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Public Version

Statement of Issues

Cargotec Corporation Limited / Konecranes Plc

19 November 2021

Introduction

1. On 7 September 2021, the Commerce Commission registered an application from Cargotec Corporation Limited (Cargotec) seeking clearance to merge with Konecranes Plc (Konecranes) as part of a global transaction (the Proposed Transaction).[1]

2. To clear an application the Commission must be satisfied that an acquisition would not have, or would not be likely to have, the effect of substantially lessening competition in a New Zealand market.

3. This Statement of Issues (SoI) sets out the potential competition issues we have identified following our initial investigation. This is so Cargotec and Konecranes (the Parties) and other interested parties can provide us with submissions relating to those concerns.

4. In reaching the preliminary views set out in this SoI, we have considered information provided by the Parties and other industry participants. We have not yet made any final decisions on the issues outlined below (or any other issues) and our views may change, and new competition issues may arise, as the investigation continues.

The concerns we are testing

5. At this stage, our primary concern is considering whether the Proposed Transaction would substantially lessen competition due to horizontal unilateral effects for the supply of straddle carriers in New Zealand.

6. We are also continuing to consider whether the Proposed Transaction would substantially lessen competition due to the:

   6.1 potential unilateral effects for the supply of empty container handlers (ECHs) and reach stackers;

   6.2 potential coordinated effects in the supply of ECHs; and

[1] A public version of the Application is available on our website at https://comcom.govt.nz/case-register/case-register-entries/cargotec-corporation-konecranes-plc

6.3 potential vertical effects in the supply of spreaders.

7. At this stage, we do not have concerns about, and are planning no further investigation into, whether the Proposed Transaction would substantially lessen competition due to horizontal effects in the supply of forklift trucks.

8. We explain our reasons below and invite submissions on our preliminary views.

Process and timeline

9. We have agreed with the Parties an extension of time in which to make a decision, from the initial 40 working day statutory timeframe until 15 December 2021.

10. The Commission would like to receive submissions and supporting evidence from the Parties and other interested parties on the issues raised in this SoI. We request responses by close of business on **2 December 2021**, including a confidential and a public version of any submission made. Please read the instructions for making a submission, which can be found on page 18 of this document.

11. All submissions received will be published on our website with appropriate redactions.[2] All parties will have the opportunity to cross-submit on the public versions of submissions from other parties by close of business on **8 December 2021**.

12. If you would like to make a submission but face difficulties in doing so within the timeframe, please ensure that you register your interest with the Commission at registrar@comcom.govt.nz so that we can work with you to accommodate your needs where possible.

Background

13. Container handling equipment (CHE) is used for transportation, stacking, loading and unloading of shipping containers, mainly at ports but also inland intermodal terminals and in other industrial applications.[3]

14. According to the Applicant, CHE can be divided into four different groups:[4]

14.1 **quay cranes** – used to load and unload container ships. This includes ship-to-shore cranes (STS cranes) and mobile harbour cranes;

14.2 **gantry cranes** – used in the container yard and landside area for stacking containers and loading/unloading trucks and railcars. Examples include

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2 Confidential information must be clearly marked (by highlighting the information and enclosing it in square brackets). Submitters must also provide a public version of their submission with confidential material redacted. At the same time, a schedule must be provided which sets out each of the pieces of information over which confidentiality is claimed and the reasons why the information is confidential (preferably with reference to the Official Information Act 1982).

3 For example, [ ] uses straddle carriers to move and stack containers at each of its two [ ]. (Interview with [ ].)

4 The Application at [28].

rubber-tyred gantry cranes (RTG cranes), rail-mounted gantry cranes (RMG cranes) and automated stacking cranes;

14.3 **horizontal transport equipment** (HTE) – used to transport containers short distances in a container yard, eg, from the container stacks to the quay cranes which load them onto ships. HTE includes straddle carriers, shuttle carriers, automated guided vehicles and terminal tractors; and

14.4 **mobile equipment** – mainly used to transport and lift containers, other cargo and flat racks in terminals. This includes reach stackers, empty and full container handlers and forklifts.

