

EN

***Case No COMP/M.7134 - VOLVO CONSTRUCTION  
EQUIPMENT/ TEREX EQUIPMENT***

Only the English text is available and authentic.

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

---

Article 6(1)(b) NON-OPPOSITION  
Date: 24/04/2014

***In electronic form on the EUR-Lex website under  
document number 32014M7134***



Brussels, 24/04/2014  
C(2014) 2874 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 Sir/Madam,

**Subject: Case M.7134 - Volvo Construction Equipment AB/ Terex Equipment Limited**  
**Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004<sup>1</sup>**

(1) On 18.03.2014, the European Commission received the notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which Volvo Construction Equipment Aktiebolag ("VCE"), Volvo Group UK Limited and Volvo Construction Equipment NA LLC, all ultimately controlled by AB Volvo, will acquire sole control, within the meaning of Article 3(1)(b) of the Merger Regulation, over Terex Equipment Limited ("Terex") as well as certain assets related to the business activity of Terex Equipment Limited (the assets together with Terex, jointly referred to as the "Target"). (VCE and Terex are designated hereinafter as the "Parties" or "parties to the proposed transaction").

**1. THE PARTIES**

(2) VCE is a wholly owned subsidiary of AB Volvo, a Swedish multinational manufacturing company headquartered in Gothenburg, Sweden, the ultimate mother

---

<sup>1</sup> 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.

company of the Volvo Group. The Volvo Group is globally active in the manufacture and sale of trucks, buses, construction equipment and marine and industrial engines.

- (3) VCE is the Volvo Group company active in the manufacture and sale of equipment for construction and related industries. VCE manufactures and sells a wide range of equipment including wheeled and crawler excavators, articulated haulers, wheel loaders, pipe layers, demolition equipment, waste handlers, motor graders, pavers, compactors, milling equipment, and a range of compact equipment (such as mini loaders, mini excavators, backhoe loaders and skid steer loaders).
- (4) Volvo Group UK is a company organised under the laws of England and Wales and fully owned by AB Volvo.
- (5) Volvo Construction Equipment NA LLC is a company organised under the laws of Delaware and ultimately controlled by AB Volvo.
- (6) VCE, Volvo Group UK and Volvo Construction Equipment NA are all part of the construction equipment division of the Volvo Group.
- (7) The Target is a business unit of Terex Corporation, an American multinational manufacturing company headquartered in Westport, Connecticut, United States of America. Terex Corporation manufactures specialised machinery products for a wide range of commercial applications, including in the following sectors: construction, infrastructure, quarrying, mining, shipping, transportation, refining, energy and manufacturing.
- (8) The Target consists of the following:
  - a. Terex, which owns and operates the Target's sole off-highway dump truck production facility located in Motherwell, Scotland, United Kingdom;
  - b. certain assets and employees related to the distribution of off-highway dump trucks in the United States of America, Europe and other regions; and,
  - c. the Terex off-highway dump truck product lines.
- (9) The Target is the business unit of Terex Corporation active in the manufacture and sale of off-highway dump trucks, used for mining, quarrying and heavy construction purposes. More specifically, the Target currently manufactures five different rigid frame dump truck ("RDT") models (payload capacity 32 - 91 tonnes) and three different articulated frame dump truck ("ADT") models (payload capacity 25 - 38 tonnes).

## **2. THE OPERATION**

- (10) By means of the proposed transaction VCE will acquire sole control over the Target as it will purchase the entire issued share capital of Terex and all the assets included in the Target's perimeter.
- (11) The proposed transaction will be implemented in a single transaction where all assets and shares constituting the Target will be transferred by the seller to the buyer. Volvo Group UK limited, a Volvo group company, will acquire the entire issued share capital of Terex and VCE will acquire all the assets included in the Target's perimeter.

### **3. THE CONCENTRATION**

- (12) The proposed transaction consists of the acquisition of sole control by VCE of Terex by way of purchase of assets and shares. The transaction therefore constitutes a concentration within the meaning of Article 3(1) of the Merger Regulation.

### **4. EU DIMENSION**

- (13) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million<sup>2</sup> [EUR 33 866 million for Volvo, EUR [...] million for Terex]. However, Terex has a turnover of only EUR [...] million in the EU. Neither the requirements of Article 1(2) nor of Article 1 (3) of the Merger Regulation are therefore fulfilled.
- (14) Following a referral request the transaction has an EU dimension pursuant to Article 4(5) of the Merger Regulation.

### **5. COMPETITIVE ASSESSMENT**

- (15) The proposed transaction concerns the manufacture and sale of construction equipment in general and the manufacture and sale of ADTs in particular.
- (16) Within the broader category of construction equipment, heavy construction equipment, such as earthmoving machines, road making machines and material handling machines (including heavy excavators, heavy loaders, heavy levelling machines (including dozers and graders)) and light construction equipment such as light excavators, skid steer loaders, mini wheel loaders and backhoe loaders, can be identified as different categories.
- (17) One of the types of equipment falling within the heavy construction equipment category are off-highway dump trucks of which two types exist: "Articulated frame dump trucks" (ADTs)<sup>3</sup> and "Rigid frame dump trucks" (RDTs).
- (18) Both the parties to the proposed transaction are active in the broader construction equipment. With respect to the off-highway dump trucks segment, both VCE and Terex manufacture and sell ADTs whilst only Terex is active in the RDT segment.

