



EUROPEAN COMMISSION
DG Competition

Case M.8190 - WEICHAI / KION

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

Article 6(1)(b) NON-OPPOSITION
Date: 15/02/2017

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Brussels, 15.2.2017
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PUBLIC VERSION

MERGER PROCEDURE

To the notifying party:

**Subject: Case M.8190 - WEICHAI / KION
Commission decision pursuant to Article 6(1)(b) of Council
Regulation No 139/2004¹ and Article 57 of the Agreement on the
European Economic Area²**

Dear Sir or Madam,

- (1) On 11 January 2017, the Commission received notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which the undertaking Weichai Power Co. Ltd. ("Weichai", China) acquires within the meaning of Article 3(1)(b) of the Merger Regulation control of the whole of the undertaking Kion Group AG ("Kion", Germany) by way of purchase of securities ("the Transaction").³ Weichai and Kion are hereinafter collectively referred to as "the Parties".

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 OJ L 1, 3.1.1994, p. 3 (the 'EEA Agreement').

³ Publication in the Official Journal of the European Union No C 23, 24.01.2017, p. 9.

1. THE PARTIES

- (2) Kion is a manufacturer of forklift trucks, warehouse equipment, and other industrial trucks. Kion operates on a worldwide basis and offers a full spectrum of forklift trucks in terms of size and lifting capacity, including internal combustion trucks and electric trucks as well as warehouse equipment.⁴
- (3) Weichai is an automotive and equipment manufacturing group, incorporated under the laws of the People's Republic of China, which operates in three main business segments: (i) power assembly (engines, gears, gear boxes and axles), (ii) commercial vehicles, and (iii) automobile electronics and parts.
- (4) Weichai is controlled by SHIG within the meaning of the Merger Regulation. [...].⁵
- (5) Through a 90/10 joint venture with Kion, Weichai controls Linde Hydraulics, active in the development, manufacturing, production, sale and marketing of hydraulic components (pumps, motors, valves, gears, gear drives and ancillary castings) some of which are used in the production of forklifts.

2. THE OPERATION

- (6) Kion's acquisition by Weichai was already notified to the Commission and cleared in 2014.⁶ The Transaction is a different concentration than the one cleared in 2014 since Weichai has in the meantime lost *de jure* control and will now acquire *de facto* control over Kion.
- (7) [Description of the transfer of *de iure* control after the 2014 transaction, the subsequent loss of that control and the acquisition of *de facto* control as a result of the current transaction].⁷ [Description of the transfer of *de iure* control after the 2014 transaction, the subsequent loss of that control and the acquisition of *de facto* control as a result of the current transaction].⁸

⁴ On 24 August 2016, the Commission cleared the acquisition of German warehouse equipment manufacturer Dematic by Kion in case COMP M.8140 Kion / Dematic.

⁵ SHIG is 100% owned by the Provincial Government of Shandong of the People's Republic of China through the State-owned Assets Supervision and Administration Commission of Shandong Province Government [...] and the Shandong Council for Social Security Fund [...]. Neither the SASAC of Shandong nor the SCSS have any other businesses with horizontal overlaps or vertical links relevant to the activities in this case. Therefore, the issue of whether Weichai and SHIG are part of a single economic entity together with the other businesses in which the SASAC of Shandong or SCSS hold shares can be left open, as it would not impact the competitive analysis.

⁶ Case COMP M.7169 – Weichai Power / Kion Group (the “2014 Decision”).

⁷ [Description of the transfer of *de iure* control after the 2014 transaction, the subsequent loss of that control and the acquisition of *de facto* control as a result of the current transaction].

⁸ [Description of the transfer of *de iure* control after the 2014 transaction, the subsequent loss of that control and the acquisition of *de facto* control as a result of the current transaction].

- (8) [Description of the transfer of de iure control after the 2014 transaction, the subsequent loss of that control and the acquisition of de facto control as a result of the current transaction].

