confidential – market shares.

²⁰⁰³ See Reply to Request for information RFI 35, question 1.

²⁰⁰⁴ Reply to the SO, paragraph 1113.

expanded into Europe – such as Hyster and Svetruck which are comparable to Konecranes in terms of their market shares’.²⁰⁰⁵ Internally, the Notifying Parties track only a limited number of rivals which they consider to be meaningfully active in Europe. For example, in an internal Cargotec document, only Kalmar, Konecranes, Hyster and Svetruck are named explicitly as having market share in Europe (with an anonymous group of others).²⁰⁰⁶

- (2087) In another internal document (captioned in Figure 130) assessing the competitive landscape with metal industry customers (which are important customers of heavy-duty forklift trucks (>10 tonne capacity)), Cargotec benchmarks itself against Konecranes, Svetruck, Hyster, Kion (Linde) and Hyundai, i.e. a limited number of active suppliers. While the Notifying Parties submit that the document has the headline ‘*wide range of offering*’ and refers to four suppliers in addition to the Notifying Parties,²⁰⁰⁷ the Commission observes that the wide range of offering refers to the fact that some companies considered (such as the Notifying Parties) are seen as high price, high quality players, while other companies (such as e.g. Hyundai) are seen as lower quality, lower price players.

Figure 130: [...]

[...]

Source: [Internal document reference].

- (2088) Konecranes, in an internal document considering [internal document reference].²⁰⁰⁸
- (2089) Further, in a document considering mobile equipment overall, of which heavy-duty forklift trucks (>10 tonne capacity) are a part, Konecranes analyses that [internal document reference].²⁰⁰⁹ [Internal document reference].
- (B.ii) *Introduction to the companies active in heavy-duty forklift trucks (>10 tonne capacity) in the EEA*
- (2090) As discussed in Section 7.4.3.1 (B.i), and as seen in the market share tables, only a limited number of competitors to the Parties are active with a meaningful presence in the supply of heavy-duty forklift trucks (>10 tonne capacity) in the EEA.
- (2091) The following companies have an assigned market share in the Commission’s market reconstruction.
- (2092) **First**, Cargotec (via its business unit Kalmar) is a supplier of mobile equipment, including heavy-duty forklift trucks (>10 tonne capacity). It serves EEA demand for heavy-duty forklift trucks (>10 tonne capacity) from its factory in Stargard, Poland. It has an EEA 2018-2020 heavy-duty forklift trucks market share of [30-40]% according to the data provided by the Notifying Parties, and of [30-40]% according to the market reconstruction. It considers itself to have a [internal document reference].²⁰¹⁰ Market participants consider Cargotec to be a particularly strong

²⁰⁰⁵ Form CO, Chapter 2, paragraph 366.

²⁰⁰⁶ Doc. ID 3708-37230 (The Parties’ reply to the Commission’s request for information RFI 17, CAR-HUL-00036553.pptx), slide 4.

²⁰⁰⁷ Reply to the SO, paragraph 1116.

²⁰⁰⁸ Form CO, Reply to Request to information RFI 7, Annex QK22.2, slide 12.

²⁰⁰⁹ Form CO, Pre-notification RFI 2 – Annex QK89.1, slide 5.

²⁰¹⁰ Doc. ID 3708-11900 (The Parties’ reply to the Commission’s request for information RFI 17, CAR-HUL-00040008.pptx), slide 2.

player in relation to key customer purchase criteria such as brand reputation, vehicle quality, product range, and after-sales network.²⁰¹¹

- (2093) **Second**, Konecranes (via its Lift Trucks business unit) is a supplier of mobile equipment, including heavy-duty forklift trucks (>10 tonne capacity). It serves EEA demand for heavy-duty forklift trucks (>10 tonne capacity) from its factory in Markaryd, Sweden. In addition, it also has a factory in China. It has an EEA 2018-2020 heavy-duty forklift trucks (>10 tonne capacity) market share of [10-20]% according to the data provided by the Notifying Parties, and of [10-20]% according to the market reconstruction. It considers [internal document reference]²⁰¹² [internal document reference].²⁰¹³ Market participants consider Konecranes to be a particularly strong player in relation to key customer purchase criteria such as brand reputation, vehicle quality, product range, and after-sales network.²⁰¹⁴
- (2094) **Third**, Hyster is a US-based manufacturer of mobile equipment (including heavy-duty forklift trucks (>10 tonne capacity)), with a long established production site in the Netherlands (it also has heavy-duty forklift trucks (>10 tonne capacity) producing subsidiaries in e.g. India and China, which largely serve other world regions). It has an EEA heavy-duty forklift trucks (>10 tonne capacity) 2018-2020 market share of [10-20]% according to the data provided by the Notifying Parties, and of [20-30]% according to the market reconstruction. Market participants consider Hyster to be weaker than the Notifying Parties in relation to key customer purchase criteria such as brand reputation and vehicle quality, while Hyster is considered to have a similar position to Konecranes in product range and after-sales network (with Cargotec leading both).²⁰¹⁵
- (2095) **Fourth**, Svetruck is a Swedish manufacturer of certain mobile equipment products (empty container handlers and heavy-duty forklift trucks (>10 tonne capacity)). It has an EEA heavy-duty forklift trucks (>10 tonne capacity) market share of [10-20]% according to the data provided by the Notifying Parties, and of [10-20]% according to the market reconstruction. Significantly more market participants consider the Notifying Parties to be strong players in relation to key customer purchase criteria such as brand reputation, vehicle quality, product range, and after-sales network than those that consider Svetruck to be a strong player in relation to these parameters.²⁰¹⁶
- (2096) **Fifth**, Linde Material Handling is a Chinese-owned (Kion Group) Germany-headquartered manufacturer of material handling equipment, including certain heavy-duty forklift trucks (>10 tonne capacity) (maximum capacity of 18 tonnes). It has an EEA heavy-duty forklift trucks (>10 tonne capacity) market share of [5-10]%

²⁰¹¹ See Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 14.3, Responses to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 19.3 and Responses to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 82.3.

²⁰¹² Doc. ID 3586-81225 (The Parties' reply to the Commission's request for information RFI 18, M.10078 Cargotec Konecranes RFI 18-00351209.docx).

²⁰¹³ Form CO, PN RFI 4, Annex QK4.c.3, slide 15.

²⁰¹⁴ See Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 14.3, Responses to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 19.3 and Responses to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 82.3.

²⁰¹⁵ See Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 14.3, Responses to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 19.3 and Responses to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 82.3.

²⁰¹⁶ See Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 14.3, Responses to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 19.3 and Responses to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 82.3.

according to the market reconstruction. Market participants consider Linde (Kion) to be significantly weaker than the Notifying Parties in relation to key customer purchase criteria such as brand reputation, vehicle quality, product range, and after-sales network.²⁰¹⁷

- (2097) **Sixth**, Sany is a Chinese manufacturer of construction equipment and material handling equipment, including mobile equipment and heavy-duty forklift trucks (>10 tonne capacity). Sany has an assembly facility in Germany. The company has an EEA 2018-2020 heavy-duty forklift trucks (>10 tonne capacity) market share of [0-5]% according to the data provided by the Notifying Parties, and of [0-5]% according to the market reconstruction. Market participants consider Sany to be significantly weaker than the Notifying Parties in relation to key customer purchase criteria such as brand reputation, vehicle quality, product range, and after-sales network.²⁰¹⁸
- (2098) **Seventh**, FTMH is an Italy-based manufacturer of mobile equipment, including heavy-duty forklift trucks (>10 tonne capacity). It was founded by staff of the former mobile equipment manufacturer Fantuzzi, which was acquired by Terex (and in turn Konecranes). The company has an EEA 2018-2020 heavy-duty forklift trucks (>10 tonne capacity) market share of [0-5]% according to the market reconstruction. Market participants consider FTMH to be significantly weaker than the Parties in relation to key customer purchase criteria such as brand reputation, vehicle quality, product range, and after-sales network.²⁰¹⁹
- (2099) **Eighth**, CVS is an Italy-based manufacturer of mobile equipment, including heavy-duty forklift trucks (>10 tonne capacity). It has an EEA 2018-2020 heavy-duty forklift trucks (>10 tonne capacity) market share of [0-5]% according to the market reconstruction. Market participants consider CVS to be significantly weaker than the Parties in relation to key customer purchase criteria such as brand reputation, vehicle quality, product range and after-sales network.²⁰²⁰
- (2100) **Ninth**, Doosan is a Korean manufacturer of construction equipment and of certain mobile equipment (including heavy-duty forklift trucks (>10 tonne capacity)). It has an EEA 2018-2020 heavy-duty forklift trucks (>10 tonne capacity) market share of [0-5]% according to the market reconstruction. Market participants consider Doosan to be significantly weaker than the Parties in relation to key customer purchase criteria such as brand reputation, vehicle quality, product range, and after-sales network.²⁰²¹

²⁰¹⁷ See Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 14.3, Responses to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 19.3 and Responses to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 82.3.

²⁰¹⁸ See Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 14.3, Responses to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 19.3 and Responses to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 82.3.

²⁰¹⁹ See Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 14.3, Responses to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 19.3 and Responses to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 82.3.

²⁰²⁰ See Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 14.3, Responses to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 19.3 and Responses to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 82.3.

²⁰²¹ See Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 14.3, Responses to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 19.3 and Responses to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 82.3.

- (2101) **Tenth**, Hyundai is a Korean manufacturer of construction equipment and of certain mobile equipment (including heavy-duty forklift trucks (>10 tonne capacity)). It has an EEA 2018-2020 heavy-duty forklift trucks (>10 tonne capacity) market share of [0-5]% according to the market reconstruction. Market participants consider Hyundai to be significantly weaker than the Parties in relation to key customer purchase criteria such as brand reputation, vehicle quality, product range and after-sales network.²⁰²²
- (2102) The competitive positions of these companies, and competitors' limitations when compared with Cargotec and Konecranes, are further discussed below – in particular in Section 7.4.3.4.
- (C) The Transaction would lead to a significant increase in concentration in an already concentrated market
- (2103) The Transaction would lead to a significant increase in concentration in an already concentrated EEA market for heavy-duty forklift trucks (>10 tonne capacity).
- (2104) **First**, the Transaction would lead to a very significant market share increment of almost [20-30]% ([10-20]% according to the data provided by the Notifying Parties, [10-20]% according to the Commission's market reconstruction).
- (2105) **Second**, according to the data submitted by the Notifying Parties, the Merged Entity would be around four times as large as the next largest competitor, Svetruck. According to the Commission's market reconstruction, the Merged Entity would be significantly larger than the next largest competitor (Hyster). Further, according to the Commission's market reconstruction, there would only be three competitors to the Merged Entity with a market share of over 5%, Hyster, Svetruck and Kion (Linde). Therefore, the Merged Entity would be significantly larger than any of its rivals in the EEA.
- (2106) **Third**, the relevant HHI values also reflect the very significant increase in concentration and the very limited market position of competitors in contrast to the Merged Entity. Based on data from the Commission's market reconstruction, the EEA market for heavy-duty forklift trucks (>10 tonne capacity) would have a pre-Transaction HHI value of [2000-2500]. Post-Transaction, this concentration would significantly increase. The post-Transaction HHI value for heavy-duty forklift trucks (>10 tonne capacity) would be [3500-4000], with a delta of [1300-1400]. These values are significantly above the thresholds for which the Commission considers that it is unlikely to find competition concerns.²⁰²³ The EEA market for heavy-duty forklift trucks (>10 tonne capacity) was therefore already concentrated pre-Transaction and would be significantly more concentrated post-Transaction.
- (D) The EEA market for heavy-duty forklift trucks (>10 tonne capacity) has consolidated over the past ten years
- (2107) The Notifying Parties submit that the Commission's Article 6(1)(c) Decision 'places undue reliance on (historic) market shares as a solely conclusive indicator of market strength and it fails to take into account the dynamic nature and recent developments of the market'.²⁰²⁴ While the issue of potential entry and expansion by competitors is

²⁰²² See Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 14.3, Responses to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 19.3 and Responses to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 82.3.

²⁰²³ Horizontal Merger Guidelines, paragraphs 19-21.

²⁰²⁴ Response to the Article 6(1)(c) Decision, paragraph 371.

discussed in Section 7.4.3.3, it is clear that also when considering a longer timeframe than the three years from 2018 to 2020, in particular the last ten years, no indications of a dynamic market in which competitors were to gain market share vis-à-vis the Notifying Parties are observable. In fact, according to the data submitted by the Notifying Parties,²⁰²⁵ the market share of Cargotec increased from [20-30]% in 2010 to [30-40]% in 2020, and of Konecranes from [5-10]% in 2010 to [10-20]% in 2020. The Notifying Parties' combined share therewith increased from [30-40]% in 2010 to [50-60]% in 2020. At the same time, the market share of the EEA competitors the Notifying Parties group under 'Other Fem', 'Other Jiva (incl Mitsubishi)' and 'Other Kocema' (i.e. all competitors except for Svetruck, Hyster and Sany) declined from [40-50]% in 2010 to [10-20]% in 2020. This is another indicator showing that even when taking a longer term view, the EEA heavy-duty forklift trucks (>10 tonne capacity) market has been concentrating, and the number of credible competitors to the Notifying Parties likely decreased.

- (2108) The Notifying Parties submit that such an assessment considering market share development over the past ten years 'is erroneous as, rather than considering a longer historic period, a forward-looking assessment should look into the future and take into account the possibility of existing players expanding or of new players entering the market'.²⁰²⁶ The Commission however observes that an assessment of past market share developments can provide a first indication of dynamics in the market in question. Questions of potential entry and expansion in turn are in any case considered in Sections 7.4.3.3 and 7.4.3.4.
- (2109) Therefore, the market share developments beyond the 2018-2020 timeframe reveal the increasing consolidation of the EEA market for heavy-duty forklift trucks (>10 tonne capacity). In the last ten years, competitors were not able to expand at the expense of the market leaders Cargotec and Konecranes. On the contrary, the Notifying Parties' combined market share has increased.
- (E) The Notifying Parties' consider themselves and each other to hold important market positions pre-Transaction
- (2110) The Notifying Parties' large market shares pre-Transaction are confirmed by the Notifying Parties' internal documents.
- (2111) For example, Cargotec in an internal document captioned in Figure 131 assesses that it has a market share ranging from [internal document reference].

Figure 131: Cargotec view on Kalmar forklift truck market share in Europe

[...]

Source: [Internal document reference].

- (2112) In the document captioned above as Figure 130, Cargotec clearly considers [...] and [...] to be Kalmar's most important competitors.
- (2113) In another internal document, considering its main competitors in the concrete and bricks industry, Cargotec finds that with respect to [internal document reference] it

²⁰²⁵ Form CO, RFI PN2 – Annex – Q5 – Confidential – market shares.

²⁰²⁶ Reply to the SO, paragraph 1111.

competes [internal document reference], while with respect to ‘Heavy FLT’ it competes [internal document reference].²⁰²⁷

- (2114) In another internal document, Cargotec considers Kalmar, Konecranes and Hyster to be the most important forklift truck players in Europe, when considering market shares.²⁰²⁸
- (2115) [...], Konecranes only considers [internal document reference].²⁰²⁹
- (2116) Therefore, the Notifying Parties’ internal documents confirm that they consider themselves and each other to hold important market positions and market shares pre-Transaction in the EEA market for heavy-duty forklift trucks (>10 tonne capacity).
- (F) Market participants consider the Notifying Parties to hold important market positions and the Merged Entity to have a very large market share
- (2117) Customers, distributors and competitors of the Parties consider that the Parties hold important market positions in the EEA heavy-duty forklift trucks (>10 tonne capacity) market and that the Merged Entity would have a very large market share.
- (2118) For example, a customer explains that ‘[w]ith respect to heavy-duty forklifts with a lifting capacity of more than 12 or 16 tonnes, the Company submits that in practice there are only three viable suppliers it can consider: Konecranes, Kalmar and Linde. As Linde is not a substantial player in this market and does not offer forklifts of equivalent quality to the Parties, Konecranes and Kalmar account for around 90% of the market’.²⁰³⁰
- (2119) A competitor of the Notifying Parties submits that it ‘is also active in the market for heavy-duty forklift trucks with a lifting capacity above 10 tonnes but does not play a significant role. Kalmar and Konecranes are stronger in this lifting capacity range’. It further explains that ‘[t]here are several players active in the market for 10 to 18 tonnes lifting capacity heavy-duty forklift trucks. According to [the Company’s] best knowledge, in Europe, the main players are Kalmar, Konecranes, Svetruck, Hyster, Hyundai and Doosan’. Considering specifically the space of forklift trucks with between 10 and a maximum of 18 tonnes capacity, this competitor explains that ‘two largest suppliers of forklift trucks with a lifting capacity between 10 and 18 tonnes are Kalmar and Konecranes, with a combined market share of approximately [40-50]%. Hyster is also perceived as strong in the European market and has approximately [20-30]% of the market share, while KION has about [10-20]% of the market share’.²⁰³¹
- (2120) Another competitor explains that ‘Hyster is the third in Europe in terms of market share in lifttrucks overall. The Parties have together more than 60 percent of market share in heavy-duty forklifts, reach stackers and empty container handlers’. This competitor further states that ‘[i]n the forklift range of lifting capacity between 10 and 32 tonnes, there are a greater number of OEMs active (Linde, CVS, FTMH, Hyundai, Toyota, Doosan, Sany) and the market is not dominated by individual

²⁰²⁷ Doc. ID 3738-17916 (The Parties’ reply to the Commission’s request for information RFI 17, CAR-
GRA-00019423.pptx), slide 47.

²⁰²⁸ Doc. ID 3708-37230 (The Parties’ reply to the Commission’s request for information RFI 17, CAR-
HUL-00036553.pptx), slide 4.

²⁰²⁹ Doc. ID 3593-97896 (The Parties’ reply to the Commission’s request for information RFI 18, M.10078
Cargotec Konecranes RFI 18-01204539.pptx).

²⁰³⁰ Doc. ID 1117, Minutes of a call with a customer, 21 April 2021.

²⁰³¹ Doc. ID 1662, Minutes of a call with a competitor, 30 April 2021.

suppliers. In the Nordics, the Parties are strong, e.g. in the forestry business, but there local supplier Svetruck is also active'.²⁰³²

- (2121) Yet another competitor submits that 'Sany's market share in the markets for reach stackers, empty container handlers and heavy-duty forklift trucks in Europe is below 10%, but the Company is in a growing mode. The market for reach stackers in Europe is the most concentrated, as aside of the Parties, only Hyster appears to be focusing significantly on this segment and other suppliers, like CVS Ferrari only have a minor presence [...] In heavy-duty forklift trucks, a broader range of players are active in Europe, aside of the Parties, Hyster and Sany for example also Svetruck and possibly Taylor. In the market segment up to 16 tonnes capacity also Hyundai is active'.²⁰³³
- (2122) A further competitor explains: 'Regarding the OEMs' presence in the different mobile equipment markets (i.e., reach stackers, empty container handlers, full container handlers and heavy-duty forklift trucks), the northern European market is dominated by Kalmar and Konecranes. With regards to the Scandinavian market specifically, Kalmar and Konecranes are perceived as by far the market leaders. [...] Hyster is a sizeable competitor in the Netherlands, Benelux and the United Kingdom but its presence is limited in Germany. CVS Ferrari is active in Germany, but is not perceived as having a strong market position. Chinese players are perceived as having a limited presence, or even quasi non-existent in the Northern European and German markets. Svetruck is also active in the heavy-duty forklift trucks market.' Further, this competitor submits that '[i]n the Southern-European markets (i.e., France, Italy and Spain), Kalmar and Konecranes are perceived as major players but are not as strong as in Northern Europe, notably because Hyster has a larger presence. While CVS Ferrari is not perceived as a strong player in France and is only starting to be active in Spain, it is very active in Italy (its home market) where it is perceived as stronger than the Parties. Konecranes has a very limited presence in Italy'.²⁰³⁴
- (2123) A distributor describes Kalmar (Cargotec) as '*clearly dominant*' in the supply of mobile equipment, of which heavy-duty forklift trucks (>10 tonne capacity) are a part, in Spain.²⁰³⁵
- (2124) Another distributor 'estimates that Konecranes and Kalmar hold each a 40% market share across all mobile equipment combined (i.e., forklifts, reach stackers and empty container handlers) in the Netherlands. Hyster would hold the remaining shares in the mobile equipment market, with Sany, Liebherr and CVS Ferrari representing only a small percentage'.²⁰³⁶
- (2125) Considering the competitive situation in Belgium and the Netherlands overall, another distributor explains that '[t]he two main suppliers in Belgium and in the Netherlands across forklifts, empty container handlers and reach stackers are Kalmar and Konecranes, Kalmar has an estimated share of 40% and Konecranes has an estimated share of 30% in Benelux. Kalmar's position is a little stronger than Konecranes because of historical reasons. Kalmar has a factory owned branch selling directly its products in Belgium. It used to be a dealer, but Cargotec purchased the

²⁰³² Doc. ID 932, Minutes of a call with a competitor, 20 April 2021.

²⁰³³ Doc. ID 657, Minutes of a call with a competitor, 22 April 2021.

²⁰³⁴ Doc. ID 1773, Minutes of a call with a competitor, 3 May 2021.

²⁰³⁵ Doc. ID 261, Minutes of a call with a distributor, 24 February 2021.

²⁰³⁶ Doc. ID 673, Minutes of a call with a distributor, 26 February 2021.

company from the owner. Hyster has an estimated share of 20%. The remaining suppliers hold an aggregate share of 10%, which includes Sany and Svetruck'.²⁰³⁷

- (2126) Another distributor describes specifically for Italy, that '[t]he two main suppliers in Italy across forklifts, reach stackers and empty containers are Kalmar and Hyster, each one with an estimated share of 30%. Konecranes (via [its distributor]) and CVS have each an estimated share of 15%. CVS is however currently struggling to survive in the Italian market. The remaining suppliers hold an aggregated share of 10%, which includes FTMH (an Italian local manufacturer), Sany, Svetruck and Liebherr. These estimates vary from year to year, as they may depend on a very few orders from a very few customers: the supplier winning that customers may increase its share from 15% to 45% in one year'.²⁰³⁸
- (2127) Another distributor, with respect to Northern Europe submits that '[t]he two main suppliers in Denmark, Norway and Sweden across heavy-duty forklifts and reach stackers are Kalmar and Konecranes. In these countries, the Parties have a combined share of approximately 75% of the market. The remaining suppliers hold an aggregate share of 25%, which includes CVS Ferrari, Hyster, Sany and Svetruck. Svetruck is not active in reach stackers'.²⁰³⁹
- (2128) Yet another distributor explains with respect to mobile equipment (of which heavy-duty forklift trucks (>10 tonne capacity) are a part) that '*[w]ith regards to the market positions of the different players active in the Swedish market for mobile equipment supplied for port operations, the main players are Konecranes, Kalmar and Svetruck. The Parties have a dominant position and hold each approximately 20 - 30% of the market share. In the market for mobile equipment supplied for sawmills applications, Svetruck holds about 40% of the market share while the Parties both hold approximately 25% each. Hyster, CVS Ferrari and Sany have a minor presence in these markets for mobile equipment*'. The same distributor submits that '*[i]n the Norwegian market for mobile equipment, Kalmar has around 40% of the market share, and Konecranes could have up to 25-30%. In any case the Parties together have at least 60% of the market. Svetruck is perceived as a smaller player in this market and holds approximately 20% of the share. The remaining suppliers hold the rest of the share, which includes Hyundai, Ferrari, Hyster and other OEMs*'.²⁰⁴⁰

(G) Conclusion

- (2129) For the reasons set out in this Section 7.4.3.1, the Commission considers that the Transaction results in a very large combined market share, indicative of a dominant market position in the EEA market for heavy-duty forklift trucks (>10 tonne capacity). The Commission further considers that the Transaction leads to a high degree of concentration in the EEA market for heavy-duty forklift trucks (>10 tonne capacity).
- 7.4.3.2. The Transaction eliminates competition between the Notifying Parties that pre-Transaction compete particularly closely and intensely
- (2130) The Transaction eliminates competition between the Notifying Parties that pre-Transaction compete intensely and closely in the EEA market for heavy-duty forklift trucks (>10 tonne capacity). The Notifying Parties submit that they are not

²⁰³⁷ Doc. ID 502, Minutes of a call with a distributor, 14 April 2021.

²⁰³⁸ Doc. ID 558, Minutes of a call with a distributor, 24 March 2021.

²⁰³⁹ Doc. ID 881, Minutes of a call with a distributor, 19 April 2021.

²⁰⁴⁰ Doc. ID 1765, Minutes of a call with a distributor, 11 May 2021.

particularly close competitors on the market for heavy-duty forklift trucks (>10 tonne capacity).²⁰⁴¹ However, this Section will demonstrate that in a field of a limited number of rivals with a meaningful market presence, the Transaction constitutes ‘*a merger between two producers offering products which a substantial number of customers regard as their first and second choices*’.²⁰⁴² This Section will further show that some rivals of the Notifying Parties cannot be considered to offer ‘*close substitutes to the products of the merging firms*’.²⁰⁴³

(A) Pre-Transaction, both Parties are particularly important and close competitors

- (2131) **First**, and as described in Section 7.4.3.1, Cargotec pre-Transaction is the clear market leader in the EEA market for heavy-duty forklift trucks (>10 tonne capacity), with a market share of over [30-40]%. According to the data provided by the Notifying Parties, Konecranes is the second largest player with a market share of [10-20]%. According to the Commission’s market reconstruction, Hyster is the second largest player with [20-30]%, whereas Konecranes has a market share of [10-20]%. The Parties are therefore two important suppliers in the EEA market for heavy-duty forklift trucks (>10 tonne capacity).
- (2132) **Second**, competitors to the Notifying Parties also regard them as important suppliers in the EEA market for heavy-duty forklift trucks (>10 tonne capacity), and consider the Notifying Parties to be close competitors to each other.
- (2133) The majority of competitors responding to the market investigation submit that both Kalmar (Cargotec) and Konecranes are among the top three competitors they encounter when submitting bids to supply heavy-duty forklift trucks (>10 tonne capacity) in the EEA.²⁰⁴⁴
- (2134) Further, competitors responding to the market investigation consider Cargotec to be the closest competitor to Konecranes and Konecranes to be the second closest competitor (after Hyster) to Cargotec for heavy-duty forklift trucks (>10 tonne capacity).²⁰⁴⁵
- (2135) **Third**, customers of the Parties also consider the Parties to be close competitors. Specifically, customers responding to the market investigation consider the Notifying Parties to be each other’s closest competitors, with parameters such as quality and service network named as important factors.²⁰⁴⁶
- (2136) Further, when asked to rank the top five heavy-duty forklift trucks (>10 tonne capacity) suppliers active in the EEA according to a number of parameters, majorities of customers consider Cargotec and Konecranes to be the strongest/best and second strongest/second best in relation to brand reputation, vehicle quality, product characteristics, product range, after-sales service network and the development of new products.²⁰⁴⁷ This further suggests that the Parties are particularly close competitors in the EEA market for heavy-duty forklift trucks (>10 tonne capacity).

²⁰⁴¹ Response to the Article 6(1)(c) Decision, paragraphs 375-391.

²⁰⁴² Horizontal Merger Guidelines, paragraph 28.

²⁰⁴³ Horizontal Merger Guidelines, paragraph 28.

²⁰⁴⁴ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 81.3.

²⁰⁴⁵ Response to Q1 – Questionnaire to Competitors, Doc. ID 3154, questions E.C.A.1 and E.C.A.2.

²⁰⁴⁶ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, questions E.C.A.1 and E.C.A.2.

²⁰⁴⁷ Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 14.3.

- (B) Tender events for heavy-duty forklift trucks (>10 tonne capacity) show that the Notifying Parties are competing particularly closely and sometimes are the only credible alternatives for customers
- (2137) When considering evidence of bidding interactions between suppliers of heavy-duty forklift trucks (>10 tonne capacity), it becomes further apparent that the Notifying Parties are competing closely on the EEA market for heavy-duty forklift trucks (>10 tonne capacity) and in certain cases are the only credible alternatives for heavy-duty forklift trucks (>10 tonne capacity) customers.
- (B.i) *The analysis of the Notifying Parties' bidding data on the EEA market for heavy-duty forklift trucks (>10 tonne capacity) is consistent with the qualitative evidence on closeness of competition*
- (2138) The main exercise performed by the Commission consists in checking the magnitude of the loss ratios between Cargotec and Konecranes based on their bidding data. This is to confirm that in addition to the significant market shares in heavy-duty forklift trucks (>10 tonne capacity) the Notifying Parties are also competing closely in the tenders in which they participate, losing frequently to each other.
- (2139) The Commission also compared the loss ratios from the bidding analysis against some 'benchmark loss ratios', that is, the loss ratios that one would expect between the Parties based on their market shares (that is, assuming that the volumes or revenues lost by each Party are won by its rivals in proportion to their respective market shares).
- (2140) Table 6 of Annex I presents the loss ratios for Cargotec in heavy-duty forklift trucks (>10 tonne capacity). According to the bidding data, three competitors, namely Konecranes, Hyster and Svetruck, exert significant competitive pressure on Cargotec. Konecranes captures [...] % in value and [...] % in volume of the tenders lost by Cargotec, Hyster [...] % in value and [...] % in volume and Svetruck [...] % in value and [...] % in volume. Results are mostly in line with those based on market shares (as shown in Annex I).
- (2141) When looking at the tenders lost by Konecranes, Cargotec is the main competitive constraint to Konecranes, capturing [...] % in value and [...] % in volume of the bids lost by Konecranes. This suggests even more closeness than expected based on market shares, as the loss ratios based on the bidding data are higher than the benchmark loss ratios based on market shares (as shown in Annex I). Hyster captures [...] % and Svetruck [...] % of the tenders lost by Konecranes.
- (B.ii) *Customers of the Notifying Parties describe tender events where only the Parties or a very limited number of suppliers participated*
- (2142) A significant number of the Notifying Parties' customers have access to a very limited number of suppliers of heavy-duty forklift trucks (>10 tonne capacity) that submit offers to them or participate in their tender processes. In many cases, the Notifying Parties are among only four or three competing suppliers – in some cases only the Notifying Parties are named as alternatives. This suggests that the Notifying Parties compete particularly closely for certain customers and that competitor's products are not close substitutes.
- (2143) One customer describes that the last instance (2015) when it purchased heavy-duty forklift trucks (>10 tonne capacity), the business was awarded to Cargotec, with

Konecranes as the only other bidder. Reasons for choosing Cargotec are described as *‘procurement costs, full service costs, availability, warranties...’*.²⁰⁴⁸

- (2144) Another customer describes that the last instance (2020) when it purchased heavy-duty forklift trucks (>10 tonne capacity), the business was awarded to Konecranes, with Kalmar as the only other bidder. Reasons for choosing Konecranes are described as *‘the proposed price’* and that Kalmar had won a machine the year before.²⁰⁴⁹
- (2145) Another customer describes that the last instance (2021) when it purchased heavy-duty forklift trucks (>10 tonne capacity), the business was awarded to Konecranes, with no other bidder.²⁰⁵⁰
- (2146) Another customer describes that the last instance (2021) when it purchased heavy-duty forklift trucks (>10 tonne capacity), the business was awarded to Cargotec, with Konecranes and Hyster as the only other bidders. Reasons for choosing Cargotec are described as: *‘The underlying framework agreements were awarded based on an evaluation matrix including a variety of factors’*.²⁰⁵¹
- (2147) Another customer describes that the last instance (2021) when it purchased heavy-duty forklift trucks (>10 tonne capacity), the business was awarded to Konecranes, with Kalmar and Hyster as the only other bidders. Reasons for choosing Konecranes are described as: *‘At each purchase, we follow the procedure with appraisal criteria, which are predefined before the release of the tender. The awarded supplier is the one who reaches the highest ranking after the scoring of the appraisal criteria’*.²⁰⁵²
- (2148) Another customer describes that the last instance (2019) when it purchased heavy-duty forklift trucks (>10 tonne capacity), the business was awarded to Konecranes, with Kalmar as the only other bidder. Reasons for choosing Konecranes are described as *‘[p]rice, range of manufacturers on the various terminals, support of the local market (dealer) through a fair distribution of orders’*.²⁰⁵³
- (2149) Another customers describes that the last instance (2021) when it purchased heavy-duty forklift trucks (>10 tonne capacity), the business was awarded to Svetruck, with Konecranes and Cargotec as the only other bidders. Reasons for choosing Svetruck are described as *‘[p]roduct specifications [sic!], price, service’*.²⁰⁵⁴
- (2150) Another customer describes that the last instance (2020) when it purchased heavy-duty forklift trucks (>10 tonne capacity), the business was awarded to Konecranes, with Kalmar, Hyster and Linde as the other bidders. Reasons for choosing Konecranes are described as *‘[o]perating cost – service’*.²⁰⁵⁵
- (2151) Another customer describes that the last instance (2021) when it purchased heavy-duty forklift trucks (>10 tonne capacity), the business was awarded to Konecranes,

²⁰⁴⁸ Courtesy Translation. The original German text reads: ‘Anschaffungskosten, Full Service Kosten, Verfügbarkeit, Garantieleistungen ...’. Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 15.3.

²⁰⁴⁹ Courtesy Transalction. The original French text reads: ‘le prix proposé l'année d'avant Kalmar avait remporté l'achat d'une machine neuve’. Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 15.3.

²⁰⁵⁰ Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 15.3.

²⁰⁵¹ Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 15.3.

²⁰⁵² Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 15.3.

²⁰⁵³ Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 15.3.

²⁰⁵⁴ Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 15.3.

²⁰⁵⁵ Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 15.3.

with Kalmar and Hyster as the only other bidders. Reasons for choosing Konecranes are described as '[p]rice and service proposal'.²⁰⁵⁶

- (2152) The Notifying Parties submit that '[f]rom these nine customers, three refer to tenders in which Cargotec and Konecranes were the only two bidders, whilst one customer refers to an instance where Konecranes was the only bidder. The Proposed Transaction would have no impact on the latter bid where only Konecranes participated. Moreover, from the remaining five customers, four indicated that there was one participant in addition to the Parties (Hyster or Svetruck) whilst one indicated that there were two additional participants (Hyster and Linde). Lastly, one of these tenders was won by Svetruck due to "product specifications, price and service"'.²⁰⁵⁷ They further submit that for some other customers only one of the Notifying Parties together with other suppliers made bids.²⁰⁵⁸ However, submissions by customers show that regularly only a very limited number of heavy-duty forklift trucks (>10 tonne capacity) suppliers compete for customers' business. Customers in fact often only have access to a very small number of companies bidding for their heavy-duty forklift trucks (>10 tonne capacity) business. A significant number of customers rely only on the Notifying Parties or only the Notifying Parties and one or two other competitors. While some customers also report tender events where neither of the Notifying Parties participated, none of the customers responding to the market investigation reported tender events in which either of Doosan, Hyundai and FTMH participated.²⁰⁵⁹
- (2153) In addition, a customer submits that '[w]ith respect to heavy-duty forklifts with a lifting capacity of more than 12 or 16 tonnes, the Company submits that in practice there are only three viable suppliers it can consider: Konecranes, Kalmar and Linde. As Linde is not a substantial player in this market and does not offer forklifts of equivalent quality to the Parties, Konecranes and Kalmar account for around 90% of the market'. It further submits that '[t]here are some other, smaller players active in the heavy-duty forklift market, such as Hyster and Sany. However, as the Company considers the Parties to offer the highest quality equipment, these suppliers are generally not considered by the Company'.²⁰⁶⁰
- (2154) Therefore, based on the market investigation, the Notifying Parties compete particularly closely with each other, and in a significant number of cases are the only two alternatives for customers, or part of a very small group of alternatives for customers.
- (B.iii) The Notifying Parties are aware that in a considerable number of instances they are customers' only effective alternatives*
- (2155) The Notifying Parties are aware that in a considerable number of instances EEA customers only have access to a very limited number of effective suppliers of heavy-duty forklift trucks (>10 tonne capacity), in some cases only the two Notifying Parties are considered as serious competitors able to fulfil customer requirements.

²⁰⁵⁶ Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 15.3.

²⁰⁵⁷ Reply to the SO, paragraph 1189.

²⁰⁵⁸ Reply to the SO, paragraph 1189.

²⁰⁵⁹ See Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 15.3.

²⁰⁶⁰ Doc. ID 1117, Minutes of a call with a customer, 21 April 2021.

(2156) **First**, Cargotec considers in a number of instances that it is competing for the supply of heavy-duty forklift trucks (>10 tonne capacity) in the EEA only with Konecranes and at most a very limited number of competitors.

(2157) For example, in an internal email exchange, captioned in Figure 132, [internal document reference].

Figure 132: [...]

[...]

Source: [Internal document reference].

(2158) In another example, [internal document reference].

Figure 133: [...]

[...]

Source: [Internal document reference].

(2159) In another instance, Kalmar [internal document reference].²⁰⁶¹

(2160) **Second**, Konecranes in a number of instances considers that it is competing for the supply of heavy-duty forklift trucks (>10 tonne capacity) in the EEA only with Cargotec and at most a very limited number of competitors.

(2161) For example, in an email [internal document reference].

Figure 134: [...]

[...]

Source: [Internal document reference].

(2162) In another example (captioned in Figure 135), a Konecranes dealer writes to Konecranes and inquires about the reason behind the different price increases from 2020 to 2021 for two Konecranes forklift truck models. The dealer is particularly concerned, because *‘that will be even harder to be accepted in the market (especially against Kalmar that, as far as we are informed, has not applied the similar price increase)’*. Aside of Kalmar, the dealer does not mention any other competitor.

Figure 135: [...]

[...]

Source: [Internal document reference].

(2163) In another example, [internal document reference].

Figure 136: [...]

[...]

Source: [Internal document reference].

(2164) In a follow up email to the one captioned in Figure 136 above, of which an excerpt is captioned in Figure 137, [internal document reference].

²⁰⁶¹ Doc. ID3 665-52620 (The Parties’ reply to the Commission’s request for information RFI 17, CAR-PAT-00076970.msg).

Figure 137: [...]

[...]

Source: [Internal document reference].

- (2165) In another example, a Konecranes employee reports internally, [internal document reference].²⁰⁶² [Internal document reference].
- (2166) In another example, a Kalmar Konecranes employee is requesting internally [internal document reference].²⁰⁶³
- (2167) In another internal email, a Konecranes distributor writes to Konecranes to [internal document reference].²⁰⁶⁴ [Internal document reference].
- (2168) In another Konecranes internal email, [internal document reference].²⁰⁶⁵
- (2169) In another internal email, a Konecranes employee inquires [internal document reference].²⁰⁶⁶ [Internal document reference].
- (2170) In a further internal email, a Konecranes employee reports that [internal document reference].²⁰⁶⁷ [Internal document reference].
- (2171) Therefore, the Notifying Parties internally consider that they often compete against a very limited number of rivals for the supply of heavy-duty forklift trucks (>10 tonne capacity) in the EEA and in certain cases only against each other.
- (C) The Notifying Parties are particularly close competitors, because they have extensive and strong distribution and after-sales networks
- (2172) The Notifying Parties are particularly close competitors, because they have the most extensive and strongest distribution and after-sales networks in the EEA. As their networks are significantly more extensive and stronger than those of almost all EEA rivals (with the possible exception of Hyster), the Notifying Parties compete particularly closely for customers – some of whom as a result only have few available suppliers to turn to.
- (C.i) Distribution and after-sales networks are very important to compete effectively in the EEA heavy-duty forklift trucks (>10 tonne capacity) market*
- (2173) As described in Section 7.4.1.2 (C.i) for reach stackers, distribution and after-sales networks are also very important to compete effectively in the EEA heavy-duty forklift trucks (>10 tonne capacity) market.
- (2174) Manufacturers of heavy-duty forklift trucks (>10 tonne capacity) supply the heavy-duty forklift trucks (>10 tonne capacity) to customers largely either via local distributors/dealers (that are independent of the manufacturer, but associated via a

²⁰⁶² Doc. ID 3591-99245 (The Parties' reply to the Commission's request for information RFI 18, M.10078 Cargotec Konecranes RFI 18-00841419 msg).

²⁰⁶³ Doc. ID 3594-41436 (The Parties' reply to the Commission's request for information RFI 18, M.10078 Cargotec Konecranes RFI 18-01239193 msg).

²⁰⁶⁴ Doc. ID 3585-49534 (The Parties' reply to the Commission's request for information RFI 18, M.10078 Cargotec Konecranes RFI 18-00251257 msg).

²⁰⁶⁵ Doc. ID 3590-58617 (The Parties' reply to the Commission's request for information RFI 18, M.10078 Cargotec Konecranes RFI 18-00830244 msg).

²⁰⁶⁶ Doc. ID 3585-49965 (The Parties' reply to the Commission's request for information RFI 18, M.10078 Cargotec Konecranes RFI 18-00248608 msg).

²⁰⁶⁷ Doc. ID 3591-25803 (The Parties' reply to the Commission's request for information RFI 18, M.10078 Cargotec Konecranes RFI 18-00845133 msg).

distribution agreement), or via directly owned local sales unit. In the EEA, Konecranes largely relies on distributors/dealers, whereas Kalmar largely relies on sales via its own local entities. While customers to some degree perform maintenance on heavy-duty forklift trucks (>10 tonne capacity) in-house, they also source after-sales services for heavy-duty forklift trucks (>10 tonne capacity) from the manufacturers or associated dealers/distributors.

- (2175) The Notifying Parties argue that ‘the sale of (heavy-duty) forklift trucks does not require neither a local distribution nor after-sales presence’.²⁰⁶⁸
- (2176) The Commission however observes that local distribution and after-sales networks are of crucial importance for effective customer access.
- (2177) **First**, customers consider local distribution and after-sales presence of manufacturers of heavy-duty forklift trucks (>10 tonne capacity) to be of high importance and to be key purchase criteria.
- (2178) A majority of customers expressing their view submit that they consider the availability of maintenance and service provision in their region by the equipment supplier (directly or via associated dealers/distributors) as very important for their purchasing decision.²⁰⁶⁹ In this context, a customer explains that ‘[o]perational readiness of equipment is important and since we don’t have the internal capacities for maintenance and service, it is important to have a local provider for that services’.²⁰⁷⁰ Another customer submits that ‘[i]t’s important that the equipment can operate according to the needs of the factory (high availability / capability factor). Therefore having the option of a close by maintenance / service provider is key’.²⁰⁷¹ Yet another customer explains that ‘[i]n addition to the performance parameters, the availability of a device is the decisive criterion. That is why the local availability of spare parts and service is an extremely important aspect at all times’.²⁰⁷² A further customer states: ‘The after-sales service is very important and is always considered in the choice of one brand or another’.²⁰⁷³
- (2179) Further, a large majority of customers expressing their view submit that across the entire lifetime of mobile equipment (to which heavy-duty forklift trucks (>10 tonne capacity) belong), they have to rely on the maintenance and repair services of the equipment supplier or their associated dealer/distributor, at least for some maintenance and repair needs. A considerable number of responding customers even have to rely on the equipment supplier or their associated dealer/distributor for most or all of their maintenance and repair needs.²⁰⁷⁴ In this context one customer states: ‘We neither have the internal capacities nor technical capabilities to perform such services and repairs in-house’.²⁰⁷⁵ A GTO submits that ‘[s]upport on repair and maintenance may be required from the OEM/associated dealer/distributor due warranty obligations or lack of skilled in-house technicians at specific locations’.²⁰⁷⁶ Another customers says that it ‘does not have any captive maintenance and repair

²⁰⁶⁸ Response to the Article 6(1)(c) Decision, paragraph 401.

²⁰⁶⁹ Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 7.3.

²⁰⁷⁰ Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 7.3.1.

²⁰⁷¹ Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 7.3.1.

²⁰⁷² Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 7.3.1.

²⁰⁷³ Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 7.3.1.

²⁰⁷⁴ Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 8.

²⁰⁷⁵ Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 8.1.

²⁰⁷⁶ Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 8.1.

capabilities. Independent maintenance and repair services are not available'.²⁰⁷⁷ Another customer explains that *'due to the individual position of the supplier, we are dependent on this maintenance throughout the entire service life. Nowhere else can we order spare parts*'.²⁰⁷⁸ A terminal operators further explains: *'We get better prices for spare parts from the supplier/dealer. The response time of the service is significantly shorter, even the delivery time for the parts. The manufacturer's diagnostic software is often required for newer equipment*'.²⁰⁷⁹ Another customer explains that *'the procurement of original spare parts is in most cases only possible via the manufacturers*'.²⁰⁸⁰ Yet another customer submits that *'[t]here is also continuous progress in the field of industrial trucks. The devices are increasingly turning into computers on wheels, with the mechanical part being fully developed by almost all manufacturers. The knowledge and thus the unique selling point is therefore located in the brain of the machine, which is very well shielded by the manufacturer. Service by the manufacturer is therefore necessary mainly in the areas of fault diagnosis, software errors, updates, operating data, etc.*'²⁰⁸¹

- (2180) Consequently, a large majority of customers expressing their view submit that in the past five years they have not bought heavy-duty forklift trucks (>10 tonne capacity) from a supplier that does not have a local after-sales/servicing presence (either directly or via an associated distributor/dealer) in the area where they are using the equipment.²⁰⁸² Similarly, a large majority of customers expressing their view submit that for their next purchase of heavy-duty forklift trucks (>10 tonne capacity), they would not consider a supplier that does not have a local after-sales/servicing presence (either directly or via an associated distributor/dealer) in the area where they are using the equipment.²⁰⁸³ One customer explains this by stating: *'Due to the importance of after-sales service to us*'.²⁰⁸⁴ One customer explains this by explaining that it only procures equipment with *'Full Service'* and therefore has *'high availability, guarantees, reaction times, etc.*'²⁰⁸⁵ Another customer states that *'[i]t will be mandatory to buy only equipment which can be serviced afterwards. If the OEM would not be present by themselves then the equipment could be purchased / serviced through a local distributor*'.²⁰⁸⁶
- (2181) The fact that a local after-sales presence is considered essential by customers is further underlined by the majority of customers expressing their view submitting that, in case of a breakdown of a mobile equipment unit (e.g. a heavy-duty forklift truck (>10 tonne capacity)), they expect a reaction time of 12 hours or less from the

²⁰⁷⁷ Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 8.1.

²⁰⁷⁸ Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 8.1.

²⁰⁷⁹ Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 8.1.

²⁰⁸⁰ Courtesy Translation. The original German text reads: *'Die Originalersatzteilbeschaffung ist in den meisten Fällen nur über der Hersteller möglich'*. Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 8.1.

²⁰⁸¹ Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 8.1.

²⁰⁸² Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 10.3.

²⁰⁸³ Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 11.3.

²⁰⁸⁴ Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 11.3.1.

²⁰⁸⁵ Courtesy Translation. The original German text reads: *'Weil nur Geräte inclusive Full Service angeschafft werden (dadurch hohe Verfügbarkeit, Garantien, Reaktionszeiten, etc.)'*. Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 11.3.1.

²⁰⁸⁶ Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 11.3.1.

OEM or an associated distributor/dealer.²⁰⁸⁷ In this context one customer explains that that it *‘expects a response within one 1 hour and the necessary action within another 2 hours’*.²⁰⁸⁸ Another customer states: *‘We expect a response time of 12 to 24 hours. We have a minimal fleet and need the equipment, therefore repairs at short notice are extremely important [for] us’*.²⁰⁸⁹

- (2182) A customer describes the importance of local service presence in the following way: *‘[The Company] uses its mobile container handling equipment on 250 days a year on 6 days a week and 10 to 12 hours per day (in two shifts). [The Company] does not have any backup machines and does not plan for any downtime due to failures of the machines. Since the machines weigh 30 to 60 tons, any necessary replacement is far from being effortless and takes four to five weeks. These circumstances form the premise from which [the Company] looks at potential suppliers’ reaction time, i.e. the necessity for quick and effective maintenance service’*. The customer goes on to explain that *‘[f]or [the Company] it is important to have a contact person immediately available, when repair or maintenance is needed. [The Company] expects to be serviced within three to four hours on a weekday’*. This is in particular relevant, because *‘[the Company] does not have its own personnel for the maintenance of its mobile container handling equipment’*.²⁰⁹⁰
- (2183) Another customer describes the need for a local service presence by stating that it *‘organises the maintenance of its heavy-duty forklift trucks based on the terminal in question. Larger terminals typically have their own technical staff, whereas smaller terminals rely on service providers like the Parties. In the latter case the Company may also have maintenance contracts based on the running hours of the equipment – and the Parties would be responsible for all servicing needs, even lubrication’*.²⁰⁹¹
- (2184) **Second**, distributors consider local distribution and after-sales presence of manufacturers of heavy-duty forklift trucks (>10 tonne capacity) to be of high importance and to be key purchase criteria for customers.
- (2185) Majorities of dealers/distributors expressing their view submit that in the region in the EEA where they are active, they compete against other local distributors/dealers and against direct sales of OEMs with a local distribution presence in the supply of heavy-duty forklift trucks (>10 tonne capacity).²⁰⁹² One distributor explains in this context that *‘[s]ome manufacturers don’t have an exclusive distribution network. That’s the reason why, in some cases, we compete against other local distributors/dealers. Generally speaking, the customers don’t feel confident to deal with OEMs which don’t have a local distribution presence. They want local support for schedule maintenance and repair operations’*.²⁰⁹³
- (2186) A large majority of dealers/distributors expressing their view consider that the availability of maintenance and service provision in their region in the EEA by the equipment manufacturer or associated dealers/distributors is very important for the purchasing decision of mobile equipment customers.²⁰⁹⁴ A distributor explains that *‘[i]t is in the daily after-sales that customer satisfaction is won or lost. Therefore*

²⁰⁸⁷ Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 12.

²⁰⁸⁸ Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 12.1.

²⁰⁸⁹ Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 12.1.

²⁰⁹⁰ Doc. ID 311, Minutes of a call with a customer, 2 March 2021.

²⁰⁹¹ Doc. ID 1117, Minutes of a call with a customer, 21 April 2021.

²⁰⁹² Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 14.3.

²⁰⁹³ Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 14.3.1.

²⁰⁹⁴ Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 16.3.

access to service and maintenance is essential for any given customer, because it is the basis for a smooth daily operation'.²⁰⁹⁵ Another respondent explains: *'Downtimes are very expensive and often there is no substitute equipment available. Therefore, maintenance and services must be available on very short notice, i.e. service provider needs to be close by*'.²⁰⁹⁶ Yet another distributor states that *'[p]rompt availability of spare parts and good service are key to the choice of supplier*'.²⁰⁹⁷ A further distributor submits: *'It is simply crucial: no customer would buy anything without the awareness to can count on a professional and efficient service*'.²⁰⁹⁸ Another distributor explains that *'[a]ll customers, including self-repairers, rely much more on distributors who have a structured maintenance service (service + spare parts), so it is very important to have and maintain a high level of quality in the after-sales service*'.²⁰⁹⁹

- (2187) The majority of distributors/dealers and service providers expressing their view submit that customers typically expect a reaction time of 12 hours or less from them in case of breakdown of a mobile equipment unit (of which heavy-duty forklift trucks (>10 tonne capacity) are a part).²¹⁰⁰
- (2188) Further, the large majority of distributors/dealers expressing their view submit that they do not consider online direct sales of mobile equipment by the OEMs to significantly grow in importance as a route-to-market in the EEA.²¹⁰¹ One distributor in this context submits that *'[o]n-line sales are interesting and have already been adopted on very standardized products and accessories. On mobile equipment however, there are so many technically complex issues which we as specialists need to convey to the customer. This cannot be done by the customer himself on-line. I think that this area will gradually evolve and we may see some impact in the long run*'.²¹⁰² Another distributor however states that *'[t]hose equipments and their attachment are so specific, that the online purchase won't grow in the next years*'.²¹⁰³ A further respondent explains: *'Selling big trucks requires intensive consulting. It is very important to understand the customer application to make sure to provide the right product with the right material handling options*'.²¹⁰⁴ Yet another distributor submits: *'Too complicated product to be bought online. Moreover: service issues are too important, and often are discussed on a taylor made basis*'.²¹⁰⁵
- (2189) **Third**, competitors consider local distribution and after-sales presence of manufacturers of heavy-duty forklift trucks (>10 tonne capacity) to be of high importance and to be key purchase criteria for customers.
- (2190) A majority of competitors expressing their view estimate the share of mobile equipment customers (of which heavy-duty forklift trucks (>10 tonne capacity) customers are a part) in the EEA that they supply some type of after-sales/maintenance services (directly or via associated dealers/distributors) to, to be at

²⁰⁹⁵ Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 16.3.1.

²⁰⁹⁶ Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 16.3.1.

²⁰⁹⁷ Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 16.3.1.

²⁰⁹⁸ Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 16.3.1.

²⁰⁹⁹ Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 16.3.1.

²¹⁰⁰ Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 17.

²¹⁰¹ Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 18.

²¹⁰² Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 18.1.

²¹⁰³ Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 18.1.

²¹⁰⁴ Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 18.1.

²¹⁰⁵ Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 18.1.

least 60% or higher.²¹⁰⁶ A competitor in this context submits: ‘*The majority of customers also requires related services*’.²¹⁰⁷

- (2191) A large majority of competitors expressing their view considers a local service /after-sales presence (either directly or via associated dealers/distributors) to be very important to be able to generate heavy-duty forklift trucks (>10 tonne capacity) sales in a certain region in the EEA.²¹⁰⁸ A competitor states in this context: ‘*Customers expect to have services available on very short notice*’.²¹⁰⁹ Another competitor explains: ‘*Forklift products need periodic maintenance. Having a local service/after-sales presence is therefore important to generate sales since it is one the key decision factors*’.²¹¹⁰
- (2192) **Fourth**, the Parties internally consider local distribution and after-sales presence of manufacturers of heavy-duty forklift trucks (>10 tonne capacity) to be of high importance and to be key purchase criteria for customers.
- (2193) For example, in an internal email [internal document reference].²¹¹¹
- (2194) In an internal document, Cargotec [internal document reference].²¹¹²
- (2195) In another internal document, Cargotec lists as ‘*key purchase criteria*’ for forklift trucks aside of [internal document reference] and [internal document reference] also [internal document reference].²¹¹³
- (2196) In another internal document (captioned above in Figure 89) assessing its own market presence for cargo handling equipment in Sweden (and in particular, mobile equipment, terminal tractors and straddle carriers), Kalmar assesses that [internal document reference].
- (2197) In addition, both Parties regularly benchmark their own distribution and after-sales performance against competitors²¹¹⁴ – this further indicates that they consider these parameters to be of key competitive importance.
- (2198) Indeed, other than submitted by the Notifying Parties,²¹¹⁵ having a local after-sales service network (and a local distribution network) for heavy-duty forklift trucks (>10 tonne capacity), either via directly owned entities and/or via a network of associated dealers/distributors, is not just ‘*beneficial and the preferred option of some suppliers*’, but rather a prerequisite for heavy-duty forklift trucks (>10 tonne capacity) suppliers to compete effectively in a given region in the EEA.
- (2199) Overall, therefore, a local distribution and after-sales presence is of high importance to customers, and is therefore critical for manufacturers of heavy-duty forklift trucks

²¹⁰⁶ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 70.

²¹⁰⁷ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 70.1.

²¹⁰⁸ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 78.3.

²¹⁰⁹ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 78.3.1.

²¹¹⁰ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 78.3.1.

²¹¹¹ Doc. ID 3586-55619, (The Parties’ reply to the Commission’s request for information RFI 18, M.10078 Cargotec Konecranes RFI 18-00998668 msg).

²¹¹² Doc. ID 3708-39120 (The Parties’ reply to the Commission’s request for information RFI 17, CAR-HUL-00041200.pptx), slides 32-33.

²¹¹³ Doc. ID 3708-12248 (The Parties’ reply to the Commission’s request for information RFI 17, CAR-HUL-00040086.pptx), slide 22.

²¹¹⁴ See e.g. Doc. ID 3667-724, (The Parties’ reply to the Commission’s request for information RFI 17, CAR-PRA-00056809.pptx); Doc. ID 3586-79989, (The Parties’ reply to the Commission’s request for information RFI 18, M.10078 Cargotec Konecranes RFI 18-00351519.pdf).

²¹¹⁵ Response to the Article 6(1)(c) Decision, paragraph 401.

(>10 tonne capacity) to ensure effective access to customers.²¹¹⁶ This is because, while customers may rely in part on third-party service providers or on in-house capabilities,²¹¹⁷ they consider after-service provision by suppliers very important and rely on it at least for some of their servicing needs.

(C.ii) The Notifying Parties have the strongest distribution and after-sales network in the EEA and therefore compete closely

- (2200) The Notifying Parties argue that the Parties do not have a particularly strong position because of their distribution and service network, as the Parties are constrained by the presence of competitors with extensive sales and services networks²¹¹⁸ and because ‘there are 339 distributors active in the EEA which are selling the mobile equipment of not only established players such as Hyster, CVS and Svertruck, but also of smaller (non-European) competitors such as Komatsu, Doosan, Hyundai and Mitsubishi’.²¹¹⁹
- (2201) The Commission however observes that the Notifying Parties have particularly strong distribution and after-sales networks among heavy-duty forklift truck (>10 tonne capacity) suppliers in the EEA and therefore compete particularly closely in the supply of heavy-duty forklift truck (>10 tonne capacity) across different EEA regions.²¹²⁰
- (2202) The Notifying Parties further submit that ‘the Parties apply inherently different routes to market. While Cargotec largely relies on sales via own dealerships, Konecranes relies on a network of third-party distributors’.²¹²¹ Although these are different distribution approaches, Cargotec’s sales staff and third-party distributors acting for Konecranes however compete intensely in distributing Cargotec and Konecranes heavy-duty forklift trucks (>10 tonnes capacity) respectively.

²¹¹⁶ The Notifying Parties further submit that the Commission has focused on an arbitrary selection of purchase criteria and that price is also a key purchase criterion (Reply to the SO, paragraph 1140). Indeed price is a relevant purchase criterion for customers – and in as far as the price competition between the Notifying Parties is concerned, it is addressed in Section 7.4.3.5 (B). In as far as the price competitiveness of companies such as Sany is concerned (which is a lower price, lower quality player than the Notifying Parties, and therefore a more distant competitor), it is considered in Section 7.4.3.4.

²¹¹⁷ See also the Notifying Parties’ follow-up submission to technical meeting on MEQ, 13 October 2021, 2-6.

²¹¹⁸ The Notifying Parties’ submission on mobile equipment, 8 June 2021, paragraphs 3-14.

²¹¹⁹ The Notifying Parties’ supplemental submission on distribution networks, 1 September 2021, paragraph 3.

²¹²⁰ With respect to after-sales networks as well as the criteria of vehicle quality, brand reputation and product range further considered below, the Notifying Parties (in the Reply to the SO, paragraph 1171) claim that the Commission ‘pre-selected’ these criteria and did not ask customers what parameters they consider to be key purchase criteria. In fact, for example in Q2 – Questionnaire to Customers, Doc. ID 3153, question E.A.2.3. (reported on for example in Section 7.4.3.3), customers were asked about which criteria they consider important for their purchase decisions. Quality, after-sales service networks and brand reputation were clearly considered to be important purchasing criteria. A broad product range is not relevant as such for a customer, but it is essential for any given customer, that the supplier in question can offer the type of heavy-duty forklift truck (>10 tonne capacity) that it requires. Therefore, to service a broad demand, a broad product range is essential.

The Notifying Parties further submit that price is also a key purchase criterion (the Reply to the SO, paragraphs 1172-1175). Indeed price is a relevant purchase criterion for customers – and in as far as the price competition between the Notifying Parties is concerned, it is addressed in Section 7.4.3.5 (B). In as far as the price competitiveness of companies such as Sany is concerned (which is a lower price, lower quality player than the Notifying Parties, and therefore a more distant competitor), it is considered in Section 7.4.3.4.

²¹²¹ Reply to the SO, paragraph 1191.

- (2203) **First**, customers consider the Notifying Parties to have particularly strong distribution and after-sales networks.
- (2204) When asked to rank the top five heavy-duty forklift truck (>10 tonne capacity) suppliers active in the EEA according to their after-sales/service network, customers clearly consider Cargotec to be the strongest. As shown in Table 35, which summarises customers' answers, customers consider Cargotec to have the strongest after-sales/service network, followed by Hyster and then Konecranes. All other competitors' after-sales/service networks are considered clearly inferior.

Table 35 – Customers' ranking of heavy-duty forklift trucks (>10 tonne capacity) suppliers' after-sales/service network

Customers' ranking of the top five heavy-duty forklift trucks (>10 tonne capacity) suppliers active in the EEA according to their after-sales/service network					
Company	1 (strongest/best)	2	3	4	5 (weakest/worst)
Cargotec	XXXXXXXXXXXX	X	XXX		
Konecranes	XXX	XX	XXXXXX	X	
Hyster	XXX	XXXXX	XXX		
Liebherr				X	
CVS Ferrari	X				X
Sany					XXXX
Linde		XX		XX	
FTMH					X
Svetruck	X	X	X		

Source: Responses to Q6 – Questionnaire to Mobile equipment customers, Doc. ID 3607, question 14.3. The Commission's evaluation of non-confidential responses.

- (2205) When asked which mobile equipment suppliers (directly or via associated dealers/distributors) they consider to be able to meet certain servicing reaction times in the regions where they use the equipment, e.g. in case of urgent repairs, customers consider Cargotec to be able to offer the fastest servicing reaction times, followed by Konecranes and then Hyster.²¹²² Similarly, the highest numbers of responding customers indicate that they consider Cargotec to have the requisite after-sales/maintenance service presence in their local area to address their service needs, followed by Konecranes and then Hyster.²¹²³
- (2206) A customer explains that because it 'has a large number of widely spread terminals in Germany, it is essential to have a few hours response time from suppliers. That is the reason why already today the number of capable suppliers is limited and would be further reduced to the merged entity and Hyster post-Transaction'.²¹²⁴
- (2207) **Second**, distributors consider the Notifying Parties to have particularly strong distribution and after-sales networks.
- (2208) When asked to rank the top five heavy-duty forklift truck (>10 tonne capacity) suppliers active in the EEA according to their after-sales/service network, distributors/dealers consider the Notifying Parties, Linde and Hyster to be the

²¹²² Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 23.

²¹²³ Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 25.

²¹²⁴ Doc. ID 311, Minutes of a call with a customer, 2 March 2021.

strongest. As shown in Table 36, which summarises distributors'/dealers' answers, distributors/dealers consider Linde to have the strongest after-sales/service network, followed by Konecranes, Cargotec and Hyster. All other competitors' after-sales/service networks are considered clearly inferior. Linde Material Handling GmbH (owned by Kion Group) is active in heavy-duty forklift trucks with a lifting capacity of 10-18 tonnes. Konecranes has an agreement with Kion Group to use the Linde Material Handling GmbH dealer network for the distribution of the Konecranes heavy-duty forklift trucks above 18 tonnes capacity.²¹²⁵

Table 36 – Distributors'/dealers' ranking of heavy-duty forklift truck (>10 tonne capacity) suppliers' after-sales/service network

Distributors'/dealers' ranking of the top five heavy-duty forklift trucks (>10 tonne capacity) suppliers active in the EEA according to their after-sales/service network					
Company	1 (strongest/best)	2	3	4	5 (weakest/worst)
Cargotec	xxxxx	xxxxxxxxx	xxxxxxxxx	x	x
Konecranes	xxxxxxxx	xxxxxx	xxxxxxxx	xxx	x
Hyster	xxxxx	xxxxxx	xxxxxx	xxxxxx	x
Liebherr			x		x
CVS Ferrari	x			xxxx	xx
Sany					xxx
Linde	xxxxxxxx	xxx		x	
FTMH	x			xx	xxxx
Svetruck			x	xxxx	xxx
Toyota		xx	x	x	
Hyundai	x			x	
Manitou	x				
Doosan	x				

Source: Responses to Q8 – Questionnaire to Distributors of mobile equipment, Doc. ID 3609, question 19.3. The Commission's evaluation of non-confidential responses.

- (2209) When asked to explain which manufacturers of mobile equipment (of which heavy-duty forklift trucks (>10 tonne capacity) are a part) have the strongest after-sales/maintenance service presence in the region in which they are active, distributors/dealers clearly consider the Parties to be among those with the strongest after-sales/maintenance service presence. In particular, the replies summarised in Table 13 (presented above in Section 7.4.1.2 (C.ii)) show that Konecranes is considered to have the strongest after-sales/maintenance service presence, followed by Cargotec, Hyster and Kion.
- (2210) When asked to explain which manufacturers of mobile equipment (of which heavy-duty forklift trucks (>10 tonne capacity) are a part) have the strongest distribution presence in the region in which they are active, distributors/dealers clearly consider the Notifying Parties to be among those with the strongest distribution presence. In particular, the replies summarised in Table 14 (presented above in Section 7.4.1.2 (C.ii)) show that Cargotec is considered to have the strongest distribution presence, followed by Konecranes, Hyster and Kion.

²¹²⁵ Doc. ID 1662, Minutes of a call with a competitor, 30 April 2021.

