



Competition
Commission
SINGAPORE

Section 57 of the Competition Act (Cap. 50B)

Grounds of Decision issued by the Commission

Notification for Decision: Anticipated Merger between The Manitowoc Company, Inc. and Enodis plc

29 September 2008

Case number: CCS 400/002/08

Confidential information in the original version of this Decision has been redacted from the published version on the public register. Redacted confidential information in the text of the published version of the Decision is denoted by [X]

I. INTRODUCTION

1. On 15 August 2008, the Competition Commission of Singapore (“CCS”) received a notification for decision pertaining to an anticipated transaction (the “Transaction”), by which The Manitowoc Company, Inc. (“Manitowoc”) would acquire Enodis plc. (“Enodis”), through the former’s wholly-owned subsidiary MTW County Ltd (“MTW”). Manitowoc, Enodis and MTW are collectively referred to as “the parties”.
2. During the Phase 1 review, the 30-working day indicative timeframe (within which the Phase 1 review is expected to be completed) was stopped on two occasions for a total of 6 working days as a result of the parties seeking more time to respond to CCS’ requests for clarification/ further information.
3. In filing this notification, parties also gave CCS notice of commitments they had offered to the European Commission (“EC”) to divest certain Enodis assets post-merger. On 19 September 2008, it was announced that the EC had given approval for the Transaction to proceed, subject to the divestment commitments offered by the parties. The parties furnished CCS with details of the approved divestment commitments on 23 September 2008.
4. CCS has concluded that in light of the divestment commitments as approved by the EC, the Transaction will, if carried into effect, not infringe the prohibition under section 54 of the Competition Act (the “Act”).

II. THE PARTIES

5. Manitowoc is a public limited liability company registered in the state of Wisconsin, USA and listed on the New York Stock Exchange. Manitowoc is involved in the following lines of business:

- i) the supply of lifting equipment for the global construction industry (“crane”);
- ii) the supply of cold-focused equipment for the foodservice industry, including ice-cube machines, ice & beverage dispensers and commercial refrigeration equipment (“foodservice”); and
- iii) the supply of ship building, ship repair, retrofitting and conversion services for customers in the maritime industry (“marine”).

6. Enodis, a public company registered in England and Wales and listed in London, is a global food and beverage equipment manufacturer and is involved in the following lines of business:

- i) the supply of hot and cold-focused foodservice equipment, including primary cooking, ovens, ice machine, refrigeration and beverage equipment to customers worldwide; and
- ii) the supply of food retail equipment including refrigeration systems, refrigerated display cases and walk-in cold storage rooms primarily to supermarkets and convenience stores in North America.

III. THE MERGER

7. The Transaction involves a cash offer by Manitowoc of 328 pence per share for the entire ordinary share capital of Enodis. The parties submit that a combination with Enodis will allow Manitowoc to enter two major new market segments, i.e. hot foodservice and food retail equipment, as well as to expand its ice, refrigeration and beverage businesses.

8. Based on the information above, the Transaction constitutes a merger pursuant to section 54(2)(b) of the Act.

IV. COMPETITION ISSUES

9. The businesses of Manitowoc and Enodis overlap horizontally in the supply of cold-focused foodservice equipment. Therefore, the Transaction may potentially lead to coordinated and non-coordinated effects that substantially lessen competition in the market(s) where cold-focused foodservice equipment is transacted.

10. CCS investigations did not reveal any vertical integration issues arising from the Transaction that would give rise to competition concerns.

V. RELEVANT MARKETS

Product market definition

Parties' submission

11. The parties submit that from a customer perspective, the relevant product market encompasses the wholesale supply of four types of ice machines, namely:

a) Self-contained cubers

These are low capacity machines which make and store ice within the same integrated unit;

b) Modular cubers

These are large capacity machines which do not have facilities to store the ice produced within the same unit and are used alongside storage bins and ice dispensing units;

c) Flake machines

These are generally large machines producing flakes of ice at minus 1-2 degrees Celsius for specific industrial purposes; and

d) Scale ice machines

These are large machines producing flakes of ice at minus 10-12 degrees Celsius for industrial purposes.

