

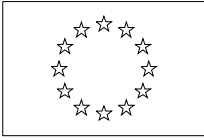
***Case No COMP/M.2882 -
TEREX / DEMAG***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 16/08/2002

*Also available in the CELEX database
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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 16.08.2002

SG (2002) D/231191

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

To the notifying parties

Dear Sir/Madam,

**Subject: Case No COMP/M.2882 – Terex/Demag
Notification of 16.07.2002 pursuant to Article 4 of Council Regulation
No 4064/89¹**

1. On 16.07.2002, the Commission received a notification of a proposed concentration by which the undertaking Terex Corporation (“Terex”), USA, acquires sole control of the whole of the undertaking Demag Mobile Cranes GmbH & Co KG (“Demag”), Germany, by way of purchase of shares.
2. After examination of the notification, the Commission has concluded that the proposed operation falls within the scope of Council Regulation (EEC) No 4064/89 and does not raise serious doubts as to its compatibility with the common market and with the EEA Agreement.

I. THE PARTIES

3. Terex is a diversified global manufacturer of a broad range of equipment for the construction, infrastructure development, quarrying, recycling and surface mining industry. Cranes account for roughly 20% of Terex’ worldwide turnover.
4. Demag is a 100% subsidiary of Siemens AG. Prior to its acquisition by Siemens, Demag was part of Mannesmann’s Atecs business unit, which was divested by Vodafone after the acquisition of Mannesmann. Demag is active in the manufacturing

¹ 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).

and marketing of lattice boom cranes and mobile telescopic cranes. Demag's primary geographic areas of activity are Europe and the USA.

II. THE OPERATION

5. The proposed transaction involves the acquisition by Terex via its indirect subsidiary, Terex Germany GmbH & Co KG ("Terex Germany"), of all the shares of Demag. Following the proposed transaction, Terex will exercise sole control over Demag.
6. The notified operation leads to a change of control and therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

III. COMMUNITY DIMENSION

7. The notified operation does not meet the thresholds laid down in Article 1 (2) of the Merger Regulation, since the combined aggregate world-wide turnover of the undertakings concerned is below EUR 5 billion.² However, the notified concentration has Community dimension pursuant to Article 1(3) of the Merger Regulation.
8. The combined aggregate worldwide turnover of the undertakings concerned is more than EUR 2,500 million (Terex EUR 2,623 million, and Demag EUR 428 million). The combined aggregate turnover of the undertakings concerned exceeds EUR 100 million in at least three Member States [...]. Moreover, in each of these Member States the aggregate turnover of each of the undertakings concerned is more than EUR 25 million. The aggregate Community-wide turnover of each of the undertakings concerned is more than EUR 100 million [...] and none of them achieves more than two-thirds of its aggregate Community-wide turnover within one Member State. The notified operation therefore has a Community dimension. It does not constitute a co-operation case under the EEA Agreement.

IV. THE RELEVANT MARKETS

A. Relevant product markets

9. The proposed acquisition concerns the manufacturing and marketing of mobile telescopic cranes and mobile lattice boom cranes. Mobile cranes are mounted on a carrier system (all terrain, rough-terrain or road-going) which enables them to move loads over certain distances or move quickly between jobs. The customers for the products are generally rental companies who purchase fleets of mobile cranes for hire to construction companies. Due to the high cost of mobile cranes, construction companies are less commonly direct customers for cranes.
10. The Parties suggest that the relevant product markets are those for:
 - i. Mobile telescopic cranes;
 - ii. Low-end lattice boom cranes, with low lifting capacity ("low-end"); and

² 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.

- iii. High-end lattice boom cranes, with high lifting capacity (“high-end”).
11. According to the Parties, mobile telescopic cranes are characterised by their versatility and mobility, allowing them to perform different tasks on building sites with the highest possible degree of flexibility. Mobile telescopic cranes generally travel on the road in an assembled state and can be rigged up quickly on-site. They thus provide a high degree of manoeuvrability and are particularly convenient for short-term construction sites or single lifts. However, their lifting capacity rarely exceeds 650 tons. The Parties also consider that mobile telescopic cranes differ from lattice boom cranes with regard to price.
 12. In contrast, lattice boom cranes are transported in a disassembled state and require assembly on site, which may take 1-2 days. The Parties suggest that the additional costs for haulage, assembly, and personnel result in higher operating expenses as compared with telescopic cranes. Therefore, mobile lattice boom cranes are used for applications that mobile telescopic cannot perform, predominantly on large construction sites. Lattice boom cranes have a significantly higher lifting capacity than mobile telescopic cranes (of up to 1,600 tons) and they are capable of lifting goods to heights (up to 230 meters) that may not be reached by telescopic cranes (maximum height of 140 meters).
 13. The Parties consider a further distinction is to be made between lattice boom cranes with a high lifting capacity (“high-end”) exceeding 300 tons and lattice boom cranes with a lower lifting capacity (“low-end”). The Parties submit that high-end lattice boom cranes differ significantly in terms of size, design complexity, price and intended use from low-end lattice boom cranes. While the latter are mainly used in civil construction work, high-end lattice boom cranes are applied on large industrial construction sites for power stations, bridges and petro-chemical facilities.
 14. The Commission’s market investigation broadly confirmed the Parties’ suggestion of separate markets for mobile telescopic cranes, mobile “low-end” lattice boom cranes and mobile “high-end” lattice boom cranes. However, the initial market investigation also indicated that, to a certain extent, the mobile telescopic crane market might be further subdivided into a low-end and a high-end market. Indeed, smaller mobile telescopic cranes can be moved more easily from one site to another, since they may be driven on public roads without special authorisation or accompanying convoy. Low-end mobile telescopic cranes are thus particularly appropriate for single or short term lifting jobs. However, the Commission’s further inquiry did not provide support for the existence of two separate mobile telescopic crane markets. In any event, for the purpose of the present decision the precise definition of the relevant product markets may be left open given that, on the basis of all alternative market definitions considered, the notified operation does not lead to the creation or strengthening of a dominant position.