#### **5.1. Relevant product market**

##### *5.1.1. Off-highway dump trucks with a payload capacity below 100 tonnes*

- (19) The Parties submit that the relevant product market is the market for all construction equipment, encompassing earthmoving machines, road making machines and material handling machines, including heavy excavators, heavy loaders, heavy levelling machines (including dozers and graders) and light construction equipment (including light excavators, skid steer loaders, mini wheel loaders and backhoe loaders).

---

<sup>2</sup> Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C95, 16.04.2008, p1).

<sup>3</sup> ADTs are off-highway dump trucks with a hinge between the cab and the dump box.

- (20) Notwithstanding the above, the Parties acknowledge that an alternative market definition according to the type of product may be considered. On this basis off-highway dump trucks could constitute a separate product market which could be further segmented into ADTs and RDTs.
- (21) The Commission has previously considered that heavy and compact construction equipment and light construction equipment belong to separate product markets.<sup>4</sup> In the same case, the possibility of further sub-segmenting the market based on individual product types, such as heavy excavators, heavy loaders, heavy levelling machines and light construction equipment has been considered.<sup>5</sup>
- (22) In case *COMP/M.4887 Doosan/Bobcat* the Commission considered broader market definitions such as (i) the market for the all construction equipment including both heavy and compact equipment, (ii) the market for all compact construction equipment and (iii) the market for compact equipment by application (excavating and loading). This approach was considered due to the substitutability of different individual equipment types, which was also supported by customers and competitors in that case.<sup>6</sup> The Commission did not reach a definitive conclusion on the product market definition.
- (23) In the present case, the Commission notes that, in light of the market investigation, albeit customers and competitors recognize the existence of a great degree of substitutability between the various products falling within the broader category of "construction equipment", a market segmentation according to product type should be considered.
- (24) The Commission also notes that the majority of the respondents took the view that off-highway dump trucks are not substitutable with other construction equipment mainly because of their product characteristics and application in practice.
- (25) With reference to a possible further segmentation of the market according to maximum payload capacity, the Commission notes that the majority of the respondents took the view that off-highway dump trucks with a payload capacity above 100 tons are not substitutable with off-highway dump trucks with a payload capacity below 100 tons due to different characteristics and application in practice. Often is not possible to use off-highway dump trucks with a payload capacity of more than 100 tons due both to the conditions of the worksite and to various economic reasons. Respondents confirmed that in order to use off-highway dump trucks with a payload capacity of more than 100 tons bigger loading equipment and bigger hauling road are required which requires larger investments.
- (26) The Commission considers that, on the basis of the market investigation, the off-highway dump trucks with a payload capacity below 100 tons ADTs and RDTs may not be part of the same product market. The Commission also remarks that the majority of respondents perceive ADTs and RDTs as not being comparable in terms of price. ADTs are 10 to 50% more expensive than RDTs. Furthermore, there are technical differences between the two products. ADTs are more suitable when hauling roads are soft and slippery while RDTs can be used with lower maintenance costs in hard hauling road conditions.

---

<sup>4</sup> See *COMP/M.1571 New Holland/Case* (1999) and *COMP/M.2369 CNF/FHE* (2001).

<sup>5</sup> *COMP/M.2369 CNF/FHE* (2001).

<sup>6</sup> *COMP/M.4887 Doosan/Bobcat* (2007).

- (27) For the purposes of the present transaction the Commission considers that the exact product market definition can be left open considering that no competition problem is likely to arise even under the narrowest product market definition i.e. the market for ADTs with a payload capacity below 100 tons.

#### *5.1.2. Sales of spare parts and after sales services*

- (28) The Parties submit that the sale of spare parts and aftersales services cannot be separated from the sale of the construction equipment and hence do form part of the same market. The Parties submit that the service costs of construction equipment are a very important factor in the decision making process of the client and the overall costs are assessed in advance.
- (29) For the purpose of the present transaction, the Commission considers that the exact product market definition can be left open as no competition problem is likely to arise even under the narrowest product market definition, i.e. considering the sales of spare parts and after sales services as a separate market.

## **5.2. Relevant geographic market**

- (30) The Parties submit that, irrespective of how the product market is defined, its geographic scope is global and in any event not narrower than EEA wide.
- (31) The Parties' allegation is consistent with the Commission's past decisional practice.
- (32) The Commission observes that this view was also confirmed by the market investigation. The supply of construction equipment, irrespective of the type, is made on global or at least EEA-wide basis and the competitive conditions in the EEA are homogenous with no major price differences and the quality of the products being the same throughout the EEA.
- (33) However, the Commission considers that the exact geographic market definition can be left open in the present case as the transaction is unlikely to raise competition concerns under the narrowest geographic market definition considered, that is an EEA-wide market.

