

Cargotec Corporation / Konecranes Plc
Joint response to Commerce Commission
Statement of Issues

PUBLIC VERSION:

Contains Cargotec and Konecranes confidential information

Key: Confidential material in this submission has been removed. Its location in the document is denoted by [].

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CONFIDENTIALITY

- 1 Confidentiality is sought in respect of the highlighted information. Release of this information would be likely to unreasonably prejudice Cargotec and/or Konecranes' commercial position. Cargotec and Konecranes (together, **the Parties**) request that they are notified if the Commerce Commission (**Commission**) receives any request under the Official Information Act 1982 for the release of any part of the confidential information. They also request that the Commission seek and consider their views as to whether the confidential information remains confidential and commercially sensitive before it responds to such requests.

EXECUTIVE SUMMARY

- 2 The Parties appreciate the opportunity to respond to the potential concerns presented in the Commission's Statement of Issues (**SOI**).
- 3 As discussed with the Commission on 9 December 2022, the Parties have started engaging in discussions about remedies [] the European Commission, []].
- 4 We summarise the key points in our response below. The response follows the structure of the SOI.

Statement of Issues	Cargotec/Konecranes response
Market definition	
The geographic market is likely to be NZ-wide. However in assessing the competitive effects of the Proposed Transaction, the Commission will consider constraints provided from outside New Zealand.	<ul style="list-style-type: none"> Container handling markets have many characteristics that, in practice, strongly point towards global markets, rather than national markets. Even if the Commission concludes that the appropriate market is only New Zealand-wide (on account of the technical Commerce Act requirements), the Commission must properly take into account the constraint from both national and global suppliers. The Commission's current analysis discounts the competitive constraint from global suppliers.
Straddle carriers	
[]].	
Empty container handlers	
<p>The Proposed Transaction would result in a reduction of the number of suppliers from four to three.</p> <p>Customer feedback suggests there may be barriers to entry in the market, with customers preferring a fleet of ECHs to all be one brand.</p> <p>There is some evidence that the global growth of the Chinese companies will result</p>	<ul style="list-style-type: none"> The Parties are not strong or close competitors for the supply of ECHs. Following the Proposed Transaction there will be at least seven suppliers that currently offer ECHs in New Zealand. In addition, there are several suppliers that have ECHs in their offering that are active in New Zealand in relation to the supply of mobile

Statement of Issues	Cargotec/Konecranes response
<p>in increased competition in New Zealand in the future (noting comments from one interviewee that “they appear to operate without difficulty, and the cost and innovation is comparable (to European equipment)”).</p>	<p>equipment generally, and would therefore be credible participants in any RFP for ECHs.</p> <ul style="list-style-type: none"> Barriers to entry are low. Customers can easily switch suppliers, and it is common to operate a mixed fleet of ECHs. Using distributors and dealers can readily facilitate entry.
Reach stackers	
<p>There may be high barriers to entry arising from customer preferences for strong brand and a need for local support for servicing. However, the Commission has fewer concerns in relation to the supply of reach stackers.</p>	<ul style="list-style-type: none"> The Parties’ implied combined market share for reach stackers is only []%. This is not a level of concentration that could plausibly give rise to a lessening of competition. There are a large number of competitors for reach stackers in New Zealand, including Hyster, Sany, Omega, ZPMC, CVS Ferrari, Svetruck and Linde. []. A local presence is not required for reach stackers (or any type of mobile equipment). The vast majority of suppliers of mobile equipment in New Zealand do not have a local presence, including Hyster (the market leader for mobile equipment in New Zealand). Barriers to entry are low, for the same reasons as for ECHs.
Heavy-duty forklifts	
<p>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.</p>	<ul style="list-style-type: none"> The Parties agree: neither Cargotec nor Konecranes is a significant competitor for forklift trucks, and there are several strong competitors of heavy-duty forklift trucks that will continue to constrain the Merged Entity post-Transaction.
Coordinated effects	
<p>There is limited evidence that the Proposed Transaction is likely to make potential forms of coordination more likely, and markets for container handling equipment are less vulnerable to coordination.</p>	<p>The Parties agree the markets for container handling equipment are not vulnerable to coordination.</p> <p>Coordination in relation to the supply of ECHs specifically is unlikely because:</p> <ul style="list-style-type: none"> a number of strong and innovative suppliers of ECHs will remain following the Proposed Transaction; the presence of tenders, lack of price transparency and absence of visibility of competing participants in tenders; and expected new entry into the market for ECHs would disrupt any coordination strategy.
Vertical effects - spreaders	
<p>Bromma has a significant market position in the upstream supply of crane spreaders which it supplies to downstream competitors including Konecranes. While there are other spreader suppliers available, they may not</p>	<p>Cargotec does not presently engage in any input foreclosure strategies with respect to spreaders (globally or in relation to New Zealand) because it lacks both the ability and incentive to do so:</p>

Statement of Issues	Cargotec/Konecranes response
<p>cover the full range of spreaders required by customers.</p> <p>However, no customers have raised concerns over the types of spreader available or the potential for access to be restricted post-Transaction.</p>	<ul style="list-style-type: none"> • Bromma faces significant competition for the supply of spreaders from both vertically integrated container handling OEMs and dedicated spreader manufacturers such as Elme, Stinis, RAM and VDL; • a number of parties could easily expand their supply of any type of spreaders; • spreaders are highly standardised, meaning multi-sourcing is common; • there is no incentive to foreclose on competitors as it would involve [] and • Konecranes is not an essential customer for any spreader supplier, meaning the Merged Entity will also have no ability or incentive to engage in customer foreclosure. <p>Even if the Merged Entity was incentivised to employ a foreclosure strategy post-Transaction in other jurisdictions (which it is not), sales of spreaders in New Zealand are so infrequent that this would not provide the Merged Entity with any real competitive advantage.</p>
Vertical effects – spare parts	
<p>It is unclear whether the supply of proprietary spare parts comprises part of the market for the supply of container handling equipment or its own distinct market.</p> <p>Some customers have raised concerns that the Proposed Transaction could make it more difficult to access spare parts.</p> <p>Available evidence suggests that access to spare parts and servicing expertise is seen as a very important and expensive part of operating container handling equipment.</p>	<p>The Parties have only supplied proprietary spare parts to customers for their own equipment in New Zealand and therefore, even if there is a distinct market for spare parts, the Parties do not compete in it.</p> <p>The Merged Entity will not be in a position to foreclose post-Transaction as:</p> <ul style="list-style-type: none"> • the only customers which the Merged Entity would be able to foreclose on are their own, and there is no incentive to do so; and • the Parties only have []% combined market share for the supply of after-sales services and spare parts globally.