- (2211) **Third**, competitors consider the Notifying Parties to have particularly strong distribution and after-sales networks.
- (2212) When asked to rank the top five heavy-duty forklift truck (>10 tonne capacity) suppliers active in the EEA (including their own company) according to their after-sales/service network, competitors consider the Notifying Parties to be stronger than most competitors. In particular, the replies summarised in Table 37 show that Hyster is considered to have the strongest after-sales/service network, followed by Cargotec, Konecranes and Linde. Other competitors' after-sales/service networks are considered clearly inferior.

Table 37 – Competitors' ranking of heavy-duty forklift truck (>10 tonne capacity) suppliers' after-sales/service network

Competitors' ranking of the top five heavy-duty forklift truck (>10 tonne capacity) suppliers active in the EEA according to their after-sales/service network					
Company	1 (strongest/best)	2	3	4	5 (weakest/worst)
Cargotec	x	xxxx		x	
Konecranes		x	xxxx		
Hyster	xxxx	x	x		
Hyundai					x
CVS Ferrari				x	
Sany				xx	x
Uplifting				x	
Svetruck			x		x
Linde	x			x	x

Response to Q3 – Questionnaire to competitors, Doc. ID 3582, question 82.3. The Commission's evaluation of non-confidential responses.

- (2213) A competitor to the Notifying Parties explains that '[t]he Parties therefore today occupy the two best distribution channels for mobile equipment in Europe and through this, hold strongly a substantial part of the market and block other OEMs from accessing parts of the market. When it comes to capable distributors in Europe, the Parties have essentially either bought or bound to themselves the 'cherries of the cake''.²¹²⁶
- (2214) **Fourth**, the Parties consider themselves and each other to have particularly strong distribution and after-sales networks.
- (2215) For example, Konecranes assesses that [internal document reference]²¹²⁷ [internal document reference].²¹²⁸ [Internal document reference].²¹²⁹ [Internal document reference].²¹³⁰
- (2216) Cargotec, in comparing its own mobile equipment (of which heavy-duty forklift trucks (>10 tonne capacity) are a part) strengths against Konecranes', assesses in the document captioned in Figure 138 that Konecranes has [internal document reference]. Kalmar on the other hand is said to have the advantage [internal

²¹²⁶ Doc. ID 1773, Minutes of a call with a competitor, 3 May 2021.

²¹²⁷ Form CO, RFI PN7 Annex QK4(c).2 – Confidential, slide 20.

²¹²⁸ Form CO, RFI PN7 Annex QK22.1 – Confidential, slides 6 and 15.

²¹²⁹ Form CO, RFI PN4 Annexes QK4.3, slide 17.

²¹³⁰ Form CO, RFI PN7 Annex QK22.1 – Confidential, slide 16.

document reference]. This clearly shows that the service and distribution presence of both players is considered as a key competitive parameter – and that both Notifying Parties have strengths in this field.

Figure 138: [...]

[...]

Source: [Internal document reference].

- (2217) In another internal Cargotec document, captioned in Figure 139, the competitive environment for mobile equipment service sales in Germany are considered. Four mobile equipment suppliers are listed – Hyster, Linde (belonging to Kion Group), Konecranes and Kalmar. As described above, the Linde network is also used in part by Konecranes. [Internal document reference].

Figure 139: Cargotec view of mobile equipment service sales in Germany

[...]

Source: [Internal document reference].

- (2218) In another internal document, one of Kalmar's strengths in forklift trucks is assessed to be [internal document reference].²¹³¹

(C.iii) Conclusion

- (2219) Therefore, local distribution and after-sales presence are considered to be important by customers when considering heavy-duty forklift truck (>10 tonne capacity) purchases, and it therefore is important for suppliers to have strong distribution and after-sales networks.
- (2220) The Notifying Parties are recognised to belong to a small group of suppliers with the strongest distribution and after-sales networks by a range of market participants (customers, distributors, competitors), and therefore compete particularly closely. The strong distribution and after-sales networks allow the Notifying Parties to compete in regions in the EEA where less competitors are active (because of a lack of local presence) and to compete at customers that have particularly stringent service requirements (that not all of the Notifying Parties' competitors can meet). The Notifying Parties' strong position in distribution and after-sales therefore limits the substitutability between the products of the Notifying Parties and those supplied by rival producers.
- (D) The Notifying Parties are particularly close competitors, because they offer a full range of heavy-duty forklift truck (>10 tonne capacity) models
- (2221) The Notifying Parties are particularly close competitors, because they offer a full range of heavy-duty forklift truck (>10 tonne capacity) models. They are therefore able to compete for a wide set of customers that have different specification requirements.
- (2222) The Notifying Parties, submit that heavy-duty forklift trucks (>10 tonne capacity) with capacities above 30 tonnes only account for a small proportion of the Notifying

²¹³¹ Doc. ID 3708-18185 (The Parties' reply to the Commission's request for information RFI 17, CAR-HUL-00039802.pptx), slide 9.

Parties' heavy-duty forklift trucks (>10 tonne capacity) sales in the EEA,²¹³² and in any case such models are also available from rival suppliers.²¹³³

- (2223) The Commission observes that while the bulk of demand for heavy-duty forklift trucks (>10 tonne capacity) is in models below 30 tonne lifting capacity, there are product segments in which significantly less competitors than in the overall market are active (e.g. very high capacity forklift trucks). Therefore, the Notifying Parties compete closely due to their extensive heavy-duty forklift trucks (>10 tonne capacity) product ranges.
- (2224) The Notifying Parties further state that 'OEMs do not need to offer a particularly large product range to be able to compete effectively in the market for forklift trucks'²¹³⁴ and that only few customers require 'niche heavy-duty forklift trucks'.²¹³⁵ Indeed, to address the specific demand of a certain customer, a supplier only needs to be able to offer the specific machines that the customer in question requires. In order to be a significant constraint to the Merged Entity however, which is active across the entire heavy-duty forklift trucks (>10 tonne capacity) product range, suppliers likewise need a broad product range.
- (2225) **First**, customers consider the Notifying Parties to have particularly broad product ranges that compete closely with each other.
- (2226) When asked to rank the top five heavy-duty forklift truck (>10 tonne capacity) suppliers active in the EEA according to their product range, customers clearly consider the Notifying Parties to have the best product range together with Hyster. In particular, the replies summarised in Table 38 show that Cargotec is clearly considered to have the best/strongest product range, followed by Konecranes and Hyster. All other suppliers are considered to have significantly weaker product ranges and are only mentioned by very few customers.

Table 38 – Customers' ranking of heavy-duty forklift truck (>10 tonne capacity) suppliers' product ranges

Customers' ranking of the top five heavy-duty forklift truck (>10 tonne capacity) suppliers active in the EEA according to their product range					
Company	1 (strongest/best)	2	3	4	5 (weakest/worst)
Cargotec	XXXXXXXX		XXX	X	
Konecranes	XXXX	XX	XX	XXX	
Hyster	XXXX	XX	XX		
CVS Ferrari	X		X		
Sany			X	X	XXX
Linde	X	XX			
FTMH				X	
Svetruck	X	X			

Source: Responses to Q6 – Questionnaire to Mobile equipment customers, Doc. ID 3607, question 14.3. The Commission's evaluation of non-confidential responses.

²¹³² Response to the Article 6(1)(c) Decision, paragraph 379.

²¹³³ Response to the Article 6(1)(c) Decision, paragraph 378.

²¹³⁴ Reply to the SO, paragraph 1140.

²¹³⁵ Reply to the SO, paragraph 1203.

(2227) This view is also reflected in the response of customers to the question which suppliers of heavy-duty forklift trucks (>10 tonne capacity) can meet all their technical equipment requirements (e.g. in terms of lifting capacity, load-handling away from centre of gravity, drive type, data-readout, etc.). In particular, the replies summarised in Table 39 show that Cargotec and Konecranes are considered by most responding customers expressing their view to be able to meet all of their equipment requirements. Overall, aside of the Notifying Parties, only Hyster and Svetruck are also considered by a majority of customers expressing their view to be able to meet all of their equipment requirements. Identifying which company they refer to by 'other European OEM', some customers mention Linde (which belongs to the Kion Group).²¹³⁶

Table 39 – Customers' view on which heavy-duty forklift truck (>10 tonne capacity) supplier can meet their equipment requirements

Customers' indication of which heavy-duty forklift truck (>10 tonne capacity) supplier can meet their equipment requirements				
Company	Can meet all of my equipment requirements	Can meet most of my equipment requirements	Can meet some of my equipment requirements	Can meet none of my equipment requirements
Cargotec	XXXXXXXXXXXXXXXXXX	XXXXX	XX	
Konecranes	XXXXXXXXXXXXXXXXXX	XXXXX	X	
Hyster	XXXXXXXXXXXX	XXXXXXXXXXXX	XX	
Sany	XXX	XXXXX	XX	XX
Svetruck	XXXXXXXXXX	XXX	XXX	
CVS Ferrari	XXXX		XXX	X
Liebherr	XXXXX	XXX	X	XXXX
FTMH	XX		X	X
Taylor		X		
Kion	X	XX		
Other European OEM	XXXX			X
Other non-European OEM				X

Source: Responses to Q6 – Questionnaire to Mobile equipment customers, Doc. ID 3607, question 18.3. The Commission's evaluation of non-confidential responses. Excluding replies indicating 'I do not know'.

(2228) It follows that when considering specific heavy-duty forklift truck (>10 tonne capacity) types – and in particular heavy-duty forklift trucks (>10 tonne capacity) of higher lifting capacities – the Notifying Parties are among a very small number of players offering certain types of heavy-duty forklift trucks (>10 tonne capacity) in the EEA. Asked which OEMs they consider to be effective suppliers in their region of heavy-duty forklift trucks with a capacity above 32 tonnes, a considerable number of customers ascribed capabilities only to the Notifying Parties, Hyster and Svetruck. For the range of heavy-duty forklift trucks with a capacity between 18 and 32 tonnes, most customer ascribe capabilities to only the Notifying Parties and Hyster.

²¹³⁶ Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 18.3.1.

Considering fully electric heavy-duty forklift trucks, most customers consider Cargotec as an effective supplier in their region, followed by Hyster and Konecranes. All other competitors are considered effective suppliers by significantly less customers.²¹³⁷

- (2229) In this context, customers also indicate that in the past ten years, they have bought heavy-duty forklift trucks (>10 tonne capacity) with a minimum lifting capacity of 32 tonnes only from Cargotec, Konecranes, Hyster, Svetruck and Linde.²¹³⁸ Linde as a manufacturer of heavy-duty forklift trucks does not supply forklift trucks with a capacity above 18 tonnes; whereas Linde as a distributor for Konecranes distributes Konecranes heavy-duty forklift trucks (>10 tonne capacity) with a lifting capacity above 18 tonnes.²¹³⁹
- (2230) **Second**, distributors consider the Notifying Parties to have particularly broad product ranges that compete closely with each other.
- (2231) When asked to rank the top five heavy-duty forklift truck (>10 tonne capacity) suppliers active in the EEA according to their product range, distributors/dealers clearly consider the Notifying Parties to have the best product range. In particular, the replies summarised in Table 40 show that Cargotec is clearly considered to have the best/strongest product range, followed by Konecranes. All other competitors, and even Hyster, are considered to have significantly weaker product ranges.

Table 40 – Distributors’/dealers’ ranking of heavy-duty forklift truck (>10 tonne capacity) suppliers’ product ranges

Distributors’/dealers’ ranking of the top five heavy-duty forklift truck (>10 tonne capacity) suppliers active in the EEA according to their product range					
Company	1 (strongest/best)	2	3	4	5 (weakest/worst)
Cargotec	XXXXXXXXXXXXXXXXXX	XXXXXXXX			X
Konecranes	XXXXXX	XXXXXXXXXXXXXX	XXXXXX	X	
Hyster	XX	XXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	
Liebherr			XX		
CVS Ferrari				XXX	XXX
Sany				X	XX
Linde	X	XX	XXX	XXX	XXX
FTMH		XX		X	XXX
Svetruck	X		XXXX	XXX	
Toyota			X	X	XX
Hyundai					XX
Doosan					XX
Manitou	X				

Source: Responses to Q8 – Questionnaire to Distributors of mobile equipment, Doc. ID 3609, question 19.3. The Commission’s evaluation of non-confidential responses.

²¹³⁷ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question E.C.A.3.3.

²¹³⁸ Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, questions 19.3. and 19.3.1.

²¹³⁹ Doc. ID 1662, Minutes of a call with a competitor, 30 April 2021.

- (2232) **Third**, competitors consider the Notifying Parties to have particularly broad product ranges that compete closely with each other.
- (2233) When asked to rank the top five heavy-duty forklift truck (>10 tonne capacity) suppliers active in the EEA (including their own company) according to their product range, competitors consider Hyster to have the best product range. In particular, the replies summarised in Table 41 show that the Notifying Parties are considered to follow Hyster and Svetruck in terms of their product ranges. All other competitors are considered to have significantly weaker product ranges.

Table 41 - Competitors' ranking of heavy-duty forklift truck (>10 tonne capacity) suppliers' product ranges

Competitors' ranking of the top five heavy-duty forklift truck (>10 tonne capacity) suppliers active in the EEA according to their product range					
Company	1 (strongest/best)	2	3	4	5 (weakest/worst)
Cargotec		xxxx	xx		
Konecranes	x		xxx	x	
Hyster	xxx	x		x	
CVS Ferrari					x
Sany				xxx	
Uplifting		x			
Svetruck	xx		x	x	
Linde					xxx

Source: Responses to Q3 – Questionnaire to competitors, Doc. ID 3582, question 82.3. The Commission's evaluation of non-confidential responses.

- (2234) When considering specific heavy-duty forklift truck (>10 tonne capacity) product types, one EEA rival (Kion) of the Notifying Parties explains that it is only active in the supply of heavy-duty forklift trucks (>10 tonne capacity) with a lifting capacity between 10 and 18 tonnes.²¹⁴⁰
- (2235) Another competitor (CVS) explains that it 'only manufactures heavy-duty lift trucks with a lifting capacity of 25 tonnes and above because as a small player, it is only competitive in the markets for container handling equipment where the volumes of production are such that the economies of scales of larger OEMs do not considerably differ from the Company's. By way of illustration, [the Company] is not active in the market for lift trucks with a lifting capacity between 10 and 16 tonnes because it is a much larger market in terms of number of units sold. [The Company] is not active in niche parts of the markets either as they require engineering resources that the Company prefers to dedicate to products where the return on the engineering investment is higher'.²¹⁴¹
- (2236) Yet another competitor (Sany) explains that '[t]he Parties are also active in heavy-duty forklift trucks with a lifting capacity above 32 tonnes, even above 50 tonnes, but [itself] is not'.²¹⁴²
- (2237) A further competitor (Hyster) states that it 'has a standard range of 32-52 tonnes capacity forklifts and have delivered trucks up to 60 tonnes. Customers use that

²¹⁴⁰ Doc. ID 1662, Minutes of a call with a competitor, 30 April 2021.

²¹⁴¹ Doc. ID 1773, Minutes of a call with a competitor, 3 May 2021.

²¹⁴² Doc. ID 657, Minutes of a call with a competitor, 22 April 2021.

equipment in specialised areas, such as steel mills. They often do not have large fleets and the equipment is bespoke/tailor-made'.²¹⁴³

- (2238) The Notifying Parties submit that in the time period 2018-2020 Cargotec has sold heavy-duty forklift trucks (>10 tonne capacity) with a lifting capacity of up to 70 tonnes and Konecranes has sold heavy-duty forklift trucks (>10 tonne capacity) with a lifting capacity of up to 60 tonnes.
- (2239) Therefore, not all competitors of the Notifying Parties active on the overall market are present both at the lower range of lifting capacities (e.g. CVS) and at the higher range of lifting capacities (e.g. Kion and Sany).
- (2240) The Notifying Parties submit that the bulk of their EEA supply of heavy-duty forklift trucks (>10 tonne capacity) is in heavy-duty forklift trucks (>10 tonne capacity) with a capacity below 30 tonnes.²¹⁴⁴ The Commission notes that there are nevertheless customers that require heavy-duty forklift trucks (>10 tonne capacity) with a lifting capacity above 30 tonnes. A limited number of suppliers, including the Notifying Parties can currently only meet this demand in the EEA.
- (2241) **Fourth**, the Notifying Parties consider themselves and each other to have particularly broad product ranges that compete closely with each other.
- (2242) For example, in an internal document Cargotec assesses that in forklift trucks Kalmar has [internal document reference].²¹⁴⁵
- (2243) In another document, captioned in Figure 140, Cargotec lists as one of Kalmar's advantages that it has a [internal document reference].

Figure 140: [...]

[...]

Source: [Internal document reference].

- (2244) Cargotec in another internal document ascribes to Kalmar with respect to its forklift trucks a [internal document reference].²¹⁴⁶
- (2245) In another internal document, Cargotec considers Konecranes forklift trucks to be [internal document reference].²¹⁴⁷
- (2246) Konecranes in an internal email [internal document reference].²¹⁴⁸
- (2247) Further, the Notifying Parties are also competing closely and across the entire heavy-duty forklift trucks (>10 tonne capacity) product range when considering their different brands and value propositions to customers. Both Notifying Parties have a more budget/value oriented brand/product as well as a premium line. Konecranes offers the premium 'Konecranes Blue' or SMV branded heavy-duty forklift trucks (>10 tonne capacity), as well as the cheaper 'Konecranes Liftace' brand. Kalmar offers the premium 'Premium', as well as the cheaper 'Essential' lines.

²¹⁴³ Doc. ID 932, Minutes of a call with a competitor, 20 April 2021.

²¹⁴⁴ Response to the Article 6(1)(c) Decision, paragraph 279.

²¹⁴⁵ Doc. ID 3708-18185 (The Parties' reply to the Commission's request for information RFI 17, CAR-HUL-00039802.pptx), slide 9.

²¹⁴⁶ Doc. ID 3708-25356 (The Parties' reply to the Commission's request for information RFI 17, CAR-HUL-00031983.pptx), slide 2.

²¹⁴⁷ Form CO, PN RFI 4, Annex QC15.a.1, slide 134.

²¹⁴⁸ Doc. ID 3585-93974 (The Parties' reply to the Commission's request for information RFI 18, M.10078 Cargotec Konecranes RFI 18-00257872 msg).

- (2248) The Konecranes internal document captioned in Figure 93 above in Section 7.4.1.2 (D) illustrates [internal document reference].
- (2249) Cargotec in an internal document, captioned in Figure 141, shows that in its medium range (9-18 tonnes) of forklift truck, it competes in [internal document reference]. Therefore, only the Parties are present and compete in both the Premium and Essential segments of the market.

Figure 141: [...]

[...]

Source: [Internal document reference].

- (2250) Similarly, the internal Konecranes document captioned in Figure 142 shows [...].

Figure 142: Konecranes benchmarking of premium and value proposition against competitors

[...]

Source: [Internal document reference].

- (2251) The Notifying Parties are active in what they themselves consider to be the ‘Premium’ segment of the heavy-duty forklift trucks (>10 tonne capacity) market, while competitors like Hyster are considered to only offer lower quality heavy-duty forklift trucks (>10 tonne capacity) products (e.g. ‘Value’ products). In addition, the Notifying Parties are active in a particularly broad product range, also covering very high capacity heavy-duty forklift trucks. Therefore, the Notifying Parties’ product portfolios are particularly close substitutes, whereas competitor products are more distant substitutes. This finding is further supported by the market share estimates based on value submitted by the Notifying Parties. While the Notifying Parties submit that Cargotec has a 2018-2020 EEA volume market share of [30-40]%, the Notifying Parties estimate Cargotec’s 2018-2020 EEA value market share to be [30-40]%. For Konecranes the estimates are [10-20]% (volume) and [10-20]% (value), for the Merged Entity [50-60]% (volume) and [50-60]% (value). Each Notifying Party’s and the Merged Entity’s value share estimate is therefore higher than the respective volume market share. In contrast, the Notifying Party’s estimates for competitors show the inverse trend. For example for the main remaining competitor post-Transaction: Hyster [10-20]% (volume) and [10-20]% (value).²¹⁴⁹ Value-based market shares capture better differences in differentiated product markets. Therefore, the fact that according to the Notifying Parties the Parties’ value-based shares are higher than their volume-based shares while Hyster’s value-based share is lower than its volume-based share further shows that the Notifying Parties compete in particular in the premium segment of the EEA heavy-duty forklift trucks (>10 tonne capacity) market and in the highest capacity segments of the market, in which Hyster is not or less present. It follows that the Notifying Parties compete more closely with each other than with Hyster.
- (2252) Therefore, both Notifying Parties consider themselves and each other to be active with heavy-duty forklift truck (>10 tonne capacity) products across different value proposition segments. At the same time, they do not consider their other competitors to be active across all these segments. The Notifying Parties therefore compete with each other across the entire heavy-duty forklift truck (>10 tonne capacity) product

²¹⁴⁹ Form CO, Reply to Request for information RFI 7, Annex Q2.

range along the value-premium scale, whereas other competitors do not. This further indicates that the Notifying Parties compete particularly closely.

- (2253) Overall, the Notifying Parties are offering a full heavy-duty forklift truck (>10 tonne capacity) product range, while most competitors do not. The Notifying Parties therefore compete particularly closely, because they are able to compete for a wide set of customers that have different specification (lifting capacity, premium/value product, modifications, etc.) requirements. They are therefore also able to compete in segments and niches of the heavy-duty forklift truck (>10 tonne capacity) market in the EEA, in which no or only few competitors are active and customers therefore only have limited ability to substitute the Notifying Parties' products.

(E) The Notifying Parties closely compete in developing new products

- (2254) The Notifying Parties submit that '*Chinese suppliers are at the forefront of innovation in Mobile Equipment*' (of which heavy-duty forklift trucks (>10 tonne capacity) are a part).²¹⁵⁰ They further, by referencing an internal Konecranes document, explain that '*Western*' suppliers are '*seeking to move into more standardized or utilitarian variants*', while Chinese suppliers are '*increasingly moving into and expanding premium and standard variants*'.²¹⁵¹
- (2255) The Commission does not dispute that manufacturers like Kalmar and Konecranes are also offering more budget oriented heavy-duty forklift truck (>10 tonne capacity) product lines (e.g. Konecranes Liftace and Kalmar Essential) and that Chinese manufacturer has been able to place a limited number of units with EEA customers.
- (2256) However, the Notifying Parties are two particularly innovative heavy-duty forklift truck (>10 tonne capacity) suppliers – and they compete closely in the supply of newly developed heavy-duty forklift truck (>10 tonne capacity) products (e.g. in terms of electrification, data-readout and –usage, etc.) into the EEA market.
- (2257) **First**, customers consider the Notifying Parties to be particularly innovative manufacturers of heavy-duty forklift truck (>10 tonne capacity).
- (2258) When asked to indicate which supplier of mobile equipment (of which heavy-duty forklift truck (>10 tonne capacity) are a part) they consider to be particularly innovative, customers consider the Notifying Parties to be the most innovative. In particular, the replies summarised in Table 42 (which reproduces Table 20) show that Cargotec is considered the most innovative, followed by Konecranes, Liebherr and Hyster. Liebherr is not active in heavy-duty forklift trucks (>10 tonne capacity). Other competitors are considered considerably less innovative.

²¹⁵⁰ The Notifying Parties' supplemental submission on mobile equipment, 24 September 2021, paragraph 20.

²¹⁵¹ The Notifying Parties' supplemental submission on mobile equipment, 24 September 2021, paragraph 21.

Table 42 - Customers' ranking of particularly innovative mobile equipment suppliers

Customers' ranking of particularly innovative mobile equipment suppliers					
Company	1 (weakest/worst)	2	3	4	5 (strongest/best)
Cargotec			XXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXX
Konecranes		X	XXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXX
Hyster		X	XXXXXXXXXX	XXXXXXXXXXXXXX	XXXX
Sany	XX	XXXXXX	XXXXXX	XXX	
Svetruck	X	XXXXXXX	XXXXXXXXXX	XXX	
CVS Ferrari	XX	XXX	XXXXXXX	XXXX	X
Liebherr	X	XX	XXXXXXX	XXXXXX	XXXXXX
FTMH	X	XXXX	XXXX		XX
Taylor	X	X	XXXXXX		
Kion	X	X	XXXX		X
Other European OEM	X	X	XXX	X	X
Other non-European OEM	X	X	XXX		

Source: Responses to Q6 – Questionnaire to Customers of mobile equipment, Doc. ID 3607, question 20. The Commission's evaluation of non-confidential responses.

- (2259) In addition, when asked to rank the top five heavy-duty forklift truck (>10 tonne capacity) suppliers according to which one is best/strongest in the development of new products, customers consider Cargotec to be the strongest, followed by Konecranes and then Hyster. All other competitors are considered significantly weaker in the development of new products.²¹⁵²
- (2260) Overall, large majorities of customers consider that both Cargotec and Konecranes are particularly innovative competitors in mobile equipment (of which heavy-duty forklift trucks (>10 tonne capacity) are a part).²¹⁵³
- (2261) One market participant in this context explains: 'The E-heavy duty forklift truck of Kalmar in the range of 10 to 18 t capacity was the first E-truck in the market. It could become a real alternative to the existing Konecranes heavy duty forklift trucks with a strong brand and dealer network in the back'.²¹⁵⁴ A customer states: 'Cargotec continues to innovate. The devices continue to develop and remain reliable. The ambitions with regard to electric drive, hydrogen drive and automation are clear'.²¹⁵⁵ Another customer submits with respect to Cargotec: 'Electrification / hydrogen drive / automation. Kalmar seems to be first in business on these topics'.²¹⁵⁶
- (2262) With respect to Konecranes, a customer submits that it 'is very aggressive in introducing new technology, new features and innovation'.²¹⁵⁷ Another market

²¹⁵² Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 14.3.

²¹⁵³ Responses to Q2 – Questionnaire to Customers, Doc. ID 3153, questions E.C.C.1 and E.C.C.2.

²¹⁵⁴ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question E.C.C.1.1.

²¹⁵⁵ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question E.C.C.1.1.

²¹⁵⁶ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question E.C.C.1.1.

²¹⁵⁷ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question E.C.C.2.1.

participant states: ‘Konecranes forklift trucks are always state of the art with a very good cabin’.²¹⁵⁸

- (2263) Asked to identify the innovative products that suppliers of heavy-duty forklift trucks (>10 tonne capacity) have brought to the market in the last five years, multiple customers name examples for Cargotec, Konecranes and Hyster, while only one customer names an example for Sany and only one customer names an example for Kion. For Cargotec, customers for example name the electric heavy-duty forklift truck, hybrid drives and smart fleet/data processing functionalities. For Konecranes, customers for example name the electric heavy-duty forklift truck, its true connect software, and remote services. For Hyster, a customer refers to an electric heavy duty forklift truck, another one to hybrid drives, electrification and remote services. For Sany, one customer names the electric forklift.²¹⁵⁹
- (2264) **Second**, competitors consider the Notifying Parties to be particularly innovative manufacturers of heavy-duty forklift trucks (>10 tonne capacity).
- (2265) When asked to rank the top five heavy-duty forklift trucks (>10 tonne capacity) suppliers according to which one is best/strongest in the development of new products, competitors consider the Notifying Parties to be among the strongest. In particular, the replies summarised in Table 43 show that Cargotec is considered to be the strongest in the development of new products, followed by Hyster and then Konecranes. The other competitors are considered to be significantly weaker.

Table 43 – Competitors’ ranking of heavy-duty forklift truck (>10 tonne capacity) suppliers’ development of new products

Competitors’ ranking of the top five heavy-duty forklift truck (>10 tonne capacity) suppliers active in the EEA according to their development of new products					
Company	1 (strongest/best)	2	3	4	5 (weakest/worst)
Cargotec	xx	xxx	x		
Konecranes	x		xx	xx	
Hyster	xx	xx		x	
Svetruck		x	xx		
CVS Ferrari					x
Sany			x	xx	
Linde				x	xx
Uplifting	x				
Hyundai					x

Source: Responses to Q3 – Questionnaire to Competitors, Doc. ID 3582, question 82.3. The Commission’s evaluation of non-confidential responses.

- (2266) A competitor to the Notifying Parties submits that ‘[b]oth Kalmar and Konecranes are leaders in the electric medium capacity fork-lift trucks (10-16 Ton capacity). Actually, they are currently the sole two brands offering fully electric fork-lift trucks with a capacity of 16 Tone/1200 mm’.²¹⁶⁰ This shows that the Notifying Parties are

²¹⁵⁸ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question E.C.C.2.1.

²¹⁵⁹ Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 21.3.

²¹⁶⁰ Doc. ID 4654, Submission by a competitor, 22 November 2021.

considered to be leaders in electrification in the EEA heavy-duty forklift trucks (>10 tonne capacity) market.

- (2267) Considering their own planned heavy-duty forklift trucks (>10 tonne capacity) product innovations, some competitors explain that they are developing zero emissions products (e.g. electric versions).²¹⁶¹
- (2268) **Third**, the Notifying Parties consider themselves main innovators and early producers of electric heavy-duty forklift trucks (>10 tonne capacity).
- (2269) Electrification, and more broadly the development of low/zero emissions vehicles, appears to be the main development trend with respect to heavy-duty forklift trucks (>10 tonne capacity). Other development trends include the inclusion of software for smart data usage and remote control features.²¹⁶²
- (2270) The Notifying Parties submit that ‘Cargotec offers light electric forklift trucks with 5-9 tonnes lifting capacity and medium electric forklifts with 9-18 tonnes lifting capacity, whilst Konecranes offers heavy-duty electric forklift trucks of a capacity of 10-18 tonnes. Among other suppliers, Linde offers electric forklift trucks of a similar capacity as Cargotec (2-8 tonnes) and FTMH has developed an electric forklift with 25 tonnes lifting capacity. The Parties also note that the electrification of heavy duty forklift is a recent trend and that the number of suppliers is likely to increase in the near future (noting that several suppliers outside of the EEA offer electric heavy duty forklift trucks, e.g. Wiggins and Elwell Park)’.²¹⁶³ The Notifying Parties further state that Hyster ‘just recently launched a 10-18t electric forklift truck’.²¹⁶⁴
- (2271) Therefore the Notifying Parties are early-adopters of the electric heavy-duty forklift truck (>10 tonne capacity) concept, first-to-market, and at present among a very limited group of suppliers in the EEA.
- (2272) Further, [...]. Konecranes [...].²¹⁶⁵
- (2273) Therefore, both Notifying Parties are working on further expanding their electric heavy-duty forklift trucks (>10 tonne capacity) product portfolio.
- (2274) Further, the Notifying Parties are monitoring each other’s developments in electrification.
- (2275) For example, Konecranes in an internal document (excerpted in Figure 143) [internal document reference].

Figure 143: [...]

[...]

Source: [Internal document reference].

- (2276) When Konecranes launched its electric heavy-duty forklift truck (>10 tonne capacity), a Kalmar employee in an internal email reported: [internal document reference].²¹⁶⁶ [Internal document reference].

²¹⁶¹ Responses to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 91.3.

²¹⁶² For example, [...], see e.g. Doc. ID 3669-76233 (The Parties’ reply to the Commission’s request for information RFI 17, CAR-VEH-00055097.msg).

²¹⁶³ Response to the Article 6(1)(c) Decision, paragraph 378.

²¹⁶⁴ Reply to the SO, paragraph 1149.

²¹⁶⁵ Reply to Request for information RFI 21, question 17.d.3.

²¹⁶⁶ Doc. ID 3708-45427 (The Parties’ reply to the Commission’s request for information RFI 17, CAR-HUL-00000522 msg).

- (2277) Further, in another internal document Kalmar considers its [internal document reference] and its [internal document reference] as competitive advantages in the heavy-duty forklift trucks (>10 tonne capacity) market.²¹⁶⁷
- (2278) In a [...] email to Konecranes, a Konecranes distributor reports that [internal document reference].²¹⁶⁸
- (2279) In an internal email, [internal document reference].²¹⁶⁹
- (2280) In a Cargotec internal document, a slide of which is captioned in Figure 144, the following risk to Kalmar's forklift truck strategy is identified: [internal document reference]. In this context it is further noted that [internal document reference]. This shows that Kalmar considers itself a leader in heavy-duty forklift truck (>10 tonne capacity) electrification, and considers Konecranes to be one of its closest rivals in heavy-duty forklift truck (>10 tonne capacity) electrification.

Figure 144: [...]

[...]

Source: [Internal document reference].

- (2281) Overall, therefore, the Notifying Parties are important and close competitors in the development of new heavy-duty forklift trucks (>10 tonne capacity) products, in particular electric versions. Customers and competitors clearly consider the Notifying Parties to be two important players in the development of new heavy-duty forklift trucks (>10 tonne capacity) products. While other heavy-duty forklift truck (>10 tonne capacity) manufacturers are also developing electric heavy-duty forklift trucks (>10 tonne capacity), they come to the market after the Notifying Parties' products (the Notifying Parties therefore have an advantage, as described in an internal Kalmar email exchange²¹⁷⁰). In general, this also confirms that the Notifying Parties are particularly innovative suppliers of heavy-duty forklift trucks (>10 tonne capacity) and therefore compete closely.
- (F) Absent the Transaction, the Notifying Parties would have continued to compete intensely for customers and market share
- (2282) Absent the Transaction, the Notifying Parties would have continued to compete intensely for customers and market share in the EEA market for heavy-duty forklift trucks (>10 tonne capacity).
- (F.i) *The Notifying Parties consider each other as the main competitors in the EEA*
- (2283) The Notifying Parties consider each other as each other's main competitors in the EEA heavy-duty forklift trucks (>10 tonne capacity) market. The Notifying Parties regularly benchmark against each other, consider the price pressure from the other Party, and fight for market share.

²¹⁶⁷ Doc. ID 3663-66155 (The Parties' reply to the Commission's request for information RFI 17, CAR-MON-00087980.pptx), slide 34.

²¹⁶⁸ Doc. ID 3585-54174 (The Parties' reply to the Commission's request for information RFI 18, M.10078 Cargotec Konecranes RFI 18-00242071 msg).

²¹⁶⁹ Doc. ID 3585-60894 (The Parties' reply to the Commission's request for information RFI 18, M.10078 Cargotec Konecranes RFI 18-01254913 msg).

²¹⁷⁰ Doc. ID 3708-45427 (The Parties' reply to the Commission's request for information RFI 17, CAR-HUL-00000522 msg).

- (2284) **First**, Konecranes considers Cargotec as its main competitor in the EEA.
- (2285) In an internal document, Konecranes summarises [internal document reference].²¹⁷¹ This suggests that [...].
- (2286) In an assessment of its main competitors in Europe in mobile equipment (which includes heavy-duty forklift trucks (>10 tonne capacity)), Konecranes clearly considers Kalmar as its main rival. In the slide captioned in Figure 145, Konecranes not only ascribes the largest market share to Kalmar out of those competitors considered, but also considers Kalmar to have other key strengths. For example, Kalmar is said to be able to ‘*direct the Market pricing as the Market Leader*’ and to be generally ‘*[s]trong on all fronts, technical and commercial with own inhouse dealer network*’.

Figure 145: Konecranes view of mobile equipment competitors in Europe

[...]

Source: [Internal document reference].

- (2287) In a document that summarises Konecranes’ Lift Trucks business unit’s (which includes heavy-duty forklift trucks (>10 tonne capacity)) [internal document reference].²¹⁷² This suggests that that there is significant price competition between the Notifying Parties and that Konecranes’ dealers perceive Kalmar as a main competitor.
- (2288) In a [...] internal Konecranes document reviewing [internal document reference].²¹⁷³
- (2289) Even in 2021, i.e. after the announcement of the Transaction, the head of Konecranes’ Lift Trucks business unit (which includes heavy-duty forklift trucks (>10 tonne capacity)) confirms [internal document reference].²¹⁷⁴
- (2290) Even a third party, the competitor Hyster, internally considers Cargotec as a main competitor to Konecranes in forklift trucks. In a Hyster internal document, [internal document reference].²¹⁷⁵ This further shows that Cargotec is considered a close rival to Konecranes.
- (2291) **Second**, Cargotec considers Konecranes as its main competitor in the EEA.
- (2292) For example, Cargotec in an internal document considers Konecranes to be its largest forklift truck rival in terms of market share in Northern and Central Europe, and its second largest rival (after Hyster) in Western and Southern Europe.²¹⁷⁶
- (2293) In an internal document, Cargotec considers that Konecranes is taking [internal document reference].²¹⁷⁷

²¹⁷¹ Form CO, PN RFI2, Annex QK89.1, slide 5.

²¹⁷² Doc. ID 3584-4720 (The Parties’ reply to the Commission’s request for information RFI 18, M.10078 Cargotec Konecranes RFI 18-00162988.pdf), slides 23 and 25.

²¹⁷³ Doc. ID 3586-81225 (The Parties’ reply to the Commission’s request for information RFI 18, M.10078 Cargotec Konecranes RFI 18-00351209.docx).

²¹⁷⁴ Doc. ID 3586-69893 (The Parties’ reply to the Commission’s request for information RFI 18, M.10078 Cargotec Konecranes RFI 18-01153171 msg).

²¹⁷⁵ Doc. ID 3591-97620 (The Parties’ reply to the Commission’s request for information RFI 18, M.10078 Cargotec Konecranes RFI 18-01207135.pptx), slide 15.

²¹⁷⁶ Doc. ID 3708-37230 (The Parties’ reply to the Commission’s request for information RFI 17, CAR-HUL-00036553.pptx), slide 4.

²¹⁷⁷ Form CO, PN RFI7, Annex QC39.1, slide 19.

- (2294) In an email exchange after the announcement of the Transaction, a Kalmar vice president for South Europe states that [internal document reference].²¹⁷⁸
- (2295) The fact that Cargotec considers Konecranes as an important rival is further evidenced in a Cargotec internal email, captioned in Figure 146. Cargotec is considering to acquire [internal document reference]. It is considered [internal document reference]. This clearly shows that Cargotec considers Konecranes as a significant rival and even considers the acquisition of a company in order to prevent Konecranes from acquiring it and becoming also a stronger heavy-duty forklift trucks (>10 tonne capacity) rival in a certain region.

Figure 146: [...]

[...]

Source: [Internal document reference].

- (2296) Further, Figure 147 shows Cargotec's view on the digital service offering for mobile equipment (of which heavy-duty forklift trucks (>10 tonne capacity) are a part) by a number of competitors, including itself and Konecranes. [...].

Figure 147: [...]

[...]

Source: [Internal document reference].

- (2297) In another internal document, considering its main competitors in the concrete and bricks industry, Cargotec finds that with respect to 'Medium FLT' it competes [internal document reference], while with respect to 'Heavy FLT' it competes [internal document reference].²¹⁷⁹
- (2298) With respect to the situation in the Netherlands, Cargotec states in an internal document the need for a forklift truck [internal document reference].²¹⁸⁰
- (2299) In an internal document considering Western Europe, Kalmar assesses with respect to mobile equipment (of which heavy-duty forklift trucks (>10 tonne capacity) are a part), that [internal document reference].²¹⁸¹
- (2300) In another internal document (captioned in Figure 148), benchmarking its heavy-duty forklift trucks (>10 tonne capacity) against its global rivals, Cargotec clearly considers [internal document reference], and are therefore also likely to not compete as closely with the Notifying Parties' products as the Notifying Parties' products with each other.

²¹⁷⁸ Courtesy Translation. The original German text reads: [internal document reference] . Doc. ID 3716-9371 (The Parties' reply to the Commission's request for information RFI 17, CAR-WUR-00019739 msg).

²¹⁷⁹ Doc. ID 3738-17916 (The Parties' reply to the Commission's request for information RFI 17, CAR-GRA-00019423.pptx), slide 47.

²¹⁸⁰ Doc. ID 3740-10607 (The Parties' reply to the Commission's request for information RFI 17, CAR-SAN-00023635.pptx), slide 5.

²¹⁸¹ Doc. ID 3665-22169 (The Parties' reply to the Commission's request for information RFI 17, CAR-PAT-00091396.pptx), slide 3.

Figure 148: Forklift truck quality-price matrix of global players

[...]

[...]

Source: [Internal document reference].

(2301) Even a third party, the competitor Hyster, internally considers Konecranes as a main competitor to Cargotec in forklift trucks. In a Hyster internal document, the following [internal document reference].²¹⁸² This further shows that Konecranes is considered a main rival of Cargotec, across different forklift truck segments – and is considered as a familiar alternative by customers.

(F.ii) Both Notifying Parties have growth plans in heavy-duty forklift trucks (>10 tonne capacity)

(2302) Both Cargotec and Konecranes have plans pre-Transaction to grow their mobile equipment and heavy-duty forklift trucks (>10 tonne capacity) business and to increase their respective market shares.

(2303) The Notifying Parties submit that ‘it is natural for companies to have growth plans’ and that surely ‘the Parties’ competitors have similar growth plans’.²¹⁸³

(2304) The Commission however considers that growth plans by the Parties mean that an increase in potential competition (due to growth ambitions of both, in part at expense of each other) would be lost due to the Transaction. This is an issue separate from whether or not competitors have growth ambitions. Given the Parties’ growth plans, absent the Transaction, competition and pricing pressure between the Parties would increase.

(2305) **First**, Konecranes have plans to grow its market share in heavy-duty forklift trucks (>10 tonne capacity) in the coming years, also at the expense of Cargotec.

(2306) As explained above in Recitals (1435) to (1442) above, Konecranes’ [internal document reference]. This initiative also explicitly includes heavy-duty forklift trucks (>10 tonne capacity). Overall, Konecranes aims to increase its market share to [...], in part by [...].

(2307) [...]. Therefore, absent the Transaction, it is likely that the Notifying Parties would have competed even more intensely on the EEA market for heavy-duty forklift trucks (>10 tonne capacity).

(2308) **Second**, Cargotec have plans to grow its market share in heavy-duty forklift trucks (>10 tonne capacity) in the coming years, also at the expense of Konecranes.

(2309) In particular, Cargotec has the ambition to increase its forklift truck market share – globally and specifically also in Europe. As shown in the slide from an internal Cargotec document captioned in Figure 149, [internal document reference].

Figure 149: [...]

[...]

Source: [Internal document reference].

²¹⁸² Doc. ID 3591-97620 (The Parties’ reply to the Commission’s request for information RFI 18, M.10078 Cargotec Konecranes RFI 18-01207135.pptx), slide 11.

²¹⁸³ Response to the Article 6(1)(c) Decision, paragraph 391.

(2310) In another slide from the same document, captioned in Figure 150, [internal document reference] common to all four areas.

Figure 150: [...]

[...]

Source: [Internal document reference].

(2311) [Internal document reference].²¹⁸⁴

(2312) In addition, Cargotec has its own dedicated strategy to try and [internal document reference] – specifically also in mobile equipment and heavy-duty forklift trucks (>10 tonne capacity).²¹⁸⁵

(2313) In an internal document, [internal document reference].²¹⁸⁶

(2314) In another internal Cargotec document [internal document reference].²¹⁸⁷ This suggests a willingness on the side of Cargotec to go specifically after current Konecranes customers and to price competitively against Konecranes in order to gain market share against Konecranes.

(2315) [Internal document reference].²¹⁸⁸ [Internal document reference].²¹⁸⁹

Figure 151: [...]

[...]

Source: [Internal document reference].

(2316) In another internal document, captioned in Figure 152, under the heading [internal document reference] it is assessed that this is possible with the following approach: [internal document reference].

Figure 152: [...]

[...]

Source: [Internal document reference].

(2317) In addition to this overall mobile equipment strategy to [internal document reference], Cargotec in another internal document also describes an even more targeted strategy to [internal document reference] in forklift trucks. For example, in the slide captioned in Figure 153, it is assessed that Kalmar should [internal document reference].

²¹⁸⁴ Doc. ID 3711-7759 (The Parties' reply to the Commission's request for information RFI 17, CAR-MAL-00009315.pptx), slide 55.

²¹⁸⁵ See e.g. Doc. ID 3662-28275 (The Parties' reply to the Commission's request for information RFI 17, CAR-KAU-00141887.pptx) and Doc. ID 3708-25356 (The Parties' reply to the Commission's request for information RFI 17, CAR-HUL-00031983.pptx).

²¹⁸⁶ Doc. ID 3659-35011 (The Parties' reply to the Commission's request for information RFI 18, CAR-KAR-00011713.pptx), slide 9.

²¹⁸⁷ Doc. ID 3662-28275 (The Parties' reply to the Commission's request for information RFI 17, CAR-KAU-00141887.pptx), slide 5.

²¹⁸⁸ Doc. ID 3662-28275 (The Parties' reply to the Commission's request for information RFI 17, CAR-KAU-00141887.pptx), slide 23.

²¹⁸⁹ Doc. ID 3662-28275 (The Parties' reply to the Commission's request for information RFI 17, CAR-KAU-00141887.pptx), slide 25.

Figure 153: [...]

[...]

Source: [Internal document reference].

- (2318) In another slide from the same document, captioned in Figure 154, it is described that Kalmar should [internal document reference].

Figure 154: [...]

[...]

Source: [Internal document reference].

- (2319) [...].

- (2320) Overall, therefore, both Notifying Parties consider each other as main competitors in the EEA market for heavy-duty forklift trucks (>10 tonne capacity) and both Notifying Parties have plans to increase their heavy-duty forklift trucks (>10 tonne capacity) market shares – in part at the expense of each other and in part also based on the same or similar strategies. Absent the Transaction, this would result in continued and further intensified competition between the Notifying Parties in the EEA market for heavy-duty forklift trucks (>10 tonne capacity).

(G) Conclusion

- (2321) For the reasons set out in this Section 7.4.3.2, the Commission considers that the Transaction eliminates competition between the Notifying Parties that pre-Transaction compete closely and intensely on the EEA market for heavy-duty forklift trucks (>10 tonne capacity). The analysis of the Notifying Parties' bidding data and tender interactions generally suggest that the Notifying Parties compete closely. Views from market participants as well the Notifying Parties' internal documents further suggest that the Notifying Parties compete particularly closely due to strong distribution and service networks and a broad product range, and that they are important innovators in heavy-duty forklift trucks (>10 tonne capacity). Further, absent the Transaction, the Notifying Parties would have competed intensely, as they consider each other as main rivals and have plans to each increase their heavy-duty forklift trucks (>10 tonne capacity) market shares.

7.4.3.3. Competitors face significant barriers to entry and expansion

- (2322) The Commission will examine whether entry is likely or whether potential entry is likely to constrain the behaviour of incumbents post-merger. For entry to be likely, it must be sufficiently profitable, timely and it must be of sufficient scope and magnitude to deter or defeat the anti-competitive effects of the merger. Barriers to entry give incumbent firms advantages over potential competitors, as they determine entry risks and costs for potential entrants.²¹⁹⁰
- (2323) The Notifying Parties submit that there are no significant barriers to entry and expansion, in particular because there has been successful entry into the heavy-duty forklift trucks (>10 tonne capacity) market in the recent past. Further, they state that as *'evidenced by the successful global expansion of Chinese players in just a matter of a few years, safety and regulatory standards worldwide for forklift trucks generally can be met without difficulties'*. Also, *'[m]ost of the critical components used to produce forklift trucks are readily available and commonly sourced from*

²¹⁹⁰ See HMG, paragraphs 69-75.

third Parties'. In addition, the Notifying Parties submit that '*forklift trucks are often sold through knowledgeable distributors, which work together with suppliers to demonstrate the quality of their offering and expand the customer base*'. Further, '*the ease of entry is evidenced by the high number of players on the market*'.²¹⁹¹

- (2324) In addition, the Notifying Parties state that local service and distribution networks are not a pre-requisite to successfully supply in the heavy-duty forklift trucks (>10 tonne capacity) market,²¹⁹² but that in any case sufficient independent distributors and service providers are available for potential entrants to partner with.²¹⁹³
- (2325) The Notifying Parties further submit that changing markets (e.g. demand for environmentally friendly solutions) are giving room for market entry.²¹⁹⁴
- (2326) The Notifying Parties also submit that they are concerned about the entry and expansion of Chinese competitors, globally and also in Europe.²¹⁹⁵
- (2327) Contrary to the submissions by the Notifying Parties, the Commission finds that significant barriers to entry and expansion exist in the EEA market for heavy-duty forklift trucks (>10 tonne capacity). While some companies indicate that they have entry or expansion plans, no entry on significant scale has occurred over the past ten years – instead the market has consolidated further. Future entry and expansion are made difficult by the benefits of a European assembly presence, the need of a local distribution and after-sales network, the benefits incumbents have due to their installed base, and the need to develop high-quality, well perceived products.
- (2328) The Notifying Parties further submit that in assessing the likelihood of entry and expansion, a timeframe longer than 2-3 years would be appropriate, e.g. due to the characteristics of the market such as long-term investments and relatively low and lumpy order volumes.²¹⁹⁶ However, such a timeframe appears to be appropriate to account for the lumpiness of demand in the heavy-duty forklift trucks (>10 tonne capacity) industry – it is therefore also a three-year timeframe that is considered when assessing market shares (an approach also advanced by the Notifying Parties in the Form CO). Further, given an average eight-year lifespan of heavy-duty forklift trucks (>10 tonne capacity), a 2-3 year timeframe to consider potential entry and expansion already accounts for on average 25% to 38% of replacement demand – a significant portion of demand for which customers would be exposed to the (adverse) effects of the Proposed Transaction. If one were to consider entry and expansion on a 5-year timeframe, this affected proportion of replacement demand would even be 63%. Therefore, a 2-3 year timeframe is appropriate to consider entry and expansion in this case.
- (2329) Overall, it therefore is unlikely that any potential entry or expansion would be sufficient in scope and magnitude to effectively deter and defeat the anti-competitive effects of the Transaction.

²¹⁹¹ Form CO, Chapter 2, paragraphs 357-358.

²¹⁹² Response to the Article 6(1)(c) Decision, paragraph 400.

²¹⁹³ Response to the Article 6(1)(c) Decision, paragraphs 401-402.

²¹⁹⁴ Response to the Article 6(1)(c) Decision, paragraphs 403-404.

²¹⁹⁵ Response to the Article 6(1)(c) Decision, paragraph 407.

²¹⁹⁶ Reply to the SO, paragraph 1129 and paragraph 847.

- (A) Some companies have entry or expansion ambitions in relation to the EEA heavy-duty forklift trucks (>10 tonne capacity) market
- (2330) The Commission has become aware of some companies that have entry or expansion plans in relation to the EEA heavy-duty forklift trucks (>10 tonne capacity) market.
- (2331) A company currently active in the supply of heavy-duty forklift trucks (>10 tonne capacity) only outside of the EEA submits that it plans to enter the EEA market for heavy-duty forklift trucks (>10 tonne capacity) in the next 2-3 years. This competitor submits: *‘Yes, we are concentrating on the western hemisphere but will expand our distribution in the future’*.²¹⁹⁷ The company further explains that while *‘currently has no specific plans of market entry in Europe/in the EEA, it considers it likely that it will seek to compete there in the future as well’*.²¹⁹⁸ However, this competitor notes in relation to the time and cost related to such entry plans that *‘[i]t is a monumental task because of the two major players konecrane and kalmar. jointly it would be a monopoly in my opinion’*.²¹⁹⁹ The company also explains that profitable entry is not easy to achieve since initially relatively low number of units could be expected to be sold. Accordingly, *“it would not be worth the expense to undertake the necessary CE certificate registration for the products”*. The company estimates that the cost of CE certificate would be mid six figures at least and if one were to certify the entire product line, this would probably reach into the seven figures. Other costs related to market entry would be linked to the installation of offices in Europe and the creation of marketing campaigns to present the product. In addition, the current design of this competitor’s container handling equipment would require certain modifications to meet European customer preferences.²²⁰⁰
- (2332) A further company currently active in the supply of heavy-duty forklift trucks (>10 tonne capacity) only outside the EEA and based in India submits that it plans to enter the supply of heavy-duty forklift trucks (>10 tonne capacity) in the EEA in the next 2-3 years.²²⁰¹ The company also submits that it has *‘to invest significant amounts to establish a distribution and service network in the EEA’*.²²⁰² The company further submits: *‘We currently supply mobile equipment per Indian Standards. As EU regulations are generally stricter, we may have challenges to supply mobile equipment’*.²²⁰³
- (2333) A competitor already active in the supply of heavy-duty forklift trucks (>10 tonne capacity) in the EEA, Sany, submits that it is *‘in a growing mode’*.²²⁰⁴
- (2334) The Notifying Parties submit that *‘in a market with excess capacity, the presence of a few competitors is sufficient to guarantee effective price competition, as any attempt to increase prices would be defeated by competitors who have sufficient capacity to expand production’*.²²⁰⁵ Indeed, asked if they could expand supply in case of an increase in prices for heavy-duty forklift trucks (>10 tonne capacity) in the EEA, one competitor answered yes, in a short matter of time, one answered yes, in 2-3 years

²¹⁹⁷ Response to Q1 – Questionnaire to Competitors, Doc. ID 3154, question E.C.B.1.3.

²¹⁹⁸ Doc. ID 4133, Minutes of a call with a competitor, 19 August 2021.

²¹⁹⁹ Response to Q1 – Questionnaire to Competitors, Doc. ID 3154, question E.C.B.3.3.

²²⁰⁰ Doc. ID 4133, Minutes of a call with a competitor, 19 August 2021.

²²⁰¹ Response to Q3 – PH2 Questionnaire to competitors, Doc. ID 3582, question 84.3.

²²⁰² Response to Q3 – PH2 Questionnaire to competitors, Doc. ID 3582, question 84.3.1.

²²⁰³ Response to Q3 – PH2 Questionnaire to competitors, Doc. ID 3582, question 75.1.

²²⁰⁴ Doc. ID 657, Minutes of a call with a competitor, 22 April 2021.

²²⁰⁵ Reply to the SO, paragraph 1128.

and two answered no.²²⁰⁶ Competitors generally submit that they could increase their production capacity for heavy-duty forklift trucks (>10 tonne capacity).²²⁰⁷

- (2335) However, production capacity is not the main feature limiting suppliers' ability to compete in the EEA heavy-duty forklift trucks (>10 tonne capacity) market. Unlike other parameters (price, quality, distribution and service network, etc.) the Notifying Parties do not track competitors' production capacities, [...].²²⁰⁸ Rather than available capacity, factors such as customer access (via a strong distribution and after-sales network) and the ability to fulfil customer requirements (e.g. with respect to quality, reputation and product range) are relevant for the success of (potential) suppliers.
- (B) No significant entry into the EEA heavy-duty forklift trucks (>10 tonne capacity) market in the past ten years
- (2336) The EEA market for heavy-duty forklift trucks (>10 tonne capacity) has seen no significant entry in the past ten years. In fact, rather than the entry and expansion of competitors, concentration has been the main defining trend in the EEA market for heavy-duty forklift trucks (>10 tonne capacity). As explained in Section 7.4.3.1 (D), the market share of 'other' EEA competitors of the Notifying Parties (in the data provided by the Notifying Parties grouped together under 'Other Fem', 'Other Jiva (incl. Mitsubishi)' and 'Other Kocema' (i.e. all competitors except for Svetruck, Hyster and Sany)), declined from [40-50]% in 2010 to [10-20]% in 2020. This indicates that market concentration in this time has significantly increased.
- (2337) The Notifying Parties submit that in the past ten years (since 2011), five companies have entered into the EEA market for heavy-duty forklift trucks (>10 tonne capacity), namely FTMH, Hyundai, Sany, Uplifting and Socma.
- (2338) The Commission observes the following in relation to these companies and their presence in the EEA heavy-duty forklift trucks (>10 tonne capacity) market:
- (2339) FTMH: This company is an Italian mobile equipment supplier, founded by former Fantuzzi staff (which was acquired by Konecranes). In the years 2018-2020, the Notifying Parties in the tender data provided to the Commission do not record a single EEA instance where they lost a heavy-duty forklift trucks (>10 tonne capacity) tender to this company.²²⁰⁹ Further, Konecranes in a recent documents notes [internal document reference].²²¹⁰
- (2340) Hyundai: This company is a Korean manufacturer of a range of industrial machinery, including construction equipment and forklift trucks (including heavy-duty forklift trucks (>10 tonne capacity)). In the years 2018-2020, the Notifying Parties in the tender data provided to the Commission record [...] where they lost a heavy-duty forklift trucks (>10 tonne capacity) tenders to this company.²²¹¹
- (2341) Sany: This company, a Chinese manufacturer of construction and port/material handling equipment, is said by the Notifying Parties to have entered the heavy-duty forklift trucks (>10 tonne capacity) market in 2012. According to the data provided

²²⁰⁶ Response to Q1 – Questionnaire to Competitors, Doc. ID 3154, question E.C.B.7.3.

²²⁰⁷ See Responses to Q3 – PH2 Questionnaire to competitors, Doc. ID 3582, question 80.3.1.

²²⁰⁸ Reply to request for information RFI 30, question 10.

²²⁰⁹ See data provided in Reply to request for information RFI 16.

²²¹⁰ Doc. ID 3586-62316 (The Parties' reply to the Commission's request for information RFI 18, M.10078 Cargotec Konecranes RFI 18-00354050.pptx), slide 7.

²²¹¹ See data provided in Reply to request for information RFI 16.

by the Notifying Parties, Sany has made its first EEA sales of heavy-duty forklift trucks (>10 tonne capacity) in 2019, and has according to the Notifying Parties an EEA 2018-2020 market share of [0-5] %.

- (2342) Uplifting: This is a small Spanish manufacturer of mobile equipment. In the years 2018-2020, the Notifying Parties in the tender data provided to the Commission do not record a single EEA instance where they lost a heavy-duty forklift trucks (>10 tonne capacity) tender to this company.²²¹² No customer explaining its last purchase of heavy-duty forklift trucks (>10 tonne capacity) indicates that this company submitted a bid.²²¹³ A Konecranes Lift Trucks sales director in an internal email states [internal document reference].²²¹⁴
- (2343) Socma: This is a Chinese manufacturer of mobile and construction equipment. In the years 2018-2020, the Notifying Parties in the tender data provided to the Commission do not record a single EEA instance where they lost a heavy-duty forklift trucks (>10 tonne capacity) tender to this company.²²¹⁵ No customer explaining its last purchase of heavy-duty forklift trucks (>10 tonne capacity) indicates that this company submitted a bid.²²¹⁶ The Notifying Parties submit that Socma has ‘*recently entered the European market for heavy-duty forklift trucks*’.²²¹⁷ However, the Notifying Parties also submit that they ‘*are not aware whether and where Socma has already sold its mobile equipment in Europe*’, but point out that Socma is offering its products online in different European languages and on online platforms such as Alibaba, as well as that according to a colour-coded map on Socma’s Facebook page it has a dealer in Germany.²²¹⁸ The Commission reiterates that online sales are not considered to be an important or growing route to market in the EEA (see e.g. Recital (2188)), and that further no customer responding to the Commission’s market investigation plans to purchase mobile equipment for EEA operations from Socma in the next 2-3 years (see Table 47).
- (2344) This assessment therefore confirms that there has not been any significant entry in the EEA heavy-duty forklift trucks (>10 tonne capacity) market in the past ten years.
- (2345) Further, when asked if following a price increase for heavy-duty forklift trucks (>10 tonne capacity) in the EEA they tried to start supplying them in the EEA, a majority of competitors expressing their view indicate that they either did not try to start supplying heavy-duty forklift trucks (>10 tonne capacity) in the EEA following a price increase, or that they did not observe a price increase. Only two competitors expressing their views submit that they successfully started supplying heavy-duty forklift trucks (>10 tonne capacity) in the EEA following a price increase in the EEA.²²¹⁹
- (2346) Overall, therefore, there has not been significant entry into the EEA market for heavy-duty forklift trucks (>10 tonne capacity) in the past ten years.

²²¹² See data provided in Reply to request for information RFI 16.

²²¹³ See Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 15.3.

²²¹⁴ Doc. ID 3594-57552 (The Parties’ reply to the Commission’s request for information RFI 18, M.10078 Cargotec Konecranes RFI 18-01218532 msg).

²²¹⁵ See data provided in Reply to request for information RFI 16.

²²¹⁶ See Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 15.3.

²²¹⁷ Reply to the SO, paragraph 1113.

²²¹⁸ Reply to Request for information RFI 37, question 3.

²²¹⁹ Responses to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 86.3.

- (C) The lack for a European assembly presence constitutes a barrier to entry
- (2347) The lack of a European assembly presence for heavy-duty forklift trucks (>10 tonne capacity) constitutes a barrier to entry.
- (2348) While it is in principle possible to be active in the supply of heavy-duty forklift trucks (>10 tonne capacity) in the EEA without a European assembly factory for heavy-duty forklift trucks (>10 tonne capacity), this has significant disadvantages that would prevent the company in question from competing effectively in the EEA.²²²⁰
- (2349) Cargotec produces its heavy-duty forklift trucks (>10 tonne capacity) in the EEA (in its Stargard, Poland factory). Konecranes produces its heavy-duty forklift trucks (>10 tonne capacity) in the EEA (Markaryd, Sweden) and in China (Lingang). The Notifying Parties serve the EEA demand exclusively with assembled heavy-duty forklift trucks (>10 tonne capacity) units from their EEA factories.²²²¹
- (2350) The importance the Notifying Parties ascribe to assembly in Europe is for example documented in a Cargotec internal document in which, in relation to another mobile equipment product, empty container handlers, it is assessed that there is a demand for machines [internal document reference].²²²² As heavy-duty forklift trucks (>10 tonne capacity) are manufactured in the same facilities as empty container handlers and are sold through the same sales channels (often to the same or similar customer groups), a similar rationale likely also applies to heavy-duty forklift trucks (>10 tonne capacity). This shows that customers prefer machines that can be described as having been ‘made in Europe’.
- (2351) Customers indeed have a preference for heavy-duty forklift trucks (>10 tonne capacity) manufactured in Europe. In relation to mobile equipment overall (of which heavy-duty forklift trucks (>10 tonne capacity) are a part), the majority of customers expressing their view submit that they generally consider suppliers with mobile equipment manufacturing facilities in the EEA, while only minorities of responding customers consider suppliers only headquartered in the EEA and suppliers located outside the EEA.²²²³
- (2352) Further, the competitor Sany assembles most mobile equipment for EEA customers at its assembly site in Germany (from kits delivered from China). In many cases, certain modifications to adhere to European customers’ requirements are done at the site in Germany, and sometimes particular local components are installed that are not available in China. Further, having stock kits (which then can be assembled according to customer modification requirements upon order receipt) in Europe, allows for shorter lead times to European customers, in contrast with deliveries from China.²²²⁴
- (2353) This further confirms that it is likely very difficult to enter the EEA market for heavy-duty forklift trucks (>10 tonne capacity) simply by delivering units from a

²²²⁰ See also Responses to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 74. No competitor submits that mobile equipment supplied in the EEA is exclusively manufactured outside the EEA.

²²²¹ With the exception of three Cargotec units from its Chinese plant. See Reply to request for information 13, Annex QC16 and Annex QK16.

²²²² Doc. ID 3739-16199 (The Parties’ reply to the Commission’s request for information RFI 17, CAR-HEI-00018875 msg).

²²²³ Responses to Q2 – Questionnaire to Customers, Doc. ID 3153, question E.B.1.

²²²⁴ Doc. ID 3983, Minutes of a call with a competitor, 22 September 2021.

production facility in Asia. Some form of European assembly presence is necessary in order to be competitive in terms of lead times and to be able to adequately fulfil customisation requirements of European customers.

(D) The need for an effective local distribution and after-sales network constitutes a barrier to entry and expansion

(2354) The Commission, contrary to the submissions of the Notifying Parties,²²²⁵ finds a local distribution and after-sales network is essential in order to be able to effectively supply heavy-duty forklift trucks (>10 tonne capacity) in the EEA market. As explained in Section 7.4.3.2 (C.i), customers, distributors, competitors and the Notifying Parties themselves ascribe great importance to local distribution and after-sales presence for effective customer access. This stands in contrast to the Notifying Parties' claim that local distribution and after-sales presence are not a barrier to entry, because '*local distribution and after-sales networks are not a pre-requisite to enter the market*' for heavy-duty forklift trucks (>10 tonne capacity).²²²⁶

(D.i) *Potential entrants do not have alternatives to setting up local distribution and after-sales networks*

(2355) Potential entrants into the EEA market for heavy-duty forklift trucks (>10 tonne capacity) do not have alternatives to setting up a local distribution and after-sales network in order to effectively access customers of heavy-duty forklift trucks (>10 tonne capacity) in the EEA.

(2356) **First**, online direct sales of mobile equipment (of which heavy-duty forklift trucks (>10 tonne capacity) are a part) are not, contrary to the submission by the Notifying Parties,²²²⁷ an effective alternative avenue for (potential) suppliers of heavy-duty forklift trucks (>10 tonne capacity) in the EEA to access customers.

