

***Case No COMP/M.2844 -  
LINDE / KOMATSU /  
KOMATSU FORKLIFT***

Only the English text is available and authentic.

**REGULATION (EEC) No 4064/89  
MERGER PROCEDURE**

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Article 6(1)(b) NON-OPPOSITION  
Date: 19/12/2002

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 19/12/2002

SG (2002) D/233389

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EEC) No 4064/89 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 Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE  
ARTICLE 6(1)(b) DECISION

**To the notifying Parties**

Dear Sir/Madam,

**Subject: Case No COMP/M.2844 – LINDE / KOMATSU / KOMATSU FORKLIFT  
Notification of 21 November 2002 pursuant to Article 4 of Council  
Regulation No 4064/89<sup>1</sup>**

1. On 21 November 2002, the Commission received a notification of a proposed concentration by which the undertaking Linde A.G. (“Linde”, Germany) and Komatsu Ltd. (“Komatsu”, Japan) acquire within the meaning of Article 3(1)(b) of the Council Regulation joint control of the undertaking Komatsu Forklift Co., Ltd. (“KFL”, Japan), now solely controlled by Komatsu.
2. The Commission has concluded that the notified operation falls within the scope of the Merger Regulation and does not raise serious doubts as to its compatibility with the common market.

**I. THE PARTIES**

3. Linde is the ultimate parent company of a multinational technology group active in three main business: (i) the Gas and Engineering Division, which offers industrial gas products world-wide and designs and builds industrial plants in different sectors (petrochemical and pharmaceutical industries, processing of natural gas, etc.), (ii) the Refrigeration Division (refrigeration technology and freezer display cases and cabinets), and (iii) the Material-Handling Division, which manufactures and sells forklift trucks and material-handling equipment.

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<sup>1</sup> OJ L 395, 30.12.1989 p. 1; corrigendum OJ L 257 of 21.9.1990, p. 13; Regulation as last amended by Regulation (EC) No 1310/97 (OJ L 180, 9. 7. 1997, p. 1, corrigendum OJ L 40, 13.2.1998, p. 17).

4. Komatsu is the ultimate parent company of a multinational group active in three primary industry business: (i) manufacture of construction and mining equipment (hydraulic excavators, bulldozers, tunnel boring machines, etc.), (ii) manufacture of electronic products (LAN servers, thermo-electric modules, etc.), and (iii) others as manufacture of forging and stamping presses, sheet-metal machines and machine tools, defence systems and outdoor power equipment, and industrial vehicles and logistics, which include forklift trucks and material-handling equipment.
5. KFL is the Komatsu wholly-owned subsidiary active in the forklift trucks and material-handling equipment.

## **II. THE OPERATION**

6. Over the last three years, KFL and Linde have signed different co-operation agreements. The Basic Agreement, signed on 19 May 2000, sets out the co-operation with respect to production, distribution and exchange of technology in different markets (Europe, Japan, Asia-Pacific and the Americas). In Europe, the co-operation gave rise to the Wholesale Distributorship Agreement (“WDA”) and to the Production Agreement (“PA”), both signed on 31 August 2000. Under these agreements, Linde becomes the KFL’s exclusive wholesaler in Europe and starts to produce some KFL products through its subsidiary OM Carrelli Elevatori S.p.A. (“OM”).
7. Further to these agreements, and in order to enhance their co-operation, the parties signed the Global Co-operation Basic Agreement (“GCBA”, 10 May 2002), which sets the framework for the co-operation in other fields, including R&D, procurement, production, distribution and marketing.
8. The proposed transaction consist in the transformation of KFL into a full function joint venture of Linde and Komatsu.
9. To that aim, the parties have signed on 12 November 2002 a Joint Venture Agreement (“JVA”), which establishes the acquisition by Linde of 48% KFL’s share capital as well as important veto rights which will confer on Linde joint control with Komatsu over KFL.
10. The acquisition by Linde of its stake in KFL will be carried out in three stages: (i) a first acquisition amounting to 13,3% stake, before 31 December 2002, (ii) a second one amounting to 35% stake, before 30 June 2003, and (iii) a third acquisition amounting to 48% stake during the first half of 2005.

## **III. CONCENTRATION**

### *Joint control*

11. There will be a “Steering Committee”, where Linde and Komatsu will be equally represented with 2 members each. This committee will set up the commercial strategy of KFL, which will have to be implemented by the KFL’s Board of Directors. Linde will be able to veto the Board of Directors’ decisions that are not in line with the commercial strategy decided in the Steering Committee.

12. Regarding the Board of Directors, the number of directors appointed by Komatsu and Linde will be: 4 and 1 after the first acquisition, 4 and 2 after the second one, and 3 and 2 after the third one. Despite this minority position of Linde, it will have important veto rights with regards to:

[strategic decisions on the business policy of the joint venture]

13. Linde will also appoint part of the senior management, [...].
14. These special veto rights will be held by Linde from the outset, so there will be joint control immediately after its first acquisition of shares.

#### Full functionality

15. Prior to the transaction, KFL is a stand-alone business, performing all the activities of an autonomous economic entity at a world-wide basis. The transaction results in a change in the control over KFL. The agreements mentioned in section II, signed prior the transaction, remain the same. Moreover, the WDA and the PA establish the co-operation only in Europe, where, for instance, the OM's license production under the PA is limited to less than [...] of the KFL's total turnover achieved in the KFL-type forklift trucks.
16. The KFL dealership network is and will continue to be a separate network from the OM network.
17. The transformation of KFL into a joint venture will not change KFL's business, and KFL will retain its resources and will continue on a world-wide basis to develop, manufacture, market and distribute material-handling equipment with its own management dedicated to the day-to-day operations.
18. In the light of the above, the proposed transaction is a full function joint venture constituting a concentration.