15. CHE may be manual or automated, and fleets may comprise a hybrid of both manual and automated equipment. For example, Ports of Auckland Limited (POAL) uses a hybrid fleet of automated and manual straddle carriers manufactured by Konecranes.[5]

16. CHE is usually in heavy use, which makes regular maintenance necessary and important for port companies as the major end users of such equipment. Aftersales services may be completed in-house, outsourced to third party contractors, or provided by Original Equipment Manufacturers (OEMs) through their affiliated distributors or dealers.[6]

16.1 End users may have significant in-house service capabilities for products that contain more technological / specialised features, including straddle carriers.

16.2 End users may outsource aftersales services for products that contain fewer specialised features and are similar to general heavy machinery, such as forklifts.

17. Both Parties make and supply a range of CHE (among other equipment). However, at this stage the Commission's investigation of the Proposed Transaction is only concerned with those areas in which there is identified overlap in New Zealand, namely:

17.1 straddle carriers, which are a type of wheel-mounted horizontal transport equipment[7] used to transport containers in a container yard. Straddle carriers have a hoisting structure allowing them to lift containers up to four stacked containers high;

17.2 reach stackers, which are a type of mobile equipment[8] that grips the container from above which allows placement of containers several rows deep;

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5 POAL website, 'Automation', https://www.poal.co.nz/about-us/Pages/Automation.aspx.
6 The Application at [47]. Interview with [ ].
7 The Application at [8].
8 The Application at [10].

17.3 ECHs, which are a type of mobile equipment with masted lift trucks used for handling equipment;[9] and

17.4 heavy duty forklift trucks, which are a type of mobile equipment designed to hoist and move materials ranging from approximately 10 tonnes to 70 tonnes.[10]

18. The supply of certain inputs into the manufacture and maintenance of the above equipment is also relevant to our consideration of the Proposed Transaction. This includes the supply of:

18.1 spreaders, which are the components of CHE used to grip containers and are used as input parts for cranes and mobile equipment; and

18.2 spare parts and related maintenance services.

19. We have not identified any other areas where the Parties overlap in our investigation so far, but we welcome submissions on any other areas where the Parties are competitors (actual or potential).

The Parties

20. Cargotec is a Finnish publicly listed company. Cargotec is a global supplier of products in three main areas:

20.1 CHE and automated terminal equipment (eg, cranes, terminal tractors, straddle carriers and forklifts);

20.2 on-road load handling equipment (eg, truck-mounted cranes); and

20.3 maritime equipment (ie, equipment, spare parts and related services for merchant cargo and passenger ships, offshore oil, gas and renewables sites, fishery, research and marine sites and ships, and naval logistics and operations).

21. Over the 2017 to 2020 period, Cargotec has supplied to customers in New Zealand the following products: manual straddle carriers, reach stackers, terminal tractors, ECHs and forklift trucks.[11] In New Zealand, Cargotec also offers aftersales services and spare parts to customers who have purchased Cargotec equipment.[12]

22. Konecranes is also a Finnish publicly listed company which is involved globally in the provision of material handling equipment, including CHE cranes, terminal tractors,

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9 The Application at [105].

10 The Application at [209.2].

11 Cargotec's wholly owned subsidiary, Kalmar New Zealand limited, supplies mobile equipment via AB Equipment Limited (AB Equipment).
[
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12 The Application at [259].

shuttle carriers, straddle carriers, container handlers and forklifts. Konecranes provides aftersales services and spare parts through its local agent, Port Solutions Limited (Port Solutions),
[ ][13] It also offers services for non-Konecranes equipment (although noting its main focus is on servicing Konecranes' own equipment).