(2357) The large majority of distributors expressing their view submit that they do not consider online direct sales of mobile equipment by the OEMs to significantly grow in importance as a route-to-market in the EEA.²²²⁸ One distributor explains in this context that '*there are so many technically complex issues which we as specialists need to convey to the customer. This cannot be done by the customer himself on-line. I think that this area will gradually evolve and we may see some impact in the long run*'.²²²⁹ Another distributor states: '*Those equipments and their attachment are so specific, that the online purchase won't grow in the next years*'.²²³⁰ A further distributor submits: '*Online offers yes, but no online direct sales with putting something into your "purchasing-basket", like AMAZON. Always a lot of questions needs to be cleared before, lots of explanation / checking, operating and so on*'.²²³¹

(2358) **Second**, customers do not consider suppliers that do not have a local after-service presence. The large majority of customers expressing their view submit that they would not consider a supplier that does not have a local after-sales/servicing presence (either directly or via an associated distributor/dealer) in the area in which they are active for their next purchase of heavy-duty forklift trucks (>10 tonne

²²²⁵ See e.g. the Reply to the SO, paragraph 1137.

²²²⁶ Response to the Article 6(1)(c) Decision, paragraphs 401 and 294.

²²²⁷ Response to the Article 6(1)(c) Decision, paragraph 313.

²²²⁸ Responses to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 18.

²²²⁹ Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 18.1.

²²³⁰ Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 18.1.

²²³¹ Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 18.1.

capacity).²²³² In the past five years, the large majority of customers has not bought heavy-duty forklift trucks (>10 tonne capacity) from a supplier that does not have a local after-sales/servicing presence in their region.²²³³ Similarly, the fact that most customers at some point rely on the servicing of equipment by the OEM or an associated dealer/distributor²²³⁴ and require fast reaction times,²²³⁵ further excludes potential heavy-duty forklift trucks (>10 tonne capacity) suppliers without a local after-sales presence in the EEA from contention for EEA customers.

- (2359) Therefore, potential entrants into the EEA market for heavy-duty forklift trucks (>10 tonne capacity) do not have an alternative to establishing a local distribution and after-sales network.

(D.ii) *It is difficult to establish a network of heavy-duty forklift trucks (>10 tonne capacity) distributors and service providers in the EEA*

- (2360) Establishing a network of heavy-duty forklift trucks (>10 tonne capacity) distributors and service providers in the EEA is very difficult, in particular when considering a network that would allow a new entrant to rival the networks of the Notifying Parties. This however would be necessary in order to effectively constrain the Merged Entity across the different regions of the EEA.

- (2361) **First**, the lack of sufficient available potential distributors/service providers makes it difficult for potential entrants to establish a strong distribution and after-sales network in the EEA.

- (2362) A number of competitors submit that there are not enough appropriate distributors/service providers available to work with in the EEA in order to establish an after-sales/maintenance network that covers all or almost all of the EEA.²²³⁶ While one heavy-duty forklift trucks (>10 tonne capacity) manufacturer active in India states that ‘*Yes, there may be companies who meet our criteria and who are not associated with our competitors*’,²²³⁷ two established European heavy-duty forklift trucks (>10 tonne capacity) competitors consider the availability of distributors in the EEA not yet associated with manufacturers to be limited. One competitor states about the distributor availability: ‘*Very few to none, at least among those with a potential interest in this business*’.²²³⁸ Another competitor says ‘*Yes, but very limited [are available]*’.²²³⁹

- (2363) Discussing the establishment of a distribution and service network that goes beyond single dealers, a competitor further explains that ‘*[t]he investment required to build up a significative and economically viable presence in several EEA markets which are very well presidiated by certain brands/distributors, makes it basically impossible for new entrants, wheather distributors or directly suppliers, to enter*

²²³² Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 11.3.

²²³³ Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 10.3.

²²³⁴ Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 8.

²²³⁵ Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 12.

²²³⁶ Responses to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 89.

²²³⁷ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 90.1.

²²³⁸ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 90.1.

²²³⁹ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 90.1.

*these markets. Often the incumbent suppliers/distributors also strenuously protect their market with any mean they have from the entrance of new players’.*²²⁴⁰

- (2364) Competitors also describe that they have specific requirements for entering into agreements with distributors/service providers. One competitor states that it *‘would only enter into agreements with distributors if they would be willing to make thenecessary investments to effectively sell and - more than anything - support the product in the local market and that can substantiate with facts such will’.*²²⁴¹ Another competitor states that its *‘[d]ealer agreements are comprehensive. We have many criteria that are aimed to have consistent high quality customer coverage meeting our standards also on business ethics (code of conduct)’.*²²⁴²
- (2365) A competitor identifies ‘the establishment of a distribution network as one of the main difficulties when entering the EEA mobile equipment markets’ due to ‘the need to provide good coverage (i.e., dealers and services located close to customers), and capital requirements, as the mobile equipment industry is particularly capital-intensive (and the bigger the machines, the bigger these requirements, e.g. in terms of financing, stocking, etc.)’.²²⁴³
- (2366) Another competitor summarises the lack of appropriate distributors that (potential) competitors of the Parties could turn to by stating that *‘[t]here are few distributors available given the substantial investments in terms of sales representatives, service technicians, spare parts stock and supporting equipment this activity requires. Small local dealers or servicing outfits do not have the competence level in terms of sales and services to compete against specialised distributors. Moreover, the successive acquisitions of the Parties over time have restricted the choice of available distributors. While Kalmar acquired Valmet and Ottawa, Konecranes acquired SMV, Linde, Terex and Fantuzzi. Over time, the Parties rationalised their distribution network by selecting the best distributors of the acquired OEMs and prevented them to offer the other brands available. Kalmar has gone a further step by taking over some of the local distributors and turning them into Kalmar branches, thereby absorbing the know-how and infrastructure of the distributors. The Parties therefore today occupy the two best distribution channels for mobile equipment in Europe and through this, hold strongly a substantial part of the market and block other OEMs from accessing parts of the market. When it comes to capable distributors in Europe, the Parties have essentially either bought or bound to themselves the ‘cherries of the cake’.*²²⁴⁴
- (2367) The Notifying Parties submit that there is a very large number of companies in the EEA active as distributors or service providers for mobile equipment (that includes heavy-duty forklift trucks (>10 tonne capacity)), or could become active in this field.²²⁴⁵ However, there is in fact not a large number of available distributors/servicing providers that new entrants in the EEA heavy-duty forklift trucks (>10 tonne capacity) market could turn to. In particular, the Notifying Parties’ claim that companies currently active as distributors and/or service providers in neighbouring markets to mobile equipment (such as construction equipment) could

²²⁴⁰ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 89.1.

²²⁴¹ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 90.

²²⁴² Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 90.

²²⁴³ Doc. ID 4278, Minutes of a call with a competitor, 23 August 2021.

²²⁴⁴ Doc. ID 1773, Minutes of a call with a competitor, 3 May 2021.

²²⁴⁵ See e.g. Supplemental submission on distribution networks, 1 September 2021, paragraph 6.

easily start distributing and/or servicing also heavy-duty forklift trucks (>10 tonne capacity),²²⁴⁶ is contradicted by distributors' and service providers' submissions.

- (2368) Many distributors submit that distributors/dealers providers currently solely active in neighbouring product areas (for example construction equipment or low capacity forklifts) could not easily and in a short matter of time become effective distributors/dealers for heavy-duty forklift trucks (>10 tonne capacity) in the EEA.²²⁴⁷ This is due to lack of expertise with the product and lack of contacts among customers who typically buy this product.
- (2369) While one distributor submits that '[i]n general if they have a solid business, with high level of service coverage, competence and strong growth/ business results then there, then a business in a neighbouring industry could be a candidate as a distributor/ dealer',²²⁴⁸ another distributor clearly submits: 'A transition from a neighboring industry has almost never been seen. It takes decades to establish a track-record in the heavy-duty segments and most often a player from a neighboring trade would not be willing to invest the necessary time and ressources'.²²⁴⁹ Another distributor states that 'the distributor of other mobile equipment/machines (e.g. construction machines) does not have the network/contacts to provide heavy-duty forklift trucks in a short matter of time'.²²⁵⁰ Another company with distribution activities states: 'Knowledge and network needs to be built up which takes a lot of time'.²²⁵¹ Yet another distributor says that '[p]eople who sell low-capacity forklifts or construction equipments are not usually well versed in the field of heavy handling, and they are not usually technically equipped to service this type of equipment'.²²⁵²
- (2370) The majority of distributors submit that maintenance/service providers currently solely active in neighbouring product areas for example construction equipment or low capacity forklifts) could not easily and in a short matter of time become effective maintenance/service providers for heavy-duty forklift trucks (>10 tonne capacity) in the EEA.²²⁵³ This is due to lack of expertise with the product.
- (2371) While one distributor submits: 'It would be possible with customers in the industry: they usually have also low capacity forklifts, and they also appreciate "one stop shopping" suppliers, able therefore to provide and service all the products they need. Moreover: the technical skills needed for low capacity forklifts are not so different from those needed for high capacity forklifts',²²⁵⁴ another distributor explains in this context: 'There will be an obstacle in the form of lack of product knowledge, lack of experience which will make it very difficult to make the transition. The basic competences are similar, but due to differences in both application and electronic architecture it is a very difficult transition'.²²⁵⁵ Yet another distributor states that '[i]t is a very special product, it needs expertise, not enough by neighbouring products'.²²⁵⁶ A further distributor explains: 'Normally, those who service low

²²⁴⁶ Response to the Article 6(1)(c) Decision, paragraph 306.

²²⁴⁷ Responses to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, questions 12.3 and 12.3.1.

²²⁴⁸ Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 12.3.1.

²²⁴⁹ Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 12.3.1.

²²⁵⁰ Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 12.3.1.

²²⁵¹ Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 12.3.1.

²²⁵² Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 12.3.1.

²²⁵³ Responses to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 13.3.

²²⁵⁴ Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 13.3.1.

²²⁵⁵ Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 13.3.1.

²²⁵⁶ Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 13.3.1.

capacity forklifts or construction equipment do not have the right equipment and technicians trained in this type of equipments'.²²⁵⁷

- (2372) By submitting that a number of distributors/dealers currently associated to the Notifying Parties or established competitors in the EEA are engaging in 'multi-branding', i.e. distribute overlapping mobile equipment products from different OEMs, the Notifying Parties suggest that new entrants in the EEA heavy-duty forklift trucks (>10 tonne capacity) market can easily find an established distributor that in addition also starts distributing their product.²²⁵⁸
- (2373) However, the Commission finds that multi-branding by distributors in the EEA is at most a niche phenomenon. When considering heavy-duty forklift trucks (>10 tonne capacity) in particular, distributors overwhelmingly only distribute one brand.
- (2374) Some of Cargotec's EEA distributors also distribute products that directly overlap with Cargotec's lighter forklift truck product line; however none of Cargotec's EEA distributors engages in the distribution of heavy duty-forklift trucks (>10 tonne capacity) from Cargotec rivals.²²⁵⁹
- (2375) With respect to Konecranes, the Notifying Parties submit that a significant number of distributors also distribute competing products of a directly overlapping capacity range (i.e. forklift trucks with a maximum lifting capacity of at least 10 tonnes). However, the majority of these distributors [...].²²⁶⁰ [...].
- (2376) In response to the market investigation, a substantial number of distributors submit that they supply overlapping heavy-duty forklift products in the EEA.²²⁶¹ However, many explain that they distribute Konecranes and Linde forklift trucks.²²⁶² Another distributor explains that it is a '*distributor of Kalmar and Toyota forklifts*'.²²⁶³ As the Notifying Parties explain, this particular distributor distributes Toyota forklifts with a capacity of up to 8 tonnes, i.e. not heavy-duty forklift trucks (>10 tonne capacity).²²⁶⁴ Another distributor explains that it also supplies '*Manitou*'²²⁶⁵ – this is a brand of lower capacity forklift trucks as well.
- (2377) A few other distributors mention that they also distribute Carer electric forklift trucks.²²⁶⁶ As no customers mentioned this brand (in terms of having sourced from it or considering it as a currently relevant or potential future heavy-duty forklift truck (>10 tonne capacity) supplier) in the market investigation,²²⁶⁷ this is a niche product and not a close substitute to the Notifying Parties' heavy-duty forklift trucks (>10 tonne capacity) range.
- (2378) A majority of distributors submits that they are bound by contractual obligations with the equipment manufacturer to not distribute directly overlapping mobile equipment

²²⁵⁷ Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 13.3.1.

²²⁵⁸ See e.g. Supplemental submission on distribution networks, 1 September 2021, paragraph 6, Presentation at EC expert session, 23 September 2021, slide 7, and the Reply to the SO, paragraph 1133.

²²⁵⁹ Reply to Request for information RFI 30, Annex QC6.

²²⁶⁰ Reply to Request for information RFI 30, Annex QK6.

²²⁶¹ Responses to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 5.3.

²²⁶² Responses to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 5.3.1.

²²⁶³ Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 5.3.1.

²²⁶⁴ Reply to Request for information RFI 30, Annex QC6.

²²⁶⁵ Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 5.3.1.

²²⁶⁶ Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 5.3.1.

²²⁶⁷ Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607.

products.²²⁶⁸ A distributor explains: *‘We are exclusive Hyster dealers in our region. It is part of our standard contract, that we do not sell other products (competitor brand) which are in direct competition with the other. We are, however, entitled to sell complementary products of any given brand’.*²²⁶⁹ A Linde distributor explains: *‘Only at the explicit request of the customer, and when Linde cannot fulfil the requirements of the customer, we are allowed to offer other products’.*²²⁷⁰ A distributor that is not bound by contractual obligations states that it nevertheless chooses to distribute only one brand because it is *‘Easier to standardize on selling and servicing one brand. Build up competence on knowledge on service, repairs to be able to provide the customer a good level of service’.*²²⁷¹ Another distributor simply states: *‘We see no reasons to have multiple brands’.*²²⁷²

- (2379) Overall there are therefore only a limited number of effective distributors and service providers readily available that new entrants in the EEA heavy-duty forklift trucks (>10 tonne capacity) market could turn to in order to set up a strong distribution and after-sales network.
- (2380) **Second**, the large installed base of heavy-duty forklift truck (>10 tonne capacity) units of the Notifying Parties across the EEA is an inherent advantage and a barrier to entry and expansion for (potential) competitors.
- (2381) In order to profitably maintain a distribution and after-sales network in the EEA, not only in main centres of heavy-duty forklift truck (>10 tonne capacity) demand (e.g. close to where a lot of key customers are concentrated, such as the wood and paper industry in Scandinavia), but also in regions where demand is less concentrated (and consist more out of low unit number orders), a significant installed base is important.
- (2382) One of the main EEA competitors of the Notifying Parties explains this by stating: *‘Competing in the Nordic countries is difficult as Kalmar and KoneCranes have dominant share there and it is difficult to get critical mass supporting the distribution/service channel in the many smaller ports/terminals’.*²²⁷³ This competitor further explains that *‘[a]s to the density and homogeneity of the dealer network, [the Company] has dealers in almost all countries of Europe. Offering local service, especially in 24/7 port equipment, is paramount for end-customers. Some of the dealers are very good in small equipment product lines due to their traditional activity, but they are not so strong in the container handling equipment sector. This influences their results, especially where the competition is strong, i.e. where it is difficult to break into a port where 24/7 service is needed. In these cases a critical mass is needed to be able to deliver the requested activity: team, bridging equipment and knowledge represent the biggest challenges. [The Company] aims to have dealers appointed to cover all of the EU Member States, which is the case currently*

²²⁶⁸ Responses to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 6.

²²⁶⁹ Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 6.1.

²²⁷⁰ Courtesy translation. The original German text reads: *‘Nur auf expliziten Kundenwunsch oder wenn Linde die Anforderungen des Kunden nicht erfüllen kann, können wir andere Produkte anbieten’.*

²²⁷¹ Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 6.1.

²²⁷² Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 6.2.

²²⁷³ Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 6.2.

²²⁷³ Response to Q1 – Questionnaire to Competitors, Doc. ID 3154, question E.B.4.1.

or becomes the target when a dealer replacement is needed'.²²⁷⁴ Another competitor states 'volume will be a key driver to be price competitive on the market'.²²⁷⁵

- (2383) The fact that [...] is also evidenced in an internal Konecranes email, an excerpt of which is captioned in Figure 155. [Internal document reference].

Figure 155: [...]

[...]

Source: [Internal document reference].

- (2384) **Third**, competitors consider a local distribution and after-sales presence as an important barrier to entry and expansion.
- (2385) Large majorities of competitors expressing their view submit that a local distribution network and a local after-servicing network are essential for companies that seek to newly enter the supply of heavy-duty forklift trucks (>10 tonne capacity) in the EEA.²²⁷⁶ A competitor in that context states that having a '*[c]ompetitive price with a high quality supported by a strong local network for sales and service are essential for the marketing of Heavy Duty Forklifts in the EEA*'.²²⁷⁷
- (2386) Large majorities of competitors expressing their view submit that it is either somewhat or even very difficult to achieve a local distribution network and a local after-sales/servicing network for companies that seek to newly enter the supply of heavy-duty forklift trucks (>10 tonne capacity) in the EEA.²²⁷⁸ While one competitor states that '*[i]n the industry segment where heavy duty trucks are mainly used it's much easier to get access to the customers. Brands/suppliers with a high reputation for delivery of trucks below 10t capacity very often get confidence also for supply of heavy duty trucks. Heavy duty forklift trucks are much closer to standard forklift trucks than reach stackers and container handlers with their spreaders*'.²²⁷⁹ A competitor in that context explains that '*[t]he lack of good local Sale and After Sale Service is most unsourmountable problem that a newcomer would have to go by*'.²²⁸⁰
- (2387) Another competitor of the Notifying Parties submits with respect to mobile equipment (of which heavy-duty forklift trucks (>10 tonne capacity) are a part) that '*Cargotec and Konecranes have stated that in the MEQ segment there is a multitude of players that are active or intend to become active on the EU marketplace, thus alleging that customers have a lot of choices besides them. This assertion is not acceptable as the market share of most of these other players is negligible and – even more important – it is not set to grow in the foreseeable future. These brands cannot count and will not be able to count for a long while, on strong and influential key distributors in any of the main (and even in any of the less important) national EU markets*'. The competitor further submits that '*[t]o this extent, the assumption of the Concerned Parties according to which there would be over 300 dealers in the EU that could effectively sell and service Container Handling and Heavy Duty Lift-trucks is just not true. All the key few dealers capable to provide professional, reliable and profitable After Sale Services on Mobile Equipment are owned or linked*

²²⁷⁴ Doc. ID 932, Minutes of a call with a competitor, 20 April 2021.

²²⁷⁵ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 88.3.1.

²²⁷⁶ Responses to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 87.3.

²²⁷⁷ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 87.3.1.

²²⁷⁸ Responses to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 88.3.

²²⁷⁹ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 88.3.1.

²²⁸⁰ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 88.3.1.

*to the Concerned Parties and not available to other competitors. In fact even the so much feared Chinese brand Sany, which has injected millions of euros over the last decade attempting to break through in the EU market of Mobile equipment, has so far failed, despite having appointed many dealers in the whole continent over this period of time’.*²²⁸¹

- (2388) The competitor elaborates further: ‘The downplay of the importance of the After Sale and Service Network made by the Concerned Parties in their Oral Hearing presentation is totally non convincing. They stated that “on-line sales” are becoming more and more popular, because a growing share of the spare parts sale is nowadays managed through internet portals and because some buyers are adopting an internet bidding process. In reality, spare parts are basically entirely sold through the official sales network of every principal and internet bidding is only the last stage of contest at which only pre-qualified bidder make it. Needless to say, the reliability of an After Sale Service is always a pre-requisite to be pre-qualified in these internet bidding processes that remain a very tiny minority of the whole cases. No small and medium size buyer in fact adopts such a buying process and this class of customers in the MEQ market represents by far the largest group’.²²⁸²
- (2389) Therefore, competitors deem local distribution and after-sales network to be essential for new entrants in to the EEA heavy-duty forklift trucks (>10 tonne capacity) market, and at the same time consider the establishment of these networks to be difficult to achieve for potential entrants.
- (2390) **Fourth**, the Notifying Parties consider local distribution and after-sales presence as an important barrier to entry and expansion.
- (2391) The Parties consider local distribution and after-sales presence in the EEA to be of high importance for effective customer access, and therefore also to constitute a significant barrier to entry and a significant barrier to expansion of existing competitors.
- (2392) For example, Cargotec in an internal document considers one of its own strengths in forklift trucks to be its [internal document reference].²²⁸³
- (2393) In another Cargotec internal document from 2020, it is stated with respect to Sany: [internal document reference].²²⁸⁴ This further shows that even a company like Sany, which according to the Notifying Parties is a significant constraint on the Parties, is still searching for dealers and struggling to be successful in a meaningful way with port and terminal customers in Europe. Similarly, in an internal Konecranes document it is reported in 2021, that Sany is ‘[a]dvertising that they are searching for dealers in Europe (Linkdin)’.²²⁸⁵
- (2394) Konecranes in an internal email is considering [internal document reference].²²⁸⁶ [Internal document reference].

²²⁸¹ Doc. ID 4654, Submission by a competitor, 22 November 2021.

²²⁸² Doc. ID 4654, Submission by a competitor, 22 November 2021.

²²⁸³ Doc. ID 3708-18185 (The Parties’ reply to the Commission’s request for information RFI 17, CAR-HUL-00039802.pptx), slide 9.

²²⁸⁴ Doc. ID 3665-61568 (The Parties’ reply to the Commission’s request for information RFI 17, CAR-PAT-00092221.pptx), slide 4.

²²⁸⁵ Doc. ID 3586-23975 (The Parties’ reply to the Commission’s request for information RFI 18, M.10078 Cargotec Konecranes RFI 18-00343107.pptx), slide 30.

²²⁸⁶ Doc. ID 3585-56176 (The Parties’ reply to the Commission’s request for information RFI 18, M.10078 Cargotec Konecranes RFI 18-00238439 msg).

(2395) Konecranes in another internal document presenting [internal document reference].²²⁸⁷

(2396) In an internal email, a local Kalmar representative in Portugal, [internal document reference].

Figure 156: [...]

[...]

Source: [Internal document reference].

(2397) These exchanges show that the Notifying Parties internally consider a local distribution and in particular after-sales network to be of importance. They regard certain competitors, in particular also Sany and Svetruck to be lacking a strong distribution and after-sales network in the EEA.

(2398) **Fifth**, competitors already present in the EEA heavy-duty forklift trucks (>10 tonne capacity) market are constrained in their ability to expand their market presence, due to their weaker distribution and after-sales presence.

(2399) The need to establish a strong local distribution and after-sales presence in the EEA is not only a barrier to entry for potential new suppliers of heavy-duty forklift trucks (>10 tonne capacity), but it also constitutes a significant barrier to expansion for those competitors already present in the EEA. In addition to the Parties' assessment of Sany's weak after-sales presence in the EEA, market participants also deem other competitors that are already present on the EEA heavy-duty forklift trucks (>10 tonne capacity) market to have weak after-service networks.

(2400) Table 44 below reproduces Table 35, which shows that, Cargotec is considered to have by far the strongest after-sales network in the EEA heavy-duty forklift trucks (>10 tonne capacity) market, followed by Hyster and Konecranes. All other competitors are considered to have significantly weaker networks. Given the importance of strong distribution and after-sales networks in order to compete effectively and broadly across the different regions of the EEA, it therefore follows that small EEA heavy-duty forklift trucks (>10 tonne capacity) players like Svetruck, Linde (Kion), CVS Ferrari, FTMH or Sany face significant barriers to expand their market presence (Liebherr is not active heavy-duty forklift trucks (>10 tonne capacity)), because their after-sales networks appear to be weak.

²²⁸⁷ Form CO, PN RFI 7, Annex QK22.1, slides 15 and 16.

Table 44 – Customers’ ranking of heavy-duty forklift trucks (>10 tonne capacity) suppliers’ after-sales/service network

Customers’ ranking of the top five heavy-duty forklift trucks (>10 tonne capacity) suppliers active in the EEA according to their after-sales/service network					
Company	1 (strongest/best)	2	3	4	5 (weakest/worst)
Cargotec	xxxxxxxxxxxx	x	xxx		
Konecranes	xxx	xx	xxxxxx	x	
Hyster	xxx	xxxxx	xxx		
Liebherr				x	
CVS Ferrari	x				x
Sany					xxxx
Linde		xx		xx	
FTMH					x
Svetruck	x	x	x		

Source: Responses to Q6 – Questionnaire to Mobile equipment customers, Doc. ID 3607, question 14.3. The Commission’s evaluation of non-confidential responses.

- (2401) In relation to Sany’s challenges in the EEA due to its after-sales network, a competitor further explains: ‘For non-EEA competitors, entering the European markets for mobile equipment would entail difficulties in establishing distribution and service networks. [The Company] explained some non-EEA suppliers have already entered the EEA market, including Sany. To [the Company]’s knowledge, Sany has entered multiple dealership agreements for mobile equipment. However, the Company believes that, despite Sany having competitive prices, obtaining good coverage requires significant volumes, skills, investments and a suitable approach. Hence, achieving market shares in the EEA that are similar to the ones in the Chinese market will be challenging for Sany’.²²⁸⁸
- (2402) Overall, therefore the need for an effective local distribution and after-sales network constitutes a significant barrier to entry and expansion in the EEA heavy-duty forklift trucks (>10 tonne capacity) market.
- (E) Customers’ quality, product range and reputation requirements constitute a barrier to entry and expansion
- (2403) Customers of heavy-duty forklift trucks (>10 tonne capacity) in the EEA have certain requirements related to the quality of heavy-duty forklift trucks (>10 tonne capacity), specific heavy-duty forklift trucks (>10 tonne capacity) models (and therefore the product range of the manufacturer), and also consider brand reputation as a factor (which also determines important factors such as drivers’ acceptance of the vehicle and the vehicles’ resale value).
- (2404) **First**, quality requirements of customers constitute a barrier to entry and expansion.
- (2405) A large majority of competitors expressing their view submit that they consider it essential for a company seeking to newly enter the EEA market for heavy-duty forklift trucks (>10 tonne capacity) to have a high-quality heavy-duty forklift trucks (>10 tonne capacity) product.²²⁸⁹ A competitor explains this answer by stating it is

²²⁸⁸ Doc. ID 4278, Minutes of a call with a competitor, 23 August 2021.

²²⁸⁹ Responses to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 87.3.

‘[b]ecause trucks are not easy to be replaced when the trucks have quality problems’.²²⁹⁰

- (2406) A majority of competitors expressing their view however submit that they consider it either somewhat or even very difficult to achieve a high quality product for a company seeking to newly enter the EEA heavy-duty forklift trucks (>10 tonne capacity) market.²²⁹¹
- (2407) A large majority of customers expressing their view consider quality to be a very important criteria when selecting a heavy-duty forklift trucks (>10 tonne capacity) supplier.²²⁹²
- (2408) Assessing the vehicle quality offered by heavy-duty forklift trucks (>10 tonne capacity) suppliers currently active in the EEA, customers clearly consider the Notifying Parties’ to offer the highest quality vehicles. As shown in Table 45, Cargotec is considered to be the best in vehicle quality, followed by Konecranes. While some customers also ascribe good quality to Hyster and Svetruck machines, all other suppliers are either ascribed clearly inferior quality or mentioned by only very few customers at all. Given that this is an important purchase criterion for customers, weakness in vehicle quality likely is a barrier to expansion for EEA heavy-duty forklift trucks (>10 tonne capacity) players like e.g. Sany.

Table 45 – Customers’ ranking of heavy-duty forklift trucks (>10 tonne capacity) suppliers’ vehicle quality

Customers’ ranking of the top five heavy-duty forklift trucks (>10 tonne capacity) suppliers active in the EEA according to their vehicle quality					
Company	1 (strongest/best)	2	3	4	5 (weakest/worst)
Cargotec	xxxxxxxxxx	xxxx	xx		
Konecranes	xxxxxxx	xx	xx	xx	
Hyster	xxxx	xxxx	x		
Liebherr			x		
CVS Ferrari	x			x	
Sany			x		xxx
Linde	x	xx	x		
FTMH				x	
Svetruck	xxx			x	

Source: Responses to Q6 – Questionnaire to Mobile equipment customers, Doc. ID 3607, question 14.3. The Commission’s evaluation of non-confidential responses.

- (2409) An issue connected but separate from customers’ quality requirements, is the need for new entrants to comply with certain regulations applicable to the supply in the EEA. This pertains in particular to certain emissions regulations (e.g. necessity for mobile equipment to be delivered with stage V engines, whereas lower engine ratings are sufficient in some other world regions) and to the necessary CE certification. A competitor to the Parties describes the CE mark as a main obstacle to supply in

²²⁹⁰ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 87.3.1.

²²⁹¹ Responses to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 88.3.

²²⁹² Responses to Q2 – Questionnaire to Customers, Doc. ID 3153, question E.A.2.3.

the EEA,²²⁹³ and that the costs necessary for CE marking are only worth to incur when one can expect to sell a meaningful number of units in the EEA.²²⁹⁴

- (2410) **Second**, product range requirements of customers constitute a barrier to entry and expansion.
- (2411) Some competitors expressing their view submit that they consider it essential for a company seeking to newly enter the EEA market for heavy-duty forklift trucks (>10 tonne capacity) to have a broad product range of heavy-duty forklift trucks (>10 tonne capacity).²²⁹⁵
- (2412) A majority of competitors expressing their view however submit that they consider it either somewhat or even very difficult for a company seeking to newly enter the EEA heavy-duty forklift trucks (>10 tonne capacity) market to achieve a broad product range.²²⁹⁶
- (2413) Customers do not necessarily consider it necessary for suppliers of heavy-duty forklift trucks (>10 tonne capacity) to offer a broad range of different heavy-duty forklift trucks (>10 tonne capacity) types – however customers require the supplier in question to be able to deliver the specific heavy-duty forklift trucks (>10 tonne capacity) type they require. As discussed in 7.4.3.2 (D), the Notifying Parties are considered to have the broadest product range. The smaller product range of even certain established EEA competitors constitutes a barrier to expansion for them, as they are not able to effectively compete for certain customers (i.e. customers that require heavy-duty forklift trucks (>10 tonne capacity) types not in their portfolio).
- (2414) **Third**, brand reputation requirements of customers constitute a barrier to entry and expansion.
- (2415) A large majority of customers expressing their view submit that the reputation and the previous experience of the heavy-duty forklift trucks (>10 tonne capacity) supplier are very important or important criteria when selecting a heavy-duty forklift truck (>10 tonne capacity) supplier. Similarly, already having an installed base on their premise is considered to be a very important or important criterion by a large majority of customers.²²⁹⁷
- (2416) These customer preferences clearly grant a significant advantage to the incumbents in the EEA heavy-duty forklift trucks (>10 tonne capacity) market, as they have an established reputation, and, at least in the case of the Notifying Parties, also a large installed base of units.
- (2417) Assessing the brand reputation of heavy-duty forklift trucks (>10 tonne capacity) suppliers currently active in the EEA, customers clearly consider the Notifying Parties' to have a strong brand reputation. As shown in Table 46, Cargotec is considered to have the best brand reputation, followed by Konecranes, and then Svetruck and Hyster. Other established EEA suppliers like CVS and Linde are considered inferior to the Notifying Parties and have been considered by significantly fewer customers. Sany is considered to be significantly inferior to all other players in terms of brand reputation. Given that this is an important purchase criterion for

²²⁹³ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 85.3.1.

²²⁹⁴ Doc. ID 4133, Minutes of a call with a competitor, 19 August 2021.

²²⁹⁵ Responses to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 87.3.

²²⁹⁶ Responses to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 88.3.

²²⁹⁷ Responses to Q2 – Questionnaire to Customers, Doc. ID 3153, question E.A.2.3.

customers, weakness in brand reputation likely is a barrier to expansion for these EEA heavy-duty forklift trucks (>10 tonne capacity) players.

Table 46 – Customers’ ranking of heavy-duty forklift trucks (>10 tonne capacity) suppliers’ brand reputation

Customers’ ranking of the top five heavy-duty forklift trucks (>10 tonne capacity) suppliers active in the EEA according to their brand reputation					
Company	1 (strongest/best)	2	3	4	5 (weakest/worst)
Cargotec	xxxxxxx	xxxxx	xxx		
Konecranes	xxxxx	xxx	xxx	xx	
Hyster	xxx	xxxx	xx		
Liebherr			x		
CVS Ferrari	x			x	
Sany					xxxx
Linde	x	x	x		
FTMH				x	
Svetruck	xxxx	x			

Source: Responses to Q6 – Questionnaire to Mobile equipment customers, Doc. ID 3607, question 14.3. The Commission’s evaluation of non-confidential responses.

- (2418) The fact that some companies that already have sales in the EEA are named by only very few customers (and when named, are given low brand reputation ratings), further shows that these companies are not well known and do not have a well-established brand reputation among customers. This weak brand reputation therefore constitutes a further barrier to expansion even for those companies that are already active in the EEA as heavy-duty forklift trucks (>10 tonne capacity) suppliers.
- (2419) Among the existing competitors in the EEA heavy-duty forklift trucks (>10 tonne capacity) market, in particular Sany appears to have reputation problems and as a consequence is likely constrained in its ability to expand its presence.
- (2420) A market participant explains in relation to Sany: ‘Customers have been confronted with technical difficulties when sourcing Sany equipment. [...] Overall, Chinese players are perceived as offering equipment of lower quality. This lower quality entails a lower residual value of the equipment, which is disadvantageous for customers’.²²⁹⁸
- (2421) Another market participant explains in relation to Sany that ‘Sany had a very good reputation in Africa and Latin America but was and is still perceived as a second-level brand in Europe. Hence, even though Sany’s sales volume increased, the increment was not as large as that expected by European competitors. This proved that customers give significant importance to after-sales services, even when they can choose suppliers that offer lower prices’. This company further submits that Kalmar, Konecranes and Hyster are ‘considered as the three “triple A” brands in mobile equipment’.²²⁹⁹
- (2422) A distributor, [internal document reference].

²²⁹⁸ Doc. ID 502, Minutes of a call with a distributor, 14 April 2021.

²²⁹⁹ Doc. ID 4110, Minutes of a call with a customer, 27 August 2021.

Figure 157: [...]

[...]

Source: [Internal document reference].

- (2423) Another distributor, in explaining Sany's reputation problems in the Netherlands, explains: 'Sany has tried to enter the Dutch market for mobile equipment but faced difficulties. Sany struggles to offer a good service organisation, which makes it difficult to enter the terminals in Rotterdam in competition with the Company. In the past, Sany offered some free test units to customers (some of which had been [the Company]'s customers for years), but it would take weeks or months for Sany to solve a technical problem. As a result, customers today prefer not to work with Sany'.²³⁰⁰
- (2424) Another distributor, in explaining the Notifying Parties' strong position in Scandinavia – and thereby also describing why other players find it more difficult to be successful in that region, submits: '*The Parties have a strong positioning in the heavy-duty forklift and reach stackers markets in Scandinavia mainly because of their strong reputation. Although, Kalmar has recently moved its production to Stargrad in Poland, both Parties are still perceived as Scandinavian companies and customers in this region have a preference for the Parties' brands. For example, Konecranes' SMV brand is still highly regarded among customers. This also results in the equipment models of the Parties being very similar*'.²³⁰¹
- (2425) Overall, therefore, customers' quality, product range and reputation requirements constitute a barrier to entry and expansion in the EEA heavy-duty forklift trucks (>10 tonne capacity) market.
- (F) No entry sufficient in scope and magnitude to constrain the Merged Entity is likely
- (2426) In light of the significant barriers to entry, but also based on the specific evidence on entry ambitions available to the Commission, no entry sufficient in scope and magnitude to constrain the Merged Entity is likely in the next 2-3 years.
- (F.i) *No companies with specific entry plans sufficient in scope and magnitude to constrain the Merged Entity*
- (2427) The Commission in the questionnaire sent to actual and potential competitors on the EEA market for heavy-duty forklift trucks (>10 tonne capacity) (as identified by the Notifying Parties) asked whether those companies currently not active in the supply of heavy-duty forklift trucks (>10 tonne capacity) in the EEA plan to enter the supply of heavy-duty forklift trucks (>10 tonne capacity) in the EEA in the next 2-3 years. In reply, four companies responded with yes: Loadstar, Uplifting, Kion Group, Taylor.²³⁰²
- (2428) However these companies either do not have at present specific entry plans or are unlikely to enter in a scope and magnitude sufficient to constrain the Merged Entity.
- (2429) **First**, Loadstar is an Indian company and submits that it is 'engaged in the design, manufacture, and supply of state-of-the-art Container-Handling Equipment like Reach Stackers for Loaded Container- (45 Tonnes) handling, Side-Lift Trucks for

²³⁰⁰ Doc. ID 673, Minutes of a call with a distributor, 26 February 2021.

²³⁰¹ Doc. ID 881, Minutes of a call with a distributor, 19 April 2021.

²³⁰² Responses to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 84.3.

Empty Container- (8 Tonnes) handling, and Medium- and Heavy-Duty Forklifts in the 12 to 35 Tonnes capacity range'.²³⁰³

- (2430) [Internal document reference].²³⁰⁴ [Internal document reference].²³⁰⁵ [Internal document reference].²³⁰⁶ [Internal document reference].²³⁰⁷ [Internal document reference].
- (2431) Loadstar is not named by any customer as a potential entrant into the EEA.²³⁰⁸
- (2432) In any case, any attempted entry would be made challenging by the significant entry barriers described in this Section 7.4.3.3. This is also acknowledged by Loadstar itself. For example, the Company explains: '*We currently supply mobile equipment per Indian Standards. As EU regulations are generally stricter, we may have challenges to supply mobile equipment*'.²³⁰⁹ The Company further submits that differences in customer preferences make it difficult/costly to supply in the EEA.²³¹⁰ The Company also says that '[a]s we are remotely located in India, it is very important to have an excellent local service/after-sales entity, either directly owned or through association, in the EEA'²³¹¹ and that '*significant amount of time, investment, & manpower will be required to establish a presence [in the EEA]*'.²³¹² It further clarifies: '*We will have to invest significant amounts to establish a distribution and service network in the EEA*'.²³¹³
- (2433) The Company also expects that the Transaction would further increase barriers to entry in the EEA: 'If there is a merger between the Parties, we can expect further barriers through higher input costs dictated by the large merged entity. This will affect our price competitiveness in the EEA markets'.²³¹⁴
- (2434) Therefore, an entry by Loadstar into the EEA heavy-duty forklift trucks (>10 tonne capacity) market in the next 2-3 years is not likely, and in any case is not likely to be sufficient in scope and magnitude to constrain the Merged Entity.
- (2435) **Second**, Uplifting is a Spanish company and describes itself as a manufacturer of reach stackers and forklift trucks.²³¹⁵ As explained for example in Figure 119 above, this company is considered to be '*a brand of second / third level*'. No customer explaining its last purchase of heavy-duty forklift trucks (>10 tonne capacity)

²³⁰³ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 1.

²³⁰⁴ Doc. ID 3712-31597 (The Parties' reply to the Commission's request for information RFI 17, CAR-PET-00016615.msg).

²³⁰⁵ See e.g. Doc. ID 3710-6858 (The Parties' reply to the Commission's request for information RFI 17, CAR-LAM-00018512.pptx), slide 1.

²³⁰⁶ It also appears that Loadstar offered contract manufacturing in India for the Indian market to Konecranes. See e.g. Doc. ID 3585-32466 (The Parties' reply to the Commission's request for information RFI 17, M.10078 Cargotec Konecranes RFI 18-00268041.msg).

²³⁰⁷ Doc. ID 3669-88001 (The Parties' reply to the Commission's request for information RFI 17, CAR-VEH-00014338 msg).

²³⁰⁸ See responses to Q2 – Questionnaire to Customers, Doc. ID 3153, and to Q6 – Questionnaire Customers of mobile equipment, Doc. ID 3607.

²³⁰⁹ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 75.1.

²³¹⁰ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 76.

²³¹¹ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 78.3.1.

²³¹² Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 79.3.1.

²³¹³ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 84.3.1.

²³¹⁴ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 88.3.1.

²³¹⁵ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 1.

indicates that this company submitted a bid.²³¹⁶ A Konecranes Lift Trucks sales director in an internal email states [internal document reference].²³¹⁷

- (2436) Therefore, Uplifting is not a credible potential entrant into the EEA heavy-duty forklift trucks (>10 tonne capacity) market, nor a significant constraint on the Notifying Parties.
- (2437) **Third**, Kion Group submits that it *‘is already active in the supply of heavy duty forklift trucks’*,²³¹⁸ and according to the Commission’s market reconstruction it has a 2018-2020 share of [5-10]% in the EEA heavy-duty forklift trucks (>10 tonne capacity) market. Therefore, Kion Group is not a potential entrant into this market since it is already part of it.
- (2438) **Fourth**, Taylor is a US-based manufacturer of mobile equipment.
- (2439) The Company explains that it ‘has no specific plans of market entry in Europe/in the EEA’²³¹⁹ and is ‘not currently selling in the EEA today but plan on a presence there in the future. There would be a time at some point either through acquisition or organically that we would consider producing and supplying in the EEA and the price going up would help but there would be other determining factors’.²³²⁰
- (2440) The Company further explains that differences in regulations make it difficult and costly to supply inside the EEA,²³²¹ and specifically explains that *‘the CE stamp certification is the main one for us’*.²³²² The Company further submits that differences in customer preferences would make it difficult and costly to supply inside the EEA.²³²³ The Company further submits that having a local after-sales presence is very important to successfully sell heavy-duty forklift trucks (>10 tonne capacity) in a certain region.²³²⁴ The Company also deems it somewhat difficult to establish a local after-sales network and a local distribution network in the EEA for companies seeking to enter the EEA heavy-duty forklift trucks (>10 tonne capacity) market.²³²⁵ Overall the Company submits in reply to the question what costs and time would be required to enter the EEA heavy-duty forklift trucks (>10 tonne capacity) market: *‘It is a monumental task because of the two major players konecrane and kalmar. jointly it would be a monopoly in my opinion’*.²³²⁶ While it has no specific market entry plans, it *‘estimates that 2-4 years would be necessary to properly begin sales in Europe’*.²³²⁷
- (2441) Summarising why so far Taylor is supplying largely in North America, the Company explains that ‘with the initially relatively low number of units [the Company] could expect to sell in Europe, it would not be worth the expense to undertake the necessary CE certificate registration for the products. While the Company does not

²³¹⁶ See Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 15.3.

²³¹⁷ Doc. ID 3594-57552 (The Parties’ reply to the Commission’s request for information RFI 18, M.10078 Cargotec Konecranes RFI 18-01218532 msg).

²³¹⁸ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 84.3.1.

²³¹⁹ Doc. ID 4133, Minutes of a call with a competitor, 19 August 2021.

²³²⁰ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 68.1.

²³²¹ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 75.

²³²² Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 75.1.

²³²³ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 76.

²³²⁴ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, questions 78.3.

²³²⁵ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 88.1.

²³²⁶ Response to Q1 – Questionnaire to Competitors, Doc. ID 3154, question E.C.B.3.3.

²³²⁷ Doc. ID 4133, Minutes of a call with a competitor, 19 August 2021.

have recent quotes for the costs of the CE certificate, it estimates it would cost mid six figures to achieve at least – if one were to certify the entire product line, this would probably reach into the seven figures. Other costs related to market entry would be linked to the installation of offices in Europe and the creation of marketing campaigns to present the product. Finally, the current design of [the Company]’s container handling equipment would require certain modifications to meet European customer preferences, especially in relation to ergonomic features that are of importance to equipment operators in Europe. Operators in North America typically have less demanding requirements than those in Europe’.²³²⁸

- (2442) No customer responding to the market investigation expects to purchase mobile equipment from Taylor for its EEA operations in the next 2-3 years.²³²⁹
- (2443) Konecranes in an internal document notes [internal document reference].²³³⁰
- (2444) Therefore, an entry by Taylor into the EEA heavy-duty forklift trucks (>10 tonne capacity) market in the next 2-3 years that is sufficient in scope and magnitude to constrain the Merged Entity is not likely.
- (2445) Therefore, overall those companies that submitted that they plan to enter the EEA heavy-duty forklift trucks (>10 tonne capacity) market in the next 2-3 years in response to the Commission’s questionnaire are unlikely to enter in a way that is sufficient in scope and magnitude to constrain the Merged Entity. It further appears that competitors do not have specific entry plans.

(F.ii) Potential entrants identified by the Notifying Parties are largely unknown to customers and distributors

- (2446) The Notifying Parties have submitted a list of companies they consider to be likely entrants in the EEA markets for mobile equipment (of which the EEA heavy-duty forklift trucks (>10 tonne capacity) market is a part).²³³¹ These companies are largely unknown to customers and distributors.
- (2447) As seen in Table 47, customers are unaware of most of the companies that the Notifying Parties identified as likely entrants into the EEA mobile equipment markets (of which heavy-duty forklift trucks (>10 tonne capacity) are a part). In [...] cases do customers indicate that they have purchased from these companies for EEA operations (though in the [...] cases – [...] – this likely relates to sales of low capacity forklifts). The Notifying Parties state that some suppliers ‘not yet active in Europe are [...] already known to customers which is an important factor to consider when analysing their ability to enter the market in Europe’.²³³² However, that certain customers (some of which are also active themselves in other global markets outside the EEA), know of the existence of certain companies, cannot be seen in itself as indicating likely entry. In any case, only in one instance, two customers expect to source mobile equipment in the next 2-3 years from one of the companies identified by the Notifying Parties as likely entrants. Distributors provide a very similar response.²³³³

²³²⁸ Doc. ID 4133, Minutes of a call with a competitor, 19 August 2021.

²³²⁹ Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 27.

²³³⁰ Reply to Request for information RFI 24, Annex QK7.3, slide 11.

²³³¹ Reply to Request for information RFI 19, question 9b (RFI 19 Annex Q9).

²³³² Reply to the SO, paragraph 1155.

²³³³ Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 26.

Table 47 – Customers’ knowledge of potential mobile equipment entrants

Customers’ knowledge of companies identified as likely entrants into the EEA mobile equipment markets							
Company	I am aware of this company	I am aware that this company is active in mobile equipment	I have approached this company to purchase mobile equipment for my operations in the EEA	This company has approached me to sell mobile equipment for my operations in the EEA	I have successfully purchased mobile equipment from this company for my operations in the EEA in the next 2-3 years	I expect to purchase mobile equipment from this company for my operations in the EEA in the next 2-3 years	I have not heard of this company
Camblift	xx	xx					xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxx
Dalian Forklift Co. Ltd	xxxxxx						xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xx
Goodsence	xx						xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxx
Hangzhou – Hangcha Forklift	xxxx						xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxx
Heli	xxxx	xx			xx		xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
Socma	xxxx						xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxx
Taylor	xxxxxx	xxxxxxx x	x				xxxxxxxxxxxxxxxxxxxxxxxxxxxx
Toyota/Hoist	xxxxxxxxxxxxxxxx xxx	xxxxxxx x	xx		xx		xxxxxxxxxx
XCMG	xxxx						xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
ZPMC	xxxxxxxxxxxxxxxx	xxxxxxx x	xx	x		xx	xxxxxxxxxxxxxx

Source: Responses to Q6 – Questionnaire to Mobile equipment customers, Doc. ID 3607, question 27. The Commission’s evaluation of non-confidential responses.

- (2448) While some customers explain that they expect new entrants in the EEA heavy-duty forklift trucks (>10 tonne capacity) market in the next 2-3 years (e.g. stating they expect ‘Chinese’, or ‘Chinese brands’ to enter, or submitting: ‘Merlinum claims to have up to 16 t. before the end of this year’), other customers state they do not expect entry. For example, one customer states that ‘no to the best of our knowledge’ there will be no entry. Another customer says: ‘We do not expect any new entrants’. Another customer submits that it ‘does not expect any new market entrants within the next 2-3 years’.²³³⁴
- (2449) Generally, customers submit that they are not inclined to start purchasing heavy-duty forklift trucks (>10 tonne capacity) from manufacturers that are not yet established in the EEA. The large majority of customers expressing their view that did observe a price increase in heavy-duty forklift trucks (>10 tonne capacity) submit that they did not try to purchase heavy-duty forklift trucks (>10 tonne capacity) from a supplier that at that time was not yet established in the EEA.²³³⁵ In this context a customer explains that ‘[t]he local factor is very important for us and in general we don’t use

²³³⁴ Responses to Q2 – Questionnaire to Customers, Doc. ID 3153, question E.C.B.1.1.

²³³⁵ Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 17.3.

equipment if we don't know the quality'.²³³⁶ Another customer submits: *'In addition to the performance parameters, the availability of a device is the decisive criterion. That is why the local availability of spare parts and service is an extremely important aspect at all times. The risk of implementing a non-EU provider locally and initially operating a machine without service is unmanageably high. The risk would be acceptable when it comes to individual machines and if operational safety can be guaranteed through the principle of backups. However, when it comes to the elementary part of the vehicle fleet, availability always has priority'*.²³³⁷ Yet another customer states that *'[s]ervice and support in the area of the terminal is essential for the operations'*.²³³⁸ Another customer explains that it tried but failed to source from outside of Europe: *'We tried to improve our cost competitiveness and source from outside Europe. However, we did not succeed and had quality defects as a result'*.²³³⁹

- (2450) In any case, large majorities of customers have not and do not plan to consider buying heavy-duty forklift trucks (>10 tonne capacity) from suppliers that do not have an established local after-sales network in their region.²³⁴⁰
- (2451) In addition to the companies assessed in Table 47 which the Notifying Parties submitted as potential entrants, the Notifying Parties have in the Reply to the SO named further companies they consider as potential entrants into the EEA heavy-duty forklift trucks (>10 tonne capacity) market, such as construction equipment makers such as Caterpillar, John Deere, Ljungby Maskin and Volvo Construction Equipment.²³⁴¹ Aside of the barriers to entry considered in this Section 7.4.3.3, no market participants considered these companies as likely entrants in response to the Commission's market investigation. Further, the Notifying Parties state that *'the Parties expect Merlinum to offer higher-capacity forklifts within a relatively short timeframe'* and that a customer expects this to relate to forklifts up to 16 tonnes.²³⁴² This potential entry therefore only relates to a certain, limited capacity bracket. However, as further described in Recital (2467), Merlinum's products are considered as very expensive by the Notifying Parties and not to be in direct competition with the Notifying Parties' products.
- (2452) Therefore, overall, the potential entrants identified by the Notifying Parties are largely unknown to customers and distributors – and customers do not have plans to start sourcing for EEA operations from them. In any case, customers are not inclined to start purchasing heavy-duty forklift trucks (>10 tonne capacity) for use in the EEA from suppliers which are not yet established in the EEA.

²³³⁶ Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 17.3.1.

²³³⁷ Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 17.3.1.

²³³⁸ Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 17.3.1.

²³³⁹ Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 17.3.1.

²³⁴⁰ See Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, questions 10.3 and 11.1.

²³⁴¹ Reply to the SO, paragraph 1143.

²³⁴² Reply to the SO, paragraph 1144.

(F.iii) *The Notifying Parties internally do not track immediate and specific plans of entry into the EEA heavy-duty forklift trucks (>10 tonne capacity) market*

- (2453) The Notifying Parties internally – with one exception - do not track immediate and specific plans of entry into the EEA heavy-duty forklift trucks (>10 tonne capacity) market.
- (2454) While the Notifying Parties internally do appear to have concerns related to entry and expansion of rivals in heavy-duty forklift trucks (>10 tonne capacity), these concerns largely relate to geographic areas other than the EEA. The fact that the Notifying Parties perceive entry and expansion of competitors particularly in non-EEA regions therefore further suggests that competitors of the Notifying Parties face certain barriers to entry and expansion in the EEA.
- (2455) The Notifying Parties submit, for example in the Supplemental submission on mobile equipment by Konecranes of 24 September 2021, that there are many credible mobile equipment competitors and specifically, that *‘low-cost Chinese suppliers, who are investing heavily to be at the forefront of the industry-wide mega trends of electrification and digitization, continue to enter and expand on a global basis’*.²³⁴³ Further the Notifying Parties submit that *‘[b]ecause of the particularly high supply-side substitutability between all types of forklift trucks as well as recent expansions also of Chinese players, the Parties are in fact concerned about competitors’ market entry and further expansion also in Europe’*.²³⁴⁴
- (2456) The Commission finds that indeed there are a number of Chinese heavy-duty forklift trucks (>10 tonne capacity) manufacturers (and indeed other Asian heavy-duty forklift trucks (>10 tonne capacity) manufacturers). However, only a very limited number has so far made sales in the EEA (e.g. Doosan, Hyundai, Sany) – and their market shares remain small. In addition, Hangcha may have sold at least one heavy-duty forklift trucks (>10 tonne capacity) unit in the EEA.²³⁴⁵ However, no customer responding to the market investigation expects to purchase mobile equipment from this company for its EEA operations in the next 2-3 years.²³⁴⁶
- (2457) Other Chinese suppliers (e.g. XCMG, Dalian Forklift Co. Ltd, etc.), while in part active in heavy-duty forklift trucks (>10 tonne capacity), are not active in the EEA. Internal documents of both Parties contain assessments about the entry and expansion of Chinese and other heavy-duty forklift trucks (>10 tonne capacity) companies – given that the Parties are important global suppliers of heavy-duty forklift trucks (>10 tonne capacity), it is normal that these companies assess the capabilities of the companies against which they compete in different global regions. This internal assessment of entry and expansion is however in almost all cases not related to entry and expansion in the EEA.
- (2458) Sany (which already has a limited presence in the EEA) is according to the Notifying Parties in particular a competitor that is likely to significantly expand its EEA activities in the future.²³⁴⁷ In tracking Sany’s activities, while Cargotec internally notes that [internal document reference]²³⁴⁸, that [internal document reference]²³⁴⁹

²³⁴³ Supplemental submission on mobile equipment, 24 September 2021, paragraph 4.

²³⁴⁴ Response to the Article 6(1)(c) Decision, paragraph 407.

²³⁴⁵ According to the bidding data submitted by the Notifying Parties, Cargotec lost a forklift truck tender to Hangcha.

²³⁴⁶ Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 27.

²³⁴⁷ Response to the Article 6(1)(c) Decision, paragraph 374.

²³⁴⁸ Form CO, 5.4 Submission 1 – Annex C5.40230, slide 4.

and that ‘[internal document reference]²³⁵⁰ [internal document reference].²³⁵¹ [Internal document reference]²³⁵². The Commission does not doubt that Sany is winning tenders in Western Europe and has made limited heavy-duty forklift trucks (>10 tonne capacity) sales in the EEA in recent years. It is to be expected that the Notifying Parties refer to Sany (a significant global player) across internal documents, and also refer in certain documents to Sany’s present EEA activities, given that Sany is a competitor presently active in the EEA (although only with limited sales).

- (2459) Konecranes in an internal document [internal document reference].²³⁵³ In another document Konecranes similarly states that [internal document reference]²³⁵⁴ – [internal document reference]. Cargotec in another internal document assesses a [internal document reference] but further states that [internal document reference].²³⁵⁵ This further suggests that while expansion from Sany is indeed perceived by Cargotec as a challenge, this appears to be mainly a factor in Asia, and China in particular, rather than in the EEA. [...], Konecranes deems [internal document reference].²³⁵⁶
- (2460) With respect to other companies that the Notifying Parties submit are potential entrants, Konecranes for example notes in relation to Taylor in an internal document [internal document reference].²³⁵⁷
- (2461) In a 2017 internal document, Kalmar assesses that Taylor [internal document reference].²³⁵⁸ While the Notifying Parties submit that the document is too old to contribute to an assessment of Taylor’s entry plans,²³⁵⁹ the document generally shows that while the Notifying Parties consider Taylor to be a significant (and potentially growing) competitor in the markets where Taylor is already active (predominantly North America), they do not consider it likely that Taylor will be successful in establishing a major presence in other markets (i.e. markets such as the EEA).
- (2462) In describing [...] portfolio, Konecranes [internal document reference].²³⁶⁰
- (2463) With respect to [...] activities, Konecranes notes in an internal document [internal document reference].²³⁶¹
- (2464) With respect to [...], Konecranes notes [internal document reference]. Further, Konecranes [internal document reference].²³⁶² [Internal document reference].
- (2465) With respect to [...], Konecranes assesses that [internal document reference].²³⁶³

²³⁴⁹ Form CO, 5.4 Submission 1 – Annex C5.40011, slide 3.

²³⁵⁰ Form CO, RFI PN7 – Annex QC39.1 – Confidential, slide 19.

²³⁵¹ Form CO, 5.4 Submission 1 – Annex C5.4.0120, slide 42.

²³⁵² Response to the Article 6(1)(c) Decision, paragraph 318.

²³⁵³ Form CO, RFI PN4 Annexes QK4(c).1, slide 6.

²³⁵⁴ Form CO, Pre-notification RFI 2 – Annex QK89.1, slide 5.

²³⁵⁵ Form CO, 5.4 Submission 1 – Annex C5.4.0284, slide 3.

²³⁵⁶ Form CO, RFI PN7 Annexes QK22.1 – Confidential, slide 16.

²³⁵⁷ Reply to Request for information RFI 24 QK7.3, slide 11.

²³⁵⁸ Doc. ID 3708-2802 (The Parties’ reply to the Commission’s request for information RFI 17, CAR-HUL-00008144.pptx), slide 6.

²³⁵⁹ Reply to the Letter of Facts, paragraph 150.

²³⁶⁰ Reply to Request for information RFI 24 QK7.3, slide 23.

²³⁶¹ Reply to Request for information RFI 24 QK7.3, slide 24.

²³⁶² Reply to Request for information RFI 24 QK7.3, slide 27.

²³⁶³ Reply to Request for information RFI 24 QK7.3, slide 28.

- (2466) In addition also an EEA competitor of the Notifying Parties explains that ‘Hangcha, Heli, Lonking, SOCMA, all compete mainly in China and Asia on RST and large FLT’.²³⁶⁴
- (2467) The only likely EEA entrant the Notifying Parties consider internally is Merlinum, a Swedish company that currently is active only in forklift trucks with a capacity below 10 tonnes. With respect to this company, it is noted in a Konecranes internal document [internal document reference].²³⁶⁵ [Internal document reference].²³⁶⁶
- (2468) Overall, therefore the Notifying Parties internally, with only one apparent exception, do not track immediate and specific plans of entry into the EEA heavy-duty forklift trucks (>10 tonne capacity) market.

(G) Conclusion

- (2469) For the reasons set out in this Section 7.4.3.3, the Commission considers that significant barriers to entry and expansion exist in the EEA market for heavy-duty forklift trucks (>10 tonne capacity). No entry on significant scale has occurred over the past ten years – instead the market has consolidated further. Future entry and expansion are made difficult by the benefits of a European assembly presence, the need of a local distribution and after-sales network, the benefits incumbents have due to their installed base, and the need to develop high-quality, well perceived products. In addition, no specific and timely entry or expansion plans exist that would be sufficient in scope and magnitude to effectively constrain the Merged Entity.
- 7.4.3.4. Competitors to the Notifying Parties are unlikely to be able to effectively constrain the Merged Entity and the competitive pressure on the remaining competitors will be reduced
- (2470) Post-Merger, competitors to the Notifying Parties in the EEA market for heavy-duty forklift trucks (>10 tonne capacity) are unlikely to be able to effectively constrain the Merged Entity.
- (2471) The very large market share of the Merged Entity post-Transaction, and the highly concentrated EEA heavy-duty forklift trucks (>10 tonne capacity) market in general (expressed in the HHI values), in themselves suggest that most competitors’ of the Notifying Parties only have weak market positions and lack the competitive strength to constrain the Merged Entity.
- (2472) In addition, customers’ ability to credibly threaten to switch away from the Merged Entity is very limited, due to competitors’ weak positions in relation to certain key customer purchase criteria (such as brand reputation, vehicle quality, installed base and previous experience, product range, distribution and after-sales network, etc.).
- (2473) The Transaction is also likely to reduce the competitive pressure on the remaining competitors of the Merged Entity. Post-Transaction, the incentive for the Merged Entity to compete and price aggressively will be reduced. This will also limit the need for competitors to compete and price aggressively. Faced with a windfall increase in their demand, competitors will have the ability and incentive to raise profitably their prices.

²³⁶⁴ Response to Q1 – Questionnaire to Competitors, Doc. ID 3154, question E.B.3.2.

²³⁶⁵ Reply to Request for information RFI 24, Annex QK7.4, slide 17.

²³⁶⁶ Doc. ID 3584-76870 (The Parties’ reply to the Commission’s request for information RFI 18, M.10078 Cargotec Konecranes RFI 18-00206926 msg).

- (A) The Notifying Parties are the strongest suppliers of heavy-duty forklift trucks (>10 tonne capacity) in the EEA according to key customer purchase criteria
- (2474) The Notifying Parties are the strongest suppliers of heavy-duty forklift trucks (>10 tonne capacity) in the EEA according to key customer purchase criteria.
- (2475) As discussed in Sections 7.4.3.2 and 7.4.3.3, customers consider vehicle quality, distribution and after-sales networks, product range, and brand reputation and experience to be important purchase criteria. On all of these parameters, customers, distributors and competitors deem Cargotec and Konecranes to be particularly strong players in the EEA.²³⁶⁷
- (2476) An internal Cargotec document (captioned in Figure 158) shows that Cargotec (with respect to a geographic region that includes the EEA (EMEA)), considers for example [internal document reference] to be key purchase criteria for forklift truck customers. Kalmar's competitive advantages are said to include [internal document reference]. The Notifying Parties with respect to this document submit that it '*refers to Hyster ([20-30]%) as the second supplier on the EMEA market, followed by Konecranes ([10-20]%) and Svetruck ([10-20]%)*'.²³⁶⁸ The Commission observes that these market shares (though they refer to a market wider than the EEA) are broadly in line with the market share ranges of the Commission's market reconstruction – and that according to the figures on this slide, the Merged Entity would have a combined share of [50-60]% - a level indicative of a dominant market position.

Figure 158: Kalmar view on forklift truck key purchase criteria and own competitive advantages

[...]

Source: [Internal document reference].

- (2477) Similarly, in another internal document, the Kalmar forklift truck strengths are listed for example to be [internal document reference].²³⁶⁹
- (2478) In another internal document (captioned in Figure 159) Kalmar's main benefits and value to customers are for example described as the following: [internal document reference] . Main selling arguments against Konecranes are: [internal document reference]. With respect to Linde: [internal document reference]. With respect to Hyster: [internal document reference]. With respect to Svetruck: [internal document reference].

Figure 159: [...]

[...]

Source: [Internal document reference].

- (2479) Similarly, Konecranes in an internal document [internal document reference].²³⁷⁰

²³⁶⁷ See e.g. Responses to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 82.3, Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 14.3, Responses to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 19.3.

²³⁶⁸ Reply to the SO, paragraph 1116.

²³⁶⁹ Doc. ID 3708-18185 (The Parties' reply to the Commission's request for information RFI 17, CAR-HUL-00039802.pptx), slide 9.

²³⁷⁰ Doc. ID 3585-3887 (The Parties' reply to the Commission's request for information RFI 18, M.10078 Cargotec Konecranes RFI 18-00267645.pptx), slide 15.

- (2480) Therefore, for competitors of the Parties to be able to effectively constrain the Merged Entity post-Transaction, they would need to be able to rival the Notifying Parties on the key purchase criteria that are important to customers. Otherwise, customers would be limited in their ability to switch (or credibly threaten to switch) away from the Merged Entity.
- (B) Customers would be limited in their ability to switch supplier if the Merged Entity were to increase prices
- (2481) Customers would be limited in their ability to switch supplier if the Merged Entity were to increase prices for heavy-duty forklift trucks (>10 tonne capacity) in the EEA post-Transaction.
- (2482) Switching is made difficult by the fact that only a limited number of suppliers has a meaningful presence in the EEA market for heavy-duty forklift trucks (>10 tonne capacity) (as discussed in Section 7.4.3.1). Certain customer groups who require specific types of heavy-duty forklift trucks (e.g. of a capacity range) will find it particularly difficult to switch, because even fewer suppliers are active in certain segments of the heavy-duty forklift trucks (>10 tonne capacity) market (as discussed in Section 7.4.3.2). This would for example be the case for very high capacity forklift trucks. Similarly, customers in regions where some of the suppliers that are active overall in the EEA do not have distribution and in particular after-sales networks will be particularly limited in their ability to switch.
- (2483) The Notifying Parties submit that several Cargotec and Konecranes customers ‘*have recently switched*’ to competitors like Hyster, Linde and Svetruck.²³⁷¹ The Commission observes that switching is in principle possible (also because some customers maintain mixed fleets). However, the ability of customers to switch heavy-duty forklift truck (>10 tonne capacity) supplier is already pre-Transaction limited, because (i) not all suppliers have strong and broad distribution and after-sales networks, (ii) not all suppliers offer a full product range, (iii) not all suppliers meet customers’ quality, reputation and experience requirements. Based on these factors some customers’ switching ability is more limited (because they are located in regions where only few suppliers have requisite distribution and after-sales networks, because they require a particularly high capacity forklift truck, because they require an electric heavy-duty forklift truck (>10 tonne capacity), etc.) than the switching ability of other customers (because their operation is located in region where multiple suppliers have requisite distribution and after-sales presence, etc.). By removing the competition between Cargotec and Konecranes, two suppliers that are considered particularly strong according to key customer purchase criteria, the Transaction will further limit customers’ switching ability.
- (2484) In that context, customers provide differing views on whether switching heavy-duty forklift truck (>10 tonne capacity) suppliers would be easy or difficult if the Merged Entity were to increase its prices in the EEA post-Transaction.²³⁷²
- (2485) Some customers perceive switching to be possible. A customer states relation to its ability to switch suppliers of mobile equipment (of which heavy-duty forklift trucks (>10 tonne capacity) are a part) that ‘*due to EU-wide tenders, supplier changes are always possible*’.²³⁷³ Another customer submits that ‘[a]lternative manufacturers as

²³⁷¹ Response to the Article 6(1)(c) Decision, paragraph 395.

