

***Case No COMP/M.5125 -
MAREL / SFS***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 21/04/2008

***In electronic form on the EUR-Lex website under document
number 32008M5125***



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 21-IV-2008

SG-Greffe(2008) D/201870

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying party:

Dear Sir/Madam,

**Subject: Case No COMP/M.5125 - Marel/ SFS
Notification of 12 March 2008 pursuant to Article 4 of Council Regulation
No 139/2004¹**

1. On 12 March 2008, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 ("EC Merger Regulation") by which the undertaking Marel Food Systems hf. ("Marel", Iceland) acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of the undertaking Stork Food Systems ("SFS", The Netherlands) by way of purchase of shares and assets.
2. After examination of the notification, 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 and the functioning of the EEA Agreement.

I. THE PARTIES

3. Marel is primarily active in the development, manufacture, sale and servicing of machinery and systems for processing of fish, red meat and poultry. The company's products include flowlines and software, weighing, grading, batching and packing systems, as well as portioning equipment.

¹ OJ L 24, 29.1.2004, p. 1.

4. SFS designs, develops, produces, sells and maintains machinery and equipment for food processing. The equipment offered by SFS includes equipment for processing of poultry, red meat, fish and potatoes and processing of liquid food (dairy and juices) products. SFS is the food processing business of Stork N.V. ("Stork"), a Dutch industrial group also active in the aerospace industry, technical/industrial services and printing machinery².

II. THE OPERATION

5. Marel and Stork entered into a Share and Business Sale and Purchase Agreement on 28 November 2007 whereby Marel acquires sole control over SFS. The business acquired by Marel comprises shares in different subsidiaries of Stork which are active in the food processing industry, as well as assets (lists of clients, office equipment) and liabilities of Stork Systèmes Alimentaires S.A and Stork Food Systems Australasia Pty. Ltd., which are two small companies dealing *inter alia* with sales and services within the food processing business. Consequently, the proposed transaction constitutes a concentration within the meaning of Article 3(1)(b) of the EC Merger Regulation.

III. COMMUNITY DIMENSION

6. The case did not originally have a community dimension. However, as the transaction was notifiable in at least four Member States, namely Greece (post-merger filing), Portugal, Slovenia and Spain³, following a pre-notification request by the notifying party, it has been referred to the Commission pursuant to Article 4(5) of the Merger Regulation.

IV. COMPETITIVE ASSESSMENT

7. The transaction involves the manufacturing and sale of machinery and equipment for the processing of livestock - poultry, beef and pork (these two together "red meat") and fish where both the acquirer and the target company are active. However, the notifying party submits that their activities are complementary and do not overlap. SFS supplies also machinery and equipment for the processing of liquid products (dairy and juices) and potatoes, but Marel is not active in these areas.

² See Commission's decision in case COMP/M.4796 Candover/Stork of 20 August 2007.

³ The notifying party submits that a notification requirement in Cyprus based on an Order by the Minister of Commerce, Industry and Tourism could not have been excluded in this case

Relevant product markets

8. The processing of livestock into food products at an industrial level takes place in separate production lines which consist of a substantial number (up to 200) of individual pieces of equipment. The Commission has not yet had an opportunity to consider the markets for food processing equipment that are relevant in this case. In the notifying party's view and with reference to a decision of the German Bundeskartellamt⁴, a distinction should be made between primary processing equipment and further processing equipment⁵. The notifying party submits that the equipment for primary processing and for further processing serve different purposes and do not belong to the same product market. The description below is related to processing of poultry, where SFS and Marel are both active but is also valid, with some adjustments, for red meat and fish.
9. During the phase of primary processing the animals are killed, their parts which cannot be used for human consumption are removed and the remaining parts are cut into pieces. The result is a piece of meat which in general is not designed for consumption by end-customers. The equipment needed comprises an assortment of machines used for slaughtering, hanging transport, reloading, defeathering, eviscerating and chilling, cutting up into pieces and deboning. Weighing machines are also used throughout the process, when the bird is hanging at an overhead conveyor or fixed at a carrier. Core competencies required here are a strong knowledge of the physiology of the bird and of the impact each of these stages has on the animal.
10. The steps which belong to the further processing stages start with this "raw" piece of meat and vary as to the desired outcome of the final processing stage. These steps can be coating, marinating, frying, forming, sausages and nuggets making, freezing etc. Other equipment supplied by the parties and their competitors in this area include weighing equipment (which can be distinguished from weighing equipment used in primary processing to the extent that it is dedicated to steps when the product is lying on a conveyor in the context of pack-off operations), mixing and grinding equipment, portioning machines, X-Ray machines and process control software. Core competencies required for this phase are a strong knowledge of the processes of weighing, grading, packaging and labelling as well as ingredients and cooking recipes.
11. According to the notifying party, this segmentation is also justified by the fact that most of their customers in the European food industry are only active in the primary processing sector or in the further processing sector. When these customers have integrated activities, the purchasing pattern of primary processing and further processing equipment is also different. As regards primary processing, food processors usually require a more or less fixed scope of equipment that they usually source comprehensively from one supplier able to provide the full primary processing line (since all animals that are processed have to go through this stage). With regard to further processing lines, their design and composition will widely depend on the outcome of the processing activities (sausages, nuggets, bacon etc) which may vary

