



23 Marcus Clarke Street
Canberra ACT 2601

GPO Box 3131
Canberra ACT 2601

tel: (02) 6243 1368

mergers@acc.gov.au

www.acc.gov.au

Our ref: IM-71003
Contact officers: Yak Wang / Annelise Caplan
Contact phone: (03) 9290 6978 / (03) 9910 9451

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Dear Interested Party

Re: Request for submissions: Cargotec's proposed merger with Konecranes – Proposed Undertakings

The Australian Competition and Consumer Commission (**ACCC**) is currently reviewing Cargotec Corporation's (**Cargotec**) proposed merger with Konecranes Plc (**Konecranes**) (the **proposed merger**).

Cargotec and Konecranes have offered commitments to the European Commission (**EC**) in relation to the proposed merger (**EC Commitments**). The EC Commitments require Cargotec to divest its Kalmar Automation Services business and Konecranes to divest its Konecranes Lift Trucks business (collectively, the **Divestment Businesses**). To address competition concerns in Australia, Cargotec and Konecranes have each offered the ACCC a proposed undertaking pursuant to s87B of the *Competition and Consumer Act 2010* (**Proposed Undertakings**), which require the parties to comply with the EC Commitments, including divestiture in Australia, and provides for ACCC approval of the proposed purchaser(s) of the Divestment Businesses.

The purpose of this letter is to seek your views on whether requiring the parties to sell the Divestment Businesses would adequately address the competition concerns arising from the proposed merger in Australia. Your views will assist the ACCC in reaching a final decision on the proposed merger and whether to accept the Proposed Undertakings. **Attachment A** to this letter outlines the background to the proposed merger and a summary of the EC Commitments and Proposed Undertakings, with additional details of the Divestment Businesses contained in **Attachment C** and **D**. A list of specific questions is at **Attachment B**.

If you wish to make a submission, please provide it by **4.00pm (AEDT) on Thursday, 10 March 2022**. Submissions may be emailed, preferably in PDF format to mergersru@acc.gov.au with the subject line: Submission re: Cargotec/Konecranes - Proposed Undertakings (Attention: Annelise Caplan/Yak Wang).

This matter is public and you can forward this letter to anybody who may be interested.

Please note the ACCC has not yet formed a concluded view as to whether its competition

concerns are capable of being addressed by the EC Commitments, Proposed Undertakings or any other possible remedy. The market consultation process should not be taken as an indication that the ACCC will accept the EC Commitments, Proposed Undertakings or that any remedy will be capable of satisfying its competition concerns.

The ACCC may require changes to the Proposed Undertakings depending on the nature and extent of any concerns raised during the market consultation process. The ACCC will only accept a remedy if it is satisfied that it will sufficiently address its competition concerns, and after consideration of the monitoring and compliance costs and any risk to competition associated with the implementation of the Proposed Undertakings (or failure to do so). If you have any questions in relation to this matter or would like to arrange a teleconference to discuss your response, please contact Yak Wang on (03) 9290 6978 or Annelise Caplan on (03) 9910 9451.

Confidentiality of submissions

The ACCC treats sensitive information it receives during a merger review as confidential, and will not publish your submission. We will not disclose submissions to third parties (except our advisors/consultants) unless compelled by law (for example, under freedom of information legislation or during court proceedings) or in accordance with s155AAA of the Competition and Consumer Act 2010. Where the ACCC is required to disclose confidential information, we will notify you in advance where possible so that you have an opportunity to be heard. Therefore please clearly indicate if any information you provide is confidential. Our [Informal Merger Review Process Guidelines](#) contain more information on confidentiality.

Yours sincerely



Daniel McCracken-Hewson
General Manager
Merger Investigations

Attachment A

Proposed merger and ACCC review

The proposed merger was announced on 1 October 2020. Post-merger, all assets and liabilities of Konecranes will transfer to Cargotec. Shareholders of Konecranes and Cargotec will each own approximately 50 per cent of the shares in the merged entity.