23. Over the 2017 to 2020 period Konecranes sold to customers in New Zealand the following products: manual and automated straddle carriers, [ ], ECHs and forklift trucks.[14]

Other suppliers of container handling equipment

24. Other suppliers of CHE in New Zealand include the following:

24.1 *Shanghai Zenhua Heavy Industries Co. Ltd (ZPMC):* ZPMC is a Chinese-based global supplier of CHE, including quay cranes and gantry cranes. It has expanded globally in recent years into the supply of other CHE, including straddle carriers. In New Zealand, ZPMC has previously supplied STS cranes to Port Otago and POAL. It also sells reach stackers through a New Zealand agent (MTS Energy Ltd).[15]

24.2 *Liebherr:* Liebherr is a Swiss-German company that supplies (among other things) a range of maritime cranes worldwide, including mobile harbour cranes, quay and gantry cranes and reach stackers. In New Zealand, Liebherr has supplied mobile harbour cranes and straddle carriers (including to Lyttelton Port Company Limited and Port of Tauranga Limited),
[ ][16]

24.3 *Sany:* Sany is a Chinese-based manufacturer of heavy industrial equipment and has developed during the last decade into a global supplier of CHE, including cranes and mobile equipment. In New Zealand, Sany supplies the full range of mobile equipment (including reach stackers, ECHs and forklifts) through its local dealer, Portstar.

24.4 *Hyster:* Hyster is a major global supplier of a wide range of mobile equipment. In New Zealand, Hyster is the largest supplier of reach stackers, ECHs and forklift trucks.

The relevant markets

25. We define markets in the way that we consider best isolates the key competition issues that arise from a merger. In many cases this may not require us to precisely define the boundaries of a market. What matters is that we consider all relevant

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13 The Application at [259].

14 Konecranes sells this equipment through its wholly owned Australian subsidiary, its German and Finnish offices and a New Zealand-based distributor, Port Solutions.

15 The Application at [39.5].

16 Interview with [ ].

competitive constraints, and the extent of those constraints. For that reason, we also consider products and services that fall outside the market, but which would still impose some degree of competitive constraint on the merged entity.

26. When assessing relevant markets, we consider:

    26.1 whether customers could easily switch to alternative products in response to a price increase (known as 'demand side' substitution); and

    26.2 whether suppliers could easily switch their manufacturing process to produce different products (known as 'supply side' substitution).

The Parties' view of the markets

27. The Parties submit that the relevant markets for assessing the competitive effects of the Proposed Transaction are those where sales of Cargotec and Konecranes equipment overlap in New Zealand, namely:[17]

    27.1 the supply of straddle carriers, as distinct from other types of CHE in New Zealand; and

    27.2 the supply of mobile equipment in New Zealand, specifically:

        27.2.1 ECHs; and

        27.2.2 forklift trucks.[18]

28. The Parties submit that it is appropriate to consider separate product markets for different types of CHE and mobile equipment based on equipment type. Regarding the supply of forklifts, the Parties note that in New Zealand, they only overlap in the supply of forklifts with a lifting capacity of over nine tonnes.[19]

29. As discussed in the background section, Cargotec (through its subsidiary Bromma), manufactures spreaders for use by other OEMs (including Konecranes). In the period 2017 to 2020, Bromma supplied four spreaders to New Zealand customers, one of which was with a Konecranes product. Konecranes manufactures some types of spreaders, but they are not sold to other OEMs. The Parties do not consider the supply of spreaders to be a relevant market.[20]

30. The Parties submit that CHE markets have many characteristics that strongly point towards global markets:[21]

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17 The Applicant has used sales for the period 2017 – 2020 to determine the areas of overlap. (The Application at [93].)

18 The Application at [113].

19 The Application at [111].

20 The Application at Appendix 2 [2.4].

21 The Application at [128] to [129].

30.1 many major suppliers of mobile and/or horizontal transport equipment supply CHE to customers around the world;

30.2 CHE is often produced in a limited number of production facilities and is shipped across countries and continents;

30.3 global expansion is common and has been achieved by many suppliers; and

30.4 transport costs are not an obstacle to inter-continental shipments.

Our current views of the relevant markets

Container handling equipment

31. At this stage, we consider that there are separate product markets for:

31.1 straddle carriers; and

31.2 each of the different types of mobile equipment, including reach stackers, ECHs and heavy duty forklift trucks.

32. The evidence we have gathered so far generally suggests that there is limited demand-side and supply-side substitutability between different types of CHE. CHE is highly specialised on both the demand and supply sides and is used by customers for narrowly defined tasks.[22]

33. Some CHE can perform similar tasks. However, the decision on which type of CHE to use in a terminal is made based on how the terminal has been designed. The terminal design is influenced by ground conditions, location, how much space is available to stack containers, access to other infrastructure (eg, rail sidings), and the number of containers that need to be moved.