PART 1: THE RELEVANT MARKETS

Container handling markets are broader than national

5 While the Commission has expressed a provisional view that the relevant geographic markets are likely to be broader than national, it has nevertheless proposed a New Zealand-wide market. We assume this reflects the requirement in s 3(1A) of the Commerce Act that the term “market” refers to a market in New Zealand, rather than any disagreement that, at a practical level, competition plays out in global markets.¹

6 The Parties agree that container handling markets have many characteristics that strongly point towards global markets. In particular:

¹ SOI at [44] – [45].

- 6.1 container handling equipment is standardised globally (i.e. equipment is made to fit the standard globally-sized container sizes and shapes) and is generally assembled with standard components;
- 6.2 major suppliers are active all over the world. Most major suppliers of mobile and horizontal transport equipment supply container handling equipment on a global basis to customers all over the world. For example, the Parties, Hyster, Sany, Kuenz, and ZPMC all supply container handling equipment globally;
- 6.3 global expansion is common and has been achieved by many suppliers. There are generally no significant obstacles to geographical expansion, particularly in relation to mobile equipment (as set out below at paragraphs 39 to 40 and 50);
- 6.4 it is not a prerequisite to successfully sell container handling equipment in New Zealand that a supplier has its own local sales and service network. This is particularly the case in relation to mobile equipment. For further information, see paragraphs 15 to 17;
- 6.5 there is no manufacturing of container handling equipment in New Zealand, and therefore all New Zealand customers have to look to global suppliers to meet their requirements. New Zealand-based customers frequently deal direct with OEMs based offshore (as opposed to dealing solely with New Zealand-based importers or dealers), and so the market is not properly characterised as a national supply market.
- 7 This means that the Commission, even if it considers it is constrained in a technical sense by the Commerce Act definition of "market", must properly take into account the constraint from all global suppliers of container handling equipment, any of whom is an actual or potential supplier to New Zealand.
- 8 There are a number of suppliers that offer ECHs and reach stackers in New Zealand that, while not featuring in recent sales in the 2017-2020 reference period, including Sany, CVS Ferrari, Linde, Taylor, Svetruck and ZPMC, should be included in the Commission's analysis of actual competition. Each of these suppliers has, to the best of Kalmar NZ's knowledge, either made sales of ECHs and reach stackers in New Zealand in the past (albeit outside the reference period) or advertises ECHs and reach stackers for sale to New Zealand customers on their or their distributor/dealer's websites.
- 9 In addition, the Commission's competition analysis discounts global suppliers of ECHs and/or reach stackers that do not currently offer these products in New Zealand but are active in New Zealand in relation to the supply of other types of container handling equipment, and would therefore be credible participants in any RFP for ECHs / reach stackers. These include CVS Ferrari,² Hyundai³ and Heli.⁴

² As noted at paragraph 48.2 below, CVS Ferrari offer reach stackers in New Zealand and could easily introduce ECHs in New Zealand (which it supplies in Australia).

³ As noted at paragraph 39.2 below, Hyundai currently offers forklift trucks in New Zealand, and could easily introduce its ECH offering in New Zealand (which it supplies in Australia).

⁴ As noted at paragraph 39.3 below, Heli offers forklift trucks in New Zealand and could easily introduce its ECH offering in New Zealand (which it supplies in Australia).

The market for the supply of spreaders is also global

- 10 The geographic scope of the market for the supply of spreaders is also global. Spreaders are manufactured globally and are standardised across the world. Spreaders are made to fit equipment manufactured by all container handling OEMs, regardless of their location. As with container handling equipment, there are also no meaningful geographic, economic or legal barriers to the trade of spreaders globally. Spreaders are typically manufactured in one or a few production sites and shipped globally to container handling OEMs (or, to a limited extent, direct to port/terminal operators).

No separate market for additional services and spare parts

- 11 For the reasons set out in Part 5, there is no separate market for additional services and spare parts. Alternatively, if there is such a market, the Parties do not compete in it given the Parties have to date only supplied spare parts to customers of their own equipment. Accordingly, these services should be treated as part of the main product markets.

PART 2: THE COUNTERFACTUAL

- 12 As the Commission notes, the Parties consider that, in the absence of the Proposed Transaction, both Cargotec and Konecranes would continue to operate as independent businesses in the markets for horizontal and mobile equipment and therefore the appropriate counterfactual is the status quo. This is consistent with the preliminary findings of other competition regulators in other jurisdictions.

PART 3: HORIZONTAL UNILATERAL EFFECTS**STRADDLE CARRIERS**

- 13 []].

MOBILE EQUIPMENT

- 14 Before addressing the Commission's preliminary views in relation to empty container handlers, reach stackers and forklift trucks, we make some observations on competitive dynamics in relation to mobile equipment more generally.