12. The parties submit that there is overlap only in three of the product markets, namely self-contained cubers, modular cubers and flake ice machines. The parties say that scale ice machines are not a relevant market as Manitowoc does not manufacture this type of machines and there is thus no corresponding overlap.

13. The parties submit that from a demand-side perspective, customers do not view the three different types of ice machines as strict alternatives (due to space constraints, volume requirements, etc). At the margin, there may be some substitution between certain models of self-contained and modular cubers, but otherwise, the different types of ice machines are perceived to be separate products.¹

14. The parties submit that from a supply-side perspective, the product market is a wider market comprising of all ice machines. According to the parties, the production of an ice machine is a relatively straightforward process and manufacturers of ice machines are able to produce more than one type of ice

¹ Annex 22 to Form M1, para. 1.1, at pages 1-2.

machine on a single production line. In addition, the parties submit that the switching or reallocation of production between one type of ice machine to another can be done within four hours by modifying an existing production line, so that manufacturers can easily reconfigure their plants for optimal production of all types of machine, once they have manufactured or obtained the relevant parts.²

CCS' assessment

15. In relation to the four types of ice machines, feedback from third parties has indicated that on the demand-side, customers tend to find limited substitutability between self-contained cubers, modular cubers, flake ice machines and scale ice machines. Some of the feedback received by CCS indicated that space constraints may impede substitution by the customer and that the quality of the food to which the ice is applied may be affected depending on the type of ice machine.

16. On the supply-side, CCS received feedback from third parties indicating that some degree of substitutability exists between the different types of ice machines. Specifically, CCS received feedback from other ice machine manufacturers that it may be possible to switch production between the four different types of ice machines within a short span of time, due to the similar underlying technology and parts found in the different types of ice machines. The feedback also highlighted that ice machine manufacturers often produce more than one type of ice machine on a single production line.

17. In light of the above, CCS examined the impact of the Transaction on the supply of ice machines generally and also on the supply of the different types of ice machines, i.e. self-contained cubers, modular cubers, flake ice machines and scale ice machines.

18. Although the parties maintain that their activities in Singapore overlap only in the market for the supply of self-contained cubers, modular cubers and flake ice machines, CCS notes that there are two further areas of overlap between the parties' activities, i.e. commercial refrigeration and beverage equipment. In response to CCS' additional requests for information regarding these two sectors, the parties state that the parties have a "limited presence" in these two sectors on a global basis and that the Transaction will also not result in a substantial lessening of competition in any markets in Singapore³. These claims were not contradicted by any third party feedback, and no concerns were raised by third parties in relation to the commercial refrigeration and beverage equipment sectors. As such, CCS did not consider these two sectors further for the purposes of this decision.

² Annex 22 to Form M1, para. 1.4.2, at pages 7-8.

³ Para. 2-3 of parties' letter to CCS dated 12th September 2008.

Geographic market definition

Parties' submission

19. The parties submit that the geographical scope of the relevant market is global. The parties point out that they do not have any production facilities manufacturing ice machines in Singapore, and that the supply of ice machines to the Singapore market is primarily through intermediaries, such as distributors or kitchen equipment suppliers.

20. The parties state that their ice machines, which are manufactured mainly in the United States, China and Italy, are supplied and sold globally. In addition, the parties add that their sales to large end-users (known as key accounts) or global multinational corporations such as [X] as well as global hotel chains such as [X], tend to be negotiated on a global basis and transacted under a global contract⁴.