#### **IV. COMMUNITY DIMENSION**

19. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion<sup>2</sup>. Each of Linde and Komatsu have a Community-wide turnover in excess of EUR 250 million, but they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension.

#### **V. COMPETITIVE ASSESSMENT**

##### **a) Relevant product markets**

20. The parties submit that the market of material-handling equipment can be subdivided according to its main function and area of use into two different relevant product

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<sup>2</sup> Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ C66, 2.3.1998, p25). To the extent that figures include turnover for the period before 1.1.1999, they are calculated on the basis of average ECU exchange rates and translated into EUR on a one-for-one basis.

markets namely the market for counterbalanced forklift trucks (“CFT”) and the market for warehouse equipment (“WE”).

21. CFT are person-operated material-handling vehicles equipped with a fork or ram for loading and transporting cargo, as well as a mast for moving cargo vertically. There are a great variety of models differing in weight bearing capacity and type of engine, but all of them share some common distinctive characteristics which distinguishes them from other material-handling equipment: (i) they lift the weight outside the base of their wheels, that is why they are counterbalanced, (ii) they can carry good in both horizontal and vertical directions, (iii) have a maximum lift height in the range of 4 to 6 metres, (iv) the weight bearing capacity ranges from 0.6 to 50 tonnes, and (v) they are the most flexible and fastest material-handling equipment inside a factory or warehouse.
22. WE are person-operated material-handling vehicles developed for the use in warehouses. Two main groups can be distinguished: (i) electric-motor narrow aisle trucks: larger powered trucks on which the driver stands or sits and which are used for intensive order picking and/or pallet handling with lift heights up to 13 metres, and (ii) electric motor hand trucks: small and electric powered WE that the operator pushes or drives while standing, used for all types of goods handling with lift heights up to 5 metres.
23. Despite these differences in the WE, the parties consider that both groups belong to an overall system. The products are complementary and when a customer is establishing a new warehouse, generally the entire range of WE or at least an essential part of it is required. So, the customers are to a large extent the same for all products.
24. From the supply point of view, the parties argue that most of the larger WE suppliers produce the entire or nearly the entire product range, usually at one and the same production site. The main components, production machines and the entire basic production are the same for all types of WE, and only the final assembly differs due to different additional components. So, the overall WE constitutes one separate relevant product market.
25. The definitions of the relevant product markets stated by the parties are in line with previous Commission decisions<sup>3</sup> in this sector, and the market investigation has largely confirmed that this definition of the relevant product market is valid.

#### **b) Relevant geographic markets**

26. The parties submit that for both relevant product markets, CFT and WE, the relevant geographic market is at least EEA-wide. The main arguments are the following: (i) the conditions of competition are essentially homogeneous through the EEA and there are no significant barriers to entry in the different estates from the legal, economic or geographic point of view, (ii) transport costs within Europe are around 2%-3% of the product value, and usually the plants deliver their products throughout Europe, (iii) large customers generally carry out multinational negotiations with a number of suppliers for central procurement for their operation in several countries and (iv) practically all suppliers have European-wide price list, which has led to homogeneity of prices in Europe.

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<sup>3</sup> Cases COMP IV/M.256 Linde/Fiat (28 September 1992) and COMP IV/M.1950 Toyoda Automatic Loom Works/BT Industries (15 June 2000)

27. These arguments are in line with previous decisions of the Commission<sup>3</sup>. The market investigation carried out by the Commission has confirmed that the relevant geographic market can be considered to be that of the EEA.

### **c) Assessment**

#### Counterbalanced forklift trucks

28. At a EEA level the presence of KFL is marginal, and the combined market shares after the operation will be [30-35]% (Linde [30-35]% and KFL [<5]%). There will remain a number of other competitors which will prevent any dominant position from arising post-merger: Toyota/BT (the former Toyoda/BT) 14%, NACCO 10%, Jungheinrich 8%, Manitou 7%, MCF 5% and Nissan 4%. These are multinational competitors, most of them active as well in the WE market, with enough know-how, production capacity (around 84.5% of capacity utilisation rate in EEA in 2001) and financial strength. Moreover, there are a number of smaller competitors which serve more limited market segments.

29. In the light of the above and due to the minimal overlap produced by the operation, it does not give rise to any competitive concerns.

#### Warehouse equipment

30. The presence of KFL is also marginal in the EEA for the WE market. After the operation, the combined market share will be [30-35]% (Linde [30-35]% and KFL [<5]%), and there will remain a number of multinational competitors: Jungheinrich 31%, Toyota/BT 18%, Atlet 4%, NACCO 3%, Crown 2% and MCF 1%.

31. In this case, the three main players account for around [80-85]% of the EEA market but, even so, the marginal overlap between the parties does not materially alter the prevailing market structure and, thus, does not give rise to any competitive concerns.

32. Hence it is considered that the proposed operation does not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the common market or the EEA or any substantial part of those.

## **VI. CONCLUSION**

33. 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 (EEC) No 4064/89.

For the Commission  
Mario MONTI  
Member of the Commission