²³⁷² Responses to Q2 – Questionnaire to Customers, Doc. ID 3153, questions E.C.A.4. and E.C.A.4.1.

²³⁷³ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question E.C.A.4.1. Courtesy translation. The original German reads: ‘*Durch EU-weite Ausschreibungen sind Bieterwechsel ständig möglich*’.

*HYSTER, SANY, ZPMC, LIEBHERR or LINDE could supply in similar terms of specifications, quality, delivery times, etc.*²³⁷⁴ (Liebherr and ZPMC are not active in heavy-duty forklift trucks (>10 tonne capacity). A further customer states: *‘There are multiple brands available in the forklift business’*.²³⁷⁵

- (2486) However, other customers do not perceive switching suppliers to be an effective strategy to avoid a price increase. With respect to the effect in mobile equipment (of which heavy-duty forklift trucks (>10 tonne capacity) are a part), one customer simply states that the Transaction would result in ‘NO MORE COMPETITION’,²³⁷⁶ another customer describes practical challenges: *‘Always there is a possibility to change suppliers but it creates some issues from operational point of view and technical point of view (more spare parts, more trainings and etc)’*.²³⁷⁷ Yet another customer submits that *‘Konecranes and Cargotec are our main suppliers of the products mentioned. The level of knowledge of the employees is high and the supply of replacement parts has been optimized over the years. The factories reserve production windows and communicate reserves and bottlenecks. Mergers and price increases are common practice and our operations are geared towards them. Nonetheless, ending the collaboration through an unacceptable increase in prices would affect every imaginable process’*.²³⁷⁸ With respect to this customer the Notifying Parties submit that it maintains a mixed fleet.²³⁷⁹ Even when maintaining a mixed fleet however, customers can be limited in their switching abilities (because the number of available suppliers is reduced, and because not all suppliers are capable of addressing all the customers’ needs).
- (2487) A distributor describes what it expects to be the consequence of a supplier change for its business model: *‘We’ve built quite a big reputation for our company and the brandname Kalmar. I might lose credibility at my clients if I have to switch to a different / new brand or start promoting a competing brand. This breaks down everything we’ve built in the past. I think this has a very high risk for my company’*.²³⁸⁰
- (2488) A customer further explains that its ability to switch suppliers is limited because it *‘has a large number of widely spread terminals in Germany, [and therefore] it is essential to have a few hours response time from suppliers. That is the reason why already today the number of capable suppliers is limited and would be further reduced to the merged entity and Hyster post-Transaction’*.²³⁸¹ Therefore, the Transaction would further reduce this customers’ already very limited ability to switch suppliers.
- (2489) Another customer submits that its choice for forklift trucks is pre-Merger already *‘limited to Hyster, Kalmar and Konecranes which have local dealers in Lithuania’*.²³⁸²
- (2490) Another customer submits that *‘[w]ith respect to heavy-duty forklifts with a lifting capacity of more than 12 or 16 tonnes, the Company submits that in practice there*

²³⁷⁴ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question E.C.A.4.1.

²³⁷⁵ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question E.C.A.4.1.

²³⁷⁶ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question E.C.A.4.1.

²³⁷⁷ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question E.C.A.4.1.

²³⁷⁸ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question E.C.A.4.1.

²³⁷⁹ Reply to the SO, paragraph 1161.

²³⁸⁰ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question E.C.A.4.1.

²³⁸¹ Doc. ID 311, Minutes of a call with a customer, 2 March 2021.

²³⁸² Doc. ID 675, Minutes of a call with a customer, 7 April 2021.

are only three viable suppliers it can consider: Konecranes, Kalmar and Linde. As Linde is not a substantial player in this market and does not offer forklifts of equivalent quality to the Parties, Konecranes and Kalmar account for around 90% of the market'. It further explains that '[t]here are some other, smaller players active in the heavy-duty forklift market, such as Hyster and Sany. However, as the Company considers the Parties to offer the highest quality equipment, these suppliers are generally not considered by the Company'.²³⁸³

- (2491) Another customer submits with respect to Sany: '[The Company] is not inclined to purchase from Sany, as they are relatively new to the market and the quality of their offering does not currently meet the general specifications of the Company'.²³⁸⁴
- (2492) A distributor active in Spain describes customers' limited switching ability by submitting that '[f]inal customers of mobile container handling equipment have a reason to be concerned about the proposed merger. There are many instances where [the Company] in Spain only faces Kalmar in the supply of equipment, and in most cases the only competition in the market are Kalmar and Konecranes. Customers would lose the ability to generate competition between Kalmar and Konecranes and would need to start sourcing from Hyster, which is a company currently not relied upon by customers'.²³⁸⁵
- (2493) Another distributor submits that 'Hyster's equipment is however of a lower quality and the Company believes that customers operating with Konecranes or Kalmar equipment would not source from Hyster. The difference of quality can be explained by the lower level of the components used by Hyster in its equipment (e.g., they are using the same type of transmission as the Parties, but use a less advanced iteration of it). In addition, the finishing and welding on Hyster machines is not quite up to the same standard as on the Parties' machines. Overall, while Kalmar's and Konecranes' equipment has a lifespan of approximately 10 years, Hyster's equipment has a lifespan of seven to eight years'.²³⁸⁶ This implies that while some customers consider Hyster to be a potential alternative to the Parties, some other customers may not due to quality reservations.
- (2494) Yet another distributor again points to the importance of an effective after-sales network by explaining that '[i]n this market, competition occurs at the distribution/sales level. Therefore, by itself the merger does not have a large effect because there are still other competitors that can manufacture heavy-duty forklifts and reach stackers. However, without a significant service network these competitors will not be able to take a large share of the market and the merged entity will clearly stay the market leader'.²³⁸⁷
- (2495) Customers are therefore limited in their ability to switch supplier post-Transaction.
- (2496) The Notifying Parties submit that a Cargotec customer of heavy-duty forklift trucks (>10 tonne capacity) has '*recently switched*' to Linde.²³⁸⁸ However, the Notifying Parties explain that [internal document reference].²³⁸⁹ This shows that [...] has not switched away from Cargotec, but rather that (at least part of) its demand is

²³⁸³ Doc. ID 1117, Minutes of a call with a customer, 21 April 2021.

²³⁸⁴ Doc. ID 508, Minutes of a call with a customer, 10 March 2021.

²³⁸⁵ Doc. ID 261, Minutes of a call with a distributor, 24 February 2021.

²³⁸⁶ Doc. ID 502, Minutes of a call with a distributor, 14 April 2021.

²³⁸⁷ Doc. ID 881, Minutes of a call with a distributor, 19 April 2021.

²³⁸⁸ Reply to the SO, paragraph 1163.

²³⁸⁹ Reply to Request for information RFI 37, question 11.

contestable for certain suppliers. Similar considerations likely apply to other customers that also source from suppliers other than the Notifying Parties. The Notifying Parties submit that this case shows that [internal document reference].²³⁹⁰ As explained in the following, mixed fleets are however not an indication that switching would be an effective practice for a significant number of customers in reaction to a post-Merger price increase.

- (2497) The Notifying Parties further submit in this context that the existence of mixed fleets (i.e. customers that own heavy-duty forklift trucks (>10 tonne capacity) from more than one supplier) and past instances of switching between suppliers would support the finding that switching by customers is generally easy, or at least a viable option in reaction to a price increase.²³⁹¹ First, the existence of mixed fleets and the general ability of (certain) customers to switch is not in itself informative on the question of whether switching would be an effective strategy for customers to avoid a post-Merger price increase by the Merged Entity. If switching and mixed fleets were entirely absent from the heavy-duty forklift trucks (>10 tonne capacity) market, the Proposed Transaction's potential effect on competition would be very limited (as all existing customers would be locked-in and could not be contested – i.e. there would be no competition between the Notifying Parties pre-Transaction for existing customers. Existing customers are however clearly contested). Switching suppliers is in principle possible for various customers, yet because the Notifying Parties are competing closely in this market, many customers are likely to consider the other Notifying Party when switching away from one of them. This choice would disappear post-Transaction. Further, switching opportunities are limited for many customers, as – as described in this Section 7.4.3.4 (B) – other suppliers of heavy-duty forklift trucks (>10 tonne capacity) cannot fulfil all their requirements. Therefore, switching is not an effective option for many customers in response to a price increase by the Merged Entity.

(C) Each competitor currently present on the EEA heavy-duty forklift trucks (>10 tonne capacity) market is limited in its ability to constrain the Merged Entity

- (2498) To recall, the companies competing with the Notifying Parties in heavy-duty forklift trucks (>10 tonne capacity) in the EEA are: Hyster, Svetruck, Kion (Linde), CVS Ferrari, Doosan, Hyundai, FTMH and Sany. All of these companies are limited in their ability to constrain the Merged Entity post-Transaction. While Hyster might be a meaningful competitor post-Transaction, it falls short of the Notifying Parties' capabilities in some key areas. All other competitors are more significantly limited in their capabilities and therefore in their ability to constrain the Merged Entity.
- (2499) **First**, competitors with a small EEA 2018-2020 market share (below 5% according to the Commission's market reconstruction) are unlikely to be able to effectively constrain the Merged Entity (i.e. Sany, FTMH, CVS, Doosan, Hyundai). Konecranes in an internal document considers that '*the market for Heavy FLT's is consolidating and the small players will at some point fall of the cliff*'.²³⁹² A competitor explains with respect to smaller players in mobile equipment overall (of which heavy-duty forklift trucks (>10 tonne capacity) are a part): '*Smaller players usually have to focus on a small niche of the market to stay competitive – nevertheless it is very difficult*

²³⁹⁰ Reply to the Letter of Facts, paragraph 152.

²³⁹¹ Reply to the SO, paragraphs 1162-1164.

²³⁹² Form CO, PN RFI 7, Annex QK22.1, slide 15.

*for them to maintain the necessary Europe-wide service network or to keep up with technology developments in the market’.*²³⁹³

- (2500) Sany: The company has a very small EEA 2018-2020 market share of [0-5]% according to the Commission’s market reconstruction and of [0-5]% according to the data provided by the Notifying Parties. The Notifying Parties submit that ‘*Sany is expected to grow and constrain the Parties on the market for heavy-duty forklift trucks*’.²³⁹⁴ However, only one customer explaining its last purchase of heavy-duty forklift trucks (>10 tonne capacity) indicates that Sany submitted a bid.²³⁹⁵ One customer indicates that it expects Sany to newly participate with bids in future tenders that match those of Cargotec and/or Konecranes in terms of quality, servicing, etc.²³⁹⁶ In the years 2018-2020, the Notifying Parties in the tender data provided to the Commission do not record a single EEA instance where they lost a heavy-duty forklift trucks (>10 tonne capacity) tender to this company.²³⁹⁷ In an internal [year] document considering Western Europe, Kalmar assesses that [internal document reference].²³⁹⁸ Customers consider Sany clearly inferior to the Notifying Parties according to key purchase criteria (such as quality, brand reputation, distribution and after-sales network, etc.).²³⁹⁹ This shows that Sany cannot be expected to constitute a significant constraint on the Merged Entity in the EEA heavy-duty forklift trucks (>10 tonne capacity) market.
- (2501) FTMH: The company has a very small EEA 2018-2020 market share of [0-5]% according to the Commission’s market reconstruction. No customer explaining its last purchase of heavy-duty forklift trucks (>10 tonne capacity) indicates that FTMH submitted a bid.²⁴⁰⁰ No customer indicates that it expects FTMH to newly participate with bids in future tenders that match those of Cargotec and/or Konecranes in terms of quality, servicing, etc.²⁴⁰¹ In the years 2018-2020, the Notifying Parties in the tender data provided to the Commission do not record a single EEA instance where they lost a heavy-duty forklift trucks (>10 tonne capacity) tender to this company.²⁴⁰² Customers consider FTMH clearly inferior to the Notifying Parties according to key purchase criteria (such as quality, brand reputation, distribution and after-sales network, etc.).²⁴⁰³
- (2502) CVS: The company has a very small EEA 2018-2020 market share of [0-5]% according to the Commission’s market reconstruction. One customer explaining its last purchase of heavy-duty forklift trucks (>10 tonne capacity) indicates that CVS

²³⁹³ Doc. ID 932, Minutes of a call with a competitor, 20 April 2021.

²³⁹⁴ Reply to the SO, paragraph 1123.

²³⁹⁵ See Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 15.3.

²³⁹⁶ Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 15.3.1.

²³⁹⁷ See data provided in Reply to request for information RFI 16.

²³⁹⁸ Doc. ID 3665-22169 (The Parties’ reply to the Commission’s request for information RFI 17, CAR-PAT-00091396.pptx), slide 3.

²³⁹⁹ See Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 14.3.

²⁴⁰⁰ See Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 15.3.

²⁴⁰¹ Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 15.3.1.

²⁴⁰² See data provided in Reply to request for information RFI 16.

²⁴⁰³ See Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 14.3.

submitted a bid.²⁴⁰⁴ No customer indicates that it expects CVS to newly participate with bids in future tenders that match those of Cargotec and/or Konecranes in terms of quality, servicing, etc.²⁴⁰⁵ In the years 2018-2020, the Notifying Parties in the tender data provided to the Commission [...] and [...] where they lost a heavy-duty forklift trucks (>10 tonne capacity) tender to this company.²⁴⁰⁶ CVS is only active in heavy-duty forklift trucks (>10 tonne capacity) with a lifting capacity above 25 tonnes.²⁴⁰⁷ Customers consider CVS clearly inferior to the Notifying Parties according to key purchase criteria (such as quality, brand reputation, distribution and after-sales network, etc.).²⁴⁰⁸

- (2503) Doosan: The company has a very small EEA 2018-2020 market share of [0-5]% according to the Commission's market reconstruction. No customer explaining its last purchase of heavy-duty forklift trucks (>10 tonne capacity) indicates that Doosan submitted a bid.²⁴⁰⁹ No customer indicates that it expects Doosan to newly participate with bids in future tenders that match those of Cargotec and/or Konecranes in terms of quality, servicing, etc.²⁴¹⁰ In the years 2018-2020, the Notifying Parties in the tender data provided to the Commission [...] and [...] where they lost a heavy-duty forklift trucks (>10 tonne capacity) tender to this company.²⁴¹¹ Customers consider Doosan clearly inferior to the Notifying Parties according to key purchase criteria (such as quality, brand reputation, distribution and after-sales network, etc.).²⁴¹²
- (2504) Hyundai: The company has a very small EEA 2018-2020 market share of [0-5]% according to the Commission's market reconstruction. No customer explaining its last purchase of heavy-duty forklift trucks (>10 tonne capacity) indicates that Hyundai submitted a bid.²⁴¹³ No customer indicates that it expects Hyundai to newly participate with bids in future tenders that match those of Cargotec and/or Konecranes in terms of quality, servicing, etc.²⁴¹⁴ In the years 2018-2020, the Notifying Parties in the tender data provided to the Commission [...] where they lost a heavy-duty forklift trucks (>10 tonne capacity) tender to this company.²⁴¹⁵ Customers consider Hyundai clearly inferior to the Notifying Parties according to

²⁴⁰⁴ See Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 15.3.

²⁴⁰⁵ Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 15.3.1.

²⁴⁰⁶ See data provided in Reply to request for information RFI 16.

²⁴⁰⁷ Doc. ID 1773, Minutes of a call with a competitor, 3 May 2021.

²⁴⁰⁸ See Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 14.3.

²⁴⁰⁹ See Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 15.3.

²⁴¹⁰ Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 15.3.1.

²⁴¹¹ See data provided in Reply to request for information RFI 16.

²⁴¹² See Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 14.3.

²⁴¹³ See Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 15.3.

²⁴¹⁴ Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 15.3.1.

²⁴¹⁵ See data provided in Reply to request for information RFI 16. The Notifying Parties (the Reply to the SO, paragraph 1127) state that '*the Commission should have also contacted this competitor directly to correctly assess its competitive strength instead of only relying on the Parties' tender data*'. The Commission notes that Hyundai is included in the Commission's market reconstruction.

key purchase criteria (such as quality, brand reputation, distribution and after-sales network, etc.).²⁴¹⁶

- (2505) **Second**, Kion (Linde) is unlikely to be able to effectively constrain the Merged Entity.
- (2506) The company has a small EEA 2018-2020 market share of [5-10]% according to the Commission's market reconstruction. Therefore the Merged Entity with a 2018-2020 EEA market share of [50-60]% will be at least five times as large. In the years 2018-2020, the tender data provided to the Commission shows a meaningful degree of tender interaction between Kion (Linde) and the Notifying Parties.²⁴¹⁷
- (2507) Considering certain customer key purchase criteria for heavy-duty forklift trucks (>10 tonnes), as shown in Table 48, customers consider Cargotec and Konecranes to be significantly stronger than Kion (Linde) in relation to brand reputation, vehicle quality, product range and after-sales network. Distributors and Competitors provide similar responses.²⁴¹⁸ It is also noteworthy that overall only few customers mention Kion (Linde) to be among the five most relevant suppliers in relation to these parameters.

Table 48 – Kion (Linde) comparison with the Notifying Parties according to key purchase criteria

Customers' ranking of the top five heavy-duty forklift trucks (>10 tonne capacity) suppliers active in the EEA according to key purchase criteria (The Parties and Kion (Linde))					
Company	1 (strongest/best)	2	3	4	5 (weakest/worst)
Brand reputation					
Cargotec	xxxxxxxx	xxxxx	xxx		
Konecranes	xxxxx	xxx	xxx	xx	
Kion (Linde)	x	x	x		
Vehicle quality					
Cargotec	xxxxxxxxxxx	xxxx	xx		
Konecranes	xxxxxxx	xx	xx	xx	
Kion (Linde)	x	xx	x		
Product range					
Cargotec	xxxxxxxx		xxx	x	
Konecranes	xxxx	xx	xx	xxx	
Kion (Linde)	x	xx			
After-sales network					
Cargotec	xxxxxxxxxxxxx	x	xxx		
Konecranes	xxx	xx	xxxxxx	x	
Kion (Linde)		xx		xx	

Source: Responses to Q6 – Questionnaire to Mobile equipment customers, Doc. ID 3607, question 14.3. The Commission's evaluation of non-confidential responses.

²⁴¹⁶ See Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 14.3.

²⁴¹⁷ See data provided in Reply to request for information RFI 16.

²⁴¹⁸ See Responses to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 19.3 and Responses to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 82.3.

- (2508) Further, as shown in Table 39 above, significantly more customers submit that the Notifying Parties can meet all of their heavy-duty forklift trucks (>10 tonne capacity) equipment requirements, than indicate that Kion (Linde) can do so.
- (2509) Other than Cargotec and Konecranes which offer the full capacity range of heavy-duty forklift trucks (>10 tonnes), Kion (Linde) only supplied heavy-duty forklift trucks (>10 tonne capacity) with a maximum lifting capacity of 18 tonnes. The company therefore does not compete with the Notifying Parties in any lifting capacity segment above 18 tonnes.
- (2510) Kion further submits that '[i]n the lifting capacity range between 10 and 18 tonnes, the Company offers a niche product and sells approximately 100 to 200 units per year. This product is expensive because it is designed with a hydrostatic motor and pumps that offers a better manoeuvrability and steering capacities. KION is popular with customers that want to source high-performance forklift trucks, but it has lost a lot of market share because of the high price'.²⁴¹⁹ This suggests that the Kion (Linde) heavy-duty forklift trucks (>10 tonne capacity) are not close substitutes to the Notifying Parties' products.
- (2511) The fact that [internal document reference], is seen as a main selling argument by Kalmar against Linde.²⁴²⁰
- (2512) Cargotec in an internal document (captioned in Figure 160) however considers that [internal document reference].

Figure 160: [...]

[...]

Source: [Internal document reference].

- (2513) A customer with respect to Linde's position in the heavy-duty forklift trucks (>10 tonne capacity) market submits that it '*is not a substantial player in this market and does not offer forklifts of equivalent quality to the Parties*'.²⁴²¹
- (2514) Therefore, Kion (Linde) is unlikely to be able to effectively constrain the Merged Entity post-Transaction. It has a small market share, and is regarded by market participants to lag behind Cargotec and Konecranes with respect to certain key customer purchase criteria, and its activities are concentrated only on certain EEA countries/regions. Its heavy-duty forklift trucks (>10 tonne capacity) portfolio only partly overlaps with the Notifying Parties' portfolio (10-18 tonnes) and the Notifying Parties consider Kion (Linde) to occupy a different position in the price-quality matrix of forklift trucks.
- (2515) **Third**, Svetruck is unlikely to be able to effectively constrain the Merged Entity.
- (2516) The company has a small to moderate EEA 2018-2020 market share of [10-20]% according to the data provided by the Notifying Parties and of [10-20]% according to the Commission's market reconstruction. Therefore the Merged Entity with a 2018-2020 EEA market share of [50-60]% will be at least between two and a half and four times as large. In the years 2018-2020, the tender data provided to the

²⁴¹⁹ Doc. ID 1662, Minutes of a call with a competitor, 30 April 2021.

²⁴²⁰ Doc. ID 3667-51198 (The Parties' reply to the Commission's request for information RFI 17, CAR-PRA-00139946.pptx), slide 4.

²⁴²¹ Doc. ID 1117, Minutes of a call with a customer, 21 April 2021.

Commission shows a meaningful degree of tender interaction between Svetruck and the Notifying Parties.²⁴²²

- (2517) Considering certain customer key purchase criteria for heavy-duty forklift trucks (>10 tonnes), as shown in Table 49, significantly more customers consider Cargotec and Konecranes to be stronger than Svetruck in relation to brand reputation, vehicle quality, product range and after-sales network. Generally, Svetruck is seen by those customers naming Svetruck as one of the five most relevant suppliers to have a good brand reputation and a good vehicle quality. It is however noteworthy that significantly few customers consider Svetruck to be among the five most relevant suppliers than the Notifying Parties. Distributors and Competitors provide similar responses (competitors considering Svetruck to be leading in vehicle quality).²⁴²³

Table 49 – Svetruck comparison with the Notifying Parties according to key purchase criteria

Customers' ranking of the top five heavy-duty forklift trucks (>10 tonne capacity) suppliers active in the EEA according to key purchase criteria (The Parties and Svetruck)					
Company	1 (strongest/best)	2	3	4	5 (weakest/worst)
Brand reputation					
Cargotec	xxxxxxxx	xxxxx	xxx		
Konecranes	xxxxx	xxx	xxx	xx	
Svetruck	xxxx	x			
Vehicle quality					
Cargotec	xxxxxxxxxxx	xxxx	xx		
Konecranes	xxxxxxxx	xx	xx	xx	
Svetruck	xxx			x	
Product range					
Cargotec	xxxxxxxx		xxx	x	
Konecranes	xxxx	xx	xx	xxx	
Svetruck	x	x			
After-sales network					
Cargotec	xxxxxxxxxxxxx	x	xxx		
Konecranes	xxx	xx	xxxxxx	x	
Svetruck	x	x	x		

Source: Responses to Q6 – Questionnaire to Mobile equipment customers, Doc. ID 3607, question 14.3. The Commission's evaluation of non-confidential responses.

- (2518) Further, as shown in Table 39 above, significantly more customers submit that the Notifying Parties can meet all of their heavy-duty forklift trucks (>10 tonne capacity) equipment requirements, than indicate that Svetruck can do so.

- (2519) The Notifying Parties submit that 'Konecranes further expects Svetruck to expand based on its "robust and solid machine, repeat customers"'.²⁴²⁴ However, Svetruck

²⁴²² See data provided in Reply to request for information RFI 16.

²⁴²³ See Responses to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 19.3 and Responses to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 82.3.

²⁴²⁴ Reply to the SO, paragraph 1150.

explains: ‘we are a small manufacturer and dont meet [the Parties] so much in market except [S]weden and range of 10-50t forklifts’.²⁴²⁵

- (2520) Cargotec in an internal document (captioned above in Figure 160) considers Svetruck to occupy roughly the same place in the price-quality matrix in relation its forklift truck products. In this context, Konecranes in an internal document also states [internal document reference].²⁴²⁶
- (2521) Konecranes in an internal document analyses [internal document reference].²⁴²⁷ This suggests that the price competition exercised by Svetruck on other suppliers like the Notifying Parties is limited.
- (2522) Konecranes also in a another recent documents notes [internal document reference].²⁴²⁸
- (2523) Further, with respect to a [...] distributor, [...],²⁴²⁹ it is noted in an internal Konecranes document: [internal document reference].²⁴³⁰ Indeed, other than submitted by the Notifying Parties,²⁴³¹ Svetruck’s dealer network in Europe is not strong – it does not have a strong EEA-wide coverage. This perception is also shared by customers (see Table 49).
- (2524) In an internal Konecranes email [internal document reference].²⁴³² This shows that due to Svetruck’s weaker distribution and after-sales network, it is not competitive vis-à-vis the Parties in all regions of the EEA.
- (2525) Cargotec in an internal document further states: [internal document reference].²⁴³³ This suggests that Kalmar expects the competitive constraint exerted by Svetruck to decrease in the future.
- (2526) In another internal document, Kalmar assesses that Svetruck ‘[c]ontinues to make 200 trucks per year’.²⁴³⁴ This further confirms that Svetruck is not aggressively trying to increase its market share. The Notifying Parties however claim that ‘*the fact that Svetruck manufactures 200 trucks on a market with an average demand of approximately 1000 units per year shows that they are competitive*’.²⁴³⁵ The Commission however notes that the 200 trucks refer to Svetruck’s annual production for global supply, whereas the ‘*approximately 1000 units per year*’ refer to EEA demand only.
- (2527) In any case, Svetruck is not considered to be a competitor that is competing to increase its market share in heavy-duty forklift trucks (>10 tonne capacity). In an

²⁴²⁵ Response to Q1 – Questionnaire to Competitors, Doc. ID 3154, question 1.

²⁴²⁶ Doc. ID 3586-15461 (The Parties’ reply to the Commission’s request for information RFI 18, M.10078 Cargotec Konecranes RFI 18-00356431.pdf), slide 15.

²⁴²⁷ Form CO, PN RFI 7, Annex QK22.2, slide 12.

²⁴²⁸ Doc. ID 3586-62316 (The Parties’ reply to the Commission’s request for information RFI 18, M.10078 Cargotec Konecranes RFI 18-00354050.pptx), slide 7.

²⁴²⁹ Reply to Request for information RFI 26, question 1c.

²⁴³⁰ Doc. ID 3584-55157 (The Parties’ reply to the Commission’s request for information RFI 18, M.10078 Cargotec Konecranes RFI 18-00167626.doc).

²⁴³¹ Reply to the SO, paragraph 1121.

²⁴³² Doc. ID 3585-56176 (The Parties’ reply to the Commission’s request for information RFI 18, M.10078 Cargotec Konecranes RFI 18-00238439 msg).

²⁴³³ Doc. ID 3707-4106 (The Parties’ reply to the Commission’s request for information RFI 17, CAR-ERI-00029271.pptx), slide 7.

²⁴³⁴ Doc. ID 3708-2802 (The Parties’ reply to the Commission’s request for information RFI 17, CAR-HUL-00008144.pptx), slide 6.

²⁴³⁵ Reply to the Letter of Facts, paragraph 155.

internal Konecranes email, it is noted that [internal document reference].²⁴³⁶ This is in line with a distributor explaining that ‘*Svetruck mainly supplies to existing customers and is not very active in pursuing new customers. It has a low production capacity of approximately 200 units per year and sells mainly (i.e., 70%) in Scandinavian countries where they have a stronger position and where they can sell their equipment at higher prices*’.²⁴³⁷ Similarly, a competitor states that Svetruck ‘*seems not to be in a position to increase its market shares*’ and that ‘*Svetruck mainly sells to its existing customers which proactively come in contact with it to source new units, and the delivery times are often about one and half year*’.²⁴³⁸

- (2528) Therefore, Svetruck is unlikely to be able to effectively constrain the Merged Entity post-Transaction. It has a small to moderate market share and concentrates its market activities on only certain regions (primarily Scandinavia) and existing customers (making it an unlikely supplier for customers to be able to switch to). While it appears to be strong in relation to vehicle quality and brand reputation, it therefore lacks a strong distribution and after-sales network – and is generally named only by few customers to be among the main relevant heavy-duty forklift trucks (>10 tonne capacity) suppliers in the EEA. Finally, also the Notifying Parties do not consider Svetruck as a player fighting to increase its market position.
- (2529) **Fourth**, Hyster is unlikely to be able to effectively constrain the Merged Entity.
- (2530) The company has a moderate EEA 2018-2020 market share of 12.7% according to the data provided by the Notifying Parties and of [20-30]% according to the Commission’s market reconstruction. Therefore the Merged Entity with a 2018-2020 EEA market share of [50-60]% will be at least between one 1.8x to over four times as large. In the years 2018-2020, the tender data provided to the Commission shows a meaningful degree of tender interaction between Hyster and the Notifying Parties.²⁴³⁹
- (2531) Considering certain customer key purchase criteria for heavy-duty forklift trucks (>10 tonnes), as shown in Table 50, the Notifying Parties are considered to be stronger than Hyster in relation brand reputation and vehicle quality, while Hyster is considered to have a similar position to Konecranes in product range and after-sales network (with Cargotec leading both). Distributors and Competitors provide broadly similar responses.²⁴⁴⁰

²⁴³⁶ Doc. ID 3585-49355 (The Parties’ reply to the Commission’s request for information RFI 18, M.10078 Cargotec Konecranes RFI 18-00238412 msg).

²⁴³⁷ Doc. ID 502, Minutes of a call with a distributor, 14 April 2021.

²⁴³⁸ Doc. ID 1662, Minutes of a call with a competitor, 30 April 2021.

²⁴³⁹ See data provided in Reply to request for information RFI 16.

²⁴⁴⁰ See Responses to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 19.3 and Responses to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 82.3.

Table 50 – Hyster comparison with the Notifying Parties according to key purchase criteria

Customers' ranking of the top five heavy-duty forklift trucks (>10 tonne capacity) suppliers active in the EEA according to key purchase criteria (The Parties and Hyster)					
Company	1 (strongest/best)	2	3	4	5 (weakest/worst)
Brand reputation					
Cargotec	xxxxxxx	xxxxx	xxx		
Konecranes	xxxxx	xxx	xxx	xx	
Hyster	xxx	xxxx	xx		
Vehicle quality					
Cargotec	xxxxxxxxxx	xxxx	xx		
Konecranes	xxxxxxxx	xx	xx	xx	
Hyster	xxxx	xxxx	x		
Product range					
Cargotec	xxxxxxxx		xxx	x	
Konecranes	xxxx	xx	xx	xxx	
Hyster	xxxx	xx	xx		
After-sales network					
Cargotec	xxxxxxxxxxxx	x	xxx		
Konecranes	xxx	xx	xxxxxx	x	
Hyster	xxx	xxxxx	xxx		

Source: Responses to Q6 – Questionnaire to Mobile equipment customers, Doc. ID 3607, question 14.3. The Commission's evaluation of non-confidential responses.

- (2532) Further, as shown in Table 39 above, more customers submit that the Notifying Parties can meet all of their heavy-duty forklift trucks (>10 tonne capacity) equipment requirements, than indicate that Hyster can do so.
- (2533) Hyster submits that its 'product range is similar to the one of the Parties'.²⁴⁴¹
- (2534) Hyster explains that it's 'main challenge is in regions in Europe where the Parties already pre-merger have a very large market share and it is therefore difficult for Hyster to gain market share there. Further, customers may have some concerns, as the market is divided by only a small number of players'.²⁴⁴²
- (2535) It further explains the difficulty to gain market share in areas where the Notifying Parties are particularly strong by explaining that '[i]n the Nordics, the Parties are definitely dominant. The dominance may arise from the fact that for a fleet of six to seven reach stackers, one mechanic is necessary, and this mechanic cannot be available 24/7. Therefore, for having a fleet of machines, a good team and spare parts availability are necessary. In large countries, such as Norway with long distances, it is difficult to keep the service level at the requested range'.²⁴⁴³
- (2536) Hyster further submits that '[t]he merged entity will have a dominant fleet size and service presence in some countries/regions/ports in the EEA. This will make it more difficult for competitors like Hyster to start/expand supply in these countries with

²⁴⁴¹ Doc. ID 932, Minutes of a call with a competitor, 20 April 2021.

²⁴⁴² Doc. ID 932, Minutes of a call with a competitor, 20 April 2021.

²⁴⁴³ Doc. ID 932, Minutes of a call with a competitor, 20 April 2021.

smaller dealers, because one would lack the necessary scale of service capabilities. This issue would be particularly severe in the Nordics, where the Parties' combined market share across the different mobile equipment product types [(which includes heavy-duty forklift trucks (>10 tonne capacity))] would be above 60%. Similarly, certain ports around the Mediterranean and some areas in Germany would face a similar concentration'.²⁴⁴⁴ (Hyster's submission with regards to the situation in Germany is for example confirmed in an internal Cargotec document analysing the mobile equipment service market environment in Germany, and only ascribing a low market share of below 10% to Hyster in that country.²⁴⁴⁵ Similarly, a competitor explains that Hyster's presence in Germany is limited.²⁴⁴⁶ Hyster's submission with regards to the situation in Scandinavia is also confirmed by a distributor, which describes Hyster's presence in Sweden and Norway as limited.²⁴⁴⁷)

- (2537) Therefore, while the Notifying Parties submit that Hyster 'is not concerned about the proposed transaction as it is expected to open the doors for Hyster and Chinese competitors to further expand in Europe',²⁴⁴⁸ Hyster 'believes that the proposed transaction might significantly limit competition and increase barriers to entry in the market for mobile equipment'.²⁴⁴⁹
- (2538) It further states that '[c]ustomers that today may have two or three effective choices of suppliers of mobile equipment will post-merger have less choice and, depending on their location, be concerned'.²⁴⁵⁰
- (2539) The Notifying Parties consider Hyster as their second most important EEA competitor (after each other). While Kalmar's distribution and service network are stronger than Svetruck's, the Notifying Parties do not consider Hyster, unlike Svetruck, to offer premium heavy-duty forklift trucks (>10 tonne capacity) that are closely comparable to their own.
- (2540) For example, Cargotec in an internal document (captioned in Figure 161) considers that [internal document reference].

Figure 161: [...]

[...]

Source: [Internal document reference].

- (2541) Similarly, in another Cargotec internal document (captioned in Figure 162), [internal document reference].

Figure 162: Kalmar assessment of competitor positioning forklift trucks

[...]

Source: [Internal document reference].

- (2542) Cargotec in another internal document considers Hyster to offer [internal document reference].²⁴⁵¹

²⁴⁴⁴ Doc. ID 4278, Minutes of a call with a competitor, 23 August 2021.

²⁴⁴⁵ Doc. ID 3666-24202 (The Parties' reply to the Commission's request for information RFI 17, CAR-PAT-00121551.pptx), slide 7.

²⁴⁴⁶ Doc. ID 1773, Minutes of a call with a competitor, 3 May 2021.

²⁴⁴⁷ Doc. ID 1765, Minutes of a call with a distributor, 11 May 2021.

²⁴⁴⁸ Reply to the SO, paragraph 1119.

²⁴⁴⁹ Doc. ID 4278, Minutes of a call with a competitor, 23 August 2021.

²⁴⁵⁰ Doc. ID 932, Minutes of a call with a competitor, 20 April 2021.

(2543) Similarly, Konecranes, in an internal document (captioned in Figure 163) [internal document reference].

Figure 163: Konecranes’ benchmarking of mobile equipment competitors’ product ranges

[...]

Source: [Internal document reference].

- (2544) A distributor describes this issue by stating that ‘Hyster’s equipment is however of a lower quality and the Company believes that customers operating with Konecranes or Kalmar equipment would not source from Hyster. The difference of quality can be explained by the lower level of the components used by Hyster in its equipment (e.g., they are using the same type of transmission as the Parties, but use a less advanced iteration of it). In addition, the finishing and welding on Hyster machines is not quite up to the same standard as on the Parties’ machines. Overall while Kalmar’s and Konecranes’ equipment has a lifespan of approximately 10 years, Hyster’s equipment has a lifespan of seven to eight years’.²⁴⁵²
- (2545) A customer explains that it considers only Kalmar, Konecranes and Linde as viable suppliers. It goes on to explain that ‘[t]here are some other, smaller players active in the heavy-duty forklift market, such as Hyster and Sany. However, as the Company considers the Parties to offer the highest quality equipment, these suppliers are generally not considered by the Company. Heavy-duty forklifts purchased by the Company typically have a lifetime of 15 to 20 thousand running hours. In the Company’s experience the equipment from Linde and Hyster cannot reach these lifetime running hours. As maintenance costs are an important consideration, the Company relies on the Parties’ heavy-duty forklift trucks, as they can reach these required lifetime running hours’.²⁴⁵³
- (2546) This suggests that Hyster’s heavy-duty forklift trucks (>10 tonne capacity) are not close substitutes to the heavy-duty forklift trucks (>10 tonne capacity) of the Notifying Parties. Hyster’s heavy-duty forklift trucks (>10 tonne capacity) likely compete with the Notifying Parties’ at customers with less stringent quality requirements, whereas customers with strict quality requirements prefer to rely on the Notifying Parties’ ‘premium’ products.
- (2547) Further, Cargotec also considers Hyster to be active in a more limited capacity range (maximum of 52 tonnes, whereas Kalmar has a maximum of 80 tonnes).²⁴⁵⁴
- (2548) Konecranes in an internal document notes [internal document reference].²⁴⁵⁵
- (2549) Therefore, Hyster is unlikely to be able to effectively constrain the Merged Entity post-Transaction. While post-Transaction it is likely to remain as the main EEA competitor to the Merged Entity in the heavy-duty forklift trucks (>10 tonne capacity) market, it only has a moderate market share. According to Hyster’s, the Notifying Parties’ and market participants’ assessment, Hyster has a weaker (also after-sales) presence in certain EEA regions where the Notifying Parties are strong (e.g. Scandinavia, Germany). In that context, Hyster considers the Transaction to

²⁴⁵¹ Form CO, PN RFI 4, Annex QC.a.1, slide 137.

²⁴⁵² Doc. ID 502, Minutes of a call with a distributor, 14 April 2021.

²⁴⁵³ Doc. ID 1117, Minutes of a call with a customer, 21 April 2021.

²⁴⁵⁴ Reply to Request for information RFI 24, Annex QC7.8, slide 9.

²⁴⁵⁵ Form CO, PN RFI 7, Annex QK22.2, slide 12.

likely further raise barriers to entry and expansion. In addition, the heavy-duty forklift truck (>10 tonne capacity) products offered by Hyster are not close substitutes to the Notifying Parties' premium products.

(2550) Therefore, overall the heavy-duty forklift truck (>10 tonne capacity) competitors presently active in the EEA are unlikely to be able to effectively constrain the Merged Entity post-Transaction.

(D) The Transaction leads to a reduction of competitive pressure on the remaining competitors

(2551) As explained above, post-Transaction, the remaining competitors would not be able to effectively constrain the Merged Entity. This is mainly due to their limited market presence and limitations with respect to certain customer key purchase criteria (e.g. distribution and after-sales network, brand reputation, vehicle quality, product range).

(2552) In addition, the Transaction is likely to reduce the competitive pressure on the remaining competitors of the Merged Entity. As explained above in Section 7.4.3.2 (F) and below in Section 7.4.3.5 (B), pre-Merger the Notifying Parties compete intensely with each other, also on price. This aggressive competitive behaviour, in which the Notifying Parties in part engage to gain market share from each other, also acts as a competitive constraint on their competitors currently active in the EEA heavy-duty forklift trucks (>10 tonne capacity) market. Post-Transaction, the incentive for the Merged Entity to compete and price aggressively will be reduced. This also limits the need for competitors to compete and price aggressively as explained below.

(2553) Specifically, in case of a price increase by the Merged Entity post-Transaction, competitors of the Merged Entity offering products that at least for some customers are substitutes to the Merged Entity's products, will experience a demand increase. In an oligopolistic competition setting, a player faced with such a windfall increase in its demand has the ability to raise profitably its prices.²⁴⁵⁶

(2554) In the case of the EEA heavy-duty forklift trucks (>10 tonne capacity) market, Hyster would be the main remaining competitor to the Merged Entity. While the Notifying Parties offer products that are closer substitutes to each other's than to Hyster's products, the Notifying Parties are nevertheless engaged in pre-Transaction significant competition with Hyster. This is evidenced in the bidding data analysis, submissions from customers, competitors, and the Notifying Parties' internal documents.

(2555) The bidding data analysis (see Section 7.4.3.2 (B.i)) shows significant loss ratios from Cargotec and Konecranes to Hyster. This diversion implies a likely demand increase for Hyster in case the Merged Entity increases prices. There is a strong probability that in this oligopolistic market Hyster would react to this with a second order price increase: Faced with the windfall increase in its demand, Hyster would face the choice between (i) a market share increase and a profitable price increase, and (ii) a larger market share increase with a less profitable, lower price increase – Hyster would have a greater incentive to pursue option (i) as it would be more profitable.

²⁴⁵⁶ Horizontal Merger Guidelines, paragraph 24.

- (2556) In any case, Hyster's ability to aggressively compete to gain market share following a price increase by the Merged Entity is limited according to the results from the market investigation, due to Hyster being considered by customers and competitors to offer lower product quality and to not have a strong distribution and after-sales network in all regions of the EEA.
- (2557) The Notifying Parties submit that 'there is no basis to automatically assume this price increase [by Hyster] would be significant[, as o]ther factors, such as buyers' negotiating power and how buyers organise competition between suppliers, also influence the extent to which the firm will be able to increase its price'.²⁴⁵⁷ However, in the context of the EEA heavy-duty forklift trucks (>10 tonne capacity) market, which post-Transaction will be highly concentrated with the Merged Entity by far the largest player and only few other suppliers with a meaningful share left, the ability of buyers to organise competition between suppliers will be significantly limited.
- (2558) Further, the Notifying Parties state that the assessment of a likely second order price increase by Hyster is '*outright contradictory*' to the finding '*that Hyster would be limited in its ability to constrain the Merged Entity and that customers would be limited in their ability to switch*'.²⁴⁵⁸ As explained in detail above (e.g. in Sections 7.4.3.2 and 7.4.3.4), Hyster is indeed trailing the Notifying Parties according to certain key customer purchase criteria – and therefore will be limited in its ability to effectively constrain the Merged Entity post-Transaction. Some customers will thus not consider Hyster (and its products) as an adequate substitute to the Notifying Parties' (and their products). However, (and as explained e.g. in Section 7.4.3.2 (B.i)), there is significant bidding interaction between the Notifying Parties and Hyster pre-Transaction (as certain customers do consider Hyster's products as substitutes to the Notifying Parties'). Therefore, the finding that a second order price increase by Hyster is likely, is not in contradiction to the finding that Hyster's ability to constrain the Merged Entity post-Transaction is limited.
- (2559) Customers responding to the Commission's market investigation report tender events in which only the Notifying Parties and Hyster (and in some cases few others) participated.²⁴⁵⁹ Competitors also confirm this view.²⁴⁶⁰ Similar instances are reported in the Notifying Parties' internal documents (see e.g. Section 7.4.3.2 (B.iii)). In these specific cases of competition in an oligopolistic market, following a post-Transaction price increase by the Merged Entity, Hyster would find it profitable to increase its own prices as well. The same applies for other remaining competitors to the Merged Entity, such as Kion and Svetruck.
- (2560) Therefore, the Transaction is likely to lead to a reduction of competitive pressure on the remaining competitors.
- (E) Conclusion
- (2561) For the reasons set out in this Section 7.4.3.4, the Commission considers that post-Merger, competitors to the Parties in the EEA market for heavy-duty forklift trucks (>10 tonne capacity) are unlikely to be able to effectively constrain the Merged Entity. The Merged Entity has a very large combined market share and in addition, customers' ability to credibly threaten to switch away from the Merged Entity is limited, due to competitors' weak positions in relation to certain key customer

²⁴⁵⁷ Reply to the Letter of Facts, paragraph 156 and paragraphs 138-139.

²⁴⁵⁸ Reply to the Letter of Facts, paragraph 156 and paragraph 140.

²⁴⁵⁹ Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 15.3.

²⁴⁶⁰ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 81.3.

purchase criteria (such as brand reputation, vehicle quality, installed base and previous experience, product range, distribution and after-sales network, etc.), and because competitors' products are not close substitutes to the Notifying Parties'. In addition, the Transaction is also likely to lead to a reduction of competitive pressure on the Notifying Parties' competitors.

- 7.4.3.5. The Transaction is likely to have a negative impact on the EEA heavy-duty forklift trucks (>10 tonne capacity) market and lead to higher prices
- (2562) The Transaction is likely to have a negative impact on the EEA heavy-duty forklift trucks (>10 tonne capacity) market, by significantly reducing competition, leading to higher prices and increasing barriers to entry and expansion. As explained in Sections 7.4.3.1 to 7.4.3.4, the Transaction leads to very large combined market shares, and removes competition between the Notifying Parties that pre-Transaction compete closely and intensely. Neither new entrants nor existing competitors are likely to constrain the Merged Entity. Therefore, it is likely that the Transaction will have a negative impact on competition in the EEA and lead to higher prices.
- (2563) In addition, market participants also expect the Transaction to lead to a negative impact on competition and higher prices in the EEA market for heavy-duty forklift trucks (>10 tonne capacity). Further, the Notifying Parties' pre-Merger pricing strategies also suggest that a price increase is likely.
- (A) Market participants expect the Transaction to lead to a negative impact and higher prices
- (2564) The results of the market investigation indicated that many market participants expect the Transaction to lead to a negative impact and higher prices.²⁴⁶¹ The Notifying Parties submit however that the Commission is merely '*quoting selectively from responses to the market investigation and internal documents in order to create the impression that a consensus exists among market participants that the Merged Entity will increase prices and harm customers in other ways*' and that this '*disregards the views of many customers and competitors who have said that they expect that the Proposed Transaction would be unlikely to have negative effects (or have been neutral on the matter), thus providing clear and ample evidence to the contrary*'.²⁴⁶² Indeed some market participants do not expect the Proposed Transaction to lead to a negative impact on competition and higher prices. This may be the case because a larger number of suppliers can address their specific heavy-duty forklift trucks (>10 tonne capacity) requirements, or because heavy-duty forklift trucks (>10 tonne capacity) are only a minor part of their container and material handling equipment needs (this is for example the case for certain very large GTOs).
- (2565) In addition, as explained in further detail in this Section 7.4.3.5 (A), the majority of customers, as well as various other market participants, expect the Proposed Transaction to lead to price increases in the EEA heavy-duty forklift trucks (>10 tonne capacity) market.

²⁴⁶¹ Responses to Q2 – Questionnaire to Customers, Doc. ID 3153, question E.D.1.; responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 29.3.; responses to Q1 – Questionnaire to Competitors, Doc. ID 3154, question E.D.1, and responses to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 94.3.

²⁴⁶² Reply to the SO, paragraph 1220.

- (2566) **First**, a significant number of customers expect the Transaction to lead to a negative impact and higher prices in the EEA market for heavy-duty forklift trucks (>10 tonne capacity).
- (2567) A significant number of customers expressing their opinion expect that the Transaction would lead to price increases in the EEA for heavy-duty forklift trucks (>10 tonne capacity).²⁴⁶³
- (2568) Some customers do not expect the Transaction to lead to higher prices in the EEA. One customer considers that the '[m]arket is extended enough'.²⁴⁶⁴ Another customer states: *'The future trade volumes, global and local economy, COVID recovery, etc. and the number of alternative parties active in the market are all factors contributing to equipment prices which we consider will outweigh any price increases that the merged entity may try to introduce'*.²⁴⁶⁵ Another customer submits: *'We do not expect it should not change the market, as Konecranes did not supply any forklift trucks before. However, the merger might change the strategy of Cargotech and may focus them only on the reach stacker and empty container handling segment (the common segment for both companies) which is currently very lucrative'*.²⁴⁶⁶
- (2569) However, other customers expect the Transaction to lead to high prices in the EEA. A customer explains: *'1 of the major competitors will not be able to submit a competitive quote for similar equipment allowing price increase'*.²⁴⁶⁷ Another customer submits that *'[w]ithout market competition price will go up'*.²⁴⁶⁸ A further competitor states that *'[t]he unification of the two manufacturers can only lead to an impoverishment of the market. A kind of monopoly position will even emerge locally because the competition cannot offer service and spare parts supply everywhere. Experience shows that a monopoly position of a company (local) and a general impoverishment of the market undoubtedly reduce the urge and the need to innovate. With regard to the price policy of the combined company, it is likely that prices will at least remain stable due to the synergy effect. afterwards, however, it should be added that the prices for the products will rise more extremely because the opposite pole is missing with regard to a large part of the products'*.²⁴⁶⁹ Another customer points to *'less competition in the future'*.
- (2570) Another customer explains that *'[i]f Kalmar and Konecranes were to merge, the Company would only receive one competitive offer with respect to reach stackers and heavy-duty forklifts. While a number of its terminals operate fleets of only one supplier, in the future the market would lack competition with respect to price. Further, as Kalmar and Konecranes also have the best service networks in Germany, the merged entity would be able to use this position and increase the rates it charges*

²⁴⁶³ Responses to Q2 – Questionnaire to Customers, Doc. ID 3153, question E.D.1. and Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 29.3.

²⁴⁶⁴ Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 29.3.1.

²⁴⁶⁵ Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 29.3.1.

²⁴⁶⁶ Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 29.3.1.

²⁴⁶⁷ Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 29.3.1.

²⁴⁶⁸ Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 29.3.1.

²⁴⁶⁹ Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 29.3.1.

for maintenance’.²⁴⁷⁰ Another customer submits that ‘Cargotec en Kone are the two biggest suppliers in the Netherlands. After the merge the competition is gone’.²⁴⁷¹

- (2571) Some customers consider that the Transaction could lead to an increase in innovation, while others expect no change or a decrease in innovation.²⁴⁷² For example, one customer states that ‘[h]opefully the innovation would increase due to the merger assuming the R&D departments of the merging companies will start sharing knowledge’.²⁴⁷³ However, another customer states that ‘the proposed merger would also negatively affect innovation’.²⁴⁷⁴ Another customer states: ‘We expect development speed to slow down and innovation to decrease. Competition drives speed and new ideas. We expect development resources to be cut down’.²⁴⁷⁵
- (2572) Some customers consider that the Transaction will lead to an increase in after-sales prices, while others expect no change.²⁴⁷⁶ For example, while one customer submits: ‘We believe that will not have any major impact at the labor and spare parts cost at the after-sale services’,²⁴⁷⁷ another customer expects ‘higher parts prices. Maybe higher service costs, when Kalmar takes over the service for all Kalmar + Konecranes SMV equipment. (Konecranes currently handles the service through a dealer network)’.²⁴⁷⁸
- (2573) More broadly, customers overall expect a negative impact as a consequence of the Transaction.
- (2574) **Second**, competitors expect the Transaction to lead to a negative impact in the EEA market for heavy-duty forklift trucks (>10 tonne capacity).
- (2575) Some competitors expect the Transaction to lead to higher prices in the EEA market for heavy-duty forklift trucks (>10 tonne capacity).²⁴⁷⁹
- (2576) While some competitors expect prices not to change or to decrease and explain that ‘it could go either way. I believe the two would be a monopoly which could increase price or as more asian influence comes in they could combine their economies of scale and lower prices creating an even bigger monopoly’,²⁴⁸⁰ others expect price increases.
- (2577) One competitor explains that this could depend on the respective capacity segment and submits with respect to a potential price increase: ‘Difficult to say in this space as the combined share is about 35-40% [and further that with respect to] <18t there are multiple players in the market with each strong points. [However for] >18t the

²⁴⁷⁰ Doc. ID 1117, Minutes of a call with a customer, 21 April 2021.

²⁴⁷¹ Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 28.1.

²⁴⁷² Responses to Q2 – Questionnaire to Customers, Doc. ID 3153, question E.D.2. and Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 30.3.

²⁴⁷³ Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 30.3.1.

²⁴⁷⁴ Doc. ID 1117, Minutes of a call with a customer, 21 April 2021.

²⁴⁷⁵ Response to Q2 – Questionnaire to Customers, Doc. ID 3153, question E.D.2.1.

²⁴⁷⁶ Responses to Q2 – Questionnaire to Customers, Doc. ID 3153, question E.D.3. and Responses to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 31.3.

²⁴⁷⁷ Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 31.3.1.

²⁴⁷⁸ Response to Q6 – PH2 Questionnaire to Customers of Mobile Equipment, Doc. ID 3607, question 31.3.1.

²⁴⁷⁹ Responses to Q1 – Questionnaire to Competitors, Doc. ID 3154, question E.D.1, and Responses to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 94.3.

²⁴⁸⁰ Response to Q1 – Questionnaire to Competitors, Doc. ID 3154, question E.D.1.1.

*concentration could mean less choice and increased pricing’.*²⁴⁸¹ Another competitor states that *‘[t]he reduction of the competition and progressively of the diversity of product offering, would inevitably lead to an increase of the price rather than a reduction’.*²⁴⁸²

- (2578) While some competitors expect innovation to increase or not change as a result of the Transaction, others expect a decrease in innovation.²⁴⁸³ While one competitor submits that it *‘[d]epends on the setup of Konecranes/Cargotec after the merger becoming effective. However, as both are innovative companies, we would assume that a combination of their know how and innovative ability will be advantageous for them’*,²⁴⁸⁴ another competitor submits that *‘[t]he two merging entities would decide which existing product development program of each individual entity per each product / market segment will have to be continued or discontinued. This is very logical and synergically effective but would inevitably lead to the suppression of some product development concept in favor of others’.*²⁴⁸⁵
- (2579) Similarly, while some competitors expect no change or a decrease of after-sales prices, others expect after-sales prices to increase as a consequence of the Transaction.²⁴⁸⁶ While one competitor explains that it *‘[d]epends on the setup of Konecranes/Cargotec after the merger becoming effective and setup of their future sales and service organization’*,²⁴⁸⁷ another states an increase in after-sales prices *‘would particularly be true if the merge will not free existing After Sale Service Channels occupied by the merging entities’.*²⁴⁸⁸ Another competitor explains: *‘The price policy of Cargotec and Konecranes are well known and if their profit is reduced on machines it is on the contrary very large on service and spare parts.. Obviously if they merge they will not double their services... They will eliminate a good part of their services and increase their prices because they will have to become bigger and therefore their costs will increase’.*²⁴⁸⁹
- (2580) More broadly, competitors overall expect a negative impact of the Transaction – on their own business and on customers of heavy-duty forklift trucks (>10 tonne capacity). One competitor submits that its own *‘market share is too small in order to be seriously affected’*,²⁴⁹⁰ and that it further *‘does not expect the proposed transaction to have a significant impact on its activities in the market for heavy-duty forklift trucks with a lifting capacity between 10 to 18 tonnes, as it offers equipment with a different concept than the Parties’.*²⁴⁹¹
- (2581) Another competitor submits that post-Transaction *‘this group will get more than 90% of the HEAVY DUTY market, so we will be facing an Oligopoly where it will be*

²⁴⁸¹ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 94.3.1.

²⁴⁸² Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 94.3.1.

²⁴⁸³ Responses to Q1 – Questionnaire to Competitors, Doc. ID 3154, question E.D.4, and Responses to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 95.3.

²⁴⁸⁴ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 95.3.1.

²⁴⁸⁵ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 95.3.1.

²⁴⁸⁶ Responses to Q1 – Questionnaire to Competitors, Doc. ID 3154, question E.D.2, and Responses to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 96.3.

²⁴⁸⁷ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 96.3.1.

²⁴⁸⁸ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 96.3.1.

²⁴⁸⁹ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 96.3.1.

²⁴⁹⁰ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 97.3.1.

²⁴⁹¹ Doc. ID 1662, Minutes of a call with a competitor, 30 April 2021.

impossible for small companies like us to survive. Such a merger will be the death of the small industry which are manufacturing in Europe'.²⁴⁹²

- (2582) Another competitor submits that '[c]ustomers that today may have two or three effective choices of suppliers of mobile equipment will post-merger have less choice and, depending on their location, be concerned'.²⁴⁹³
- (2583) Some competitors also expect the Transaction to raise barriers for entry and expansion. For example, one company currently not active inside the EEA states: *'Larger market entities tend to have greater market-making ability. We expect that an entry into the EEA may be barred by a large private entity, such as will be formed by the merger'*.²⁴⁹⁴ Another competitor that expects a negative impact on its own business explains that this is *'[b]ecause they can expand the networks that are currently existing'*.²⁴⁹⁵
- (2584) Another competitor states that it 'also has concerns with respect to the impact of the proposed transaction on the markets for mobile equipment. The threats to competition in the market for mobile equipment do not lie in the non-availability of alternative producers but in the access to the market for these producers. The Company is very concerned about the merger as it believes that the merged entity might keep two different brands under the same company to artificially keep the sales and service network of both OEMs'. The Competitor further explains that '[t]his would block other OEMs from accessing the sales channel of the container handling equipment markets, as it would prevent them from finding serious distributors'.²⁴⁹⁶
- (2585) Another competitor, explains that also '[c]onsidering automation, the merged entity will become a big powerhouse, controlling a lot of technical knowledge and locking in a large installed base, which will strongly discourage new entrants and expansion plans for existing smaller players in this market'.²⁴⁹⁷ This competitor further explains that while it considers this less significant of an issue than in other mobile equipment markets,²⁴⁹⁸ it 'believes that the proposed transaction might significantly limit competition and increase barriers to entry in the market for mobile equipment'.²⁴⁹⁹
- (2586) **Third**, also some distributors expect the Transaction to lead to a negative impact and higher prices in the EEA market for heavy-duty forklift trucks (>10 tonne capacity).
- (2587) Some distributors expect the Transaction to lead to higher prices in the EEA market for heavy-duty forklift trucks (>10 tonne capacity).²⁵⁰⁰ While one distributor submits that *'this merger will force the other manufacturers to improve the quality of their products and to invest in the extension of the distributors and after sales network'*,²⁵⁰¹ and another distributor states that *'[h]igher production reduces manufacturing costs. This price difference must be transferred to the market'*,²⁵⁰² yet another distributor submits that *'[t]he merged company will have the most part of the*

²⁴⁹² Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 97.3.1.

²⁴⁹³ Doc. ID 932, Minutes of a call with a competitor, 20 April 2021.

²⁴⁹⁴ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 97.3.1.

²⁴⁹⁵ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 97.3.1.

²⁴⁹⁶ Doc. ID 1773, Minutes of a call with a competitor, 3 May 2021.

²⁴⁹⁷ Doc. ID 932, Minutes of a call with a competitor, 20 April 2021.

²⁴⁹⁸ Response to Q3 – PH2 Questionnaire to Competitors, Doc. ID 3582, question 98.3.1.

²⁴⁹⁹ Doc. ID 4278, Minutes of a call with a competitor, 23 August 2021.

²⁵⁰⁰ Responses to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 31.3.

²⁵⁰¹ Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 31.3.1.

²⁵⁰² Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 31.3.1.

market [and that t]here will be great disparity between them and other competitors in the market'.²⁵⁰³ Another distributor explains: 'Less competition means higher prices'.²⁵⁰⁴

- (2588) Another distributor explains that '[t]ogether, Konecranes and Cargotec will be the largest and stronge[st] OEM in the world'.²⁵⁰⁵ A further distributor sees the 'danger of a dominant position after the merger of Konecranes and Cargotec'.²⁵⁰⁶ Another distributor states that 'fewer suppliers means less competition, which generally means higher prices'.²⁵⁰⁷
- (2589) Another distributor states that '[t]he customers in Europe would have no choice but to purchase equipment from the merged entity. The Company assumes that this situation would naturally lead to higher prices and worse conditions for customers', and further that '[t]he Company was surprised to learn about the proposed transaction. Currently, the Company competes hard in the three-player system – post-merger there would be little competition left in mobile equipment'.²⁵⁰⁸
- (2590) A further distributor explains that '[t]he Parties would have around 80% combined market share in mobile equipment. Some customers may switch away, e.g., to Sany, as they prefer not to deal with large suppliers. Nevertheless, the Company is concerned that prices may increase to the detriment of its customers. However, the Company's customers would continue to rely on the good servicing work that it provides today and, as such, the merger would not have a direct impact on its business (but its customers may face increased prices)'.²⁵⁰⁹
- (2591) Also considering the perspective of customers, a reseller submits in relation to mobile equipment (of which heavy-duty forklift trucks (>10 tonne capacity) is a part) that '*the merged entity will have an enourmous power to push customers into a certain direct. There would be only a few brands in the EEA left for customers to chose from. This could further open the door for the Chinese competitors to enter in Europe. However, Chinese competitor Sany even built an assembly factory in Germany and still does no[t] manage to convince customers that it is offering a "European" machine*'.²⁵¹⁰
- (2592) A significant number of distributors also expect that the Transaction would have a negative impact on the ability of competitors of the Parties in the EEA heavy-duty forklift trucks (>10 tonne capacity) market to compete in the supply of heavy-duty forklift trucks (>10 tonne capacity).²⁵¹¹ While one distributor submits in this context that '*this merger will force the other manufacturers to improve the quality of their products and to invest in the extension of the distributors and after sales network*',²⁵¹² another distributor submits that '*[i]t is a clear competitive advantage*

²⁵⁰³ Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 31.3.1.

²⁵⁰⁴ Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 31.3.1.

²⁵⁰⁵ Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 31.3.1.

²⁵⁰⁶ Courtesy translation. The original German text reads: '*Gefahr einer marktbeherrschenden Position nach Fusion von Konecranes und Cargotec*'. Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 31.3.1.

²⁵⁰⁷ Courtesy translation. The original German text reads: '*Weniger Hersteller, bedeutet weniger Wettbewerb, bedeutet in der Regel höherer Preis*'. Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 31.3.1.

²⁵⁰⁸ Doc. ID 502, Minutes of a call with a distributor, 14 April 2021.

²⁵⁰⁹ Doc. ID 673, Minutes of a call with a distributor, 26 February 2021.

²⁵¹⁰ Doc. ID 4110, Minutes of a call with a reseller, 27 August 2021.

²⁵¹¹ Responses to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 30.3.

²⁵¹² Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 30.3.1.

for Cargotec. Even with tenders'.²⁵¹³ A further distributor states: 'Competitors will have a difficult job to compete with a merged company from that high level'.²⁵¹⁴

- (2593) Further, a significant number of distributors also expect that the Transaction would have a negative impact on their own business²⁵¹⁵ and on their ability to compete in the distribution of heavy-duty forklift trucks (>10 tonne capacity).²⁵¹⁶ While one distributor submits: 'On positive side we think they can leverage product development, and as we are a long standing distributor of Kalmar would hope to benefit from this by maintaining/ developing our relations as a distributor',²⁵¹⁷ and another distributor states: 'We believe that the union of two manufacturers such as Cargotec and Konecranes will improve the positioning of European products against Asian brands and may be favorable for the end user thanks to the synergies and unusual elements of both products, producing higher quality equipment without need to increase prices',²⁵¹⁸ yet another distributor submits that it is 'not sure if the Konecranes brand will be kept active or if all will be branded as Kalmar'.²⁵¹⁹ A further distributor states: 'Merger will make one huge Producer who has no actual competition'.²⁵²⁰ Another distributor says that '[t]he merged company will have the most part of the market [and that t]here will be great disparity between them and other competitors in the market'.²⁵²¹ Another distributor finds that the Transaction would lead to a 'concentration of important market participants and the danger of a high pricing power in an oligopoly. The existing business model of [the Company] is endangered'.²⁵²² Yet another distributor states: 'Regarding the effect of the proposed merger in Spain (where Kalmar is clearly dominant), [the Company] is concerned that the Cargotec product line and business model (direct to market) will prevail in case of a full merger of brands of the Parties. This would mean that companies like [the Company] (and those with a similar business model) would be pushed out of the market. A similar effect may also occur in other countries'.²⁵²³
- (2594) Another Konecranes distributor submits that it is 'uncertain where its place in the market will be post-merger. This is principally related to the question of whether the merged entity will maintain two brands of reach stackers and heavy-duty forklifts or only one, and whether it will also only keep one sales channel to the market' and further that '[i]f the Company were to lose the distribution of the Konecranes machines post-merger, it would quickly seek to find another brand of equipment to distribute. This would however not be easy, because other brands are not as well known among customers, and therefore the Company would lose some turnover. While the Company expects that it could retain many customers in such a scenario, it also expects to lose some'.²⁵²⁴

²⁵¹³ Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 30.3.1.