34. For example, reach stackers, used to move containers in some terminals, will not be a substitutable CHE in terminals designed to primarily use straddle carriers, and vice versa. Although we are aware of one instance where a customer switched between straddle carriers and reach stackers, the change of terminal design (and therefore the CHE used) was driven by external factors [ ].[23]

35. The cost of switching between different types of CHE (eg, between straddle carriers and reach stackers), once a terminal design has been implemented, is likely to be prohibitive in most cases, given that it would require a significant terminal redesign.

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[22] Interview with [ ] and interview with [ ]

[23] [ ] switched from using straddle carriers to reach stackers and terminal tractor and trailer units. (Interview with [ ]).

36. While forklifts and ECHs can in theory both carry empty containers, in practice the substitution between the two is limited in the highly optimised terminal environment.

37. Therefore, at this stage, we consider that one type of CHE is not typically substitutable for another.

38. While it may be appropriate to divide these product categories further, for example manual vs automated, hybrid vs electric, our current view is that it may be more appropriate to take these into account when analysing the closeness of competition. Regarding these issues, it is not necessary to form a view on market definition at this stage.

39. There are additional products and services required to operate CHE. They include spare parts, on-board software, equipment upgrades, software development services required to connect the equipment to a terminal operating system.

40. Companies purchasing CHE are sophisticated customers who consider the total "life-cycle" costs of operating the equipment during the purchasing process. The costs of software, maintenance and the availability of spare parts and after-sales services are important factors considered when a CHE supplier is selected. Given this, we are considering whether additional services and spare parts should be treated as part of the main product markets listed above, or as a separate market.

41. We invite submissions on:

    41.1 the extent to which there is product substitution within different types of CHE; and

    41.2 whether the supply of any additional products or services required to operate the equipment should be assessed as part of the main product markets for CHE, or assessed separately.

The supply of spreaders

42. We are also considering the impact of the Proposed Transaction on the supply of spreaders to manufacturers of CHE and other port equipment, given Cargotec's ownership of Bromma, a manufacturer of spreaders used by Konecranes and other manufacturers.

43. Spreaders are an important input in a range of CHE and the type and brand of spreader used may be an important consideration to customers.[24] At this stage, we consider that the supply of spreaders is likely a relevant market.

[24] Interview with [ ].

Geographic market

44. The evidence available to us so far indicates that the geographic markets at issue are likely to be broader than New Zealand. Suppliers of CHE are active globally. However, their strategy and willingness to aggressively compete for customers seems to differ depending on the region.[25] Some customers have told us that they consider the presence of servicing capabilities in countries close to New Zealand to be important.[26] A number of customers rely on technical support from these hubs located outside of New Zealand.

45. Our current view is that the geographic market is likely to be NZ-wide. However, in our assessment of the competitive effects of the Proposed Transaction we will consider the constraints likely to be provided from outside of New Zealand. We invite submissions on this point.

With and without scenarios

46. Assessing whether a substantial lessening of competition is likely requires us to:

    46.1 compare the likely state of competition if the Proposed Transaction proceeds (the scenario with the merger, often referred to as the factual) with the likely state of competition if it does not (the scenario without the merger, often referred to as the counterfactual); and

    46.2 determine whether competition is likely to be substantially lessened by comparing those scenarios.

47. With the Proposed Transaction, Cargotec would acquire all the assets and liabilities of Konecranes in consideration for newly issued shares. Therefore, at the completion of the transaction, Konecranes' shareholders will own approximately 50% of the shares of the merged entity, and Cargotec's shareholders will own the other approximately 50%.

48. Without the Proposed Transaction, the Parties submit that the status quo would apply (ie, that Konecranes and Cargotec continue to operate as two independent businesses).[27]

49. As part of our assessment of the Proposed Transaction, we will consider how the Parties are likely to operate absent the Proposed Transaction.

50. We invite submissions on the appropriate without the Proposed Transaction scenario.

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25 Interview with [ ], interview with [ ] and interview with [ ].