In June 2021, Cargotec applied to the ACCC for informal clearance of the proposed merger. The ACCC published a Statement of Issues on 28 October 2021 setting out its preliminary competition concerns, including the reduction of straddle and shuttle carrier suppliers from two to one, gantry cranes suppliers from three to two, and consolidation in suppliers of mobile equipment in Australia. Further information about the ACCC's review and the Statement of Issues can be accessed at:

<https://www.accc.gov.au/public-registers/mergers-registers/public-informal-merger-reviews/cargotec-corporation-konecranes-plc>.

Cargotec

Cargotec is headquartered in Finland and active globally in material handling solutions ranging from manufacture and supply of container handling products (manual and automated) to engineering solutions for the maritime industry.

Cargotec's Kalmar Automation Solutions (**KAS**) business supplies port cranes, horizontal transport equipment (**HTE**) and automation globally, including to customers in Australia, including equipment control systems required to operate automated equipment. KAS also offers aftersales servicing and spare parts. Cargotec's Kalmar (**KAMOS**) business unit supplies mobile equipment, related aftersales servicing and spare parts.

Konecranes

Konecranes is headquartered in Finland and specialises in material handling solutions for general manufacturing and process industries, container handling products and services, and automated solutions.

Konecranes' Port Solutions business provides container handling products and terminal solutions to customers in Australia. As part of the Port Solutions business, the Konecranes Lift Trucks business supplies mobile equipment.

Overview of the EC Commitments

The Divestment Businesses are:

- (a) the Konecranes Lift Trucks Business, which is Konecranes' global mobile equipment business (**MEQ Divestment Business**). The MEQ Divestment Business is not physically present in Australia but supplies mobile equipment to customers in Australia via a third-party distributor, United Equipment Pty Ltd (**United**), and
- (b) the Cargotec KAS Business, which is Cargotec's global port cranes, HTE and automation business (**KAS Divestment Business**).

The Divestment Businesses may be acquired by separate purchasers, or alternatively both Divestment Businesses may be acquired together by a single purchaser.

Cargotec and Konecranes must enter into a final binding sale and purchase agreement within a specified period from the EC's decision date, or a divestiture trustee will be appointed to sell the Divestment Businesses to a purchaser at no minimum price.

MEQ Divestment Business

The MEQ Divestment Business is comprised of two entities in Sweden and one in China.

The Konecranes assets to be divested include:

- its mobile equipment business, which manufactures and supplies reach stackers, full and empty container handlers as well as forklift trucks,
- the Lift Trucks sales channel, services and spare parts business (and other essential functions), and
- all customer, distributor, agent and supply agreements entered into by those legal entities which form part of the MEQ Divestment Business. If any customer, distributor, supply or agent agreements are not entered into by the legal entities part of the MEQ Divestment Business, but do cover (in whole or in part) the supply of MEQ, Konecranes will use its reasonable best efforts to transfer these agreements to the purchaser to the extent they relate to the supply of MEQ.

The MEQ Divestment Business also includes the transfer of the Liftace and SMV trademarks.

In relation to the 'Konecranes' brand:

- the merged entity will retain the Konecranes brand, but cannot sell any mobile equipment under the Konecranes brand until 8 years after the merger has closed.
- the purchaser of the MEQ Divestment Business has the option to license from the merged entity the Konecranes brand for 3 years to supply mobile equipment. After which, it will no longer be able to use the Konecranes brand.

Konecranes has no physical presence in Australia in relation to the supply of container handling equipment (including MEQ). Konecranes has no offices, premises, or staff in Australia in relation to the supply of container handling equipment (including MEQ). It supplies MEQ to customers via a third-party distributor, namely United. In Australia, the following Konecranes assets will be divested:

- Konecranes' distribution agreement with United for the supply of MEQ to customers in Australia, and
- limited intellectual property registered in Australia.

For a more detailed description of the assets to be divested as part of the MEQ Divestment Business please refer to **Attachment C**.