²⁵¹⁴ Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 30.3.1.

²⁵¹⁵ Responses to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 27.

²⁵¹⁶ Responses to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 28.3.

²⁵¹⁷ Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 27.1.

²⁵¹⁸ Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 27.1.

²⁵¹⁹ Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 27.1.

²⁵²⁰ Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 27.1.

²⁵²¹ Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 27.1.

²⁵²² Courtesy Translation. The original German text reads: 'Konzentration wesentlicher Marktteilnehmer sowie Gefahr einer hohen Preissetzungsmacht im Oligopol. Das bestehende Geschäftsmodell [des Unternehmens] ist gefährdet'. Response to Q8 – Questionnaire to Distributors of Mobile Equipment, Doc. ID 3609, question 27.1.1.

²⁵²³ Doc. ID 261, Minutes of a call with a distributor, 24 February 2021.

²⁵²⁴ Doc. ID 881, Minutes of a call with a distributor, 19 April 2021.

- (2595) Therefore, overall, a significant number of market participants expect the Transaction to have a negative impact on the EEA market for heavy-duty forklift trucks (>10 tonne capacity) by significantly reducing competition, leading to an increase in prices and by increasing barriers to entry and expansion.
- (B) The Notifying Parties' pre-Merger pricing behaviour suggests a price increase is likely post-Transaction
- (2596) The Notifying Parties' pre-Merger pricing behaviour suggests that a price increase is likely post-Transaction in the EEA heavy-duty forklift trucks (>10 tonne capacity) market.
- (2597) Konecranes internally considers [internal document reference].²⁵²⁵ [Internal document reference].²⁵²⁶ [Internal document reference].²⁵²⁷
- (2598) Considering [internal document reference].²⁵²⁸
- (2599) Further, Cargotec also considers [internal document reference].²⁵²⁹
- (2600) In another internal Cargotec document considering mobile equipment, [internal document reference].²⁵³⁰
- (2601) In an internal Kalmar email, it is reported with respect to mobile equipment (of which heavy-duty forklift trucks (>10 tonne capacity) are a part): [internal document reference].²⁵³¹ It is further reported that [internal document reference].²⁵³² This further shows that there is significant price competition between the Notifying Parties pre-Transaction.
- (2602) The Notifying Parties therefore pursue aggressive pricing strategies – also vis-à-vis each other.
- (2603) In addition, Cargotec specifically aims at increasing its forklift truck market share by applying aggressive pricing. This is also recognised by competitors ([internal document reference]).²⁵³³ This shows that Cargotec uses aggressive pricing to achieve its strategic goal to increase its heavy-duty forklift truck (>10 tonne capacity) market share.
- (2604) Therefore, there is significant price competition between the Notifying Parties pre-Merger, which would be lost post-Transaction. In addition, Cargotec has a strategy to try to increase its market share by pricing aggressively. The Transaction allows Cargotec to grow its market share inorganically instead, without the need to price aggressively against Konecranes. It is therefore likely that the Transaction will lead

²⁵²⁵ Doc. ID 3586-62316 (The Parties' reply to the Commission's request for information RFI 18, M.10078 Cargotec Konecranes RFI 18-00354050.pptx), slide 6.

²⁵²⁶ Doc. ID 3586-71912 (The Parties' reply to the Commission's request for information RFI 18, M.10078 Cargotec Konecranes RFI 18-00349884.pptx), slide 7.

²⁵²⁷ Reply to Request for information RFI 24, Annex QK7.4, slide 30.

²⁵²⁸ Doc. ID 3708-25356 (The Parties' reply to the Commission's request for information RFI 17, CAR-HUL-00031983.pptx), slide 5.

²⁵²⁹ Doc. ID 3659-35011 (The Parties' reply to the Commission's request for information RFI 17, CAR-KAR-00011713.pptx), slides 5 and 7.

²⁵³⁰ Doc. ID 3666-857 (The Parties' reply to the Commission's request for information RFI 17, CAR-PAT-00121990.pptx), slide 4.

²⁵³¹ KCI = Konecranes

²⁵³² Doc. ID 3739-38037 (The Parties' reply to the Commission's request for information RFI 17, CAR-HEI-00031094 msg).

²⁵³³ Doc. ID 3591-97620 (The Parties' reply to the Commission's request for information RFI 18, M.10078 Cargotec Konecranes RFI 18-01207135.pptx), slide 11.

to a price increase in the EEA heavy-duty forklift trucks (>10 tonne capacity) market.

(C) The Transaction is likely to reduce the competitive pressure on the remaining competitors which will also contribute to price increase

(2605) As indicated above, in Section 0 (D), the Transaction is likely to reduce the competitive pressure on the remaining competitors of the Merged Entity in the EEA market for heavy-duty forklift trucks (>10 tonne capacity), which will contribute to price increase.

(2606) Pre-Transaction the Notifying Parties compete intensely with each other, including on price. Post-Transaction, the incentive for the Merged Entity to compete and price aggressively will be reduced. This also limits the need for the Notifying Parties' main remaining competitor, Hyster, to compete and price aggressively, while having the ability and incentive to raise its prices profitably.

(2607) There is a strong probability that in the post-Transaction oligopolistic market setting, faced with the windfall increase in its demand (in case of price increase by the Merged Entity), Hyster would have greater incentive to increase its price at the expense of a smaller increase of its market share as it will be more profitable.

(D) Conclusion

(2608) For the reasons set out in this Section 7.4.3.5, the Commission considers that the Transaction is likely to have a negative impact on the EEA market for heavy-duty forklift trucks (>10 tonne capacity) by significantly reducing competition, leading to an increase in prices and by increasing barriers to entry and expansion. The Transaction leads to very large combined market shares, and removes competition between the Notifying Parties that pre-Transaction compete closely and intensely. Market participants also expect the Transaction to lead to a negative impact and higher prices in the EEA market for heavy-duty forklift trucks (>10 tonne capacity). Further, the Notifying Parties' pre-Merger pricing strategies also suggest that a price increase is likely. The Transaction is also likely to further limit competitors' ability of entry and expansion. In addition to eliminating important competitive constraints that the merging parties exert upon each, the Transaction is likely to reduce the competitive pressure on the remaining competitors, which are likely to have an incentive to increase profitably their prices.

7.4.3.6. Conclusion

(2609) For the reasons set out in this Section 7.4.3, the Commission concludes that the Proposed Transaction would significantly impede effective competition in the EEA heavy-duty forklift trucks (>10 tonne capacity) market, by creating a dominant position and by eliminating important competitive constraints that the Notifying Parties had exerted upon each other and by reducing competitive pressure on the remaining competitors.²⁵³⁴

(2610) The following factors in particular support the finding of a creation of a dominant position:

(a) The Transaction would lead to a very large market share of the Merged Entity (over 50%) in an already concentrated EEA heavy-duty forklift trucks (>10 tonne

²⁵³⁴ As discussed in Recital (507), the creation of a dominant position and the elimination of important competitive constraints are not mutually exclusive.

capacity) market (pre-Transaction HHI of [2000-2500], post-Transaction HHI of [3500-4000], delta of [1300-1400]);

- (b) The Transaction would eliminate competition between the Notifying Parties, which pre-Transaction compete intensely and closely, and both have plans to further grow their heavy-duty forklift trucks (>10 tonne capacity) market share;
 - (c) The Merged Entity is unlikely to be constrained by new competitors, due to significant barriers to entry and expansion, and unlikely to be constrained by existing competitors, due to their limited market presence, weaker performance on key customer purchase criteria compared to the Notifying Parties, and/or because their products are not close substitutes to the Notifying Parties’;
 - (d) The Transaction is likely to have a negative impact on the EEA market for heavy-duty forklift trucks (>10 tonne capacity) by significantly reducing competition, leading to an increase in prices and by further increasing barriers to entry and expansion.
- (2611) The following factors in particular support the finding of the elimination of important competitive constraints:
- (a) The Transaction reduces the number of suppliers with a significant position in the EEA heavy-duty forklift trucks (>10 tonne capacity) market and significantly increases market concentration;
 - (b) The Transaction would eliminate competition between the Notifying Parties, which pre-Transaction compete intensely and closely, and which are for many customers two of a very small group of viable suppliers. The largest remaining competitor post-Transaction (Hyster), is a more distant competitor to the Notifying Parties according to certain key purchase criteria. Overall, the Notifying Parties compete as closely, and according to some parameters even closer, as their market shares would suggest;
 - (c) The Merged Entity is unlikely to be constrained by new or existing competitors. The Transaction is likely to reduce competitive pressure on remaining competitors, mainly on Hyster, making a second order price increase likely;
 - (d) The Transaction is likely to have a negative impact on the EEA market for heavy-duty forklift trucks (>10 tonne capacity) by significantly reducing competition, leading to an increase in prices and by further increasing barriers to entry and expansion.
- (2612) Therefore, the Commission considers that the Transaction would significantly impede effective competition in the EEA heavy-duty forklift trucks (>10 tonne capacity) market, by creating a dominant position and by eliminating important competitive constraints.

7.5. Vertical links: Spreaders

7.5.1. Crane spreaders: input foreclosure

- (2613) There is a vertical link between Cargotec’s upstream activities in spreaders (via its spreader manufacturing business unit Bromma) and Konecranes’ downstream activities in gantry cranes and in mobile harbour cranes (‘MHCs’). The Commission has therefore investigated whether the Proposed Transaction would give rise to input foreclosure in relation to cranes spreaders, i.e., whether the Merged Entity would restrict access to spreaders to its competitors in the downstream markets of MHCs and gantry cranes.

7.5.1.1. The Notifying Parties' arguments

- (2614) The Notifying Parties submit that the Merged Entity would have no ability to engage into an input foreclosure strategy with respect to any type of spreaders. They claim that there are several other standalone spreaders manufacturers active on the market, such as RAM, Stinis, Elme and a number of smaller players, currently supplying approximately [40-50]% percent of crane spreaders worldwide and over [40-50]% in Europe. These would be able to easily and significantly expand their production capacity to supply crane spreaders to vertically non-integrated crane manufacturers, such as Künz or Liebherr.

7.5.1.2. The Commission's assessment

- (2615) According to its Guidelines, in order to assess whether the Merged Entity could effectively foreclose its downstream rivals in the MHCs and yard cranes markets, the Commission has verified whether the Merged Entity would have the (i) ability and the (ii) incentives to adopt such strategy and (iii) whether such strategy would have a significant detrimental effect on competition downstream.²⁵³⁵

(A) Mobile Harbour Crane Spreaders

- (2616) With regard to the MHC spreaders market, in spite of its very large market share, the Commission takes the view that the Merged Entity would not have the ability to adopt an input foreclosure strategy.
- (2617) Between 2018 and 2020, Cargotec had a market share of [80-90]% in spreaders for MHCs, while its competitors had only minor market shares of [5-10]% for RAM, [0-5]% for Stinis and [0-5]% for Elme.²⁵³⁶
- (2618) Nonetheless, in spite of these high market shares, the Commission takes the view that the Merged Entity cannot affect the availability of MHC spreaders for its downstream competitors, or in any way hinder their access, for the following reasons.
- (2619) First, the Commission's investigation showed that MHC spreaders are often sold separately from MHCs.²⁵³⁷ The Merged Entity therefore does not have the ability to interfere in the sale of those MHCs sold without spreaders.
- (2620) Second, the main competitor downstream, Liebherr, is already pre-transaction moving away from purchasing Bromma spreaders,²⁵³⁸ which indicates that other spreader competitors – even if smaller – can address Liebherr's needs. It is worth noting that the downstream market of mobile equipment spreaders is a quasi-duopoly with Liebherr and Konecranes having together close to [90-100]% of the market, while the remaining [10-20]% stay with three fringe competitors (this both at EEA and global levels).²⁵³⁹

²⁵³⁵ Commission's Non-Horizontal Guidelines, paragraph 32.

²⁵³⁶ Reply to RFI PN5 – Annex Q62.

²⁵³⁷ Response to RFI 28, Annex QC10 and Minutes of a call with a competitor, 7 October 2021, Doc. ID 4030.

²⁵³⁸ Response to the Article 6(1)(c) Decision, Table 3 and Minutes of a call with a competitor, 17 September 2021, Doc. ID 4077, paragraph 15.

²⁵³⁹ Form CO, Chapter 4, table 4.

(2621) Third, the market investigation also showed that a Bromma competitor could expand its capacity and become an effective alternative supplier of spreaders for the MHC competitors downstream.²⁵⁴⁰

(2622) As the Merged Entity would not have the ability to adopt an input foreclosure strategy, it would also lack the incentives. Such input foreclosure strategy would only lead to a reduction of the combined entity's profitability as a consequence of lost sales in the upstream market with no sales increase in the downstream market. Given that the combined entity would not have the ability or the incentives to engage in an input foreclosure strategy, it is not necessary for the Commission to assess the potential impact of such foreclosure strategy on effective competition.

(B) Yard Cranes Spreaders

(2623) With regard to yard crane spreaders, Cargotec (Bromma) has also had very large market share in this market in the EEA. Between 2018-2020, Cargotec (Bromma) had a market share of [70-80]%, while its main competitors had only minor market shares of [10-20]% for RAM, [5-10]% for Stinis and [0-5]% for Elme in sales to OEMs.²⁵⁴¹

(2624) Nonetheless, already today Cargotec (Bromma) is supplying Konecranes with yard crane spreaders. In fact, Konecranes sources [80-90]% of its needs from Cargotec (Bromma).²⁵⁴² Hence, the Proposed Transaction does not significantly change the current supply conditions both in the upstream and downstream markets. In addition, already today the main competitor of the Notifying Parties in the different yard cranes markets downstream, ZPMC, does not procure yard cranes spreaders on the merchant market. ZPMC is vertically integrated, and therefore uses its own yard cranes spreaders.²⁵⁴³ The Merged Entity could thus not affect its main competitor by having recourse to input foreclosure, which in itself makes this strategy less appealing. For these reasons, the Commission also concludes that the Merged Entity would not have the ability nor the incentive to adopt an input foreclosure strategy in the yard cranes spreaders market. Given that the combined entity would not have the ability or the incentives to engage in such strategy, it is not necessary for the Commission to assess its the potential impact on effective competition.

7.5.1.3. Conclusion on input foreclosure

(2625) Based on its market investigation, the Commission concludes that the Proposed Transaction would not enable the Merged Entity to adopt an input foreclosure strategy in relation to MHC spreaders nor to yard cranes spreaders.

7.5.2. *Mobile equipment spreaders: customer foreclosure*

(2626) There is another vertical link between Cargotec's activities in spreaders (via its business unit Bromma) and the Notifying Parties' downstream activities in mobile equipment.

(2627) Given the high market share of Bromma in the mobile equipment spreaders upstream market and the combined market share of the Merging Entity in the downstream markets of mobile equipment, the Proposed Transaction may give rise to customer foreclosure in relation to mobile equipment spreaders.

²⁵⁴⁰ Agreed Minutes of a call with a Spreader OEM, 23 September 2021, paragraph 19, Doc. ID 4021.

²⁵⁴¹ Reply to RFI PN5 – Annex Q62.

²⁵⁴² Form CO, Chapter 3, paragraph 334 and RFI 28, Annex QK10.

²⁵⁴³ Form CO, Chapter 3, paragraph 307.

7.5.2.1. The Notifying Parties' arguments

- (2628) The Notifying Parties submit that most of Cargotec's (Kalmar's) mobile equipment is equipped with spreaders manufactured by its subsidiary Bromma and that the latter has only very limited sales of mobile equipment spreaders to other market players, with a merchant market share of only [0-5]% worldwide and [0-5]% in EEA in 2018-2020²⁵⁴⁴. Konecranes does not currently purchase any mobile equipment spreaders from Cargotec (Bromma) and uses mostly the mobile equipment spreaders produced by Elme, accounting for approximately [...] ²⁵⁴⁵- [...] % ²⁵⁴⁶ of Elme's mobile equipment spreaders production. Moreover, Konecranes mobile equipment spreaders purchases represented in average [...] % of the total demand in the EEA merchant market²⁵⁴⁷.
- (2629) The Notifying Parties further submit that Konecranes is not an essential customer for mobile equipment spreaders, as the remaining [...] % of Elme's mobile equipment spreaders are sold to other mobile equipment manufacturers. Therefore, even if Konecranes stopped purchasing mobile equipment spreaders from Elme, the latter would still have access to sufficiently large customer base for mobile equipment spreaders or Elme could even switch the production capacities from mobile equipment spreaders to crane spreaders and thus continue to operate without incurring significantly higher cost²⁵⁴⁸.
- (2630) In their replies to the SO and Letter of Facts, the Notifying Parties reiterated their view that Konecranes is not an important customer of Elme and that Elme would have sufficient alternatives to cope with the potential loss of Konecranes as customer. In particular, Elme could focus on recent growing entrants in the mobile equipment market, such as Sany, and could also start supplying other types of spreaders, such as crane spreaders, including intermodal spreaders²⁵⁴⁹. Moreover, according to the Notifying Parties, a negative impact on customers has not been demonstrated²⁵⁵⁰; and no evidence indicates that Elme would be forced to increase prices or [...] ²⁵⁵¹.

7.5.2.2. The Commission's assessment

(A) Ability

- (2631) Based on the results of the market investigation and the evidence available to it, the Commission finds that the Merged Entity would have the ability to engage in customer foreclosure.
- (A.i) *Upstream market*
- (2632) A spreader is one of the three most valuable input components of the mobile equipment²⁵⁵². A mobile equipment spreader represents 10-15% of the input cost of the mobile equipment²⁵⁵³ or 10-12% of the final mobile equipment product price.²⁵⁵⁴

²⁵⁴⁴ Form CO, Pre-notification RFI 5 – Annex Q62 – Confidential.

²⁵⁴⁵ Response to the Article 6(1)(c) Decision, paragraph 506.

²⁵⁴⁶ Form CO, Chapter 3: Other overlapping markets, point 336.

²⁵⁴⁷ Form CO, RFI 13 – Annex QK 17 – Confidential.

²⁵⁴⁸ Response to the Article 6(1)(c) Decision, paragraph 508.

²⁵⁴⁹ Reply to the SO, paragraphs 1245 et seq. and Reply to the to the Letter of Facts, paragraphs 163 et seq.

²⁵⁵⁰ Reply to the SO, paragraphs 1262 et seq. and Reply to the to the Letter of Facts, paragraphs 170 et seq.

²⁵⁵¹ Reply to the SO, paragraphs 1269 et seq. and Reply to the to the Letter of Facts, paragraphs 175 et seq.

²⁵⁵² Agreed minutes of a call with a competitor of 14 September 2021, Doc. ID 4220, paragraph 15.

²⁵⁵³ Agreed minutes of a call with a competitor of 14 September 2021, Doc. ID 4220, paragraph 11.

²⁵⁵⁴ Form CO, Chapter 3, paragraph 308.

Any significant variation of mobile equipment spreader price has therefore an impact on the final price of the mobile equipment.

- (2633) The upstream market of mobile equipment spreaders is particularly concentrated. According to the results of the market investigation, there are only two plausible suppliers of mobile equipment spreaders of sufficient quality, range and industrial production capacity. Figure 164 shows the market shares on the EEA and worldwide merchant markets. These numbers, however, do not include the captive production of Bromma mobile equipment spreaders for Kalmar (Cargotec).

Figure 164: Mobile equipment spreaders market shares EEA and Worldwide

Geography	Segment	Competitor	2018-2020	
			Units	%
GLOBAL	MEQ	Cargotec/Bromma	[...]	[0-5]%
GLOBAL	MEQ	Konecranes	[...]	0.0%
GLOBAL	MEQ	Combined	[...]	[0-5]%
GLOBAL	MEQ	Elme	[...]	[80-90]%
GLOBAL	MEQ	RAM	[...]	[10-20]%
GLOBAL	MEQ	Total	[...]	100.0%
EUROPE	MEQ	Cargotec/Bromma	[...]	[0-5]%
EUROPE	MEQ	Konecranes	[...]	0.0%
EUROPE	MEQ	Combined	[...]	[0-5]%
EUROPE	MEQ	Elme	[...]	[80-90]%
EUROPE	MEQ	RAM	[...]	[10-20]%
EUROPE	MEQ	Total	[...]	100.0%
EEA WITHOUT UK	MEQ	Cargotec/Bromma	[...]	[0-5]%
EEA WITHOUT UK	MEQ	Konecranes	[...]	0.0%
EEA WITHOUT UK	MEQ	Combined	[...]	[0-5]%
EEA WITHOUT UK	MEQ	Elme	[...]	[80-90]%
EEA WITHOUT UK	MEQ	RAM	[...]	[10-20]%
EEA WITHOUT UK	MEQ	Total	[...]	100.0%

Source: M.10078 – RFI 28 – Annex QC4 – Confidential.

- (2634) The largest supplier of mobile equipment spreaders to the merchant market is Elme with a total yearly average production of [number] mobile equipment spreaders sold worldwide. [...]. The second largest manufacturer is Bromma (Cargotec), manufacturing in average [number] mobile equipment spreaders annually.²⁵⁵⁵ Bromma however sells the vast majority of its production captively to Kalmar and thus within its group. On the merchant market, it only has a market share of [0-5]% worldwide and [0-5]% in the EEA.
- (2635) The EEA market is essentially covered by Elme's and Bromma's mobile equipment spreader production, sold to downstream companies by the former, and used for internal consumption by the latter. Outside of the EEA, Taylor (US) or Sany (China)²⁵⁵⁶, Dalian (China), Mitsubishi (Japan)²⁵⁵⁷, similarly to Cargotec, produce their mobile equipment spreaders in-house.

²⁵⁵⁵ Based on data provided by the Notifying Parties in M.10078 – RFI 28 – Annex QC10 – Confidential.

²⁵⁵⁶ Agreed minutes of a call with a competitor of 22 September 2021, Doc. ID 3983, paragraph 18.

²⁵⁵⁷ Agreed minutes of a call with a competitor 2 September 2021, Doc. ID 4037, paragraph 12.

- (2636) Against this background, the demand for mobile equipment spreaders in EEA downstream markets is fulfilled by Bromma (for its internal production) and by Elme, which supplies on the merchant market the main competitors of Cargotec pre-transaction, i.e. Hyster and Konecranes.
- (2637) In particular, pre-transaction Konecranes purchases in average [number] mobile equipment spreaders from Elme per year²⁵⁵⁸. [Third party information].²⁵⁵⁹
- (2638) Contrary to Elme, which manufactures only mobile equipment spreaders, Bromma's production scale does not depend only on this type of spreaders, as Bromma produces at least [number] crane spreaders in addition to the mobile equipment spreaders in neighbouring production facilities²⁵⁶⁰.

(A.ii) Large downstream presence in mobile equipment

- (2639) According to the data provided by the Notifying Parties, Cargotec's downstream share of supply of products equipped with mobile equipment spreaders (mainly reach stackers, empty and full container handlers) is [30-40]% in the Europe and Konecranes downstream share of supply of product equipped with mobile equipment spreaders is [20-30]% in Europe.²⁵⁶¹ The Merged Entity would thus enjoy a combined downstream share of [60-70]% of sales of products equipped with mobile equipment spreaders in Europe.^{2562 2563} Such a large downstream share is already by itself an important indicator of the ability of the Merged Entity to engage in foreclosure.²⁵⁶⁴

(A.iii) Elimination of an important customer

- (2640) Mobile equipment spreaders are an important input for a number of different downstream markets, including in particular those assessed in Section 7.4. 7.4. Mobile Equipment.
- (2641) First, after the Proposed Transaction, Konecranes, which currently procures [third party information] of the production of Elme, would be part of the Merged Entity. The Merged Entity could be supplied by Bromma (Cargotec) to the detriment of its current purchases from Elme.
- (2642) Second, Konecranes has been an important customer to Elme since [year]. Elme identifies Konecranes [third party information]. Since the beginning of the cooperation, Konecranes' volumes of purchases have been continuously increasing and Elme pursued significant investments in the past years in order to satisfy the increasing demand from Konecranes²⁵⁶⁵.
- (2643) Third, the importance of Konecranes for the assessment of the ability of the Merged Entity to engage in foreclosure is best represented by the share it represents in the

²⁵⁵⁸ Reply to RFI 21, Question 24b), paragraph 78.

²⁵⁵⁹ Agreed minutes of a call with a competitor 2 September 2021, Doc. ID 4037, paragraph 13.

²⁵⁶⁰ M.10078 – RFI 21 – Response – Confidential, paragraph 73.

²⁵⁶¹ Form CO, Chapter 3, Table 38, page 97.

²⁵⁶² Form CO, Chapter 3, Table 38.

²⁵⁶³ In the reply to question 1 of the RFI 28, the Notifying Parties explained that these downstream shares include reach stackers, empty container handlers, full container handlers, as well as straddle and shuttle carriers. In reply to question 3 of the RFI 28, the Notifying Parties explained that the number of straddle and shuttle carriers is negligible, e.g. [number] mobile equipment spreaders are accounted for in the value provided for Konecranes.

²⁵⁶⁴ Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings, (2008/C 265/07), paragraph 25.

²⁵⁶⁵ Agreed minutes of a call with a competitor of 2 September 2021, Doc. ID 4037, paragraph 13.

procurement of these products on the merchant market. In particular, Konecranes' procurement of mobile equipment spreaders represents [...] % of Elme's turnover, which in turn amounts to [...] % of the total demand in the EEA²⁵⁶⁶. By switching Konecranes procurement to Bromma, the Proposed Transaction would eliminate such an important customer of the sole independent mobile equipment spreader manufacturer and thus eliminate the channel to the market for its products.

- (2644) As a result of this, and in view of the Merged Entity's market power in the downstream markets, [third party information]. The Proposed Transaction would consequently eliminate an important customer with a significant degree of market power in the downstream market, leaving few economic alternatives in the downstream market for the upstream rival to Bromma (Cargotec) to sell its output. The loss of the customer is significant [third party information], as explained above.

(A.iv) Merger specificity

- (2645) The Commission finds that change in the sourcing pattern of Konecranes from Elme would be merger specific as it is a direct result of the Transaction.
- (2646) First, prior to the Transaction, Konecranes procured its needs of mobile equipment spreaders exclusively from Elme. In fact, almost non-integrated all mobile equipment manufacturers on the market, including Konecranes and Hyster, source their mobile equipment spreaders from Elme, an independent manufacturer, in order to avoid sourcing from an upstream entity of their direct downstream competitor, Kalmar. The Transaction would change this business rationale for Konecranes.
- (2647) [...] ²⁵⁶⁷. Moreover, Konecranes' internal documents state that the company was in the process of a [internal document reference] ²⁵⁶⁸.
- (2648) [...] ²⁵⁶⁹, Konecranes' internal documents demonstrate that [internal document reference]. It is to be noted that Bromma is the only plausible alternative on the market to issue competing price quotes on the market of mobile equipment spreaders within the full industrial range.
- (2649) Fourth, the continued commitment of Konecranes to Elme is demonstrated by the fact that Elme incurred investments in order to fulfil the demand of Konecranes on a lasting basis ²⁵⁷⁰.
- (2650) The Commission therefore concludes that the Merged Entity would have the ability to foreclose access to downstream markets.

(B) Incentive

- (2651) Based on the results of the market investigation, the Commission finds that the Merged Entity would have incentive to foreclose Elme from accessing the downstream market by eliminating Konecranes as a customer [third party information], in the form of shifting its mobile equipment spreader purchases to Bromma.

²⁵⁶⁶ Form CO, RFI 13 – Annex QK 17 – Confidential.

²⁵⁶⁷ Agreed minutes of a call with a competitor of 2 September 2021, Doc. ID 4037, paragraph 14.

²⁵⁶⁸ Figure 165: Konecranes' challenging Elme's prices with Bromma quotes.

²⁵⁶⁹ Reply to RFI 21, Question 32, paragraph 87.

²⁵⁷⁰ Agreed minutes of a call with a competitor of 2 September 2021, Doc. ID 4037, paragraph 14.

(B.i) *Bromma's mobile equipment spreaders could be sourced by Konecranes*

- (2652) The Commission finds, on the basis of the evidence available, that in view of no substantial product differentiation between Bromma's and Elme's mobile equipment spreaders, the current demand of Konecranes could be met by Bromma.
- (2653) First, as to the price and quality, various market players confirmed that the price and quality levels of Bromma and Elme are comparable. To this effect, one competitor mentioned that *'[T]hey do not present relevant differences in terms of technical characteristics and price.'*²⁵⁷¹, while another competitor considers *'[Elme's] products as comparable with those produced by Bromma in terms of quality and price'*²⁵⁷². The Notifying Parties admit the same characteristics: *'In terms of price, quality and service, Elme and Bromma spreaders are very similar and both companies enjoy a comparable reputation.'*²⁵⁷³
- (2654) Second, the lack of product differentiation also stems from the internal documents of the Notifying Parties, in particular from Konecranes' attempt [internal document reference].²⁵⁷⁴ [Internal document reference]. The abovementioned elements indicate the absence of product differentiation between Bromma and Elme, as Konecranes is able to use the competitive pressure of Bromma, as a potential alternative supplier to Elme, the current supplier, in order to improve its pricing conditions.

Figure 165: [...]

[...]

Source: [Internal document reference].

(B.ii) *No capacity limitations of the Merged Entity*

- (2655) The Commission finds that a switch by Konecranes to Bromma's mobile equipment spreaders could be met by the production capacity available to Bromma without significant investment.
- (2656) First, according to the Notifying Parties, Konecranes purchased [number] mobile equipment spreaders over the period 2018-2020, which means that Konecranes' annual needs in mobile equipment spreaders are approximately [number] units²⁵⁷⁵. Bromma's normal production level of mobile equipment spreaders is [number] units yearly. It can produce up to [number] units in peak production level and its production capacity can reach up to [number] units yearly with an increase in man-hours. Further increase of production capacity is also possible, e.g. up to [number] units yearly with additional investment. For reference, see Figure 166: Capacity of Bromma's factory in Malaysia per annum based on 2 shifts/5 work days per week.
- (2657) Taking into account the above production capacity information, Bromma appears to be able to meet Konecranes' needs in mobile equipment spreaders under normal production level, i.e. [number] units, which is slightly above the current peak production level ([...] units). Even in periods of peak production, Bromma's capacity appears to be sufficient to cover Konecranes needs in mobile equipment spreaders, i.e. [number] units, which is still within the limit of production level with increased man-hours, but without any investment.

²⁵⁷¹ Agreed minutes of a call with a competitor of 23 September 2021, Doc. ID 4278, paragraph 9.

²⁵⁷² Agreed minutes of a call with a competitor of 2 September 2021, Doc. ID 4037, paragraph 17.

²⁵⁷³ Reply to RFI 21, Question 34, paragraph 91.

²⁵⁷⁴ Reply to RFI 21, Question 32, paragraph 87.

²⁵⁷⁵ Reply to RFI 21, Question 24b), paragraph 78.

- (2658) This fact was eventually not contested by the Notifying Parties in their reply to the RFI 21, whereby: ‘it is anticipated that Cargotec would be able to produce all of Konecranes MEQ spreader needs [...]’.²⁵⁷⁶

Figure 166: [...]

[...]

Source: [Internal document reference].

- (2659) Based on the above-mentioned analysis, it appears that Bromma has sufficient capacity to cover all of Konecranes’ mobile equipment spreaders needs, without the necessity to incur any immediate or substantial investment.

(B.iii) Increased downstream margins

- (2660) The information gathered in the market investigation supports the conclusion that a foreclosure strategy would be profitable for the Merged Entity. Not only would the Merged Entity be able to enjoy increased downstream margins by increasing the cost to its downstream competitors by lowering Elme’s scale, but it could capture increased profits on an important part – [60-70]% – of the downstream supply of products equipped with mobile equipment spreaders, where it would enjoy market power.
- (2661) First, the internalisation of mobile equipment spreaders production with Bromma for the whole Merged Entity will allow the Merged Entity to increase its overall margin, by capturing part of the margin that now accrues to Elme. The Notifying Parties made a brief reference to this point in their reply to RFI 21: ‘*It goes without saying that post-merger the supply of Konecranes with Bromma spreaders will create additional efficiencies by eliminating double margins.*’²⁵⁷⁷
- (2662) Second, taking into account the overall production capacity of Bromma, as referred to Figure 166, [number] mobile equipment spreaders and [number] crane spreaders yearly under peak production conditions is [third party information] as the average production output of Elme, i.e. [number] spreaders yearly²⁵⁷⁸. There are therefore no indications that the upstream division of the future integrated Merged Entity would be less efficient than the foreclosed supplier, Elme. This entails that there are no indications that the costs of the Merged Entity associated with reducing purchases from the rival upstream supplier, Elme, would be higher in comparison to the current sourcing from Elme.
- (2663) Third, the lack of effective competition after the Proposed Transaction on a number of large downstream mobile equipment markets, including in particular reach stackers, empty container handlers and heavy duty forklift trucks, would entail there would not be sufficient competition in downstream markets to offset the strategy. On the contrary, the significant market power achieved by the Merged Entity, as described in Section 7.4 7.4.Mobile Equipment, would enable the integrated firm to enjoy the benefit of higher price levels downstream resulting from the foreclosure strategy.

²⁵⁷⁶ Reply to RFI 21, Question 28, paragraph 76.

²⁵⁷⁷ Reply to RFI 21, Question 34, paragraph 88.

²⁵⁷⁸ Agreed minutes of a call with a competitor of 2 September 2021, Doc. ID 4037, paragraph 2.

(C) Overall likely impact on effective competition

- (2664) Internalising the production of mobile equipment spreaders by Bromma to cover Konecranes needs in the future Merged Entity will have negative impact on the downstream competition due to the foreclosure of Elme. [Third party information].
- (2665) Before the Transaction, Konecranes [third party information] source their mobile equipment spreaders from Elme, an independent manufacturer, to avoid sourcing them from a direct downstream competitor. This sourcing pattern has allowed Elme to develop sufficient scale in mobile equipment spreaders. Elme, with its production facilities in Western Europe, is able to exercise competitive pressure on Bromma, whose scale comes also from other types of spreaders and whose production cost in Malaysia is significantly lower to the levels in Western Europe, as described above.
- (2666) The Transaction, by shifting Konecranes volumes to Bromma, whose capacity is sufficient, is likely to foreclose Bromma's rival in the upstream market (Elme) by denying it competitive access to its [third party information] customer (Konecranes). The Proposed Transaction may thus reduce Elme's ability to compete in the foreseeable future. As a result, the downstream rivals, such as [third party information], are likely to be put at a competitive disadvantage due to increased input cost – increased price of mobile equipment spreaders from Elme due to its loss of production scale. The Merged Entity may in turn profitably either raise its prices just below its competitors' price levels or may use its sufficient margin to gain more market share by applying price incentives against its downstream rivals. In fact, as established above, the Merged Entity will have the incentive and ability to move the procurement of spreaders by Konecranes from Elme to Bromma.
- (2667) In order to analyse the effect of this foreclosure on Elme's ability to compete in the manufacturing of mobile equipment spreaders, the Commission has gathered financial information from Elme. [Third party information].
- (2668) [Third party information].²⁵⁷⁹
- (2669) [Third party information].²⁵⁸⁰
- (2670) [Third party information].²⁵⁸¹ [Third party information]²⁵⁸².
- (2671) [Third party information].
- (2672) [Third party information]²⁵⁸³, [third party information].²⁵⁸⁴ [Third party information].
- (2673) [Third party information]²⁵⁸⁵.
- (2674) [Third party information]²⁵⁸⁶ [third party information]²⁵⁸⁷. [Third party information].

²⁵⁷⁹ Agreed minutes of a call with a competitor of 2 September 2021, Doc. ID 4037, paragraph 21.

²⁵⁸⁰ Agreed minutes of a call with a competitor of 14 September 2021, Doc. ID 4220, paragraph 8.

²⁵⁸¹ [Third party information].

²⁵⁸² Reply to the SO, paragraph 1253.

²⁵⁸³ Reply to the SO, paragraph 1260 and Reply to the Letter to the Letter of Facts, paragraphs 163-169.

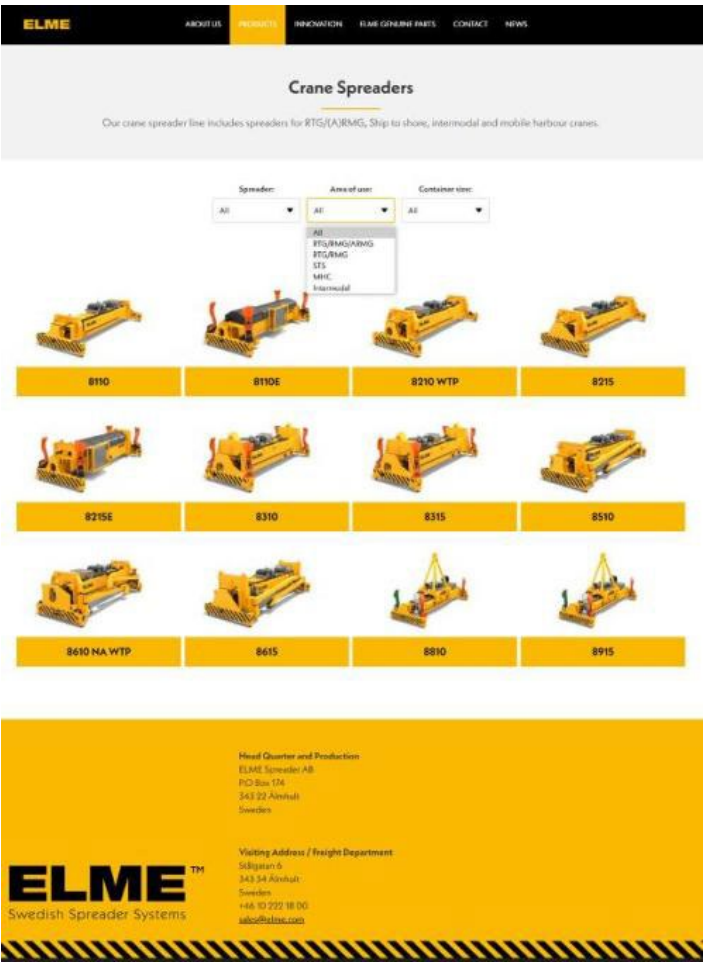
²⁵⁸⁴ Agreed minutes of a call with a competitor of 2 September 2021, Doc. ID 4037, paragraph 23.

²⁵⁸⁵ Reply to the SO, paragraph 1260 and Reply to the Letter of Facts, paragraphs 163-169.

²⁵⁸⁶ Referring to the Reply to the SO, paragraph 1260, third bullet and the Letter of Facts, paragraphs 169-172.

²⁵⁸⁷ M.1008 – RFI PN5 – Annex – Q62 – Confidential.

Figure 167: Elme’s crane spreaders offer



Source: Doc. ID 4322, ELME Website, <https://www.elme.com/product-category/crane-spreaders>, accessed 19.10.2021.

- (2675) [Third party information].²⁵⁸⁸
 - (2676) [Third party information].²⁵⁸⁹
 - (2677) Finally, as the merchant market of mobile equipment spreaders would shrink by approximately [third party information], a potential entry of a new supplier does not appear to be realistic, despite the foreseeable price increase.
- 7.5.2.3. Conclusion
- (2678) The Commission has therefore concluded that the Merged Entity would have incentive and ability to foreclose Elme’s access to downstream markets. Such foreclosure would likely result in an upward pricing pressure on mobile equipment spreaders available to the Parties’ competitors in downstream mobile equipment markets, and thus have an overall impact on effective competition in the downstream markets where the Merged Entity is active.

2588 Agreed minutes of a call with a competitor of 2 September 2021, Doc. ID 4037, paragraph 22.
2589 Agreed minutes of a call with a competitor of 14 September 2021, Doc. ID 4220, paragraph 14.

8. CONCLUSION ON THE COMPATIBILITY OF THE PROPOSED TRANSACTION WITH THE INTERNAL MARKET

- (2679) For the reasons set out above in Section 7, the Commission concludes that the Transaction, as notified, would significantly impede effective competition in the EEA markets for RTGs, reach stackers, empty container handlers and heavy-duty forklift trucks, in the plausible EEA market(s) for straddle and shuttle carriers, and due to customer foreclosure have an overall impact on effective competition in the downstream mobile equipment markets where the Merged Entity is active.
- (2680) On this basis, the Commission finds that the Transaction, as notified, would significantly impede effective competition in the internal market within the meaning of Article 2(3) of the Merger Regulation and Article 57 of the EEA Agreement.

9. COMMITMENTS

9.1. Introduction

- (2681) In order to render the Transaction compatible with the internal market, the Notifying Parties submitted commitments on 9 December 2021 (the ‘MEQ Commitments of 9 December 2021’ and the ‘KAS Commitments of 9 December 2021’, together the ‘Commitments of 9 December 2021’), pursuant to Article 8(2) of the Merger Regulation. The Commitments of 9 December 2021 were market tested with third parties. Following the market test, the Commission provided feedback to the Parties.
- (2682) The Notifying Parties submitted revised commitments on 6 January 2022 (the ‘Final MEQ Commitments’ and the ‘Final KAS Commitments’, together the ‘Final Commitments’). The Final KAS Commitments were market tested with third parties.
- (2683) On 20 January 2022 the Notifying Parties submitted a signed addendum to the Final KAS Commitments.
- (2684) The Commission conducted two series of market tests, first in relation to both the MEQ and KAS Commitments submitted on 9 December 2021 and then in relation to the Final KAS Commitments. These MEQ market test received 72 replies, the KAS market tests received 53 and 67 replies respectively.

9.2. Analytical framework

- (2685) The following principles from the Merger Regulation and the Commission’s Notice on Remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004 (‘Remedies Notice’)²⁵⁹⁰ apply where parties to a concentration offer commitments with a view of rendering a concentration compatible with the internal market.
- (2686) Where a concentration raises competition concerns in that it could significantly impede effective competition, in particular as a result of the creation or strengthening of a dominant position, the parties may seek to modify the concentration in order to resolve the competition concerns and thereby gain clearance of their concentration.²⁵⁹¹
- (2687) The Commission only has the power to accept commitments that are capable of rendering the concentration compatible with the internal market so that they will

²⁵⁹⁰ OJ C 267, 22.10.2008, p. 1.

²⁵⁹¹ Remedies Notice, paragraph 5.

prevent a significant impediment to effective competition in all relevant markets where competition concerns were identified.²⁵⁹²

- (2688) To that end, the commitments have to eliminate the competition concerns entirely and have to be comprehensive and effective from all points of view.²⁵⁹³ In assessing whether proposed commitments are likely to eliminate all competition concerns, the Commission considers all relevant factors including inter alia the type, scale and scope of the commitments, judged by reference to the structure and particular characteristics of the market in which those concerns arise, including the position of the parties and other participants on the market.²⁵⁹⁴
- (2689) Moreover, commitments must be capable of being implemented effectively within a short period of time.²⁵⁹⁵ In case of implementation risks and implementation uncertainties for instance related to third party consents, it is incumbent on the parties to remove such uncertainties.²⁵⁹⁶
- (2690) Where a proposed concentration threatens to significantly impede effective competition, the most effective way to maintain effective competition, apart from prohibiting the concentration, is to create the conditions for the emergence of a new competitive entity or for the strengthening of existing competitors via divestitures by the merging parties.²⁵⁹⁷
- (2691) The divested activities must consist of a viable business that, if operated by a suitable purchaser, can compete effectively with the merged entity on a lasting basis and that is divested as a going concern. The business must include all the assets which contribute to its current operation or which are necessary to ensure its viability and competitiveness and all personnel which are currently employed or which are necessary to ensure the business' viability and competitiveness.²⁵⁹⁸
- (2692) Personnel and assets which are currently shared between the business to be divested and other businesses of the parties, but which contribute to the operation of the business or which are necessary to ensure its viability and competitiveness, must also be included. Otherwise, the viability and competitiveness of the business to be divested would be endangered.²⁵⁹⁹
- (2693) Normally, a viable business is a business than can operate on a stand-alone basis, which means independently of the merging parties as regards the production and supply of input materials or other forms of cooperation other than during a transitory period.²⁶⁰⁰
- (2694) Even though normally the divestiture of an existing viable stand-alone business is required, the Commission, taking into account the principle of proportionality, may also consider the divestiture of businesses which have existing strong links or are partially integrated with businesses retained by the parties and therefore need to be "carved out" in those respects. In order to reduce the risks for the viability and competitiveness to a minimum in such circumstances, an option for the parties is to

²⁵⁹² Remedies Notice, paragraph 9.

²⁵⁹³ Remedies Notice, paragraph 9.

²⁵⁹⁴ Remedies Notice, paragraph 12.

²⁵⁹⁵ Remedies Notice, paragraph 9.

²⁵⁹⁶ Remedies Notice, paragraph 11.

²⁵⁹⁷ Remedies Notice, paragraph 22.

²⁵⁹⁸ Remedies Notice, paragraphs 23-25.

²⁵⁹⁹ Remedies Notice, paragraph 26.

²⁶⁰⁰ Remedies Notice, paragraph 32.

submit commitments proposing to carve out those parts of an existing business that do not necessarily have to be divested. In effect, an existing, stand-alone business is being divested in those circumstances although, by way of a “reverse carve-out”, the parties may carve-out the limited parts, which they may keep.²⁶⁰¹

- (2695) The intended effect of the divestiture will only be achieved if and once the business is transferred to a suitable purchaser in whose hands it will become an active competitive force in the market. The potential of a business to attract a suitable purchaser is an important element of the Commission’s assessment of the appropriateness of the proposed commitment.²⁶⁰²
- (2696) There are cases where only the proposal of an up-front buyer will allow the Commission to conclude with the requisite degree of certainty that the business will be effectively divested to a suitable purchaser. The parties therefore have to undertake in the commitments that they are not going to complete the notified operation before having entered into a binding agreement with a purchaser for the divested business, approved by the Commission.²⁶⁰³ This concerns cases where there are considerable obstacles for a divestiture, such as third party rights, or uncertainties as to finding a suitable purchaser²⁶⁰⁴ as well as cases, which cause considerable risks of preserving the competitiveness and saleability of the divestment business in the interim period until divestiture.²⁶⁰⁵

9.3. The Commitments of 9 December 2021

9.3.1. The MEQ Commitments of 9 December 2021

9.3.1.1. Description of the MEQ Commitments of 9 December 2021

- (2697) The MEQ Commitments of 9 December 2021 consist of the divestiture of Konecranes’ global mobile equipment business, named Lift Trucks business, (the ‘MEQ Divestment Business’) to an independent purchaser with financial resources, proven expertise and incentive to maintain and develop the MEQ Divestment Business as a viable and active competitive force, subject to approval by the Commission.
- (2698) The MEQ Divestment Business includes Konecranes’ business for the manufacturing and commercialization of reach stackers, full container handlers, empty container handlers and heavy-duty forklift trucks (>10 tonne capacity) (together “mobile equipment”), and related spare parts and technical support.
- (2699) Specifically, the MEQ Divestment Business includes the following:²⁶⁰⁶
- (a) Konecranes’ mobile equipment headquarters, R&D, manufacturing site and distribution centre for spare parts located in Markaryd, Sweden and Konecranes’ manufacturing site and spare parts distribution centre in Lingang (Shanghai), China;
 - (b) All mobile equipment product lines currently produced and sold by Konecranes, which comprises reach stackers, empty container handlers, full container handlers, forklift trucks and related spare parts;

²⁶⁰¹ Remedies Notice, paragraph 35.

²⁶⁰² Remedies Notice, paragraph 47.

²⁶⁰³ Remedies Notice, paragraph 53.

²⁶⁰⁴ Remedies Notice, paragraph 54.

²⁶⁰⁵ Remedies Notice, paragraph 55.

²⁶⁰⁶ As described in the Schedule of the MEQ Commitments of 9 December 2021.

- (c) All product descriptions and related information including but not limited to information displayed on Konecranes Lift Trucks websites and brochures;
 - (d) All existing inventory of finished goods, components, sub-components, and raw materials and spare parts;
 - (e) The manufacturing, testing and servicing equipment and machinery used in the manufacturing and testing of mobile equipment including all related documentation (for example, machine records, design history files and technical files);
 - (f) R&D and pipeline projects and related information;
 - (g) All customer, distributor and agent information, including but not limited to relevant records, reports, transactional data and accreditations;
 - (h) All customer, distributor, agent and supply agreements entered into by the legal entities part of the MEQ Divestment Business. Konecranes will use its reasonable best efforts to transfer agreements which cover the supply of mobile equipment and which are not entered into by the legal entities part of the Divestment Business;
 - (i) All the rights in all brands, patents, design rights and other intellectual property technology and knowhow currently used exclusively or predominantly to develop, manufacture, sell and use mobile equipment, which are held by Konecranes. This will include the Liftace and SMV trademarks, which are used exclusively by the MEQ Divestment Business. The Konecranes brand will be retained by Konecranes. During the period of twelve (12) months from the transfer of the legal title to the MEQ Divestment Business to the purchaser, the Notifying Parties shall not be allowed to sell any mobile equipment under the Konecranes brand. During this twelve (12) month period, at the option of the purchaser, the Notifying Parties and the purchaser will enter into commercially acceptable arrangements, including if applicable through a license, to allow purchaser to sell the existing inventory and spare parts of mobile equipment products using the Konecranes brand. The initial twelve (12) month period will be followed by twenty four (24) additional “black out” months during which neither the Notifying Parties nor the purchaser will be allowed to sell mobile equipment products under the Konecranes brand;
- (1) To the extent required by the purchaser, and in order to ensure that the MEQ Divestment Business has access to the shared technology required to maintain its competitiveness and viability as prior to the transfer of the legal title to the MEQ Divestment Business to the purchaser, Konecranes will provide a royalty free, irrevocable, non-exclusive, global and perpetual license to those Konecranes’ patents and other intellectual property, technology and know-how used by Konecranes primarily to develop, manufacture, sell and use products outside the scope of the MEQ Divestment Business but which are also used for the development, manufacturing, sale and use of mobile equipment;
 - (a) the term “shared technology” includes the patents and other intellectual property, technology and know-how which (i) have been jointly developed by Konecranes and by the MEQ Divestment Business, or (ii) have been developed solely by Konecranes or the MEQ Divestment Business for use in mobile equipment;
 - (b) the term “shared technology” does not include patents and other intellectual property, technology and know-how developed by Konecranes alone to develop and manufacture products outside the scope of the MEQ Divestment Business. This license will not extend to any improvements of or developments to the licensed technology, know-how or other intellectual property developed

after the transfer of the legal title to the MEQ Divestment Business to the purchaser. The purchaser will be able to make any changes to the technology as considered appropriate. All liabilities arising from changes carried out by the purchaser or by any other person/entity will be borne by the purchaser or by the person/entity making such changes;

- (j) All domain names used exclusively for the supply of mobile equipment. Any domain names that include a reference to Konecranes would be licensed for a limited period until the purchaser can redirect business to a new domain name;
- (k) All the personnel (including key personnel) employed by the legal entities part of the MEQ Divestment Business or, if not, personnel that are and to the extent they are used predominantly or exclusively for the manufacturing, supply or servicing of mobile equipment;
- (l) All business records, books of account, financial records, and tax records; all information, including customer and supplier lists and details, product and pricing information, account histories, research data and commercial data used exclusively or predominantly for the manufacturing, supply or servicing of mobile equipment;
- (m) To the extent applicable, all sales and promotional literature and other sales-related materials used exclusively or predominantly for the manufacturing, supply or servicing of mobile equipment;
- (n) At the option of the purchaser, Konecranes will enter into the following transitional services agreements with the purchaser (from the transfer of the legal title to the MEQ Divestment Business to the purchaser):
 - (1) financial shared services for transaction handling for a period up to twenty four (24) months, and others shared corporate services, such as HR, for a period up to six (6) months;
 - (2) SAP for a period up to twenty four (24) months, Microsoft applications and emails for a period up to three (3) months, and other shared IT system for a period up to twelve months (12);
 - (3) remote monitoring and maintenance management platforms (TruConnect and YourKonecranes) and Konecranes Store eCommerce platform for online sales of spare parts, for a period up to twenty four (24) months;
 - (4) storage for spare parts and office space for employees that are sited in local areas outside Sweden and China, for a period up to twelve (12) months;
 - (5) domain names used for the supply of MEQ that include the Konecranes brand name, for a period up to three (3) months.

9.3.1.2. The Notifying Parties' Arguments

- (2700) The Notifying Parties submit²⁶⁰⁷ that the sale of the MEQ Divestment Business would remove the entire overlap between the Notifying Parties globally in respect of reach stackers, empty container handlers and heavy-duty forklift trucks as the MEQ Divestment Business comprises Konecranes' entire global mobile equipment business. Following the divestment, the Merged Entity would be active in mobile equipment only through the existing global business of Cargotec, therefore fully

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Form RM relating to the MEQ Commitments of 9 December 2021.

restoring the status quo ante with no reduction in the number of competitors in the market.²⁶⁰⁸

- (2701) The Notifying Parties consider that the commitments would comprehensively address the concerns identified by the Commission in relation to mobile equipment and would also eliminate the Commission's customer foreclosure concern in relation to mobile equipment spreaders (which are upstream from mobile equipment). In terms of the products being divested (by including full container handlers) and geographic reach of the MEQ Divestment Business (by including Konecranes' global mobile equipment business), the proposed divestment would even go beyond the overlaps of concern identified by the Commission.²⁶⁰⁹
- (2702) The Notifying Parties submit that the MEQ Divestment Business would provide the purchaser with a fully integrated and standalone production, sale and distribution business for mobile equipment, which has access to a wide range of customers and geographies globally, and with all the resources necessary to operate as a competitive supplier of mobile equipment globally and in the EEA. The MEQ Divestment Business would create the conditions for the emergence of a new competitive entity or the strengthening of an existing competitor in the area of mobile equipment. That competitor would be capable of replicating the current competitive interaction between Konecranes and Cargotec.²⁶¹⁰
- (2703) The Notifying Parties also submit that the MEQ Divestment Business already operates on a largely standalone basis without any significant links with the retained business of Konecranes. It is an attractive and profitable business forecasted to remain so. The MEQ Divestment Business would represent a clear-cut and structural solution in line with paragraph 33 of the Remedies Notice and constitutes a divestment of an existing standalone business.²⁶¹¹

9.3.1.3. Results of the market test on the MEQ Commitments of 9 December 2021

- (2704) The results of the market test were overall positive. The majority of competitors, customers and distributors expressing an opinion submit that the proposed commitments are in principle suitable and adequate to effectively remove in their entirety the Commission's competition concerns regarding the EEA markets for reach stackers, empty container handlers and heavy-duty forklift trucks (>10 tonne capacity). In a competitor's view, this is due to the fact that the commitments '*would keep the two entities as separate businesses and not create a monopoly*'.²⁶¹² Another competitor expresses the opinion that '*[t]he good players in this market segment are limited. Kalmar and Konecranes are two majors of them. Thus, divesting one of the two would, as far as we know, remove competition concerns*'.²⁶¹³ A customer clarifies that '*[t]he know-how, personnel and product line of Konecranes will be sold to another party. This could lead to new competitor emerging or a known competitor improving its situation*'.²⁶¹⁴ Another customer expects that '*[t]he proposed commitments are suitable and adequate as they aim to ensure sufficient competition*

²⁶⁰⁸ Ibid, paragraph 14.

²⁶⁰⁹ Ibid, paragraphs 11 and 15.

²⁶¹⁰ Ibid, paragraphs 11 and 17.

²⁶¹¹ Ibid, paragraphs 12 and 20.

²⁶¹² Responses to Q9 – Market test questionnaire for mobile equipment, Doc. ID 5421, questions 2.1.1, 2.2.1 and 2.3.1.

²⁶¹³ Responses to Q9 – Market test questionnaire for mobile equipment, Doc. ID 5421, question 2.3.1.

²⁶¹⁴ Responses to Q9 – Market test questionnaire for mobile equipment, Doc. ID 5421, questions 2.1.1, 2.2.1 and 2.3.1.

by maintaining the number of competitors’.²⁶¹⁵ A distributor submits that ‘[t]he commitments should allow to continue effective competition’.²⁶¹⁶

- (2705) A majority of respondents that expressed an opinion in the market test state that they consider the MEQ Commitments of 9 December 2021 to be sufficient in scale and scope to ensure both the immediate viability and competitiveness, as well as independence of the MEQ Divestment Business from the Notifying Parties.²⁶¹⁷
- (2706) The MEQ Divestment Business will have access to brand names known to most market participants within the port industry. In the opinion of a majority of respondents in the market test sharing their views, the MEQ Divestment Business will be viable and competitive when relying on the SMV and Liftace brand names. Some of the respondents state ‘[t]he brands are well known and have a strong customer base’, or that ‘[b]oth brand names are well known within the industry therefore we do not see any reason why continued competitiveness will be adversely affected’.²⁶¹⁸
- (2707) A majority of respondents that expressed an opinion state that they consider that the personnel of the MEQ Divestment Business including the key personnel is sufficient to ensure the viability and competitiveness of the MEQ Divestment Business.²⁶¹⁹ A majority of opinions in the market test also support the view that the MEQ Divestment Business will have sufficient R&D capabilities to ensure its viability and competitiveness.²⁶²⁰
- (2708) Further, a majority of customers that expressed an opinion indicate that under the MEQ Commitments of 9 December 2021 they would likely continue sourcing mobile equipment from the MEQ Divestment Business.²⁶²¹ A majority of distributors expressing an opinion are also likely to continue distributing the MEQ Divestment Business’ mobile equipment products and they consider themselves able to compete effectively for customers by offering these products.²⁶²²
- (2709) While the results of the market test were overall positive and respondents which expressed interest in acquiring the MEQ Divestment Business generally do not consider amendments necessary,²⁶²³ some market participants point to certain elements where the MEQ Commitments of 9 December 2021 should be improved with a view to ensuring the full viability and competitiveness of the MEQ Divestment Business.
- (2710) In particular, respondents to the market test raise the following points of concern:
- (a) The MEQ Divestment Business needs the ability to market ‘Konecranes’ branded mobile equipment for a longer transitional period due to equipment and spare parts in stock in warehouses and at distributors and in order to have sufficient time to re-brand equipment and promotional material. A longer timeframe to use the

²⁶¹⁵ Responses to Q9 – Market test questionnaire for mobile equipment, Doc. ID 5421, question 2.3.1.

²⁶¹⁶ Responses to Q9 – Market test questionnaire for mobile equipment, Doc. ID 5421, questions 2.1.1, 2.2.1 and 2.3.1.

²⁶¹⁷ Responses to Q9 – Market test questionnaire for mobile equipment, Doc. ID 5421, questions 3 and 4.

²⁶¹⁸ Responses to Q9 – Market test questionnaire for mobile equipment, Doc. ID 5421, questions 14 and 14.1.

²⁶¹⁹ Responses to Q9 – Market test questionnaire for mobile equipment, Doc. ID 5421, question 15.

²⁶²⁰ Responses to Q9 – Market test questionnaire for mobile equipment, Doc. ID 5421, question 16.

²⁶²¹ Responses to Q9 – Market test questionnaire for mobile equipment, Doc. ID 5421, questions 5 and 6.

²⁶²² Responses to Q9 – Market test questionnaire for mobile equipment, Doc. ID 5421, questions 11 and 12.

²⁶²³ Responses to Q9 – Market test questionnaire for mobile equipment, Doc. ID 5421, question 23.

Konecranes brand for mobile equipment would strengthen the MEQ Divestment Business in retaining its customers. At the same time, the Merged Entity should be barred from marketing mobile equipment under the ‘Konecranes’ brand during a longer blackout period due to the longer lifecycle of the equipment. A blackout period, which is not sufficiently long, would allow the Merged Entity to re-approach the legacy Konecranes mobile equipment customers, which would not need new mobile equipment during the black-out period if it were too short, and offer these customers new Konecranes-branded equipment after the expiry of the black-out period.²⁶²⁴

- (b) With respect to the remote monitoring and maintenance management platform TruConnect, a majority of competitors, as well as distributors, who expressed an opinion consider that the platform is an important element to keep the MEQ Divestment Business viable and competitive. A majority of these respondents also state that it will not be easy for a potential purchaser of the MEQ Divestment Business to establish similar platform with the same features.²⁶²⁵

9.3.1.4. The Commission’s Assessment of the MEQ Commitments of 9 December 2021

- (2711) The Commission considered that the MEQ Commitments of 9 December 2021 could be suitable to eliminate the significant impediment to effective competition in the mobile equipment markets, subject to certain improvements in the light of the market test feedback.
- (2712) **First**, the MEQ Divestment Business consists of Konecranes’ entire global mobile equipment business comprising production, distribution and sale of all mobile equipment products in relation to which the Commission identified competition concerns. The MEQ Commitments of 9 December 2021, therefore, remove the entire horizontal overlap brought about by the Transaction in reach stackers, empty container handlers and heavy-duty forklift trucks (>10 tonne capacity). The MEQ Commitments of 9 December 2021 also remove the vertical link created in relation to mobile equipment spreaders (upstream) since the Konecranes’ mobile equipment division currently sourcing spreaders on the merchant market will no longer be part of the Merged Entity affecting its incentives.
- (2713) **Second**, the MEQ Commitments of 9 December 2021 comprise a business, which, subject to limited improvements, can compete effectively with the Merged Entity on a lasting basis. The MEQ Divestment Business is a profitable business. Already pre-Transaction it operates on a largely stand-alone basis with no significant links with the retained business of Konecranes. The MEQ Divestment Business comprises tangible and intangible assets, as well as personnel which are necessary for the efficient production and distribution of mobile equipment products and which could ensure the viability and competitiveness of the business.
- (2714) More specifically, the factories in [location] and [location] have assembly lines dedicated only and entirely to the manufacturing of Konecranes’ mobile equipment products. The R&D and product development activities, which support the mobile equipment business, sales and distribution channels, spare parts and support services, included in the MEQ Divestment Business, provide the potential purchaser a whole set of tangible assets needed for the effective operation of the business. The potential

²⁶²⁴ Responses to Q9 – Market test questionnaire for mobile equipment, Doc. ID 5421, questions 14.2, 14.3, 14.4.1.

²⁶²⁵ Responses to Q9 – Market test questionnaire for mobile equipment, Doc. ID 5421, questions 10.2, 10.3, 10.3.1, 13.3, 13.4, 13.4.1.

purchaser would also acquire intangible assets such as know-how and intellectual property currently used by Konecranes' mobile equipment business. The SMV and Liftace brands, recognised in the port industry and used in the supply of mobile equipment, will further add to the set of intangible assets of the MEQ Divestment Business.

- (2715) The MEQ Divestment Business also comprises Konecranes' commercial agreements with distributors, suppliers and customers, as well as employees providing all necessary functions for the operation of the business (including management). It is unlikely that the MEQ Divestment Business will be deprived of important sourcing synergies since under the existing purchasing agreements at Konecranes group level the share of spend for mobile equipment is the largest.²⁶²⁶ Nor it is expected that sale synergies will be lost since direct sales to customers are limited and sales of mobile equipment take place via distribution channels that will be divested as part of the MEQ Divestment Business.
- (2716) It followed that, while some elements of the commitments should be improved in line with the market test feedback (see below), the MEQ Divestment Business, as defined by the MEQ Commitments of 9 December 2021, could ensure the viability and competitiveness of the business and allow for preserving competition that would otherwise be lost as a result of the Transaction.
- (2717) **Third**, in response to the market test, a number of credible potential purchasers expressed interest in acquiring the MEQ Divestment Business. This shows that the commitments are attractive for the market.
- (2718) In light of the market test feedback, however, certain improvements to the MEQ Commitments of 9 December 2021 are necessary to ensure sufficient viability and competitiveness of the MEQ Divestment Business.
- (2719) **In the first place**, the Konecranes brand licencing and blackout periods may be too short to allow the potential purchaser to re-brand the mobile equipment products and the MEQ Divestment Business to retain its customers. In view of the lifecycle of the equipment, which is significantly longer than the proposed blackout period, the potential purchaser would run the risk that the Merged Entity would approach its customers with new Konecranes-branded equipment after the end of the two-year blackout period.
- (2720) **In the second place**, in view of the growing importance of remote monitoring and maintenance management for improving mobile equipment offering and addressing customers' requirements, it is essential that the potential purchaser of the MEQ Divestment Business is able to continue using Konecranes' TruConnect platform or have sufficient time to establish its own platform of a similar type. However, the two-year period proposed to that end may be too short for the potential purchaser to develop a new remote monitoring and maintenance management platform (in case the purchaser does not have its own platform). It may also be challenging, technically and commercially, for the potential purchaser to switch the entire installed base of Konecranes mobile equipment machines from TruConnect to a new platform.