3. THE CONCENTRATION

- (9) As a result of the purchase of additional shares, Weichai will get the possibility of *de facto* exercising sole voting control over Kion, within the meaning of paragraph (59) of the Jurisdictional Notice, in the light of the attendance rate to Kion's shareholders' meetings registered in the past three years.
- (10) In accordance with Article 7(2)(b) of the Merger Regulation, Weichai has committed to not exercising the voting rights attached to any of the additional shares prior to obtaining clearance from the Commission, and has notified the acquisition of control to the Commission without delay.

4. EU DIMENSION

- (11) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million (Weichai: EUR 7 380.1 million; Kion: EUR 5 098 million). Each of them has an EU-wide turnover in excess of EUR 250 million (Weichai: EUR 786 million; Kion: EUR 3 871.6 million), but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State. The notified operation therefore has an EU dimension.

5. RELEVANT MARKETS

5.1. Introduction

- (12) There are no horizontal overlaps between the Parties' activities. The Transaction however gives rise to vertical relationships.
- (13) Kion is a manufacturer of counterbalanced forklift trucks ("CFTs"). Weichai manufactures and sells engines used in CFTs and, through Linde Hydraulics, is also active in the manufacture and supply of hydraulic components that are used in the production of CFTs.
- (14) The Transaction therefore gives rise to vertical relationships between Weichai's upstream activities in the manufacturing and supply of engines, and hydraulic components for CFTs on the one hand, and Kion's downstream activities in CFTs on the other hand.
- (15) Weichai supplies one specific engine to Baoli Forklift Company ("Baoli"), a subsidiary of Kion located in China, used in CFTs exclusively sold in China. The total turnover generated by these sales in 2015 was below [...].
- (16) Linde Hydraulics supplies hydraulic components to Kion for use in the production of CFTs sold in the EEA. Sales from Linde Hydraulics to Kion in 2016 amounted to approximately [...].

5.2. Market definitions

5.2.1. Downstream market: Counterbalanced forklift trucks (CFTs)

- (17) CFTs are person-operated material handling vehicles equipped with a fork or a ram for loading and transporting cargo, as well as a mast for moving cargo vertically. There is a variety of models differing in weight bearing capacity and type of engine, but all of them share common distinctive characteristics - they can carry goods in both horizontal and vertical directions, and have a maximum lift height in the range of four to six meters.
- (18) In previous decisions, the Commission has defined one product market for CFTs, notably based on the general supply side-substitutability: manufacturers generally produce the entire range of forklift trucks of various sizes, engines, and capacity ranges.⁹ The Notifying Party concurs with the Commission's previous analysis.
- (19) The Commission has previously defined the relevant geographic markets for CFTs to be at least EEA-wide.¹⁰ The Notifying Party concurs with the Commission's previous analysis.

5.2.2. Upstream market 1: manufacturing and supply of engines

- (20) The Notifying Party submits that from a demand-side perspective, the specific engine supplied to Baoli would not be compatible with other types of equipment. However, from the supply side, there are large manufacturers of engines for CFTs competing with Weichai, and manufacturers of other types of engines could also enter the market within a reasonably short time frame. The Notifying Party therefore submits that the relevant product market should be wider than the supply of engines for use in CFTs.
- (21) The Notifying Party considers the relevant geographic market to be worldwide or at least EEA-wide. Weichai does not supply any engines for use in CFTs in the EEA.
- (22) Given that no competition problem will arise, even should the narrowest possible market definition of engines for CFTs in the EEA be considered, the relevant product and geographic market definition can be left open.

5.2.3. Upstream market 2: manufacturing and supply of hydraulic components

- (23) Hydraulics is a technology based on the use of an incompressible fluid to transmit energy in a controlled manner so that hydraulic components will behave in a predictable way. Hydraulics are normally divided into industrial hydraulics and mobile hydraulics. The former are normally used in industries such as plastics, the latter are used in, inter alia, larger road and off road vehicles (e.g. trucks and excavators) and other work functions.

