



EUROPEAN COMMISSION  
DG Competition

***Case M.9163 – DA AGRAVIS MACHINERY /  
KONEKESKO EESTI / KONEKESKO LATVIJA /  
KONEKESKO LIETUVA / KONEKESKO  
FINNISH AGRIMACHINERY TRADE BUSINESS***

Only the English text is available and authentic.

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

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Decision on the implementation of the commitments -  
Purchaser approval  
Date: 23/03/2020



Brussels, 23.03.2020  
C(2020) 1891 final

**PUBLIC VERSION**

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

**To the notifying parties**

Dear Sir/Madam,

**Subject: Case M.9163 – DA AGRAVIS MACHINERY / KONEKESKO EESTI / KONEKESKO LATVIJA / KONEKESKO LIETUVA / KONEKESKO FINNISH AGRIMACHINERY TRADE BUSINESS**

**Approval of Wihuri OÜ as purchaser of Baltic Agro Machinery OÜ following your letter of 8 January 2020 and the Trustee’s opinion of 11 January 2020<sup>1</sup>**

**1. FACTS AND PROCEDURE**

- (1) By decision of 25 March 2019 (“the Decision”) pursuant to Article 6(1)(b) in conjunction with Article 6(2) of Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (“Merger Regulation”)<sup>2</sup> and Article 57 of the EEA Agreement, the Commission declared the concentration by which the Danish Agro Group (“Danish Agro”) through its subsidiaries DA Agravis Machinery Holding A/S (“DA Agravis”) and Danish Agro Machinery Holding A/S (“Danish Agro Machinery”) (together “the Notifying Parties”), acquires within the meaning of Article 3(1)(b) of the Merger Regulation control of the whole of Konekesko Eesti AS, SIA Konekesko Latvija, UAB

<sup>1</sup> The Trustee’s opinion was supplemented on 22 January and on 3 March 2020.

<sup>2</sup> OJ L 24, 29.01.2004, p. 1. 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.

Konekesko Lietuva, and assets of Konekesko Oy in Finland, which constitute the whole of Kesko Group's agrimachinery business (Konekesko Oy) compatible with the internal market, subject to conditions and obligations ("the Commitments").

- (2) In particular, the Commitments consist of the divestment of Baltic Agro Machinery OÜ, an Estonian limited company with registered place of business and management at Tehnika 9, Türi 7221, Järvamaa, Estonia, active in the distribution of agricultural machinery and implements and the provision of after-sale services of agricultural machinery.
- (3) According to paragraph 2 of the Commitments, Danish Agro has to procure the divestiture of Baltic Agro Machinery OÜ as a going concern to a purchaser in order to maintain effective competition. The purchaser criteria in paragraph 17 of the Commitments specify, in particular, that the purchaser should have the financial resources, proven expertise and incentive to maintain and develop the Baltic Agro Machinery OÜ as a viable and active competitive force in competition with the Parties and other competitors.
- (4) With regard to the purchaser criteria, the standard purchaser criteria<sup>3</sup> text is supplemented by an additional criterion that the Purchaser has obtained written acceptance from John Deere for the continuance of the John Deere distribution agreement on terms not less favourable than under the current ownership of DA Agravis Machinery Holding A/S.
- (5) On 23 December 2019, a Business Purchase Agreement was signed between representatives of both Baltic Agro Machinery OÜ and Wihuri OÜ. The Business Purchase Agreement governs the transfer of the business of Baltic Agro Machinery OÜ, including all operating equipment, all contracts and customer contracts and orders as well as all employees. The transaction is structured as a business transfer and is subject to the Commission's approval.
- (6) On 6 March 2020, Baltic Agro Machinery OÜ and Wihuri OÜ signed an addendum to the Business Purchase Agreement in order to bring the latter in line with the Commitments. On 11 January 2020, the Monitoring Trustee, KPMG ("Trustee") submitted an assessment of Wihuri OÜ's suitability as a purchaser and, in particular, indicated that it fulfils the purchaser criteria in section D of the Commitments attached to the Decision. The Trustee complemented its original assessment on 3 March 2020. The Trustee concluded that [...] the Business Purchase Agreement ensures the lasting structural change in the market intended by the Commitments.