A local presence is not required in New Zealand for mobile equipment

- 15 The SOI suggests that a local presence is important to be an effective supplier of reach stackers in New Zealand.⁵ However, most OEMs do not operate directly in New Zealand but rather through dealers/distributors, including Hyster (the leading supplier of mobile equipment in New Zealand) and the Parties themselves. For example:

- 15.1 Hyster sells mobile equipment through a dealer arrangement in New Zealand (Hyster NZ).⁶ Hyster has clearly been able to achieve significant market share in relation to mobile equipment despite not having a direct local

⁵ SOI at [75].

⁶ Hyster NZ was previously Gough Materials Handling (owned by the Gough Group). Hyster NZ is now owned by Sime Darby Transport (NZ) Ltd - a solutions provider to the infrastructure, forestry, transport and materials handling industries. Sime Darby Transport (NZ) Ltd is a division of Sime Darby Motors. For further information see <https://hyster.co.nz/>.

presence in New Zealand, and has illustrated that a dealer arrangement can provide the appropriate support for servicing and spare parts. Hyster is owned by Sime Darby, a large multinational with extensive interests and experience in relevant transport-related markets. Notably, it owns the CAT dealership in New Zealand;

- 15.2 Konecranes has no local New Zealand presence in container handling equipment, with no New Zealand office or staff, and instead sells mobile equipment in New Zealand through a non-exclusive relationship with Port Solutions Ltd;
- 15.3 until very recently, Cargotec did not have a local New Zealand presence in container handling equipment, with no New Zealand office or staff, and instead sold mobile equipment in New Zealand through AB Equipment;⁷
- 15.4 Sany sells mobile equipment in New Zealand through Portstar Machinery, including empty container handlers and reach stackers; and
- 15.5 ZPMC sells reach stackers in New Zealand through MTS Energy Limited.
- 16 In contrast to heavier equipment (such as cranes or straddle carriers), there is no need for customers of mobile equipment to have an ongoing relationship with the OEM for aftermarket parts and services as mobile equipment can be serviced by a wide range of third parties.
- 17 For example, mobile equipment tends to contain fewer specialised features and is more similar to general heavy machinery. That means that many third party diesel engineers that service general heavy machinery are also able to service mobile equipment. There are a large number of independent service providers that offer a wide range of services for all types of mobile equipment across brands. In addition, OEMs in New Zealand tend to provide services through their affiliated distributors or dealers for all, including third-party, brands.⁸ Finally, it is also common for customers in New Zealand to service their mobile equipment fleets in-house. For example, Kalmar NZ understands that [] and [].
- 18 In any event, the barriers to establishing a local presence in New Zealand are negligible. In the case of Kalmar NZ, the local presence consists solely of the New Zealand country director, who was recently appointed. Nothing stops any other supplier from establishing a similar presence in New Zealand.
- The Parties are not uniquely close competitors for mobile equipment**
- 19 Mobile equipment is largely commoditised, and all suppliers offer equipment that is comparable in all material respects to the equipment offered by the Parties. Accordingly, Konecranes does not exercise a unique constraint on Cargotec, and vice versa. The Parties are not closer competitors to one another than they are to other global suppliers, either globally or in New Zealand. As the Commission has noted,

⁷ Kalmar [].

⁸ For example, Kalmar NZ customers for mobile equipment are serviced by AB Equipment, Portstar offers servicing for Sany mobile equipment, and Hyster NZ provides servicing for Hyster equipment.

the principal competitive constraint on both Konecranes and Cargotec in New Zealand is Hyster.⁹

- 20 There are a large number of competitors that supply mobile equipment in New Zealand, all of whom offer similar quality, performance, control and driver experience to the mobile equipment supplied by the Parties (see paragraphs 31 to 33 (competitors for ECHs) and 47 to 49 (competitors for reach stackers)). In particular, the market in New Zealand is dominated by Hyster, the largest supplier in relation to each type of mobile equipment in New Zealand, with []% market share for empty container handlers, and []% market share for reach stackers. Sany has expanded significantly in mobile equipment in the last ten years, and is the second largest supplier of reach stackers in New Zealand (with a market share of []%), and is also a material competitor for ECHs. Omega is also a strong competitor for mobile equipment in New Zealand, and in Kalmar NZ's experience, []. Indeed, footnote 47 of the SOI records comments from an interview 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)".
- 21 In addition, there are a large number of other suppliers that also offer ECHs and reach stackers in New Zealand, including Linde, Taylor, Svetruck, CVS Ferrari, and ZPMC. There are a large number of global suppliers for ECHs and reach stackers that have not previously operated in New Zealand but could easily expand their geographic reach to supply New Zealand customers – such as Heli, Komatsu, Mitsubishi, Hangcha, SOCMA, XCMG, Dalian Forklift, FTMH, and Uplifting. The New Zealand customers for mobile equipment are sophisticated purchasers that are accustomed to procuring in international markets, and therefore both able and incentivised to directly reach out to global suppliers to facilitate competitive supply to New Zealand.
- 22 Finally, there is considerable excess capacity in the production of mobile equipment, including ECHs and reach stackers. Any attempt to increase prices would be defeated by competitors which have sufficient capacity to expand production.¹⁰ There is no reason why suppliers with excess capacity could not similarly expand production to begin or expand their supply of ECHs and reach stackers to New Zealand customers, given the low barriers to entry and expansion.
- The Parties are increasingly facing competition from low cost competitors**
- 23 Due to the high degree of commoditisation in mobile equipment, pricing is a key driver of customer procurement for mobile equipment. The Parties are simply not among the most price-competitive suppliers of mobile equipment globally (or in New Zealand). Customers for mobile equipment (in New Zealand and globally) are highly

⁹ SOI at [67] and [73].