21. The parties submit that it is administratively and operationally easy for an ice machine manufacturer to expand its operations and sell its products in a new geographical market, as there is no need for these manufacturers to have a local presence to penetrate a new market. The parties claim that they are able to do so, by tapping on distributors/ agents with a local or regional presence. The parties add that the training of these distributors/ agents, to sell and provide after-sales services (such as maintenance and repair) can be done easily on a regional level.⁵

22. In addition, the parties add that transportation of the ice machines is easily outsourced, with transportation costs accounting for a relatively small proportion of ex-works prices. (For example, the parties say that transport costs via sea in containers from the US to Asia or from the EEA to Asia are about [X]% of ex-works prices). The parties say that transport times via sea are also not expected to cause major delays, [X]⁶

CCS' assessment

23. Feedback from third parties indicates that even though sales of ice machine manufacturers tend to be concentrated in a few key areas, the geographical market is global in nature. This is because ice machine manufacturers are able to expand sales to new markets with relative ease, through securing distributors and/or dealers to facilitate sales and provide after-sales service in a country, even if a manufacturer does not have a physical presence in that particular country. CCS notes that Manitowoc's ice machine manufacturing facilities are concentrated mainly in the United States of America and China but Manitowoc is able to sell its products in ninety countries, through their global network of 120 distributors⁷.

24. In addition, third party feedback has indicated that the relevant market is

⁴ Annex 22 to Form M1, para. 1.3.3, at page 5.

⁵ Annex 22 to Form M1, para. 1.4.3, at page 9.

⁶ Ibid.

⁷ Source: Manitowoc 2007 Investor Fact Sheet.

likely to be global in nature and ice machine manufacturers frequently enter into contracts with key account customers on a global basis, contracting to supply ice machines to their franchises around the world.

25. Based on the information above, CCS is of the view that the geographical scope of the relevant market is a global one.

VI. MARKET STRUCTURE

Market share and market concentration

26. On a global basis, the parties submit that their estimated sales and market shares in 2007 for the four types of ice machines, as well as for the overall ice machines market are as follows:

Table 1: Estimates of global sales and market shares for 2007

		Ice machines	Self-contained cubers	Modular cubers (including dispensers and bins)	Flake ice machine	Scale ice machines
Manitowoc	Sales (\$\$)	[X]	[X]	[X]	[X]	[X]
	Market Shares	[20-30]%	[10-20]%	[30-40]%	[10-20]%	[0-10%]
Enodis	Sales (\$\$)	[X]	[X]	[X]	[X]	[X]
	Market Shares	[30-40]%	[30-40]%	[30-40]%	[30-40]%	[20-30]%
Manitowoc + Enodis	Sales (\$\$)	[X]	[X]	[X]	[X]	[X]
	Market Shares	[60-70]%	[50-60]%	[70-80]%	[50-60]%	[20-30]%
Hoshizaki	Sales (\$\$)	[X]	[X]	[X]	[X]	[X]
	Market Shares	[20-30]%	[10-20]%	[20-30]%	[20-30]%	[0-10]%
Brema	Sales (\$\$)	[X]	[X]	[X]	[X]	[X]
	Market Shares	[0-10]%	[10-20]%	[0-10]%	[0-10]%	[0-10]%
ITV	Sales (\$\$)	[X]	[X]	[X]	[X]	[X]
	Market Shares	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%
Others	Sales (\$\$)	[X]	[X]	[X]	[X]	[X]
	Market Shares	[10-20]%	[0-10]%	[0-10]%	[10-20]%	[60-70]%
CR3	Pre-merger	[80-90]%	[60-70]%	[90-100]%	[80-90]%	[30-40]%
	Post-merger	[80-90]%	[80-90]%	[90-100]%	[80-90]%	[30-40]%

	% pt- Change	[0-10]	[10-20]	[0-10]	[0-10]	[0-10]
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Source: The Parties

27. Although there was no independent source for verification of the parties' estimates, the feedback furnished to CCS in the course of its investigations was consistent with the market size and share estimates provided by the parties.

28. The CCS is generally of the view that competition concerns are unlikely to arise in a merger situation unless:

- the merged entity will have a market share of 40% or more; or
- the merged entity will have a market share of between 20% to 40% and the post-merger CR3⁸ is 70% or more.

On a post-merger basis, CCS notes that the combined market share for the parties in the global market for ice machines would be [60-70]%. The CR3 in the global market for ice machines would also increase from [80-90]% to [80-90]%. Analysing further into each of the four product markets, the post-merger global market shares of the parties for each of the four product markets of self-contained cubers, modular cubers, flake ice machines and scale ice machines are [50-60]%, [70-80]%, [50-60]% and [20-30]% respectively. The percentage point increase in CR3 post-merger for each of the four product markets of self-contained cubers, modular cubers, flake ice machines and scale ice machines are [10-20], [0-10], [0-10] and [0-10] respectively, leading to a post-merger CR3 of [80-90]%, [90-100]%, [80-90]% and [30-40]% in each of the four product markets respectively.

