II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 24 January 2001

declaring a concentration to be compatible with the common market and the EEA Agreement

(Case No COMP/M.2033 — Metso/Svedala)

(notified under document number C(2001) 157)

(Only the English text is authentic)

(Text with EEA relevance)

(2004/254/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to the Agreement on the European Economic Area, and in particular Article 57 thereof,

Having regard to Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings [1], as last amended by Regulation (EC) No 1310/97 [2], and in particular Article 8(2) thereof,

Having regard to the Commission decision of 20 September 2000 to initiate proceedings in this case,

Having given the undertakings concerned the opportunity to make known their views on the objections raised by the Commission,

Having regard to the opinion of the Advisory Committee on Concentrations [3],

Whereas:

(1) On 7 August 2000, the Commission received a notification pursuant to Article 4 of Regulation (EEC) No 4064/89 (the Merger Regulation) of a proposed concentration by which Metso Corporation (Metso) acquires control within the meaning of Article 3(1)(b) of the Merger Regulation of the whole of Svedala Industri AB (Svedala).

(2) After examining the notification, the Commission concluded that the notified operation falls within the scope of the Merger Regulation and raises serious doubts as to its compatibility with the common market, because it could create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the common market or in a substantial part of it and in the territory covered by the EEA Agreement. Therefore, on 20 September 2000, the Commission decided to initiate proceedings pursuant to Article 6(1)(c) of the Merger Regulation and Article 57 of the EEA Agreement.

(3) On 22 November 2000, the Commission communicated its objections to Metso, through a statement issued pursuant to Article 18 of the Merger Regulation and Protocol 21 of the EEA Agreement (the Statement of Objections). The Commission received Metso's observations on this Statement on 11 December 2000.

[1] OJ L 395, 30.12.1989, p. 1; corrected version in OJ L 257, 21.9.1990, p. 13.
[2] OJ L 180, 9.7.1997, p. 1.
[3] OJ C 76, 25.3.2004.

I. THE PARTIES AND THE OPERATION

(4) Metso is a Finnish company, established in 1999 through the merger ([4]) of Valmet Corporation and Rauma Corporation. It is active in three main business areas: (i) machinery (rock and mineral processing, gears and components and car manufacturing), (ii) automation and control technology, and (iii) fibre and paper technology (pulp and paper industry processes, machinery and equipment). The 1999 turnover of Metso was EUR 3 387 million. Metso's activities in rock crushing and processing equipment are carried out through its Nordberg subsidiary, and represent approximately 15 % of Metso's turnover.

(5) Svedala is a construction and mineral processing equipment company listed on the Stockholm Stock Exchange, and active in equipment for mineral recovery, processing and handling, such as drilling equipment, rock crushing equipment, transport systems, asphalt paving and compaction equipment. Svedala's 1999 turnover was approximately EUR 1 600 million. 38 % of this turnover corresponded to the sales of the Rock Handling division (crushing and screening equipment).

(6) The proposed transaction consists of the acquisition of sole control by Metso over Svedala, through a public bid announced on 21 June 2000.

II. CONCENTRATION

(7) Metso is offering to buy all the shares of Svedala, and the implementation of Metso's offer is conditional on the acquisition by Metso of more than 90 % of Svedala's share capital. It can therefore be concluded that the operation aims at the acquisition of sole control of Svedala by Metso, and that the proposed transaction therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

III. COMMUNITY DIMENSION

(8) The aggregate world-wide turnover of Metso for the fiscal year 1999 was approximately EUR 3 387 million. The aggregate world-wide turnover of Svedala for the fiscal year 1999 was approximately EUR 1 588 million. Therefore, the undertakings concerned have a combined aggregate world-wide turnover of more than EUR 2 500 million.

([4]) See case IV/M.1379-Valmet/Rauma, 8 February 1999.

(9) In 1999, Metso and Svedala had a combined aggregate turnover of more than EUR 100 million in each of […] (*). The individual aggregate turnover of each of the parties is also in excess of EUR 25 million in each of the above Member States.

(10) Finally, the aggregate Community-wide turnover of each of the parties is more than EUR 100 million, and neither of the undertakings concerned achieves more than two-thirds of its aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension within the meaning of Article 1(3) of the Merger Regulation. It also constitutes a cooperation case under the EEA Agreement.

IV. INTRODUCTION TO THE ROCK CRUSHING SECTOR

(11) The competitive impact of the operation will be in the field of rock crushing equipment, which is sold both by Svedala and by Metso (under its Nordberg brand). After the operation, the merged entity will become a global leader in rock and mineral processing machinery.

A. Applications and technologies

(12) Rock crushing equipment principally aims at reducing the size of rock in order to make it suitable for its expected application. It is therefore primarily used for the production of aggregates (crushed rock, gravel and sand) and cement, and in the mining industry (since the metals or elements to be produced have to be extracted from finely ground rock). Aggregates are typically produced either by quarries or by construction companies which produce their own aggregate supplies by crushing rock or demolished construction materials.

(13) A typical rock crushing plant will usually involve several successive stages, each of which achieves an increasing level of rock fineness and involves a number of possible technologies: the first stage of crushing, where large rocks obtained from blasting or otherwise are crushed, is referred to as 'primary crushing'. Rocks obtained through primary crushing are then typically crushed further in secondary and subsequent crushing stages. Once rock has been crushed down to a sufficiently small size, fine particles can be obtained through grinding.

(*) Parts of this text have been edited to ensure that confidential information is not disclosed; those parts are enclosed in square brackets and marked with an asterisk.

(14) There are essentially four main types of crushing equipment: jaw crushers (where rock is crushed between two mechanical jaws), impactors (where rock is crushed by means of impact against itself and/or the hard surfaces of the device), cone crushers (where rock is crushed between a mobile cone and a fixed cone, the mobile cone rotating eccentrically within the fixed cone) and primary gyratory crushers (based on a technology similar to that of cone crushers, but with a different geometry). Within impactors, a further distinction is generally made between horizontal shaft impactors (HS impactors) and vertical shaft impactors (VS impactors). Each type of crushing equipment corresponds to a specific technology.

(15) In some cases, especially in the mining sector, where ore in the form of 'fines' has to be obtained, further reduction may be needed. This will generally be achieved through a final grinding stage. Grinding equipment consists mainly of grinding mills and roller presses. The parties are only active in the area of grinding mills. There is a wide variety of grinding mill technologies. A distinction can be made, in particular, between horizontal tumbling mills, which can be further subdivided into autogenous mills, semi-autogenous mills, rod mills and ball mills, other horizontal mills, and vertical mills.

(16) In addition to crushing and grinding equipment, a crushing plant will contain a number of smaller equipment used to move the rock through the different crushing stages: these are essentially screens, which are used to control the size of the rocks processed through the different crushers, conveyors and feeders, used to move rock from a stockpile to a conveyor or from a conveyor to a crusher.

(17) Crushing equipment, including screens, feeders and conveyors, can be fixed or mobile. Mobile crushing equipment is normally only used in aggregate production and in the construction industry. Mobile crushers are technically similar to fixed crushers, except that they have been adapted on a wheeled or tracked chassis.

B. **Product durability, risk aversion and service**

(18) Rock crushing equipment often has a very long useful life, typically in the area of 25 years. Although difficult working conditions often cause a high wear rate, and require frequent changes of wear (and of certain spare) parts, rock crushers are usually robust enough to continue operating for very long periods of time.

(19) This means that price will often not be the decisive factor when purchasing a new product: in view of the product durability, operating costs will usually be more important than the amortisation of the original price in the overall economics of the purchase decision, so that customers will often pay a lot of attention to performance or to operating factors such as reliability, maintenance costs, security of supply of spare parts, etc. This is confirmed by the fact that a large majority of customers which responded to the Commission's enquiry indicated that they considered operating factors, especially operating costs, quality, reliability or capacity, more important than price when purchasing a rock crusher.

(20) In addition, rock crushing machinery is often considered as critical equipment for aggregate and construction (A&C) and mining customers. In particular, it appears from the Commission's enquiry that failing crushing equipment may stop the entire operation of the plant concerned (for periods potentially in the order of several weeks), and therefore dramatically affect the effectiveness and competitiveness of the aggregate producer or mining customer. This is so because, in many instances, customers only have one crusher for each process stage, for example, primary crushing, secondary crushing, etc.).

(21) The combination of the long durability, of the critical importance of rock crushing machinery, and also of the relatively low purchase price of rock crushers when compared to the overall costs and revenues of a quarry or aggregate production plant, appears to make customers very conservative and averse to risks in their choices. They will often opt for safe and proven solutions rather than turn to less-reputed suppliers unable to satisfactorily guarantee reliability and security of after-sales services and spare part supplies, even if that implies accepting higher prices. That risk aversion may obviously increase with the loss of revenue derived from the failure of the rock crushing machinery, or with the likelihood of that failure. It will therefore usually be higher for those customers producing valuable goods, such as metallic mines, or working in difficult environments, such as hard and abrasive rock. However, it seems to be a general feature of the industry that rock crusher customers are very often highly averse to risk.

(22) The results of the Commission's investigation indicate that such risk aversion will manifest itself in a number of different ways. For instance, customers will attach a lot of importance to the product reliability and quality and to the supplier's reputation. In particular, it has been indicated that customers often require their suppliers to provide them with an adequate reference list, including customers processing the same type of rock.

(23) For the same reasons, the results of the Commission's investigation suggest that turnkey plants, primarily procured for the establishment of green-field crushing sites or major capacity expansion, are often awarded to those equipment suppliers with a broad product range. Although customers might theoretically have recourse to an independent engineering firm for the overall design of their plant and then split the provision of the equipment concerned over a variety of suppliers, they usually prefer to obtain all of those products and services from one single company, because the overall responsibility for the turnkey plant would be borne by one single company, instead of being shared between engineering consultants and a number of equipment suppliers. As a customer indicated, 'the greater the range of equipment the OEM has to offer, the greater the potential to supply the turnkey plant. Matching and guaranteeing the performance of crushers and screens is vital in achieving the full criteria in terms of plant design. It is not uncommon to purchase equipment from different suppliers, but the preference is to purchase from one if they are able to meet the performance required'.

(24) In its response to the Statement of Objections, Metso considers that the aversion to risk, on the part of customers, described by the Commission is not supported by the significant entry/expansion within the rock crusher markets in the EEA. Metso refers in this context to a list of significant new entrants.

(25) The argument of significant entry within the rock crusher markets is not supported by the Commission's investigation. Many of the competitors mentioned in the list of new entrants provided by Metso, are in fact long established manufacturers of crushing equipment or companies which have entered into new markets through acquisitions. In addition, as indicated in recitals 156 to 162, the results of the Commission's investigation clearly indicate that the barriers to entry within the rock crushing industry are high.

(26) Furthermore, the long durability of the products, and the need for periodic maintenance and changes of parts also mean that customers often pay a lot of attention to the provision of ancillary services, such as the supply of spare parts and wear parts, the provision of timely and effective maintenance services, advice on process improvement or on the integration of new equipment within the crushing plant, etc. In particular, it appears from the Commission's investigation that customers usually pay a lot of attention to, the fact that the equipment supplier has a national or regional presence near their site, and very often require them to do so.

(27) Customers also indicated that they attached substantial importance to the financial security and commitment of their equipment suppliers, because of their insistence that they be able to find adequate spare parts and services for the whole life duration of their rock crushing equipment.

(28) Finally, the customers' risk aversion means that they often wish to develop longstanding relationships with their rock crusher suppliers, and in particular that the provider of their initial green-field, turnkey plant, will often have an advantage over its competitors for the replacement of used machines. For instance, the data submitted by the parties indicate that the parties' success rate is usually substantially higher for those customers to which they supplied the initial turnkey plant than for other categories of customers.

(29) As regards turnkey plants and longstanding supplier relationships, Metso considers, in its response to the Statement of Objections, that the market for turnkey plants is in fact dominated by 'systems integrators' and that Metso and Svedala are not 'full-line' suppliers able to supply a full turnkey contract. Metso also submits that suppliers of turnkey plants only have a minimal advantage over their competitors.

(30) The Commission's investigation does not support those arguments. First, there is no evidence of 'systems engineers' dominating the market. In fact, several engineering companies consulted by the Commission stated that their participation usually happened via the original equipment suppliers. Secondly, as indicated in recital 28, the results of the Commission's investigation clearly indicate that suppliers providing a wide range of equipment are in a better position than others to supply a turnkey plant, and that Nordberg and Svedala are considered to be the suppliers with the broadest product portfolio.

C. **Rock crusher customers**

(31) Demand for crushing equipment essentially comes from five types of customers: (i) cement companies, which use crushers for the production of cement as well as for the production of aggregates for sale to third parties, (ii) construction and civil engineering companies and specialist demolition contractors, which use crushers for the production of aggregates from demolished buildings and from rock, (iii) independent aggregate producers, which produce aggregate from quarries for sale to road and railway construction companies, and for building

construction and landscaping purposes, (iv) contractors, hired to crush rock on a contract basis, and (v) mining companies, which crush the extracted mix of rock and ore into finely ground particles, which are processed so as to separate the metal or the mineral ore from the rock.

