

Completed acquisition by Ainscough Crane Hire Limited of James Jack Lifting Services Limited

ME/3620/08

The OFT's decision on reference under section 22(1) given on 16 June 2008. Full text of decision published on 9 July 2008.

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**Please note that square brackets indicate figures or text which have been deleted or replaced at the request of the parties for reasons of commercial confidentiality.**

## **PARTIES**

1. **Ainscough Crane Hire Limited** (Ainscough) is a supplier of mobile cranes and lifting equipment for hire.
2. **James Jack Lifting Services Limited** (James Jack) is a Scottish-based company specialising in mobile crane hire. James Jack's turnover for the year ending 31 May 2007 was approximately £12.4 million.

## **TRANSACTION**

3. Ainscough's acquisition of James Jack was brought to the OFT's attention as a result of an unsolicited complaint. The transaction having completed on 4 April 2008,<sup>1</sup> the legal deadline for the OFT's decision on reference is therefore 3 August 2008 and the extended administrative target date for that decision is 17 June 2008.

## **JURISDICTION**

4. As a result of this transaction, Ainscough and James Jack have ceased to be distinct. The parties' overlap in the provision of heavy mobile cranes for

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<sup>1</sup> The transaction was completed by way of a share transfer of the entire issued share capital of James Jack.

hire amounts to a combined share of [30-40] per cent of the total UK supply. The share of supply test in section 23 of the Enterprise Act 2002 (the Act) is consequently met and the OFT believes that it is or may be the case that a relevant merger situation has been created.

## **MARKET DEFINITION**

### **Product scope**

5. The parties overlap in the supply of mobile cranes for hire.
6. Mobile cranes comprise lifting machinery that is used in, amongst others, the civil engineering and construction industries. They are mounted on a mobile platform (typically a wheeled truck) and are capable of being transported to and operated on sites without the need for fixed runways or railway tracks. All third parties who engaged with the OFT supported the parties' proposition that mobile cranes are distinct from other types of crane, such as tower<sup>2</sup> and crawler<sup>3</sup> cranes.
7. Each model of mobile crane is built to deliver a particular maximum lifting capacity. Heavier cranes have a lifting capacity of up to around 1000 tonnes. At the lower end, some lighter cranes are designed to lift loads up to a maximum of 10 tonnes.
8. In this case, nearly all third parties agreed with the view taken by the OFT in a previous merger decision in the cranes sector, *Ainscough/Nationwide*,<sup>4</sup> which took account of that fact that mobile cranes of varying sizes are often used to lift loads that are lighter than their actual lift capacity. In the present case, the majority of third party comment confirms in particular that:
  - (a) larger cranes can be and frequently are used to do work that could be carried out by smaller cranes, however

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<sup>2</sup> A tower crane is fixed to the ground and offers the optimum combination of height and lifting capacity for use in the construction of tall buildings.

<sup>3</sup> A crawler crane is a crane mounted on an undercarriage with a set of tracks that provide for stability and mobility and the capability of traveling with a load.

<sup>4</sup> Competed acquisition by Ainscough Crane Hire Limited of Nationwide Crane Hire Limited – June 2007

- (b) smaller cranes are never used to lift tonnages that call for higher capacity cranes.
9. However, most third parties also supported a proposition made by the notifying parties that there are two segments to be applied to the overall market for the hire of mobile cranes market: one for light mobile cranes with lifting capacities of up to 200 tonnes, and the other for heavy mobile cranes with lifting capacities in excess of 200 tonnes. A minority of two third parties submitted that the appropriate benchmark for defining a heavy mobile crane, in their view, was 100 tonnes or more lifting capacity.
  10. Defining heavy mobile cranes using a benchmark of 200 tonnes or more lifting capacity provides for a more exacting test than a 100 tonnes benchmark of the post-merger constraints on Ainscough. This is so because there are a greater number of suppliers offering cranes for hire with less than 100 tonne capacities and there are a greater total number of available cranes of such specification. Accordingly, the OFT has based its competition analysis on the cautious approach of using the higher 200 tonne benchmark.

### **Geographic scope**

#### Heavy mobile cranes

11. A particular distinction between heavy mobile cranes on the one hand and light mobile cranes on the other, is that the heavy cranes are not transported back to a supplier's depot between jobs. Rather, they are moved directly to the next job at another location – which may be some considerable distance away – and undergo checks and any necessary servicing and repairs on site.
12. The parties have provided evidence to show the considerable distances over which the heavy mobile cranes in their respective fleets have been consistently transported – two notable examples being London to Edinburgh and Swansea to Sellafield. Operators travel with heavy cranes and are accommodated close to the worksite where the cranes are being deployed.