29. As the post-merger market share of the parties and the post-merger CR3 in the global market for ice machines, as well as for self-contained cubers, modular cubers and flake ice machines exceed the indicative thresholds in the CCS Guidelines, this was indicative that the Transaction, if not for the divestment commitments (explained further below), might possibly raise competition concerns in Singapore.

Barriers to Entry and Expansion

30. CCS received feedback from third parties that it is relatively easy for ice machine manufacturers to enter into new markets, through securing a distributor or dealer to facilitate sales and provide after-sales service. Third parties also indicated that the ice machine market is one which has been characterized by new entrants over the past few years, notably from China, due to low technical barriers and ability of potential entrants to reverse engineer products. The Freedonia report⁹ submitted by the parties states that [X].

31. Furthermore, CCS also received feedback supporting the parties' claim¹⁰

⁸ The CR3 refers to the concentration ratio arrived at by combining the market shares of the three largest firms in the relevant market.

⁹ Industry Study 2131, World Commercial Refrigeration Equipment, January 2007, at page 34.

¹⁰ At Annex 8 to Form M1, para. 1.4, at page 8.

that all of the other major ice machine manufacturers (such as Brema, ITV and Hoshizaki) have excess production capacity of up to 50% and that production lines are flexible.

Product differentiation

32. The parties submit that ice machine products are differentiated, as ice machine manufacturers compete on non-price factors for a range of products in the relevant market¹¹. Specifically, the parties claim that as some types of ice machines are durable in nature, a main competitive element for this range of products is competing on non-price aspects such as quality and service reliability. CCS has received feedback supporting this claim.

Countervailing buyer power

33. CCS received feedback that certain segments of buyers of ice machines, e.g. large chain account customers such as large fast food chains, restaurants, hotel chains, have some degree of buyer power when it comes to negotiating prices. However, the feedback also indicated that given the strong position of the parties in the middle to high quality brands, the large chain account customers may find it difficult to switch in the short term.

34. The feedback also indicated that ice machine manufacturers compete to secure distributors to sell their products and offer after-sales service to various countries.

VII. COMPETITION ASSESSMENT

Non-coordinated effects

35. As mentioned above, the Transaction results in post-merger markets shares that exceed the CCS indicative threshold of 40%. In the course of CCS' assessment, feedback from third parties indicated that the parties are close rivals and that their ice machines are close substitutes. Concerns were expressed that the Transaction would, in the absence of any remedy, consolidate the position of the parties in the relevant market, bringing several well known brands of ice machines under the control of a single merged entity. Third parties expressed concerns that the merged entity would have significant market power, particularly in the supply of the higher-end, superior quality range of ice machines.

36. However, the low barriers to entry and expansion for the relevant market, as well as the presence of countervailing buyer power, indicate possible constraints on any exercise of post-merger market power. Any attempt to reduce output or raise prices post-merger is likely to be met by potential or existing competitors increasing production to capture market share.

¹¹ Annex 8 to Form M1, para. 1.7.3, at page 11.

Coordinated effects

37. As mentioned above, the Transaction results in CR3s which, coupled with the post-merger market shares, exceed the CCS indicative thresholds.

38. However, the parties claim that post-merger coordination will be difficult because ice machine products are differentiated. Feedback received by CCS generally supports this claim. The low barriers to entry and expansion and the presence of buyer power in the relevant market add further to the difficulty for coordinated effects to take place.