9.3.1.5. Conclusion on the MEQ Commitments of 9 December 2021

- (2721) For the reasons set out in this Section 9.3.1, the Commission considered that, subject to improvements, the MEQ Commitments of 9 December 2021 could be suitable to

²⁶²⁶ Reply to RFI 43, Konecranes' reply to question 3.

address the identified competition concerns and to eliminate the significant impediment to effective competition to which the Transaction would give rise in the EEA markets for reach stackers, empty container handlers and heavy-duty forklift trucks (>10 tonne capacity), and in relation to the customer foreclosure related to mobile equipment spreaders.

9.3.2. *The KAS Commitments of 9 December 2021*

9.3.2.1. Description of the KAS Commitments of 9 December 2021

(2722) The KAS Commitments of 9 December 2021 consist of the divestiture of Cargotec's Kalmar Automation Solutions (KAS) business unit ('the KAS Divestment Business of 9 December') to an independent purchaser with financial resources, proven expertise and incentive to maintain and develop the KAS Divestment Business of 9 December as a viable and active competitive force, subject to approval by the Commission.

(2723) The KAS Divestment Business comprises:

- (1) Cargotec's ICS business, which is Cargotec's global port cranes business for the supply and servicing STS cranes, RTGs, RMGs and ASCs (together Port Cranes),
- (2) Cargotec's entire Intelligent Horizontal Transport Solutions business, which is Cargotec's global business for the supply and servicing of straddle and shuttle carriers²⁶²⁷, and
- (3) Cargotec's entire Kalmar One automation system, together with all essential functions which are necessary to ensure the viability and competitiveness of the business.
- (4) Specifically, the KAS Divestment Business of 9 December includes the following:²⁶²⁸
 - (a) KAS headquarters in Tampere, Finland;
 - (b) Under the KAS Commitments of 9 December 2021 Cargotec's assembly site in Stargard (Poland) would not be transferred as the Notifying Parties argue it is predominantly used for the assembly of non-KAS equipment. Cargotec would instead agree with the purchaser on the potential transfer of other offices/premises which are currently not exclusively or predominantly used for the KAS Divestment Business, to ensure the viability and competitiveness of the KAS Divestment Business;
 - (c) All Port Cranes and horizontal transportation ('HTE') product lines assembled and sold by Cargotec which comprises STS cranes, RTGs, RMGs and ASCs, straddle carriers and shuttle carriers, including Cargotec's Port Cranes and HTE related product descriptions and related information;
 - (d) All existing Port Cranes and HTE related inventory of finished goods, components, sub-components, raw materials and spare parts as of the date of the transfer of the legal title to the KAS Divestment Business to the purchaser (the '**Closing**'). This includes dedicated warehouses in

²⁶²⁷ [...], all of Cargotec's existing AGV-related know how and other assets will also be transferred as part of the KAS Divestment Business.

²⁶²⁸ As described in the Schedule of the non-confidential KAS Commitments of 9 December 2021.

Spain (Algeciras) and Australia (Inver). Cargotec would agree with the purchaser on the potential transfer of other spare parts warehouses which are currently not exclusively or predominantly used for the KAS Divestment Business, to ensure that the purchaser obtain an efficient global spare parts coverage to ensure the viability and competitiveness of the KAS Divestment Business;

- (e) The tools and equipment that are used for project delivery, namely (i) toolbox containers containing necessary tools for project delivery and on-site installation, and (ii) jigs that are used in erecting the cranes including all available related documentation.
- (f) Product development projects in relation to Port Cranes, HTE and Kalmar One and related information existing at or initiated before Closing.
- (g) The “Nelcon” brand, which Cargotec acquired as part of its acquisition of NHC Holding in 2001. The Cargotec or Kalmar brands would be retained by Cargotec. During the period of twelve (12) months from Closing, the Parties shall not be allowed to sell any Port Cranes and/or HTE products using the Kalmar brand. At the option of the purchaser, Cargotec and the purchaser would enter into commercially acceptable arrangements, including if applicable through a transitional license, to allow the purchaser to use the Kalmar brand to deliver customer projects for Port Cranes and/or HTE that are pending at the time of Closing and sell existing inventory of Kalmar branded spare parts for Port Cranes and HTE. This period of up to twelve (12) months would be followed by twelve (12) additional “black out” months during which neither the Parties nor the purchaser would be allowed to sell Port Cranes and/or HTE products under the Kalmar brand.
- (h) All patents, and other intellectual property rights and knowhow (IPR) currently used exclusively or predominantly to develop, assemble, sell, use and/or service Port Cranes and/or HTE, including IPR (if any) that is exclusively or predominantly used for Port Cranes and/or HTE spare parts, which are held by Cargotec would be transferred to the purchaser. To the extent the KAS Divestment Business relies on IPR which Cargotec licenses from third parties, Cargotec would use its best efforts to procure that the relevant licenses (or relevant portions thereof) would be transferred to the purchaser.
- (i) The entire Kalmar One automation system, enabling the purchaser of the KAS Divestment Business to sell fully automated Port Cranes and HTE. The KAS Divestment Business would include the relevant IPR and other assets in relation to the Kalmar One equipment control system (ECS). Insofar as the Kalmar One automation system relies on third-party IPR licenses, Cargotec would use its best efforts to transfer those third-party licenses to the purchaser;
- (j) All customer contracts and relationships, including:
 - (1) All ongoing equipment orders and/or contracts at the time of Closing;
 - (2) Comprehensive copies of customer records;

- (3) All ongoing aftersales services contracts related to Port Cranes and HTE would be transferred to the purchaser. To the extent customer consent is required for the transfer, Cargotec would use its best efforts to procure such consent;
- (4) All customer contracts relating to Port Cranes and HTE upgrade projects would be transferred. To the extent customer consent is required for the transfer, Cargotec would use its best efforts to procure such consent;
- (k) At the option of the purchaser, Cargotec would also transfer any other third-party contracts that exclusively or predominantly relate to the KAS Divestment Business, including
 - (1) Cargotec's supply contracts relating to the KAS Divestment Business,
 - (2) Cargotec's contract with Portowy Zakład Techniczny sp. z o.o. (PZT) in Gdynia, Poland, under which Cargotec delivers semi-finished straddle/shuttle carriers to PZT for final assembly (esp. final erection and quality testing) and shipment of the fully erected machines to the customer. At the option of the purchaser, Cargotec would use its best efforts to procure PZT's consent to a transfer of this contract to the purchaser.
 - (3) Cargotec's contract with Rainbow Industries Co., Ltd (RIC), on the basis of which RIC currently assembles Cargotec's Port Cranes at its facility in Taicang (China), including Cargotec's lease of the premises in Taicang. If this contract with RIC is transferred to the purchaser, the latter would issue a purchase order to RIC when a customer orders a crane. RIC would be responsible for the assembly of the Port Cranes. The purchaser would be responsible for project management and delivery of the crane(s) to the customer.
 - (4) Cargotec's dealership/agency agreements for its Port Cranes and HTE business;
 - (5) Cargotec's engineering consultancy agreements with third parties insofar they relate to port cranes and/or HTE.
- (l) Personnel and Key Personnel as defined in the KAS Commitments of 9 December 2021;
- (m) All other business records, book of account, financial records and tax records; all information, including customer and supplier lists and details, product and pricing information, account histories, research data and commercial data used exclusively or predominantly for the manufacturing, supply or servicing of Port Cranes and/or HTE;
- (n) To the extent applicable, all sales and promotional literature and other sales-related materials used exclusively or predominantly for the manufacturing, supply or servicing of Port Cranes and/or HTE.
- (o) To the extent reasonably required by the purchaser, Cargotec commits to offer the following transitional services to the purchaser. The exact scope of the relevant transitional services agreements (TSAs) would depend on the purchaser's own capabilities and is subject to negotiations with the

purchaser. However, Cargotec would make available these transitional services on a basis materially the same as how those services are currently provided to the KAS Divestment Business, to allow the transfer of the KAS Divestment Business in a manner which ensures its ongoing viability and competitive strength.

- (1) For a period of up to 24 months from Closing until the purchaser has completed the transfer of the straddle and shuttle carrier assembly activities out of Cargotec's Stargard facility to the location of its choice, a temporary contract manufacturing (assembly) arrangement pursuant to which Cargotec would assemble straddle and shuttle carriers for the purchaser from Cargotec's assembly site in Stargard allowing the purchaser to take over the KAS Divestment Business from day one after closing and have sufficient time to transfer the assembly of the straddle and shuttle carriers (and related supply chain) either to the purchaser's own site or to the site of an eligible sub-contractor. For the term of the contract manufacturing agreement, Cargotec would also offer transitional support with respect to certain shared support functions at the Stargard site. For the avoidance of doubt, all dedicated KAS personnel, assembly equipment and tools, inventory and capabilities/resources for supply chain and sourcing with respect to straddle/shuttle carriers from the site would be transferred, subject to applicable employment law considerations;
- (2) For a period of up to 12 months after Closing, transitional support in relation to certain group-level services that are currently provided to the KAS Divestment Business by the wider Cargotec organisation, such as certain operational finance services and operational HR services;
- (3) For a period of up to 12 months after Closing, transitional support with respect to SAP and other IT systems;
- (4) For a period of up to 12 months after Closing, access to other sites (e.g. offices or warehouses) which are currently used by Cargotec in relation to the KAS Divestment Business but are shared with other Cargotec businesses and which would not transfer to the purchaser.

9.3.2.2. The Notifying Parties' Arguments

- (2724) The Notifying Parties submit that the sale of the KAS Divestment Business as offered in the KAS Commitments of 9 December 2021 would fully restore the status quo ante by removing the entire market share overlap between the Notifying Parties relating to port cranes and straddle and shuttle carriers. Following the proposed divestment, the Merged Entity would only be active in the supply of port cranes and HTE (with the exception of terminal tractors) through Konecranes' activities. Cargotec would retain its terminal tractor business that forms part of its KAMOS business unit.
- (2725) In the Notifying Parties' opinion, the KAS Commitments of 9 December 2021 would comprehensively address the concerns identified by the Commission in relation to RTGs, straddle, and shuttle carriers. The Notifying Parties argue that the proposed package goes materially beyond addressing the Cranes and HTE concerns, as the

KAS Divestment Business comprises a number of other assets in areas where no competition concerns have been identified (most notably RMGs, ASCs and STS cranes), and Kalmar’s comprehensive automation capabilities, including ECS. It represented an end-to-end port cranes and HTE business that is capable of servicing customers’ demand at all levels of the value chain.²⁶²⁹

- (2726) The Notifying Parties submit that the KAS Divestment Business would have all assets necessary to operate on a stand-alone basis as a strong and competitive business.²⁶³⁰
- (2727) The Notifying Parties also submit that the KAS Divestment Business would be acquired by a suitable purchaser in the timeframe and in compliance with the criteria set out in the commitments because the KAS Divestment Business is a highly attractive proposition to any purchaser as an industry-leading global cranes and HTE business with proven success and a strong global customer base and as a viable standalone business and without the requirement for major carve-outs.²⁶³¹

9.3.2.3. Results of the market test on the KAS Commitments of 9 December

- (2728) The results of the market test on the KAS Commitments of 9 December were overall negative. Almost half of the competitors, customers and potential purchasers expressing an opinion²⁶³² submit that the proposed commitments are in principle not suitable and adequate to effectively remove in their entirety the competition concerns regarding the markets for the manufacturing and supply of straddle and shuttle carriers. A similarly significant number of respondents who submit a view do not consider the KAS Commitments of 9 December to be suitable and adequate to effectively remove the competition concerns in the EEA market for RTGs.²⁶³³
- (2729) In particular, respondents to the market test have advanced the following three points of concern in response to the market test:
- (2730) **First**, the concern raised most often by market participants in response to the market test is the lack of a manufacturing plant for straddle and shuttle carriers and the risks flowing from the required relocation of the Stargard assembly line for straddle and shuttle carriers.
- (2731) A clear majority of respondents confirm²⁶³⁴ that it is not common in the industry to relocate assembly lines.
- (2732) A vast majority of market participants²⁶³⁵ say that there are risks when an assembly line moves to a different location. Among the most frequently mentioned risks relate to quality, operational efficiency, staff relocation and training, regulatory and compliance as well as the overall changeover time.²⁶³⁶ A terminal operator comments in this regard: *“Moving manufacturing arrangements such as those used to produce automated straddles and carriers carries considerable risk in respect of continuity of supply for essential terminal operators globally and risk of reduced reliability/quality/safety. Transporting, installing, commissioning and testing the*

²⁶²⁹ Form RM on KAS Divestment dated 17 December 2021, paragraph 12.

²⁶³⁰ Form RM on KAS Divestment dated 17 December 2021, paragraph 14.

²⁶³¹ Form RM on KAS Divestment dated 17 December 2021, paragraph 15.

²⁶³² Responses to Q10 – Market test on the proposed KAS Commitments, question 2.

²⁶³³ Responses to Q10 – Market test on the proposed KAS Commitments, question 1.

²⁶³⁴ Responses to Q10 – Market test on the proposed KAS Commitments, question 5.

²⁶³⁵ Responses to Q10 – Market test on the proposed KAS Commitments, question 7.

²⁶³⁶ Responses to Q10 – Market test on the proposed KAS Commitments, question 7.1.

multifaceted manufacturing arrangements used to produce automated straddles is an exercise involving considerable time, expense, uncertainty and risk. Any of these factors could materially disrupt production, create delays and costs both to KAS and its end customers and/or reduce quality/productivity/safety of straddles produced in the new environment."²⁶³⁷

- (2733) One of the main difficulties of a transfer of assembly line identified by respondents is the difficulty to move the skilled workforce to the new plant, even if the assembly line is relocated. A GTO explained: "[...] *Moving this to a different location is difficult as the new know-how needs to be acquired by new personnel.*"²⁶³⁸ Likewise, a competitor noted a "*challenge to transfer people skills as majority of staff is not willing to relocate*".²⁶³⁹ Another customer explained: "*If the assembly line moves to another location without the accumulated knowledge and experience of the original assembly line, then there is inherent risk in the quality and efficiency of output.*"²⁶⁴⁰ This is even more important in relation to the Stargard plant where respondents to the market test consider that the workforce brings a lot of engineering expertise into the assembly process when it comes to manufacture the designed product.
- (2734) As a result, a clear majority of respondents²⁶⁴¹ consider that the move of an assembly line from one location to another would affect the viability and competitiveness of a business and a majority of respondents who took a view²⁶⁴² do not consider it feasible to move the Stargard assembly lines for straddle and shuttle carriers out of Stargard to the location of the choice of the purchaser within 24 months while keeping the straddle and shuttle carrier business viable and competitive. A GTO states: "*If Stargard factory is the production facility of the SC/ShC, and it is not within the package, this is a suboptimal (not to say bad) situation. It took to our knowledge many years to get that assembly set up and working properly. Now again, customers will be confronted with potential quality/delivery/... issues*".²⁶⁴³ Another customer explains: "*The movement of an assembly line from one location to another has strong potential to affect the viability and competitiveness of the business. The movement of any manufacturing arrangement (especially the complete end to end production) from one location to another will almost certainly involve production downtime as well as considerable financial outlay and risks as outlined in response [a previous question]. If any one or more of these risks is realised, this would very much affect the viability and competitiveness of the business*".²⁶⁴⁴ Similarly, a competitor notes: "*The transplanting of the manufacturing of the Straddle Carrier product into a new plant is a very difficult operation to properly accomplish and it could seriously harm the ability of the Purchaser to retain the same market share that Kalmar is currently enjoying.*"²⁶⁴⁵
- (2735) **Second**, a majority of respondents²⁶⁴⁶ say that the transfer of the Nelcon brand is not sufficient to ensure the viability and competitiveness of the Divestment Business both in the RTG and straddle/shuttle carrier markets in relation to

²⁶³⁷ Response to Q10 – Market test on the proposed KAS Commitments, question 7.1.

²⁶³⁸ Response to Q10 – Market test on the proposed KAS Commitments, question 7.1.

²⁶³⁹ Response to Q10 – Market test on the proposed KAS Commitments, question 7.1.

²⁶⁴⁰ Responses to Q10 – Market test on the proposed KAS Commitments, question 7.1.

²⁶⁴¹ Responses to Q10 – Market test on the proposed KAS Commitments, question 8.

²⁶⁴² Responses to Q10 – Market test on the proposed KAS Commitments, question 3.

²⁶⁴³ Response to Q10 – Market test on the proposed KAS Commitments, question 3.1.

²⁶⁴⁴ Response to Q10 – Market test on the proposed KAS Commitments, question 8.1.

²⁶⁴⁵ Response to Q10 – Market test on the proposed KAS Commitments, question 1.1.

²⁶⁴⁶ Responses to Q10 – Market test on the proposed KAS Commitments, questions 24 and 25.

branding/marketing. Several market participants²⁶⁴⁷ commented that the Nelcon brand is old and practically not known anymore, such as: *“While the Nelcon brand had a good reputation many years ago, it has not been visible as a crane manufacturer in the recent past. If a Purchaser of the Divestment Business does not have its own brand to be used for the Divestment Business, he will have to invest in rebuilding the strength of the Nelcon brand.”*²⁶⁴⁸ Similarly, a competitor noted: *“The Nelcon brand is long time gone out of business.”*²⁶⁴⁹ Likewise a GTO said: *“We already treat the Nelcon brand as non-existent [...]”*²⁶⁵⁰ Another GTO explained: *“Nelcon is an almost forgotten brand”*.²⁶⁵¹

- (2736) Consequently, feedback from market participants indicates that the timeframe of 12 months to use the Kalmar brand is too short. A majority of market participants²⁶⁵² considers that the transitional brand licence of 12 months is not sufficient to ensure the viability and competitiveness of the Divestment Business in RTGs. Several market participants mention that the timeframe of 12 months might not even be sufficient to close running projects. A GTO stated in this regard: *“A contract of RTG procurement usually last between 12-24 months, so a transitional brand license of 12 months is insufficient.”*²⁶⁵³ Similarly, a competitor notes: *“Project of this product range span over 2-3 years. Have to give sufficient time for customers to phase in with the new owner.”*²⁶⁵⁴ In relation to straddle and shuttle carriers a majority of market participants is of the same view.²⁶⁵⁵
- (2737) **Third and consequently**, the Commission did not receive any credible expressions of interest by a suitable potential buyer for the KAS Divestment Business.²⁶⁵⁶
- (2738) In addition to this, the Commission notes that a clear majority of respondents who took a view²⁶⁵⁷ consider that in order to establish itself as a viable and competitive force in the RTG as well as in the straddle and shuttle carrier markets, the purchaser of the divestment business should be already active in port cranes, straddle and shuttle carriers or other port equipment.
- (2739) However, the Commission found that market participants consider the KAS Commitments of 9 December to be sufficient in several aspects.
- (2740) **First**, a clear majority of respondents who took a view consider the transfer of the KAS headquarters in Tampere sufficient to ensure the viability and competitiveness of the Divestment Business in the RTG markets in relation to engineering capabilities and a majority of respondents who took a view consider this as well for the straddle and shuttle carrier business.²⁶⁵⁸ A GTO noted: *“The KAS headquarter forms the engineering core. [...]”*²⁶⁵⁹

²⁶⁴⁷ Responses to Q10 – Market test on the proposed KAS Commitments, questions 24.1 and 25.1.
²⁶⁴⁸ Response to Q10 – Market test on the proposed KAS Commitments, questions 24.1 and 25.1.
²⁶⁴⁹ Response to Q10 – Market test on the proposed KAS Commitments, questions 24.1 and 25.1.
²⁶⁵⁰ Response to Q10 – Market test on the proposed KAS Commitments, questions 24.1 and 25.1.
²⁶⁵¹ Response to Q10 – Market test on the proposed KAS Commitments, questions 24.1 and 25.1.
²⁶⁵² Responses to Q10 – Market test on the proposed KAS Commitments, question 26.
²⁶⁵³ Response to Q10 – Market test on the proposed KAS Commitments, question 26.1.
²⁶⁵⁴ Response to Q10 – Market test on the proposed KAS Commitments, question 26.1.
²⁶⁵⁵ Responses to Q10 – Market test on the proposed KAS Commitments, question 27.
²⁶⁵⁶ Responses to Q10 – Market test on the proposed KAS Commitments, question 39.
²⁶⁵⁷ Responses to Q10 – Market test on the proposed KAS Commitments, questions 34 and 35.
²⁶⁵⁸ Responses to Q10 – Market test on the proposed KAS Commitments, questions 12 and 13.
²⁶⁵⁹ Response to Q10 – Market test on the proposed KAS Commitments, question 13.1.

- (2741) **Second**, respondents who took a view also were favourable in terms of automation as regards the transfer of the entire Kalmar One automation system both in relation to RTGs as well as straddle and shuttle carriers.²⁶⁶⁰
- (2742) **Third**, respondents who took a view also were favourable as regards inventories of finished goods, components, sub-components, raw materials, spare parts and dedicated warehouses as well as patents and other intellectual property rights and know—how as well as customer contracts and relationships and personnel included in the KAS Divestment Business of 9 December both in relation to RTGs as well as straddle and shuttle carriers.²⁶⁶¹
- 9.3.2.4. The Commission’s Assessment of the KAS Commitments of 9 December 2021
- (2743) The Commission considered that the KAS Divestment Business as described in the KAS Commitments of 9 December is not adequate and suitable to remove the Commission’s competition concerns in relation to the RTG as well as straddle and shuttle carrier markets.
- (2744) **First**, the Commission considered, in line with market participants’ feedback, that the risks resulting from the transfer of the Stargard assembly line render the KAS Divestment Business of 9 December unsuitable to address the Commission’s competition concerns in the plausible straddle and shuttle carrier markets.
- (2745) The Notifying Parties acknowledge themselves the difficulties in particular as regards the moving of workforce in case of a transfer of assembly line: “[...]it will ultimately be the choice of the individual employees whether they are willing to accept the purchaser’s employment offer and move to a different location. This decision will likely depend on the location of the new assembly site and its proximity to Stargard”.²⁶⁶²
- (2746) Moreover, the Commission notes that the Stargard plant is strategically located in a way that it can easily reach the PZT sub-contractor in Gdynia where the products are erected and shipped to customers by sea. A relocation away from Stargard would break this link and the transfer of the PZT sub-contract without the Stargard plant would have limited value. Still, it is important to finalise the assembly on the seaside (as opposed to the inland Stargard plant) because, as the Notifying Parties explained, fully erected straddle/shuttle carriers cannot be transported over land.²⁶⁶³
- (2747) **Second**, in light of the clear market test feedback that the Nelcon brand is largely unknown to market participants, the Commission considered that the KAS Divestment Business of 9 December entails significant risks that the divestment business might not be competitive and viable in terms of branding and marketing.
- (2748) **Third**, the Commission was concerned about the lack of expression of interest by a suitable potential purchaser of the KAS Divestment Business of 9 December. In view of the lack of an up-front buyer clause, the lack of interest in the remedy by a suitable buyer alone renders the KAS Commitments of 9 December unsuitable to eliminate the Commission’s competition concerns in the markets for RTGs and straddle and shuttle carriers, due to the implementation risks that these entail.

²⁶⁶⁰ Responses to Q10 – Market test on the proposed KAS Commitments, questions 18 and 19.

²⁶⁶¹ Responses to Q10 – Market test on the proposed KAS Commitments, questions 14, 15, 16, 17, 20, 21, 22 and 23.

²⁶⁶² Cargotec’s Response to RFI 40, paragraph 40.

²⁶⁶³ Cargotec’s Response to RFI 40, paragraph 15.

- (2749) **Fourth** and in addition to the three issues raised by the market test on the KAS Commitments of 9 December, the Commission considered that there are significant risks and uncertainties in relation to the R&D capabilities of the KAS Divestment Business of 9 December. The Notifying Parties provided a list of a number of R&D teams within Cargotec to the Commission, which appear to work also for KAS but that the Merged Entity intends to retain in order to ensure Cargotec's overall R&D capabilities, including for other business units. These include Cargotec Digital Solutions in Tampere, KAMOS digitalization in Tampere, Cargotec Data Driven Services (DDS in Tampere and Energy Business accelerators in Helsinki.²⁶⁶⁴

9.3.2.5. Conclusion on the KAS Commitments of 9 December 2021

- (2750) For the reasons set out in Sections 9.3.2.3 and 9.3.2.4, the Commission considered that the KAS Commitments of 9 December are not suitable to remove the significant impediment to effective competition to which the proposed Transaction would give rise to in the EEA markets for RTGs and in the plausible global and EEA market(s) for straddle and shuttle carriers.

9.4. The Final Commitments

9.4.1. *The Final MEQ Commitments*

9.4.1.1. Description of the Final MEQ Commitments

- (2751) The Notifying Parties submitted revised commitments on 6 January 2022 (the 'Final MEQ Commitments').
- (2752) The Final MEQ Commitments relate to the same remedy parameter, and include the same tangible and intangible assets, as well as licences, agreements, supplier, distributor and customer contracts as the MEQ Commitments of 9 December 2021. The Final MEQ Commitments however include the following improvements:
- (2753) **First**, an up-front buyer clause is included. In particular, the Transaction shall not be implemented before Konecranes or the Divestiture Trustee has entered into a final binding sale and purchase agreement for the sale of the Divestment Business and the Commission has approved the purchaser and the terms of the sale.
- (2754) **Second**, with respect to the Konecranes brand, the brand licencing and blackout periods are extended in scope and length. Specifically, during the period of eight years from the transfer of the legal title to the MEQ Divestment Business to the purchaser, the Notifying Parties shall not be allowed to sell any mobile equipment under the Konecranes brand. At the option of the purchaser, the Notifying Parties and the purchaser will enter into commercially acceptable arrangements, including if applicable through a license to allow the purchaser to sell mobile equipment products using the Konecranes brand for a period of three years from the moment when the Notifying Parties and the purchaser have agreed on the relevant arrangements. After this three year period and until the end of the eight year period from the transfer of the legal title to the MEQ Divestment Business to the purchaser, neither the Notifying Parties nor the purchaser will be allowed to sell mobile equipment products under the Konecranes brand.
- (2755) **Third**, with respect to the remote monitoring and maintenance management platform TruConnect, at the option of the purchaser, Konecranes will enter into a transitional services agreement for a period of twenty-four months, or provide to the purchaser a

²⁶⁶⁴ Cargotec's Response to RFI 40, paragraph 74.

duplicate of TruConnect, comprising the hardware and software system that collects and stores data for monitoring Konecranes mobile equipment. The purchaser will be permitted to use the TruConnect system and associated intellectual property exclusively for mobile equipment.

- (2756) **Fourth**, should consent for the transfer of any of the agreements not entered into by the legal entities part of the MEQ Divestment Business not be obtained from customers, Konecranes will 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 the Monitoring Trustee. Should such a transfer not be possible, Konecranes will terminate the respective contract with respect to the supply of mobile equipment if and to the extent reasonably possible without exposing itself to damage claims or any other form of significant harm.
- (2757) Further, the duration of the transitional services agreements for Microsoft applications and emails, and for domain names used for the supply of mobile equipment that include the Konecranes brand name, are increased in length from three to six months.

9.4.1.2. The Notifying Parties' Arguments

- (2758) The Notifying Parties re-state that the sale of the MEQ Divestment Business would remove any concern in relation to reach stackers, empty container handlers and heavy-duty forklift trucks and in relation to the foreclosure concern related to mobile equipment spreaders. The Notifying Parties further state that the Final MEQ Commitments provide for the divestment of a standalone business including all assets necessary to compete effectively on the relevant markets.²⁶⁶⁵

9.4.1.3. The Commission's Assessment of the Final MEQ Commitments

- (2759) **First**, as assessed in Section 9.3.1.4 in detail for the MEQ Commitments of 9 December 2021, the Final MEQ Commitments also remove the entire horizontal overlap brought about by the Transaction in reach stackers, empty container handlers and heavy-duty forklift trucks (>10 tonne capacity). Therefore, the Konecranes mobile equipment business, which currently sources mobile equipment spreaders on the merchant market, will not be part of the Merged Entity affecting its incentives. The Final MEQ Commitments therefore also remove the foreclosure concerns described in Section 7.5.2.
- (2760) **Second**, as assessed in Section 9.3.1.4 in detail for the MEQ Commitments of 9 December 2021, the Final MEQ Commitments also consist of a viable business that can compete effectively with the Merged Entity on a lasting basis. The MEQ Divestment Business of 6 January 2022 includes all the assets which contribute to its current operation or which are necessary to ensure its viability and competitiveness and all personnel which are currently employed or which are necessary to ensure the business' viability and competitiveness.
- (2761) **Third**, specifically, the Final MEQ Commitments improve the viability and competitiveness of the Divestment Business in relation to two key aspects.
- (2762) **In the first instance**, the Konecranes brand licensing and blackout periods are extended in scope and length. The purchaser of the MEQ Divestment Business will not only be able to use the Konecranes brand to sell the existing inventory and spare parts of mobile equipment products for one year, but will be able to use the

²⁶⁶⁵ Revised Form RM of 3 January 2022.

Konecranes brand to sell mobile equipment for three years. This significantly improves the ability of the purchaser to keep marketing the MEQ Divestment Business' mobile equipment products to existing customers that are used to the Konecranes brand. The purchaser will therefore have more time to rebrand the mobile equipment products (i.e. by using the secondary brands SMV and/or Liftace, or by using a new brand name).

- (2763) The extension of the Konecranes brand blackout period further strengthens the Divestment Business' ability to retain its customers. The Merged Entity will not be able to sell 'Konecranes' branded mobile equipment for eight years – which is the average lifespan of mobile equipment. Therefore, existing customers of the MEQ Divestment Business cannot be approached for one product lifecycle by the Merged Entity with new 'Konecranes' branded equipment. Overall, this extension in scope and length of the Konecranes brand licence and in length of the Konecranes brand blackout period ensures that the MEQ Divestment Business is in a strong position to retain its customer base. The improvements to the Konecranes brand licencing and blackout periods therefore further strengthen the viability and competitiveness of the MEQ Divestment Business.
- (2764) **In the second instance**, the purchaser will have the option to opt either for a transitional services agreement (for two years) for the use of the TruConnect remote monitoring and maintenance management platform, or, if preferred, for a duplication of the TruConnect platform for the purchaser to be used for mobile equipment. This significantly strengthens the viability and competitiveness of the MEQ Divestment Business. Data monitoring is increasingly gaining importance for mobile equipment products. Customers use data to more efficiently allocate vehicle uptime and schedule maintenance. Manufacturers can use data generated by equipment deployed at customers to further improve their equipment offering. A remote monitoring and maintenance management platform is therefore essential to ensure that a mobile equipment supplier can address customer requirements (for equipment that is compatible with such a platform also provided by the supplier) and to ensure that the mobile equipment supplier has access to the necessary data to further improve its mobile equipment offering.
- (2765) A two-year transitional services agreement may be too short for a purchaser of the MEQ Divestment Business to develop a new remote monitoring and maintenance management platform (in case the purchaser does not have its own platform), and it may be technically and commercially challenging to switch all the installed base Konecranes mobile equipment machines from Konecranes TruConnect to a new platform.
- (2766) Therefore, the duplication of the TruConnect platform for the purchaser (at the purchaser's option) enables the purchaser to continue using the same platform that currently customers of the MEQ Divestment Business rely upon and that currently the Divestment Business relies upon for information about vehicle performance and customers' vehicle usage patterns. The duplication of TruConnect at the option of the purchaser therefore further strengthens the viability and competitiveness of the MEQ Divestment Business.
- (2767) **Finally**, further improvements to the Final MEQ Commitments, such as the termination of customer contracts by Konecranes if no transfer to the MEQ Divestment Business is possible and the increase in duration of certain transitional services agreements further strengthen the viability and competitiveness of the MEQ Divestment Business.

(2768) In addition, the inclusion of an up-front buyer clause ensures that the Transaction will only be implemented once the Commission has approved a purchaser, limiting any potential implementation risks.

9.4.1.4. Conclusion on the Final MEQ Commitments

(2769) For the reasons set out in this Section 9.4.1, the Commission considers that the Final MEQ Commitments are suitable and sufficient to eliminate the significant impediment to effective competition to which the Transaction would give rise to in the EEA markets for reach stackers, empty container handlers and heavy-duty forklift trucks (>10 tonne capacity), and in relation to customer foreclosure related to mobile equipment spreaders.

9.4.2. *The Final KAS Commitments of 6 January 2022*

9.4.2.1. Description of the Final KAS Commitments of 6 January 2022

(2770) The Notifying Parties submitted revised commitments on 6 January 2022 (the ‘Final KAS Commitments’). The Final KAS Commitments again consist of the divestiture of Cargotec’s Kalmar port cranes and straddle and shuttle carrier businesses, (‘the Final KAS Divestment Business’) to an independent purchaser with financial resources, proven expertise and incentive to maintain and develop the KAS Divestment Business as a viable and active competitive force, subject to approval by the Commission. It includes Cargotec’s businesses for the manufacturing and commercialisation of port cranes as well as straddle and shuttle carriers, and related spare parts and technical support.

(2771) The Final KAS Commitments relate to the same remedy parameter, and generally include the same tangible and intangible assets, as well as licences, agreements, supplier, distributor and customer contracts as under the KAS Commitments of 9 December 2021. The Final KAS Commitments however include the following changes and improvements:

(2772) **First**, an upfront buyer clause is included. In particular, the Transaction shall not be implemented before Cargotec or the Divestiture Trustee has entered into a final binding sale and purchase agreement for the sale of the Final KAS Divestment Business and the Commission has approved the purchaser and the terms of the sale. Such a clause is intended to limit the implementation risks stemming from the lack of expressions of interest for the KAS Divestment Business of 9 December 2021.²⁶⁶⁶

(2773) **Second**, further purchaser criteria are included to ensure the acquisition of the KAS Divestment Business by a suitable purchaser. [...].

(2774) **Third**, instead of a transfer of the straddle and shuttle carrier assembly line, the revised KAS Commitments of 6 January 2022 foresee the divestment of Cargotec’s assembly site in Stargard, with the exception of all personnel employed by and assets owned by Cargotec’s loader-crane business unit Hiab, including the separate, dedicated Hiab facility at Stargard, which will be retained by Cargotec. Moreover, Cargotec will carve-out all assets and personnel at Stargard used exclusively for Cargotec’s mobile equipment business subject to the Monitoring Trustee’s view and approval by the Commission. The transfer of Cargotec’s mobile equipment assembly activities from Stargard to another facility shall be completed within a period not exceeding twenty-four (24) months from Closing. For the duration of the Stargard transfer period, Cargotec and the purchaser will enter into a transitional lease and

²⁶⁶⁶ KAS Commitments of 6 January 2022, paragraph 3.

services agreement pursuant to which Cargotec will have the right to continue to assemble mobile equipment at the Stargard Facility.

- (2775) **Fourth**, in addition to the “Nelcon” brand, the Final KAS Commitments foresee the divestment of the “Kalmar” brand for use in relation to the supply and servicing of Port Cranes and HTE. The Parties will retain the exclusive right to use the Kalmar brand in relation to the supply and servicing of any other equipment than Port Cranes and HTE, in particular mobile equipment. Cargotec will differentiate the Kalmar brand used in relation to the supply and servicing of any other equipment than Port Cranes and HTE from the Kalmar brand used by the Purchaser in relation to the supply and servicing of Port Cranes and HTE. If the Commission approves the sale of the KAS Divestment Business without the Kalmar brand, the Parties shall not be allowed to sell any Port Cranes and/or HTE products using the Kalmar brand during the period of ten years from Closing. At the option of the Purchaser, the Parties and the Purchaser will enter into commercially acceptable arrangements, including if applicable through an exclusive and royalty-free license, to allow the Purchaser to sell Port Cranes and HTE products using the Kalmar brand for a period of five years from the moment when the Parties and the Purchaser have agreed on the relevant arrangements. After this five year period and until of the end of the tenth year from Closing, neither the Parties nor the Purchaser will be allowed to sell Port Cranes or HTE products under the Kalmar brand.
- (2776) **Fifth**, all existing Port Cranes and HTE related tool box containers, which contain necessary equipment for project delivery, and tools and jigs, which are used for assembly and maintenance, including all available related documentation.
- (2777) **Sixth**, instead of IPR currently used exclusively or predominantly to develop, assemble, sell, use and/or service Port Cranes and/or HTE, the Final KAS Commitments foresee the divestment of all IPR related to Port Cranes and/or HTE.
- (2778) **Seventh**, to the extent required by the purchaser, and in order to ensure that the Final KAS Divestment Business has access to the shared technology required to maintain its competitiveness and viability as prior to Closing, Cargotec will provide a royalty free, irrevocable, non-exclusive, sub-licensable, global and perpetual license to the IPR currently used by Cargotec primarily to develop, manufacture, sell and use products outside the scope of the Final KAS Divestment Business but which are also currently used for the development, manufacturing, sale and use of Port Cranes and HTE. For the avoidance of doubt:
- (1) the term ‘shared technology’ includes IPR for use in Port Cranes and/or HTE which (a) has been jointly developed by Cargotec and by the KAS Divestment Business as of Closing, or (b) has been developed solely by Cargotec or the KAS Divestment Business; and
 - (2) the term ‘shared technology’ does not include IPR developed by Cargotec alone to develop and manufacture products outside the scope of the Final KAS Divestment Business.

This license will not extend to any improvements of or developments to the licensed technology, know-how or other intellectual property developed after Closing. The purchaser will be able to make any changes to the technology as considered appropriate. For the avoidance of doubt, all liabilities arising from changes carried out by the purchaser or by any other person/entity will be borne by the purchaser or by the person/entity making such changes. The Merged Entity will obtain a royalty free, irrevocable, non-exclusive, sub-licensable, global and perpetual license to any

shared IPR that is transferred to the purchaser but is required by the Merged Entity to pursue activities outside the Port Cranes and HTE businesses.

- (2779) **Eighth**, at the option of the purchaser, Cargotec will provide it via a licence to the relevant IPR or otherwise, a duplicate of the cloud-based environment and functionalities related to the Final KAS Divestment 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 HTE. The purchaser will be permitted to use the aforementioned functionalities and associated IPR exclusively for Cargotec Port Cranes and HTE.

9.4.2.2. The Notifying Parties' Arguments

- (2780) The Notifying Parties reiterate their arguments submitted in relation to the KAS Commitments of 9 December 2021.
- (2781) In addition, they submit that reverse carve-outs such as foreseen for the Stargard Facility have previously been accepted by the Commission. Both the Nelcon brand and the Kalmar brand were well-known in the market for use with cranes and straddle/shuttle carried and suitable for all equipment offered by the Final KAS Divestment Business.
- (2782) Moreover, they submit that the purchaser will be able to sell the Final KAS Divestment Business equipment based on strong, well-recognised brands.
- (2783) Following the sale of the Final KAS Divestment Business, Cargotec would differentiate the Kalmar brand used for mobile equipment from the Kalmar brand used by the purchaser for KAS, e.g., by changing the colour of the logo and attaching an additional word to the "Kalmar" brand name such as, e.g. "Kalmar Mobile".
- (2784) According to the Notifying Parties, there was no reason to believe that this brand split would give rise to any brand confusion between the cranes and shuttle/straddle carriers sold by the KAS Divestment Business and the mobile equipment business retained by the Merged Entity. Customers for these products are highly sophisticated, professional procurement specialists, and knowledgeable about the different brands. Customers are typically different: cranes and straddle/shuttle carriers are usually purchased by large terminal operators whereas MEQ is purchased by distributors and industrial customers in addition to port customers. Today, only approximately [...] percent of the KAS and MEQ customers overlapped. Even within port customers, there typically were different procurement teams for port cranes and straddle/shuttle carriers versus MEQ. In addition, the procurement process for cranes and straddle/shuttle carriers on the one hand and MEQ on the other are very different. The former is project-based and the latter is product-based and, as a result, more brand-driven. Moreover, there already were numerous Kalmar brands used in the market.
- (2785) The Notifying Parties also note that should the purchaser be an industrial buyer, it may be more beneficial for the Final KAS Divestment Business to re-brand the acquired product lines rather than continuing to sell them under the Kalmar brand in which case a re-branding commitment would be adequate to ensure the viability and competitiveness of the Final KAS Divestment Business.²⁶⁶⁷

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Revised Form RM on KAS Commitments of 6 January 2022 dated 3 January 2022.

9.4.2.3. Results of the market test on the Final KAS Commitments

- (2786) The results of the market test on the Final KAS Commitments were overall positive. The majority of competitors, customers and potential purchasers expressing an opinion submit that the proposed commitments are in principle suitable and adequate to effectively remove in their entirety the Commission's competition concerns regarding the EEA markets both for RTGs as well as straddle and shuttle carriers.
- (2787) The feedback overall is positive.
- (2788) **First**, market participants overall recognise the improvements brought to the KAS divestment package, notably the divestment of the Stargard plant under the form of a reverse carve-out and the possibility of a broader use of the Kalmar brand for the purchaser. A clear majority of market participants who took a view consider the Final KAS Commitments in principle suitable and adequate to remove competition concerns in both the RTG and straddle and shuttle carrier markets.²⁶⁶⁸ Further, a clear majority of market participants who took a view consider the 24 months transitional period to be sufficient and adequate for the transfer of the MEQ personnel and equipment to another facility.²⁶⁶⁹
- (2789) **Second**, a majority of respondents who took a view consider that the opportunity for the purchaser to acquire the Kalmar brand for the supply and servicing of Port Cranes and HTE can ensure the viability and competitiveness of both the RTG and straddle and shuttle carrier businesses, despite the conservation of the Kalmar brand by the Merged Entity for the supply and servicing of any other equipment.²⁶⁷⁰ Likewise, half of the respondents who took a view consider that the Merged Entity using the Kalmar brand for all other products but Port Cranes and HTE would not have a negative impact on awareness of the Kalmar brand.²⁶⁷¹
- (2790) **Third**, the Commission finds that market participants are even more favourable to the alternative rebranding option for the purchaser of Final KAS Divestment Business. A clear majority of respondents who took a view consider that an alternative rebranding of the Port Cranes and HTE businesses with its own brand would generally be feasible for the purchaser of the KAS Divestment Business.²⁶⁷² A clear majority of respondents who took a view consider the 5 year brand licensing arrangements to be sufficient timeframe to ensure the viability and competitiveness of the Final KAS Divestment Business.²⁶⁷³ Further, a clear majority of respondents consider the 10 year black-out period to be a sufficient timeframe to ensure the viability and competitiveness of the Final KAS Divestment Business.²⁶⁷⁴
- (2791) **Fourth**, a clear majority of respondents who took a view consider that the shared technology arrangements foreseen in the Final KAS Commitments ensure the viability and competitiveness of the Final KAS Divestment Business in the markets for RTGs and straddle and shuttle carriers.²⁶⁷⁵
- (2792) **Fifth**, a clear majority of respondents who took a view consider that the scope of the Final KAS Commitments and in particular the tangible and intangible assets as

²⁶⁶⁸ Responses to Q11 – Market test on the proposed revised KAS Commitments, question 1.

²⁶⁶⁹ Responses to Q11 – Market test on the proposed revised KAS Commitments, question 2.2.

²⁶⁷⁰ Responses to Q11 – Market test on the proposed revised KAS Commitments, question 3.

²⁶⁷¹ Responses to Q11 – Market test on the proposed revised KAS Commitments, question 3.2.

²⁶⁷² Responses to Q11 – Market test on the proposed revised KAS Commitments, question 4.

²⁶⁷³ Responses to Q11 – Market test on the proposed revised KAS Commitments, question 5.

²⁶⁷⁴ Responses to Q11 – Market test on the proposed revised KAS Commitments, question 6.

²⁶⁷⁵ Responses to Q11 – Market test on the proposed revised KAS Commitments, question 7.

described in the Schedule and Appendixes are sufficient to ensure the viability and competitiveness of the Final KAS Divestment Business in the RTG and straddle and shuttle carrier markets.²⁶⁷⁶

- (2793) **Sixth**, a vast majority of respondents who took a view consider that there are criteria that a suitable buyer should fulfil to ensure the viability and competitiveness of the Final KAS Divestment Business.²⁶⁷⁷ Respondents who took a view have also insisted on the importance of an industry background, global reach and ownership of a strong brand for the purchaser and welcome the purchaser criteria in this regard.
- (2794) However, respondents to the market test still raised the following points of concern:
- (2795) **First**, some respondents voiced being uncertain about the reverse carve-out in light of required plant sharing for a relatively long period and possible risks of confidentiality breach. While a majority of market participants who took a view do not see significant implementation risks for the viability and competitiveness of the straddle and shuttle carrier business in the reverse carve-out of the MEQ business, some consider that there are some implementation risks.²⁶⁷⁸
- (2796) **Second**, several respondents see a potential risk of brand confusion for customers and the industry with regard to the utilisation of the Kalmar brand by two different companies in neighbouring sectors. While a majority of market participants who took a view consider that the opportunity for a partial transfer of the Kalmar brand can ensure the viability and competitiveness of the KAS Divestment Business, a non-negligible number of market participants who took a view took the opposite view.²⁶⁷⁹ A customer explained in this regard: *“It is widely accepted that the concurrent use of a brand by two different parties for similar classes of goods and services gives rise to a risk of confusion in the market and potential dilution of the brand. It is worth noting that the Kalmar brand is generally applied in a highly visible way to substantially durable goods. As such, any brand change over or differentiation exercise may be detracted from by the long tail of a highly visible existing product range. In terms of new business (including for common/non specialised parts and servicing), there is a considerable risk that shared use of the Kalmar brand by both Cargotec and the incoming purchaser will favour the longstanding association of Cargotec with the Kalmar brand. This is especially the case where customers use Kalmar branded products manufactured by both the KAS Divestment Business and the merged entity business. Further, if quality, safety or servicing issues arise in relation to Kalmar branded products manufactured by the merged entity, there is a high risk that those issues would unfairly impact the reputation (and therefore the viability and competitiveness) of the KAS Divestment Business.”*²⁶⁸⁰ Similarly, a GTO commented: *“It would be, however, confusing for the customers and in the industry to have the Kalmar brand being used by two different companies. It would be better if the entire Kalmar brand is being given to the Purchaser (if the Purchaser wants that) and that the merged company establishes its own brand.”*²⁶⁸¹ Likewise, a competitor stated: *“The main issue is represented by the fact that the Merged Entity*

²⁶⁷⁶ Responses to Q11 – Market test on the proposed revised KAS Commitments, question 8.

²⁶⁷⁷ Responses to Q11 – Market test on the proposed revised KAS Commitments, questions 10 and 10.1.

²⁶⁷⁸ Responses to Q11 – Market test on the proposed revised KAS Commitments, question 2.

²⁶⁷⁹ Responses to Q11 – Market test on the proposed revised KAS Commitments, question 3.

²⁶⁸⁰ Response to Q11 – Market test on the proposed revised KAS Commitments, question 3.1.

²⁶⁸¹ Response to Q11 – Market test on the proposed revised KAS Commitments, question 3.1.

*seems to be determined to continue to use the Kalmar brand for its MEQ business. That would inevitably create a lot of confusion and disorientation in the market.”*²⁶⁸²

- (2797) In line with this, around half of the respondents who took a view in the market test consider that the partial use of the Kalmar brand by the purchaser for Port Cranes and HTE and the partial use of the Kalmar brand by the Merged Entity for all other equipment would have a negative impact on awareness of the Kalmar brand.²⁶⁸³ Most of the respondents who clarified the negative impact²⁶⁸⁴ said they see a risk of brand confusion and several respondents expressed that they would prefer a transfer of the Kalmar brand for all equipment. For instance, a GTO explained: *“It will be difficult for the market to distinguish between the brand “Kalmar”-old = selling mobile equipment and “Kalmar”-new = selling STS, RTG & SC. For better separation “Kalmar”-old could be forced to create a new logo, not using the “Kalmar” - red. Or both “Kalmar”-old and “Kalmar”-new could be forced to extend the name. Developing an own brand that can be distinguished from the market will be a huge interest for both parties, as you don’t want to have your reputation depending on another companies performance.”*²⁶⁸⁵
- (2798) **Third**, as regards an alternative rebranding, several market participants clarified that they considered it only feasible if the purchaser had a strong brand and that rebranding would take several years.²⁶⁸⁶ For instance, a customer stated: *“I believe it would be very difficult to introduce a new brand to the marketplace that has no history or credibility in the provision of Port Cranes and HTE. Re-branding with their own brand that is an established provider of such equipment would be feasible.”*²⁶⁸⁷ A competitor commented: *“A purchaser with a strong track record in adjacent businesses would probably have a good basis for a rebranding.”*²⁶⁸⁸ Asked who would have a sufficiently strong brand for such a rebranding market participants commented, for instance: *“Any major OEM in our industry, e.g. ZPMC, Liebherr etc. or any other company from a different industry that is a commonly known and reputable brand”* or *“Any acquirer with an established standing in the logistics equipment sector, which needs not necessarily be a crane manufacturer, would probably have a sufficiently strong brand”* or *“One who possesses a brand of similar strategic brand equity in the material handling or capital goods space.”*²⁶⁸⁹
- (2799) **Fifth** despite the improvements, in response to the market test the Commission only received limited expressions of interest by strategic players acceptable under the purchaser criteria.²⁶⁹⁰

9.4.2.4. The Commission’s Assessment of the Final KAS Commitments

- (2800) In assessing the suitability of the Final KAS Commitments in relation to the markets for the manufacturing and supply of RTGs and the manufacture and supply of straddle and shuttle carriers, the Commission takes into account the following factors.

²⁶⁸² Response to Q11 – Market test on the proposed revised KAS Commitments, question 3.1.

²⁶⁸³ Responses to Q11 – Market test on the proposed revised KAS Commitments, question 3.2.

²⁶⁸⁴ Responses to Q11 – Market test on the proposed revised KAS Commitments, question 3.2.1.

²⁶⁸⁵ Responses to Q11 – Market test on the proposed revised KAS Commitments, question 3.2.1.

²⁶⁸⁶ Responses to Q11 – Market test on the proposed revised KAS Commitments, questions 4.1 and 4.2.

²⁶⁸⁷ Response to Q11 – Market test on the proposed revised KAS Commitments, question 4.1.

²⁶⁸⁸ Responses to Q11 – Market test on the proposed revised KAS Commitments, question 4.2.

²⁶⁸⁹ Responses to Q11 – Market test on the proposed revised KAS Commitments, question 4.2.

²⁶⁹⁰ Response to Q11 – Market test on the proposed revised KAS Commitments, question 11.

- (2801) **First**, as assessed in Section 9.3.2.4 in detail for the KAS Commitments of 9 December 2021, the Final KAS Commitments also remove the entire horizontal overlap brought about by the Transaction in RTGs as well as straddle and shuttle carriers.
- (2802) **Second**, the Final KAS Commitments also consist of a viable and stand-alone business that can compete effectively with the Merged Entity on a lasting basis. The KAS Divestment Business includes all the assets which contribute to its current operation or which are necessary to ensure its viability and competitiveness and all personnel which are currently employed or which are necessary to ensure the business' viability and competitiveness. Specifically, the Final KAS Commitments improve the viability and competitiveness of the KAS Divestment Business in relation to three key aspects.
- (2803) **In the first instance**, the Commission finds that the Final KAS Commitments entirely eliminate the significant risks associated with the transfer of straddle and shuttle carrier assembly line from the Stargard plant. According to the Final KAS Commitments, the straddle and shuttle carrier line will remain in the Stargard plant and the plant as a whole will be divested.
- (2804) Moreover, Cargotec will carve-out all assets and personnel at Stargard used exclusively for Cargotec's mobile equipment business subject to the Monitoring Trustee's view and explicit approval of the Commission. To this effect, Cargotec shall at the latest by the end of the First Divestiture Period make a fully documented and reasoned submission to the Commission containing a list of all the personnel and the main assets at the Stargard Facility which are used exclusively for Cargotec's mobile equipment business and will therefore be carved-out from the KAS Divestment Business and be retained by Cargotec, as well as an indicative timeline for the transfer of the relevant assets out of Stargard. In the light of this safeguard, the Commission does not find any relevant risks flowing from the reverse carve-out of the Hiab and MEQ businesses from the Stargard plant.
- (2805) **In the second instance**, the Commission finds that the revised provisions on branding in the Final KAS Commitments mitigate the significant risks the Commission identified in relation to branding in the KAS Commitments of 9 December 2021. In light of the comments made during the market test and based on previous experience, the Commission considers that the rebranding of the divested Port Cranes and HTE equipment is feasible. The Final KAS Commitments foresee [...].
- (2806) The Commission notes in this regard, that similar rebranding arrangements with licenses and black-out periods were accepted in previous cases for industrial products.²⁶⁹¹ Further, the Commission finds that the 5 year rebranding, followed by a 5 year black-out period foreseen in the Final KAS Commitments, would ensure that customers would not be confused by parallel management of the same brand by two different owners over a too long period of time. It also guarantees that the purchaser, who would have a strong trademark to carry out the rebranding according to the strengthened purchaser criteria, would not be hindered by a reintroduction by the Merged Entity, after the licencing period, of Kalmar products in cranes and straddle

²⁶⁹¹ See, for instance, cases M.9163 – DA Agravis Machinery/Konekesko Eesti/Konekesko Latvija/Konekesko Lietuva/Konekesko Finnish Agromachinery Trade business (Relevant brand: Baltic Agro Machinery); M.8454 – KKR/Pelican Rouge (Relevant brand: Selecta); M.8440 – DuPont/FMC (Health and Nutrition business) (Relevant brand: Grinsted).

carriers. This protection would last five more years after the expiration of the exclusive licence, which is a suitable duration according to respondents to the market test. The Commission notes that a rebranding remedy is acceptable in this case, given that the brand at stake is widely used and a high proportion of its turnover is generated in markets outside those in which these particular competition concerns have been identified (the mobile equipment concerns being addressed by the MEQ Commitments).²⁶⁹² On that basis, the Commission has a preference for this rebranding remedy.

- (2807) **In the third instance**, the Commission finds that the up-front buyer clause added to the Final KAS Commitments mitigates the risks the Commission identified in relation to the limited expressions of interest it received from suitable buyers. In particular, the inclusion of an up-front buyer clause ensures that the Transaction would only be implemented once the Commission has approved a suitable purchaser meeting the (improved) purchaser criteria of the Final KAS Commitments and the binding agreement between the purchaser and Cargotec.
- (2808) **In the fourth instance**, the Commission considers the uncertainties relating to R&D discussed in Section 9.3.2.4 resolved in light of the shared technology arrangements as well as the option for a licence to the relevant IPR or otherwise, a duplicate of the cloud-based environment and functionalities related to the Final KAS Divestment Business included in the Final KAS Commitments.
- (2809) **Finally**, further improvements to the Final KAS Commitments, such as the divestment of the tool box containers further strengthen the viability and competitiveness of the Final KAS Divestment Business.

9.4.2.5. Conclusion on the Final KAS Commitments

- (2810) For the reasons set out in Sections 9.4.2.3 and 9.4.2.4, the Commission considers that the Final KAS Commitments are suitable and sufficient to eliminate the significant impediment to effective competition to which the Transaction would give rise in the EEA markets for RTGs, in the plausible global as well as in the plausible EEA market(s) for straddle and shuttle carriers.

9.4.3. *Structure of the Commitments*

- (2811) Regarding the structure of the Commitments, the Commission notes that no respondents to the market test express any concerns regarding the structure of the Commitments in two distinct remedy packages. Furthermore, the fact that one package originates from Cargotec and one from Konecranes did not trigger any uncertainties among respondents regarding possible lost synergies between both business lines if they come from different Merging Parties. This is consistent with the analysis of the Commission, which has not identified major synergies within Cargotec and Konecranes between both business lines. In relation to the KAS Commitments, the prior agreement of the Commission on the Stargard MEQ assets to be retained by Cargotec guarantees that the Divestment Business will not be deprived of relevant assets because of the reverse carve-out.
- (2812) For the reasons set out in Section 9.4, the Commission considers that the Final MEQ Commitments and the Final KAS Commitments are suitable and sufficient to eliminate the significant impediment to effective competition to which the Transaction would give rise in the EEA markets for RTGs, reach stackers, empty

²⁶⁹² Remedies Notice, paragraph 40.

container handlers and heavy-duty forklift trucks (>10 tonne capacity), in the plausible EEA market(s) for straddle and shuttle carriers, and in relation to customer foreclosure related to mobile equipment spreaders.

9.5. Conclusion on the Commitments

- (2813) Based on the results of the market test, and the assessment of the Commitments, the Final MEQ Commitments and the Final KAS Commitments eliminate the competition concerns identified by the Commission as a result of the proposed Transaction.

10. CONDITIONS AND OBLIGATIONS

- (2814) Pursuant to the second subparagraph of Article 8(2) of the Merger Regulation, the Commission may attach to its decision conditions and obligations intended to ensure that the undertakings concerned comply with the commitments they have entered into vis-à-vis the Commission with a view to rendering the concentration compatible with the internal market.
- (2815) The fulfilment of the measure that gives rise to the structural change of the market is a condition, whereas the implementing steps which are necessary to achieve this result are generally obligations on the Parties. Where a condition is not fulfilled, the Commission's decision declaring the concentration compatible with the internal market is no longer applicable. Where the undertakings concerned commit a breach of an obligation, the Commission may revoke the clearance decision in accordance with Article 8(6) of the Merger Regulation. The undertakings concerned may also be subject to fines and periodic penalty payments under Articles 14(2) and 15(1) of the Merger Regulation.
- (2816) In accordance with the basic distinction described in Recital (2814) as regards conditions and obligations, this Decision should be made conditional, on the one hand, on the full compliance by Konecranes with the Sections B and C of the Final MEQ Commitments²⁶⁹³ (including the MEQ Schedule and Appendices 1 to 5 to the MEQ Schedule) submitted by Konecranes on 6 January 2022 and, on the other hand, on the full compliance by Cargotec with the Sections B and C of the Final KAS Commitments²⁶⁹⁴ submitted on 6 January 2022 and as amended by the Addendum to the KAS Schedule submitted on 20 January 2022 (including the KAS Schedule and Appendices 1 to 12 to the KAS Schedule). All other Sections of both the Final MEQ Commitments and the Final KAS Commitments should be obligations within the meaning of Article 8(2) of the Merger Regulation. The full text of the commitments is attached as Annexes II and III to this Decision and forms an integral part thereof.

HAS ADOPTED THIS DECISION:

Article 1

The notified operation whereby Cargotec Corporation intends to enter into a full merger within the meaning of Article 3(1)(a) of the Merger Regulation with Konecranes Plc is hereby declared compatible with the internal market and the functioning of the EEA Agreement.

²⁶⁹³ Attached to this decision as Annex II.

²⁶⁹⁴ Attached to this decision as Annex III.

Article 2

Article 1 is subject to compliance with the conditions set out in Sections B and C of Annex II and Sections B and C of Annex III.

Article 3

Konecranes Plc shall comply with the obligations set out in the Sections of Annex II not referred to in Article 2.

Article 4

Cargotec Corporation shall comply with the obligations set out in the Sections of Annex III not referred to in Article 2.

Article 5

This Decision is addressed to:

Cargotec Corporation
Porkkalankatu 5
00180 Helsinki
Finland

Konecranes Plc
Koneenkatu 8
05830 Hyvinkää
Finland

Done at Brussels, 24.2.2022

For the Commission

(Signed)
Margrethe VESTAGER
Executive Vice-President

Case M.10078 – CARGOTEC / KONECRANES

ANNEX I : QUANTITATIVE ANALYSIS

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1. INTRODUCTION

- (1) This Annex to the Decision presents a quantitative analysis performed based on Cargotec's and Konecranes' bidding data to assess closeness of competition between the Parties across the different Mobile Equipment markets, namely Empty Container Handlers (ECH), Reach Stackers (RS) and Heavy-duty Forklift Trucks (FLT).
- (2) This annex is structured as follows:
 - (a) Section 2 presents a description of the bidding data received from Cargotec and Konecranes;
 - (b) Section 3 presents the main results of the Commission's analysis;
 - (c) Section 4 presents a number of sensitivities for the main results;
 - (d) Section 5 presents the Commission's assessment of the Parties' Reply to the Statement of Objections ('SO') related to the bidding analysis, in particular Annex 1 to the Reply to the SO.

2. DESCRIPTION OF THE DATA AND ASSUMPTIONS

- (3) To prepare this Annex, the Commission has used the following data:
 - (a) Market shares submitted by Cargotec and Konecranes ('the Parties') in response to Pre-Notification RFI 7. More specifically, file "*M.10078 - RFI PN7 - Annex Q2 – Confidential.xlsx*".
 - (b) Market shares from the Commission's market reconstruction, i.e. collating information on sales revenues from each supplier of Mobile Equipment active in the EEA.
 - (c) Bidding data provided by the Parties in their responses to RFI 16. More specifically, file "*M.10078 - RFI 16 - Annex - QC1 - Confidential.XLSX*" (Cargotec) and "*M.10078 - RFI 16 - Annex - QK1.2 - Confidential.xlsx*" (Konecranes). In terms of bidding data, the Commission requested Cargotec and Konecranes to provide data on all bids in which they have participated for Mobile Equipment during the 2016-2020 period, at the worldwide level.
- (4) In the following, the Commission sets out the main assumptions made in cleaning the data, before calculating the loss ratios presented in Section 3 of this Annex.
- (5) First, in terms of **time frame**, the Commission has focused on the most recent three years, namely 2018-2020.
- (6) Second, in terms of **geographic scope**, the Commission has focussed on the tenders with delivery region equal to "EEA" (excluding the UK). In the Konecranes dataset, variable "Delivery Region" was missing in few tenders. When "Billing Region" was available and equal to "EEA", the Commission assumed the "Delivery Region" to be "EEA" too. However, the Commission notes that for the period 2018-2020, once the observations with missing winner are dropped (see paragraph (8)) all of the remaining observations have an indication for the delivery region.
- (7) Third, in Konecranes data, in a few instances **some tenders were not allocated to a single market (Empty container handlers, Reach stackers or Forklift trucks)**. However, for the 2018-2020 period, such tenders were mostly in Rest of

the World, and only one was in the EEA. This tender was dropped from the analysis.^{1 2}

- (8) Fourth, there were a few tenders for which the winner was indicated as “second hand”, meaning that the customer opted for a second hand solution. The Commission did not take these observations into account because (1) doing so improves comparability of the loss ratios with the benchmark loss ratios calculated based on market shares (since market shares do not account for volumes and revenues relating to second hand sales); and (2) it is impossible to retrieve whether the second hand sale relates to a product of a rival or of the other merging party.³
- (9) Fifth, there were several tenders lost by the Parties for which the **identity of the winner was missing**. The Commission has dropped these from the analysis and Table 1 shows how frequent these instances were.
- (10) The Commission has also dropped one observation from the Konecranes dataset for which the winner was indicated as [tender information].

Table 1. Percentage of tenders lost with information about the winner’s identity

Party	Equipment type	Number of cases lost	Number of lost cases with information on the winner	% of cases lost with information on the winner
Cargotec (Salesforce)	RS	[...]	[...]	97%
	ECH	[...]	[...]	93%
	FLT > 10t	[...]	[...]	90%
Konecranes (Siebel, RUSH, Liftman, LT orders)	RS	[...]	[...]	64%
	ECH	[...]	[...]	66%
	FLT > 10t	[...]	[...]	53%

Note: Numbers refer to all available years 2018-2020, EEA only.

- (11) Sixth, in displaying the results in Section 3, the Commission has grouped under the label “**Others**” all competitors with loss ratio (based on both volume and value) below 5%. However, the following competitors are never classified as “Others”, even when their loss ratios are small: CVS, Liebherr, Svetruck, Sany.
- (12) Seventh, there are instances in the Konecranes data for which the tender has **(a) missing sales volumes, (b) missing value, or (c) missing volume and value**. However, all of these instances coincide with a missing winner identity, so once we drop the tenders with missing winner, all remaining tenders have information on sales volumes and value.
- (13) There are no instances of missing volume or value in Cargotec bidding data.
- (14) Eighth, the lost opportunities data for Konecranes is sourced exclusively from Konecranes’ RUSH reports; the latter includes **sales made by [...]**, as indicated by the Parties⁴. For Cargotec, the Parties state that “*when equipment is sold via an independent dealer, the identity of the end customer is usually not recorded, and*

¹ These statistics are always based on the data that is relevant for the Commission’s analysis, i.e. the tenders lost by Cargotec and Konecranes respectively, over the period 2018-20.

² Contrary to the Commission’s approach, the Parties’ analysis duplicates this tender across the two segments involved. However, since it is impossible to establish how to split the revenues, the Commission decided to drop this tender. The Commission’s conclusions in this annex are in any event not qualitatively affected by the assumption taken in relation to this tender.