## **2. ASSESSMENT OF THE PROPOSAL**

### **2.1. Legal Framework**

- (7) In its assessment of the proposed purchaser and agreements, and in accordance with paragraph 48 of the Commission Notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004, OJ C 267, 22 October 2008 (the "Remedies Notice"), the Commission has to ensure the suitability and independence of the proposed

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<sup>3</sup> Commission Notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004, paragraphs 48 and 49.

purchaser, the viability of the divestment business after the sale, and that the divestment business is sold in a manner consistent with the conditions and obligations attached to the decision.

- (8) According to paragraph 17 of the Commitments, the Commission has to verify that the purchaser fulfils the following criteria:
- (a) the purchaser is independent of and unconnected to the Parties and their Affiliated Undertakings;
  - (b) the purchaser has the financial resources, proven experience, and incentive to maintain and develop the Divestment Business as a viable and active competitive force with the Parties and other competitors;
  - (c) the acquisition of the Divestment Business by the purchaser is neither likely to create, in light of the information available to the Commission, *prima facie* competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed. In particular, the purchaser must reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Business; and
  - (d) the purchaser has obtained written acceptance from John Deere for the continuance of the John Deere distribution agreement on terms no less favourable than under the current ownership of DA Agravis Machinery Holding A/S.

## **2.2. Description of the Proposed Purchaser**

- (9) Wihuri OÜ is a private limited company incorporated in Estonia. It is a newly established company founded on 10 December 2019 with an ordinary share capital of EUR 2,500.
- (10) Wihuri OÜ was established with the purpose of acquiring the business of Baltic Agro Machinery OÜ and hence, no activity has yet been conducted from the company. However, Wihuri OÜ is ultimately owned by Wihuri International Ltd. Wihuri International Ltd. is a limited company incorporated in Finland and the ultimate parent company of the Wihuri Group.
- (11) The Wihuri Group is a conglomerate active in thirty countries and within four business divisions consisting of (i) packaging, (ii) daily goods wholesale, (iii) technical trade and (iv) aviation. On a worldwide scale the different divisions employ more than 5,000 people and in 2018 the group net profit was approximately EUR [2 million].
- (12) The technical trade division of the Wihuri Group is operated by Wihuri Oy Tekninen. The division has ten business premises throughout Finland and offers supply and service within the following product categories: vehicle heaters, repair shop equipment, lift trucks, municipal machines, hand and electric tools, construction machines and engines, machine tools and motorboats.
- (13) Besides representing brands such as Wille, Metabo, Mazak and Eberspächer, the technical trade division was between 1947 and 2020 an authorized distributor of Caterpillar construction and mining equipment, diesel and natural gas engines,

industrial gas turbines and diesel-electric locomotives in Finland. As of 1 January 2020 the Wihuri Group has transferred the distributorship of Caterpillar and the pertaining Caterpillar business to a Finnish subsidiary of Avesco AG, a third party with no involvement in the acquisition of the Divestment Business. The technical trade division has since 7 November 2019 been an authorised John Deere dealer in Finland.

### **2.3. Independence from the Parties**

- (14) The Danish Agro Group neither owns any shares or has any direct or indirect interest in Wihuri OÜ or any other company within the Wihuri Group. Reciprocally, neither does Wihuri Group regarding Baltic Agro Machinery OÜ or any other company within the Danish Agro Group.
- (15) None of the members of the management board or the board of directors of neither Baltic Agro Machinery OÜ or any other entity within the Danish Agro Group is inter-locking with the members of the management and/or board of Wihuri OÜ or any other company within the Wihuri Group and vice versa.
- (16) Further, Baltic Agro Machinery OÜ and Wihuri OÜ have no current commercial relations to each other and the same applies for their respective parent companies and their affiliates. This independence between the parties will not be influenced by the contemplated transaction. Post-closing the parties will still have no interest in each other. The only links between the parties after the consummation of the contemplated transaction will be the temporary leases as described in the previous section and the transitional services provided by the Danish Agro Group.