⁴ Decision *Meyn/Systemate* dated 13 March 2006, B 4-240/05.

⁵ The decision *Meyn/Systemate* was only related to primary processing of poultry.

from company to company. Therefore, customers operating (also) in the field of further processing do not source full processing lines (for further processing), but are simultaneously supplied by various, more specialised manufacturers focusing on one specific piece of equipment.

12. Moreover, from a supply-side perspective, the parties note that equipment suppliers are specialized on one type of equipment, i.e. either primary or further processing equipment. So far no European supplier is capable of manufacturing the entire scope of all categories of processing equipment in a comprehensive line for both primary and further processing. Given the particularities of these processing steps, as outlined above at para. 9 and 10, there is also no supply-side substitutability as regards this equipment.
13. Marel also considers that the machinery and equipment for primary processing and for further processing need to be distinguished by the different kinds of livestock, in particular poultry, red meat and fish because of the major differences related to the size and anatomy of these animals.
14. As regards poultry, the notifying party takes the view that there is no need to consider whether the market for primary (or further) processing of poultry should be subdivided into smaller markets with regard to the differences in the equipment used for different kind of birds (chickens, turkeys, ducks and geese) since each supplier has the expertise to supply equipment for the various types of birds.
15. Likewise, the notifying party submits that the relevant markets should not be subdivided into smaller markets with regard to differences in the capacity of the lines since most competitors are capable of delivering approximately the same range of equipment as the parties⁶.
16. In a nutshell, the notifying party submits that the product markets which are relevant for the assessment of the transaction are i) machinery and equipment used for primary processing of poultry, ii) machinery and equipment used for further processing of poultry iii) machinery and equipment used for further processing of red meat and iv) machinery and equipment used for further processing of fish. None of the parties are active in the manufacturing of equipment used for primary processing of red meat and only Marel sells equipment used for primary processing of fish.
17. The product market definition for primary processing submitted by the notifying party has been broadly confirmed by respondents to the market investigation in this case. However, some competitors and customers mentioned that if primary processing equipment is definitely meat-specific and thus different between animal species, this is not always the case for further processing. For certain processing parts such as breading or deep-frying, they submit that the same equipment can be used irrespective of the origin of the piece of meat. Conversely, other customers suggested that they need a supplier of further processing machinery which is technically focused on the type of meat they treat.
18. In the course of the market investigation, some competitors suggested a narrower segmentation of the processing markets: whilst the scope of the primary progressing

⁶ In the area of primary processing of poultry, SFS sells equipment with a capacity of [...] birds per hour .

is not questioned, these market players put forward that the further processing market should be further divided in three segments :

- the "secondary processing" market, including equipment used to weigh, grade, cut, slice, portion, size and group parts of the carcass, the end-result being a consumer-ready product or an intermediate for another step;
- the "further processing" market where additional treatment (such as marinating, spicing, frying etc.) is carried out using the material resulting from secondary processing;
- the "process and logistical control" market which includes software and hardware guaranteeing the operational control of the process and its outcome. Basically this equipment controls the product flow and collects data that enables users to fulfil their obligations with regard to the customers and regulatory requirements (for instance as regards traceability)⁷.