(32) Broadly speaking, it appears from the Commission investigation and from the parties' submission that rock crushing customers may be categorised into two groups, depending on the type of equipment they purchase and on their procurement pattern: smaller A&C customers on the one hand, and larger mining companies or aggregate and cement producers (mining customers) on the other hand. A&C customers include independent aggregate producers and contractors, construction and civil engineering companies, specialist demolition contractors, and cement companies, when they purchase smaller crushers for the production of aggregates sold to third parties. By contrast, mining customers include mining companies, very large size quarries and cement producers, purchasing larger equipment for the production of cement.

(33) A&C customers are usually small-size companies operating on a local or national basis, each purchasing a limited number and range of crushing products. Those customers usually only procure the smaller crushers, and, in view of the need for additional services as described above in recital 26, such as provision of spare parts, technical support, advice for process improvement or new purchases, almost exclusively purchase their equipment from the supplier's national agent or distributor, with whom they very often have a close on-going relationship.

(34) By contrast, mining customers are usually large-size companies, sometimes with a presence in several countries or even continents, which usually purchase larger, high capacity equipment, albeit in much smaller quantities than A&C customers. Their size, and the fact that they may operate in remote areas, may make them less dependent than A&C customers for national support, and they often procure through international and, in the EEA, mostly regional competitive bidding. However, it appears from the Commission's investigation that, at least in the EEA, proximity still plays an important role in the selection of the rock crusher supplier. For instance, several mining customers indicated that they considered it essential for their supplier to have a presence in the region, for example, the EEA of their site. Almost all mining customers considered at least, that having a regional presence was a substantial competitive advantage for equipment suppliers. This appears to be due to a number of reasons, in particular the relatively small size of EEA mining customers when compared to the global average, the high proportion of companies with activities in the EEA only, and the relatively high proportion of cement companies and very large quarries, which are often less used to working in remote and difficult areas.

(35) Finally, it should be noted that A&C demand is often fragmented but concerns relatively large quantities of crushers, typically several hundred units per year in the EEA, while mining demand concerns a very limited number of products. For instance, the average EEA-wide market volume for gyratory crushers has been only two units per annum since 1990.

D. **Rock crusher suppliers**

(36) Rock crushers are usually produced in a very limited number of manufacturing plants world-wide: for instance, Svedala manufactures all of its Jawmaster series of jaw crushers in Brazil, while Nordberg produces all of its G-series cone crushers in Finland. Products are then sold either directly by the central sales office of the equipment manufacturer, or, in the case of A&C products, through a network of agents, distributors or subsidiaries each with an allocated, and often exclusive, territory.

(37) The rock crushing industry is characterised by a continuum of companies, from the large, international and broad-range firms, such as Svedala, Nordberg, Terex or Krupp, to the smaller companies offering a limited number of products in a narrow geographic area, such as Haahjem Base, selling A&C jaw crushers in the Nordic countries, or Rodrigo Matias Magalhães, only active in Portugal. Between these two extremes, one can find companies active at regional level and selling products in only one of the A&C and the mining segments, such as BHS, MEM or Bräuer Aufbereitungsmaschinen, or in one process stage or technology, such as Kleemann & Reiner, Extec or Magotteaux. There are also companies active at the global level but only selling a limited range of products, such as FL Smidth-Fuller, which primarily offers gyratory crushers and grinders to the mining customers.

E. **Procurement**

(38) Rock crushing equipment is usually procured through competitive bidding, either emanating from national

distributors, in the case of A&C products, or for example from the central regional sales centre of the equipment supplier, in the case of mining products. Customers may either purchase a limited number of products or a whole crushing installation. In the latter case, procurement is often made through a turnkey contract.

(39) In practice, turnkey contracts are relatively rare in the EEA. For instance, they account for less than 11 % of A&C crusher sales in that region, and for an even smaller proportion of mining crusher sales. Most sales take place in the context of either replacement of existing equipment, or expansion of existing sites. However, it should be noted the actual importance of turnkey contracts may greatly exceed their share of the market volume. In particular, the fact that Nordberg and Svedala's respective success rates are usually higher in those cases where they supplied the initial plant than in other cases, suggests that the award of a turnkey plant may confer the supplier with a significant advantage over its competitors when it comes to replacing some of the crushers concerned, for instance because the initial supplier knows the plant and the customer and therefore can propose an optimal solution, or because integration within the rest of the plant will be easier. In that context, turnkey contracts may also be viewed as a means for suppliers to establish longstanding relationships with their customers, in order to facilitate future equipment sales.

V. **THE RELEVANT MARKETS**

A. **Relevant product markets**

(40) The parties submit that rock crushing equipment may be categorised both by technology, that is to say, jaw crushers, cone crushers, etc., and by type of application, namely, cement production and mining applications on the one hand, and aggregate production and construction on the other.

Segmentation by technology

(41) The parties submit that, despite a degree of demand-side substitutability between the various technologies, each technology could belong to a distinct product market. This has been confirmed by the results of the Commission's investigation, from which it appears that each technology will generally be primarily used within a specific domain, where other technologies would not be technically or economically viable.

(42) First, as indicated in recital 13, the crushing process is almost invariably carried out through successive stages, each taking as an input the output of the previous stage so as to achieve further size reduction. For instance, aggregate production is usually made through a two-stage process involving a jaw crusher or horizontal shaft impactor (HS impactor) at a primary stage, and another crusher, for example cone crusher, HS impactor or vertical shaft impactor (VS impactor) at a secondary stage. Similarly, the processing of mining ore, which requires further size reduction than aggregate production and involves larger quantities of rock, is typically achieved through a three-stage plant, using a large jaw crusher or a gyratory crusher at a primary step, a cone crusher at a secondary stage and a grinding mill or roller press for finishing work.

(43) In that context, it appears that products used at different crushing stages (i.e. primary processing, secondary processing, and finishing) are not substitutable with each other, because they will usually not be able to process the same size of rock and to deliver the same output. With the exception of the horizontal shaft impactor technology, which can be used either for primary or for secondary crushing, it appears that each crushing technology is mainly used at one process stage (primary crushing, secondary crushing, or grinding) only. It follows that a distinction should be made between those technologies which are used predominantly for primary processing (such as jaw crushers and gyratory crushers), those which are mainly used for secondary crushing (such as cone crushers, vertical shaft impactors) and those which are used for final grinding (such as roller presses or grinding mills).

(44) Secondly, it appears that, even within the same process stage, different technologies are usually not used for the same purposes. For instance, different technologies may be used for different rock qualities, as is shown by the fact that horizontal shaft impactors are primarily used for soft rock applications, while cone crushers are generally considered for hard rock crushing and different technologies may meet different capacity requirements, since jaw crushers are adequate for low and medium tonnage operations, while gyratory crushers are best suited for high-capacity crushing. In that context, it is concluded that each technology will mostly correspond to a specific field of application, where it will usually not compete with other crushers.

(45) Finally, there appears to be limited supply-side substitutability from one technology to another. This is indicated by the results of the Commission investigation, since most competitors indicated that they could not easily switch production from one technology to

another. This is also confirmed by the presence of substantial barriers to entry: in particular, a vast majority of competitors and customers indicated that it usually took several years to develop and introduce a new type of equipment, and that customers very often required suppliers of new equipment to offer physical demonstration of their products, to test them for a long period of time under the customers' field conditions, and even to provide a satisfactory reference list of existing customers for the same product.

(46) Such limited supply-side substitutability is also confirmed by the presence of specialised manufacturers such as Canica-Jaques and Magotteaux (vertical shaft impactors), and by the fact that, more generally, most equipment suppliers do not manufacture the whole range of applicable technologies. For instance, it appears that only a very limited number of rock crusher suppliers in the EEA actually produce cone crushers, and that most suppliers focus on a limited range of products.

(47) The results of the Commission's investigation therefore indicate that there are distinct product markets for each technology. Jaw crushers, gyratory crushers, cone crushers, horizontal shaft impactors, vertical shaft impactors, grinding mills, and roller presses therefore each belong to specific product markets. Screens, feeders and conveyors also appear to constitute distinct product markets.

Segmentation by size/application

Distinct markets for A&C crushers and for mining crushers

(48) Within each technology, products may come in a variety of sizes, from small products to very large products. The parties submit that, on the demand side, all products are linked by a chain of substitution, so that a product of any given size will competitively constrain its immediate larger and smaller neighbours; and the parties also submit that, on the supply-side, it is easy to switch from one size to another, because technologies are fairly simple and also because, in view of the substantial sub-contracting of the manufacture of component parts, the manufacture of larger or smaller products does not require substantial investment.

(49) Nevertheless, the parties submit that a distinction should be drawn between crushers used for aggregate production and construction (A&C crushers) on the one hand, and crushers used for mining applications, very large quarries and cement production (mining crushers) on the other hand ([5]). They consider, firstly, that, although certain rock crushing technologies may be used for both A&C and mining applications, A&C customers will usually procure the smaller equipment, while mining customers will usually purchase the high end, high capacity versions of machines; and , secondly, the conditions of competition between A&C crushers and mining crushers are different, because mining customers tend to purchase products on a global basis, contrary to A&C customers who source rock crushing equipment on narrower basis.

(50) Finally, the parties submit that, within mining cone crushers, very large cones should constitute a specific product market, even different from the market for smaller mining cones, because the very large cones are usually twice as expensive and heavy, and have approximately twice the capacity of the next largest products.

(51) The results of the Commission investigation seem to confirm the parties' view that products of various sizes are usually linked by a chain of supply-side and demand-side substitution. However, at the same time, they indicate that the larger the products, the fewer the competent equipment producers; and, in particular, that manufacturers of A&C products may not always be able to sell products to the mining customers. This suggests the presence of thresholds in the supply-side substitutability, and would indicate the existence of distinct product markets for the smaller equipment (i.e. the A&C crushers) on the one hand, and for the larger equipment (i.e. the mining crushers, which are primarily sold to mining customers, but also to some extent to A&C customers) on the other.

(52) The presence of thresholds in the supply-side substitutability is further confirmed by a number of additional elements. In particular, there are indications that crushers of different sizes may also require different manufacturing plants. For instance, the data provided by the parties suggest that Nordberg has had to split the production of its cone crushers in three different sites (namely Macon (France), Tampere (Finland) and Milwaukee (USA)) respectively manufacturing the smaller crushers, the medium crushers and the larger crushers. Furthermore, a vast majority of competitors indicated that larger crushers were usually much more difficult to produce and sell than smaller crushers, particularly because they implied higher risks and costs, and because they were less easily tested.

(53) Furthermore, there are strong indications that A&C crushers and mining crushers require a distinct business model. The results of the Commission's investigation indicate that competition for A&C crushers is driven by a strong emphasis on service and presence at a national level, and by the need for producers to sell relatively

([5]) The accurate definitions for larger and smaller equipment as provided by the parties are detailed in Annex I to this document.

high quantities of products to achieve sufficient economies of scale. By contrast, mining crushers are usually sold in much lower quantities (for instance, the annual EEA market volume for mining HS impactors is more than 20 times lower than that for A&C HS impactors), they are often produced on order, and competition relies to a much smaller extent on a dense distribution network.

(54) It is therefore concluded that, within each crusher technology, a distinction should be made between (smaller) A&C crushers and (larger) mining crushers.

No market for so-called 'hybrid' jaw crushers

(55) In a submission to the Commission dated 14 September 2000, the parties amended the product market definition they had originally proposed for jaw crushers, submitting that a third 'hybrid' category of jaw crushers should be considered in addition to A&C jaw crushers and mining jaw crushers. The parties suggest that this hybrid category corresponds to jaw crushers with an intake opening between 1,25 m and 1,5 m and that it constitutes a distinct relevant product market, because jaw crushers in this category are predominantly sold through regional (for example, EEA-wide or Asia-wide) tendering procedures, whereas larger jaw crushers are normally sold through world-wide tendering and are purchased essentially by mining customers.

(56) However, it appears from the data submitted by the parties that more than […]* of all jaw crushers with an intake between 1,25 m and 1,50 m sold by Nordberg and Svedala in the EEA are purchased by customers who belong to the A&C segment. Furthermore, most A&C customers have indicated to the Commission that they do not purchase large crushers and small crushers in different ways. In fact, most A&C crushers rely on national distributors of crushing equipment for all of their supplies, regardless of the size of the equipment purchased. Therefore, the Commission concludes that the conditions of competition remain essentially the same for all jaw crushers with an intake of less than 1,5 m and that it would be artificial to distinguish a separate market for the 'hybrid' category of jaw crushers.

(57) It is therefore concluded that jaw crushers may be categorised into two product markets: one for A&C jaw crushers (including all jaw crushers with an intake of less than 1,5 m), and one for larger jaw crushers (typically used in mining applications including very large quarries).

Presence of a distinct product market for very large, high capacity cone crushers

(58) The parties consider that Nordberg's MP800 and MP1000 cone crushers constitute a separate market, in which there is no other product from any manufacturer in the world. The MP800 and MP1000 are the largest commercially available cone crushers in the world. According to the parties, the MP800 and MP1000 belong to a separate market in particular because the crushing force of these two products is substantially higher than that of any other commercially available cone crusher.

(59) The results of the Commission investigation also tend to confirm the presence of a distinct market for very large cone crushers as submitted by the parties. However, some third parties disputed the parties' assertion that the only products competing in that market were Nordberg's MP800 and MP1000, on the basis that Svedala's largest cone (namely, its H8000 model) competes with Nordberg's larger cones. Some third parties also indicated that they view the H8000 model as comparable to other Nordberg cone crushers, including in particular the HP800, a cone crusher of a size similar to that of the MP800, but with a lower crushing force.