B. Relevant geographic markets

15. The Parties submit that the markets for mobile telescopic cranes as well as for high-end and low-end lattice boom cranes are EEA-wide. In Case IV/M.1594 (*Preussag/Babcock Borsig*) of 17.08.1999, the Commission suggested there was a trend toward the crane markets becoming wider than national. The market investigation provided some support for the view of the Parties that the markets are EEA-wide. The main manufacturers of mobile cranes, i.e. Liebherr, Grove, Faun, Terex and Demag have a relatively homogeneous presence in terms of supply relationships throughout the EEA.

Price levels for the different mobile crane models do not differ significantly throughout the EEA and transport costs only account for approximately 1-5% (depending on crane size and distance) of the sale price. There are neither significant regulatory barriers between Member States nor significant national or local preferences for the products of particular mobile crane manufacturers. The market investigation revealed that customers considered it highly desirable for manufacturers to maintain a local presence, however, the Commission notes that the larger manufacturers have a local presence in each Member State. However, the precise definition of the geographic market may be left open since even on the basis of national markets, the proposed concentration does not give rise to competition concerns.

V. COMPETITIVE ASSESSMENT

16. On the market for high-end lattice boom cranes, Demag has an EEA-wide share of [55-60%]. However, the proposed concentration does not lead to any increase of market shares in this market since Terex does not produce lattice boom cranes. The Parties will not be able to resort to bundling practices since only large customers with considerable bargaining power, buy several cranes at once whereas the large majority of customers purchase their cranes according to their medium term requirements. Even on the basis of a hypothetical market for “all mobile cranes” (Terex [0-10%]; Demag [10-20%]), the apparently strong market position of the Parties in respect of high-end lattice boom cranes will be diluted due to the small size of this segment, which accounts for less than 5% of the hypothetical market for “all mobile cranes” (in value).
17. *Horizontal overlap.* Demag sells all-terrain mobile telescopic cranes with a lifting capacity of up to 650 tons and high-end lattice boom cranes. Terex supplies rough-terrain and all-terrain mobile telescopic cranes with a low-lifting capacity (35 to 120 tons) but no lattice boom cranes. On the basis of the market definition proposed by the Parties, the only affected markets are in the field of mobile telescopic cranes. Due to the long-term investment characteristics of mobile cranes, the Commission’s assessment took account of the somewhat fluctuating market shares.
18. On an EEA-wide basis, Terex and Demag have a combined market share of approximately [15-25%] in value terms and [25-35%] of volume. On the basis of national markets, the new entity’s combined average share during the previous five years has been approximately [20-30%] in France, Germany and the UK, and approximately [25-35%] in Italy. However, at both the EEA and the national levels the Parties face competition from strong competitors, namely Liebherr (approximately [35-40%] market share EEA-wide and in most Member States), Grove (approximately [20-25%]) and Faun Tadano (approximately [10-15%]). Moreover, in Italy there are several smaller manufacturers of mobile telescopic cranes such as Locatelli, Ormig and Marchetti exercising competitive pressure on the large manufacturers.
19. Even on the basis of two narrower segments for mobile telescopic cranes (“high-end” and “low-end”) the proposed operation does not give rise to competition concerns. On the high-end segment there is no noteworthy overlap, Terex being merely active in this segment. On the low-end segment, the Parties’ combined market shares (in value terms) vary from [20-30%] on an EEA level, approximately [20-30%] in France, Germany and the UK to approximately [25-35%] in Italy. Though the Parties have a combined volume market share of [35-45%] in France, no competition concerns arise since the value market share is only approximately [20-30%]. However, even in Italy

the Parties cannot behave independently from customers and competitors since all their main competitors (and especially in Italy also local manufacturers) produce low-end telescopic cranes, which the market investigation confirmed, customers consider as appropriate substitutes for the models of Terex or Demag.

VI. CONCLUSION

20. 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

Pascal LAMY
Member of the Commission