¹⁰ See, for example, SO Response, p 242 [845]. [

]. XCMG recently announced plans to build a new plant for the production of port handling equipment with a capacity of 2,000 units.

price sensitive, and price considerations are increasingly decisive for their purchasing decisions.¹¹

- 24 Chinese suppliers of mobile equipment have a highly competitive cost position and are able to undercut other suppliers including the Parties by about []% on average for any mobile equipment type. The successful expansion of Chinese suppliers such as Sany is clear evidence of favourable customer perceptions of the value proposition that these suppliers offer. Kalmar NZ's view is that [].

Barriers to entry for mobile equipment are low

- 25 The Commission has suggested that there may be barriers to entry in relation to ECHs and reach stackers, with customers preferring a fleet of ECH or reach stackers to be all one brand.¹² The Parties disagree.
- 26 Customers can easily switch suppliers of mobile equipment or operate a mixed fleet. Barriers to switching are low because mobile equipment are largely standardised commodity products with comparable functionality, meaning that lack of familiarity with another supplier's product is not a material barrier to switching. Further, there are limited switching costs when customers switch supplier for mobile equipment. Switching costs mainly relate to commercial negotiations which are incurred even when customers re-order equipment from the same supplier.
- 27 It is common for customers to operate mixed fleets of mobile equipment in New Zealand. For example, Kalmar understands that:
- 27.1 []; and
- 27.2 [].¹³
- 28 As noted above at paragraphs 15 to 17, it is not necessary for suppliers of mobile equipment to have a local presence in New Zealand, and using distributors and dealers can readily facilitate entry. There are a number of dealer/distributor options in New Zealand, meaning OEMs can easily enter into distributor or dealer arrangements to access New Zealand customers.
- 29 Finally, barriers to entry in relation to the manufacturing of mobile equipment are also low as mobile equipment is standardised globally and mainly assembled using standard components. In comparison to more specialised equipment, mobile equipment is effectively just a subset of general heavy machinery.

¹¹ For example, [

SO, p 210-212 [902]-[919].

¹² SOI at [68] and [75].

¹³ Kalmar NZ understands that [

].

]. See EC

Empty container handlers

30 The SOI suggests that the Proposed Transaction would result in a reduction in the number of competitors from four to three. In markets such as these, three competitors is more than adequate to maintain strong competition (for the reasons set out in Part 4 below). But regardless, there are in fact a number of additional competitors that supply the New Zealand market but are not reflected in the recent sales data the Parties have access to. The Commission can therefore be satisfied there is no prospect of a substantial lessening of competition because:

30.1 a more accurate assessment is the Proposed Transaction would result in a reduction in the number of competitors from eight to seven;

30.2 recent sales data does not indicate that the Parties are particularly strong competitors in New Zealand. Hyster is the principal competitive constraint and effectively dominates the market;

30.3 sales in the reference period understate the significance of Omega and Sany; and

30.4 there are a number of global suppliers of ECHs that could readily enter or expand in New Zealand.

The Proposed Transaction results in an eight to seven reduction in competitors rather than four to three

31 The Commission's analysis of actual competition appears to largely discount suppliers of ECHs that did not make any sales in New Zealand in the 2017-2020 reference period. Given the volume of trade of ECHs in New Zealand is necessarily limited because of the specialist nature of this equipment, limiting analysis to sales in the reference period does not capture the range of suppliers of ECHs already present in New Zealand.

32 In addition to Hyster, Omega, Cargotec and Konecranes, there are a number of other suppliers of ECHs that also currently supply ECHs in New Zealand but are not represented in the recent sales data to which the Parties have access, including:¹⁴

32.1 Sany, which supplies ECH in New Zealand via Portstar Machinery.¹⁵

32.2 Linde, a global supplier of mobile equipment based in Germany, which supplies ECHs in New Zealand via Eurolift.¹⁶ Kalmar NZ understands that []¹⁷

¹⁴ As explained below at paragraph 64.1, TVH is an independent supplier of spare parts for mobile equipment. TVH's New Zealand website specifies that their container handler parts are suitable for a range of container handlers in New Zealand, including Hyster, Kalmar, Konecranes, Linde, Sany, Svetruck and CVS Ferrari container handlers. This provides further evidence that there are additional suppliers of ECHs in New Zealand beyond the Parties, Hyster and Omega. For further detail, see: <https://www.tvh.com/en-nz/parts/get-inspired/parts-for/container-handling-equipment/container-handler> (accessed 1 December 2021).

¹⁵ See: <https://portstar.co.nz/product/sdcy90k6h-9-ton-empty-stacker/> (accessed 3 December 2021).

¹⁶ Eurolift does not appear to have a New Zealand website, however see: <https://www.linkedin.com/company/eurolift-nz/about/> and <https://www.finda.co.nz/business/listing/ny87/eurolift-nz-ltd/> (accessed 8 December 2021).

¹⁷ []

32.3 Taylor, a global supplier of mobile equipment, which supplies ECHs in New Zealand via Fowlers Machinery Ltd.¹⁸ Kalmar NZ understands that []].

32.4 Svetruck, a global supplier of mobile equipment, also supplies ECHs in New Zealand via Fowlers Machinery Ltd.¹⁹ Kalmar NZ understands that []].

33 Accordingly, even if the Commission concludes that the appropriate frame of reference is a national market, there are a large number of suppliers of ECHs already supplying the New Zealand market.

The Parties are not particularly strong competitors in New Zealand

34 Cargotec has []% market share, and Konecranes has []% market share in New Zealand. The share data does not therefore indicate that the Parties are particularly strong competitors in New Zealand. Further, as detailed below, the Parties face increasingly strong competition from other competitors for ECHs in New Zealand.

35 Hyster is the market leader for ECHs globally and in New Zealand (with a market share of []% in New Zealand), and will be the Merged Entity's main competitor. Hyster has a well-established track record for mobile equipment in New Zealand and is very price competitive. The Parties consider that on average, Hyster prices equipment []].