## **5.3. Assessment**

### *5.3.1. All construction equipment*

- (34) On an EEA wide market for all construction equipment, the transaction would not lead to an affected market. The combined market share of the Parties is [10-20] % and the increment brought about by the concentration is minimal (around [0-5] %) due to the small size of Terex. Other competitors with significant market shares like Caterpillar ([10-20] %), JCB ([10-20] %), Doosan ([5-10] %), Hitachi CM ([5-10] %) and Komatsu ([5-10]%) are active on this market.
- (35) In the light of the above and of all the other available evidence, the Commission considers that on an EEA wide market for all construction equipment the transaction is therefore unlikely to raise serious doubts as to its compatibility with the internal market.

5.3.2. ADTs.

- (36) On the narrowest plausible market for ADTs with a payload capacity under 100 tons in the EEA the transaction would lead to the following market structure:

EEA-Wide	ADT market segment volume based market shares		
	2012	2011	2010
VCE	([30-40] %)	([30-40] %)	([40-50]%)
Target	([0-5] %)	([0-5] %)	([0-5] %)
<b>VCE + Target</b>	<b>([30-40] %)</b>	<b>([30-40] %)</b>	<b>([40-50]%)</b>
Caterpillar	([10-20] %)	([20-30] %)	([20-30]%)
Bell	([10-20] %)	([10-20] %)	([10-20])
Hydrema	([10-20] %)	([10-20] %)	([0-5] %)
Komatsu	([0-5] %)	([0-5] %)	([0-5] %)

- (37) VCE is the strongest player with an estimated market share by volume of [30-40]% in 2012. Terex on the contrary is a small player on the market with an estimated [0-5]% market share by volume in 2012. The proposed transaction will therefore lead to a combined market share of the Parties of [30-40] %. However, the addition of market shares is very limited with only [0-5] %.
- (38) The combined entity would face competition from other market players with significant market shares between 10% and 20% like Caterpillar ([10-20] %), Bell ([10-20] %) and Hydrema ([10-20] %).
- (39) The Commission notes, in light of the replies to the market investigation, that the Parties are not close competitors on the potential ADT market as Terex is acting as a budget supplier competing mainly on price whilst VCE is a premium supplier competing mainly on quality.
- (40) The Commission notes that, in light of replies to the market investigation, the majority of the respondents do not perceive Terex as a particularly aggressive or important competitor. Respondents to the market investigation state that Terex offers prices lower to VCE and other premium suppliers but is lacking in product development and after sales services.
- (41) The Parties also submit that a number of players recently entered the ADT market such as Bell (2004, at present with an estimated market share of [10-20] %), Sany Group (2014), Doosan Corporation (2010), John Deere Group (2012). The Parties claim that new players, particularly those already active on the Asian market but not at EEA level, are expected to enter the market in the near future. This has been to some extent confirmed by the market investigation with a minority of respondents expecting new competitors, especially from Asia, to enter the market in the near future.

- (42) The Commission notes that, in light of the replies to the market investigation, the proposed transaction is unlikely to have a negative impact on the level of competition and prices.
- (43) Finally the Commission notes that no third parties raised specific competition concerns with respect to the impact of the proposed transaction on the market for ADTs both for ADTs and for off-highway dump trucks with a payload capacity below 100 tons in general. Moreover, the Commission observes that the majority of the respondents are of the opinion that price levels will likely remain the same or decrease and that the level of competition post-transaction will increase or at least remain the same.
- (44) On the basis of the above and of all the other available evidence, the Commission considers that the proposed transaction does not give rise to serious doubts as to its compatibility with the internal market in relation to ADTs under 100 tonnes on an EEA wide basis.

### 5.3.3. *Sales of spare parts and after sales services.*

- (45) The Parties submit that on a potential market for the sale of spare parts and supply of after sales services for ADTs, their position is weaker compared to the market for ADTs as additional competitors are present on this market. The Parties claim that, aside from the Original Equipment Manufacturers present on the market for ADTs (Caterpillar, Bell, Hydrema, Komatsu and others), they face competition also from independent spare parts suppliers, independent spare parts traders, independent repairers, authorised workshops, authorised workshops of other repairers and in-house workshops (this is the case for large customers).
- (46) Following the first warranty period, VCE's network does not retain [...] of clients for after sales services. On the contrary it estimates that in year 2 after the purchase of the equipment [...] of the customers resort to other competitors for the provision of spare parts and after sales service and in year 4 approximately [...] of the clients receive services from competitors.
- (47) The Commission notes, in light of the replies to the market investigation, that serious doubts are unlikely to arise on a hypothetical market for the sale of spare parts and the provision of after sale services. Most respondents are of the opinion that the intensity of competition post-transaction will increase or at least remain the same.
- (48) In the light of the above and of all the other available evidence, the Commission considers that the proposed transaction does not give rise to serious doubts as to its compatibility with the internal market in relation to sale of spare parts and the provision of after sale services for ADTs.



## **6. CONCLUSION**

- (49) 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)*  
*Joaquín ALMUNIA*  
*Vice-President*