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***Case No COMP/M.5345 -
TEREX CORPORATION
/ FANTUZZI GROUP***

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

Article 6(1)(b) NON-OPPOSITION
Date: 19/11/2008

***In electronic form on the EUR-Lex website under document
number 32008M5345***



COMMISSION OF THE EUROPEAN COMMUNITIES

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

Brussels, 19.11.2008
SG-Greffe(2008) D/206913
C(2008) 7334

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying party:

Dear Sir/Madam,

**Subject: Case No COMP/M.5345 - TEREX CORPORATION/ FANTUZZI GROUP
Notification of 15/10/2008 pursuant to Article 4 of Council Regulation
No 139/2004¹**

1. On 15.10.2008, the Commission received a notification of a proposed concentration pursuant to Article 4 and following a referral pursuant to Article 4(5) of Council Regulation (EC) No 139/2004 by which Terex Corporation ("Terex") will acquire sole control over Fantuzzi Group ("Fantuzzi") by way of purchase of shares.
2. After examination of the notification, the Commission has concluded that the operation falls within the scope of the Merger Regulation but does not raise serious doubts as to its compatibility with the common market and the EEA agreement.

I. THE PARTIES

3. Fantuzzi Industries S.a.r.l ("Fantuzzi") is a Luxembourg based corporation ultimately controlling Fantuzzi Group, active in the container handling equipment sector through its subsidiaries Reggiane Cranes & Plants S.p.A and Noell Crane Holding GmbH.
4. Terex Corporation ("Terex", US) is the ultimate controlling entity of the Terex Group which operates in the manufacture of a broad range of equipment for the construction, infrastructure development, quarrying, recycling and surface mining industry. With respect to the container handling equipment sector, it is active exclusively in the Reach Stackers' segment. Terex would carry out this transaction through its subsidiaries: Terex Italia S.r.l., and Terex Germany GMBH&CO KG.

¹ OJ L 24, 29.1.2004 p. 1.

II. THE OPERATION AND THE CONCENTRATION

5. The envisaged operation involves the acquisition by Terex of the entire share capital of Reggiane Cranes & Plants S.p.A. (which in turn will have purchased all the operations of Fantuzzi Reggiane S.p.A.) through Terex Italia S.r.l. and of Noell Crane Holding GmbH through Terex Germany GMBH&CO KG further to two separate and simultaneous transactions. As a result, Terex will acquire sole control of Fantuzzi.

IV. COMMUNITY DIMENSION

6. The notified concentration does not meet the turnover thresholds of Article 1(2) or 1(3) of the Merger Regulation.
7. On 19/09/2007, the notifying party informed the Commission in a reasoned submission pursuant to Article 4(5) of the ECMR that the concentration was capable of being reviewed under the national competition laws of at least three Member States, namely, Austria, Bulgaria, Germany, Greece, Italy and Malta and requested the Commission to examine it. Since none of the Member States competent to examine the concentration indicated its disagreement with the request for referral within the period laid down by the ECMR, the concentration is deemed to have a Community dimension.

V. COMPETITIVE ASSESSMENT

PRODUCT MARKET DEFINITION

8. The transaction concerns the container handling equipment sector. In the notifying party's view, which is in line with previous decisions of the German and Spanish competition Authorities, it is appropriate to segment container handling machinery according to the different types of equipment, namely, Terminal Tractors, Forklift Trucks, Reach Stackers, Straddle Carriers, Ship to Shore Cranes, Gantry Cranes and Mobile Harbour Cranes².
9. There are no precedents of the European Commission on the above market; however, in previous decisions it considered similar vehicles, namely, Forklift Trucks³, to form a separate market within the handling equipment sector⁴.
10. Moreover, the German Competition Authority has also identified a separate market for after sales Services (repairs, servicing and delivery of spare parts). These services are usually performed by a large number of different operators such as equipment producers, independent service operators, companies active in full operational leasing

² Bundeskartellamt's decision n. B5 – 29220 - FA-51/07 Cargotec / CVS Ferrari, of 24 August 2007, para. 75 – 80 (“German Decision”), Ministerio de Economía Y Hacienda – Dirección General de Defensa de la Competencia, decision n. 07014 Cargotec / CVS Ferrari , para. V.2.