26 Interview with [ ], interview with [ ], interview with [ ] and interview with [ ].

27 The Application at [131].

Competition concerns: Horizontal unilateral effects

51. Horizontal unilateral effects arise when a firm merges with or acquires a competitor that would otherwise provide a significant competitive constraint (particularly relative to remaining competitors, if any) such that a market participant can profitably increase price above (and/or reduce quality below) the level that would prevail without the merger.

52. Our strongest concerns currently relate to horizontal unilateral effects arising in the supply of straddle carriers, followed by concerns relating to horizonal unilateral effects arising in the supply of ECHs. We are also continuing to test the extent to which the Proposed Transaction would be likely to lessen competition in the supply of reach stackers.

Straddle carriers

53. For the reasons set out below, we are not currently satisfied that the Proposed Transaction would not be likely to substantially lessen competition in the supply of straddle carriers in New Zealand.

54. The Applicant submits that the Proposed Transaction will not substantially lessen competition in the supply of straddle carriers in New Zealand because the merged entity will face significant and increasing competition from alternative suppliers of straddle carriers such as ZPMC and Liebherr.[28]

55. The Applicant also submits that:[29]

    55.1 high historic straddle carrier market shares do not accurately reflect the true market position of the merging parties;

    55.2 customers exercise significant buyer power and can switch between suppliers and utilise mixed fleets of straddle carriers; and

    55.3 participants in neighbouring container handling and heavy machinery markets are well placed to enter and expand and do not face insurmountable barriers to entry or expansion.

Reduction to a single supplier of straddle carriers

56. The Parties overlap in the global supply of straddle carriers and market enquiries indicate that they are each other's closest competitor. Combined, they have over [ ] percent global market share.[30] Cargotec and Konecranes are currently the only active suppliers of straddle carriers in the New Zealand market.

57. Based on the evidence currently before us, the merged entity would be the only known supplier of straddle carriers to New Zealand customers. Straddle carrier

[28] The Application at [136].
[29] The Application at [136].
[30] The Application at [139].

customers told us that their current options for straddle carrier supply are limited to Konecranes and Cargotec.[31]

Constraint from new entry and expansion appears unlikely

58. The Commission's preliminary view is that other potential alternative suppliers and the threat of new entry or expansion will be insufficient to prevent a substantial lessening of competition.

59. Straddle carrier customers told us they do not view ZPMC (or other Chinese suppliers such as XCMG) as a credible alternative supplier of straddle carriers for the below reasons.

    59.1 A demonstrable local presence (whether this be through a third-party distributor or direct presence) is important to straddle carrier customers to ensure swift and reliable access to expertise and spare parts.[32] Suppliers with a local presence tend to understand the New Zealand market better. We understand ZPMC does not currently have a local presence in respect of the supply of straddle carriers.[33] However, it may not be difficult to either set up a local distributor or contract with a third-party distributor.

    59.2 Customers tend to perceive European products as more desirable and of better quality.[34]

    59.3 Customers prefer suppliers with a reliable track record. [ ], indicated that ZPMC's straddle carriers were new and were not yet a mature product.[35] [ ][36]

60. Some straddle carrier customers suggested that, in five to ten years' time, there is likely to be technological growth from Chinese straddle carrier manufacturers and that they may eventually provide a viable alternative to straddle carriers supplied by Konecranes and/or Cargotec.[37] However, they also suggested that the Parties' concerns regarding the threat of Chinese manufacturers were pre-emptive as the

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31 Interview with [ ], interview with [ ] and interview with [ ]. [ ] indicated they would be likely to undertake further research into other providers of straddle carriers, including ZPMC but were not certain [ ]. [ ] suggested ZPMC is not truly interested in the straddle carrier market, and that ZPMC's real interest was in supplying large cranes [ ].