### **2.4. Financial resources, proven expertise and incentive to maintain and develop the Divestment Business as a viable and active competitor**

- (17) First, in the Trustee's assessment the Wihuri Group has adequate financial resources to acquire, operate and develop the agrimachinery business of Baltic Agro Machinery OÜ. According to the Trustee, the Wihuri Group has a significant financial revenue (EUR 1.9 billion) and results (net profit of EUR 2 million) compared to the financial resources required to conduct the Divestment Business in Estonia, for example the estimated purchase price is close to EUR [...].
- (18) Second, the Trustee further indicates that Wihuri Group has the necessary expertise to enter into the agricultural machinery distributorship business in Estonia. Wihuri's technical trade division has been an exclusive Caterpillar dealer in Finland for many years. This together with the experience within the municipal machines, which also is part of Wihuri's technical trade division, ensures experience within heavy machinery. These experiences together with Wihuri's dealership of John Deere's agricultural machinery in Finland, supports an assessment that Wihuri Group has the required experience to continue the Divestment Business in Estonia.
- (19) Third, Wihuri's business plan on the Divestment Business shows Wihuri's incentive to maintain and develop the Divested Business as a viable and active competitor in the market for distribution of agricultural machinery. [Wihuri is further incentivised to generate as much turnover as possible in all of its operating markets].
- (20) The Trustee analysed Wihuri's business plan for the Divestment Business and key financial indicators such as revenue and estimated market shares. The Trustee

concluded that the revenues and profits of the operating companies are realistic. In the Monitoring Trustee's assessment, the business plan provided by Wihuri is realistic and feasible, taken into account the activities planned by Wihuri, but also acknowledging the potential macroeconomic and weather implications, which might significantly affect the business plan.

- (21) In view of the above, the Commission considers that Wihuri has the financial resources, proven expertise and incentive to maintain and develop the Divestment Business as a viable and active competitive force in competition with the Parties and other competitors.

#### **2.5. John Deere's acceptance for the continuance of the John Deere distribution agreement**

- (22) John Deere has given its approval of Wihuri OÜ continuing with the distribution of John Deere machines as the purchaser of the activities of Baltic Agro Machinery OÜ. The current non-exclusive John Deere agreement concluded with Baltic Agro Machinery OÜ will not be continued but replaced by an exclusive new dealer agreement with Wihuri OÜ on terms no less favourable than the current agreement with Baltic Agro Machinery OÜ.

#### **2.6. Absence of prima facie competition problems or risk of delay**

- (23) The acquisition of the Divestment Business by Wihuri does not create any horizontal overlaps or vertical relationships, since Wihuri is not active in the area of manufacturing or distribution of agricultural machinery, or supply of spare parts or implements or for provision of after-sales services in Estonia. Given this lack of activities in Estonia on the part of Wihuri, the Commission considers that there are no *prima facie* competition concerns raised by the proposed transaction.
- (24) The completion of the proposed transaction is not subject to regulatory authorisations or other dilatory conditions.. Therefore, there appears to exist no risk of delay in completing the transaction due to the need to obtain regulatory approvals.

### **3. ASSESSMENT OF THE BUSINESS PURCHASE AGREEMENT**

- (25) The Trustee has carried out a detailed review of the Business Purchase Agreement and other agreements related to the transaction, and concluded that the terms of the Proposed Agreements ensure the lasting structural change in the market intended by the Commitments.
- (26) According to paragraph 18 of the Commitments, "*[t]he Commission may approve the sale of each Divestment Business without one or more Assets or parts of the Personnel, or by substituting one or more Assets or parts of the Personnel with one or more different assets or different personnel, if this does not affect the viability and competitiveness of the Divestment Business after the sale, taking account of the proposed purchaser.*"

- (27) The Business Purchase Agreement is on certain matters deviating from the transaction as envisaged in the Commitments, in particular:
- (a) the transaction is structured as an asset deal, rather than the transfer of the legal entity Baltic Agro Machinery OÜ;
  - (b) exclusion of the grain dryer activity;
  - (c) differing provisions concerning real estate and leases;
  - (d) the Hold Separate Manager, Eiko Nõgols, not being transferred with the Divestment Business;
  - (e) the exclusion of items from the inventory of machines and spare parts to be transferred.
- (28) The Commission considers these elements in turn below.