(60) The parties have provided information to the Commission which shows that on many occasions, Svedala has offered its H8000 cone crusher as an alternative to Nordberg's, MP800, MP1000, HP800 or HP700 ([6]) crushers. On some of these occasions, Svedala has actually been able to convince its customer to purchase its H8000 cone rather than one of Nordberg's very large cones. Furthermore, the internal documents from Metso analysing the conditions of competition for large cone crushers invariably take into account, not only Nordberg's MP1000 and MP800 crushers, but also Svedala's H8000 and Nordberg's HP800 and HP700 products.

(61) All these very large cones appear to share common technical characteristics. They all have a nominal power rating over 500 kW; their liner diameter is larger than 1 800 mm and they weigh over 60 tonnes. Such crushers are typically used in heavy duty and high volume mining applications. There are only two other products available in the market which appear to share some of the technical characteristics of Nordberg's and

([6]) The HP700 has physical characteristics similar to that of the HP800, except that its nominal power is 560 kW instead of 600 kW.

Svedala's high capacity cone crushers: these are KFS2100 cone crusher, and, to a lesser extent, the Z18 ([7]) cone crusher, both manufactured by Kawasaki.

(62) All the above-mentioned high capacity cone crushers (including Kawasaki's products) have estimated unit prices over EUR 800 000, which is more than twice the average price estimated by the parties for 'normal' mining cone crushers (EUR 370 000). This very substantial price difference shows that high capacity cone crushers are normally not substitutable with smaller 'normal' mining cone crushers (i.e. cone crushers with a liner diameter above 1,5 m and below 1,8 m).

(63) The parties have submitted that larger mining cone crushers other than the MP800 and MP1000 belong to the same chain of supply-side and demand-side substitution as other mining cone crushers. They have also indicated that one high capacity cone crusher can be replaced by two smaller cone crushers.

(64) However, it appears that besides the parties and Kawasaki, which is marginally present in this business area, no other rock crushing manufacturer is supplying high capacity cone crushers with a power rating above 500 kW. Furthermore, most competitors have indicated to the Commission that developing larger products is a difficult and lengthy process: one competitor in particular has indicated it would take up to five years to successfully develop and market a very large cone crusher. It can therefore be concluded that, from a supply side perspective, the 'normal' and smaller mining cones are not substitutable with the high capacity, very large cone crushers.

(65) The price differences between the two categories of products are a clear indication that customers cannot substitute smaller crushers to high capacity, very large cone crushers. The submission made by the parties that it could be possible to substitute one very large cone crusher with two smaller crushers appears to be entirely theoretical. […]*. Furthermore, the choice of two smaller cone crushers rather than one high capacity crusher entails additional complexity, additional ancillary equipment (such as screens, feeders and conveyors), additional operating personnel and additional maintenance. That choice would therefore imply higher overall purchase price and operating costs. It would thus normally not be economical for a mining customer to choose two smaller cone crushers rather than one high-capacity crusher.

(66) In its response to the Statement of Objections, Metso states that according to its experience, mining cones can be replaced by two smaller (A&C) cones in approximately 60 % of cases. Metso also considers that there are certain advantages of using two smaller cones; for example the risks of total breakdown will be decreased. The Commission recognises the (limited) advantages of using two pieces of equipment instead of a single one but considers that this type of advantage is not sufficiently important to compensate for the extra costs and complexity of purchasing, using and maintaining two pieces of equipment instead of one. […]*.

(67) It can therefore be concluded that high capacity cone crushers constitute a distinct product market. The parties have suggested that, within mining crushers, Nordberg's MP800 and MP1000 products belong to a separate relevant product market. However, the Commission concludes that the operation will create a dominant position in the high-capacity cone crusher market, irrespective of whether or not MP800 and MP1000 belong to this market. Therefore, the exact definition of the high capacity cone crushers market may be left open.

(68) In the light of the above, the Commission concludes that there are separate product markets for A&C crushers (smaller) and mining crushers (larger); and that, within mining cones, very large high-capacity cones constitute a specific product market.

Distinction between new crushers and used crushers

(69) Rock crushers are usually highly durable products which have long useful lives. For instance, the typical life span for A&C jaw crushers is estimated to be around 25 years, but there are crushers operating today which have been in use for more than 40 years. In view of this durability, there is a large stock of used equipment, which may be proposed to customers as an alternative to new equipment.

(70) In that context, it is necessary to examine whether used equipment should be included in the same market as new equipment, or instead whether new crushers and used crushers form part of distinct product markets. The results of the Commission investigation broadly indicate that used equipment is generally not viewed as a substitute to new equipment. First, most competitors indicated that they did not consider the presence of used equipment to act as a substantial constraint on the conditions of competition for new crushers, all the more so as used equipment in a satisfactory shape is scarce and as new technology makes older products obsolete and uneconomical.

([7]) Strictly speaking, the Z18 cone crusher cannot be compared with the parties' high capacity cone crushers since its nominal power rating is significantly lower (330 kW).

(71) Secondly, although customers indicated that they could consider used equipment when deciding on the purchase of a crusher, it appears that, in practice, very few have recently procured used equipment. This appears to result from the combination of the customers' high risk aversion as indicated above in recital 21 on the one hand, and to the risks associated with the purchase of used equipment on the other hand: for instance, the reliability, performance and durability of used equipment may not be secured, there is often no period of guarantee, and, in the case of old products, it is questionable whether the supply of spare and wear parts can be obtained on a durable basis.

(72) Finally, those customers who indicated that they were prepared to buy used equipment stated that they would only do so for relatively new equipment with few hours of utilisation, while it also appears from the Commission's investigation that, usually, used machines are very old and outdated.

(73) In the light of the above, it is therefore concluded that there are separate markets for used crushers and new crushers.

Conclusion

(74) In the light of the above, it is concluded (i) that used crushing equipment and new crushing equipment belong to distinct product markets; (ii) that new equipment should be categorised by technology; (iii) that each technology should be further segmented by size/application into A&C products on the one hand, and mining products on the other hand; and (iv) that, within mining cone crushers, very large high-capacity cone crushers constitute a distinct product market. A table summarising the relevant product markets can be found in Annex I.

B. **Relevant geographic markets**

(75) Metso submits that the markets for mining crushers are world-wide, because customers source products on a global basis. The parties also submit that the markets for A&C crushers are at least EEA-wide, because products sold throughout the EEA are very similar, because transport costs are very low, because production is made at a limited number of locations, and because distribution does not create barriers to entry. As indicated above for example in recital 26, sales of rock crushing equipment do not only comprise the supply of the products concerned, but are usually associated with the provision of a number of after-sales services, such as maintenance and overhaul, spare parts and wear parts, etc. It follows that the dimension of the markets for crushing equipment is determined not only by the geographic scope of the manufacturing level, but also by the conditions of competition for the provision of the after-sales services. […]*.

A&C products

(76) In its decision to initiate proceedings in this case, the Commission identified a number of factors pointing towards national rather than EEA-wide geographic markets for A&C products. In particular, the Commission underlined, firstly, that A&C customers rely on national distributors, secondly, that there appeared to be significant barriers to entry preventing suppliers from extending their operations into Member States where they were previously absent and, finally, that there were substantial variations in prices and in market shares from one Member State to another. However, in view of the presence of other factors pointing in the direction of possibly broader geographic markets, the Commission left the exact definition of the geographic markets for A&C crushers open.

(77) In a written submission to the Commission dated 17 September 2000, the parties endeavoured to address the different issues raised by the Commission in relation to the geographic scope of the A&C markets. The parties followed two main lines of argument. Firstly, they submitted that barriers to entry into the different European national markets are low. Secondly, they claimed that a proper analysis of the purchasing patterns of A&C customers should demonstrate that customers do not depend significantly upon national distributors.

(78) As regards the level of the barriers to entry into the different Member States, the parties underlined that it is not necessary to have a dense distribution network to be active in a given country. For instance, Nordberg's German distribution network consists of a subsidiary, with one outlet, plus five distributors, with one outlet each. The number of staff working in Nordberg's German distribution network does not exceed […]* people. Metso considers that the recruitment of competent commercial and technical staff is not a complex task, that appropriate third-party distributors are easily available and that the financial investment requirements are minimal.

(79) Concerning the purchasing patterns of A&C customers, the parties indicated in particular that a majority of customers obtain spare parts, wear parts, technical support and maintenance services either internally or from independent third parties. Therefore, in the opinion of Metso, after-sales services do not in any way make A&C customers dependent upon national OEM distributors. Furthermore, Metso provided examples of

cross-border sales by distributors which, in the parties' view, is further evidence of the EEA-wide scope of the A&C markets.

Demand side considerations

(80) The results of the Commission's detailed investigation confirm the national dimension of A&C markets. First, it appears that, although customers may obtain most wear parts and routine maintenance services from independent third parties, they still depend on the producers' distributors or agents for almost all specialised key services or parts. For instance, it has been indicated that a majority of spare parts cannot be obtained outside the equipment supplier's distribution network, and that, for complex or important maintenance operations, recourse to the distributor is necessary. Furthermore, it appears that, even for those services which might be sourced from independent suppliers, it is often more effective and competitive to rely on the distributor. For instance, although process engineering services may be purchased from engineering consultants, customers will generally turn to the distributors, which usually consider process engineering as an integral part of the crusher sale and therefore provide that service free of charge. Finally, certain customers indicated that, for certain services (especially process engineering), they were not aware of any third party supplier in their territory.

(81) Secondly, and more generally, relationships between the customers and the producer's distributors are not restricted to the supply of parts and the provision of maintenance services. In particular, a large majority of customers indicated that they require close and frequent contact with their equipment supplier's distributor, and that their relationships with that distributor extended to discussions over future improvements or expansions, technical advice, etc. The importance of that local presence may also be explained by the customers' risk aversion: in a way, the presence of a national distributor can be viewed as an element of additional security in the case of any serious problem, and as a sign of the equipment producer's commitment to continue supplying and assisting their customers.

(82) Thirdly, it appears from the Commission investigation that it is both ineffective and often impossible for customers to deal with distributors outside their country. In particular, the vast majority of A&C customers who responded to the Commission's investigation indicated that foreign distributors would not constitute credible alternatives to distributors in their own country, because of longer delivery times for spare parts, of language barriers, of additional (transport, exchange, etc.) costs, etc. Furthermore, most distributors have exclusive territory agreements: although customers may still be able to contact foreign distributors at their own initiative, it is difficult to understand how those distributors would manage to achieve the close and frequent contact required by customers (and in particular to discuss on future purchases, improvements, etc.) without infringing their contractual territorial restrictions. Finally, it appears from the Commission's investigation that, in practice, even those customers who would decide to turn to foreign distributors might not be able to obtain equipment or services from those distributors: in particular, several customers have referred to examples of situations where distributors located outside their country refused to serve them directly and instead redirected them towards the appropriate national distributors.

(83) It is therefore concluded that demand-side considerations clearly point towards national markets for A&C rock crushing equipment.

Supply-side considerations

(84) As far as the supply-side is concerned, there is no indication that suppliers in other Member States or other foreign countries could start operations in a new Member State in the short term and without incurring significant additional costs or risks.

(85) Although the distribution network required to be active in a given Member State need not be particularly dense, and the physical investment required to set up such a distribution network need not always be substantial, most competitors and A&C customers indicated that setting up a new distribution network would require substantial efforts and time. In particular, it appears from the Commission's investigation that a new distributor would have to build the customer relationships and confidence necessary to start selling products, would have to demonstrate its products' reliability and quality, and would have to convince customers of its ability to supply spare parts and after-sales services in a timely and effective manner. According to the vast majority of customers and competitors, this could take several years.

(86) In particular, one of the competitors among those which, according to the parties, have been able to expand successfully the geographical reach of their operations declared that 'the greatest challenge to […]* effective commercial exploitation […]* is the establishment of secure and reliable distribution and after-sales service/support functions'. Furthermore, A&C

customers appear to be very reluctant to purchase from a supplier whose reputation would not be sufficiently established. Therefore, expanding one's operation from one Member State into another is a complex task, which cannot be accomplished in a short period of time.

(87) The national character of A&C crusher markets is further confirmed by the fact that several manufacturers of A&C equipment have no or very little activity outside their home country. The parties believe that this could be explained because of the limited size (and therefore appeal) of certain national markets. The Commission, however, observes that, first, the parties' argument is an acknowledgement of the need for a national distributor, and of the fact that the establishment of such a distributor is not a straightforward and costless operation; and secondly, that some producers active in certain Member States are absent from some of the largest national markets such as Germany and the United Kingdom. This clearly shows that the 'insufficient' volume of certain national markets is not the main reason why producers refrain from extending the reach of their activities, and therefore suggests that barriers to entry between Member States are not negligible.

(88) It follows that supply-side considerations also indicate the presence of national markets for A&C rock crushing equipment.

Other elements

(89) The national dimension of the markets for A&C crushing machinery is further confirmed by the presence of substantial variations in market shares and prices from one Member State to another.