KAS Divestment Business

The Cargotec assets to be divested include:

- Intelligent Cranes Solution business, which is Cargotec's global port cranes business for the supply and servicing of ship-to-shore cranes, rubber-tired gantry cranes, rail mounted gantry cranes and automated stacking cranes,
- Intelligent Horizontal Transport Solutions business, which is Cargotec's global business for the supply and servicing of straddle and shuttle carriers,
- the entire Kalmar One automation system, and
- related after-sales and upgrade / modernisation services and spare parts supply.

The purchaser of the KAS Divestment business will acquire Cargotec's HTE and mobile equipment assembly site in Stargard, Poland. However, certain personnel and assets used exclusively for Cargotec's mobile equipment business at the Stargard assembly site will be carved-out of the KAS Divestment Business and retained by Cargotec. These Cargotec mobile equipment assembly activities will be transferred to another facility within 24 months.

In relation to the 'Kalmar' brand:

- If the KAS Divestment Business is divested without the Kalmar brand, the merged entity would not be allowed to sell Port Cranes and/or HTE products under the Kalmar brand until 10 years after the merger has closed.

The merged entity retains exclusive use the Kalmar brand for all types of CHE equipment other than Port Cranes and HTE product.

- The purchaser of the KAS Divestment Business has the option to use the Kalmar brand for the supply of Port Cranes and HTE products under a 5-year licence. After this 5-year period and until of the end of the 10th year from closing, neither the merged entity nor the purchaser will be allowed to sell Port Cranes or HTE products under the Kalmar brand. The merged entity intends to differentiate the Kalmar brand used in relation to the supply of any other equipment than Port Cranes and HTE from the Kalmar brand used by the purchaser in relation to the supply of Port Cranes and HTE.

In Australia, the following leased premises used by the KAS Divestment Business will be divested:

- an office in Port Botany, Sydney (Building 12, Lord Street), and
- a warehouse in Brooklyn, Melbourne (Grieve Parade).

The KAS Divestment Business includes KAS employees located in Melbourne and Sydney and also includes:

- all contracts with Australian customers, including all ongoing equipment and / or contracts and all ongoing aftersales services contracts related to Port Cranes and HTE, and
- all existing Port Cranes and HTE related inventory of finished goods in Australia, including components, sub-components, raw materials, spare parts, tool box containers, tool and jigs.

For a more detailed description of the assets to be divested as part of the KAS Divestment Business please refer to **Attachment D**.

Overview of the Proposed Undertakings

The Proposed Undertakings contain the following substantive obligations:

- Cargotec and Konecranes must comply with the EC Commitments to the extent they relate to the Divestment Businesses in Australia,
- Cargotec and Konecranes must irrevocably submit to the jurisdiction of the Federal Court of Australia in relation to the Proposed Undertakings,
- Cargotec and Konecranes must sell the Divestment Businesses only to ACCC approved purchaser(s), and
- Cargotec and Konecranes must procure that the monitoring trustee appointed by the EC provide the ACCC with a copy of each report (including any confidential version) provided to the EC that indicates Cargotec and Konecranes' progress as to compliance with the EC Commitments. The ACCC may directly request information from the monitoring trustee at any time.

Attachment B

We have set out a list of questions you may wish to address in your submission. Please feel free to comment on any other issues that you consider relevant to the ACCC's assessment.