Sales in the reference period understate the significance of Omega and Sany

36 Omega is also a material competitor for ECHs in New Zealand (which it supplies via Clark Equipment). Although Omega's share of recent sales in New Zealand is only []%, based on deliveries in the 2017-2020 reference period (representing [] delivered), this share understates Omega's competitive significance. In particular:

36.1 In Kalmar NZ's experience, Omega []].

].

36.2 Kalmar NZ also understands that []]. Given this was a recent sale, this data was not captured in the 2017-2020 reference period.

¹⁸ See: https://fowlers.co.nz/products/?brand=taylor&listing_order=date&listing_orderby=DESC (sort by brand Taylor) (accessed 8 December 2021). Fowlers Machinery Ltd is owned by Central Forklift Group Ltd.

¹⁹ See: https://fowlers.co.nz/products/?brand=svetruck&listing_order=date&listing_orderby=DESC (sort by brand Svetruck) (accessed 8 December 2021). As above, Fowlers Machinery Ltd is owned by Central Forklift Group Ltd.

37 Sany²⁰ is also a very active competitor in New Zealand, despite not showing up in the recent sales data. Kalmar NZ understands that:

37.1 [

]; and

37.2 [

].

38 Sany has expanded significantly in the global container handling equipment industry in the past ten years and the Parties expect Sany to increase in strength in relation to ECHs in New Zealand given Sany's strong position in relation to reach stackers (discussed at paragraph 46 below).

There are a large number of global suppliers of ECHs that could easily expand to supply ECHs in New Zealand

39 There are several suppliers who have ECHs in their offering that are active in New Zealand in relation to the supply of other types of mobile equipment, and would therefore be likely to expand their New Zealand offering to include ECHs in response to any increase in prices. For example:

39.1 CVS Ferrari offers reach stackers in New Zealand (see paragraph 48.2 below),²¹ and could easily introduce ECHs in New Zealand (which it supplies in Australia);²²

39.2 Hyundai currently offers forklift trucks in New Zealand²³ (with a market share of []%), and could easily introduce its ECH offering in New Zealand (which it supplies in Australia);²⁴

39.3 Heli offers forklift trucks in New Zealand²⁵ and could easily introduce its ECH offering in New Zealand (which it supplies in Australia);²⁶ and

40 Finally, there are a number of global suppliers of ECHs that have a significant market share globally, and could easily expand their geographic reach to supply New Zealand customers. These global suppliers include Heli, CVS, FTMH, Komatsu,

²⁰ Sany sell ECH in New Zealand via Portstar Machinery – see: <https://portstar.co.nz/product/sdcy90k6h-9-ton-empty-stacker/> (accessed 3 December 2021).

²¹ See: <https://stellarmachinery.co.nz/product/ferrari-forklift/> (accessed 3 December 2021).

²² See: <https://liftequipt.com.au/ferrari-forklift-trucks/container-handling-lift-trucks/hybrid-empty-container-handler/> (accessed 3 December 2021).

²³ See: <https://hyundainforklifts.co.nz/> (accessed 3 December 2021).

²⁴ See: <https://www.hyundaimaterialhandling.com.au/forklifts/15ERS/>, see also <https://www.industrysearch.com.au/hyundai-walkie-reach-stacker-15ers/p/218009> (accessed 3 December 2021).

²⁵ See: <https://www.heliforklifts.co.nz/heli-forklift-new-zealand-management-team-wellington-auckland-nz/> (accessed 3 December 2021). In addition, Central Group Forklifts & Trucks distributes Heli forklifts in New Zealand, see: https://www.centralgroup.co.nz/forklifts/Heli_forklifts.html (accessed 3 December 2021).

²⁶ See: <https://alliedforklifts.com.au/?s=empty+container+handler> (accessed 3 December 2021).

Mitsubishi, Hangcha, Dalian Forklift and SOCMA. Kalmar NZ has had recent experience of [].

Reach stackers

41 As with ECHs, the SOI suggests that the Proposed Transaction will result in a greater reduction in competition for reach stackers than is actually the case. The Commission can be satisfied there is no prospect of a substantial lessening of competition because:

41.1 recent sales data does not indicate that the Parties are particularly strong competitors in New Zealand. Hyster is the principal competitive constraint and effectively dominates the market;

41.2 a more accurate assessment is the Proposed Transaction would result in a reduction in the number of competitors from nine to eight; and

41.3 there are a number of global suppliers of ECHs that could readily enter or expand in New Zealand.

The Parties are not particularly strong competitors in New Zealand

42 Neither Cargotec nor Konecranes is a material competitor for reach stackers in New Zealand. Cargotec only supplied [] reach stackers in the 2017-2020 reference period, and Konecranes [] reach stackers in that period. Accordingly, the implied combined market share of the Parties is only []%. This is not a level of concentration that could plausibly give rise to a lessening of competition.

43 Globally, Cargotec has been [] for reach stackers in the last few years (from []). Further, as detailed below, the Parties face increasingly strong competition from other competitors for reach stackers in New Zealand.

44 The strongest competitors for reach stackers in New Zealand are Hyster, Sany and Omega, with market shares of []%, []% and []%, respectively.

45 Hyster is the market leader for reach stackers in New Zealand, followed by Sany, which has recently delivered a hybrid reach stacker to a customer in New Zealand.²⁷ Omega is also a substantial competitor, and Kalmar NZ understands that [].

46 In Kalmar NZ's experience, []

].

²⁷ Kalmar NZ understands this customer is [].

The Proposed Transaction results in a nine to eight reduction in competitors rather than five to four

47 The SOI observes that Hyster, Sany and Omega are significant competitors, with Cargotec and Konecranes trailing.²⁸ That analysis would suggest that the Proposed Transaction would result in a reduction in the number of competitors from five to four. That does not suggest a substantial lessening of competition is likely.