(90) For instance, Nordberg's market share of A&C jaw crushers in Finland is approximately [75 to 85 %]*, compared with its average EEA market share of [15 to 25 %]*. Similarly, Svedala has been the only company to sell vertical shaft impactors in Sweden for each of the last three years, while its aggregate EEA market share does not exceed [15 to 25 %]*. Although the parties consider that variations in market shares are irrelevant for the purposes of the definition of the geographic markets, the very substantial variations observed here mean that the competitive situation is not homogeneous across the EEA. This is a clear indication that the geographical markets are narrower than suggested by the parties.

(91) [Confidential: This section concerns price differences between Member States for rock crushing equipment sold by Metso]*.

(92) In the light of the above, it is concluded that the geographic markets for A&C crushing equipment (i.e. A&C jaw crushers, A&C HS impactors, A&C VS impactors, A&C cone crushers and the ancillary screens feeders and conveyors) are national.

Mining products

(93) As indicated above in recital 75, the parties submit that the geographic markets for mining products are world-wide. In its response to the Statement of Objection, Metso accepts that there may be some justification for defining the geographic market for mining jaw and horizontal shaft impactor crushers as EEA-wide, but puts forward a number of arguments to support a world-wide scope for the primary gyratory crushers market.

(94) First, Metso considers that the scope of the geographic market may vary from one type of mining crusher to another type. In Metso's view, certain types of mining crushers, such as jaws and horizontal shaft impactors, are simple, 'commodity-like' products, for which there is usually sufficient competition at regional (e.g. EEA-wide) level so that customers will not feel obliged to purchase or compare prices on a wider than regional basis. On the other hand, according to the parties, certain types of mining crushers, such as primary gyratory crushers, are purchased infrequently by sophisticated and well-informed customers who will normally obtain offers from world-wide suppliers before purchasing.

(95) In order to support its argument, Metso has analysed five recent occasions on which one of the parties has sold a primary gyratory crusher in the EEA. On three of those occasions, the customer visited potential suppliers in the United States (F.L-Smidth-Fuller, Metso or Svedala) and/or in Japan (Kobe); on two other occasions, the customer made site visits in a number of countries and the seller (Svedala) assembled a sale team which included experts from Sweden and the United States, as well as members of its local distribution organisation.

(96) As indicated above in recital 34, mining customers are generally large international companies, which, being used to operating in remote and sometimes difficult places, and having substantial resources, have managed to reduce the need for close on-going relationships with the equipment supplier's distributors. In particular, mining customers may meet some of their maintenance and spare part needs in-house, by constituting local stocks of spare parts or by training their own maintenance personnel.

(97) In that context, in view of the fact that those customers repeatedly procure rock crushing equipment for their various operations world-wide, and given the high value and complexity of mining crushers, mining customers often procure mining equipment on a centralised basis and through international competitive bidding with the head sales office of equipment suppliers. In view of the apparently low level of transport costs, equipment producers from around the globe may be authorised to effectively compete for the equipment concerned.

(98) The factors explained in recitals 95 to 97 would appear to point in favour of a broad (possibly global) geographic dimension for the mining crusher markets. However, the results of the Commission's detailed investigation indicate that, especially in the EEA, competition actually takes place on a narrower basis.

Demand side considerations

(99) It appears from the Commission's investigation that, although mining customers are usually much less dependent on a local presence from the equipment supplier, they usually still require rock crusher producers to offer effective and timely support (repair, provision of spare parts, etc.) at EEA level. As a customer indicated, 'as well as equipment functionality and service, a vendor is often selected on their ability to supply expediently key non-stock items that fall outside the scope of routine maintenance. In addition, the vendor's scope of work may also include the supervision of a local maintenance contractor'.

(100) In their response to the Statement of objections, the parties disputed that the requirement for supervision of local maintenance contractors and for speedy delivery of spare parts necessarily implies a regional presence. In their view, supervision may be exercised by experts based anywhere in the world, who can fly whenever needed. Similarly, spare parts could be flown in from a single world-wide base.

(101) However, this objection of the parties only addresses the practical aspects of how maintenance supervision and delivery of spare parts can be organised, and does not take into account the importance paid by customers to the quality of the local or regional after-sales organisation. Although it is evident that some level of centralisation can take place, the need for local presence remains, since customers will often judge unfavourably after-sales organisations that would rely entirely on centralised expertise and logistics. Indeed, the Commission has found evidence that mining customers may actually pay a significant degree of attention to the local capability of their crushing equipment supplier. In particular, a Scottish customer explained that Svedala obtained 'the bulk of [its] large quarry business [including a primary gyratory crusher]' because 'Svedala has a base in Wiskaw, Scotland (and good people too)'.

(102) As indicated in recitals 93 and 94, the parties have tried to demonstrate that, when purchasing large equipment such as a primary gyratory crusher, customers compare offers from the main world-wide suppliers and are willing to travel abroad to visit suppliers and to see the proposed equipment in operation. However, the Commission notes that the majority of mining customers which indicated that they purchase primary gyratory crushers have declared that they obtain these crushers through a more regional procurement procedure, rather than through a world-wide procurement procedure. In fact, no customer based in Europe has indicated that it procured primary gyratory crushers on a wider than EEA-wide basis. In addition, the Commission considers that the customers' willingness to travel so as to see a given piece of equipment in operation does not preclude the regional dimension of the market. This is mainly because site visits by customers mainly aim at verifying the suitability of the products concerned and do not relate to technical support or after-sales services, while the regional dimension of procurement is precisely due to the importance of support or after-sales service considerations. The customers' willingness to travel abroad to see products in operation can instead be construed as an additional demonstration of the customers' risk aversion as described in recitals 21 and 22. This clearly shows that the typical purchasing pattern of European mining customers is based on EEA-wide (or even national) procurement.

(103) Furthermore, it appears that, although some customers might theoretically make do without such a regional presence (because they manage to do so for their sites in remote areas where no equipment supplier offers sufficient support, by constituting local stocks of spare parts, training their own maintenance and repair people, etc.), this would not be the case for the vast majority of mining crusher customers in the EEA. First, it appears that most of the demand for mining crushers in the EEA is from either smaller, regional mining companies (who could not easily develop those competencies in the short term) or from cement companies and very large quarries (which are often less used to working in remote and difficult areas).

(104) In addition, the results of the Commission's investigation suggest that even for those European mining customers with the capability to manage without any regional presence from the equipment supplier, developing such capability would entail

additional costs and risks which they prefer to avoid, by obtaining the relevant services directly from the equipment manufacturer. In that context, and given that several equipment suppliers have a substantial presence in the EEA and therefore offer such support services, customers in the EEA will therefore usually opt for those crusher producers able to provide support service at the regional level. This is further indicated by the fact that those suppliers without a substantial presence in the EEA have no (or, in any event, very limited) sales in that region, although they may have much stronger positions elsewhere. For instance, this is the case of Kobe, which, despite being the world's third largest supplier of mining jaw crushers, mining cones and horizontal tumbling mills, has not made any sales in the EEA over the last three years. In fact, based on the data provided by the parties, Kobe does not appear to have made any sales of mining crushers in the EEA since 1990.

(105) Finally, as described above in recitals 21 and 22, the combination of the long durability, the criticality of rock crushing machinery, and the limited purchase price of rock crushers when compared to the overall costs and revenues of a quarry or aggregate production plant, appears to make customers very conservative and averse to risk in their choices. In that context, proximity with the equipment supplier may be seen as an important element of comfort and security for the customer.

(106) That obviously does not preclude the fact that customers may carry out their purchases and contract negotiations from their head office, and that all suppliers world-wide may formally be invited to compete. However, even those customers which procured equipment in such a way indicated that, in practice, the purchase of a rock crusher for use in the EEA will greatly depend on the presence of effective and timely support in that area.

Supply-side considerations

(107) The regional dimension of competition in the EEA is further indicated by a number of additional elements. First, it appears from the results of the Commission's detailed investigation that most of the non-European mining crusher suppliers as listed by the parties are unknown or at least unfamiliar to most mining customers in the EEA. Some mining customers even indicated that some of those suppliers were not active in rock crushing machinery at all.

(108) In addition, it appears that most suppliers of mining crushers do not operate on a global basis, but instead tend to specialise in certain regions or areas. This is particularly true for Russian and Chinese suppliers, which have relatively few sales outside their home markets and are not considered by the vast majority of customers to be credible competitors outside Russia and China. For instance, most customers stated that they did not know those suppliers, and those customers which had had some contacts with Russian and Chinese suppliers indicated that their products were of inferior standards and performance, and that their spares and service were unreliable.

(109) That specialisation in a limited number of regions also appears to hold true for most other crushing machinery producers. Despite a broader geographic scope of operations, and with the exception of a very limited number of truly global players (such as Svedala, Nordberg, or FL-Smidth-Fuller), it appears from the data provided by the parties that most mining crusher producers are active in a limited number of regions only, and obtain most of their contracts through national or regional tenders.

(110) This appears to be particularly so in the EEA. For instance, according to the data provided by the parties, major mining crusher suppliers such as Kobe (the world's third largest supplier of mining jaw crushers, mining cones and horizontal tumbling mills) and Kawasaki (the world's second largest supplier of mining cones) have been unable to sell products in Europe over the last three years. More generally, it appears from the data submitted by the parties that the market positions of the main mining crushing machinery are substantially different in the EEA from what they may be on a global basis (even excluding Russian and Chinese producers). For instance, in HS impactors, the parties' combined market share (in terms of units) between 1997 and 1999 amounts to [20 to 30 %]* in the EEA, compared with a global market share (excluding Russian and Chinese producers) hardly exceeding [0 to 10 %]*. Similarly; in large jaw crushers, the parties' combined market share reached [40 to 50 %]* at the EEA level, while it hardly exceeds [15 to 25 %]* world-wide (excluding Russian and Chinese producers).

(111) Finally, a vast majority of competitors indicated that there were substantial barriers to entry from one region to another. In particular, the EEA is a limited mining crusher market, when compared to large mining areas such as North America or South Africa. For instance, according to the data submitted by the parties, no more than […]* primary gyratory crushers are sold each year in the EEA, while approximately […]* units are procured annually world-wide (excluding Russia and China). Similarly, in mining HS impactors, the EEA represents on average no more than [0 to 10 %] of total global demand (once again, excluding Russia and China). That small market volume, together with the presence

of already well-established competitors and the level of proximity and service required by customers, might deter non-EEA suppliers from incurring the costs and difficulties necessary for an effective entry into the EEA mining crusher market, and thus further reduce the number of credible suppliers to EEA customers.

Other elements

(112) The fact that competition is not organised on a world-wide basis is further confirmed by the considerable discrepancies in the global market volume estimates provided by rock crushing machinery suppliers. For instance, excluding Russian and Chinese producers, the global market volume estimations for 1999 as provided by the parties and competitors range between 40 units and 99 units for mining HS impactors. Similarly, in gyratory crushers, a competitor believed itself to be the clear market leader with a considerable market share between 1990 and 1996, while the parties estimate that this competitor did not represent more than 25 % of sales in that period, and the results of the Commission's investigation suggest that this competitor's market share was probably in the area of 30 to 35 %. This indicates that suppliers are not aware of a substantial amount of projects world-wide, and, by contrast, strongly suggests that a number of contracts are placed on a narrower basis.

(113) Finally, it should be noted that rock crushing machinery for sale in the EEA has to comply with the safety specifications of Directive 98/37/EC of the European Parliament and of the Council of 22 June 1998 on the approximation of the laws of the Member States relating to machinery (the Machinery Directive) ([8]), as amended by Directive 98/79/EC ([9]) and in particular has to bear a 'CE marking' demonstrating its conformity with that directive. It has been brought to the attention of the Commission that non-European manufacturers do not always meet those requirements today. From that viewpoint the Machinery Directive, whilst harmonising standards in the EEA and facilitating trade between Member States, might also have the indirect consequence of preventing non-European suppliers that are unable to match its requirements from selling in the EEA. This would therefore contribute to the existence of a distinct EEA market for mining crushing machinery. The parties nonetheless submit that the Community requirements applicable to rock crushers are of such a basic nature that it can be expected that all suppliers operating in different parts of the world are able to meet those requirements without major difficulty.

(114) In the light of the above, it is concluded that the geographic markets for mining crushers are EEA-wide. This conclusion is supported by both the specificity of demand in the EEA (and especially by the presence of small 'mining' customers procuring rock crushing machinery locally or requiring the presence of substantial after-market support in the EEA) and the organisation of most rock crusher suppliers on a regional basis. In particular, and contrary to the allegations of the parties, the Commission has found no evidence of a larger than EEA-wide market for certain types of mining crushers such as primary gyratory crushers: indeed, for the reasons explained above in recital 102, primary gyratory crushers appear to be purchased and distributed in the EEA essentially in the same way as other mining crushers.

VI. COMPETITIVE ASSESSMENT FOR A&C CRUSHERS

(115) As indicated in recital 32 above, A&C crushers are the smaller crushers sold to independent aggregate producers and contractors, construction and civil engineering companies, specialist demolition contractors, and cement companies (when they purchase smaller crushers for the production of aggregates sold to third parties). They include smaller jaw crushers, smaller HS impactors, smaller cone crushers, VS impactors and obviously the ancillary screens, feeders and conveyors. The operation will lead to the combination of Nordberg and Svedala, which are the two largest suppliers of A&C crushers in the EEA and collectively account for [20 to 30 %]* of A&C rock crushers, the next largest competitors being Terex (approximately [5 to 15 %]* and Krupp (approximately [0 to 10 %]*).