1. If you have not previously provided a submission to the ACCC on this matter, please:
 - a. provide a brief description of your business or organisation.
 - b. outline the reasons for your interest in the proposed merger, including any commercial relationship/s with either Cargotec or Konecranes.
2. Will the remedy proposal:
 - a. address the ACCC's preliminary competition concerns set out in its Statement of Issues dated 28 October 2021? Why or why not?
 - b. replace any loss of competition resulting from the proposed merger? Why or why not? Does your view differ according to whether there is a single purchaser or separate purchasers?
 - c. attract a suitable purchaser or purchasers? To what extent would a purchaser need existing facilities and / or experience, including in Australia or regionally, to be a viable, effective and long-term competitor.
3. Does the remedy proposal include all the necessary assets and personnel required to ensure a purchaser can become a viable, effective and long-term competitor? If not, please explain what else would be required.
4. Are you aware of any third party (including regulatory) consents required to transfer the assets to a purchaser that may impact on the effective implementation of the remedy proposal?
5. Do you have concerns about a potential purchaser of the MEQ Divestment Business (which includes the Distribution Agreement with United) exiting or reducing its engagement with the Australian mobile equipment market?
6. Does the potential dual use of the Kalmar brand raise concerns either for confusion in the market or for the viability of the purchaser - that is, a purchaser using the Kalmar brand for the supply of Port Cranes and HTE products, and the merged entity using the Kalmar brand for the supply of all other types of CHE equipment (except for Port Cranes and HTE products)?
7. How significant is the risk of asset degradation (including employees defecting and customer contracts terminating etc) after the merger closes but before the merged entity finds a purchaser for the Divestment Businesses?
8. The remedy proposal includes divesting a business from each of Cargotec and Konecranes. Are there significant risks or losses in synergy in divesting these businesses and transferring them to any potential single or separate purchaser(s) – for example the reverse carve-out at the Stargard assembly facility? Would the risks or losses in synergy be materially less if both of the divested businesses came from either Cargotec or Konecranes?

9. Do you have any concerns about the loss of competition resulting from the proposed merger that are not addressed by the remedy proposal?
10. Please provide any additional information or comments you consider relevant to the ACCC's consideration of the proposed merger under section 50 of the Act.

Attachment C – MEQ Divestment Business

Asset / resource	Summary of MEQ Divestment Business
Outline of global remedy	
Legal entities	Two entities in Sweden and one in China.
Business offices / premises	Konecranes' MEQ headquarters, R&D, manufacturing site and distribution centre for spare parts located in Markaryd, Sweden and Konecranes' manufacturing site and spare parts distribution centre in Lingang, China.
Product Lines	All MEQ product lines currently produced and sold by Konecranes globally (including with respect to Australian customers) which comprise reach stackers, empty container handlers, full container handlers, forklift trucks and related spare parts.
Personnel	Staff currently employed by the MEQ Divestment Business globally, including personnel who are used predominantly or exclusively for the manufacturing, supply, sale or servicing of MEQ.
Product descriptions	All product descriptions and related information.
Inventory of finished goods	All existing inventory of finished goods, and raw materials and spare parts as of the date of Closing.
Equipment and machinery	Manufacturing, testing and servicing equipment and machinery used in the manufacturing and testing of MEQ including all related documentation.
R&D / pipeline projects	All R&D and pipeline projects and related information.
Customer etc information	All customer, distributor and agent information.
Customer, distributor, agent and supply agreements	All customer, distributor, agent and supply agreements entered into by the legal entities part of the MEQ Divestment Business.
Brands, patents, design rights, technology and knowhow	All rights in all brands, patents, design rights and other intellectual property technology and knowhow currently used exclusively or predominantly to develop, manufacture, sell and use MEQ, which are held by Konecranes. This will include the <i>Liftace</i> and <i>SMV</i> trademarks.
Domain names	All domain names used exclusively for the supply of MEQ.
Business records, books etc	All business records, books of account, financial records, and tax records; all information, including customer and supplier lists and details, product and pricing information, account histories, research data and commercial data.
Sales literature	To the extent applicable, all sales and promotional literature and other sales-related materials used exclusively or predominantly for the manufacturing, supply or servicing of MEQ.
Software	At the option of the purchaser, Konecranes will provide the purchaser with a duplicate of its remote monitoring platform TruConnect, comprising the hardware and software system that collects and stores data for monitoring Konecranes MEQ. At the option of the purchaser, a transitional services agreement relating to Microsoft applications, emails etc.
Transitional arrangements	A range of transitional services arrangements at the option of the purchaser.
Overview of Australian assets which form part of MEQ Divestment Business	
Distribution agreement	Distribution agreement Konecranes has in place with a third party for the supply of MEQ to customers in Australia
IP	Limited IP registered in Australia.