³ For the period 2018-20 in the EEA, the Commission dropped 1 tender out of [...] in Empty container handlers, 12 tenders out of [...] in Reach stackers, and 35 tenders out of [...] in Forklift trucks.

⁴ Annex QK1 of Parties’ reply to RFI 16, column H.

competitors' identity is rarely reported".⁵ Since the Commission drops observations with missing winner, it is assumed for Cargotec that the lost opportunities data excludes bids by independent distributors. The Commission considers that this is unlikely to bias the results of the analysis, as there is no reason to believe that the distribution of loss ratios when sales are made via independent distributors are significantly different from the distribution of loss ratios made directly by Cargotec and Konecranes.

3. BIDDING ANALYSIS

3.1. Loss ratios

- (15) In this section, the Commission presents the results of its quantitative analysis of closeness of competition between the Parties, in each segment of Mobile Equipment. The analysis focuses on tenders delivered in the EEA, during 2018-2020.
- (16) The main exercise performed by the Commission consists in checking the magnitude of the loss ratios between the Cargotec and Konecranes based on their bidding data. This is to confirm that in addition to the significant market shares in Mobile Equipment the Parties are also competing closely in the tenders in which they participate, losing frequently to each other.
- (17) The Commission also compared the loss ratios from the bidding analysis against some "benchmark loss ratios", that is, the loss ratios that one would expect between the Parties based on their market shares (that is, assuming that the volumes or revenues lost by each Party are won by its rivals in proportion to their respective market shares).
- (18) The loss ratio between Cargotec [Konecranes] and Konecranes [Cargotec] is calculated as the proportion of volumes (or revenues) lost by Cargotec that is won by Konecranes [Cargotec]. That is, out of the totality of tenders for which Cargotec [Konecranes] participated but did not win, the Commission has calculated the share that was won by Konecranes [Cargotec] instead.
- (19) For each segment, two tables are produced. One for the loss ratios amongst the tenders lost by Cargotec and one for the loss ratios amongst the tenders lost by Konecranes.
- (20) Each table has 5 columns. Column 1 and 2 include loss ratios computed using the bidding data (based on volume and value respectively). Column 3 reports the number of tenders with known winner. Column 4 shows loss ratios computed using the market shares data provided by the Parties. Column 5 shows the loss ratios based on the market shares from the Commission's market reconstruction. The sum over each column has to equal 1, except for the "Number of tenders" column, whose sum is the total number of tenders lost by the relevant merging party in the given segment.

3.1.1. Reach stackers

- (21) Table 2 presents the loss ratios for Cargotec's lost bids. The loss ratios to Konecranes is high ([...]%). The Commission notes that the loss ratio to Konecranes is smaller than expected based on market share and reconstruction based loss ratios. However, these loss ratios still indicate a high degree of

⁵ Parties' reply to Pre-Notification RFI 1, Question 3.

closeness, as Cargotec loses to Konecranes more than a third of its bids –more than to any other competitor.

- (22) CVS and Hyster also appear to be competitive constraints to Cargotec, based on the bidding data, with loss ratios of [...] % and [...] % respectively. However, the Commission notes that a more granular analysis at the country level (see Section 4.1) suggests that the wins of CVS and Hyster are rather concentrated only in certain countries. This is different from Konecranes, who appears to win tenders lost by Cargotec in a broader set of countries.

Table 2. Reach Stackers: Cargotec Loss Ratios EEA, 2018-2020

	Loss ratio (value)	Loss ratio (volume)	Number of tenders	Benchmark loss ratio – Parties’ shares	Benchmark loss ratio – EC reconstruction
Konecranes	[...]	[...]	[...]	[...]	[...]
Cvs	[...]	[...]	[...]	[...]	[...]
Hyster	[...]	[...]	[...]	[...]	[...]
Liebherr	[...]	[...]	[...]	[...]	[...]
Sany	[...]	[...]	[...]	[...]	[...]
Other	[...]	[...]	[...]	[...]	[...]
Total	[...]	[...]	[...]	[...]	[...]

Note: Others in columns LR includes Linde, CCH_AB, TerberL. Others in column EC reconstruction includes: CES, FTMH, Up Lifting.

- (23) Table 3 presents the results for Konecranes. Cargotec seems by a [...] the most important competitive constraint to Konecranes in this market, with loss ratios [...]. This loss ratio is broadly in line with the expectation based on Cargotec’s high market share of [...].⁶

Table 3. Reach Stackers: Konecranes Loss Ratios EEA, 2018-2020

	Loss ratio (value)	Loss ratio (volume)	Number of tenders	Benchmark loss ratio – Parties’ shares	Benchmark loss ratio – EC reconstruction
Cargotec	[...]	[...]	[...]	[...]	[...]
Cvs	[...]	[...]	[...]	[...]	[...]
Hyster	[...]	[...]	[...]	[...]	[...]
Liebherr	[...]	[...]	[...]	[...]	[...]
Sany	[...]	[...]	[...]	[...]	[...]
Other	[...]	[...]	[...]	[...]	[...]
Total	[...]	[...]	[...]	[...]	[...]

Note: Others in LR columns includes Baumann, FTMH, Up Lifting; Others in EC reconstruction includes: CES, FTMH, Up Lifting.

⁶ Based on the Parties’ data.

3.1.2. Empty container handlers

- (24) According to the loss ratios in Table 4, Cargotec's most important competitor is Hyster, with a loss ratio of [...]. Konecranes is the second strongest constraint to Cargotec (and only significant constraint other than Hyster), with a loss ratio [...], above the expectation based on market shares.

Table 4. Empty Container Handlers: Cargotec Loss Ratios EEA, 2018-2020

	Loss ratio (value)	Loss ratio (volume)	Number of tenders	Benchmark loss ratio – Parties' shares	Benchmark loss ratio – EC reconstruction
Konecranes	[...]	[...]	[...]	[...]	[...]
Cvs	[...]	[...]	[...]	[...]	[...]
Ftmh	[...]	[...]	[...]	[...]	[...]
Hyster	[...]	[...]	[...]	[...]	[...]
Sany	[...]	[...]	[...]	[...]	[...]
Svetruck	[...]	[...]	[...]	[...]	[...]
Other	[...]	[...]	[...]	[...]	[...]
Total	[...]	[...]	[...]	[...]	[...]

Note: Others in EC reconstruction include: Up Lifting.

- (25) Table 5 presents the results for Konecranes. Cargotec captures [...] that Konecranes loses, with loss ratios [...]. These are [...] the loss ratios expected based on market-shares. The only significant additional constraint to Konecranes is Hyster.

Table 5. Empty Container Handlers: Konecranes Loss Ratios EEA, 2018-2020

	Loss ratio (value)	Loss ratio (volume)	Number of tenders	Benchmark loss ratio – Parties' shares	Benchmark loss ratio – EC reconstruction
Cargotec	[...]	[...]	[...]	[...]	[...]
Cvs	[...]	[...]	[...]	[...]	[...]
Ftmh	[...]	[...]	[...]	[...]	[...]
Hyster	[...]	[...]	[...]	[...]	[...]
Sany	[...]	[...]	[...]	[...]	[...]
Svetruck	[...]	[...]	[...]	[...]	[...]
Other	[...]	[...]	[...]	[...]	[...]
Total	[...]	[...]	[...]	[...]	[...]

Note: Other in EC reconstruction includes Up Lifting.

- (26) The Commission notes that this is the market with the smallest number of tenders available. As a robustness check, in Section 4.2 the Commission computed the loss ratios for the entire time period for which data is available (2016-2020). The results of the sensitivity analysis confirm the qualitative conclusions from Table 4 and Table 5.

3.1.3. Heavy-duty forklift trucks

- (27) Table 6 presents the loss ratios for Cargotec in Heavy-duty forklift trucks. According to the bidding data, three competitors, namely Konecranes, Hyster and Svetruck, exert significant competitive pressure on Cargotec. Konecranes captures [...] % of the tenders lost by Cargotec, Hyster [20-30] % and Svetruck [...] %. Results are mostly in line with those based on market shares.

Table 6. Forklift Trucks: Cargotec Loss Ratios EEA, 2018-2020

	Loss ratio (value)	Loss ratio (volume)	Number of tenders	Benchmark loss ratio – Parties’ shares	Benchmark loss ratio – EC reconstruction
Konecranes	[...]	[...]	[...]	[...]	[...]
Cvs	[...]	[...]	[...]	[...]	[...]
Hyster	[...]	[...]	[...]	[...]	[...]
Linde	[...]	[...]	[...]	[...]	[...]
Other Fem	[...]	[...]	[...]	[...]	[...]
Other Jiva	[...]	[...]	[...]	[...]	[...]
Sany	[...]	[...]	[...]	[...]	[...]
Svetruck	[...]	[...]	[...]	[...]	[...]
Other	[...]	[...]	[...]	[...]	[...]
Total	[...]	[...]	[...]	[...]	[...]

Note: Other in DR columns includes Carer, Doosan, Hangcha, Mitsubishi, Mora, Still. Other in Reconstruction column includes Doosan, FTMH, Hyundai.

- (28) Table 7 presents the loss ratios for Konecranes’ competitors. Cargotec is the main competitive constraint to Konecranes in this market, capturing [...] % of the bids lost by Konecranes, suggesting even more closeness than expected based on market shares. Hyster captures [...] % and Svetruck [...] %.

Table 7. Forklift Trucks: Konecranes Loss Ratios EEA, 2018-2020

	Loss ratio (value)	Loss ratio (volume)	Number of tenders	Benchmark loss ratio – Parties’ shares	Benchmark loss ratio – EC reconstruction
Cargotec	[...]	[...]	[...]	[...]	[...]
Cvs	[...]	[...]	[...]	[...]	[...]
Hyster	[...]	[...]	[...]	[...]	[...]
Linde	[...]	[...]	[...]	[...]	[...]
Other Fem	[...]	[...]	[...]	[...]	[...]
Other Jiva	[...]	[...]	[...]	[...]	[...]
Sany	[...]	[...]	[...]	[...]	[...]
Svetruck	[...]	[...]	[...]	[...]	[...]
Other	[...]	[...]	[...]	[...]	[...]
Total	[...]	[...]	[...]	[...]	[...]

Note: Other in LR columns includes Combilift, Daewoo, Hyundai, Merlo. Other in column Reconstruction includes Doosan, FTMH, Hyundai.

4. APPENDIX I – SENSITIVITY ANALYSES

- (29) This Appendix presents the results of two sensitivity analyses; first, given the low number of tenders in EEA when focusing on 2018-2020 (for both Cargotec and Konecranes), we repeat the calculation of the loss ratios based on all available observations.
- (30) Second, specifically for Reach Stackers and EEA, based on the Cargotec bidding data, we have examined loss ratios per country, as well as calculate the distribution of competitors' successes across countries.

4.1. Sensitivity analysis I: Country-based analysis of loss ratios in Reach stackers

- (31) Table 8 shows the volume-based loss ratios per country for Cargotec's three main competitors in EEA, in Reach Stackers. The columns named CVS, Hyster and Konecranes contain the loss ratios to these competitors in each country.
- (32) In the "Total" column, the loss ratios of the three competitors are summed. This sum need not equal to 1, as there might exist other competitors to whom Cargotec loses tenders. The Commission notes that in seven of the countries listed, the sum is indeed 1, that is, only three competitors of Cargotec are successful in capturing tenders lost by Cargotec.
- (33) It is clear from the table that Konecranes is a constraint to Cargotec EEA-wide, winning tenders lost by Cargotec in almost all countries. To the contrary, competitors like CVS appear to be significantly more focussed on certain countries.

Table 8. EEA, 2018-2020, Cargotec's loss ratios to its main competitors.

Country	CVS	Hyster	Konecranes	Total	Tenders in country
Austria	[...]	[...]	[...]	[...]	[...]
Belgium	[...]	[...]	[...]	[...]	[...]
Czech Republic	[...]	[...]	[...]	[...]	[...]
Finland	[...]	[...]	[...]	[...]	[...]
France	[...]	[...]	[...]	[...]	[...]
Germany	[...]	[...]	[...]	[...]	[...]
Italy	[...]	[...]	[...]	[...]	[...]
Lithuania	[...]	[...]	[...]	[...]	[...]
Malta	[...]	[...]	[...]	[...]	[...]
Netherlands	[...]	[...]	[...]	[...]	[...]
Norway	[...]	[...]	[...]	[...]	[...]
Poland	[...]	[...]	[...]	[...]	[...]
Portugal	[...]	[...]	[...]	[...]	[...]
Spain	[...]	[...]	[...]	[...]	[...]
Sweden	[...]	[...]	[...]	[...]	[...]

Note: Loss ratios calculated based on the bidding-data volumes.

- (34) In Table 9, the Commission examines the distribution per country of each competitor's tenders won.⁷ This confirms again that while Konecranes is a constraint to Cargotec EEA-wide (as its tenders won –among those lost by Cargotec- are spread across all countries), competitors like CVS appear to be significantly more focused on certain countries.

⁷ Each column in Table 9 sum to 100%.

- (35) For instance, out of all (35) tenders that CVS has won (among those lost by Cargotec), 51% are in Italy. This information can be used to assess the relative importance of each country-market to each of Cargotec's major competitors.

Table 9. EEA 2018-2020, Distribution of Cargotec's competitors' wins across countries.

Country	CVS	Hyster	Konecranes
Austria	[...]	[...]	[...]
Belgium	[...]	[...]	[...]
Czech Republic	[...]	[...]	[...]
Finland	[...]	[...]	[...]
France	[...]	[...]	[...]
Germany	[...]	[...]	[...]
Italy	[...]	[...]	[...]
Lithuania	[...]	[...]	[...]
Malta	[...]	[...]	[...]
Netherlands	[...]	[...]	[...]
Norway	[...]	[...]	[...]
Poland	[...]	[...]	[...]
Portugal	[...]	[...]	[...]
Spain	[...]	[...]	[...]
Sweden	[...]	[...]	[...]
Total	[...]	[...]	[...]

Note: Loss ratios calculated based on the bidding-data volumes.

4.2. Sensitivity analysis II: Loss ratios for Empty container handlers based on full sample 2016-2020

- (36) In Table 10 and Table 11, the Commission presents loss ratios computed using the entire available time period of bidding data (2016-2020). This is a robustness check for the results presented for Empty container handlers (see Section 3.1.2), due to the smaller number of observations in that market, compared to the other markets.
- (37) Using the expanded dataset results in higher loss ratios between the Parties, especially in terms of diversion from Cargotec to Konecranes. Indeed, in Table 10 the loss ratios to Konecranes increase to [...] -circa [...] more than the corresponding values in Table 4. These results confirm the robustness of the conclusions drawn based on Table 4 and Table 5. Focussing on a larger number of tenders (longer time period) further increases the closeness between the parties.

Table 10. Cargotec loss ratios for ECH, EEA, 2016-2020

	Loss ratio (value)	Loss ratio (volume)	Number of tenders	Benchmark loss ratio – Parties' shares	Benchmark loss ratio – EC reconstruction
Konecranes	[...]	[...]	[...]	[...]	[...]
Cvs	[...]	[...]	[...]	[...]	[...]
Hyster	[...]	[...]	[...]	[...]	[...]
Sany	[...]	[...]	[...]	[...]	[...]
Svetruck	[...]	[...]	[...]	[...]	[...]
Other	[...]	[...]	[...]	[...]	[...]
Total	[...]	[...]	[...]	[...]	[...]

Note: "Other" in column EC reconstruction includes Up Lifting.

Table 11. Konecranes loss ratios for ECH, EEA, 2016-2020

	Loss ratio (value)	Loss ratio (volume)	Number of tenders	Benchmark loss ratio – Parties’ shares	Benchmark loss ratio – EC reconstruction
Cargotec	[...]	[...]	[...]	[...]	[...]
Cvs	[...]	[...]	[...]	[...]	[...]
Hyster	[...]	[...]	[...]	[...]	[...]
Sany	[...]	[...]	[...]	[...]	[...]
Svetruck	[...]	[...]	[...]	[...]	[...]
Others	[...]	[...]	[...]	[...]	[...]
Total	[...]	[...]	[...]	[...]	[...]

Note: “Others” in column EC reconstruction includes FTMH, Up Lifting. “Others” in column Parties’ shares includes FTMH.

5. APPENDIX II – COMMISSION’S ASSESSMENT OF THE PARTIES’ REPLY TO THE SO

- (38) In the Reply to the SO⁸, the Parties raised a number of arguments against the validity of the Commission’s analysis of bidding data presented in Annex I to the SO.
- (39) This section summarises the main claims of the Parties and provides explanations of why the bidding analysis is solid and informative on closeness of competition between Cargotec and Konecranes.

5.1. Critique of the completeness and reliability of the bidding data

- (40) The Parties claim that the bidding data is incomplete and contains limitations that would not allow the Commission to reach solid conclusions by relying on it.
- (41) In particular, the Parties claim that the coverage of the bidding data is too limited because (1) the Parties do not always record tenders in their internal databases and (2) even for the tenders they record, the identity of the winner is not always available. In the Parties’ view, *“a significant proportion of MEQ sales opportunities is not taken into account in the analysis in the SO’s Annex I. To the extent that these excluded sales opportunities are materially different than the ones considered in the analysis, (i.e. the set of opportunities for which data are available is not a representative sample), there is a clear risk that the analysis in the SO’s Annex I is biased.”*⁹
- (42) In this respect, the Commission notes that the incompleteness of the bidding data cannot be claimed to generate a bias against the Parties (that is, an overestimation of the loss ratios between Cargotec and Konecranes). The Parties have not provided any explanation on the direction of this potential bias, nor did they try to explain why dropping the observations for which the winner is missing could lead to an overestimation of Parties’ closeness of competition. In Commission’s view, without any further evidence, the required reduction of the sample for cleaning purposes does not lead to any bias against the Parties.¹⁰

⁸ Especially Annex 1 to Reply to the SO.

⁹ Annex 1 to the Reply to the SO, paragraph 4.2.

¹⁰ The Commission also notes that the figures provided in Table 1 of Annex 1 to the Reply to the SO (reporting the Parties’ estimate of the proportion of tenders for which data is available) are biased downwards because they assume that the Parties have participated in all the tenders that were eventually won by their rivals – which is highly unlikely.

- (43) Even the Parties, in the Data Room Report, acknowledge that there is a priori no reason to believe that the information from the tenders with missing winner identity would have generated higher or lower loss ratios between the Parties.¹¹ Therefore, a priori it is impossible to state that the Commission's analysis contains a bias against the Parties' case. Given the impossibility by the Parties to provide the missing data, the analysis performed by the Commission represents a correct technical use that can be made of the Parties' bidding data and is, in the Commission's view, a valuable complement to the qualitative analysis of closeness of competition between the Parties. The loss ratios calculated based on the available data are thus informative on closeness of competition.

5.2. Critiques on the scope of the bidding analysis

- (44) The Parties claim that the Commission should have collected additional data "*to conduct a rigorous bidding analysis*".¹²
- (45) In particular, they contend that "*Parties' bidding data present significant limitations, which make it impossible to analyse several issues relevant to the assessment of closeness of competition, such as:*
- a. *the frequency with which the Parties compete against each other,*
 - b. *the number of competitors usually competing in tenders, or*
 - c. *the ranking of competitors in tenders, and the frequency with which one Party is the second-best alternative (i.e. the runner-up) when the other Party wins.*"¹³
- (46) The Commission points out that if more complete data were available, additional analysis could have been carried out. However, this does not mean that any analysis based on the data available in this case is uninformative. Together with the qualitative information available (for example, from internal documents and customers' questionnaires)¹⁴, the quantitative data available suggests that the Parties are close competitors in a competitive landscape where tenders are usually not crowded.
- (47) The Parties add that "*an analysis of the opportunities won by each of the Parties, taking into consideration both the runner-up and the difference between the second and third best competitors in each case*"¹⁵ has not been conducted and therefore it is not possible to "*quantitatively assess the extent to which the Parties constrain each other*"¹⁶. In this case two remarks are in order.
- (48) In the first place, information on "*the [cost] difference between the second and third best competitors*" is important to understand the possible change of prices following a merger only if tenders are carried out by means of second-price auctions with homogeneous products.¹⁷ In the present case, there is no evidence

¹¹ See Section 2.2. of the Data Room Report.

¹² Annex 1 to the Reply to the SO, paragraph 3.

¹³ Annex 1 to the Reply to the SO, paragraph 1.6.

¹⁴ See Section 7.4.1 (Reach stackers), 7.4.2 (Empty container handlers) and 7.4.3 (Heavy-d forklift trucks) of the Decision.

¹⁵ Annex 1 to the Reply to the SO, paragraph 3.2.

¹⁶ Annex 1 to the Reply to the SO, paragraph 3.2.

¹⁷ This is because in second price auctions with homogeneous products (1) every bidding firm offers a price equal to its cost and (2) the price paid by the winner is equal to the price offered by the second best bidder. In such a setting the only merger having an effect on the equilibrium price is a merger between the first and the second best competitor (i.e. the two competitors with lowest costs). After

that tenders are organised as a second-price auction (for instance, because competing firms do not have full transparency on the characteristics of offers made by competitors and how customers value the different offers—as would be required by a second price auction).¹⁸ In this case, the bidding behaviour is more appropriately thought of as a first price auction, where bidders sell differentiated products (e.g. in terms of quality, after-sale service, etc.). Therefore, the Parties' remark is not pertinent.

- (49) In the second place, the Commission considers that the level of market shares, the available qualitative information¹⁹ and evidence from loss ratios that the Parties are close competitors are sufficient to infer the likelihood of significant price effects in a post-merger scenario.
- (50) In a tender setting where competitors have imperfect information about each others' bids, competition resembles the standard differentiated product competition with posted prices. In this context, the expected price increase stemming from a merger of two close competitors is higher than when the two merging firms are less close competitors.²⁰ In the present case, the loss ratio analysis of the Commission contributes quantitative evidence towards establishing the closeness of competition between Cargotec and Konecranes.

5.3. Critiques of Sensitivity I (country-level analysis in Reach Stackers)

- (51) In this section, the Commission addresses the critiques to its country-level sensitivity analysis, that according to the Parties is “irrelevant” and “seriously flawed”²¹.
- (52) First, the Parties' contest the Commission's choice of performing an analysis at the country-level. According to the Parties' “[...] *the market is at least European-wide, if not worldwide in scope. A loss analysis at the individual country level does not give an accurate picture of the competitive landscape.*”²² In this respect, the Commission points out that, despite an EEA-wide relevant market, a country-level analysis provides insightful information. For instance, it highlights the fact that certain competitors' reach is considerably smaller than EEA, contrary to the Parties.
- (53) Second, the Parties contend that “[t]he country-level sensitivity analysis relies on a small number of observations. Four of the 15 EEA countries for which there are opportunities lost by Cargotec include only one tender for the period analysed. No conclusion can be drawn based on such a small number of observations”. The Commission acknowledges that the number of observations per country is low, but highlights that the scope of the exercise is not to provide an estimate of the country-based loss ratios, but rather showing that the constraint imposed by Hyster

such a merger, the equilibrium price would move from a level equal to the second best bidder's cost to the level of the third best bidder's cost.

¹⁸ See M.7278 – General Electric/ALSTOM (Thermal Power - Renewable Power & Grid business), Annex I, Section 3 for the circumstances under which a second price auction (rather than a first price auction) is the more appropriate characterisation of a bidding market.

¹⁹ See Section 7.4.1 (Reach stackers), 7.4.2 (Empty container handlers) and 7.4.3 (Heavy-d forklift trucks) of the Decision.

²⁰ See M.7278 – General Electric/ALSTOM (Thermal Power - Renewable Power & Grid business), Annex I, pages 9-12, and references therein.

²¹ Annex 1 to the Reply to the SO, paragraph 4.5.

²² Annex 1 to the Reply to the SO, paragraph 4.5.

and CVS is not uniform across the EEA, but rather concentrated across a few countries.

- (54) Third, the Parties criticise “*the reasoning to exclude Hyster and CVS as strong competitors*”²³. More specifically, they claim that the reasoning contained in Annex 1 to the SO, according to which “*Konecranes is a constraint to Cargotec EEA-wide, winning tenders lost by Cargotec in almost all countries [and that] competitors like CVS appear to be significantly more focused on certain countries.*”²⁴ is flawed. According to the Parties, “[t]his argument assumes that, for Cargotec to face a strong competitive constraint, it must not only face a strong competitor in each country, but this must always be the same competitor. This is a fallacy. If Hyster exerts significant pressure in country A and CVS exerts significant pressure in country B then Cargotec faces significant pressure in both countries.”²⁵
- (55) In this respect, the Commission clarifies that nowhere it has claimed that “*for Cargotec to face a strong competitive constraint, it must not only face a strong competitor in each country, but this must always be the same competitor*”. The purpose of the country-level analysis was to show that while at the EEA level it may appear that Cargotec, in addition to Konecranes, faces two significant rivals (Hyster and CVS) attracting [...] and [...] respectively of the tenders lost by Cargotec in the EEA, these two rivals’ competitive pressure is not homogeneous across the entire EEA. Rather, they seem to focus on a limited number of countries. Because tenders are organised on a country basis, it is relevant to document in which parts of the EEA each rival is a constraint or not.
- (56) Fourth, the Parties add that “[o]f the [number] countries with more than one opportunity, either Hyster or CVS alone capture roughly [...] to [...] of the volume lost by Cargotec.”²⁶ This statement is incorrect: among the [...] countries with more than one opportunity, in five ([countries]) Hyster or CVS capture [...] of the volume lost by Cargotec, and in four ([countries]) the volume won goes even [...] ²⁷. Moreover, the above statement also neglects the evidence on the volumes lost by Konecranes, which are frequently lost in favour of Cargotec ([...]) while Hyster and CVS emerge as significantly less strong competitive constraints (winning [...] and [...] of volume, respectively).²⁸
- (57) Fifth, Annex 1 to the Reply to the SO points out that: “*the Commission has excluded Sany from the country-level sensitivity analysis, despite the fact that, in several EEA countries, Sany captures a significant fraction of volumes lost by Cargotec. In particular, Sany captured [...] of volumes lost by Cargotec in [countries]. Furthermore, had the Commission included the UK in its analysis, which it should have, the sensitivity analysis would have also shown that Sany captures [...] of volumes lost by Cargotec in the UK, while Konecranes captures [...].*”²⁹ In this respect, the Commission reiterates that the exclusion of Sany is due to the fact that, overall, it is a marginal competitor. Indeed, based on the market reconstruction, Sany has a market share of [0-5]% and a loss ratio equal to [0-5]%

²³ Annex 1 to the Reply to the SO, paragraph 4.7.

²⁴ Annex 1 to SO, par 35.

²⁵ Annex 1 to the Reply to the SO, paragraph 4.7.

²⁶ Annex 1 to the Reply to the SO, paragraph 4.7.

²⁷ Annex 1 to SO, Table 8.

²⁸ Annex 1 to SO, Table 3.

²⁹ Annex 1 to the Reply to the SO, paragraph 4.8.

in the Reach Stacker market.³⁰ Thus, despite winning a higher share of volume lost by Cargotec in countries such as [countries], Sany remains a small competitor in the EEA-wide market. In addition, the aim of the exercise was primarily to assess the geographical distribution of the tenders won by Hyster and CVS, since these competitors have similar – albeit lower – loss ratios as Konecranes (from Cargotec).

5.4. Critiques of Sensitivity II (2016-2020 analysis for Empty Container Handlers)

- (58) In the Data Room Report, the Parties noted that (1) the benchmark loss ratios based on the Parties' shares were calculated incorrectly (based on revenues data for 2020, as opposed to volumes data for 2016-2020) and (2) the benchmark ratio for 2016-2020 based on the Commission's market reconstruction did not include sales made by Sany, FTMH or CES.³¹
- (59) As regards point (1) above, the Commission has corrected the mistake, as indeed a correct calculation had to be based on 2016-2020 volumes rather than 2020 revenues. The tables related to Appendix II (see Section 4.2) now present the correct figures. The update generated only a very minor change in the resulting numbers (compared to the corresponding tables shown in the SO). As a result, this change does not alter the Commission's conclusions in Appendix II.
- (60) As regards point (2) above, the Commission notes that the issue was related to the fact that Sany, FTMH and CES were not capable of providing sales volumes data for 2016 and 2017. In response to the Parties' comment, the Commission included for these competitors at least the sales for 2018-2020. This inclusion does not change the non-confidential ranges presented in the tables of Appendix II (see Section 4.2). While the sales volumes for these competitors are still missing for 2016 and 2017, given the limited size of these competitors in Empty Container Handlers, this data limitation is unlikely to materially affect the Commission's conclusions.

5.5. Minor computation errors

- (61) After the Reply to the SO, the Commission noticed a number of minor issues with its analysis, which had to be corrected. Part of these are related to points raised by the Parties in Annex 1 to the Reply to the SO. The corrections do not change the qualitative conclusions made in the SO, and in fact even the quantitative results are essentially the same.
- (62) Specifically, the Commission has corrected the following:
- (a) In relation to the Konecranes data, in the analysis presented in Annex I to the SO, the Commission dropped the tenders referring to "second hand".³² However, this was not done for the purpose of Table 1 of Annex I to the SO. This is now corrected.
 - (b) In relation to the Konecranes data, in the analysis presented in Annex I to the SO, the Commission replaced the variable "delivery region" to EEA when the billing region was missing but the variable "billing region" was marked as EEA. However, this was not done for the purpose of Table 1 of Annex I to the SO. This is now corrected.

³⁰ Annex 1 to SO, Table 2.

³¹ See Data Room Report, Section 2.4.

³² See Annex I to the SO, paragraph 10.

- (c) In relation to Cargotec data, the Parties noted in the Reply to the SO³³ that the Commission's analysis in the SO had not correctly reflected the fact that different rows in the bidding dataset sometimes corresponded to the same tender opportunity. This led to some double counting in the number of tenders and revenues. For instance, one sales opportunity for two Reach Stackers can be reported in two entries, each for one reach stacker for total price of EUR 0.8 million (EUR 0.4 million each). In this case, the SO analysis was counting two separate opportunities with a combined value of EUR [...], while it actually is only one opportunity worth EUR [...]. This is now corrected.
- (63) Finally, the Commission notes that one tender in the Konecranes data has a segment labelled as "ECH, RS". While the Parties in their analysis in the Reply to the SO split the tender across the two products, the Commission has decided to drop it because the revenues data cannot be split across the two products. In any event, the results are not materially affected irrespectively of one or the other approach.
- (64) This Annex presents updated results addressing the points above. The same results have also been presented in the Letter of Facts of 2 December 2021.

³³ See Annex 1 to the Reply to the SO, paragraph 4.10.

January 6, 2022

Case COMP/M. 10078 – Cargotec / Konecranes

COMMITMENTS TO THE EUROPEAN COMMISSION

Pursuant to Article 8(2) of Council Regulation (EC) No 139/2004 (the “**Merger Regulation**”), Konecranes Plc (including its Affiliated Undertakings, “**Konecranes**”) and Cargotec Corporation (including its Affiliated Undertakings, “**Cargotec**”, and together with Konecranes, the “**Parties**”) hereby enter into the following Commitments (the “**Commitments**”) vis-à-vis the European Commission (the “**Commission**”) with a view to rendering the proposed merger between Cargotec and Konecranes (the “**Transaction**”) compatible with the internal market and the functioning of the EEA Agreement by a decision pursuant to Article 8(2) of the Merger Regulation (the “**Decision**”). The Commitments shall take effect upon the date of adoption of the Decision and be subject to Closing of the Transaction.

This text shall be interpreted in light of the Decision, in the general framework of European Union law, in particular in light of the Merger Regulation, and by reference to the Commission Notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004 (the “**Remedies Notice**”).

The Schedule and its Appendices form an integral part of the Commitments.

Section A. Definitions

1. For the purposes of these Commitments, the following terms shall have the following meaning:
 - **Affiliated Undertakings:** undertakings controlled by the Parties, whereby the notion of control shall be interpreted pursuant to Article 3 of the Merger Regulation and in light of the Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (the “**Consolidated Jurisdictional Notice**”).
 - **Assets:** the assets that contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business, as indicated in Section B, paragraph 6 and described more in detail in the Schedule.
 - **Cargotec:** Cargotec Corporation, incorporated under the laws of Finland, with its registered office at Porkkalankatu 5, 00180 Helsinki, Finland and registered with the Finnish Business Register under Business Identity Code 1927402-8.
 - **Closing:** the transfer of the legal title to the Divestment Business to the Purchaser.

- **Closing Period:** the period of [...] from the approval of the Purchaser and the terms of sale by the Commission.
- **Confidential Information:** any business secrets, know-how, commercial information, or any other information of a proprietary nature that is not in the public domain.
- **Conflict of Interest:** any conflict of interest that impairs the Trustee's objectivity and independence in discharging its duties under the Commitments.
- **Divestment Business:** the business as defined in Section B and in the Schedule which Konecranes commits to divest.
- **Divestiture Trustee:** one or more natural or legal person(s) who is / are approved by the Commission and appointed by Konecranes and who has / have received from Konecranes the exclusive Trustee Mandate to sell the Divestment Business to a Purchaser at no minimum price.
- **Effective Date:** the date of adoption of the Decision.
- **First Divestiture Period:** the period of [...] from the Effective Date.
- **Hold Separate Manager:** the person appointed by Konecranes to manage the day-to-day operation of the Divestment Business under the supervision of the Monitoring Trustee.
- **Key Personnel:** all personnel necessary to maintain the viability and competitiveness of the Divestment Business, as listed in the Schedule, including the Hold Separate Manager.
- **Konecranes:** Konecranes Plc, incorporated under the laws of Finland, with its registered office at Koneenkatu 8, 05830, Hyvinkää, Finland, and its Affiliated Undertakings.
- **Monitoring Trustee:** one or more natural or legal person(s) who is / are approved by the Commission and appointed by Konecranes and/or Cargotec, and who has / have the duty to monitor the Parties' compliance with the conditions and obligations attached to the Decision.
- **Parties:** Konecranes and Cargotec.
- **Personnel:** all staff currently employed by the Divestment Business, including staff seconded to the Divestment Business, shared personnel as well as the additional personnel listed in the Schedule.
- **Purchaser:** the entity approved by the Commission as acquirer of the Divestment Business in accordance with the criteria set out in Section D.

- **Purchaser Criteria:** the criteria laid down in paragraph 16 of these Commitments that the Purchaser must fulfil in order to be approved by the Commission.
- **Schedule:** the schedule to these Commitments describing more in detail the Divestment Business.
- **Trustee(s):** the Monitoring Trustee and / or the Divestiture Trustee as the case may be.
- **Trustee Divestiture Period:** the period of [...] from the end of the First Divestiture Period.

Section B. The commitment to divest and the Divestment Business

Commitment to divest

2. In order to maintain effective competition, Konecranes commits to divest, or procure the divestiture of, the Divestment Business by the end of the Trustee Divestiture Period as a going concern to a Purchaser and on terms of sale approved by the Commission in accordance with the procedure described in paragraph 17 of these Commitments. To carry out the divestiture, the Parties commit to find a Purchaser and to enter into a final binding sale and purchase agreement for the sale of the Divestment Business within the First Divestiture Period. If Konecranes has not entered into such an agreement at the end of the First Divestiture Period, Konecranes shall grant the Divestiture Trustee an exclusive mandate to sell the Divestment Business in accordance with the procedure described in paragraph 29 in the Trustee Divestiture Period.
3. The Transaction shall not be implemented before Konecranes or the Divestiture Trustee has entered into a final binding sale and purchase agreement for the sale of the Divestment Business and the Commission has approved the purchaser and the terms of sale in accordance with paragraph 16.
4. The Parties shall be deemed to have complied with this commitment if:
 - (a) by the end of the Trustee Divestiture Period, Konecranes or the Divestiture Trustee has entered into a final binding sale and purchase agreement and the Commission approves the proposed purchaser and the terms of sale as being consistent with the Commitments in accordance with the procedure described in paragraph 16; and
 - (b) the Closing of the sale of the Divestment Business to the Purchaser takes place within the Closing Period.
5. In order to maintain the structural effect of the Commitments, the Parties shall, for a period of ten (10) years after Closing, not acquire, whether directly or indirectly, the possibility of exercising influence (as defined in paragraph 43 of the Remedies Notice, footnote 3) over the whole or part of the Divestment Business, unless, following the submission of a reasoned request from the Parties showing good cause and accompanied by a report from the Monitoring Trustee (as provided in paragraph 43 of

these Commitments), the Commission finds that the structure of the market has changed to such an extent that the absence of influence over the Divestment Business is no longer necessary to render the Transaction compatible with the internal market.

Structure and definition of the Divestment Business

6. The Divestment Business consists of the entirety of Konecranes' global Lift Trucks business (the "**MEQ Business**"), which is Konecranes' business for the manufacturing, and commercialization of reach stackers, full container handlers, empty container handlers, as well as forklift trucks (together "**MEQ**") and related spare parts and technical support. The legal and functional structure of the Divestment Business as operated to date is described in the Schedule. The Divestment Business, described in more detail in the Schedule, includes all assets and staff that contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business, in particular:
 - (a) all tangible and intangible assets (including intellectual property rights);
 - (b) all licenses, permits and authorizations issued by any governmental organisation for the benefit of the Divestment Business;
 - (c) all contracts, leases, commitments and customer orders of the Divestment Business; all customer, credit and other records of the Divestment Business; and
 - (d) the Personnel.

Section C. Related commitments

Preservation of viability, marketability and competitiveness

7. From the Effective Date until Closing, Konecranes shall preserve or procure the preservation of the economic viability, marketability and competitiveness of the Divestment Business, in accordance with good business practice, and shall minimise as far as possible any risk of loss of competitive potential of the Divestment Business. In particular Konecranes undertakes:
 - (a) not to carry out any action that might have a significant adverse impact on the value, management or competitiveness of the Divestment Business or that might alter the nature and scope of activity, or the industrial or commercial strategy or the investment policy of the Divestment Business;
 - (b) to make available, or procure to make available, sufficient resources for the development of the Divestment Business, on the basis and continuation of the existing business plans;
 - (c) to take all reasonable steps, or procure that all reasonable steps are being taken, including appropriate incentive schemes (based on industry practice), to encourage all Key Personnel to remain with the Divestment Business, and not to solicit or move any Personnel to Konecranes' remaining businesses. Where, nevertheless,

individual members of the Key Personnel exceptionally leave the Divestment Business, Konecranes shall provide a reasoned proposal to replace the person or persons concerned to the Commission and the Monitoring Trustee. Konecranes must be able to demonstrate to the Commission that the replacement is well suited to carry out the functions exercised by those individual members of the Key Personnel. The replacement shall take place under the supervision of the Monitoring Trustee, who shall report to the Commission.

Hold-separate obligations

8. Konecranes commits, from the Effective Date until Closing, to procure that the Divestment Business is kept separate from the businesses that Konecranes will be retaining and, after closing of the Transaction to keep the Divestment Business separate from the businesses that Konecranes is retaining and to ensure that unless explicitly permitted under these Commitments: (i) management and staff of the businesses retained by Konecranes have no involvement in the Divestment Business; (ii) the Key Personnel and Personnel of the Divestment Business have no involvement in any business retained by Konecranes and do not report to any individual outside the Divestment Business.
9. Until Closing, Konecranes shall assist the Monitoring Trustee in ensuring that the Divestment Business is managed as a distinct and saleable entity separate from the businesses which Konecranes is retaining. Immediately after the adoption of the Decision, Konecranes shall appoint a Hold Separate Manager. The Hold Separate Manager, who shall be part of the Key Personnel, shall manage the Divestment Business independently and in the best interest of the business with a view to ensuring its continued economic viability, marketability and competitiveness and its independence from the businesses retained by Konecranes. The Hold Separate Manager shall closely cooperate with and report to the Monitoring Trustee and, if applicable, the Divestiture Trustee. Any replacement of the Hold Separate Manager shall be subject to the procedure laid down in paragraph 7(c) of these Commitments. The Commission may, after having heard Konecranes, require Konecranes to replace the Hold Separate Manager.
10. To ensure that the Divestment Business is held and managed as a separate entity the Monitoring Trustee shall exercise Konecranes' rights as shareholder in the legal entity or entities that constitute the Divestment Business (except for its rights in respect of dividends that are due before Closing), with the aim of acting in the best interest of the business, which shall be determined on a stand-alone basis, as an independent financial investor, and with a view to fulfilling Konecranes' obligations under the Commitments. Furthermore, the Monitoring Trustee shall have the power to replace members of the supervisory board or non-executive directors of the board of directors, who have been appointed on behalf of Konecranes. Upon request of the Monitoring Trustee, Konecranes shall resign as a member of the boards or shall cause such members of the boards to resign.

Ring-fencing

11. Konecranes shall implement, or procure to implement, all necessary measures to ensure that it does not, after the Effective Date, obtain any Confidential Information relating to the Divestment Business. Any such Confidential Information obtained by Konecranes before the Effective Date will be eliminated and not be used by Konecranes. This includes measures *vis-à-vis* Konecranes' appointees on the supervisory board and/or board of directors of the Divestment Business. In particular, the participation of the Divestment Business in any central information technology network shall be severed to the extent possible, without compromising the viability of the Divestment Business. Konecranes may obtain or keep information relating to the Divestment Business which is reasonably necessary for the divestiture of the Divestment Business, the carrying out of Konecranes' obligations under these Commitments or the disclosure of which to Konecranes is required by law.

Non-solicitation clause

12. The Parties undertake, subject to customary limitations, not to solicit, and to procure that Affiliated Undertakings do not solicit, the Key Personnel transferred with the Divestment Business for a period of [...] after Closing.

Due diligence

13. In order to enable potential purchasers to carry out a reasonable due diligence of the Divestment Business, Konecranes shall, subject to customary confidentiality assurances and dependent on the stage of the divestiture process:
 - (a) provide to potential purchasers sufficient information as regards the Divestment Business; and
 - (b) provide to potential purchasers sufficient information relating to the Personnel and allow them reasonable access to the Personnel.

Reporting

14. Konecranes shall submit written reports in English on potential purchasers of the Divestment Business and developments in the negotiations with such potential purchasers to the Commission and the Monitoring Trustee no later than ten (10) days after the end of every month following the Effective Date (or otherwise at the Commission's request). Konecranes shall submit a list of all potential purchasers having expressed interest in acquiring the Divestment Business to the Commission at each and every stage of the divestiture process, as well as a copy of all the offers made by potential purchasers within five days of their receipt.
15. Konecranes shall inform the Commission and the Monitoring Trustee on the preparation of the data room documentation and the due diligence procedure and shall submit a copy of any information memorandum to the Commission and the Monitoring Trustee before sending the memorandum out to potential purchasers.

Section D. The Purchaser

16. In order to be approved by the Commission, the Purchaser must fulfil the following criteria:
 - (a) The Purchaser shall be independent of and unconnected to the Parties and their Affiliated Undertakings (this being assessed having regard to the situation following the divestiture);
 - (b) The Purchaser shall have the financial resources, proven expertise and incentive to maintain and develop the Divestment Business as a viable and active competitive force in competition with the Parties and other competitors;
 - (c) The acquisition of the Divestment Business by the Purchaser must neither be likely to create, in light of the information available to the Commission, *prima facie* competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed. In particular, the Purchaser must reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Business.
17. The final binding sale and purchase agreement (as well as ancillary agreements) relating to the divestment of the Divestment Business shall be conditional on the Commission's approval. When Konecranes has reached an agreement with a purchaser, it shall submit a fully documented and reasoned proposal, including a copy of the final agreement(s), within one (1) week to the Commission and the Monitoring Trustee. Konecranes must be able to demonstrate to the Commission that the purchaser fulfils the Purchaser Criteria and that the Divestment Business is being sold in a manner consistent with the Commission's Decision and the Commitments. For the approval, the Commission shall verify that the purchaser fulfils the Purchaser Criteria and that the Divestment Business is being sold in a manner consistent with the Commitments including their objective to bring about a lasting structural change in the market. The Commission may approve the sale of the Divestment Business without one or more Assets or parts of the Personnel, or by substituting one or more Assets or parts of the Personnel with one or more different assets or different personnel, if this does not affect the viability and competitiveness of the Divestment Business after the sale, taking account of the proposed purchaser.

Section E. Trustee

I. Appointment procedure

18. The Parties shall appoint a Monitoring Trustee to carry out the functions specified in these Commitments for a Monitoring Trustee. The Parties commit not to close the Transaction before the appointment of a Monitoring Trustee.
19. If Konecranes has not entered into a binding sale and purchase agreement regarding the Divestment Business one (1) month before the end of the First Divestiture Period or if the Commission has rejected a purchaser proposed by Konecranes at that time or thereafter, Konecranes shall appoint a Divestiture Trustee. The appointment of the

Divestiture Trustee shall take effect upon the commencement of the Trustee Divestiture Period.

20. The Trustee shall:
- (i) at the time of appointment, be independent of the Parties and their Affiliated Undertakings;
 - (ii) possess the necessary qualifications to carry out its mandate, for example have sufficient relevant experience as an investment banker or consultant or auditor; and
 - (iii) neither have nor become exposed to a Conflict of Interest.
21. The Trustee shall be remunerated by the Parties in a way that does not impede the independent and effective fulfilment of its mandate. In particular, where the remuneration package of a Divestiture Trustee includes a success premium linked to the final sale value of the Divestment Business, such success premium may only be earned if the divestiture takes place within the Trustee Divestiture Period.

Proposal by the Parties

22. No later than two (2) weeks after the Effective Date, the Parties shall submit the name or names of one or more natural or legal persons whom the Parties propose to appoint as the Monitoring Trustee to the Commission for approval. No later than one (1) month before the end of the First Divestiture Period or on request by the Commission, the Parties shall submit a list of one (1) or more persons whom Konecranes proposes to appoint as Divestiture Trustee to the Commission for approval. The proposal shall contain sufficient information for the Commission to verify that the person or persons proposed as Trustee fulfil the requirements set out in paragraph 20 and shall include:
- (a) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Trustee to fulfil its duties under these Commitments;
 - (b) the outline of a work plan which describes how the Trustee intends to carry out its assigned tasks; and
 - (c) an indication whether the proposed Trustee is to act as both Monitoring Trustee and Divestiture Trustee or whether different trustees are proposed for the two functions.

Approval or rejection by the Commission

23. The Commission shall have the discretion to approve or reject the proposed Trustee(s) and to approve the proposed mandate subject to any modifications it deems necessary for the Trustee to fulfil its obligations. If only one (1) name is approved, the Parties shall appoint or cause to be appointed the person or persons concerned as Trustee, in accordance with the mandate approved by the Commission. If more than one (1) name is approved, Konecranes shall be free to choose the Trustee to be appointed from among the names approved. The Trustee shall be appointed within one (1) week of the Commission's approval, in accordance with the mandate approved by the Commission.

New proposal by the Parties

24. If all the proposed Trustees are rejected, the Parties shall submit the names of at least two (2) more natural or legal persons within one (1) week of being informed of the rejection, in accordance with paragraphs 18 and 23 of these Commitments.

Trustee nominated by the Commission

25. If all further proposed Trustees are rejected by the Commission, the Commission shall nominate a Trustee, whom Konecranes shall appoint, or cause to be appointed, in accordance with a Trustee mandate approved by the Commission.

II. Functions of the Trustee

26. The Trustee shall assume its specified duties and obligations in order to ensure compliance with the Commitments. The Commission may, on its own initiative or at the request of the Trustee or the Parties, give any orders or instructions to the Trustee in order to ensure compliance with the conditions and obligations attached to the Decision.

Duties and obligations of the Monitoring Trustee

27. The Monitoring Trustee shall:
- (i) propose in its first report to the Commission a detailed work plan describing how it intends to monitor compliance with the obligations and conditions attached to the Decision.
 - (ii) oversee, in close co-operation with the Hold Separate Manager, the on-going management of the Divestment Business with a view to ensuring its continued economic viability, marketability and competitiveness and monitor compliance by Konecranes with the conditions and obligations attached to the Decision. To that end the Monitoring Trustee shall:
 - (a) monitor the preservation of the economic viability, marketability and competitiveness of the Divestment Business, and the keeping separate of the Divestment Business from the businesses retained by Konecranes, in accordance with paragraphs 7 and 8 of these Commitments;
 - (b) supervise the management of the Divestment Business as a distinct and saleable entity, in accordance with paragraph 9 of these Commitments;
 - (c) with respect to Confidential Information:
 - determine all necessary measures to ensure that Konecranes does not after the Effective Date obtain any Confidential Information relating to the Divestment Business,

- in particular strive for the severing of the Divestment Business' participation in a central information technology network to the extent possible, without compromising the viability of the Divestment Business,
 - make sure that any Confidential Information relating to the Divestment Business obtained by Konecranes before the Effective Date is eliminated and will not be used by the Parties, and
 - decide whether such information may be disclosed to or kept by Konecranes as the disclosure is reasonably necessary to allow Konecranes to carry out the divestiture or its obligations under these Commitments, or as the disclosure is required by law;
- (d) monitor the splitting of assets and the allocation of Personnel between the Divestment Business and Konecranes;
- (iii) propose to Konecranes such measures as the Monitoring Trustee considers necessary to ensure Konecranes' compliance with the conditions and obligations attached to the Decision, in particular the maintenance of the full economic viability, marketability or competitiveness of the Divestment Business, the holding separate of the Divestment Business and the non-disclosure of competitively sensitive information;
- (iv) review and assess potential purchasers as well as the progress of the divestiture process and verify that, dependent on the stage of the divestiture process:
- (a) potential purchasers receive sufficient and correct information relating to the Divestment Business and the Personnel in particular by reviewing, if available, the data room documentation, the information memorandum and the due diligence process, and
 - (b) potential purchasers are granted reasonable access to the Personnel;
- (v) act as a contact point for any requests by third parties, in particular potential purchasers, in relation to the Commitments;
- (vi) provide to the Commission, sending Konecranes a non-confidential copy at the same time, a written report within fifteen (15) days after the end of every month that shall cover the operation and management of the Divestment Business as well as the splitting of assets and the allocation of Personnel so that the Commission can assess whether the Divestment Business is held in a manner consistent with the Commitments and the progress of the divestiture process as well as potential purchasers;
- (vii) promptly report in writing to the Commission, sending Konecranes a non-confidential copy at the same time, if it concludes on reasonable grounds that Konecranes is failing to comply with these Commitments;
- (viii) within one (1) week after receipt of the documented proposal referred to in paragraph 17 of these Commitments, submit to the Commission, sending Konecranes a

non-confidential copy at the same time, a reasoned opinion as to the suitability and independence of the proposed purchaser and the viability of the Divestment Business after the sale and as to whether the Divestment Business is sold in a manner consistent with the conditions and obligations attached to the Decision, in particular, if relevant, whether the sale of the Divestment Business without one or more Assets or not all of the Personnel affects the viability of the Divestment Business after the sale, taking account of the proposed purchaser;

(ix) assume the other functions assigned to the Monitoring Trustee under the conditions and obligations attached to the Decision.

28. If the Monitoring and Divestiture Trustee are not the same legal or natural persons, the Monitoring Trustee and the Divestiture Trustee shall cooperate closely with each other during and for the purpose of the preparation of the Trustee Divestiture Period in order to facilitate each other's tasks.

Duties and obligations of the Divestiture Trustee

29. Within the Trustee Divestiture Period, the Divestiture Trustee shall sell at no minimum price the Divestment Business to a purchaser, provided that the Commission has approved both the purchaser and the final binding sale and purchase agreement (and ancillary agreements) as in line with the Commission's Decision and the Commitments in accordance with paragraphs 16 and 17 of these Commitments. The Divestiture Trustee shall include in the sale and purchase agreement (as well as in any ancillary agreements) such terms and conditions as it considers appropriate for an expedient sale in the Trustee Divestiture Period. In particular, the Divestiture Trustee may include in the sale and purchase agreement such customary representations and warranties and indemnities as are reasonably required to effect the sale. The Divestiture Trustee shall protect the legitimate financial interests of Konecranes, subject to Konecranes' unconditional obligation to divest at no minimum price in the Trustee Divestiture Period.
30. In the Trustee Divestiture Period (or otherwise at the Commission's request), the Divestiture Trustee shall provide the Commission with a comprehensive monthly report written in English on the progress of the divestiture process. Such reports shall be submitted within fifteen (15) days after the end of every month with a simultaneous copy to the Monitoring Trustee and a non-confidential copy to Konecranes.

III. Duties and obligations of Konecranes

31. Konecranes shall provide and shall cause its advisors to provide the Trustee with all such co-operation, assistance and information as the Trustee may reasonably require to perform its tasks. The Trustee shall have full and complete access to any of Konecranes' or the Divestment Business' books, records, documents, management or other personnel, facilities, sites and technical information necessary for fulfilling its duties under the Commitments and Konecranes and the Divestment Business shall provide the Trustee upon request with copies of any document. Konecranes and the Divestment Business shall make available to the Trustee one or more offices on their premises and shall be available for meetings in order to provide the Trustee with all information necessary for the performance of its tasks.

32. Konecranes shall provide the Monitoring Trustee with all managerial and administrative support that it may reasonably request on behalf of the management of the Divestment Business. This shall include all administrative support functions relating to the Divestment Business which are currently carried out at headquarters level. Konecranes shall provide and shall cause its advisors to provide the Monitoring Trustee, on request, with the information submitted to potential purchasers, in particular give the Monitoring Trustee access to the data room documentation and all other information granted to potential purchasers in the due diligence procedure. Konecranes shall inform the Monitoring Trustee on possible purchasers, submit lists of potential purchasers at each stage of the selection process, including the offers made by potential purchasers at those stages, and keep the Monitoring Trustee informed of all developments in the divestiture process.
33. Konecranes shall grant or procure Affiliated Undertakings to grant comprehensive powers of attorney, duly executed, to the Divestiture Trustee to effect the sale (including ancillary agreements), the Closing and all actions and declarations which the Divestiture Trustee considers necessary or appropriate to achieve the sale and the Closing, including the appointment of advisors to assist with the sale process. Upon request of the Divestiture Trustee, Konecranes shall cause the documents required for effecting the sale and the Closing to be duly executed.
34. Konecranes shall indemnify the Trustee and its employees and agents (each an “**Indemnified Party**”) and hold each Indemnified Party harmless against, and hereby agrees that an Indemnified Party shall have no liability to Konecranes for, any liabilities arising out of the performance of the Trustee’s duties under the Commitments, except to the extent that such liabilities result from the wilful default, recklessness, gross negligence or bad faith of the Trustee, its employees, agents or advisors.
35. At the expense of Konecranes, the Trustee may appoint advisors (in particular for corporate finance or legal advice), subject to Konecranes' approval (this approval not to be unreasonably withheld or delayed) if the Trustee considers the appointment of such advisors necessary or appropriate for the performance of its duties and obligations under the Mandate, provided that any fees and other expenses incurred by the Trustee are reasonable. Should Konecranes refuse to approve the advisors proposed by the Trustee the Commission may approve the appointment of such advisors instead, after having heard Konecranes. Only the Trustee shall be entitled to issue instructions to the advisors. Paragraph 34 of these Commitments shall apply *mutatis mutandis*. In the Trustee Divestiture Period, the Divestiture Trustee may use advisors who served Konecranes during the Divestiture Period if the Divestiture Trustee considers this in the best interest of an expedient sale.
36. Konecranes agrees that the Commission may share Confidential Information proprietary to Konecranes with the Trustee. The Trustee shall not disclose such information and the principles contained in Article 17 (1) and (2) of the Merger Regulation apply *mutatis mutandis*.
37. Konecranes agrees that the contact details of the Monitoring Trustee are published on the website of the Commission's Directorate-General for Competition and they shall inform interested third parties, in particular any potential purchasers, of the identity and the tasks of the Monitoring Trustee.

38. For a period of ten (10) years from the Effective Date the Commission may request all information from the Parties that is reasonably necessary to monitor the effective implementation of these Commitments.
- IV. Replacement, discharge and reappointment of the Trustee
39. If the Trustee ceases to perform its functions under the Commitments or for any other good cause, including the exposure of the Trustee to a Conflict of Interest:
- (a) the Commission may, after hearing the Trustee and the Parties, require the Parties to replace the Trustee; or
- (b) the Parties may, with the prior approval of the Commission, replace the Trustee.
40. If the Trustee is removed according to paragraph 39 of these Commitments, the Trustee may be required to continue in its function until a new Trustee is in place to whom the Trustee has effected a full hand over of all relevant information. The new Trustee shall be appointed in accordance with the procedure referred to in paragraphs 18-25 of these Commitments.
41. Unless removed according to paragraph 39 of these Commitments, the Trustee shall cease to act as Trustee only after the Commission has discharged it from its duties after all the Commitments with which the Trustee has been entrusted have been implemented. However, the Commission may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.

Section F. The review clause

42. The Commission may extend the time periods foreseen in the Commitments in response to a request from the Parties or, in appropriate cases, on its own initiative. Where the Parties request an extension of a time period, it shall submit a reasoned request to the Commission no later than one (1) month before the expiry of that period, showing good cause. This request shall be accompanied by a report from the Monitoring Trustee, who shall, at the same time send a non-confidential copy of the report to the Parties. Only in exceptional circumstances shall the Parties be entitled to request an extension within the last month of any period.
43. The Commission may further, in response to a reasoned request from the Parties showing good cause waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in these Commitments. This request shall be accompanied by a report from the Monitoring Trustee, who shall, at the same time send a non-confidential copy of the report to the Parties. The request shall not have the effect of suspending the application of the undertaking and, in particular, of suspending the expiry of any time period in which the undertaking has to be complied with.

Section G. Entry into force

44. The Commitments shall take effect upon the date of adoption of the Decision.

[signed]

duly authorised for and on behalf of Cargotec

[signed]

duly authorised for and on behalf of Konecranes

SCHEDULE

1. The proposed Commitments offered by Konecranes consist of the divestiture to the Purchaser of Konecranes' global MEQ business. This business, as defined in this Schedule, is hereinafter referred to as the "**Divestment Business**". If there is any asset or personnel which is not covered by this Schedule but which is both used exclusively or not in the Divestment Business and necessary for the continued viability and competitiveness of the Divestment Business, and taking into account the identity and capabilities of potential purchasers, that asset or adequate substitute will be offered to potential purchasers.
2. The Divestment Business is comprised of the following Konecranes legal entities: [two entities in Sweden and one in China]. Any new legal entities which may be established prior to Closing to transfer additional assets with the Divestment Business will be [...].
3. Specifically, the Divestment Business includes the following tangible and intangible assets that are owned by the legal entities part of the Divestment Business or, if not, assets that are and to the extent they are used predominantly or exclusively for the manufacturing, supply or servicing of MEQ:
 - a. Konecranes' MEQ **headquarters, R&D, manufacturing site and distribution center** for spare parts located in Markaryd, Sweden and Konecranes' manufacturing site and spare parts distribution center in Lingang (Shanghai), China;
 - b. All MEQ **product lines** currently produced and sold by Konecranes which comprises reach stackers, empty container handlers, full container handlers, forklift trucks and related spare parts.
 - c. All **product descriptions and related information** including but not limited to information displayed on Konecranes Lift Trucks websites and brochures.
 - d. All existing **inventory** of finished goods, components, sub-components, and raw materials and spare parts as of the date of Closing. This includes spare parts at [...]. The spare parts held at [...] prior to Closing. The spare parts in other locations will be transferred to the Purchaser by way of asset sale with – if requested by the Purchaser and [...] - an associated transitional services agreement for Konecranes to store the spare parts on behalf of the Purchaser for a period up to twelve (12) months from Closing.
 - e. The **manufacturing, testing and servicing equipment and machinery** used in the manufacturing and testing of MEQ including all documentation (for example, machine records, design history files and technical files) related to this manufacturing, testing and servicing equipment and machinery. A non-exhaustive list of machinery and equipment is included at **Appendix 1** to the Commitments.
 - f. **R&D and pipeline projects** and related information existing at or initiated before Closing.

- g. All **customer, distributor and agent information**, including but not limited to relevant records, reports, transactional data and accreditations.

A non-exhaustive list of distributors and suppliers is included at **Appendix 2** to the Commitments.

- h. All **customer, distributor, agent and supply agreements** entered into by the legal entities part of the Divestment Business. If any customer, distributor, supply or agent agreements are not entered into by the legal entities part of the Divestment Business, but do cover (in whole or in part) the supply of MEQ, Konecranes will use its reasonable best efforts to transfer of these agreement to the Buyer to extent they relate to the supply of MEQ. Should consent for transfers not be obtained from customers, Konecranes will 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 the Monitoring Trustee. Should such a transfer not be possible, Konecranes will terminate the respective contract with respect to the supply of MEQ if and to the extent reasonably possible without exposing itself to damage claims or any other form of significant harm.
- i. All the rights in all **brands, patents, design rights and other intellectual property technology and knowhow** currently used exclusively or predominantly to develop, manufacture, sell and use MEQ, which are held by Konecranes. This will include the Liftace and SMV trademarks which are used exclusively by the MEQ Business. The Konecranes brand will be retained by Konecranes. During the period of eight (8) years from Closing, the Parties shall not be allowed to sell any MEQ under the Konecranes brand. At the option of the Purchaser, the Parties and the Purchaser will enter into commercially acceptable arrangements, including if applicable through a license, to allow Purchaser to sell MEQ products using the Konecranes brand for a period of three (3) years from the moment when the Parties and the Purchaser have agreed on the relevant arrangements. After this three (3) year period and until of the end of the eight (8) year period from Closing, neither the Parties nor the Purchaser will be allowed to sell MEQ products under the Konecranes brand.

A non-exhaustive list of the patents, applications and trademarks to be transferred (to [Sweden entity]) is included at **Appendix 3** to the Commitments.

To the extent required by the Purchaser, and in order to ensure that the Divestment Business has access to the **shared technology** required to maintain its competitiveness and viability as prior to Closing, Konecranes will provide a royalty free, irrevocable, non-exclusive, sub-licensable, global and perpetual license to those Konecranes' patents and other intellectual property, technology and know-how currently used by Konecranes primarily to develop, manufacture, sell and use products outside the scope of the Divestment Business but which are also currently used for the development, manufacturing, sale and use of MEQ.

For the avoidance of doubt:

A) the term 'shared technology' as used and which fulfils the conditions set out above in this paragraph 3.i, includes the patents and other intellectual property, technology and know-how for use in MEQ which (1) have been jointly developed by Konecranes and by the Divestment Business as of Closing, or (2) have been developed solely by Konecranes or the Divestment Business; and

B) the term 'shared technology' does not include patents and other intellectual property, technology and know-how developed by Konecranes alone to develop and manufacture products outside the scope of the Divestment Business.

This license will not extend to any improvements of or developments to the licensed technology, know-how or other intellectual property developed by the Parties after Closing. The Purchaser will be able to make any changes to the technology as considered appropriate. For the avoidance of doubt, all liabilities arising from changes carried out by the Purchaser or by any other person/entity will be borne by the Purchaser or by the person/entity making such changes.

Konecranes will obtain a royalty free, irrevocable, non-exclusive, sub-licensable, global and perpetual license to any shared intellectual property rights that are transferred to the Purchaser but are required by the Merged Entity to pursue activities outside the MEQ Business, including a license to [...] which are utilized in Konecranes [...].

- j. All domain names used exclusively for the supply of MEQ. Any domain names that include a reference to Konecranes would be licensed for a limited period until the Purchaser can redirect business to a new domain name. An exhaustive list of domain names is provided at **Appendix 3**.
- k. All the **Personnel (including Key Personnel)** employed by the legal entities part of the Divestment Business or, if not, Personnel that are and to the extent they are used predominantly or exclusively for the manufacturing, supply or servicing of MEQ.

An exhaustive list of the Key Personnel and the Personnel is enclosed herewith at **Appendix 4**. For the avoidance of doubt, [...] will not be included in the Divestment Business unless the EC and the Monitoring Trustee determine that these employees are essential for the competitiveness and viability of the Divestment Business.

- l. All **business records, books of account, financial records, and tax records**; all information, including customer and supplier lists and details, product and pricing information, account histories, research data and commercial data used exclusively or predominantly for the manufacturing, supply or servicing of MEQ.
- m. To the extent applicable, all **sales and promotional literature** and other sales-related materials used exclusively or predominantly for the manufacturing, supply or servicing of MEQ.