A. A&C crushers other than cone and jaw crushers

(116) As indicated in the Commission's decision to institute proceedings in this case, there is no indication that the operation will create competition concerns in the markets for impactors, screens, feeders or conveyors.

(117) First, the operation does not raise competition concerns for impactors, since Nordberg does not sell VS impactors in the EEA. Furthermore, although Nordberg is currently entering VS impactor production through the introduction of a new range of products, and although Svedala currently has strong market positions in certain Member States, it appears that the merged entity will remain subject to competition from other large VS impactor producers (such as Magotteaux or Canica-Jaques) with a substantial presence in the

([8]) OJ L 207, 23.7.1998, p. 1.
([9]) OJ L 331, 7.12.1998, p. 1.

Member States concerned. Furthermore, in HS impactors, the parties' combined market shares ([10]) do not exceed [20 to 30 %]* in any Member State where overlaps occur, and the merged entity will remain subject to the competition from other suppliers such as Hartl, Kleemann & Reiner, or national players such as Arja.

(118) Secondly, the parties have limited positions in the markets for screens, feeders and conveyors: according to the market share figures provided by Metso, the parties collectively account for less than [10 to 20 %]* of sales of screens and feeders in the EEA, and they are marginal suppliers of conveyors. This is also true at the national level, since the parties' market shares in screens and feeders would not exceed [20 to 30 %]*, respectively, in any Member State.

B. **Cone and jaw crushers**

Market positions of the parties and their competitors

Cone crushers

(119) Nordberg and Svedala are by far the two largest suppliers of A&C cone crushers in the EEA (with market shares of [25 to 35 %]* for Nordberg, and [25 to 35 %]* for Svedala), the next largest competitor in the EEA being Terex [5 to 15 %]*.

(120) Insofar as the operation results in the combination of Nordberg and Svedala, it inevitably results in considerable market shares in most EEA Member States, namely Austria [65 to 75 %]*, Denmark [70 to 80 %]*, Finland [85 to 95 %]*, France [80 to 90 %]*, Germany [45 to 55 %]*, Italy [40 to 50 %]*, Norway [90 to 100 %]*, Portugal [60 to 70 %]*, Spain [65 to 75 %]*, Sweden [75 to 85 %]*, and the United Kingdom [35 to 45 %]*.

(121) In those Member States, the prevalence of the merged entity is even more important as the rest of the supply side is often highly fragmented, and some of the remaining competitors may often be local players, only active in a limited number of Member States. A typical example of such a situation can be found in Austria, where the merged entity will have a market share almost […]* times as high as that of its next largest competitor Terex [5 to 15 %]*, the rest of demand being mostly met by local competitors. Even in Italy, where the parties' market shares are relatively less important, the merged entity's share of sales will be more than […]* that of its next largest competitor, and it will be confronted by a substantial number of small local suppliers such as Comec (the next largest competitor) or Reiter e Crippa.

(122) Furthermore, in the United Kingdom, it should be noted that the parties' average combined market share in the period from 1997 to 1999 underestimates the actual market positions of Nordberg and Svedala, because of the considerable growth of the parties' shares of sales in that period. In particular, although Nordberg and Svedala only accounted for [20 to 30 %]* of sales in 1997, they represented [40 to 50 %]* of units sold in 1998 and [50 to 60 %]* in 1999. As a result of that evolution, the merged entity's market position is now more than twice that of its next largest competitor, Terex [15 to 25 %]*.

(123) In most remaining national markets, the operation will either not create any overlaps or will lead to combined market shares below [30 to 40 %]* (as in Belgium and the Netherlands). An intermediate situation exists in Ireland, where Nordberg and Svedala's combined market shares reach [40 to 50 %]*, but where Terex and PSP still account for substantial proportions of sales (respectively [30 to 40 %]* for Terex, and [15 to 25 %]* for PSP).

Jaw crushers

(124) Nordberg and Svedala are two of the largest suppliers of A&C jaw crushers in the EEA [10 to 20 %]* for Nordberg, and [5 to 15 %]* for Svedala), the other largest competitors being Terex [10 to 20 %]* and Extec [5 to 15 %]*.

(125) The operation will lead to very high cumulated market shares in Finland [75 to 85 %]*, Norway [60 to 70 %]*, and Sweden [55 to 65 %]* and Denmark [35 to 45 %]*. In Finland, Norway and Sweden, the rest of the supply-side is highly fragmented, the next largest competitor barely accounting for [10 to 20 %]* of sales. This is somewhat less so in Denmark, where another competitor, Böhringer, represented [20 to 30 %]* of sales between 1997 and 1999.

(126) In Portugal, Nordberg and Svedala collectively accounted for [40 to 50 %] of sales in 1999. However, Svedala's average sales do not exceed […]* unit per year in that market (out of a market volume of 13 units). Therefore, the overlap between the parties is de minimis, and the operation does not substantially affect the conditions of competition in that country.

(127) The operation will also create overlaps in a number of other markets. However, with the exception of Austria, the parties' combined market shares do not exceed [20 to 30 %]* in any of those countries, and they will remain subject to the competition from other market

([10]) In view of the low market volumes in most EEA Member States, market shares for A&C products have been calculated as an average of units sold between 1997 and 1999.

players, either global players (such as Terex, Extec or Parker) or local suppliers (such as Laron). Furthermore, in Austria, where Nordberg represented [25 to 35 %]* of sales in 1999, the operation will only have de minimis effects, since Svedala only sold […]* jaw crusher in 1999 out of a total market volume of 34 units.

Additional competitive advantages of the parties

(128) The above considerations suggest that the merged entity will both have considerable market shares and be very substantially larger than its competitors in most of the markets concerned. Furthermore, it appears from the market investigation that the merged Metso/Svedala will benefit from a number of additional competitive advantages enabling it to further weaken existing competitors and raising the barriers to entry in the markets concerned.

Highest reputation

(129) First, as indicated in recitals 18 to 21, the durability and criticality of rock crushing equipment make customers highly averse to risk, and cause them to opt for secure products and suppliers even if that implies paying higher prices. As a customer indicated, 'quality is the principal issue with regard to product comparisons. This is irrespective of type of equipment'.

(130) In that context, it is important to note, first, that customers indicated that they considered performance, reliability and after-sales services to vary significantly between the various suppliers, and, second, that Nordberg and Svedala are almost unanimously considered to be the rock crusher suppliers with the highest reputation in the industry. This is reflected in the results of the Commission's investigation, which in particular show that Nordberg and Svedala's products are the clear solutions of choice when it comes to processing hard or abrasive (and therefore challenging) rock. Similarly, internal documents from Nordberg indicate that one of its targeted competitive advantages was to offer the 'best and most reliable products in the industry offering more proven advantages to customers than competing products', while other documents indicate that 'Nordberg products are considered good and high quality on average'.

Broad product portfolio

(131) The merged entity will also be able to derive substantial advantages from its broad product portfolio. In particular, customers and competitors have pointed out that the capacity to offer a broad range of equipment is important in the context of turnkey offers for green-field crushing sites or substantial capacity expansion, and also that this enables the rock crushing supplier concerned to offer complete after-sales solutions and to reduce risks through having one supplier bear the overall responsibility of the rock crushing installation. It was also argued that this allows the rock crushing supplier to have the best possible knowledge of its customer's crushing site, and therefore to be in a position to offer optimal advice and solutions for improvements, upgrades or capacity expansion. In the words of Svedala's President and CEO, 'customers are seeking suppliers who offer complete solutions'.

(132) In that context, the fact that Nordberg and Svedala are considered to be the suppliers with the broadest product portfolio will clearly give the merged entity an additional significant competitive advantage. Similarly with Nordberg, which boasts having a 'full product line to cover all customer requirements in rock size reduction and classifying', Svedala's President and CEO indicated that 'Svedala is alone in offering a complete assortment. […]*. Consequently, customers can acquire a whole line of products and services from a single supplier, while our competitors can only meet portions of their overall needs. […]* That means that we have a very strong platform for the future'.

(133) In particular, the combination of a high reputation and a broad product portfolio should make the merged entity the supplier of choice for new turnkey contracts. This would especially be so because, firstly, other competitors indicated that they depended on the parties for the supply of certain equipment (primarily cone crushers), secondly, most customers have indicated that Nordberg and Svedala were the only ones able to offer large turnkey contracts, and, thirdly, third parties stated that they regard the cone crushers as the 'competitive driver' according to which other purchasing decisions are made (especially in hard rock crushing conditions, where the performance of the plant is determined by that of the cone crusher).

(134) Turnkey contracts are relatively scarce (they represent approximately […]* of Nordberg's rock crushing turnover). However, as indicated in recital 39 above, they appear to have important implications for the conditions of competition: in particular, they have been reported to create a longstanding relationship between the equipment supplier and its customer, which, in view

of the customers' high risk aversion, generally make it easier for the supplier to win future contracts with the customer concerned and therefore to further reduce the competitive pressure from other suppliers.

Broad geographic coverage

(135) Nordberg and Svedala have unrivalled geographic coverage in the EEA (and even possibly world-wide). First, in an industry sensitive to business cycles, this will help the merged entity both to mitigate business risks and to be close to customers when it comes to sales and service.

(136) Secondly, and much more importantly, this broad coverage should enable the merged entity to engage in selective competitive actions against other suppliers with a more limited (and sometimes national) scope of operations. The effects of such behaviour could be all the more detrimental as, in the A&C sector, a significant proportion of competitors (and sometimes, the next largest supplier after the merged entity) fall in that category. This is, for instance, the case in the Norwegian, Swedish and Italian markets for A&C cone crushers.

Economies of scale

(137) There are indications that size matters in the A&C sector, since competitors indicated that, in order to be competitive in the A&C sectors, relatively high quantities had to be sold so as to benefit from economies of scale.

(138) In that context, it should be noted that the merged entity will become by far the largest producer of A&C cones (with [60 to 70 %]* of sales), as well as (albeit to a lesser extent) jaw crushers (with [20 to 30 %]* of sales) in the EEA. Given that the next largest competitors to the parties in certain Member States are much smaller companies, this could enable the merged entity to engage in targeted competitive actions against those competitors and further tighten their grip on the markets concerned.

(139) This could be the case of Böhringer, Nordberg and Svedala's largest competitor in the Danish market for jaw crushers, who, although representing [20 to 30 %]* of sales in that country, will have sales volumes equal to only [0 to 10 %]* of that of the merged entity at the EEA level. This could also be the case in the United Kingdom and Irish markets for cone crushers, where although the parties' next competitor, Terex, has sizeable positions, its sales of A&C cone crushers in the EEA will be less than one-seventh of that of the merged entity.

Insufficient competitive constraints from existing competitors

(140) The above considerations indicate that, after the operation, smaller competitors with a narrower product range and scope of operations will not be in a position to exercise sufficient competitive pressure on the merged entity. In particular, they will clearly not be in a position to offer the level of guarantee, reputation and support that risk averse customers usually require.

(141) However, as indicated in recital 37 above, the rock crushing industry is also characterised by a continuum of suppliers, from large, international and broad-range firms (such as Svedala, Nordberg, Terex or Krupp), to smaller companies offering a limited number of products in a narrow geographic area (such as Haahjem Base, selling A&C jaw crushers in the Nordic countries (Sweden, Finland, Norway, Denmark and Iceland), or Rodrigo Matias Magalhães, only active in Portugal). To the extent that some of the larger rock crushing suppliers are also active in A&C cone and jaw crushers in the Member States concerned, it is necessary to examine whether the pressure of those suppliers could substantially constrain the competitive behaviour of the merged entity.

(142) Four of those larger companies manufacture cone crushers and/or jaw crushers. Those are Terex, Krupp, Parker and Kleemann & Reiner:

(a) Terex is a US-based diversified global manufacturer of lifting, earthmoving and light construction equipment for the construction, quarrying, recycling and mining industries. Terex entered the markets of A&C crushers in 1999 through the acquisitions of US-based Cedarapids Inc. and United Kingdom-based Powerscreen. Terex now offers a full range of A&C crusher equipment, including jaw crushers (fixed, track, mounted and portable) and cone crushers. Terex sells its products in 60 countries.

(b) Krupp Fördertechnik is a German subsidiary of the ThyssenKrupp Group and supplies a full range of crushing equipment. It sells Telsmith-developed cone crushers on the basis of a license agreement under

the Telsmith brand name (which is a large supplier in the USA).

(c) Parker is a long-established United Kingdom-based manufacturer of crushing and screening plants. It has expanded its product range during the last five years. It sells a wide range of fixed, track mounted and portable jaw crushers. Its product range also includes a cone crusher. Parker sells across the EEA.

(d) Kleemann & Reiner is a long-established German company which has expanded significantly in the 1990s. It now sells both jaw and cone crushers in most EEA Member States.

(143) The results of the Commission's investigation indicate that the presence of those competitors may be sufficient to prevent the merged entity from leveraging its market positions in cone and jaw crushers so as to extend its dominance into new product areas. This is especially so because the equipment producers referred to in recital 142 also have relatively broad product portfolios, sufficient geographic coverage, and excellent reputation in some market areas.

(144) However, the investigation's results also indicate that those suppliers will not be able to challenge the merged entity's market position in cone crushers in most EEA Member States and in jaw crushers in Denmark, Finland, Norway and Sweden.