Attachment D – KAS Divestment Business

Key asset / resource	Summary of KAS Divestment Business
Outline of global remedy	
Business offices / premises	<ul style="list-style-type: none"> • The KAS headquarters located in Tampere, Finland • Cargotec's HTE assembly site in Stargard, Poland (the Stargard Facility), with the exception of certain personnel and assets used exclusively for Cargotec's mobile equipment business. • Specified workshops, warehouses and offices.
Product Lines	All Port Cranes and HTE product lines assembled and sold by Cargotec globally (including to Australian customers) and related product descriptions and information.
Personnel	All staff currently employed by the KAS Divestment Business globally (including in Australia), as well as staff seconded to the business, shared personnel and certain additional personnel.
Inventory of finished goods	All existing Port Cranes and HTE related inventory of finished goods, components, sub-components, raw materials and spare parts as of the date of Closing.
Tools and equipment	All existing Port Cranes and HTE related tool box containers, which contain necessary equipment for project delivery, and tools and jigs that are used for assembly and maintenance.
Product development	All relevant information existing at or initiated before Closing on product development projects in relation to Port Cranes, HTE and Kalmar One.
Brands	<ul style="list-style-type: none"> • The "Nelcon" brand • The "Kalmar" brand for use in relation to the supply and servicing of Port Cranes and HTE (noting the Parties will retain the exclusive right to use the Kalmar brand in relation to the supply and servicing of any equipment other than Port Cranes and HTE).
Patents, and other IPR and knowhow	All patents, and other intellectual property rights and knowhow (IPR) related to Port Cranes and/or HTE, including IPR (if any) related to Port Cranes and/or HTE spare parts.
Automation and software	The Kalmar One automation system, enabling the purchaser to sell fully automated Port Cranes and HTE.
Customer contracts and relationships	All ongoing equipment orders and/or contracts at the time of Closing (including options agreed in the context of deliveries in the past), all ongoing aftersales services contracts related to Port Cranes and HTE, all customer contracts relating to Port Cranes and HTE upgrade projects, and copies of customer records.
Other third party contracts	At the option of the purchaser, a range of any other third-party contracts that exclusively or predominantly relate to the KAS Divestment Business.
Business books and records	All other business records, books of account, financial records, and tax records; all information, including customer / supplier lists and details, product / pricing information, account histories, research data and commercial data used exclusively or predominantly for the manufacturing, supply or servicing of Port Cranes and/or HTE.
Marketing materials	All sales and promotional literature and other sales-related materials used exclusively or predominantly for the manufacturing, supply or servicing of Port Cranes and/or HTE.
Transitional arrangements	A range of transitional services arrangements at the option of the purchaser, including in relation to the Stargard Facility.
Overview of Australian assets which form part of KAS Divestment Business	
Premises	In Australia, KAS has no manufacturing or assembly facilities and the only physical premises are in the nature of basic warehouses/workshops and office premises. The following premises in Australia will be transferred to the purchaser: an office in Port Botany, Sydney (Building 12, Lord Street); a warehouse in Brooklyn, Melbourne (Grieve Parade).
Personnel	Includes KAS employees located in Melbourne, Sydney and Brisbane.
Customer contracts	All ongoing contracts related to Port Cranes and HTE with Australian customers, including all ongoing equipment orders and / or contracts and all ongoing aftersales services contracts, as well as copies of customer records.

Key asset / resource	Summary of KAS Divestment Business
Inventory of finished goods, tools, etc	All finished goods in Australia, including existing Port Cranes and HTE related inventory of finished goods, components, sub-components, raw materials, and spare parts as at Closing, as well as tool box containers, tool and jigs.
IP	Specific trademarks registered in Australia