48 However, in addition to those suppliers:

48.1 ZPMC has also recently started supplying reach stackers in New Zealand through MTS Energy Limited. ZPMC is expected to expand its presence in mobile equipment in the next few years, following its successful global expansion strategy in the market for cranes where it has gained a leading position due to its supply of large volumes at aggressive prices.

48.2 CVS Ferrari (via Stellar Machinery),²⁹ Svetruck (via Fowlers Machinery)³⁰ and Linde (via Eurolift)³¹ also offer reach stackers in New Zealand. Kalmar NZ understands that CVS Ferrari has []].

49 The Proposed Transaction would therefore result in a reduction in the number of competitors from nine to eight.

There are a large number of global suppliers of reach stackers that could easily expand to supply reach stackers in New Zealand

50 Further, there are a large number of global suppliers for reach stackers that could easily expand their geographic reach to supply New Zealand customers – such as Taylor, XCMG, CES, Dalian Forklift, FTMH, Uplifting, and Hangcha.

Heavy-duty forklift trucks

51 The Parties agree that the Proposed Transaction is unlikely to result in a substantial lessening of competition in the market for the supply of heavy-duty forklift trucks.

52 As the Commission identifies, neither Cargotec nor Konecranes is a significant competitor for forklift trucks. In addition, there are several strong competitors of heavy-duty forklift trucks that will continue to constrain the Merged Entity post-Transaction.

PART 4: COORDINATED EFFECTS

53 The Parties agree the markets for container handling equipment are not vulnerable to coordination. The market is dynamic:

53.1 prices are not transparent and the tender process usually involves bilateral negotiations between the supplier and purchaser;

²⁸ SOI at [73].

²⁹ See: <https://stellarmachinery.co.nz/product/ferrari-forklift/> (accessed 3 December 2021).

³⁰ See: https://fowlers.co.nz/products/?brand=svetruck&listing_order=date&listing_orderby=DESC (sort by brand Svetruck) (accessed 8 December 2021). As above, Fowlers Machinery Ltd is owned by Central Forklift Group Ltd.

³¹ Eurolift does not appear to have a New Zealand website, however see: <https://www.linkedin.com/company/eurolift-nz/about/> and <https://www.finda.co.nz/business/listing/ny87/eurolift-nz-ltd/> (accessed 8 December 2021).

- 53.2 suppliers compete fiercely on their technology development – there is no incentive to coordinate on innovation;
- 53.3 competition is not easily observable. Significant purchases of container handling equipment are by tender or direct purchase and suppliers are not usually aware of which other suppliers are participating in a tender.
- 54 Coordination in relation to the supply of ECHs specifically is unlikely because (in addition to the above):
- 54.1 a number of strong and innovative suppliers of ECHs will remain following the Proposed Transaction. In addition to the Merged Entity, there would be at least six other suppliers of ECHs already present in New Zealand (Hyster, Omega, Sany, Line, Taylor and Svetruck); and
- 54.2 expected new entry into the market for ECHs would disrupt any coordination strategy. The Parties are aware of at least eight global suppliers of ECHs that could easily expand into New Zealand. As noted above, barriers to entry and expansion into new geographic areas in relation to ECHs are low. The Parties expect a number of companies, including Chinese players such as ZPMC and XCMG to change the market structure in the coming years and disrupt any hypothetical coordination.
- 55 The Proposed Transaction would not change these dynamics.

PART 5: VERTICAL EFFECTS

Spreaders

- 56 The Proposed Transaction would not give rise to any realistic prospect of foreclosure in the supply of spreaders in New Zealand. While there is an existing vertical connection in spreaders in New Zealand, as Cargotec supplies spreaders for cranes and mobile equipment globally through its Bromma business, the impact of the Proposed Transaction on this existing vertical connection is very limited.
- 57 Despite already being vertically integrated, Cargotec (Bromma) does not presently engage in any input foreclosure strategies with respect to spreaders (globally or in relation to New Zealand). It lacks both the ability and the incentive to do so. In particular, Bromma faces significant competition for the supply of spreaders from a number of suppliers. Critically, this will not change post-Transaction: Bromma's incentive will be to continue to maximise its spreader sales.
- 58 Given Cargotec is already vertically integrated into spreaders, and the increment to the parties' market share in relation to mobile equipment in New Zealand is negligible (with no increment in relation to cranes in New Zealand), there is no merger-specific change to the Parties' incentives in relation to spreaders. Moreover, the market in New Zealand for spreaders is so small that any foreclosure strategy employed in New Zealand would not be profit maximising for the Merged Entity.
- 59 This is consistent with feedback that the Commission has received from customers (i.e. customers have not raised concerns over the types of spreaders available, or the potential for access to spreaders to be restricted post-Transaction).³²

³² SOI at [91].

60 The Parties provide further detail in Appendix 1 regarding the supply of spreaders (both in New Zealand and globally) and the reasons why Cargotec (Bromma) has neither the ability nor the incentive to foreclose on customers or competitors.

Spare parts

61 In New Zealand, the Parties have only supplied proprietary spare parts in respect of their own equipment.³³ The Parties therefore do not compete to supply spare parts. Instead, the provision of spare parts is a component of the Parties' wider container handling offering. As a consequence, there does not appear to be any opportunity to pursue a foreclosure strategy. It is not clear what the Parties would be foreclosing.

62 The Proposed Transaction will not change the competitive dynamics in relation to the supply of spare parts, meaning there is no merger-specific change to the Parties' ability and incentives to withhold supply of spare parts.