32 Interview with [ ].

33 Interview with [ ] and interview with [ ].

34 Interview with [ ] and interview with [ ].

35 Interview with [ ].

36 Interview with [ ].

37 Interview with [ ] and interview with [ ].

quality of manufacturing and design of straddle carriers offered by the Parties far outstrips what is currently available from the Chinese market.[38]

61. Constraint from entry [ ] by manufacturers new to the New Zealand straddle carrier market appears unlikely.

    61.1 We understand that [[39] [40]] the New Zealand straddle carrier market. We also understand that significant research and development and investment would be required to enter the straddle carrier market given the market trends toward electric vehicles and automation.

    61.2 [ ] told us that the global straddle carrier market is small, which makes it not very attractive for potential new entrants. Furthermore, straddle carrier construction and design is very different to other CHE and it would be difficult to switch from making cranes to straddle carriers quickly.
    [
    ][41]

    61.3 [ ] reiterated the difficulties of designing and manufacturing straddle carriers for driver comfort, and given the complexity of the equipment.

62. [ ] also suggested that for automated straddle carriers, the Parties have chosen to pursue telemetry-based automation which may limit the ability of straddle carrier customers to switch to other suppliers that use other types of automation, (eg, using LiDAR or cameras).

Other CHE types not likely to provide constraint

63. As discussed above in the market definition section, our enquiries to date have suggested that other types of CHE are not viewed as substitutes by straddle carrier customers. Our preliminary view is that constraint from other types of CHE is not likely to be sufficient to prevent a price increase or quality decrease by the merged entity.

    63.1 CHE is highly specialised and used for narrowly defined tasks.

[38] Interview with [ ].
[39] Interview with [ ].
[40] Interview with [ ].
[41] Interview with [ ].

63.2 Terminals tend to make a strategic choice about what CHE they will use for certain purposes that they rarely reconsider or deviate from. Changes to this choice would be very costly.[42]

Mobile equipment

64. In the Application the Parties submit that the Proposed Transaction will not substantially lessen competition in a mobile equipment market because:[43]

64.1 a large number of established players will continue to provide effective competition;

64.2 global competition has increased in recent years as Chinese companies have rapidly expanded;

64.3 customers have countervailing power; and

64.4 barriers to entry and expansion are low.

Empty container handlers

65. For the reasons set out below, we currently have concerns that the Proposed Transaction would be likely to substantially lessen competition in the supply of ECHs in New Zealand.

66. Based on the Parties' estimates of sales of ECHs into New Zealand between 2017-2020, the Proposed Transaction would result in a reduction of the number of suppliers from four to three (including Hyster and Omega).[44]

67. The Parties identified Hyster as the market leader in mobile equipment in New Zealand, and specifically for ECHs, and has a much larger presence than the Parties combined.[45]

68. Customer feedback suggests there may be barriers to entry in the market, with customers preferring a fleet of CHE (eg, a fleet of ECHs) to all be one brand, to reduce training, maintenance, and spare parts costs.[46]

69. We have seen some evidence to suggest that the global growth of the Chinese companies who supply ECHs will result in increased competition in New Zealand market in the future (eg, from Sany).[47]

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42 Interview with [ ] and interview with [ ].

43 The Application at [173].

44 The Application at [199].

45 The Application at [176.1] - [176.3]. [ ] noted that Hyster is the best equipment on the market [ ].

46 Interview with [ ], interview with [ ] and interview with [ ].

47 [ ] noted that Chinese full and empty container handlers and reach stackers are coming into New Zealand, and they appear to operate without difficulty, and the cost and innovation is comparable (to European equipment). ([ ]).

70. However, we are currently not satisfied from the evidence gathered to date that the Proposed Transaction would not be likely to result in a substantial lessening of competition. We continue to investigate, and welcome submissions on, the closeness of competition between the Parties and the relative strength of Hyster (and any other parties) in the supply of ECHs in New Zealand.

Reach stackers

71. As noted above, we have fewer concerns in relation to the supply of reach stackers but are continuing to test whether the Proposed Transaction is likely to substantially lessen competition.

72. The Parties submit that although they overlap globally in the manufacture and supply of reach stackers, there was no overlap in sales or deliveries of reach stackers in New Zealand between 2017-2020 and, as such, the supply of reach stackers is not a relevant market.[48]

73. As with ECHs above, the Parties identify Hyster as the New Zealand market leader for reach stackers.[49] The Parties estimate that Hyster has the highest number of recent sales in New Zealand ([ ] units), with Sany and Omega having the next-largest presence having supplied [ ] and [ ] units respectively in the period 2017-2020.[50] By contrast, Cargotec supplied [ ] reach stackers between 2017-2020. Konecranes [ ].