(145) First, it is clear from the combination of the parties' considerable market shares; the merged entity's significant additional competitive advantages; the importance attached by customers to quality, experience, after-market service and more generally risk reduction; and the limited presence and lower reputation of all other suppliers in the markets concerned, that no other existing cone or jaw crusher manufacturer would be able to substantially challenge the merged entity's competitive position in those markets. This is further suggested by the fact that most customers could not name any crusher supplier with an offer competitive with that of the parties (let alone that of the merged entity).

(146) Secondly, it appears that the other suppliers may suffer from a number of additional weaknesses when compared to the parties. For instance, cone crushers and jaw crushers (especially in the Nordic countries) are often used in hard or abrasive rock conditions. It is true that most crushers available are able to crush hard and soft rock and that it would not be economically feasible to design crushing equipment only for hard or for soft rock applications. However, it has been clearly indicated by third parties during the market investigation that not all the products offered are able to crush all hard rock (material harder than 30 000 pounds per square inch). In fact, many customers crushing hard rock consider Nordberg and Svedala as the only suitable suppliers, since they represent the highest quality in this respect. In that context, it is highly questionable whether the other suppliers, which are already at a disadvantage in terms of reputation, could reasonably convince conservative customers to change their existing and satisfactory crushers for products perceived to have a lower quality.

(147) Similarly, there are strong indications that those suppliers' distribution networks may be much less effective than that of Nordberg and Svedala. For instance, a significant number of customers (such as the Portuguese association for mining and aggregate companies) indicated that they were not aware of any other supplier but Nordberg and Svedala. Others indicated that those other suppliers they knew did not have sufficient presence in their country.

(148) In the light of the above, it is concluded that existing competitors are not in a position to substantially challenge the merged entity's market position, or to exercise any significant constraint on its competitive behaviour in the markets concerned. This is also further confirmed by the results of the Commission's investigation, since most customers and competitors indicated that the operation would create a monopoly in cone crushers, and a significant number of customers in the Nordic countries expressed concerns for jaw crushers. As one customer put it, 'the alternatives are few and do not have the in-depth knowledge and world-wide experience applicable. Choice will be virtually nil'.

Insufficient countervailing buying power from customers

(149) There is no indication that A&C customers could have sufficient market power to constrain the competitive behaviour of the merged entity. As indicated in recital 35 above, A&C demand is highly fragmented (customers usually accounting for no more than […]* of Nordberg or Svedala's sales), customers do not often procure new equipment and purchases therefore tend to vary from one year to another. That is further indicated by the fact that a majority of customers indicated that they had limited bargaining power and depended on a limited number of suppliers. Most customers also voiced serious concerns about the effects of the proposed transaction.

Insufficient additional competitive constraints

Other technologies

(150) The parties have submitted that there is a degree of demand side substitutability between the various A&C crusher markets, especially between VS impactors and cone crushers. According to the parties, VS impactors could compete with cone crushers in approximately 30 % of cone crusher applications. They claim that this substitution is also expected to increase following technological advances, and therefore to significantly reduce any market power the merged entity could have in cone crushers.

(151) The market investigation does not support this reasoning. First, even accepting the argument of the parties, cone crushers would not compete with VS impactors in 70 % of cases. Secondly, a vast majority of competitors indicated that they did not consider VS impactors (or any other technology) to be sufficient to constrain the competitive behaviour and the prices of the merged entity. As one competitor put it, 'a cone crusher is a very important machine for the majority of processing plants. When a cone crusher is needed due to the crushed material there is no technical alternative, it can definitely not be replaced by a vertical shaft impactor, because it is not technically or economically possible'. It is therefore concluded that alternative technologies are not sufficient to constrain the competitive behaviour and the prices of the merged entity.

Used equipment

(152) The parties have also submitted that, in addition to new rock crushing equipment, there is significant trade in used equipment within the EEA. According to the parties there are several globally operating suppliers selling this 'second-hand equipment'. Used equipment is also widely advertised.

(153) However, as indicated above in recitals 69 to 73 relative to product market definition, used equipment is relatively rarely considered to be an alternative to new equipment by customers, primarily because of the risks (questionable reliability and durability, absence of guarantee, uncertainties about supply of spare parts, etc.) attached to used products. In addition, especially in high performance applications, a maximum utilisation of the equipment is required and these operations cannot use second-hand equipment to achieve their business objectives. Used equipment is sometimes considered for budgetary reasons in order to complete crushing work with a limited scope, but even in these specific cases smaller and cheaper new crushers are usually preferred instead of second-hand crushers.

(154) Furthermore, even those customers who indicated they were prepared to buy used equipment stated that they would only do so for relatively new equipment with few hours of utilisation. Given that customers also indicated that, used machines were usually very old and outdated, this further confirms that the presence of a stock of used equipment may not be sufficient to substantially constrain the merged entity's competitive behaviour.

(155) In the light of the above, it is therefore concluded that used equipment or alternative technologies do not constitute substantial constraints for new A&C cone and jaw crushers.

High barriers to entry

(156) There is no indication that the merged entity's market position in A&C cone and jaw crushers could be substantially challenged in the short to medium term by the prospect of new entry.

(157) First, the conditions of entry cannot be dissociated from the high risk aversion of customers. In that context, it is quite apparent that any new entrant would face considerable hurdles because it would lack sufficient reputation and references, and would not be able to guarantee security of supply of spare parts and customer services. Those barriers will be further strengthened after the merger has created a highly-reputed supplier with a considerable reference list and customer base.

(158) In particular, the results of the Commission's investigation indicate that, in addition to the substantial investment and efforts linked to the development of sufficient know-how and production capacity in a new technology, any newcomer would face significant obstacles in convincing risk averse customers of the quality of its products and services. For instance, it appears from the Commission's investigation that newcomers will often be unable to sell their products unless they can offer physical demonstration of their products, test their products under the customers' field conditions, and provide customers with satisfactory reference lists. The high costs relative to demonstration and tests, and the impossibility for new entrants to

produce reference lists, will all contribute to making entry very difficult. This is probably even more so in Denmark, Finland, Norway and Sweden, where rock crushers often operate in hard/abrasive rock conditions, and therefore the requirements for reliability and quality, and the customers' risk aversion, will be even more important than elsewhere.

(159) Furthermore, as indicated in recitals 80 to 82 above, selling in A&C markets requires the presence of an effective distribution network, with the ability to quickly and competitively supply spare and wear parts and provide maintenance and advice to customers. It appears from the Commission's investigation that, in view of the limited amount of multi-brand dealers available, and of the need for longstanding relationships between the customers and their distributors, developing a distribution network would entail substantial financial investment and, more importantly, would involve a substantial amount of time (in the order of several years). As one competitor indicated, 'for both after-sales and distribution, there is a limited number of experienced dealers available in a specific market, which are normally bound to a specific producer/brand. Best access to the customer base is the key to success. To establish this access, very long contacts and mutual confidence are required which at the beginning cost money and do not create equivalent income.'

(160) Finally, it appears that, in order to be competitive in the A&C sectors, relatively high quantities have to be sold so as to benefit from economies of scale. Approximately 400 to 500 cone crushers, and about 600 to 700 jaw crushers are supplied each year in the EEA. This would place any newcomer at a cost-disadvantage in relation to well-established producers, particularly since the newcomer would have to offer a complete range of products of various sizes and performance.

(161) Those risks and costs will even be further increased by the proposed operation, and in particular because of the formidable competitive advantages and size of the merged entity. Any entrant would have to face a dominant player with an excellent reputation, a very broad product portfolio and geographic presence and considerable sales volumes and customer base. This would be especially true in Denmark, Finland, Norway and Sweden, in view of the historic presence of the parties in those countries, the specific rock conditions found there, and the low market volumes to be obtained in those Member States.

(162) In the light of the above, it is concluded that potential competition will not be sufficient to substantially constrain the competitive behaviour of the merged entity. As one competitor put it, 'potential competitors […]* can only for a small extent influence the behaviour of the merged company, as, […]* regarding [its] distribution network, after-sales network, and especially regarding [its] products (jaws, cones), [the new company will be] very dominating in the world-wide market and especially very dominating in all European countries. The production of cone crushers is economically only possible if high quantities are produced. So every potential competitor will be afraid of high start-up investment not knowing if he will sell the critical quantity.'

Effects of the operation

(163) The above considerations demonstrate that the proposed transaction will result in the creation of a dominant player in the markets for cone crushers and jaw crushers concerned. Furthermore, there are strong indications that it will eliminate the main source of competition in those markets, insofar as that competition primarily appeared to result from the rivalry between Nordberg and Svedala.

(164) The similarity between Nordberg and Svedala, and the considerable advantages of these two companies over other equipment suppliers, are clear from the Commission's investigation. For instance, most customers could only quote Nordberg and Svedala among those suppliers able to competitively offer turnkey contracts, or to offer products really suitable for hard rock conditions. Similarly, when asked to name equipment suppliers with an offer competitive with that of Nordberg and Svedala, customers either could not name any such producer, or quoted only a very limited number, only to explain that they suffered from substantial competitive disadvantages as regards the parties.

(165) For instance, customers stated that 'Nordberg and Svedala are similar in terms of quality/performance/price etc.', 'there is no equivalent on the overall product range. At this date, we have no visibility over alternative suppliers with an equivalent offer (in terms of product and after-sales services)', 'the alternatives are few and do not have the in-depth knowledge and world-wide experience applicable.' As for their lead in reputation, some customers even stated that only Nordberg and Svedala did not have to demonstrate the capacity of their new crushers.

(166) The fact that Nordberg and Svedala are also competing directly with each other is also clearly reflected in the results of the Commission's investigation, since a vast majority of customers indicated that they use both

Nordberg and Svedala for most of their supplies, and several customers explicitly stated that their procurement policy was based on competition between those two suppliers.

(167) The rivalry between Nordberg and Svedala is also clearly apparent from Metso's internal documents. […]*.

(168) By eliminating that rivalry, the operation will both create a virtually unchallenged market player and remove the main source of competition in the A&C markets concerned. It is therefore no surprise that almost all of the customers who responded to the Commission's investigation voiced serious concerns as to the effects of the proposed transaction. Examples of such statements include 'the proposed operation will create a far too dominating actor on the crushing equipment market', 'we will only have one supplier of crushing equipment during the upcoming years', 'we will be deserted to just one manufacturer', or 'the crushing market […]* needs these two big manufacturers. It is strongly recommended to deny this merger to avoid a superpower and extreme dominance in crushing and processing equipment.'

C. **Conclusion**

(169) It is therefore concluded that the operation will create a dominant position by the merged entity on the markets for A&C cone crushers in Austria, Denmark, Finland, France, Germany, Italy, Ireland, Norway, Portugal, Spain, Sweden and the United Kingdom; it will also create a dominant position by the merged entity on the markets for A&C jaw crushers in Denmark, Finland, Norway and Sweden.

VII. **COMPETITIVE ASSESSMENT FOR MINING CRUSHERS**

(170) As indicated in recital 49, mining crushers are the larger crushers sold to larger mining companies or aggregate and cement producers. They include primary gyratory crushers, larger cone crusher (up to the high-capacity cone crushers), larger jaw crusher, larger HS impactors, as well as grinding mills and roller presses.

(171) With the exception of grinding mills, annual EEA-wide sales of the different types of mining crushers are typically very low. For instance, based on the data provided by the parties, only […]* mining jaw crushers were sold in 1997 and in 1999. Similarly, the EEA-wide sales of primary gyratory crushers have not exceeded […]* pieces per year in each year from 1997 to 1999.

(172) Given the very low volumes of mining crushers sales in the EEA, the analysis of the market positions of the different competitors has to be based on market shares calculated over a sufficiently long period of time, since sales in just two or three years are too limited to be significant. Therefore, unless expressly stated otherwise, the market share figures for mining crushers are calculated on the basis of a 10-year period (1990 to 1999).

A. **Products other than high-capacity cones, jaws and gyratories**

(173) There is no indication that the operation will create competition concerns in the markets for HS impactors, medium-capacity cone crushers, grinding mills and roller presses.

(174) First, the operation will not create any overlaps in medium-capacity cone crushers and roller presses.

(175) Secondly, the parties' cumulated market shares in HS impactors do not exceed [25 to 35 %]*, and the merged entity will still be faced with a large number of competitors, including Hazemag [20 to 30 %]* market share, SBM [5 to 15 %]* and Krupp [5 to 15 %]*.

(176) Finally, while the parties have a share of approximately [25 to 35 %]* of the grinding mill market, they will still face a significant number of competitors, including FL-Smidth-Fuller (approximately [10 to 20 %]* market share), KHD [5 to 15 %]* and Krupp [5 to 15 %]*.

B. **High-capacity cone, jaw and primary gyratory crushers**

Market positions of the parties and their competitors

High-capacity cone crushers

(177) Nordberg and Svedala are the only rock crusher suppliers to have sold high-capacity cone crushers in the EEA over the last 10 years. In particular, Svedala sold […] H8000 in […]*, while Nordberg supplied […]* HP800 and […]* 'enhanced force' MP800 in […]*.

