



EUROPEAN COMMISSION

DG Competition

Case M.7792 - KONECRANES / TEREX MHPS

Only the English text is available and authentic.

REGULATION (EC) No 139/2004
MERGER PROCEDURE

Decision on the implementation of remedies
Art. 6(1)(b) in conjunction with 6(2) - Purchaser approval

Date: 22/12/2016



EUROPEAN COMMISSION

Brussels, 22.12.2016
C(2016) 9007 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

To the notifying party:

Dear Sir/Madam,

Subject: Case M.7792 - KONECRANES / TEREX MHPS
Approval of Columbus McKinnon Corporation as a purchaser of the Stahl Divestment business following your letter of 2 December 2016 and the Trustee's opinion of 10 December 2016

I. FACTS AND PROCEDURE

1. By decision of 8 August 2016 ("the Decision"), adopted in application of Article 6(1)(b) in connection with Article 6(2) of the Council Regulation (EC) No. 139/2004¹, the Commission declared the operation by which Konecranes PLC ("Konecranes") intended to acquire the Material Handling and Port Solutions business of Terex ("Terex MHPS") compatible with the internal market subject to full compliance with the commitments annexed to the Decision and the obligations contained therein (the "Commitments").
2. In particular, in order to remove the serious doubts in the markets for electric chain hoists and wire rope hoists, Konecranes proposed to divest the entire Stahl business ("the Stahl Divestment Business"). The Divestment Business also includes all

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

tangible and intangible assets owned or used by the Kunzelsau plant, licenses, permits and authorisations, the contracts with suppliers and customers, its personnel, including [number of employees] employees designated as key personnel, such as, for example,[employees' functions].

3. By e-mail of 2 December 2016 Konecranes proposed Columbus McKinnon Corporation ("CMCO") for approval by the Commission as purchaser of the Stahl Divestment Business and submitted the final binding share purchase agreement (SPA) as well as certain draft ancillary agreements (together with the SPA collectively defined "Transaction Documents"). The SPA was signed on 30 November 2016 and the ancillary agreements (notably the supply agreements and the Transitional Service Agreement "TSA") on [date].
4. On 10 December 2016 Grant Thornton (the "Trustee") submitted its reasoned Opinion as regards CMCO's suitability as a purchaser and, in particular, has indicated that CMCO fulfils the criteria of the purchaser requirements set in section D of the Commitments. In this assessment, the Trustee also indicated that, on the basis of the Proposed Agreement, the Divestment Business would be sold in a manner consistent with the Commitments.

II. ASSESSMENT OF THE PROPOSAL

5. CMCO is a leading global designer, manufacturer, and marketer of material handling systems and services, to move, lift, position, or secure material. Headquartered in Amherst, New York, CMCO has principal manufacturing operations in the USA, Mexico, China and Europe and sells its products to distributors located in approximately 50 countries.
6. Founded in 1875, CMCO has grown to its current size through both organic and inorganic growth including successfully acquiring and integrating twenty businesses between 1994 and 2016. In addition to the sector expertise, CMCO's senior management team has substantial experience in the acquisition and integration of businesses, efficient manufacturing techniques and global operations.
7. In FY 2016, CMCO achieved annual revenue of US\$ 597 million. CMCO has approximately 3000 employees worldwide.

(a) Independence from the Parties

8. Pursuant to clause 16 (a) of the Commitments, in order to be approved by the Commission, a suitable purchaser must be independent of and unconnected to Konecranes and its Affiliated Undertakings.
9. According to the information provided by the Konecranes and the Trustee, there are no structural links between Konecranes and CMCO, no joint-ventures in which Konecranes and CMCO (or any entities thereof) participate and no links through shared executive or non-executive directors. There are no significant commercial agreements in place between Konecranes and CMCO. Whilst some (minor) relationships exist, such as, for example, [commercial relationships], these relationships are on arm's length basis and immaterial for both Konecranes and CMCO.

10. Konecranes is however a 49% shareholder in the Eastern Morris Cranes Company Ltd ("EMC"), which manufactures cranes for a variety of industries in the Kingdom of Saudi Arabia.[confidential].
11. The Trustee is of the view that Konecranes' shareholding in EMC may potentially create independence issues if this position is not resolved or there is no agreement by which Konecranes could not take actions to impact the Stahl business.
12. Konecranes intends to sell its interest in EMC and has already started the process to do so. [confidential]. The Trustee will monitor the progress of the sale of EMC and report to the Commission on this progress until Konecranes has sold all its shares in EMC.²
13. [confidential].
14. On the basis of the information provided by Konecranes and the Trustee, the Commission therefore concludes that Konecranes has already taken or is taking the necessary measures to ensure the independence of the Proposed Purchaser from Konecranes.