74. However, [ ]. The Proposed Transaction would result in competition from Konecranes being lost.

75. Market feedback to date also suggests that there may be high barriers to entry arising from customer preference for a strong brand with a demonstrated track record,[51] as well as a need for local (and/or reliable international) support for servicing and spare parts.[52]

76. We continue to investigate the extent to which the Parties are close competitors, and the extent to which they are seen as viable alternatives to the other competitors for the supply of reach stackers. We are also considering whether either of the Parties' market shares in the supply of reach stackers is likely to grow in the future.

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48 The Application, footnote 1, [98].
49 The Application at [176.1] - [176.3].
50 The Application at [244] - [245].
51 Interview with [ ] and interview with [ ].
52 Interview with [ ], interview with [ ] and interview with [ ].

Heavy-duty forklift trucks

77. Based on the evidence currently before us, our preliminary view is that the Proposed Transaction is not likely to result in a substantial lessening of competition in the market for the supply of heavy-duty forklift trucks.

78. The Parties submit that:[53]

    78.1 collectively, they account for a relatively small share of the market; and

    78.2 there are several strong competitors, including Omega, Sany, and Hyster, who will compete with the merged entity.

79. Our investigation has identified that market participants consider the heavy-duty forklift market to be competitive,[54] with several other options including Crown, Toyota and Hyundai.[55]

80. The presence of several sizeable competitors, as well as the limited combined presence of the Parties, leads us to our preliminary view that the Proposed Transaction will not result in a substantial lessening of competition for the supply of heavy-duty forklift trucks in New Zealand.

81. We welcome submissions on this preliminary view.

Competition concern: Coordinated effects

Straddle carriers, reach stackers and forklifts

82. An acquisition can substantially lessen competition if it increases the potential for the merged entity and all, or some, of its remaining rivals to coordinate their behaviour and collectively exercise market power such that output reduces and/or prices increase across the market. Unlike unilateral effects, which can arise from the merged entity acting on its own, coordinated effects require some or all the firms in the market to be acting in a coordinated way.[56]

The Parties' view

83. The Parties submit that the Proposed Transaction will not result in coordinated effects as it does not enhance the ability for the Parties and other competitors to coordinate their behaviour, and that the market is not vulnerable to coordination. In particular, the Parties submit:[57]

    83.1 a number of strong and innovative competitors will remain post-Transaction in the relevant markets;

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53 The Application at [215].
54 Interview with [ ] and interview with [ ].
55 Interview with [ ] and interview with [ ].
56 Commerce Commission "Mergers and Acquisitions Guidelines" (July 2019) at [3.84].
57 The Application at [216] to [217].

83.2 expected new entry by Chinese competitors (as well as others), driven by low barriers to entry and expansion, will significantly disrupt any hypothetical coordination; and

83.3 in relation to straddle carriers specifically, market participants differ significantly in size and cost structure and supply is characterised by lumpy, infrequent sales, typically by tender.

Our current view

84. At this stage, we have limited evidence that the Proposed Transaction is likely to make the potential forms of coordination more likely, complete, and sustainable in the majority of the relevant product markets. However, we continue to consider the potential for coordinated effects via coordination on customer allocation.

85. In respect of straddle carriers, as the Proposed Transaction may effectively be a merger to monopoly, coordination would not be needed, and it is not considered further in this SoI.

86. In respect of other types of CHE, several strong competitors would exist post-Transaction. The evidence we have received so far suggests that coordination may be possible but certain factors would make these markets less vulnerable.

86.1 Significant purchases of CHE are by tender or direct purchase and suppliers are not usually aware of which other suppliers are tendering or which has won the tender. This means that competition is not easily observable, which would make it difficult to monitor adherence to any agreement.

86.2 Tenders by port customers are large and somewhat irregular (whether a port will purchase replacement or new CHE will depend on how heavily the port uses the CHE, and the growth of the port). This is likely to reduce the incentive for, and ability of, suppliers to coordinate.