63 [

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64 As regards mobile equipment, customers requiring spare parts have a wide range of alternative options. Spare parts are widely available, being supplied by OEMs, distributors, component suppliers and specialised spare parts suppliers. For example, there are a number of specialised spare parts suppliers available to New Zealand customers:³⁴

64.1 TVH which has a presence in New Zealand and supplies a range of spare parts including the Parties'. TVH is very proactive in the New Zealand market and is able to offer an extra level of service as the business solely focuses on the supply of spare parts;³⁵

64.2 Volvo and Caterpillar, which also have presences in New Zealand,³⁶

64.3 Siemens' partner, CNC,³⁷ and

³³ Cargotec only offers spare parts to customers who have purchased Cargotec equipment. Konecranes recently established a Port Services branch in New Zealand which offers services and spare parts for non-Konecranes equipment (noting though that its main focus is servicing Konecranes' own equipment, and [

]).

³⁴ Note that customers receive maintenance and operation manuals together with the relevant container handling equipment on delivery of the equipment. These manuals include process descriptions for maintenance and repair of own-manufactured and third-party components. This means customers have the required information to allow them to source spare parts on a standalone basis.

³⁵ See: <https://www.tvh.com/en-nz> (accessed 3 December 2021).

³⁶ See: <https://www.volvotrucks.co.nz/> and <https://www.terracat.co.nz/> (accessed 3 December 2021).

³⁷ See: <https://www.cncdesign.co.nz/service-spare-parts/siemens-parts> (accessed 3 December 2021).

64.4 Scania,³⁸ Transmax³⁹ and RT Equipment.⁴⁰

- 65 These suppliers, as well as other OEMs and distributors, are readily available options for customers as mobile equipment is, to a large extent, constructed using non-proprietary components. This means customers do not have to source branded spare parts, and most components (at least two thirds of most container handling equipment⁴¹) are interchangeable and can be used across brands. Further, proprietary spare parts are considerably less likely to require repair or replacement (with interchangeable components such as the engine or transmission being more likely to require repair or replacement). This means spare parts can easily be sourced by customers on a stand-alone basis.

³⁸ See: <https://www.scania.com/nz/en/south-pacific-diesel-systems/products-and-services/workshop-services/parts.html> (accessed 3 December 2021).

³⁹ See: <https://www.transmax.co.nz/container-handling.php> (accessed 3 December 2021).

⁴⁰ See: <https://www.rtequipment.co.nz/collections/servicing-parts-equipment-hire-pre-owned-equipment/container-ramp> (accessed 3 December 2021).

⁴¹ The final third includes the more specific components of container handling equipment such as the software, cab and control systems.

APPENDIX 1: SPREADERS

Supply of spreaders

- 66 The key customers for suppliers of spreaders are container handling OEMs and, to a limited extent, end-customers of cranes.
- 67 For mobile equipment, i.e. reach stackers and empty container handlers, it is the OEM that makes the decision regarding which spreader to install in a piece of container handling equipment. Such mobile equipment is supplied to the end customer with the spreader already installed, and end-customers do not generally have a say as to which spreader is installed in the container handling equipment purchased. While the OEM may install an alternative spreader in a piece of equipment based on the functional needs of the end customer, the end customer is not involved in selecting the spreader. Indeed, in New Zealand the majority of spreaders are imported already installed in mobile equipment. For mobile equipment, it is very uncommon for an end-customer to purchase a spreader themselves. End-customers only purchase spreaders when a spreader has failed, which is rare. Spreaders are not typically replaced during the mobile equipment's lifetime. If a spreader suffered damage, it would be more likely to be repaired than replaced, or for specific parts in the spreader to be replaced.
- 68 However, for cranes, end-customers often specify the type (and brand) of spreader to be installed. The spreader is then either purchased by the crane OEM or the end-customer themselves who may also occasionally purchase a spreader as a spare part. Spreader manufacturers do not distinguish as to whether the spreader is purchased by a third-party OEM or the end-customer themselves. For instance, Bromma operates on an arm's length basis with the rest of Cargotec and offers its spreaders generally under the same terms and conditions to other Cargotec divisions as well as to external customers. To maximise its spreader sales also for cranes and to maintain Cargotec's reputation as a reliable container handling equipment manufacturer, it has no incentive to engage in any type of foreclosure strategy. Moreover, even if a spreader manufacturer were to engage in such a behaviour, customers would have several other spreader suppliers to turn to, including spreaders offered by vertically integrated crane OEMs themselves.

Sales of spreaders in New Zealand are very limited

- 69 As a result of the dynamics described above, the supply of spreaders in New Zealand (as a distinct product) is very limited. Customers only purchase spreaders when a spreader has failed, which is very uncommon. For example, []:
- 69.1 [];
- 69.2 []; and
- 69.3 [].
- 70 [].
- 71 As spreaders are only supplied separately from container handling equipment as replacements when a spreader has failed, or (very infrequently) as spare parts, there is no reason to think that the limited demand for spreaders in New Zealand is likely to grow.

Bromma faces significant competition for the supply of spreaders

- 72 Spreaders are produced either by companies already active in the production of container handling equipment or by standalone suppliers of spreaders and other equipment parts. Cargotec is an example of the first type, as it produces spreaders for cranes and mobile equipment through its subsidiary, Bromma. Bromma faces significant competition for the supply spreaders from other OEMs active in the manufacturing of spreaders and from standalone suppliers of spreaders.
- 73 Many OEMs manufacture their own spreaders and supply them to other OEMs. For example:
- 73.1 Sany manufactures and supplies spreaders for both cranes and mobile equipment;
- 73.2 ZPMC manufactures and supplies a full range of spreaders; and
- 73.3 Hyster and Taylor both manufacture and supply mobile equipment spreaders.
- 74 All of these suppliers are active in New Zealand in some capacity.
- 75 In addition, there are a number of dedicated spreader manufacturers, including:⁴²
- 75.1 Elme, which offers a full range of spreaders, and is a particularly strong player for mobile equipment spreaders.⁴³ Elme is the global market leader for spreaders, with a global market share of []% for the supply of all types of spreaders in the period 2018-2020, and []% for mobile equipment spreaders specifically. Kalmar NZ considers that [];
- 75.2 Stinis focuses on crane spreaders.⁴⁴ Stinis has a global market share of []% for the supply of all types of spreaders in the period 2018-2020, and []% for crane spreaders specifically.
- 75.3 RAM, which offers a full range of spreaders, and is a particularly strong player for crane spreaders.⁴⁵ RAM has a global market share of []% for the supply of all types of spreaders in the period 2018-2020, and []% for crane spreaders specifically.
- 75.4 Earls Industries, which specialises in crane spreaders;⁴⁶ and

⁴² All market shares for spreaders, unlike other market shares included in this SOI Response, are provided for the period 2018-2020 rather than 2017-2020. Market shares for 2017-2020 have not been made available in preparing this SOI Response, however the difference is not material to the analysis outlined in this Appendix 1.