³ Forklift trucks are vehicles used for the transport of goods in horizontal and vertical directions up to a lifting height of 4 to 6 metres. They all lift the goods outside the base of their wheels. They are used mainly for fast horizontal transport and for limited lifting tasks.

⁴ COMP IV/M.256 Linde/Fiat; COMP IV/M.1950 Toyoda Automatic Loom Works/BT Industries; COMP/M.2844 Linde/Komatsu/Komatsu Forklift, para. 26.

and rental business, original manufacturers of components and parts and terminal operators.

11. Nevertheless, for the purpose of the present operation the product market definition can be left open as the transaction does not raise any competition concerns on any possible product markets.

GEOGRAPHIC MARKET DEFINITION

12. The notifying party submits that each product market according to which the container handling equipment sector can be segmented is at least EEA-wide due to (i) the homogeneity of the conditions of competition and the absence of significant barriers to entry in different member States; (ii) the low transport costs within the EEA; (iii) the homogeneity of prices across the EEA. According to the notifying party, these arguments are in line with previous decisions of the European Commission on Forklift Trucks⁵ and with a precedent of the German and Spanish Competition Authorities⁶.
13. The notifying party has also supported its view with the following arguments; (i) Reach Stackers' end-use is the same throughout the EEA (i.e. lifting containers of any size to/from trailers or tractors and stacking/piling containers), (ii) there are no barriers or obstacles to trade between the different member States, (iii) prices' structure is homogeneous within the EEA⁷, (iv) there are no cultural features, language issues or customers-led requirements specific to local or national preferences which may affect the trade of this product, (v) there are no real product differentiation in terms of brand or quality as all the key components are identical, (vi) suppliers usually sell to costumers located throughout the EEA from one or very few manufacturing sites, this is the case of the parties as Terex manufactures 100% of its Reach Stackers in France and sells to customers located across the EEA (and beyond). Similarly Fantuzzi produces all the Reach Stackers sold in the EEA in its factory in Italy.
14. The question of whether the geographic market definition above identified is at least EEA-wide can be left open as the envisaged operation does not raise any competition concerns.

COMPETITIVE ASSESSMENT

15. Based on the above mentioned market definitions, the envisaged operation results in only one affected product market, namely the market for Reach Stackers⁸, where the parties' activities overlap horizontally. In this respect, they would have a post-merger

⁵ COMP IV/M.256 Linde/Fiat; COMP IV/M.1950 Toyoda Automatic Loom Works/BT Industries; COMP/M.2844 Linde/Komatsu/Komatsu Forklift, para. 26.

⁶ Bundeskartellamt's decision n. B5 – 29220 - FA-51/07 Cargotec / CVS Ferrari, of 24 August 2007, para. 75 – 80 (“German Decision”), Ministerio de Economía Y Hacienda – Dirección General de Defensa de la Competencia, decision n. 07014 Cargotec / CVS Ferrari, para. V.2.

⁷ For instance, Fantuzzi and Terex have only one price list for all the EEA.

⁸ Reach stacker is a type of a mobile crane able to transport a container in short distances very quickly and pile them in various rows depending on its access.

combined market share of [10-20]% in value (Fantuzzi: [5-10]% and Terex: [5-10]%) and [10-20]% in volume (Fantuzzi: [5-10]% and Terex: [5-10] %) within the EEA and [10-20]% in value (Fantuzzi: [5-10]% and Terex: [5-10]%) and [20-30]% in volume at the worldwide level (Fantuzzi: [10-20]% and Terex: [10-20]%).

16. Under both market delineations the parties face competitive pressure from strong competitors such as Kalmar (40-50% share in value in the EEA and [30-40]% worldwide), C.V.S. S.p.A. (10-20% share in value in the EEA and [10-20]% worldwide), Konecranes (10-20% share in value in the EEA and [10-20]% worldwide) and other players. The notifying party considers that competitors' market shares in volume are not different from those in value as there is no ground to consider prices applied by competitors below the average price applicable in this industrial sector.
17. Therefore, it follows from the foregoing that the transaction will not substantially alter the competition conditions on the relevant market and is unlikely to lead to any competition concerns.

VI. CONCLUSION

18. For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EC) No 139/2004.

For the Commission
(signed)
Neelie KROES
Member of the Commission