(178) Furthermore, the parties have only one competitor at global level in high-capacity cone crushers, namely Kawasaki. However, Kawasaki has never sold any

high-capacity cone crusher in Europe. Secondly, its credibility in high-capacity cone crushers remains highly questionable, since Kawasaki's global sales of high capacity cone crushers in the last three years are limited to only […]* KFS2100 crusher, in Japan. It follows that, even at a global level, the parties had combined market shares in excess of [85 to 95 %]* for each of the last three years. The operation would therefore lead to a virtual monopoly in very large, high capacity cone crushers.

(179) In its response to the Statement of Objections, Metso points out that Kawasaki also supplies the Z18 cone crusher which, according to Metso, is a very similar product to Svedala's H8000. However, as already indicated in recital 61, the Z18 cone crusher cannot be compared with the parties' high capacity cone crushers because of its significantly lower nominal power rating.

(180) The presence of competition concerns would also remain in the context of the alternative product market definition for very large cone crushers as submitted by the parties. Even if the alternative market definition for very large cone crushers, proposed by the parties, were used, the competition concerns would remain. In such a case, the very large cone crusher segment would consist of two separate markets, the first only comprising Nordberg's MP800 and MP1000 products and the second comprising all other high capacity cone crushers. In the first market, Nordberg would obviously have a global (and *a fortiori* EEA-wide) monopoly. In the second market, the parties would be the only companies to have made sales in the EEA and at global level in the last three years. In fact, no other company has made a single sale of a high capacity cone crusher in the EEA in the last ten years. The operation would therefore eliminate any remaining competition in this second market as well. Furthermore, there are strong indications that only Svedala (and to a much lesser extent Kawasaki) would be likely entrants in the first market (MP800 and MP1000 crushers), because they are the only cone crusher producers with products with a size and power approaching that of the MP800 and MP1000 crushers. The fact that Svedala is viewed as the most serious potential competitor is also confirmed in documents submitted to the Commission by Metso, […]*.

(181) In that context, it appears that the operation will result in the elimination of the main alternative source of competition in both very large cone crusher markets, and therefore will create or strengthen a dominant position.

Primary gyratory crushers

(182) The total sales of primary gyratory crushers in the EEA are extremely limited (18 units in ten years). However, over the 10-year period between 1990 and 1999, Metso and Svedala's cumulated sales accounted for more than [55 to 65 %]* of the total EEA-wide sales. There are only two other competitors in the EEA, namely F.L. Smidth-Fuller [15 to 25 %]*$ market share and Krupp [10 to 20 %]*.

(183) The merged entity would also be the leading seller of gyratories world-wide, with a market share of approximately [30 to 40 %]*, compared with approximately [15 to 25 %]* for its largest competitor, F.L. Smidth-Fuller.

(184) Furthermore, there are indications that Nordberg's competitive position is actually stronger than what its current market shares would suggest. This is so because (i) those market shares are based on the sales of Nordberg's current products (namely the GY and Morgardshammar ranges); and (ii) Nordberg is currently introducing a new, state-of-the art technology aimed at offering a real challenge to Svedala's leading products.

(185) Nordberg's position in primary gyratory crushers has been traditionally weaker than that of Svedala. However, Nordberg has recently decided to address that issue by introducing a new gyratory crusher range expected to substantially increase Nordberg's position in that sector. A prototype of this new crusher range (XP-50) has already been assembled and demonstrated by Metso at a recent mining equipment fair in the United States. Metso offered an XP-50 gyratory crusher on […]* occasions in 2000. On […]* of these occasions, Metso was not able to sell the XP-50, in particular because it had not yet been field-tested. Metso, however, has found an American customer who has accepted to rent an XP-50 gyratory crusher on a trial basis. At the end of the testing period (expected to be in […]*), this customer will have the option to purchase the XP-50 gyratory crusher. It appears therefore that the XP-50 technology is almost ready, and that Metso has been confident enough about its reliability to offer it to several customers. The actual introduction of the XP-50 range in the market will thus most likely occur in 2001.

(186) Metso apparently centres its primary gyratory strategy on the new XP-50 range. […]*.

(187) The aim of Metso, with the introduction of the XP-50 primary gyratory range, is clearly to gain market share from F.L. Smidth-Fuller and Kawasaki. It is noteworthy that just the abovementioned try-buy sale of an XP-50 crusher to an American customer will increase Metso's worldwide market share by approximately [0 to 10 %]*.

(188) It follows that the effect of the proposed transaction will be twofold: first, the operation will eliminate the

competition between Metso's and Svedala's current product ranges, which collectively account for [55 to 65 %]* of sales in the EEA. Secondly, and even more importantly, it will combine Svedala's leading crushers with Nordberg's new and promising XP-50 technology, which is anticipated to become more successful than Nordberg's current product ranges. If, as seems likely, the XP-50 range proves successful and Metso reaches its target of overtaking F.L-Smidth-Fuller and Kawasaki, the parties will have a cumulated share of the primary gyratory market of [40 to 55 %]* worldwide and approximately [65 to 75 %]* in the EEA by 2002. This implies that, in the longer term, the introduction of the XP-50 technology combined with Svedala's leading range of products would probably make the merged entity's competitive position stronger than what the immediate combination of Svedala and Nordberg's GY and Morgardshammar ranges suggest.

Jaw crushers

(189) In the market for jaw crushers, the operation would lead to a combined market share of [35 to 45 %]* for mining jaw crushers. Furthermore, the next largest competitors, Laron [15 to 25 %]* market share, Krupp [10 to 20 %]* market share) and PSP [5 to 15 %]* would have much lower market positions in the EEA. The parties would therefore have a significant and leading position in the European market.

Additional competitive advantages of the parties

(190) The above considerations suggest that the merged entity will have a virtually global (and *a fortiori* EEA-wide) monopoly in high-capacity cone crushers, and that the merged entity will have considerable market shares in both the primary gyratory and jaw crusher markets, where it will be very substantially larger than its next largest competitors.

(191) Furthermore, it appears from the market investigation that the merged entity will benefit from a number of additional competitive advantages making it even more difficult for other suppliers and/or entrants to challenge its market position.

(192) Performance, reliability and quality are determining factors for customers wishing to procure new rock crushing machinery. The Commission's investigation shows that mining customers are extremely sensitive to these factors. Moreover, given that they operate in harsh conditions and that the value of their production is usually significantly higher than the costs involved in the crushing process, mining customers will avoid taking any risk in the choice of their suppliers and will be very cautious to purchase only from suppliers with a proven track-record, even if that implies a higher price. This is especially true for purchases of large, essential equipment such as a high capacity cone crusher, a large jaw crusher or a gyratory crusher, since the break down or the failure to operate properly of such equipment would put the entire production of the mine or quarry at risk. In that context, it is important to note that the vast majority of mining customers indicated reliability and quality among the key strengths of the parties.

(193) Mining customers do not only want reliable products, they are also very eager that their supplier will not disappear before the end of the operating life of the purchased equipment. Being the clear industry leaders, the parties are seen as financially more solid than many of their smaller competitors and will therefore be preferred by risk-averse customers.

(194) Several mining customers also appear to consider that the parties' ability to offer a broad range of equipment is a significant competitive advantage. Having a broad range of equipment on offer is important in particular because mining customers are usually large companies that operate mining sites in different locations, and with different geological/physical characteristics. Only crusher producers with a complete range of products will be able to make suitable offers for each of the sites of the customer. Such producers will have the possibility to become 'core' suppliers and will have improved chances of winning tenders organised by the customer. Furthermore, the parties' broad product portfolio means that they are more likely than their competitors to be requested by a potential customer to bid for the supply of crushing machinery. This increases the frequency of contacts with customers and improves the understanding of their needs. In particular, the experience gained from the sale of a particular product can then be used to make an appropriate and targeted offer of other products for the same mining or quarrying site.

(195) Finally, the wide geographic coverage of the parties is clearly an additional advantage when serving mining customers, many of which are multinationals operating on different continents.

Insufficient competitive constraints from existing competitors

(196) In the market for very large, high capacity cone crushers, the combined entity would face virtually no other competitor in the EEA. The remaining

competition will therefore obviously not restrain the parties' behaviour in this market.

(197) As regards the markets for jaw crushers and primary gyratory crushers, the combined entity would have a market share approximately two to three times that of each of its main competitors in the EEA, PSP, Krupp and F.L-Smidth Fuller. The mere difference in market shares means that PSP, Krupp and F.L-Smidth Fuller will not be in a position significantly to constrain the parties' competitive behaviour. Furthermore, in its own view, F.L-Smidth Fuller does not have a very strong commercial presence in Europe. F.L-Smidth Fuller's focus is essentially on very large mining customers, especially in the USA and South America, whereas a significant share of the mining crusher market in Europe corresponds to sales to large aggregate quarries, which F.L-Smidth Fuller considers as a different type of business. In addition, F.L-Smidth Fuller has a much more limited range of products than the parties, since it does not manufacture cone crushers nor impactors.

(198) As regards the market for mining jaw crushers, the parties' main competitors, except Krupp, are small companies, often active in limited areas. For instance, PSP has a total annual turnover of approximately EUR 50 million, whereas Laron, considered by the parties as 'the leading mining jaw crusher supplier in the EEA in 1999', has not sold any mining jaw crusher outside Spain in the last three years.

(199) Moreover, the parties will be able to leverage their very strong positions in other key crushing equipment markets such as cone crushers (A&C size as well as high-capacity cone crushers) and gyratory crushers to conduct targeted, anti-competitive actions against Krupp or other competitors trying to challenge their position in the jaw crusher or primary gyratory crusher markets. In that respect, it should be noted that, although Krupp is currently the leading supplier in the EEA of medium-capacity mining cone crushers, it would certainly not be difficult for the parties to enter this market by developing and offering 'scaled-down' versions of their existing and commercially very successful high capacity cone crushers.

(200) Finally, the parties' competitors in jaw crushers (namely Laron, Krupp and PSP) appear to suffer from significant cost-disadvantages when compared with the parties. In particular, since the merged entity's overall production of mining jaw crushers will be two to three times larger than that of its main competitors, it will benefit from significant economies of scale.

(201) In its response to the Statement of Objections, Metso has expressed the view that economies of scale resulting from the merger would not be significant, because a substantial proportion of the production of mining jaw crushers is outsourced. Furthermore, the parties believe that they could actually be at a cost disadvantage when compared to smaller, less integrated competitors, because they have higher fixed costs. These arguments, however, can not be accepted by the Commission. First, they are largely contradictory. If Metso outsources a large part of its mining jaw crusher production, it cannot at the same time argue that it is at a cost disadvantage because it is vertically integrated with its foundries. Secondly, it is clear that outsourcing does not reduce economies of scale: the higher the volume of sales, the easier it is for the subcontractor to cover its fixed costs, a large share of which corresponds to equipment such as moulds, etc. that are specifically required for the production of the components purchased by the parties. Therefore, the higher the sales of the parties, the lower the price charged by the subcontractor will be. Thus, economies of scale benefit the parties in the same way, whether fixed costs are supported directly, or indirectly, through the price charged by subcontractors. Furthermore, higher volumes may also translate in higher procurement power vis-à-vis subcontractors, and therefore in lower supply costs for the components which the parties outsource. Similarly, and for the same reasons, it is artificial to consider that higher fixed costs resulting from vertical integration with in-house foundries would create a competitive disadvantage for the parties: smaller competitors can not afford to have an in-house foundry precisely because they do not benefit from the high sales volumes of the parties. Furthermore, an in-house foundry produces castings for all types of crushers, and not just for mining jaw crushers, and the corresponding fixed costs can thus be spread across the entire crushing equipment production of the parties. The Commission thus maintains its conclusion that the operation would result in significant economies of scale for the merged entity.

(202) It can thus be concluded that no competitor will be in a position to significantly challenge the parties' position in the markets for high-capacity cone crushers, for mining jaw crushers and for gyratory crushers.

Insufficient countervailing buying power from customers

(203) High capacity cone crusher customers will obviously not be in a position to exercise any significant degree of countervailing power which would limit the parties' market power. Indeed, customers will be left with

virtually no other choice than to purchase their high-capacity cone crushers from the merged entity.

(204) Furthermore, even for primary gyratory crushers and jaw crushers, there is no indication that customers would have sufficient countervailing power to substantially constrain the competitive behaviour of the merged entity. Customers in the EEA usually account for a relatively low share of the parties' turnover. For instance, Svedala's main European customer only represents […]* of Svedala's sales of gyratory crushers world-wide, while Nordberg's main European customer for jaw crushers only accounts for […]* of Nordberg's overall mining jaw sales. In addition, primary gyratory crushers, jaw crushers and cone crushers are considered as an essential equipment in any mining company's crushing plant, so that customers will usually opt for safe and proven solutions rather than turn to less-reputed suppliers unable to satisfactorily guarantee reliability and security of after-sales services and spare part supplies, even if that implies accepting higher prices.

No substitute products

(205) It has been argued that a certain degree of substitutability may exist between gyratory crushers and large mining jaw crushers. However, the parties have indicated that jaw crushers cost in the region of EUR 40 000 to EUR 600 000 and have a typical capacity range of 20 to 1 500 tonnes/hour, whereas a primary gyratory crusher costs in the region of EUR 1 million to EUR 2 million and has a typical capacity range of 1 000 to 5 000 tonnes/hour. It appears therefore that for high volume primary crushing applications (typically over 2 000 tonnes/hour), only gyratory crushers are suitable. Furthermore, the price differences between the two types of equipment clearly show that customers do not view them as economically substitutable. Therefore, it can be concluded that demand side substitution between primary gyratory crushers and large mining jaw crushers is insufficient to prevent the parties from obtaining a dominant position in the gyratory crusher market.