⁴³ See: <https://www.elme.com/products> (accessed 2 December 2021).

⁴⁴ See: <https://www.stinis.com/port-products/> (accessed 2 December 2021).

⁴⁵ See: <https://www.ramspreaders.com/products/> (accessed 2 December 2021).

⁴⁶ See: <https://www.earlsindustries.com/> (accessed 2 December 2021).

- 75.5 VDL, which offers a range of crane spreaders, including a fully electric spreader.⁴⁷
- 76 OEMs source spreaders under mixed models based on their needs. For example:
- 76.1 Sany manufactures its own spreaders (see paragraph 73.1 above), but also installs third-party spreaders, including from Elme, on its equipment;
- 76.2 ZPMC manufactures its own spreaders (see paragraph 73.2 above), but also sources spreaders from Bromma, RAM and Stinis;
- 76.3 Konecranes manufactures its own spreaders for straddle and shuttle carriers (although may install a [] spreader if it better matched the customer's technical requirements). Konecranes sources [] of its crane spreaders from Bromma, the rest from [], and [] mobile equipment spreaders from Elme. Konecranes has [] mobile equipment spreaders from []; and
- 76.4 Cargotec predominantly installs Bromma spreaders, but may occasionally install third party spreaders in cranes at a customer's request.

No ability or incentive to foreclose competitors

- 77 The Merged Entity will not be in a position to foreclose competitors post-Transaction, with limited global market shares ([]%) for the supply of spreaders (all types) globally. In particular, Bromma has a very low market share for mobile equipment spreaders specifically, making up []% of the global market.
- 78 Even though Bromma does have a material share of the global market for the supply of crane spreaders ([]%), any foreclosure strategy with respect to crane spreaders would fail because:
- 78.1 there are a range of alternative suppliers which downstream competitors can use:
- (a) any OEM customer that is not vertically integrated (or customers purchasing spare/replacement spreaders) will be able to choose from a wide range of standalone spreader suppliers such as Elme, Stinis and RAM;
 - (b) there are also a number of smaller players with the ability to expand significantly such as Mitsui-Paceco, VDL and Earls Industries. Cargotec believes these players all have significant spare production capacity and so could further expand in a short time period without significant investments;⁴⁸
 - (c) vertically integrated OEMs such as Sany and ZPMC⁴⁹ could easily expand their spreader supply businesses to replace Bromma's supply. In general, Chinese vertically integrated players have significant

⁴⁷ See: <https://www.vdlcontainersystemen.com/en/products/spreaders> (accessed 2 December 2021).

⁴⁸ For example, Stinis has a large spreader production facility in Malaysia which is not fully utilised, and the same for RAM in China.

⁴⁹ ZPMC has already successfully entered the merchant market by supplying spreaders to third-party OEMs in China and is understood to be actively seeking to expand its activities in spreaders further by enhancing its global crane spreader service capabilities.

capacity given they operate in very large facilities for the production of container handling equipment within large conglomerates.

78.2 spreaders are highly standardised products. Consequently, multi-sourcing by downstream competitors is common and those competitors can readily respond to any attempt to foreclose them by switching to other existing spreader suppliers.

79 Even if the Merged Entity was found to have the ability to foreclose on downstream competitors post-Transaction, the Merged Entity would have no incentive to engage in such a strategy. The key reason for this is that the Bromma business [

].⁵⁰ [].

80 Accordingly, any foreclosure strategy against downstream competitors would not be profit-maximising, either globally or in New Zealand).

Konecranes is not an essential customer for any spreader supplier

81 Konecranes is not an essential customer for any spreader supplier, meaning the Merged Entity will also have no ability or incentive to engage in customer foreclosure strategies by diverting Konecranes' demand for spreaders to Bromma and therefore foreclosing access by spreader suppliers to a sufficient customer base:

81.1 In the period 2018-2020, Konecranes made up approximately []% of the global supply of crane spreaders. Even if Konecranes was to exclusively procure spreaders from Bromma for its cranes, crane spreader suppliers would continue to have access to the remaining []% of the market. Furthermore, Konecranes already purchases []% of its crane spreaders from Bromma, so any 'switch' would only account for []% of Konecranes' purchases.

81.2 There are several large spreader suppliers which have no or minimal customer relationship with Konecranes. These include []. These players together account for []% of the global crane spreader market for 2017-2019. This means there would be no ability incentive on the Merged Entity to engage in foreclosure strategies on upstream crane suppliers.

81.3 While Konecranes currently purchases [] from Elme and is a large customer of mobile equipment spreaders for Elme, making up approximately []% of Elme's sales, there are a number of other mobile equipment suppliers who would continue to be customers of Elme even if Konecranes switched to use Bromma spreaders. Moreover, other mobile equipment suppliers, such as Sany who already is a customer of Elme, will grow in importance in coming years, growing Elme's existing and potential

⁵⁰ See the Form CO, paragraph 278.

customer base. Moreover, Elme could also divert part of its production to crane spreaders which also offer more revenues per unit.