Divestment commitments accepted by foreign jurisdictions

39. Given the substantial market share of the merged entity for ice machines, as well as for self-contained cubers, modular cubers and flake ice machines, and the corresponding increases in concentration arising from the Transaction, CCS is of the view that competition concerns could potentially arise from the Transaction. However, CCS notes that the divestment commitments offered by the parties have been accepted by the EC. After obtaining feedback from the market, the EC accepted these divestment commitments on 19th September 2008. Where commitments accepted overseas have an international impact, they are apt to be relevant in the assessment of the competitive impact of the anticipated merger in Singapore. However, CCS stresses that commitments accepted by overseas authorities do not, in and of themselves, necessarily imply that CCS will allow the Transaction to proceed in Singapore. Any overseas commitments must be viewed in light of the facts and circumstances of the case, to see if they are capable of addressing competition concerns arising within Singapore, if any.

40. Under the divestment commitments agreed between the parties and the EC, the parties have undertaken, *inter alia*, to sell all of Enodis' global ice machine business that is operated under the Scotsman, Ice-O-Matic, Simag, Barline, Icematic and Oref brand names as well as the global commercial refrigeration and other non-ice businesses that are operated under the Tecnomac and Icematic brand names ("the Divestment Business"). The Divestment Business has been defined to include:

- a) all tangible and intangible assets (including intellectual property rights), which contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business;
- (b) all licences, permits and authorisations issued by any government organisation for the benefit of the Divestment Business;
- (c) all contracts, leases, commitments and customer orders of the Divestment Business; all customer, credit and other records of the Divestment Business, as well as transitional supply agreements; and
- (d) Personnel currently employed by the Divestment Business, including

key personnel, staff seconded to the Divestment Business and shared personnel.

41. The purchaser of the Divestment Business must be approved by the EC and must:

- (a) be independent of and unconnected to the Parties;
- (b) have the financial resources, proven expertise and incentive to maintain and develop the divested business as a viable and active competitive force in competition with the Parties and other competitors; and
- (c) neither be likely to create nor give rise to a risk that the implementation of the divestment will be delayed, and must, in particular, reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the divested business.

42. The divestiture has to take place within 9 months from completion of the Transaction, or such longer period as may be necessitated by a relevant competition authority withholding approval pursuant to the divestment commitments.

43. The parties submit that the divestment means that the Transaction “would not result in an increment in Manitowoc’s market share for the supply of ice machines.”¹²

44. CCS notes that Manitowoc has committed to divest all of Enodis’ production facilities for ice machine, except the facilities in Shanghai, which they will divest only if required to do so by the approved purchaser of the Divestment Business¹³. The parties have submitted that even in the event that Enodis’ production facilities in Shanghai are retained by Manitowoc, this would only result in increased production capacity for Manitowoc branded ice machines. Manitowoc would still not be able to manufacture any ice machines under any of the Enodis ice brands nor acquire any commercial information or business secrets of a confidential or proprietary nature relating to the Divestment Business. CCS notes, as stated in paragraph 31 above, that the industry appears to be characterised by excess production capacity. As such, any increase in Manitowoc’s production capacity resulting from acquisition of the facilities in Shanghai is not likely to give rise to competition concerns, insofar as the facts of this case are concerned.

45. The divestment has worldwide effect, as all of Enodis’ global ice machine businesses will be divested. As such, CCS is of the view that any competition

¹² Paragraph 4(c) of parties’ letter to CCS on 4 September 2008.

¹³ Paragraph 2.1.5, 2.1.7 and 2.1.13 of the Schedule to the Commitments to the European Commission, as approved by the EC on 19th September 2008.

concerns arising in Singapore will be sufficiently addressed. This will be the case regardless of whether the product market is defined as the market for the supply of ice machines, or whether there are separate product markets for self-contained cubers, modular cubers and flake ice machines. Furthermore, feedback received by the third parties indicates that competition concerns arising from the Transaction in relation to the global ice-machine business would be sufficiently addressed by the aforementioned divestment.

VIII. CONCLUSION

46. For the reasons stated above and based on the information available to CCS, CCS has assessed that the Transaction, if carried into effect together with the parties' divestment commitment to the EC, will not infringe the section 54 prohibition.

47. In accordance with section 57(7) of the Competition Act, this decision shall be valid for a period of one year from the date of this decision.



Teo Eng Cheong (Mr)
Chief Executive
Competition Commission of Singapore