

***Case No COMP/M.6255 -  
TEREX/ DEMAG CRANES***

Only the English text is available and authentic.

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

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Article 6(1)(b) NON-OPPOSITION  
Date: 05/08/2011

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Brussels, 5.8.2011  
C(2011) 5802 final

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

**To the notifying party:**

Dear Sirs,

**Subject: Case No COMP/M.6255 – Terex/ Demag Cranes  
Commission decision pursuant to Article 6(1)(b) of Council Regulation  
No 139/2004<sup>1</sup>**

1. On 01.07.2011, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which the undertaking Terex Corporation, ('Terex' United States) acquires within the meaning of Article 3(1)(b) of the Merger Regulation control of the whole of the undertaking Demag Cranes AG ('Demag', Germany) by way of public bid announced on 19 May 2011.<sup>2</sup>

**I. THE PARTIES**

2. Terex is a US publicly listed global manufacturer of a wide range of equipment for use in various industries including the construction, infrastructure, quarrying, mining, shipping, transportation, refining, energy and utility industries.
3. Demag is a publicly listed German stock corporation active in the provision of industrial cranes, crane components, harbour cranes and port automation technology.

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1 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.

2 Publication in the Official Journal of the European Union No C 200, 8.7.2011, p. 14.

## **II. THE OPERATION**

4. On 2 May 2011, Terex announced that it intended to make a public offer for the entire share capital of Demag. The offer period commenced on 19 May 2011 and closed on 30 June 2011.<sup>3</sup>

## **III. CONCENTRATION**

5. On 20 July 2011 Terex announced that it had acquired approximately 82% of Demag's shares.<sup>4</sup> Terex will therefore acquire sole control over Demag. Consequently, the proposed transaction constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

## **IV. EU DIMENSION**

6. The notified operation does not meet the turnover thresholds set out in Article 1(2) of the Merger Regulation as the undertakings concerned do not have a combined aggregate world-wide turnover of more than EUR 5 000 million [Terex EUR 3 305 million, Demag EUR 931 million].<sup>5</sup> The alternative thresholds of Article 1(3) are met however with the result that the notified operation has an EU dimension.<sup>6</sup>

## **V. COMPETITIVE ASSESSMENT**

### **Product Market Definition**

7. The only current overlap between the parties' activities is in the area of mobile harbour cranes. Mobile harbour cranes are used for material handling at ports and terminals, including general cargo handling and shipping containers. They are mounted on tyres and can thus move around the port or terminal as required. They can be fitted with a variety of attachments for handling different types of cargo including containers and are available in various different sizes (in order to handle a range of weight capacities). They can therefore be used for loading and unloading various different sizes of ships.

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<sup>3</sup> According to German takeover law (WpUG), the shareholders of Demag who had not accepted the offer during the acceptance period had the opportunity to tender their shares during an additional acceptance period of two weeks following the publication of the final tender results on the same terms and conditions of the offer. This additional acceptance period ended on 19 July 2011.

<sup>4</sup> This figure comprises the 80.81% of Demag's shares acquired as a result of the offer and the 1.02% shareholding that Terex had acquired prior to the offer.

<sup>5</sup> Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C 95, 16.4.2008, p. 1).

<sup>6</sup> The combined aggregate world-wide turnover of the undertakings concerned exceeds EUR 2 500 million [Terex EUR 3 305 million, Demag EUR 931 million] and their combined turnover exceeds EUR 100 million in each of at least three Member States. In each of at least three of these same Member States the aggregate turnover of each of the undertakings concerned is more than EUR 25 million. In addition, the aggregate Community-wide turnover of the undertakings concerned is more than EUR 100 million but they do not achieve more than two-thirds of this in one and the same Member State.

8. The notifying party submits there are indications that the portal harbour cranes<sup>7</sup> and floating cranes<sup>8</sup> supplied by Demag share the same basic technology and many similar components as its mobile harbour cranes. Consequently, there could be an argument from a supply-side perspective that portal, floating and mobile harbour cranes are largely substitutable. However, from a demand-side perspective, the notifying party acknowledges that these three different types of crane are not interchangeable as the crane must fit its intended place of use. Therefore, in the notifying party's view it is appropriate to define a separate market for mobile harbour cranes.
9. The Commission has not previously examined the mobile harbour crane market in detail. In a previous merger case concerning the container handling equipment sector,<sup>9</sup> the Commission left the product market definition open whilst noting the notifying party's submission that it could be appropriate to segment the sector according to the different types of equipment. This was considered to be in line with previous decisions of the German and Spanish competition authorities.<sup>10</sup>
10. The market investigation in this case has broadly confirmed 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.
11. For the purposes of this case the precise definition of the relevant product market can be left open as this would not alter the competitive assessment.