19. These respondents argued that the segmentation proposed by the notifying party is too broad and that different core competencies are required for the three different stages mentioned above. Moreover, according to these respondents, the segmentation proposed by Marel excludes a wide range of equipment which are essential to every processing operation (such as logistical control software) and where Marel in combination with its recently acquired subsidiaries (AEW Delford in the UK, Scanvaegt in Denmark) would have significant market power.
20. Furthermore, one competitor pointed out in the market investigation that a considerable and growing share of demand for poultry processing equipment is generated by companies which build fully integrated plants. In these facilities, the livestock enters on one side of the plant and exits the plant at the other side, prepared, portioned, packed and ready for resale to the consumers. These companies demand integrated so-called "wall-to-wall" processing lines rather than separate processing units from different manufacturers. Therefore, according to this respondent, there is a separate relevant market for integrated processing lines for poultry.
21. The Commission has investigated these various issues and considers that it is not necessary to reach a firm position on product market definitions. As regards narrower markets within the further processing sector, the Commission found that irrespective of the segmentation that could be retained, the merging parties are active in different areas. Marel offers equipment belonging to the "process and logistical control" range but SFS does not. As regards equipment which would be included in the "secondary processing" or the "further processing" range, there is no overlap between the parties' portfolios of products, as it will be described further below. The same is true for red meat and fish processing.
22. In addition, the Commission's investigation has not shown that a separate market for integrated processing lines for poultry exists. No supplier is currently able to provide the full processing lines and, as it will be explained below, demand for such

⁷ One respondent includes weighing and grading equipment in this "process and logistical control" market whereas another limits the scope of this market to software that controls the processing equipment and product flows.

integrated solutions appear to be the exception rather than the rule, at least in the EEA. The present decision will, however, also assess the competitive impact resulting from the combination of the complementary products of the merging parties.

23. For the purpose of the present case, it can be left open whether the area of further processing (as described by the parties) should be further segmented and whether further processing is meat-specific, as the respective competitive assessment would not change under any alternative product market definition.

Relevant geographic markets

24. The notifying party considers the relevant markets in this case to be at least Europe-wide (including the EEA and other "continental" European countries as *inter alia* Ukraine, Russia and Turkey) in scope, if not worldwide. Indeed, they submit that the parties to the contemplated transaction, as well as their competitors, sell across Europe and that customers source their processing equipment at a European level or beyond. Transport costs are low ([0-5]% of the product prices) and there are no significant differences in prices for processing equipment sold under similar conditions. Finally, despite the fact that the supplier has to provide technical assistance for the product which has been sold, there is no need according to the notifying party to have a local presence. These activities can be carried out by local independent technicians and/or after-sales service providers.
25. In its *Meyn/Systemate* decision, the German Competition Authority assessed the impact of the transaction on the basis of an EEA-wide market, given the low level of transport costs and the fact that market shares of the main suppliers of poultry processing equipment do not show major discrepancies across different EEA countries. However, the German Competition Authority did not consider that the market could be worldwide in view of several factors (different technologies in Asia, America and in Europe, stagnant market in Europe whereas it is strongly growing in other parts of the world).
26. The market investigation confirmed the notifying party's submission that the scope of the geographic market is at least the EEA or is even wider. Many respondents to the market investigation mentioned nevertheless the various health and safety regulations that EEA food processors have to comply with and which could lead to an EEA-wide market definition. The notifying party has confirmed that machinery-related and safety-related regulatory requirements within the EEA may differ to some extent from such requirements which would be applicable outside the EEA⁸. However, it has also submitted that such differences can be easily overcome and do not result in noteworthy changes in costs or prices for the customers. In any event, the precise geographic market definition can be left open as it would not alter the competitive assessment.

⁸ For instance directive 98/37/EC known as "the machinery directive" provides the regulatory basis for the harmonisation of the essential health and safety requirements for machinery at EU level.