13. In Ainscough/Nationwide, the OFT drew no conclusions as to the exact scope of the geographic market, but based its competition analysis on a proposition that it was no wider than the UK.
14. In the present case, third parties have confirmed that heavy mobile cranes travel long distances overland within mainland Great Britain. According to one competitor, these considerable distances are partly a function of the limited total number of the mobile cranes with lifting capacities in excess of 200 tonnes available.
15. In light of the available evidence, the OFT bases its competition analysis on the cautious proposition that the relevant geographic scope for the supply of heavy mobile cranes for hire is no wider than mainland Great Britain.

#### Light mobile cranes

16. Light mobile cranes are offered for hire as a package with a trained crane operator transporting the machine to the worksite, delivering the required lifting services and typically returning the crane to the supplier's depot at the end of every working day. One third party competitor submitted that, if a particular job lasted longer than a day, the crane might remain overnight on a secure site.
17. The majority<sup>5</sup> of third party competitors agreed with the parties' submission that the relevant geographic market for the supply of these smaller cranes for hire is local, typically a distance of some 30 to 40 miles around the depot in which the crane is based. All of the third party customers who responded to the OFT's questionnaire submitted that they hire light mobile cranes exclusively from local suppliers.
18. Overall, in light of the evidence received from the parties and from third parties, the OFT bases its competition analysis on the cautious proposition that the relevant geographic market for the supply of light mobile cranes for hire is no wider than a 30 to 40 miles radius around each of Ainscough's and James Jack's respective depots.

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<sup>5</sup> Two competitors submitted that the relevant geographic frame of reference is closer to 20 to 25 miles around the depot, whilst one other proposed that it was closer to 45 miles.

## HORIZONTAL ISSUES

### Unilateral effects

#### Heavy mobile cranes

19. According to the parties, Ainscough had [25-35] heavy mobile cranes within its total fleet, whereas James Jack had only [one to five]. These represent a combined market share of [30-40] per cent, with an increment of just [zero to five] per cent, of the total of 92 heavy mobile cranes that are either currently in service or available for hire within Great Britain.
20. The next largest players in this segment are Baldwin with nine cranes and Select with seven cranes (market shares of [five to 15] and [one to 10] per cent respectively). 17 other suppliers remain who each currently have between five and one heavy mobile cranes either in service or available for hire.
21. In response to the OFT's questions, the vast majority of customers named many alternative suppliers to whom they could switch and submitted that there were no switching costs involved in doing so. In addition, some customers submitted that they multi-source their lifting requirements from several heavy mobile crane hire companies.
22. The parties have also provided evidence in support of their argument that crane hire companies can and do sub-hire cranes from other suppliers to carry out jobs in certain locations. Additionally, some crane hire companies (Hewden being a notable example) operate a business model by which they do not own heavy mobile cranes but nonetheless compete for work on the basis of being able to sub-hire the cranes needed to carry it out. In support of this point Ainscough has provided bidding data for 30 tenders that they took part in over the past four years. This data demonstrates that Hewden regularly bid (in one instance successfully) to supply cranes with lifting capacities in excess of 200 tonnes.
23. Ainscough submits that any reciprocal competitive constraint that was posed pre-merger between it and James Jack was limited – not least due to the fact that James Jack's fleet of heavy mobile cranes comprised only [one to five] units, but also on the basis that James Jack had a history of

bidding only for tenders for work to be carried out in Scotland. The parties provided information indicating that, of nearly three thousand tenders for the supply of heavy mobile cranes for which Ainscough has bid in a three year period ending May 2008, it was in competition with James Jack (who made bids in response to around 80 to 100 tenders over the same period) on only two tenders – albeit that it did actually lose one of these tenders to James Jack.

24. The parties also submit that pre-merger competition between Ainscough and James Jack was further limited due to variations in their respective business models. Ainscough competed to hire out heavy mobile cranes primarily on the basis of national framework agreements and formal tenders but also competed for spot contracts. James Jack on the other hand focussed on supplying heavy mobile cranes almost exclusively on the basis of spot contracts.
25. Taking account of the above factors, the OFT considers that Ainscough and James Jack were not close competitors in the supply of heavy mobile cranes prior to the merger.