### **Geographic Market Definition**

12. In previous decisions the Commission left open the geographic market definition of the product markets according to which the container handling equipment sector could be segmented. However, the Commission referred to the notifying party's view in the *Terex/Fantuzzi Group* decision that these markets were at least EEA-wide due to (i) the

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<sup>7</sup> Portal harbour cranes largely perform the same functions of mobile harbour cranes. However, as opposed to mobile harbour cranes, portal harbour cranes are mounted dockside on rails. Terex does not manufacture portal harbour cranes.

<sup>8</sup> Floating cranes are used for ship-to-ship cargo handling and are designed for the use on floating undergrounds such as vessels, barges or other ships. Terex does not manufacture floating cranes.

<sup>9</sup> Commission Decision of 19 November 2008 in Case No COMP/M.5345 – *Terex Corporation/Fantuzzi Group*, para. 8 which cites the Bundeskartellamt's decision n B5 - 29220-FA-51/07 *Cargotec/CVS Ferrari*, of 24 August 2007, para. 75-80; Ministerio de Economía Y Hacienda – Dirección General de Defensa de la Competencia, decision n. 07014 *Cargotec/CVS Ferrari*, para V.2.

<sup>10</sup> These types of equipment were: terminal tractors, forklift trucks, reach stackers, straddle carriers, ship to shore cranes, gantry cranes and mobile harbour cranes.

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 and (iii) the homogeneity of prices across the EEA (for instance, both Fantuzzi and Terex had only one price list for all the EEA).<sup>11</sup> The Commission also noted that these arguments were in line with the previous decisions of the Commission concerning forklift trucks<sup>12</sup> and with the precedents of the German and Spanish Competition Authorities.<sup>13</sup>

13. The notifying party in this case submits that the mobile harbour cranes market could be worldwide in scope since: (i) mobile harbour cranes are sold and shipped all over the world; (ii) transportation costs in general do not play a decisive factor as the investment in a mobile harbour crane is a large, long term investment and the transportation costs are minimal in relation to the overall investment; (iii) as all manufactures have their production facilities in Europe, the products must be shipped all over the world; and (iv) Terex has a worldwide price list for its mobile harbour cranes and therefore does not differentiate between different regions.
14. The market investigation has indicated that it is important in this industry for crane suppliers to be represented in the countries where their customers are located. This is because some customers may lack the necessary technical expertise to service the cranes themselves and therefore require access to an adequate after-sales service as mobile harbour cranes are critical pieces of equipment and downtime must be kept to a minimum.
15. Notwithstanding this fact, however, there are factors that point to a broader geographic market. In particular, the major suppliers Liebherr and Demag, which have their manufacturing locations in the EEA, are present across all Member States and indeed globally. Furthermore, mobile harbour crane suppliers operate a standard ex-works price for their products regardless of the customers' location and transport costs are not a significant element in comparison to the final sales price of the mobile harbour crane. Finally, there is no real product differentiation, local preferences or technical barriers to trade (at least within the EEA) that would affect trade in this product.
16. For the purposes of this case, however, it is not necessary to conclude whether the scope of the geographic market is EEA-wide or indeed global as the proposed transaction does not raise concerns under either alternative.

### **Competitive Assessment**

17. The mobile harbour crane market exhibits a relatively high level of concentration. According to the notifying party's estimates, the two main suppliers, Liebherr and Demag,

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<sup>11</sup> Commission decision of 19 November 2008 in Case No COMP/M.5345 – *Terex Corporation/Fantuzzi Group*, para. 12.

<sup>12</sup> Commission decision of 28 September 1992 in Case IV/M.256 – *Linde/Fiat*, para. XXII; Commission decision of 15 June 2000 in Case No COMP IV/M.1950 – *Toyoda Automatic Loom Works/BT Industries*, para. 12; Commission decision of 19 December 2002 in Case No COMP/M.2844 – *Linde/Komatsu/Komatsu Forklift*, para. 26.

<sup>13</sup> Bundeskartellamt, decision of 24.08.2007, case B5-51/07 – *Cargotec/CVS Ferrari*, para. 75-80; Ministerio de Economía Y Hacienda – Dirección General de Defensa de la Competencia, case 07014 – *Cargotec/CVS Ferrari*, para. V.2.

account for approximately 90% of the market at both an EEA and worldwide level as can be seen in the following tables.

**Table 1: Market shares – EEA – mobile harbor cranes (volume)<sup>14</sup>**

EEA					
	2006	2007	2008	2009	2010
<i>Market size (units)</i>	[...]	[...]	[...]	[...]	[...]
Terex Market Share	[5-10]%	[10-20] %	[10-20] %	[5-10]%	[0-5]%
Demag Market Share	[40-50]%	[40-50]%	[30-40] %	[40-50]%	[40-50]%
<b>Terex and Demag</b>	<b>[50-60]%</b>	<b>[50-60]%</b>	<b>[40-50]%</b>	<b>[50-60]%</b>	<b>[40-50]%</b>
Liebherr	[30-40] %	[30-40] %	[40-50]%	[40-50]%	[40-50]%
Italgru	[10-20] %	[0-5]%	[5-10]%	[0-5]%	[10-20] %