(b) Financial resources, proven expertise and incentive to maintain and develop the Divested Business as a viable and active competitor

15. Pursuant to clause 16 (b) of the Commitments, in order to be approved by the Commission, a suitable purchaser must have the financial resources, proven expertise and incentives to maintain and developed the Stahl Divestment Business as a viable and active competitive force in competition with Konecranes and other competitors.
16. In terms of financial resources, the Trustee has confirmed that CMCO appears in a good financial position and has sufficient financial resources to purchase the Divestment Business and support its development. In 2015, CMCO achieved annual revenue of roughly US\$580 million and gross margin of US\$ [confidential], or [percentage of sales]% of sales. [confidential].
17. With respect to proven expertise, it can first be noted that CMCO is a leading player in the manufacturing and sale of hoists and crane components. In particular, CMCO, which has been in the marketplace for 141 years, successfully manufactures and sells a wide variety of electric chain and wire rope hoists and has existing manufacturing operations in Germany, the UK, France and Hungary and a local presence in several European countries. Finally, CMCO's successful track record in acquisitions of about twenty businesses over the past twenty years suggests that it is experienced in integrating these with its own business operations.
18. In terms of incentives, CMCO plans to achieve certain synergies between the Divestment Business and its current operations as well as a number of potential revenue opportunities it can capture due to this acquisition. The former include sizeable cost synergies [confidential].

² See reasoned Opinion of the Trustee, pag. 6.

19. CMCO sees significant revenue opportunities general cross selling of each other's products through their existing distribution channels, and from [confidential]. Finally, there are significant complementarities in terms of the geographic areas where CMCO and Stahl are present and in terms of product offering that would allow the combined entity to compete effectively against Konecranes/Demag. Accordingly, CMCO appears to have the incentive, both from a financial and strategic perspective, to maintain and develop the Divestment Business as a viable and active competitive force in competition with Konecranes/Demag and other competitors.
20. On the basis of the above, the Commission considers that CMCO has sufficient financial resources, proven expertise and incentives to maintain and develop the Divestment Business as a viable and active competitor in competition with Konecranes and other players.

(c) Absence of prima facie competition problems

21. Pursuant to clause 16 (c) of the Commitments, the acquisition of the Divestment Business by the Purchaser must not be likely to create *prima facie* competition concerns ,
22. In light of the information provided by Konecranes and taking into account the reasoned opinion submitted by the Trustee, the Commission considers that the acquisition of the Divestment Business by the Purchaser appears unlikely to create prima facie competition concerns. CMCO is a very minor supplier of wire rope hoists in the EEA and, although CMCO is a significant player in the EEA market for manual hoists, Stahl's sales of manual hoists were negligible in 2015. As far as electric chain hoists are concerned, the combined market share of CMCO and Stahl exceeds 20% only in Austria ([30-40]%), Belgium ([20-30]%), Ireland ([20-30]%), the Netherlands ([30-40]%) and the UK ([20-30]%). However, in such countries the combined entity will face strong competitive pressure from a number of large and sophisticated suppliers, including Konecranes/Demag, Lifket, Abus and GIS.
23. Also, pursuant to clause 16 (c) of the Commitments, the acquisition of the Divestment Business by the Purchaser must not give rise to a risk that the implementation of the Commitments could be delayed, in particular due to need to obtain all necessary approvals for the relevant regulatory authorities.
24. The divestment transaction will be subject to a mandatory pre-Closing antitrust filing [confidential] in Germany. Due to the very limited overlaps between the activities of CMCO and Stahl, this transaction does not raise any competition concerns in Germany and there will no delays in the implementation of the Commitments. [confidential]. The case was filed with the Bundeskartellamt on 12 December 2016.
25. On the basis of the above, the Commission concludes that CMCO fulfils the Purchaser Requirement that it is neither likely to create prima facie competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed.

III. ASSESSMENT OF THE AGREEMENTS

26. According to the Trustee, the Transaction Documents do not contain any major modifications to the scope of the assets which form the Divestment Business as compared to the Commitments.
27. Section 8.3 of the Licence Agreement provides that Konecranes may terminate the Licence in the event that [confidential], whereas recital 2(c) of the Schedule to the Commitments require Konecranes to provide an irrevocable licence to Stahl.
28. While this provision of Konecranes' Licence Agreement may appear as a discrepancy between the Transaction Documents and the Commitments, the Commission notes that such provision of Konecranes' Licence Agreement only matters for [confidential] and therefore does not prevent the full implementation of the Commitments.
29. While the standard TSA term is one year, extendable by one further year (in accordance with paragraph 7 of the Commitments), some of the individual services and IT applications detailed in Annex I to the TSA have terms longer or shorter than one year. However these longer or shorter terms are dictated by third party suppliers licences and have been agreed by CMCO. The same applies on such provisions related to the Stahl supply agreement and the Konecranes supply agreements, especially regarding pricing evolution.
30. In light of the above and based on the information provided by Konecranes and taking into account the reasoned opinion submitted by the Trustee, the Commission concludes that the Transaction Documents are consistent with the Commitments and that, accordingly, the Divestment Business is being sold in a manner consistent with the Commitments.

IV. CONCLUSION

31. On the basis of the above assessment, the Commission approves CMCO as a suitable purchaser for the above-mentioned reasons.
32. On the basis of the Transaction Documents, the Commission further concludes that the Divestment Business is being sold in a manner consistent with the Commitments.
33. This decision only constitutes approval of the proposed purchaser identified herein and of the Transaction Documents. This decision does not constitute a confirmation that Konecranes has complied with its Commitments.

34. This decision is based on Section D of the Commitments attached to the Commission Decision of 8 August 2016.

For the Commission

(signed)
Johannes LAITENBERGER
Director-General