Assessment

A) Horizontal effects

Equipment for primary processing of poultry

27. SFS is in particular active in the sale of equipment for primary processing of poultry and its market share in the EEA would be, according to the notifying party's best estimates, [40-50]%⁹. Its main competitors would be Meyn-Systemate ([40-50]%), Baader-Linco ([5-10]%) and EMF ([0-5]%). Customers having replied to the market investigation confirmed indeed that the main competitors of SFS in the market for primary processing of poultry are Meyn and Baader-Linco.
28. The notifying party submits that there is a very minor overlap in the area of primary poultry processing. The reason for that is that Marel sells only one product which might be used for primary processing of poultry, i.e. a deboning flowline. This flowline is a conveyer line incorporating individual cutting tables for workers who remove the bones manually. This product does not compete, in Marel's view, with the complete automatic equipment sold by SFS, Meyn-Systemate or Baader-Linco. A majority of respondents to the market investigation have confirmed that Marel is not active in the market for primary processing of poultry.
29. In any event, the notifying party points out that Marel has not sold any deboning flowline in the EEA in 2007 and only one in 2006. Hence, even if that product is classified as belonging to the primary poultry market and competes with the equipment sold by SFS and other competitors, Marel's share of the market of equipment used for primary processing of poultry would amount to less than [0-5]%. In view of the small increment caused by the transaction, the Commission concludes that the merger would have no detrimental effect on competition in this market.

Equipment for further processing of poultry

30. On the basis of the product market definition put forward by the notifying party and according to its best estimates, the combined market share of the new entity would be [5-10]% (Marel: [0-5]%, SFS: [0-5]%), and the potential market for further processing of poultry would therefore not be affected. Competitors would be Convenience Food Systems ("CFS", [20-30]%), FMC FoodTech ([10-20]%), Formax ([10-20]%), Weber ([5-10]%) and a large number of smaller and specialized manufacturers.
31. On the basis of the segmentation put forward by market participants (secondary processing, further processing, process and logistical control), one competitor pointed out that Marel would hold in the EEA very significant market shares ([75-85]%) in secondary processing and logistical control for fish and for poultry, albeit with no overlap with SFS. The Commission's investigation showed that these figures are overestimated. Even in the areas where Marel is widely acknowledged as a well-established competitor (weighing and grading equipment), the notifying party estimates its market share in the EEA between [40-50]% for poultry, [35-45]% for

⁹ In Meyn/Systemate, the Bundeskartellamt found that SFS would hold a market share in the EEA of 50-60%.

red meat and [45-55]% for fish. These figures have been confirmed by other competitors active in these markets. Market shares would be lower in software equipment ([0-10]% for poultry, [0-10]% for meat and [5-10]% for fish) and portioning equipment ([0-5]% for poultry, [5-10]% for red meat and [20-30]% for fish). Moreover, the parties submit that for every product offered by Marel in the weighing, grading and portioning sector, there is always one and often several competitors which supply equipment which is fully substitutable to the machines offered by Marel.¹⁰

32. In any event, the market investigation confirmed that there is no overlap between Marel and SFS either in secondary or further processing or process and logistical control. It has already been mentioned that SFS is not active in process and logistical control. As regards equipment used in secondary or further processing, the parties' products do not have the same purpose and do not compete with each other. For instance, SFS' cutting-up equipment is different from Marel's portioning equipment, as the former is used for disintegrating wings and legs from poultry carcasses¹¹, whereas the latter has the function to process pieces of meat into individual portions of rather similar shape, size and weight (nuggets or filets). The same is true for weighing and grading equipment: SFS' weighing machinery relates to the stage where poultry is still a carcass and hanging on and transported on a conveyor belt (within primary processing) but Marel's "dynamic" weighing machines are used where the piece of meat is already portioned to control the efficiency of the process.

Other markets

33. The market for equipment used for further processing of red meat would not be affected in the EEA since the new entity would rank n°2 with a share of [10-20]% (Marel: [5-10]%, SFS: [0-5]%), the market leader being CFS with a share of [20-30]%. Other players would include FMC FoodTech ([10-20]%), Formax ([10-20]%), Weber ([5-10]%) and smaller competitors. Likewise, the parties submit that the products they offer are rather complementary, as SFS's products are mainly used in the cooking process whereas Marel offers weighing and grading, slicing, and portioning equipment, X-rays and inspection systems as well as software.
34. A similar picture arises as regards the market for equipment used for further processing of fish which would be an affected market in the EEA, albeit with a very limited overlap (Marel: [20-30]%, SFS: [0-5]%). The parties point out that the market leader is Baader-Linco with a share of approximately [40-50]% in the EEA. Furthermore, SFS does not produce equipment which is purpose-built for fish processing but its machines for further processing of poultry can be and are sometimes used by some customers for fish processing.
35. On the basis of the above, the transaction does not raise serious doubts as regards its horizontal effects in the EEA markets.