### **3.1. Transaction structure**

- (29) Although the Schedule of the Commitments mentioned the transfer of the legal entity Baltic Agro Machinery OÜ, Wihuri OÜ requested for the transaction to be structured as an asset deal. Wihuri OÜ reasoned its request with reference to the Estonian competition authority's investigation of Baltic Agro Machinery OÜ in relation to an alleged collusion with other competitors on the sale of grain dryers.
- (30) The Commission considers that the parties can freely choose the legal structure by which the Divestment Business is transferred, as long as all assets required to ensure the viability and competitiveness of the Divestment Business are transferred. The proposed Business Purchase Agreement includes all necessary assets to ensure the ability of the divestment business to compete effectively with the merged entity on a lasting basis.

### **3.2. Exclusion of the grain dryer activity**

- (31) Pursuant to paragraph 1.5 of the Business Purchase Agreement, the assets and liabilities pertaining to the grain dryer activity of the divestment business, as listed in appendix 3.6 to the Business Purchase Agreement are excluded from the scope of the agreement and will remain with Baltic Agro Machinery OÜ.
- (32) As mentioned in paragraph 26 of the present Decision, under the Commitments, the Commission may approve the sale of the Divestment Business without one or more assets, as long as this does not affect the viability and competitiveness of the Divestment Business after the sale.
- (33) The grain dryer activity is not part of the of Baltic Agro Machinery OÜ core business, namely the distribution of agricultural machinery, in particular John Deere machinery. In 2018, the grain dryer activity generated EUR [...] corresponding to [5-10]% of the aggregated turnover in Baltic Agro Machinery OÜ and in 2019 it was reduced to EUR [...] corresponding to [0-5]% of the turnover. This business line is therefore not essential to the functioning of the Divestment Business as a whole. Finally, the Commission did not raise serious doubts as to the compatibility of the main transaction with the internal market as regards the sale of grain dryers in Estonia.

- (34) In light of this, the Commission considers that the exclusion of the grain dryer activity is not capable of impacting the viability and competitiveness of the Divestment Business.

### **3.3. Real estate and leases**

- (35) The Divestment Business is currently operating its activities from three physical locations in Estonia, one owned by Baltic Agro Machinery OÜ (Türi) and two rented by the Divestment Business (Tartu and Tallinn).

#### *3.3.1. The outlet located in Türi*

- (36) The outlet located in Türi is owned by Baltic Agro Machinery OÜ and under the Commitments it was to be transferred to the purchaser of the Divestment Business. Under the terms of the Business Purchase Agreement, Wihuri OÜ will lease the premises for a period of 36 months. During this period, Wihuri OÜ has the option to purchase the premises at book value, which is in its benefit [...]. In addition, at the request of the Commission, Wihuri OÜ was accorded the right to continue the lease agreement for an undetermined period, after the initial 36 months period elapses. This means that Wihuri will keep the option to find a different location in the area, which may better suit its business strategy.
- (37) The Commission considers that the lease agreement, which can be prolonged unilaterally by the purchaser and has in this case the material effects of a transfer, in combination with the purchase option at defined terms and conditions, effectively enables Wihuri OÜ to carry on the activities of the divestment business in Turi and compete with the merger entity.

#### *3.3.2. The outlet in Tartu*

- (38) Under the Commitments, DA Agravis was under the obligation to offer the lease or sale of Konekesko premises in Tartu under market terms. The Purchaser has instead entered into lease agreement for the premises currently occupied by the Divestment Business, directly with the owner of the property.
- (39) In addition, the DA Agravis and the Purchaser have taken measures, with the consent of the owner of the property, to ensure the physical separation of premises, which are occupied by the Divestment Business, from the premises, which are occupied by AS Baltic Agro. Neither DA Agravis nor any of its subsidiaries will conduct distribution and after-sales services activities from the premises in Tartu. The current lease agreement allows therefore for the transfer of the real estate assets necessary to carry out the Divestment Business in an independent manner.
- (40) The Commission considers that by entering into a direct lease agreement with the owner of the premises in Tartu, Wihuri has secured the necessary real estate to allow the Divestment Business to compete effectively with the merged entity going forward.