**Table 2: Market shares – worldwide– mobile harbor cranes (volume)<sup>15</sup>**

Worldwide – Volume					
	2006	2007	2008	2009	2010
<i>Market size (units)</i>	[...]	[...]	[...]	[...]	[...]
Terex Market Share	[5-10]%	[5-10]%	[5-10]%	[5-10]%	[0-5]%
Demag Market Share	[40-50]%	[40-50]%	[40-50]%	[40-50]%	[40-50]%
<b>Terex and Demag</b>	<b>[50-60]%</b>	<b>[50-60]%</b>	<b>[50-60]%</b>	<b>[50-60]%</b>	<b>[40-50]%</b>
Liebherr	[40-50]%	[40-50]%	[40-50]%	[40-50]%	[50-60]%
Italgru	[5-10]%	[0-5]%	[0-5]%	[0-5]%	[5-10]%

18. The market investigation has shown that Liebherr and Demag (which sells mobile harbour cranes under the Gottwald name) are recognised by customers for the quality of their technology, level of reliability and service. Italgru, an Italian manufacturer, appears to have a relatively limited market presence having only recently switched from selling reconditioned cranes to manufacturing a range of newly built cranes.<sup>16</sup>
19. Terex acquired a presence in the mobile harbour crane business in 2009 when it bought the Fantuzzi Group. The Fantuzzi Group had been experiencing financial difficulties and problems in its mobile harbour crane division prior to the acquisition and these have persisted since despite Terex's efforts (including a costly restructuring programme and significant staff cuts) to put the business on a more sound footing.
20. [...] <sup>17</sup> Internal documents also revealed that Demag was not identified as a potential target until early 2010. [...] <sup>18</sup>

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<sup>14</sup> Form CO, p. 70. The market shares based on value do not differ significantly from those based on units.

<sup>15</sup> Form CO, p. 71. The market shares based on value do not differ significantly from those based on units.

<sup>16</sup> Form CO, pp. 70-71.

<sup>17</sup> [...].

<sup>18</sup> [...].

21. [...].<sup>19 20</sup>
22. The market investigation has also indicated that Terex/Fantuzzi has not exerted any significant competitive constraint on the other main suppliers in the market and that it has had only a marginal presence in the supply of mobile harbour cranes in recent years. In 2009, for example, Terex sold only [...] mobile harbour cranes in the EEA (and [...] outside the EEA). In 2010, the company only sold [...] in the EEA and made [...] elsewhere.<sup>21</sup>
23. Mobile harbour cranes typically have a long service life (c. 15 years) and as such purchases by the same customer tend to be relatively infrequent. Given the cost of a mobile harbour crane, their purchase in the EU by port authorities or similar bodies normally requires an EU-wide tender procedure.<sup>22</sup>
24. An analysis of the public tender data obtained from Terex indicates that it participated in [...] such tenders (of [...] to [...] in the EEA) in 2008, [...] (of [...] to [...] in the EEA) in 2009 and [...] (of [...] to [...] in the EEA) in 2010. This is less than [...]% of the total number of such tenders in the period as estimated by the notifying party.<sup>23 [...]</sup><sup>24</sup>
25. When customers in the market investigation were asked to name and rate all the suppliers of mobile harbour cranes they viewed as being active on the market, only four mentioned Terex/Fantuzzi whilst most mentioned Demag and Liebherr. In terms of closeness of competition, a majority of respondents highlighted the reliability of Demag's and Liebherr's products whilst all customers mentioning Terex/Fantuzzi noted that its products were of a lower quality and/or less reliable.
26. Furthermore the market is already relatively transparent given the nature of the product and its tender driven nature. [...]. Consequently, although the proposed transaction will technically reduce the number of players in an already concentrated market, on the basis of the market investigation in the present case, the practical impact is not expected to be significant.

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19 [...].

20 [...].

21 [...].

22 The EU procurement rules are contained in the Treaty on the Functioning of the European Union and Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (the *Public Sector Directive*), OJ L 134, 30.4.2004, p. 114, and Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors (the *Utilities Directive*), OJ L 134, 30.4.2004, p. 1. See reply to question 2.2 of the Commission's request for information of 19 July 2011 pursuant to Article 11 of Council Regulation (EC) No 139/2004.

23 See reply to question 3 of the Commission's request for information of 19 July 2011 pursuant to Article 11 of Council Regulation (EC) No 139/2004.

24 [...].

27. Moreover, no customers in the market investigation have raised concerns regarding coordination (either actual or future). The Commission's market investigation also indicated that bundling or tying of cranes is not common and that market players would be able to resist unwanted attempts by the merged entity to bundle products.
28. It is therefore concluded that the proposed transaction will neither significantly change the competitive structure of the market such that the risk of coordination would be increased nor give rise to any other significant competition concerns.

## **VI. CONCLUSION**

29. For the above reasons, the European Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation.

*For the Commission*  
*(signed)*  
*Johannes HAHN*  
*Member of the Commission*