⁹ Commission decision of 20 December 2012, COMP/M.4478 – KKR/Goldman Sachs/Kion, para. 9.

¹⁰ Commission decision of 20 December 2012, COMP/M.4478 – KKR/Goldman Sachs/Kion, paras. 11-12.

- (24) The Commission has previously found that hydraulics is normally divided into industrial hydraulics and mobile hydraulics, with the latter being used in larger vehicles and equipment.¹¹ Linde Hydraulics is only active in the mobile hydraulic industry. A mobile hydraulic system normally consists of the following components which are linked together by tubes, hoses or electrical wiring: one or several pumps to establish a pressure in the oil circuit; one or several valves to give direction to the oil flow, restrict pressure, etc.; one or more motors causing wheels to revolve; oil tanks, filters, accumulators, etc.; one or more cylinders causing shovels to tip, etc.
- (25) The Commission has previously found that mobile hydraulic components constitute separate markets whereby each of the components (including pumps, motors and valves) can be considered as a separate market on the basis of its functioning and application.¹²
- (26) The Commission has previously considered that the geographic market for hydraulic components is EEA-wide or wider.¹³
- (27) The Notifying Party concurs with the Commission's previous analysis.

6. COMPETITIVE ASSESSMENT

6.1. No competition concerns linked to the supply of engines for CFTs

- (28) As explained in paragraph (15), Weichai supplies one specific type of engine to Baoli, a subsidiary of Kion in China, for inclusion in one of its CFT models.
- (29) There is no affected market in the EEA, given that Weichai only supplies these engines to Baoli for CFTs sold in China, and does not supply engines to any of Kion's CFT competitors in the EEA or elsewhere. In addition, Weichai's market share in the relevant upstream market (CFT engines) would be less than [5-10]%. Therefore competition concerns are highly unlikely to arise from the vertical relationship.

6.2. No competition concerns linked to the supply of mobile hydraulic components for CFTs

- (30) Likewise, input foreclosure concerns linked to the supply by Linde Hydraulics of various mobile hydraulic components to Kion are highly unlikely to arise. Indeed, for input foreclosure to be a concern, the vertically integrated firm resulting from the merger must have a significant degree of market power in the upstream market. Linde Hydraulics' market share in the relevant upstream markets (mobile hydraulic pumps, motors, and valves) is below [5-10]% in the EEA.

¹¹ Commission decision of 14 January 1992, COMP/M.152 – Volvo/Atlas, para. 13.

¹² Commission decision of 24 February 2004, COMP/M.3082 – Pon/Nimbus/Geveke, para. 10; Commission decision of 14 January 1992, COMP/M.152 – Volvo/Atlas, para 14.

¹³ Commission decision of 24 February 2004, COMP/M.3082 – Pon/Nimbus/Geveke, para. 11; Commission decision of 14 January 1992, COMP/M.152 – Volvo/Atlas, paras. 15-16.

- (31) Finally, customer foreclosure concerns linked to the supply by Linde Hydraulics of various mobile hydraulic components to Kion are also highly unlikely to arise. For customer foreclosure to be a concern, the vertical merger must involve a company which is an important customer with a significant degree of market power in the downstream market. While Kion has a significant market share in the downstream market for CFTs (at approximately [40-50]%), it does not have significant market power as a purchaser of the relevant mobile hydraulics components. This is because the customer base for these mobile hydraulics components is wider than CFT manufacturers. As a result, Kion's purchasing shares for each of these mobile hydraulic components in the EEA are modest (less than [5-10]% for mobile pumps and motors, less than [10-20]% for valves).

7. CONCLUSION

- (32) For the above reasons, the 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 and Article 57 of the EEA Agreement.

For the Commission

(Signed)

Margrethe VESTAGER
Member of the Commission