¹⁰ Response by the notifying parties to the Commission's request for information sent on 4 April 2008.

¹¹ See SFS website <http://www.storkfoodsystems.nl/eCache/DEF/593.html> and <http://www.storkfoodsystems.nl/eCache/DEF/594.html> . For a portioning machine sold by Marel, see for instance <http://www.marel.com/products/poultryindustry/portioning/ProductID/128/> .

B) Conglomerate effects

36. As mentioned above, the parties' products in the processing of poultry are rather complementary. SFS is mostly active in the market for primary processing of poultry with a market share in the EEA of [40-50]%. It also sells further processing poultry equipment such as forming, cooking, coating, frying and sausage-making machines. Marel, on the other hand, is stronger in further processing of poultry and particularly in weighing and grading machines used for further processing with an estimated market share of [40-50]%.
37. Thus it appears that the transaction combines the [...] supplier in primary processing and the [...] supplier in weighing and grading equipment. Also, the merged entity would be able to provide after the transaction the integrated solutions that some food processing companies would require. Currently Meyn is the only competitor which is capable of supplying integrated solutions since it is active in primary processing of poultry and [...].
38. It has been argued by third parties that the new entity would become unchallenged in terms of product range and the ability to offer integrated solutions, due to the combination of Marel/Scanvaegt's significant position in further processing and the portfolio of SFS in primary processing. According to these respondents, this issue is all the more relevant since the poultry processing market is shifting towards the supply of integrated lines which are increasingly requested by customers.
39. The Commission has therefore investigated whether the new entity would have the ability and the incentives to use its strong position in the weighing and grading equipment to foreclose competitors in the primary poultry market. This could be done in two ways : i) Marel could condition sales in the weighing and grading market to sales of products belonging to the primary processing markets or vice-versa (risks of bundling) or ii) Marel could prevent the interoperability between Marel's weighing and grading or software products and products of competitors (risks of technical tying).

Risks of bundling

40. According to the notifying party's estimates, Marel would hold a market share of [40-50]%. However, while Marel does reach significant market shares, the market investigation has indicated that it nevertheless faces competition from specialized suppliers such as Bizerba, Espera, Ishida or Vendée Concept and larger companies (Baader-Linco). These competitor's shares would be between [5-10] and [10-20]%. A smaller competitor, Robotgrader, has entered the market in 2004 with a robotized grader which has been sold to some of the major European poultry producers for breast filet packaging. It appears thus that the market has experienced successful recent entry by an innovative player.
41. Moreover, the market investigation has not shown that the new entity would hold a substantial competitive advantage in weighing and grading equipment compared to competitors. As explained above, several competitors offer alternatives for Marel's equipment in the market. Some customers have also put forward that there are a number of smaller competitors which each have their particular strengths regarding a specific task. It appears that the only area where alternatives would be more limited is for equipment which is used to produce packages of a certain weight containing

only a certain number of pieces. However, it seems also that at least one competitor is currently working on this aspect and will try to offer soon a comparable solution.

42. As regards primary processing of poultry products, it has been mentioned in paragraph 27 that SFS holds a market share of [40-50]%. While this share appears significant, SFS faces nevertheless strong competition from Meyn ([40-50]%) and Baader-Linco ([5-10]%). Such competition is evidenced by orders which SFS recently lost to Meyn (see for instance paragraph 47). Customers active in poultry processing have indicated during the market investigation that they view Meyn and Baader as real alternatives to SFS in terms of technical reliability and competitiveness.
43. Even if one assumed that Marel has some market power in an assumed weighing and grading equipment market or SFS in the primary processing market, the prospects of having Marel's competitors in primary processing marginalized seem particularly thin¹². It still seems to be rare in the EEA that customers purchase primary processing and weighing and grading equipment simultaneously. As mentioned above in paragraph 11, the common pool of poultry processors requiring primary processing and further processing equipment is small. When this is the case, customers pick and choose individual pieces of machineries, often without any simultaneous purchase of other types of equipment. It therefore seems that bundling is also not likely to be profitable, since the merged entity would in many cases run the risk to lose those very customers which highly appreciate the option to pick and choose individual parts of the equipment.
44. One competitor of the parties in primary processing of poultry confirmed during the investigation that customers establishing a new plant or upgrading the entire poultry process system constitute approximately 5-10% of this competitor's sales. Sales of individual systems and lines, in connection with renewal of complete sections or part of section of the lines, speed increase of the lines or further automatization of the process, constitute approximately 80-90% of this competitor's sales.
45. Furthermore, the market investigation did not reveal a clear trend towards integrated solutions as it has been claimed by some third parties. In that respect, a distinction should be made between the demand outside the EEA and the situation within the EEA. Outside the EEA, demand for processed meat, and particularly poultry products, is growing faster and there is a shortage of slaughtering capacity. Increase of primary processing capacities is required in order to meet the raising demand and for that reason, integrated solutions are more often requested.
46. On the other hand, the EEA is a market where the demand for meat products is slowly increasing and therefore investments in entirely new operations are more limited. Also, the existing equipment of most customers in the EEA has technically reached a high level of upgrading and generally does not require complete replacement. For that reason, customers in the EEA are less likely to demand integrated solutions in the near future.
47. Finally, even when processors in the EEA express at the beginning a preference for the concept of a completely integrated processing line, they usually acquire the equipment for different processing stages from different suppliers. The background