- n. At the option of the Purchaser, Konecranes will provide to the Purchaser a duplicate of its remote monitoring platform, TruConnect, comprising the hardware and software system that collects and stores data for monitoring Konecranes mobile equipment as further detailed in **Appendix 5**. The Purchaser will be permitted to use the TruConnect system and associated intellectual property exclusively for MEQ.
- o. At the option of the Purchaser, Konecranes will enter into the following **transitional services agreements** with the Purchaser:
 - i. financial shared services for transaction handling for a period up to twenty four (24) months from Closing, and others shared corporate services, such as HR, for a period up to six (6) months from Closing.
 - ii. SAP for a period up to twenty four (24) months from Closing, Microsoft applications and emails for a period up to six (6) months from Closing, and other shared IT system for a period up to twelve months (12) from Closing.
 - iii. remote monitoring and maintenance management platform (TruConnect), customer platform (YourKonecranes) and Konecranes Store eCommerce platform for online sales of spare parts, for a period up to twenty four (24) months from Closing.
 - iv. storage for spare parts and office space for employees that are sited in local areas outside Sweden and China, for a period up to twelve (12) months from Closing.
 - v. domain names used for the supply of MEQ that include the Konecranes brand name, for a period up to six (6) months from Closing.

* * *

Appendix 1

[...]

Appendix 2

[...]

Appendix 3

Patents

Parent Case	Case No.	Agent Ref.	Country	Content	Title 2	Reg. No.	Patent No.	Application No.	Case Type	Status	Priority Date	Expire Date	Income Area	Alias Applicant
2374	2374			Containerstapler	Container stacker e.g. reach stacker				Invention	Invention protected			PS Lifttrucks	KONECRANES GLOBAL CORPORATION
2374	2374DE-0		Germany	Containerstapler	Container stacker e.g. reach stacker	DE20081049074		DE20081049074	Patent application	Application phase			PS Lifttrucks	KONECRANES GLOBAL CORPORATION
2375	2375			Containerstapler	Reach stacker				Invention	Invention protected			PS Lifttrucks	KONECRANES GLOBAL CORPORATION
2375	2375DE-0	2132142DE	Germany	Containerstapler	Reach stacker	DE20091015971		DE20091015971	Patent application	Application phase			PS Lifttrucks	KONECRANES GLOBAL CORPORATION
2607	2607			Device at lift trucks	Lifting device for lift trucks				Invention	Invention protected			PS Lifttrucks	
2607	2607US		U S A	Device at lift trucks	Lifting device for lift trucks	US6971836	US6971836	US10607354	Patent	Let Lapse	7/3/2002	6/26/2023	PS Lifttrucks	KONECRANES LIFTTRUCKS AB
2610	2610			Lift Truck See through container	Heavy-duty lift truck				Invention	Invention protected			PS Lifttrucks	
2610	2610FI		Finland	Lift Truck See through container	Heavy-duty lift truck	FI127684	FI127684	FI20176102	Patent	Granted		12/11/2037	PS Lifttrucks	KONECRANES GLOBAL OY
2857	2857	113259		Leercontainerstapler - elektrisches Hubwerk	Heavy duty lift truck				Invention	Invention protected			PS Lifttrucks	
2857	2857DE	113259DE	Germany	Leercontainerstapler - elektrisches Hubwerk	Heavy duty lift truck	DE102015118535		DE102015118535	Patent application	Application phase		10/29/2035	PS Lifttrucks	KONECRANES GLOBAL CORPORATION
2857	2857WE	113259WE	E P O	Leercontainerstapler - elektrisches Hubwerk	Heavy duty lift truck	EP3368464	EP3368464	EP16787474	Patent	Opposed	10/29/2015	10/27/2036	PS Lifttrucks	KONECRANES GLOBAL CORPORATION
2857	2857WEDE	113259WEDE	Germany	Leercontainerstapler - elektrisches Hubwerk	Heavy duty lift truck	DE502016007914	DE502016007914	EP16787474	Patent	Granted	10/29/2015	10/27/2036	PS Lifttrucks	KONECRANES GLOBAL CORPORATION
2857	2857WEFI	113259WEFI	Finland	Leercontainerstapler - elektrisches Hubwerk	Heavy duty lift truck	EP3368464	EP3368464	EP16787474	Patent	Granted	10/29/2015	10/27/2036	PS Lifttrucks	KONECRANES GLOBAL CORPORATION
2857	2857WEIT	113259WEIT	Italy	Leercontainerstapler - elektrisches Hubwerk	Heavy duty lift truck	IT502020000020821	IT502020000020821	EP16787474	Patent	Granted	10/29/2015	10/27/2036	PS Lifttrucks	KONECRANES GLOBAL CORPORATION
2857	2857WESE	113259WESE	Sweden	Leercontainerstapler - elektrisches Hubwerk	Heavy duty lift truck	EP3368464	EP3368464	EP16787474	Patent	Granted	10/29/2015	10/27/2036	PS Lifttrucks	KONECRANES GLOBAL CORPORATION
2857	2857WOAU	113259WOAU	Australia	Leercontainerstapler - elektrisches Hubwerk	Heavy duty lift truck	AU2016344735		AU2016344735	Patent application	Allowance	10/29/2015		PS Lifttrucks	KONECRANES GLOBAL CORPORATION
2857	2857WOCN	113259WOCN	China	Empty Container Handler, electric hoisting gear	Heavy duty lift truck	CNZL201680037980.X	CNZL201680037980.X	CN201680037980	Patent	Granted	10/29/2015	10/27/2036	PS Lifttrucks	KONECRANES GLOBAL CORPORATION
2857	2857WOUS	113259WOUS	U S A	Empty Container Handler, electric hoisting gear	Heavy duty lift truck	US10457534	US10457534	US15755727	Patent	Granted	10/29/2015	11/13/2036	PS Lifttrucks	KONECRANES GLOBAL CORPORATION

Parent Case	Case No.	Agent Ref.	Country	Content	Title 2	Reg. No.	Patent No.	Application No.	Case Type	Status	Priority Date	Expire Date	Income Area	Alias Applicant
3031	3031			Lift truck cabin					Design Invention				PS Lifttrucks	
3031	3031AU	D1471AU00	Austria	Lift truck cabin		358922	358922	201415669	Design	Granted	5/13/2014	11/6/2024	PS Lifttrucks	KONECRANES GLOBAL CORPORATION
3031	3031BR	D1471BR00	Brazil	Lift truck cabin		BR302014005641-7	BR302014005641-7	BR302014005641-7	Design	Granted	5/13/2014	11/11/2039	PS Lifttrucks	KONECRANES GLOBAL CORPORATION
3031	3031CA	D1471CA00	Canada	Lift truck cabin		159440	159440	159440	Design	Granted	5/13/2014	6/11/2025	PS Lifttrucks	KONECRANES GLOBAL CORPORATION
3031	3031CN	D1471CN00	China	Lift truck cabin		2014304390924	2014304390924	2014304390924	Design	Granted	5/13/2014	11/10/2024	PS Lifttrucks	KONECRANES GLOBAL CORPORATION
3031	3031EU	D1471EU00	E U	Lift truck cabin		002462820-0001	002462820-0001	002462820	Design	Granted		5/13/2039	PS Lifttrucks	KONECRANES GLOBAL CORPORATION
3031	3031ID	D1471ID00	Indonesia	Lift truck cabin		IDD0000042086	IDD0000042086	A00 2014 03133	Design	Granted	5/13/2014	11/10/2024	PS Lifttrucks	KONECRANES GLOBAL CORPORATION
3031	3031IM	D1471IM00	International Design	Lift truck cabin		DM/084781	DM/084781	WIPO40201	Design	Granted	5/13/2014	10/30/2039	PS Lifttrucks	KONECRANES GLOBAL CORPORATION
3031	3031IN	D1471IN00	India	Lift truck cabin		267140	267140	267140	Design	Granted	5/13/2014	5/13/2029	PS Lifttrucks	KONECRANES GLOBAL CORPORATION
3031	3031JP	D1471JP00	Japan	Lift truck cabin		1533404	1533404	2014-025103	Design	Granted	5/13/2014	8/14/2035	PS Lifttrucks	KONECRANES GLOBAL CORPORATION
3031	3031KR	D1471KRIM	South Korea	Lift truck cabin		DM/084781	DM/084781	WIPO40201	Design	Granted	5/13/2014	10/30/2034	PS Lifttrucks	KONECRANES GLOBAL CORPORATION
3031	3031MY	D1471MY00	Malaysia	Lift truck cabin		14-01401-0101	14-01401-0101	14-01401-0101	Design	Granted	5/13/2014	5/13/2039	PS Lifttrucks	KONECRANES GLOBAL CORPORATION
3031	3031NG	D1471NG00	Nigeria	Lift truck cabin		F/D/2014/670	F/D/2014/670	F/D/2014/670	Design	Granted	5/13/2014		PS Lifttrucks	KONECRANES GLOBAL CORPORATION
3031	3031NO	D1471NOIM	Norway	Lift truck cabin		NO20141148S	NO20141148S	20141148	Design	Granted	5/13/2014	10/30/2039	PS Lifttrucks	KONECRANES GLOBAL CORPORATION
3031	3031RU	D1471RU00	Russian Federation	Lift truck cabin		94882	94882	2014504318	Design	Granted	5/13/2014	10/30/2039	PS Lifttrucks	KONECRANES GLOBAL CORPORATION
3031	3031TH	D1471TH00	Thailand	Lift truck cabin		50260	50260	1402003397	Design	Granted	5/13/2014		PS Lifttrucks	KONECRANES GLOBAL CORPORATION
3031	3031UA	D1471UAIM	Ukraine	Lift truck cabin		DM/084781	DM/084781	WIPO40201	Design	Granted	5/13/2014	10/30/2029	PS Lifttrucks	KONECRANES GLOBAL CORPORATION
3031	3031US	D1471US00	U S A	Lift truck cabin		D748156	D748156	29/508822	Design	Granted	5/13/2014	1/26/2030	PS Lifttrucks	KONECRANES GLOBAL CORPORATION
3031	3031ZA	D1471ZA00	South Africa	Lift truck cabin		A2014/01703	A2014/01703	A2014/01703	Design	Granted	5/13/2014		PS Lifttrucks	KONECRANES GLOBAL CORPORATION

Parent Case	Case No.	Agent Ref.	Country	Content	Title 2	Reg. No.	Patent No.	Application No.	Case Type	Status	Priority Date	Expire Date	Income Area	Alias Applicant
3145	3145			Agile Grabber	Agile Grabber				Invention	Invention protected			PS Lifttrucks	
3145	3145FI		Finland	Agile Grabber	A HOISTING DEVICE FOR HOISTING EMPTY CONTAINERS	FI20186012		FI20186012	Patent application	Allowance			PS Lifttrucks	KONECRANES GLOBAL OY
3217	3217			Gripper for two empty container					Invention	Invention protected			PS Lifttrucks	
3217	3217FI		Finland	Gripper for two empty container	Lifting attachment for lifting containers	FI20205548		FI20205548	Patent application	Application phase			PS Lifttrucks	KONECRANES GLOBAL OY
3217	3217WO		P C T	Gripper for two empty container	Lifting attachment for lifting containers	PCT/FI2021/050378		PCT/FI2021/050378	Patent application	Application phase	5/27/2020		PS Lifttrucks	KONECRANES GLOBAL CORPORATION

Domains

Title	Country	Status	Client	Applicant / Owner	Registration Date	Next Renewal
liftacewarranty.com	World Wide	Registered/Granted	Konecranes Global Oy	Konecranes Global Corporation	9.12.2016	9.12.2021
liftace-warranty.com	World Wide	Registered/Granted	Konecranes Global Oy	Konecranes Global Corporation	7.12.2016	7.12.2021
smvkonecranes.parts	World Wide	Registered/Granted	Konecranes Global Oy	Konecranes Global Corporation	1.7.2014	1.7.2022
smvlifttrucks.com	World Wide	Registered/Granted	Konecranes Global Oy	Konecranes Lifttrucks AB	30.9.2013	30.9.2021
smvlifttrucks.se	Sweden	Registered/Granted	Konecranes Global Oy	Konecranes Lifttrucks AB	19.8.1998	19.8.2021

Trademarks

Title	Image	Country	Status	Classes	Client	Applicant / Owner	Priority Date	Priority No.	Application Date	Application No.	Registration Date	Registration No.	Next Renewal	Application Type
LIFTACE		Brazil	Registered/Granted	12	Konecranes Global Oy	Terex MHPS GmbH	15.8.2014	DE 30 2014 005 751.4	6.2.2015	908962940	22.8.2017	908962940	22.8.2027	With Priority
LIFTACE		Brazil	Registered/Granted	07	Konecranes Global Oy	Terex MHPS GmbH	15.8.2014	DE 30 2014 005 751.4	6.2.2015	908962932	22.8.2017	908962932	22.8.2027	With Priority
LIFTACE		Canada	Registered/Granted	07, 12	Konecranes Global Oy	Konecranes Global Corporation	15.8.2014	DE 30 2014 005 751.4	29.1.2015	1712978	20.6.2019	TMA1029325	20.6.2029	ITU - With Priority
LIFTACE		China	Pending	12	Konecranes Global Oy	Konecranes Global Corporation			3.2.2015	1249218	3.2.2015	1249218		International Registration
LIFTACE		China	Registered/Granted	07	Konecranes Global Oy	Konecranes Global Corporation			3.2.2015	1249218	3.2.2015	1249218		International Registration
LIFTACE		European Union	Registered/Granted	07, 12	Konecranes Global Oy	Konecranes Global Corporation	15.8.2014	3020140057514	3.2.2015	13705918	12.6.2015	013705918	3.2.2025	With Priority
LIFTACE		Germany	Registered/Granted	07, 12	Konecranes Global Oy	Terex MHPS GmbH			15.8.2014	30 2014 005 751	8.6.2017	302014005751	31.8.2024	Without Priority
LIFTACE		India	Registered/Granted	07, 12	Konecranes Global Oy	Konecranes Global Corporation			3.2.2015	1249218	3.2.2015	1249218		International Registration
LIFTACE		Int. Agreement & Protocol	Registered/Granted	07, 12	Konecranes Global Oy	Konecranes Global Corporation	15.8.2014	DE 30 2014 005 751.4	3.2.2015	1249218	3.2.2015	1249218	3.2.2025	With Priority
LIFTACE		Russian Federation	Registered/Granted	07, 12	Konecranes Global Oy	Konecranes Global Corporation			3.2.2015	1249218	3.2.2015	1249218		International Registration

Title	Image	Country	Status	Classes	Client	Applicant / Owner	Priority Date	Priority No.	Application Date	Application No.	Registration Date	Registration No.	Next Renewal	Application Type
LIFTACE		South Africa	Registered/Granted	12	Konecranes Global Oy	Terex MHPS GmbH	15.8.2014	DE 30 2014 005 751.4	29.1.2015	2015/02182	11.1.2019	2015/02182	29.1.2025	With Priority
LIFTACE		South Africa	Registered/Granted	07	Konecranes Global Oy	Terex MHPS GmbH	15.8.2014	DE 30 2014 005 751.4	29.1.2015	2015/02181	11.1.2019	2015/02181	29.1.2025	With Priority
LIFTACE		United Kingdom	Registered/Granted	07, 12	Konecranes Global Oy	Terex MHPS GmbH	15.8.2014	3020140057514	3.2.2015	13705918	12.6.2015	UK009013705918	3.2.2025	With Priority
LIFTACE		United States	Registered/Granted	07, 12	Konecranes Global Oy	Konecranes Global Corporation			3.2.2015	1249218	3.2.2015	1249218		International Registration
SMV		European Union	N/A - Managed by Third Party	12, 39, 41	Konecranes Global Oy	Konecranes Lifttrucks AB			26.6.2002	002752384	17.11.2003	002752384	26.6.2022	Without Priority
SMV		United Kingdom	N/A - Managed by Third Party	12, 39, 41	Konecranes Global Oy	Konecranes Lifttrucks AB			26.6.2002	002752384	17.11.2003	UK009002752384	26.6.2022	Without Priority

Appendix 4

[...]

Appendix 5

TruConnect comprises:

1. The 'Internet of things' (IoT) connectivity system that connect to MEQ and collects Konecranes MEQ data, subject to consent of the vendor
2. Software interface between the TruConnect IoT connectivity system and MEQ
3. The AWS cloud storage data base structure (insofar as it relates to MEQ data)
4. Necessary technical information for TruConnect hardware (such as modems and other hardware)

6 January 2022

Case M.10078 – CARGOTEC/KONECRANES

COMMITMENTS TO THE EUROPEAN COMMISSION

Pursuant to Article 8(2) of Council Regulation (EC) No 139/2004 (the *Merger Regulation*), Cargotec Corporation (*Cargotec*) hereby enters into the following Commitments (the *Commitments*) vis-à-vis the European Commission (the *Commission*) with a view to rendering the merger between Cargotec and Konecranes Plc (*Konecranes* and, together with Cargotec, the *Parties*) (the *Concentration*) compatible with the internal market and the functioning of the EEA Agreement by a decision pursuant to Article 8(2) of the Merger Regulation (the *Decision*).

The Commitments shall take effect upon the date of adoption of the Decision and be subject to closing of the Concentration.

This text shall be interpreted in light of the Decision, in the general framework of European Union law, in particular in light of the Merger Regulation, and by reference to the Commission Notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004 (the *Remedies Notice*).

Section A. Definitions

1. For the purpose of the Commitments, the following terms shall have the following meaning:

- **Affiliated Undertakings:** undertakings controlled by the Parties, whereby the notion of control shall be interpreted pursuant to Article 3 of the Merger Regulation and in light of the Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (the *Consolidated Jurisdictional Notice*).
- **Assets:** the assets that contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business as indicated in Section B, paragraph 7 and described more in detail in the Schedule.
- **Cargotec:** Cargotec Corporation, incorporated under the laws of Finland, with its registered office at Porkkalankatu 5, 00180 Helsinki, Finland and registered with the Finnish Business Register under Business Identity Code 1927402-8.
- **Closing:** the transfer of the legal title to the KAS Divestment Business to the Purchaser.
- **Closing Period:** the period of [...] from the approval of the Purchaser and the terms of sale by the Commission.

- **Confidential Information:** any business secrets, know-how, commercial information, or any other information of a proprietary nature that is not in the public domain.
- **Conflict of Interest:** any conflict of interest that impairs the Trustee's objectivity and independence in discharging its duties under the Commitments.
- **Divestiture Trustee:** one or more natural or legal person(s) who is/are approved by the Commission and appointed by Cargotec and who has/have received from Cargotec the exclusive Trustee Mandate to sell the KAS Divestment Business to the Purchaser at no minimum price.
- **Effective Date:** the date of adoption of the Decision.
- **First Divestiture Period:** the period of [...] months from the Effective Date.
- **Hold Separate Manager:** the person appointed by Cargotec to manage the day-to-day operation of the KAS Divestment Businesses under the supervision of the Monitoring Trustee.
- **KAS Divestment Business:** Cargotec's business unit KAS as defined in Section B below and in the KAS Schedule, which Cargotec commits to divest.
- **Key Personnel:** all personnel necessary to maintain the viability and competitiveness of the KAS Divestment Business, as listed in the Schedules, including the Hold Separate Manager.
- **Konecranes:** Konecranes Plc, incorporated under the laws of Finland, with its registered office at Koneenkatu 8, 05830, Hyvinkää, Finland, and its Affiliated Undertakings.
- **Monitoring Trustee:** one or more natural or legal person(s) who is/are approved by the Commission and appointed by Cargotec and/or Konecranes, and who has/have the duty to monitor the Parties' compliance with the conditions and obligations attached to the Decision.
- **Parties:** Cargotec and Konecranes.
- **Personnel:** all staff currently employed by the KAS Divestment Business, including staff seconded to the KAS Divestment Business, shared personnel as well as the additional personnel listed in the Schedules.
- **Purchaser:** the entity approved by the Commission as acquirer of the KAS Divestment Business in accordance with the criteria set out in Section D.
- **Purchaser Criteria:** the criteria laid down in paragraph 17 of these Commitments that the Purchaser must fulfil in order to be approved by the Commission.
- **Schedule:** the schedule to these Commitments describing more in detail the KAS Divestment Business.

- **Trustee(s):** the Monitoring Trustee and/or the Divestiture Trustee as the case may be.
- **Trustee Divestiture Period:** the period of [...] months from the end of the First Divestiture Period.

Section B. The Commitment to divest the KAS Divestment Business

Commitment to divest

2. In order to maintain effective competition, Cargotec commits to divest, or procure the divestiture of the KAS Divestment Business by the end of the Trustee Divestiture Period as a going concern to a purchaser and on terms of sale approved by the Commission in accordance with the procedure described in paragraph 18 of these Commitments. To carry out the divestiture, Cargotec commits to find a purchaser and to enter into a final binding sale and purchase agreement for the sale of the KAS Divestment Business within the First Divestiture Period. If Cargotec has not entered into such an agreement at the end of the First Divestiture Period, Cargotec shall grant the Divestiture Trustee an exclusive mandate to sell the KAS Divestment Business in accordance with the procedure described in paragraph 30 in the Trustee Divestiture Period.
3. The Concentration shall not be implemented before Cargotec or the Divestiture Trustee has entered into a final binding sale and purchase agreement for the sale of the KAS Divestment Business and the Commission has approved the Purchaser and the terms of sale in accordance with paragraph 18.
4. Cargotec shall be deemed to have complied with this commitment if:
 - (a) by the end of the Trustee Divestiture Period, Cargotec or the Divestiture Trustee has entered into final binding agreements and the Commission approves the proposed purchaser and the terms of sale as being consistent with the Commitments in accordance with the procedure described in paragraph 18; and
 - (b) the Closing of the sale of the KAS Divestment Business takes place within the Closing Period.
5. In order to maintain the structural effect of the Commitments, the Parties shall, for a period of 10 years after Closing, not acquire, whether directly or indirectly, the possibility of exercising influence (as defined in paragraph 43 of the Remedies Notice, footnote 3) over the whole or part of the KAS Divestment Business, unless, following the submission of a reasoned request from the Parties showing good cause and accompanied by a report from the Monitoring Trustee (as provided in paragraph 44 of these Commitments), the Commission finds that the structure of the market has changed to such an extent that the absence of influence over the KAS Divestment Business is no longer necessary to render the Concentration compatible with the internal market.

Structure and definition of the KAS Divestment Business

6. The KAS Divestment Business consists of the entirety of Cargotec's Kalmar Automation Solutions (**KAS**) business unit, which comprises (i) Cargotec's Intelligent Cranes Solutions (**ICS**) business, which is Cargotec's global port cranes business for the supply and servicing of ship-to-shore (**STS**) cranes, rubber-tired gantry cranes (**RTGs**), rail-mounted gantry cranes (**RMGs**) and automated stacking cranes (**ASCs**) (together **Port Cranes**), (ii) Cargotec's entire Intelligent Horizontal Transport Solutions (**IHTS**) business, which is Cargotec's global business for the supply and servicing of straddle and shuttle carriers (**HTE**)¹, and (iii) Cargotec's entire Kalmar One automation system, together with all essential functions which are necessary to ensure the viability and competitiveness of the business as described in paragraph 7 below.
7. The legal and functional structure of the KAS Divestment Business is described in the KAS Schedule. The KAS Divestment Business includes all assets and staff that contribute to the current operation or are necessary to ensure the viability and competitiveness of the business, in particular:
 - a) all tangible and intangible assets (including intellectual property rights);
 - b) all licences, permits and authorisations issued by any governmental organisation for the benefit of the KAS Divestment Business;
 - c) all contracts, leases, commitments and customer orders as well as all customer, credit and other records of the KAS Divestment Business;
 - d) the Personnel.

Section C. Related commitments

Preservation of viability, marketability and competitiveness

8. From the Effective Date until Closing, Cargotec shall preserve or procure the preservation of the economic viability, marketability and competitiveness of the KAS Divestment Business, in accordance with good business practice, and shall minimise as far as possible any risk of loss of competitive potential of the KAS Divestment Business. In particular, Cargotec undertakes:
 - (a) not to carry out any action that might have a significant adverse impact on the value, management or competitiveness of the KAS Divestment Business or that might alter the nature and scope of activity, or the industrial or commercial strategy or the investment policy of the KAS Divestment Business;

¹ [...], all of Cargotec's existing AGV-related know how and other assets will also be transferred as part of the KAS Divestment Business.

- (b) to make available, or procure to make available, sufficient resources for the development of the KAS Divestment Business, on the basis and continuation of the existing business plans;
- (c) to take all reasonable steps, or procure that all reasonable steps are being taken, including appropriate incentive schemes (based on industry practice), to encourage all Key Personnel to remain with the KAS Divestment Business, and not to solicit or move any Personnel to Cargotec's remaining business. Where, nevertheless, individual members of the Key Personnel exceptionally leave the KAS Divestment Business, Cargotec shall provide a reasoned proposal to replace the person or persons concerned to the Commission and the Monitoring Trustee. Cargotec must be able to demonstrate to the Commission that the replacement is well suited to carry out the functions exercised by those individual members of the Key Personnel. The replacement shall take place under the supervision of the Monitoring Trustee, who shall report to the Commission.

Hold-separate obligations

9. Cargotec commits, from the Effective Date until Closing, to procure that the KAS Divestment Business is kept separate from the businesses Cargotec will be retaining and, after closing of the Transaction to keep the KAS Divestment Business separate from the businesses that Cargotec is retaining and to ensure that unless explicitly permitted under these Commitments: (i) management and staff of the businesses retained by Cargotec have no involvement in the KAS Divestment Business; (ii) the Key Personnel and Personnel of the KAS Divestment Business have no involvement in any business retained by Cargotec and do not report to any individual outside the KAS Divestment Business.
10. Until Closing, Cargotec shall assist the Monitoring Trustee in ensuring that the KAS Divestment Business is managed as a distinct and saleable entity separate from the businesses which Cargotec is retaining. Immediately after the adoption of the Decision, Cargotec shall appoint a Hold Separate Manager. The Hold Separate Manager, who shall be part of the Key Personnel, shall manage the KAS Divestment Business independently and in the best interest of the business with a view to ensuring its continued economic viability, marketability and competitiveness and its independence from the businesses retained by Cargotec. The Hold Separate Manager shall closely cooperate with and report to the Monitoring Trustee and, if applicable, the Divestiture Trustee. Any replacement of the Hold Separate Manager shall be subject to the procedure laid down in paragraph 8(c) of these Commitments. The Commission may, after having heard Cargotec, require Cargotec to replace the Hold Separate Manager.
11. To ensure that the KAS Divestment Business is held and managed as a separate entity the Monitoring Trustee shall exercise Cargotec's rights as shareholder in the KAS Subsidiaries (except for its rights in respect of dividends that are due before Closing), with the aim of acting in the best interest of the business, which shall be determined on a stand-alone basis, as an independent financial investor, and with a view to fulfilling Cargotec's obligations under the Commitments. Furthermore, the Monitoring Trustee shall have the power to replace members of the supervisory board or non-executive directors of the board of directors, who have been appointed on behalf of Cargotec. Upon request of the Monitoring

Trustee, Cargotec shall resign as a member of the boards or shall cause such members of the boards to resign.

Ring-fencing

12. Cargotec shall implement, or procure to implement, all necessary measures to ensure that it does not, after the Effective Date, obtain any Confidential Information relating to the KAS Divestment Business and that any such Confidential Information obtained by Cargotec before the Effective Date will be eliminated and not be used by Cargotec. This includes measures vis-à-vis Cargotec's appointees on the supervisory board and/or board of directors of the KAS Divestment Business. In particular, the participation of the KAS Divestment Business in any central information technology network shall be severed to the extent possible, without compromising the viability of the KAS Divestment Business. Cargotec may obtain or keep information relating to the KAS Divestment Business which is reasonably necessary for the divestiture of the KAS Divestment Business, the carrying out of Cargotec's obligations under these Commitments or the disclosure of which to Cargotec is required by law.

Non-solicitation clause

13. The Parties undertake, subject to customary limitations, not to solicit, and to procure that Affiliated Undertakings do not solicit, the Key Personnel transferred with the KAS Divestment Business for a period of [...] after Closing.

Due diligence

14. In order to enable potential purchasers to carry out a reasonable due diligence of the Divestment Business, Cargotec shall, subject to customary confidentiality assurances and dependent on the stage of the divestiture process:
- (a) provide to potential purchasers sufficient information as regards the KAS Divestment Business;
 - (b) provide to potential purchasers sufficient information relating to Personnel and allow them reasonable access to the Personnel.

Reporting

15. Cargotec shall submit written reports in English on potential purchasers of the KAS Divestment Business and developments in the negotiations with such potential purchasers to the Commission and the Monitoring Trustee no later than 10 days after the end of every month following the Effective Date (or otherwise at the Commission's request). Cargotec shall submit a list of all potential purchasers having expressed interest in acquiring the KAS Divestment Business to the Commission at each and every stage of the divestiture process, as well as a copy of all the offers made by potential purchasers within five days of their receipt.

16. Cargotec shall inform the Commission and the Monitoring Trustee on the preparation of the data room documentation and the due diligence procedure and shall submit a copy of any information memorandum to the Commission and the Monitoring Trustee before sending the memorandum out to potential purchasers.

Section D. The Purchaser

17. In order to be approved by the Commission, the Purchaser must fulfil the following criteria:

- (a) The Purchaser shall be independent of and unconnected to the Parties and their Affiliated Undertakings (this being assessed having regard to the situation following the divestiture).
- (b) The Purchaser shall have the financial resources, proven expertise and incentive to maintain and develop the KAS Divestment Business as a viable and active competitive force in competition with the Parties and other competitors. More specifically, the Purchaser shall have proven expertise in the material handling or heavy-duty equipment industry.
- (c) Should the Purchaser choose not to acquire the Kalmar brand in accordance with paragraph 3(i) of the Schedule, the Purchaser should own a well-recognised brand in the material handling or heavy-duty equipment industry under which it may sell the KAS Divestment Business' Port Cranes and HTE.
- (d) The acquisition of the KAS Divestment Business by the Purchaser must neither be likely to create, in light of the information available to the Commission, *prima facie* competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed. In particular, the Purchaser must reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the KAS Divestment Business.

18. The final binding sale and purchase agreement (as well as ancillary agreements) relating to the divestment of the KAS Divestment Business shall be conditional on the Commission's approval. When Cargotec has reached an agreement with a purchaser, it shall submit a fully documented and reasoned proposal, including a copy of the final agreement(s), within one week to the Commission and the Monitoring Trustee. Cargotec must be able to demonstrate to the Commission that the purchaser fulfils the Purchaser Criteria and that the KAS Divestment Business is being sold in a manner consistent with the Commission's Decision and the Commitments. For the approval, the Commission shall verify that the purchaser fulfils the Purchaser Criteria and that the KAS Divestment Business is being sold in a manner consistent with the Commitments including their objective to bring about a lasting structural change in the market. The Commission may approve the sale of the KAS Divestment Business without one or more Assets or parts of the Personnel, or by substituting one or more Assets or parts of the Personnel with one or more different assets or different personnel, if this does not affect the viability and competitiveness of the KAS Divestment Business after the sale, taking account of the proposed purchaser.

Section E. Trustee

I. Appointment procedure

19. The Parties shall appoint a Monitoring Trustee to carry out the functions specified in these Commitments for a Monitoring Trustee. The Parties commit not to close the Concentration before the appointment of a Monitoring Trustee.
20. If Cargotec has not entered into a binding sale and purchase agreement regarding the KAS Divestment Business one month before the end of the First Divestiture Period or if the Commission has rejected a purchaser proposed by Cargotec at that time or thereafter, Cargotec shall appoint a Divestiture Trustee. The appointment of the Divestiture Trustee shall take effect upon the commencement of the Trustee Divestiture Period.
21. The Trustee shall:
- (i) at the time of appointment, be independent of the Parties and their Affiliated Undertakings;
 - (ii) possess the necessary qualifications to carry out its mandate, for example have sufficient relevant experience as an investment banker or consultant or auditor; and
 - (iii) neither have nor become exposed to a Conflict of Interest.
22. The Trustee shall be remunerated by the Parties in a way that does not impede the independent and effective fulfilment of its mandate. In particular, where the remuneration package of a Divestiture Trustee includes a success premium linked to the final sale value of the KAS Divestment Business, such success premium may only be earned if the divestiture takes place within the Trustee Divestiture Period.

Proposal by the Parties

23. No later than two weeks after the Effective Date, the Parties shall submit the name or names of one or more natural or legal persons whom the Parties propose to appoint as the Monitoring Trustee to the Commission for approval. No later than one month before the end of the First Divestiture Period or on request by the Commission, Cargotec shall submit a list of one or more persons whom Cargotec proposes to appoint as Divestiture Trustee to the Commission for approval. The proposal shall contain sufficient information for the Commission to verify that the person or persons proposed as Trustee fulfil the requirements set out in paragraph 21 and shall include:
- (a) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Trustee to fulfil its duties under these Commitments;
 - (b) the outline of a work plan which describes how the Trustee intends to carry out its assigned tasks;

- (c) an indication whether the proposed Trustee is to act as both Monitoring Trustee and Divestiture Trustee or whether different trustees are proposed for the two functions.

Approval or rejection by the Commission

24. The Commission shall have the discretion to approve or reject the proposed Trustee(s) and to approve the proposed mandate subject to any modifications it deems necessary for the Trustee to fulfil its obligations. If only one name is approved, the Parties shall appoint or cause to be appointed the person or persons concerned as Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, the Parties shall be free to choose the Trustee to be appointed from among the names approved. The Trustee shall be appointed within one week of the Commission's approval, in accordance with the mandate approved by the Commission.

New proposal by the Parties

25. If all the proposed Trustees are rejected, the Parties shall submit the names of at least two more natural or legal persons within one week of being informed of the rejection, in accordance with paragraphs 19 and 24 of these Commitments.

Trustee nominated by the Commission

26. If all further proposed Trustees are rejected by the Commission, the Commission shall nominate a Trustee, whom the Parties shall appoint, or cause to be appointed, in accordance with a trustee mandate approved by the Commission.

II. Functions of the Trustee

27. The Trustee shall assume its specified duties and obligations in order to ensure compliance with the Commitments. The Commission may, on its own initiative or at the request of the Trustee or the Parties, give any orders or instructions to the Trustee in order to ensure compliance with the conditions and obligations attached to the Decision.

Duties and obligations of the Monitoring Trustee

28. The Monitoring Trustee shall:

- (i) propose in its first report to the Commission a detailed work plan describing how it intends to monitor compliance with the obligations and conditions attached to the Decision.
- (ii) oversee, in close co-operation with the Hold Separate Manager, the on-going management of the KAS Divestment Business with a view to ensuring its continued economic viability, marketability and competitiveness and monitor compliance by

Cargotec with the conditions and obligations attached to the Decision. To that end the Monitoring Trustee shall:

- (a) monitor the preservation of the economic viability, marketability and competitiveness of the KAS Divestment Business, and the keeping separate of the KAS Divestment Business from the business retained by Cargotec, in accordance with paragraphs 8 and 9 of these Commitments;
 - (b) supervise the management of the KAS Divestment Business as a distinct and saleable entity, in accordance with paragraph 10 of these Commitments;
 - (c) with respect to Confidential Information:
 - determine all necessary measures to ensure that Cargotec does not after the Effective Date obtain any Confidential Information relating to the KAS Divestment Business,
 - in particular strive for the severing of the KAS Divestment Business' participation in a central information technology network to the extent possible, without compromising the viability of the KAS Divestment Business,
 - make sure that any Confidential Information relating to the KAS Divestment Business obtained by Cargotec before the Effective Date is eliminated and will not be used by the Parties; and
 - decide whether such information may be disclosed to or kept by Cargotec as the disclosure is reasonably necessary to allow Cargotec to carry out the divestiture or its obligations under these Commitments, or as the disclosure is required by law;
 - (d) monitor the splitting of assets and the allocation of Personnel between the KAS Divestment Business and Cargotec or Affiliated Undertakings;
- (iii) propose to Cargotec such measures as the Monitoring Trustee considers necessary to ensure its compliance with the conditions and obligations attached to the Decision, in particular the maintenance of the full economic viability, marketability or competitiveness of the KAS Divestment Business, the holding separate of the KAS Divestment Business and the non-disclosure of competitively sensitive information;
- (iv) review and assess potential purchasers as well as the progress of the divestiture process and verify that, dependent on the stage of the divestiture process:
- (a) potential purchasers receive sufficient and correct information relating to the KAS Divestment Business and the Personnel in particular by reviewing, if available, the data room documentation, the information memorandum and the due diligence process, and
 - (b) potential purchasers are granted reasonable access to the Personnel;

- (v) act as a contact point for any requests by third parties, in particular potential purchasers, in relation to the Commitments;
- (vi) provide to the Commission, sending Cargotec a non-confidential copy at the same time, a written report within 15 days after the end of every month that shall cover the operation and management of the KAS Divestment Business as well as the splitting of assets and the allocation of Personnel so that the Commission can assess whether the business is held in a manner consistent with the Commitments and the progress of the divestiture process as well as potential purchasers;
- (vii) promptly report in writing to the Commission, sending Cargotec a non-confidential copy at the same time, if it concludes on reasonable grounds that Cargotec is failing to comply with these Commitments;
- (viii) within one week after receipt of the documented proposal referred to in paragraph 18 of these Commitments, submit to the Commission, sending Cargotec a non-confidential copy at the same time, a reasoned opinion as to the suitability and independence of the proposed purchaser and the viability of the KAS Divestment Business after the sale and as to whether the KAS Divestment Business is sold in a manner consistent with the conditions and obligations attached to the Decision, in particular, if relevant, whether the sale of the KAS Divestment Business without one or more Assets or not all of the Personnel affects the viability of the KAS Divestment Business after the sale, taking account of the proposed purchaser;
- (ix) assume the other functions assigned to the Monitoring Trustee under the conditions and obligations attached to the Decision.

29. If the Monitoring and Divestiture Trustee are not the same legal persons, the Monitoring Trustee and the Divestiture Trustee shall cooperate closely with each other during and for the purpose of the preparation of the Trustee Divestiture Period in order to facilitate each other's tasks.

Duties and obligations of the Divestiture Trustee

30. Within the Trustee Divestiture Period, the Divestiture Trustee shall sell at no minimum price the KAS Divestment Business to a purchaser, provided that the Commission has approved both the purchaser and the final binding sale and purchase agreement (and ancillary agreements) as in line with the Commission's Decision and the Commitments in accordance with paragraphs 17 and 18 of these Commitments. The Divestiture Trustee shall include in the sale and purchase agreement (as well as in any ancillary agreements) such terms and conditions as it considers appropriate for an expedient sale in the Trustee Divestiture Period. In particular, the Divestiture Trustee may include in the sale and purchase agreement such customary representations and warranties and indemnities as are reasonably required to effect the sale. The Divestiture Trustee shall protect the legitimate financial interests of Cargotec, subject to Cargotec's unconditional obligation to divest at no minimum price in the Trustee Divestiture Period.

31. In the Trustee Divestiture Period (or otherwise at the Commission's request), the Divestiture Trustee shall provide the Commission with a comprehensive monthly report written in English on the progress of the divestiture process. Such reports shall be submitted within 15 days after the end of every month with a simultaneous copy to the Monitoring Trustee and a non-confidential copy to Cargotec.

III. Duties and obligations of Cargotec

32. Cargotec shall provide and shall cause its advisors to provide the Trustee with all such co-operation, assistance and information as the Trustee may reasonably require to perform its tasks. The Trustee shall have full and complete access to any of Cargotec's or the KAS Divestment Business' books, records, documents, management or other personnel, facilities, sites and technical information necessary for fulfilling its duties under the Commitments and Cargotec and the KAS Divestment Business shall provide the Trustee upon request with copies of any document. Cargotec and the KAS Divestment Business shall make available to the Trustee one or more offices on their premises and shall be available for meetings in order to provide the Trustee with all information necessary for the performance of its tasks.
33. Cargotec shall provide the Monitoring Trustee with all managerial and administrative support that it may reasonably request on behalf of the management of the KAS Divestment Business. This shall include all administrative support functions relating to the KAS Divestment Business which are currently carried out at headquarters level. Cargotec shall provide and shall cause its advisors to provide the Monitoring Trustee, on request, with the information submitted to potential purchasers, in particular give the Monitoring Trustee access to the data room documentation and all other information granted to potential purchasers in the due diligence procedure. Cargotec shall inform the Monitoring Trustee on possible purchasers, submit lists of potential purchasers at each stage of the selection process, including the offers made by potential purchasers at those stages, and keep the Monitoring Trustee informed of all developments in the divestiture process.
34. Cargotec shall grant or procure Affiliated Undertakings to grant comprehensive powers of attorney, duly executed, to the Divestiture Trustee to effect the sale (including ancillary agreements), the Closing and all actions and declarations which the Divestiture Trustee considers necessary or appropriate to achieve the sale and the Closing, including the appointment of advisors to assist with the sale process. Upon request of the Divestiture Trustee, Cargotec shall cause the documents required for effecting the sale and the Closing to be duly executed.
35. Cargotec shall indemnify the Trustee and its employees and agents (each an *Indemnified Party*) and hold each Indemnified Party harmless against, and hereby agrees that an Indemnified Party shall have no liability to Cargotec for, any liabilities arising out of the performance of the Trustee's duties under the Commitments, except to the extent that such liabilities result from the wilful default, recklessness, gross negligence or bad faith of the Trustee, its employees, agents or advisors.

36. At the expense of Cargotec, the Trustee may appoint advisors (in particular for corporate finance or legal advice), subject to Cargotec's approval (this approval not to be unreasonably withheld or delayed) if the Trustee considers the appointment of such advisors necessary or appropriate for the performance of its duties and obligations under the Mandate, provided that any fees and other expenses incurred by the Trustee are reasonable. Should Cargotec refuse to approve the advisors proposed by the Trustee the Commission may approve the appointment of such advisors instead, after having heard Cargotec. Only the Trustee shall be entitled to issue instructions to the advisors. Paragraph 35 of these Commitments shall apply *mutatis mutandis*. In the Trustee Divestiture Period, the Divestiture Trustee may use advisors who served Cargotec during the Divestiture Period if the Divestiture Trustee considers this in the best interest of an expedient sale.
37. Cargotec agrees that the Commission may share Confidential Information proprietary to Cargotec with the Trustee. The Trustee shall not disclose such information and the principles contained in Article 17 (1) and (2) of the Merger Regulation apply *mutatis mutandis*.
38. Cargotec agrees that the contact details of the Monitoring Trustee are published on the website of the Commission's Directorate-General for Competition and they shall inform interested third parties, in particular any potential purchasers, of the identity and the tasks of the Monitoring Trustee.
39. For a period of 10 years from the Effective Date the Commission may request all information from Cargotec that is reasonably necessary to monitor the effective implementation of these Commitments.

IV. Replacement, discharge and reappointment of the Trustee

40. If the Trustee ceases to perform its functions under the Commitments or for any other good cause, including the exposure of the Trustee to a Conflict of Interest:
- (a) the Commission may, after hearing the Trustee and the Parties, require the Parties to replace the Trustee; or
 - (b) The Parties may, with the prior approval of the Commission, replace the Trustee.
41. If the Trustee is removed according to paragraph 40 of these Commitments, the Trustee may be required to continue in its function until a new Trustee is in place to whom the Trustee has effected a full hand over of all relevant information. The new Trustee shall be appointed in accordance with the procedure referred to in paragraphs 19-26 of these Commitments.
42. Unless removed according to paragraph 40 of these Commitments, the Trustee shall cease to act as Trustee only after the Commission has discharged it from its duties after all the Commitments with which the Trustee has been entrusted have been implemented. However, the Commission may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.

Section F. The review clause

43. The Commission may extend the time periods foreseen in the Commitments in response to a request from Cargotec or, in appropriate cases, on its own initiative. Where Cargotec requests an extension of a time period, it shall submit a reasoned request to the Commission no later than one month before the expiry of that period, showing good cause. This request shall be accompanied by a report from the Monitoring Trustee, who shall, at the same time send a non-confidential copy of the report to Cargotec. Only in exceptional circumstances shall Cargotec be entitled to request an extension within the last month of any period.
44. The Commission may further, in response to a reasoned request from Cargotec showing good cause waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in these Commitments. This request shall be accompanied by a report from the Monitoring Trustee, who shall, at the same time send a non-confidential copy of the report to Cargotec. The request shall not have the effect of suspending the application of the undertaking and, in particular, of suspending the expiry of any time period in which the undertaking has to be complied with.

Section G. Entry into force

45. The Commitments shall take effect upon the date of adoption of the Decision.

[signed]
duly authorised for and on behalf of
Cargotec

[signed]
duly authorised for and on behalf of
Konecranes

KAS SCHEDULE

1. The KAS Divestment Business consists of the entirety of Cargotec's KAS business, which comprises of (a) Cargotec's entire Ports Cranes (***ICS***) business, which is active in the supply and servicing of STS cranes, RTGs, RMGs and ASCs; and of (b) Cargotec's entire Intelligent Horizontal Transport Solutions (***IHTS***) business, which is Cargotec's global business for the supply and servicing of straddle and shuttle carriers (horizontal transportation or ***HTE***), and (iii) Cargotec's entire Kalmar One automation system, together with all essential functions which are necessary to ensure the viability and competitiveness of the business.
2. The KAS Divestment 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. Following limited carve-out steps that will be completed prior to Closing, the KAS Divestment Business will be transferred to the Purchaser as a fully stand-alone business with its own management and all relevant business functions. Prior to Closing, Cargotec will transfer all tangible and intangible assets that are necessary for the continued operation, viability and competitiveness of the KAS Divestment Business into dedicated legal entities in the countries where the KAS Divestment Business currently has its main operations. The KAS Divestment Business will transfer to the Purchaser via a sale of 100% of the shares of "Cargotec Holding Netherlands B.V.", a new holding company which will hold all the shares in the newly established legal entity "Cargotec Advanced Netherlands B.V.". This entity will own the shares in the country-specific legal entities holding the assets comprising the KAS Divestment Business. Please refer to **Appendix 1** for an overview of the legal entities which are currently anticipated to transfer to the Purchaser (the ***KAS Subsidiaries***).
3. Specifically, the KAS Business includes the following tangible and intangible assets that will be held by the KAS Subsidiaries by the time of Closing:
 - a. KAS **headquarters** in Tampere, Finland.
 - b. Cargotec's **assembly site** in Stargard, Poland (the ***Stargard Facility***), with the exception of the personnel and assets referred to in paragraph 5 of this Schedule.
 - c. The workshops, warehouses and offices identified in **Appendix 2**.²
 - d. All Port Cranes and HTE **product lines** assembled and sold by Cargotec which comprises STS cranes, RTGs, RMGs and ASCs, straddle carriers and shuttle

² Nearly 95 percent of all KAS Divestiture Business employees identified in Appendix 10 work either in the key KAS facilities identified in Appendix 2 that will transfer with the KAS Divestiture Business or alternatively at customer sites or out of virtual offices. The remainder of the KAS Divestiture Business employees work at non-critical warehouses or office spaces that also will be included in the divestiture business at the Purchaser's option. These employees— 99 in total or less than 7 percent of all KAS Divestiture Business employees — work at Cargotec sites predominately used by other parts of the Cargotec business (e.g., Hiab, McGregor, KAMOS).

carriers,³ including Cargotec's Port Cranes and HTE related **product descriptions** and related information.

- e. All existing Port Cranes and HTE related **inventory** of finished goods, components, sub-components, raw materials and spare parts as of the date of Closing.
- f. All existing Port Cranes and HTE related **tool box containers**, which contain necessary equipment for project delivery, and **tools and jigs**, which are used for assembly and maintenance, including all available related documentation.
- g. All relevant information existing at or initiated before Closing on **product development projects** in relation to Port Cranes, HTE and Kalmar One. For a list of the main development projects (including pipeline projects) please refer to **Appendix 3**.
- h. The “**Nelcon**” **brand**.
- i. The “**Kalmar**” **brand** for use in relation to the supply and servicing of Port Cranes and HTE. For the avoidance of doubt, the Parties retain the exclusive right to use the Kalmar brand in relation to the supply and servicing of any other equipment than Port Cranes and HTE, in particular mobile equipment. Cargotec will differentiate the Kalmar brand used in relation to the supply and servicing of any other equipment than Port Cranes and HTE from the Kalmar brand used by the Purchaser in relation to the supply and servicing of Port Cranes and HTE. If, in accordance with paragraph 18, the Commission approves the sale of the KAS Divestment Business without the Kalmar brand, the Parties shall not be allowed to sell any Port Cranes and/or HTE products using the Kalmar brand during the period of ten (10) years from Closing. At the option of the Purchaser, the Parties and the Purchaser will enter into commercially acceptable arrangements, including if applicable through an exclusive and royalty-free license, to allow the Purchaser to sell Port Cranes and HTE products using the Kalmar brand for a period of five (5) years from the moment when the Parties and the Purchaser have agreed on the relevant arrangements. After this five (5) year period and until of the end of the tenth (10) year from Closing, neither the Parties nor the Purchaser will be allowed to sell Port Cranes or HTE products under the Kalmar brand.
- j. All **patents, and other intellectual property rights and knowhow (IPR)** related to Port Cranes and/or HTE, including IPR (if any) related to Port Cranes and/or HTE spare parts. To the extent the KAS Divestment Business relies on IPR which Cargotec licenses from third parties, Cargotec will use its best efforts to procure that the relevant licenses (or relevant portions thereof) will be transferred to the Purchaser. A list of the main product IP for Port Cranes and/or HTE is included at **Appendix 4**.

³ [...], all of Cargotec's existing AGV-related know how and other assets will also be transferred as part of the KAS Divestment Business.

To the extent required by the Purchaser, and in order to ensure that the KAS Divestment Business has access to the shared technology required to maintain its competitiveness and viability as prior to Closing, Cargotec will provide a royalty free, irrevocable, non-exclusive, sub-licensable, global and perpetual license to the IPR currently used by Cargotec primarily to develop, manufacture, sell and use products outside the scope of the KAS Divestment Business but which are also currently used for the development, manufacturing, sale and use of Port Cranes and HTE.

For the avoidance of doubt:

A) the term 'shared technology' as used and which fulfils the conditions set out above in this paragraph 3(j), includes IPR for use in Port Cranes and/or HTE which (1) has been jointly developed by Cargotec and by the KAS Divestment Business as of Closing, or (2) has been developed solely by Cargotec or the KAS Divestment Business; and

B) the term 'shared technology' does not include IPR developed by Cargotec alone to develop and manufacture products outside the scope of the Divestment Business.

This license will not extend to any improvements of or developments to the licensed technology, know-how or other intellectual property developed by the Parties after Closing. The Purchaser will be able to make any changes to the technology as considered appropriate. For the avoidance of doubt, all liabilities arising from changes carried out by the Purchaser or by any other person/entity will be borne by the Purchaser or by the person/entity making such changes.

The Merged Entity will obtain a royalty free, irrevocable, non-exclusive, sub-licensable, global and perpetual license to any shared IPR that is transferred to the Purchaser but is required by the Merged Entity to pursue activities outside the Port Cranes and HTE businesses.

- k. The entire **Kalmar One automation system**, enabling the Purchaser of the KAS Divestment Business to sell fully automated Port Cranes and HTE. The KAS Divestment Business will include the relevant IPR and other assets in relation to the Kalmar One equipment control system (ECS). Insofar as the Kalmar One automation system relies on third-party IPR licenses, Cargotec will use its best efforts to transfer those third-party licenses to the Purchaser.
- l. All **customer contracts and relationships**, including:
 - All ongoing **equipment orders and/or contracts** at the time of Closing (including options that were agreed in the context of deliveries in the past). To the extent customer consent is required for the transfer, Cargotec will use its best efforts to procure such consent. Should such consent not be obtained, Cargotec will 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 the Monitoring Trustee. Should such a transfer not be possible, Cargotec will terminate the respective contract if and to the extent

reasonably possible without exposing itself to damage claims or any other form of significant harm. A non-exhaustive list of the KAS Divestment Business' main ongoing equipment orders and/or contracts is provided as **Appendix 5**.

- Comprehensive copies of **customer records**, in the form of excerpts from Cargotec's customer relationship management (**CRM**) system. More specifically, Cargotec will transfer all available historic CRM content in relation to Port Cranes and HTE opportunities (including won and lost opportunities) to the Purchaser.
 - All ongoing **aftersales services contracts** related to Port Cranes and HTE.⁴ To the extent customer consent is required for the transfer, Cargotec will use its best efforts to procure such consent. Should such consent not be obtained, Cargotec will 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 the Monitoring Trustee. Should such a transfer not be possible, Cargotec will terminate the respective contract if and to the extent reasonably possible without exposing itself to damage claims or any other form of significant harm. A non-exhaustive list of the KAS Divestment Business' main service contracts is provided as **Appendix 6**. Cargotec will use its best efforts to procure the relevant consents to split any shared service contracts, i.e., contracts that cover Port Cranes and/or HTE and other equipment types, and to transfer the Port Cranes and/or HTE related portion to the Purchaser.
 - All customer contracts relating to **Port Cranes and HTE upgrade projects**. To the extent customer consent is required for the transfer, Cargotec will use its best efforts to procure such consent. Should such consent not be obtained, Cargotec will 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 the Monitoring Trustee. Should such a transfer not be possible, Cargotec will terminate the respective contract if and to the extent reasonably possible without exposing itself to damage claims or any other form of significant harm. A non-exhaustive list of the main ongoing upgrade projects is as also included in **Appendix 5**.
- m. At the option of the Purchaser, Cargotec will also transfer (the relevant portion of) any other third-party contracts that relate to the KAS Divestment Business. To the extent third-party consent is required for the transfer, Cargotec will use its best efforts to procure such consent. This particularly includes:
- Cargotec's **contract with Portowy Zakład Techniczny sp. z o.o. (PZT)** in Gdynia, Poland, under which Cargotec delivers semi-finished straddle/shuttle carriers to PZT for final assembly (esp. final erection and quality testing) and shipment of the fully erected machines to the customer. Cargotec will use its

⁴ The KAS business currently has service contracts in certain countries that generate minor revenues. Cargotec notes that it may not be possible for the purchaser to operate these contracts in a profitable way if it does not have broader existing operations in the relevant countries. These contracts will therefore be transferred at the option of the purchaser (subject to customer consent to the transfer).

best efforts to procure PZT's consent to a transfer of this contract to the Purchaser.

- Cargotec's **contract with Rainbow Industries Co., Ltd (RIC)**, on the basis of which RIC currently assembles Cargotec's Port Cranes at its facility in Taicang (China), including Cargotec's lease of the premises in Taicang. If this contract with RIC is transferred to the Purchaser, the Purchaser will issue a purchase order to RIC when a customer orders a crane. RIC will be responsible for the assembly of the Port Cranes. The Purchaser will be responsible for project management and delivery of the crane(s) to the customer.⁵
 - All relevant **supply contracts** relating to the KAS Divestment Business. A non-exhaustive list of all major supply contracts is submitted as **Appendix 7**. Shared supply contracts will be split up and the parts relevant for the KAS Divestment Business will be transferred to the Purchaser. To the extent supplier consent is required for the transfer, Cargotec will use its best efforts to procure such consent. However, in case the Purchaser is not able to secure supplies for any of the relevant inputs required for the continued operation of the KAS Divestment Business by the time of Closing, Cargotec will provide the corresponding inputs to the KAS Divestment Business by entering into a transitional back-to-back supply agreement at cost.
 - All relevant **dealership / agency agreements** relating to the KAS Divestment Business. A non-exhaustive list of the main agency and dealership agreements is submitted as **Appendix 8**. Shared dealership / agency agreements will be split up and the parts relevant for Port Cranes and/or HTE will be transferred to the Purchaser. To the extent third-party consent is required for the transfer, Cargotec will use its best efforts to procure such consent.
 - All relevant **engineering consultancy agreements** relating to the KAS Divestment Business. A non-exhaustive list of all major engineering consultancy agreements is submitted as **Appendix 9**. Shared engineering consultancy agreements will be split up and the parts relevant for Port Cranes and/or HTE will be transferred to the Purchaser. To the extent third-party consent is required for the transfer, Cargotec will use its best efforts to procure such consent.
- n. **Personnel and Key Personnel:** the KAS Divestment Business employs approximately 1,500 FTEs (including frontline unit personnel) worldwide. For a preliminary overview of the KAS Divestment Business Personnel, please refer to **Appendix 10**. For a list of the KAS Divestment Business Key Personnel, please refer to **Appendix 11**.
- o. All other **business records, books of account, financial records, and tax records**; all information, including customer and supplier lists and details, product and pricing information, account histories, research data and

⁵ A transfer of this contract requires consent by RIC. If the purchaser wants to continue this assembly partnership, Cargotec will use its best efforts to procure RIC's consent to the transfer.

commercial data used exclusively or predominantly for the manufacturing, supply or servicing of Port Cranes and/or HTE.

- p. To the extent applicable, all **sales and promotional literature** and other sales-related materials used exclusively or predominantly for the manufacturing, supply or servicing of Port Cranes and/or HTE.
 - q. At the option of the Purchaser, Cargotec will provide to the Purchaser, via a licence to the relevant IPR or otherwise, a duplicate of the **cloud-based environment and functionalities** related to the KAS Divestment 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 HTE. The Purchaser will be permitted to use the aforementioned functionalities and associated IPR exclusively for Cargotec Port Cranes and HTE.
- 4. If there is any asset or personnel which is not covered by paragraph 3 of this Schedule but which is necessary for the continued viability and competitiveness of the KAS Divestment Business, that asset/personnel or adequate substitute will be offered to the Purchaser, taking into account the Purchaser's existing assets and capabilities.
 - 5. All personnel employed by and assets owned by Cargotec's loader-crane business unit Hiab, including the separate, dedicated Hiab facility at Stargard, will be retained by Cargotec and do not form part of the KAS Divestment Business. Moreover, subject to paragraph 4 of this Schedule, Cargotec will carve-out all assets and personnel at Stargard used exclusively for Cargotec's mobile equipment business subject to the Monitoring Trustee's view and approval by the Commission. To this effect, Cargotec shall at the latest by the end of the First Divestiture Period make a fully documented and reasoned submission to the Commission containing a list of all the personnel and the main assets at the Stargard Facility which are used exclusively for Cargotec's mobile equipment business and will therefore be carved-out from the KAS Divestment Business and be retained by Cargotec, as well as an indicative timeline for the transfer of the relevant assets out of Stargard (the ***Reverse Carve-Out Submission***).
 - 6. The transfer of Cargotec's mobile equipment assembly activities from Stargard to another facility shall be completed within a period not exceeding twenty-four (24) months from Closing (the ***Stargard Transfer Period***). The Stargard Transfer Period may be extended at the request of Cargotec with the approval of the Monitoring Trustee which may not be unreasonably withheld. For the duration of the Stargard Transfer Period, Cargotec and the Purchaser will enter into a transitional lease and services agreement (the ***Stargard TSA***) pursuant to which Cargotec will have the right to continue to assemble mobile equipment at the Stargard Facility.⁶

⁶ The scope of the Stargard TSA will be negotiated with the Purchaser and take into account the capabilities of and the final scope of the assets that will transfer to the Purchaser.

7. At the option of the Purchaser, Cargotec will in the period following twelve (12) months from Closing (the ***Stargard Reorganisation Period***) reorganise the Stargard Facility in such a way that the activities of the KAS Divestment Business, i.e., all HTE assembly, will be moved to a dedicated building at the Stargard Facility (the ***Stargard HTE Facility***) as laid out in the reorganisation plan attached as **Appendix 12**.
8. In addition to the Stargard TSA, at the option of the Purchaser, Cargotec will offer the following transitional services to the Purchaser.⁷ Cargotec will make available these transitional services on a basis materially the same as how those services are currently provided to the KAS Divestment Business, to allow the transfer of the KAS Divestment Business in a manner which ensures its ongoing viability and competitive strength.
 - a. For a period of up to 12 months after Closing, transitional support in relation to certain group-level services that are currently provided to the KAS Divestment Business by the wider Cargotec organisation, such as certain operational finance services and operational HR services.
 - b. For a period of up to 12 months after Closing, transitional support with respect to SAP and other IT systems.
 - c. For a period of up to 12 months after Closing, access to other sites (e.g. workshops, offices or warehouses) which are currently used by Cargotec in relation to the KAS Divestment Business but are shared with other Cargotec businesses and which will not transfer to the Purchaser.

⁷ The scope of the relevant transitional service agreements will be negotiated with the Purchaser and take into account the capabilities of and the final scope of the assets that will transfer to the Purchaser.

KAS Schedule Appendix 1
Overview of KAS Subsidiaries

NewCo / Existing company	Country	Owner Share	Owner Shares
NewCo Netherlands (Cargotec Advanced Netherlands B.V.)	Netherlands	100%	Cargotec Holding Netherlands B.V.
NewCo China	China	100%	NewCo Netherlands
NewCo Australia	Australia	100%	NewCo Netherlands
NewCo India	India	99% 1%	NewCo Netherlands NewCo Finland
NewCo Spain	Spain	100%	NewCo Netherlands
NewCo Finland (Cargotec Advanced Finland Oy)	Finland	100%	NewCo Netherlands
NewCo Morocco	Morocco	100%	NewCo Netherlands
NewCo Belgium	Belgium	100%	NewCo Netherlands
NewCo UK	UK	100%	NewCo Netherlands
NewCo Norway	Norway	100%	NewCo Netherlands
NewCo Germany	Germany	100%	NewCo Netherlands
NewCo Singapore	Singapore	100%	NewCo Netherlands
NewCo Ireland	Ireland	100%	NewCo Netherlands
NewCo USA	USA	100%	NewCo Netherlands
ExistingCo (Cargotec Crane and Electrical Services Inc.)	USA	100%	NewCo Netherlands
NewCo France	France	100%	NewCo Netherlands
NewCo South Africa	South Africa	100%	NewCo Netherlands
NewCo Poland	Poland	100%	NewCo Netherlands

Appendix 2
[...]

Appendix 3
[...]

Appendix 4
[...]

Appendix 5
[...]

Appendix 6
[...]

Appendix 7
[...]

Appendix 8
[...]

Appendix 9
[...]

Appendix 10
[...]

Appendix 11
Key Personnel of the KAS Divestment Business

Name	Position
[...]	President
[...]¹	VP Sales / Sales Support
[...]	VP Supply Chain & Sourcing
[...]	VP Products & Solutions
[...]	VP Automation and Software
[...]	VP Project Delivery

Appendix 12
[...]

¹ This position is currently vacant but will be filled before Closing. Currently, [...] (President of KAS) provisionally also functions as Head of Sales / Sales Support.

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ADDENDUM TO THE KAS SCHEDULE

1. As specified in paragraphs 5 and 6 of the KAS Schedule, Cargotec will – subject to paragraph 4 of the KAS Schedule as well as subject to the Monitoring Trustee’s view and approval by the Commission – carve out all assets and personnel at Stargard used exclusively for Cargotec’s mobile equipment business. This transfer shall be completed within a period not exceeding twenty-four (24) months from Closing (the ***Stargard Transfer Period***), extendable at the request of Cargotec with the approval of the Monitoring Trustee. For the duration of the Stargard Transfer Period, Cargotec and the Purchaser will enter into a transitional lease and services agreement (the ***Stargard TSA***) pursuant to which Cargotec will have the right to continue to assemble mobile equipment at the Stargard Facility.
2. The Stargard TSA shall include a mechanism (the ***Stargard Cost Mechanism***) pursuant to which the Merged Entity will bear any additional operating costs in relation to the Stargard Facility if and to the extent such additional costs are incurred during the Stargard Transfer Period as a result of the fact that the Stargard Facility is used by two companies (as opposed to only one company) (the ***Additional Stargard Costs***).
3. The Additional Stargard Costs will be calculated as follows:
 - i. The total operating costs of the Stargard Facility will be calculated and apportioned to the Purchaser and the Merged Entity on the basis of the square metres used by the KAS and the KAMOS business respectively. By way of example, if the KAMOS business occupies 80% of the floor space, the Merged Entity will generally bear 80% of the operating costs.
 - ii. Should Additional Stargard Costs occur, these additional costs will be borne fully by the Merged Entity. By way of example, if the total operating costs at Stargard are currently 100 and increase to 120 as a result of Additional Stargard Costs, these Additional Stargard Costs of 20 will not be subject to the split described at paragraph 3(i) above but will be fully borne by the Merged Entity (i.e., assuming an 80/20 split between KAMOS and KAS, the Purchaser will continue to only pay 20 in operating costs, rather than having to pay an additional 4).
 - iii. Whether and to what extent cost increases are to be considered Additional Stargard Costs, i.e., are the result of the Stargard Facility being used by two companies, shall be agreed between the Purchaser and the Merged Entity or, in the absence of an agreement, determined by the Monitoring Trustee.
4. The Stargard Cost Mechanism shall be limited to the Stargard Transfer Period and, in any event, not exceed a maximum term of five (5) years.
5. Subject to validation by the Monitoring Trustee, the Purchaser and the Merged Entity may agree on alternative arrangements to the extent such arrangements are better suited to ensure the continued viability of the KAS Divestment Business, it being understood

that any cost compensation arrangement shall be limited to the Stargard Transfer Period and, in any event, not exceed a maximum term of five (5) years.

[signed]
duly authorised for and on behalf of Cargotec

[signed]
duly authorised for and on behalf of Konecranes