#### *3.3.3. The outlet in Jüri/Tallinn/Harjumaa*

- (41) Under the Commitments, the Purchaser is entitled to lease the premises occupied by Konekesko as an alternative to the lease of the premises currently occupied by the Divestment Business (“lease-swap option”). Although the purchaser did not exercise



the lease-swap option, and has instead entered into a 12 months lease agreement with AS Baltic Agro for the premises currently used by the Divestment Business. At the request of the Commission, the purchaser was accorded the right to exercise the lease-swap option at any time during the 12 months lease period.

- (42) In light of the foregoing, the Commission considers that the lease and lease-swap option in relation to the outlet in Jüri/Tallinn/Harjumaa is in line with the requirements set out by the Commitments, for the agreed lease agreement allows the transfer of the necessary real estate assets to conduct the Divestment Business.

### **3.4. Hold Separate Manager**

- (43) According to the Commitments, the Hold Separate Manager Eiko Nõgols shall be part of the Divestment Business as part of key personnel. However, Eiko Nõgols has at the beginning of December 2019 announced his resignation to the clean team of DA Agravis Machinery Holding A/S and Wihuri OÜ. Referring to his official notice period, his employment terminated at the end of January 2020.

- (44) On February 2020 Kristjan Ruusamäe was appointed as Hold Separate Manager. Kristjan Ruusamäe has been with Baltic Agro Machinery since its establishment in 2015 and for the last year, he has been the project manager for tractors and sprays in the Divestment Business. Kristjan Ruusamäe has also 10 years of experience in working with John Deere machinery. According to the Trustee, Kristjan Ruusamäe has the requisite business expertise and follows the hold-separate and ring-fencing obligations.

### **3.5. Exclusion of items from the inventory list**

- (45) The parties to the Business Purchase Agreement have agreed on a contractual right for Wihuri OÜ to exclude certain items from the inventory to be transferred at closing.

- (46) The right of Wihuri OÜ to exclude certain items shall be subject to the following limitations:

- (a) New John Deere machines: [0-5]%;
- (b) Trade-in used agricultural machines and demo-machines: [70-80]%;
- (c) New and used trade-in agricultural implements: [50-60]%; and
- (d) New spare parts for agricultural machines: [20-30]%.

All limitations are based in the aggregate book value less the impairment value for the respective category of item.

- (47) According to the Monitoring Trustee report, the exercise of this right will result in the exclusion of [...] machines from the inventory. [...] items are implements of the brand Kockerling, which has reportedly ceased its business in Estonia. [...] items are used machines and implements of other brands than John Deere; [...] items are John Deere used machines. 1 John Deere machine, which was used as a “demo model” and has been driven for several hundreds of kilometres.

- (48) The majority of the excluded inventory are used machines, which are of limited value to the Divestment Businesses. According to the Notifying Party, at the moment, the supply of used machines outgrows their demand and Baltic Agro Machinery OÜ considers a sale of this type of inventory successful when [...]. To this extent, the sale of used machines imply a large tie-up of capital. The Monitoring Trustee has agreed with this assessment and further explained that by excluding such items, the capital commitments tied up in the inventory of used machines will be limited and the risk of impairments reduced. As regards the Kõckerling implements, they would not bring a significant added value to the Divestment Business as there should not be much demand for [...] items, considering that Kõckerling has taken a decision to cease its activities in Estonia.
- (49) For these reasons and as confirmed by the Monitoring Trustee the actual exclusion of the above listed inventory does not call into question the viability, the competitiveness, nor the stand-alone character of the Divestment Business.
- (50) In light of the foregoing sections, the Commission considers that the Business Purchase Agreement as amended on 6 March 2020 is in line with the requirements set out by the Commitments.

#### **4. CONCLUSION**

- (51) Based on the above assessment, the Commission approves the Proposed Purchaser as a suitable purchaser of the Divestment Business.
- (52) Based on the Proposed Agreement, the Commission further concludes that the Divestment Business is being sold in a manner that ensures that the Divestment Business can compete effectively with the merged entity.
- (53) This decision only constitutes approval of the Proposed Purchaser identified herein and of the Proposed Agreement. This decision does not constitute a confirmation that Danish Agro has complied with the Commitments.
- (54) This decision is based on paragraphs 17 and 18 of the Commitments attached to the Commission Decision of 25 March 2019.

*For the Commission*

*(Signed)*  
*Olivier GUERSENT*  
*Director-General*

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\* Should read: these