86.3 The prices offered to individual customers are not transparent. The tender process usually involves bilateral negotiations between the supplier and purchaser and considers other ancillary services such as aftersales support, maintenance and transportation.

86.4 Customers value innovation and technological advancement, and competitors compete on a range of factors, not just price. While base products are relatively homogenous, there is strong innovation in alternative fuels and automation technology driven by customer demand.

86.5 Manufacturers face different costs to service different markets. Chinese manufacturers (such as Sany or ZPMC) have a cost advantage to service New Zealand due in part to their closer proximity compared to Europe-based manufacturers.

87. We have not seen any evidence of existing coordination in the market. However, we are continuing to consider the risk of possible coordination resulting from the

Proposed Transaction with a particular focus on the supply of ECH due to the relatively fewer number of competitors.

Competition concerns: vertical effects

Supply of spreaders

88. A merger between suppliers (or buyers) who are not competitors but who operate in related markets can result in a substantial lessening of competition due to vertical effects. This can occur where a merger gives the merged entity a greater ability or incentive to engage in conduct that prevents or hinders rivals from competing effectively (which we refer to as "foreclosing rivals").

89. We are considering whether Bromma (a Cargotec company) would have the ability and incentive to stop supplying crane spreaders or worsen the terms of supply (eg, degrading the quality or substantially increasing price) to foreclose downstream rivals in CHE.

90. The evidence available to us so far suggests that:

    90.1 Bromma has a significant market position in the upstream supply of crane spreaders, and it supplies Konecranes as well as some of the merged entity's downstream competitors, such as [ ];[58] and

    90.2 while there are other spreader suppliers including Stinis and Ram (for mobile harbour cranes, STS cranes etc) and VDL (for smaller equipment), their offering may not cover the full range of spreaders required by customers.

91. However, customers we have spoken with so far have not raised concerns over the types of spreaders available, or the potential for access to them to be restricted post-Transaction.

92. We invite submissions on whether or not the merged entity would have the ability and incentive to withhold supply of crane spreaders in NZ to other CHE manufacturers so as to protect or strengthen its market power in the relevant markets.

Supply of proprietary spare parts

93. As noted above, we are considering whether the supply of proprietary spare parts comprises part of the markets for the supply of CHE, or is its own distinct market. Some market participants have raised concerns that the Proposed Transaction would make it more difficult to source proprietary spare parts.

94. The evidence available to us so far suggests that access to spare parts and servicing expertise is seen as a very important and expensive part of operating CHE by customers, particularly given the current global supply issues.

[58] Interview with [ ].

95. We welcome submissions on whether or not the merged entity would have the ability and incentive to withhold supply of proprietary parts.

Next steps

96. The Commission is currently scheduled to decide whether or not to give clearance to the Proposed Transaction by 15 December 2021. However, this date may change as our investigation progresses.[59] In particular, if we need to test and consider the issues identified above further, the decision date may extend.

97. As part of our investigation, we are identifying and contacting parties that we consider will be able to help us assess the issues identified above.

Making a submission

98. We are continuing to undertake inquiries and seek information from industry participants about the impact of the Proposed Transaction. We welcome any further evidence and other relevant information and documents that the Parties or any other interested parties are able to provide regarding the issues identified in this SoI.

99. If you wish to make a submission, please send it to us at registrar@comcom.govt.nz with the reference "Cargotec / Konecranes" in the subject line of your email, or by mail to The Registrar, PO Box 2351, Wellington 6140. Please do so by close of business on **2 December 2021**.

100. All information we receive is subject to the Official Information Act 1982 (OIA), under which there is a principle of availability. We recognise, however, that there may be good reason to withhold certain information contained in a submission under the OIA, for example in circumstances where disclosure would be likely to unreasonably prejudice the commercial position of the supplier or subject of the information.

[59] The Commission maintains a clearance register on our website at https://comcom.govt.nz/case-register/case-register-entries/verifone-new-zealand-smartpay-holdings-limited where we update any changes to our deadlines and provide relevant documents.