#### Light mobile cranes

26. The parties overlap in the supply of light mobile cranes for hire in the Central Belt region of Scotland.<sup>6</sup> There are a total of 253 cranes of this size currently located in this region. Ainscough had [30-40] light mobile cranes whereas James Jack had [10-20] cranes. These represent a combined share of approximately [15-25] per cent of the total light mobile cranes located in the Central Belt, with a relatively modest increment of [five to 10] per cent. The competitor with the largest fleet ([45-55] cranes – also approximately [15-25] per cent) in this region is Hewden, followed by Forsyth of Denny with [25-35] cranes ([10-20] per cent) and Leggatt Crane Hire with [10-20] cranes ([one to 10] per cent). There are 15 other suppliers of light mobile cranes in the region with fleets varying in size from 12 cranes to one crane – the average fleet size amongst these 15 competitors being seven cranes.

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<sup>6</sup> The area of highest population density within Scotland, stretching from Greenock and Glasgow in the West to Edinburgh in the East.

27. In response to questions put by the OFT, the vast majority of customers were aware of and actually named several alternative suppliers between whom they could easily switch without incurring costs. The evidence indicates that many customers also multi-source from several suppliers in the area – one customer submitting that it had accounts with Ainscough, James Jack, Hewden and William Whyte.
28. As is the case with heavy mobile cranes, Ainscough's and James Jack's respective business models in the supply of light mobile cranes differed to the extent that each had a distinct focus on different areas of the overall customer base. Ainscough submits that approximately [65-75] per cent of its business was conducted under framework agreements – with the remaining [25-35] per cent comprising spot contracts and formal tenders. On the other hand, James Jack's business was driven [70-80] per cent by spot contracts and [20-30] per cent by framework agreements and formal tenders.
29. The parties have provided bidding data in support of their submission that James Jack and Ainscough were not each other's closest competitor in the Central Belt region of Scotland prior to the merger. This data gives details of 30 formal tenders submitted by Ainscough over the most recent four year period, and shows that Ainscough and James Jack both submitted competing bids on only seven occasions. Ainscough was successful on two occasions (one of which resulted in being awarded a shared contract with a competitor other than James Jack). For its part, James Jack won one contract outright and shared two.
30. The OFT considers that the available evidence indicates that Ainscough's position in the market for the supply of light mobile cranes for hire in the Central Belt region of Scotland will continue to be contested by a large number of competing bidders and that the merger will not lead to a significant lessening of competition in that market.

### **Coordinated effects**

31. The OFT has seen no evidence of pre-merger coordination in the relevant markets and does not consider that the merger brings about any significant changes in the overall market structure that will make it more conducive to coordinated behaviour amongst the remaining competitors.

## **VERTICAL ISSUES**

32. No vertical issues arise in this case.

## **THIRD PARTY VIEWS**

33. The majority of third parties were unconcerned by the merger. A minority raised concerns as to their perceptions of the increment in Ainscough's size and market power post merger. A minority also expressed concerns for its ability to dominate the light mobile crane market in Scotland and squeeze the competition. These concerns have been addressed above. One third party customer raised competition concerns (not specific to the merger) with regard to a specific local area within Scotland where there is no overlap between the parties.

## **ASSESSMENT**

34. The merging parties overlap in the supply of mobile cranes for hire.
35. The OFT considered the impact of the merger with respect to two segments in the overall market on the basis of crane lifting capacity. One segment comprises heavy mobile cranes (the supply of which is Great Britain in geographic scope) being benchmarked at a lifting capability of 200 tonnes or more. The other segment comprises light mobile cranes (the supply of which is local in geographic scope) having a lifting capacity of less than 200 tonnes.
36. The merger represents only a very small increment ([one to five] cranes) in Ainscough's pre-merger heavy mobile fleet of [25-35] cranes: a combined market share of [30-40] per cent with an increment of just [one to five] per cent. Further available evidence, including bidding data and the fact that the parties focused on different categories of customers, indicates that Ainscough and James Jack were not close competitors in this segment prior to the merger and that Ainscough will continue to be constrained, as previously, by a number of other remaining suppliers in Great Britain.
37. The areas of local overlap between the parties in the supply of light mobile cranes are all within the Central Belt region of Scotland. The merger results

in Ainscough having a [20-30] per cent share of light mobile cranes in the Central Belt with a relatively modest increment of [one to 10] per cent. Further evidence before the OFT indicates that Ainscough and James Jack focused on different categories of customers in the light mobile crane segment prior to the merger and that the market in the Central Belt will continue to be contested by a significant number of competing bidders.

38. Consequently, the OFT does not believe that it is or may be the case that the merger has resulted or may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom.

## **DECISION**

39. This merger will therefore not be referred to the Competition Commission under section 22(1) of the Act.