¹² The same applies to competitors active in the weighing and grading equipment market.

for this is that they finally consider different suppliers to be the best with regard to a particular processing stage. For instance, as regards a recent project, one customer indicated that he has sourced its primary processing equipment from Meyn and the deboning machinery from Marel/Scanvaegt. In another instance, the customer stated that he considered SFS as offering the best solution for the slaughtering stage, whereas Marel offered the optimal solution for portioning and weighing, and Espera for packaging and labelling.

Risks of technical tying

48. The market investigation has not shown that Marel would have the ability to foreclose competitors by limiting the interoperability between its products and products from competitors.
49. First, as regards the interface between Marel weighing and grading equipment and other suppliers' hardware, it can easily be obtained by the customer alone or in co-operation with the relevant other supplier. Hardware interfacing is not a complex issue since it involves identifying some basic features of the line such as the height of the equipment or the speed of the conveyor and adapting the other equipment accordingly. Most of the large customers of the parties have their own engineering staff which is able to determine the suitable combination of various pieces of equipment required and assemble them into a specific processing line which meets the customer's demand.
50. With regard to the software interface, it is worth noting, first, that Marel has a limited market share (no more than [5-10]%) in software used in primary processing of poultry and face competition from other suppliers including CSB-Systems, CFS, Ishida and Vendée Concept. Therefore the effects of a potential technical tying attempted by Marel are not likely to be substantial since there are numerous alternatives of software products offered by the merged entity.
51. Technically, Marel's software systems capture data, monitor the process and create reports for the customers. These data are stored in a database at the customer's plant. If customers like to get information from suppliers of other equipment used in the process into this database, the software of these suppliers needs to be integrated with Marel's software. This is done either by sending data to the database or by adding a new module to Marel's software¹³. For that purpose, Marel uses accessible platforms and standard methods of integration like Web services and .NET remoting.
52. It appears therefore that that the structure of Marel's software is well known and open for customers so they can ensure interfacing with equipment supplied by a competitor. In any case, even if Marel had the ability to limit the interoperability with its software products, the Commission did not find that it would have the incentive to do so, mainly for two reasons.
53. First, the most straightforward way to prevent competitors from interfacing Marel's software with their products would be to change the protocols of the software or to stop using the current accessible platform and to install tailor-made closed systems.

¹³ Marel provides to the customers technical documents on how to develop additional modules to be integrated with Marel's software

Such steps would probably trigger a reaction among customers who are used and willing to source individual equipment from different suppliers and are very keen to obtain the best technical solution. This is particularly relevant in numerous cases where the customer buys, for instance, Marel's product as a replacement item in an already existing processing line.

54. Second, and more generally, it appears to be important for Marel to receive the relevant interface information from other suppliers as it would be for these suppliers to get access to the relevant interface information from Marel in this context of a continuous flowline. Hence, Marel is to the same extent interested in the interoperability between its products and other suppliers' equipment. Furthermore, Marel could not be considered as having market power in this software market; as a result this reciprocity pattern significantly limits Marel's incentives to thwart interfacing with other suppliers.
55. In the light of the above, it can be concluded that the transaction does not raise serious doubts as regards conglomerate effects, either through bundling or through technical tying.

V. CONCLUSION

56. 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