(206) Moreover, the parties' combined strength in the mining jaw and primary gyratory crushers markets means that they will be the supplier of reference for all mining equipment used in primary crushing applications, whether the customer chooses a jaw or a gyratory crusher. The limited degree of substitutability between jaw crushers and gyratory crushers will therefore be even more reduced after the operation, since the merged entity will be the dominant player in each of these markets, with the ability to raise prices in both markets simultaneously.

(207) The parties have submitted that the purchase of two smaller cone crushers could be considered as an alternative to one high capacity crusher. However, as indicated in recitals 70 to 73, this is generally not a credible and economical option.

(208) Therefore, it can be concluded that there are no real substitutes for gyratory crushers and for very large high capacity mining cones.

(209) The parties have also submitted that, in addition to new rock crushing equipment, there is significant trade in used equipment within the EEA. According to the parties there are several, globally operating suppliers selling this 'second hand equipment'. Used equipment is also widely advertised.

(210) On the basis of the market investigation it may be concluded that there is a separate market for used equipment. For the same reasons as in the A&C markets, the existence of used equipment can not be taken into account as a real competitive constraint when analysing the parties' market position. It should be noted that 'old' used equipment will normally not be considered by mining customers who are extremely sensitive to risks, and that 'recent' (i.e. less than a few years old) used mining crushers are hardly available at all. In particular, a mining customer stated that it once 'installed a used gyratory primary owing to cost constraints' and that it turned out to be 'a big mistake' so that it had eventually to buy a new crusher.

(211) In the light of the above, it is therefore concluded that used equipment or alternative technologies do not constitute substantial constraints to the parties' competitive behaviour in the high capacity cone crusher market and in the primary gyratory crusher market.

High barriers to entry

(212) There is no indication that the merged entity's market position in high capacity cones and primary gyratory crushers could be substantially challenged in the short to medium term by the prospect of new entry.

(213) Barriers to entry in the high capacity cone crusher market are high, due to the investments and technology required: some competitors have indicated that it would take up to five years to develop and market a very large

high capacity cone crusher. Furthermore, given the very limited volume of the global sales of very large, high capacity cone crushers, it is highly unlikely that new competitors will attempt to enter this market segment. Indeed, besides the parties, the only other player in this market, Kawasaki, has not been particularly successful, since it has not captured more than [5 to 15 %]* of the world-wide sales, and has not made a single sale in Europe in the last three years.

(214) The operation will remove Nordberg's only significant competitor in the high capacity cone crusher market, and probably the only one with sufficient technological and financial resources to successfully expand its sales of very large cone crushers. In this respect, an internal strategy document of Metso dated 1 August 1999 states the following: […]*.

(215) New entry in the primary gyratory market is also extremely unlikely, because of the very limited volume of sales, both at European and global level: over the last three years, the annual world-wide sales of gyratory crushers have not exceeded 30 units. It has been indicated by third parties that it would take approximately five years for a new entrant to design, manufacture, install and test a new gyratory crusher. Because of the limited size of this market, the development costs and the investment that a new entrant would have to incur cannot be recovered in a reasonable period of time. Entry would be even more difficult now that Nordberg has just introduced the new XP-50 range of modern and apparently effective primary gyratory crushers, described in Nordberg's documents as […]*.

(216) Moreover, new entry from competitors active outside the EEA does not represent a credible threat to the parties' position in the gyratory crusher and jaw crusher markets: besides Chinese and Russian manufacturers, which have a very limited commercial presence outside their domestic areas, the only significant competitors of the parties at global level in the gyratory crusher market are Kobe, Kawasaki, F.L. Smidth-Fuller and Krupp. In the mining jaw crusher market, the parties' main competitors at global level are Kobe and Terex, with world-wide market shares of less than [0 to 10 %]*. F.L Smidth-Fuller and Krupp are already active in the European gyratory crusher market, and can therefore not be considered as potential 'new entrants'. Among the global competitors in the gyratory crusher market, only Kobe and Kawasaki, which have not made any sales of mining crushers in the EEA between 1990 and 1999, could possibly be considered as potential new entrants. However, at global level, Kobe's and Kawasaki's presence in the gyratory crusher market is very limited. According to the parties' estimate, Kobe's world-wide market share ([11]) is approximately [5 to 15 %]* and Kawasaki's market share is approximately [0 to 10 %]*, whilst the parties would have an estimated world-wide market share of [30 to 40 %]* following the merger. Similarly, Kobe and Terex have not sold any mining jaw crusher in Europe between 1990 and 1999 and only have modest shares of the worldwide sales of mining jaw crushers. Furthermore, most competitors and customers view Kobe and Kawasaki as players essentially active in the Asia-Pacific region, rather than as global competitors. It is therefore clear that Kobe, Kawasaki and Terex do not represent a serious threat to the parties' position in the EEA-wide jaw and gyratory crusher markets.

(217) Entering the markets for high capacity cone crushers or primary gyratory crushers would entail significant risks, which are unlikely to be rewarded, because of the limited size of these markets. Furthermore, the characteristics of these markets, and in particular the durability of the products and the critical impact a breakdown can have on the customer's operation, mean that a new entrant would have to face particularly high barriers. Since customers are extremely sensitive to reliability, any new entrant would have to establish that its products are of at least as good quality as those of the parties. The risk aversion of mining customers means that they will probably be very reluctant to purchase from a new entrant, unless it has been able to demonstrate the quality of its products during a sufficiently long period of time. Therefore, a new entrant would have to spend a considerable amount of time and resources demonstrating its new products before it can make any sales. This would further reduce the profitability of entering the high capacity cone crusher market and/or the primary gyratory market.

(218) Moreover, new entrants would face an additional barrier since, in the EEA, the parties have the largest share of the installed base of primary gyratory crushers and almost the entirety of the high capacity cone crushers installed base. These strong installed bases mean that, due to the importance of after-sales services, the parties will retain a privileged access to the main European mining customers.

(219) In their response to the Statement of Objections, the parties indicated that they consider that barriers to entry into the market for mining jaw crushers are low. In their response, the parties referred to Extec, a United Kingdom company which 'has introduced a mobile jaw product from scratch in 1996 and now has full range of mobile A&C jaw crushers which it sells across the EEA'. However, Extec can not be considered as a new entrant

([11]) Excluding Chinese and Russian producers.

in the mining jaw crusher market. Mobile A&C jaw crushers are significantly smaller than mining jaw crushers (which are always fixed) and belong to the A&C jaw crusher market, which is different from the mining jaw crusher market. Extec has never sold a mining jaw crusher. The parties have not produced any other evidence of recent and successful entry into this market.

(220) Furthermore, the total demand in the EEA-wide and worldwide for mining jaw crushers is extremely small when compared with other types of rock crushing equipment. In recent years, the average annual demand for mining jaw crushers was […]* in the EEA, and approximately 50 worldwide, whereas the demand for A&C jaw crushers was above 600 pieces a year, just in the EEA. This explains why 'new entrants' such as Extec have targeted the A&C jaw crusher market, and have actually avoided entering the mining jaw crusher market. Therefore, and for the same reasons as indicated in recitals 213 to 217 concerning entry into the primary gyratory market or into the high capacity cone crusher market, new entry into the mining jaw crusher market is extremely unlikely given its limited size (EEA-wide and world wide) and because of the extreme risk aversion of mining customers.

(221) Finally, the above risks and costs will be further increased by the proposed operation, for the same reasons as in the case of the A&C markets. Any entrant would have to face a dominant player with an excellent reputation, a very broad product portfolio and geographic presence and considerable sales volumes and customer base.

(222) In the light of the above, it is concluded that potential competition will not be sufficient to substantially constrain the competitive behaviour of the merged entity.

Effects of the operation

(223) In the light of the above, it is concluded that the merged entity will be able to act independently of its competitors and suppliers in the markets for high capacity cone crushers, jaw crushers and primary gyratory crushers, and that its competitive position will not be sufficiently constrained by the prospects of potential entry.

(224) The market position of the merged entity will be even stronger since, as indicated in recitals 190 to 195, it will benefit from a number of competitive advantages in addition to its sheer size. Those are, particular, the highest reputation and geographic coverage in the industry and an unrivalled product portfolio.

C. **Conclusion**

(225) In the light of the above, it is therefore concluded that the operation will create or strengthen a dominant position by the merged entity on the markets for primary gyratory crushers in the EEA, mining jaw crushers in the EEA, and high-capacity mining cone crushers in the EEA.

VIII. **COMMITMENTS SUBMITTED BY METSO**

(226) On 13 December 2000, the parties offered certain commitments to remove the competition concerns which the Commission had identified in its Statement of Objections. Those commitments have been subsequently amended by the parties taking into account certain adjustments required by the Commission in view of, in particular, the results of the market test. The full text of the final commitments is set out in the Annex II.

A. **Summary of the commitments**

(227) The commitments offered by the parties consist of the divestment of three subsidiaries of Svedala active in the R&D, production and engineering of crushing equipment, the divestment of Nordberg's GY range of primary gyratory crushers, and the divestment of certain distribution assets of Svedala in the EEA.

(228) More specifically, the commitments include:

— the divestment of Svedala — Arbra AB (SAAB), a wholly-owned subsidiary of Svedala where all Hydrocone cone crushers (including Svedala's H8000 high-capacity mining cone crusher) are produced and where Jawmaster jaw crushers are manufactured,

— the divestment of Svedala SA (SAA), a wholly-owned subsidiary of Svedala where all Eurocone cone crushers are produced, and where certain HS impactors, screens, feeders, conveyors, and mobile versions of those products are manufactured. SAA also has an engineering facility at Clichy (France),

— the divestment of Svedala Mobile Equipment AB (SMEAB), a wholly-owned subsidiary of Svedala where the mobile versions of the Jawmaster jaw crushers and the Hydrocone cone crushers are produced, and where mobile screens and mobile feeders are also manufactured,

— the divestment of Nordberg's GY and Morgardshammar ranges of primary gyratory crushers, and of Nordberg's new prototype XP-50 technology,

— the transfer of key personnel and assets relative to the distribution of Svedala's products in Austria, Belgium, Denmark, Finland, France, Germany, Italy, Ireland, Netherlands, Norway, Spain, Sweden and the United Kingdom,

— the assignment of Svedala's distribution contract with a third party in Portugal.

(229) The divestment of each of SAAB, SAA, SMEAB and Nordberg's range of primary gyratory crushers will include all relevant intellectual property rights, fittings, stocks of parts, as well as rights to supply contracts, personnel and sale contract owned. They will also include the transfer of the lease contracts of Svedala for all land and buildings making up the facilities of SAAB and SMEAB (which are not owned by Svedala).

B. **Assessment of the commitments**

Cones and jaw crushers

(230) The commitments submitted by the parties will lead to the divestment of all of Svedala's products in cone crushers and jaw crushers, and will therefore completely eliminate the product overlap between Nordberg and Svedala in those sectors.

(231) Furthermore, it appears that the divestment package includes sufficient assets, personnel and rights for the purchasers of the divested businesses to operate as a viable competitive force on the markets concerned. In particular, it should be noted that the proposed commitments include all of Svedala's production facilities for cone crushers, as well as extensive R&D, engineering and distribution assets and personnel.

(232) Similarly, although the proposed commitments do not include all of Svedala's production facilities for jaw crushers, since Svedala's plant in Brazil (where most Jawmaster jaw crushers are produced) is left out of the divestment package, it appears from the data submitted by the parties that this production could be taken on at the Svedala plant in Sweden. This is so because the plant at Svedala continues to produce Jawmasters and therefore has machines, tools and know-how in that sector, and because that plant is currently under-utilised and has sufficient capacity to accommodate the production currently made in Brazil. During the interim period before the Svedala plant can fully take on the product currently made in Brazil, the parties also undertake to manufacture under licence the Jawmaster crushers requested by the purchaser of the divested business.

Primary gyratory crushers

(233) The proposed commitments also include the divestment of all of Nordberg's product lines in gyratory crushers, namely the existing GY and Morgårdshammar range of primary gyratory crushers currently sold by Nordberg; and Nordberg's new XP-50 technology, which has not been sold yet but is expected to become an essential part of Nordberg's strategy in gyratory crushers […]*.

(234) In order to remove competition concerns in this case the full overlap needs to be eliminated. Metso's original proposal to licence the new XP technology would have created a situation whereby the purchaser of the divested business acquires Metso's existing (and outdated) products plus a licence for a product which is not yet completely developed, while the merged entity would comprise both Svedala's leading range of products and Metso's new technology. There are serious risks that, in such a situation, the purchaser of the divested business could not operate as a viable competitive force in the market. For instance, the purchaser, as a licensee, would suffer from a weaker reputation than the merged entity being the licensor and clear market leader. Secondly, the purchaser may in such a situation even decide not to invest in the final development of the XP technology, because it would fear not to have a sufficient customer base to recoup that investment.

(235) Furthermore, it appears that the divestment package includes sufficient assets, personnel and rights for the purchasers of the divested businesses to operate as a viable competitive force on the markets concerned. In particular, although the commitments do not include production facilities or personnel dedicated to those products, this does not seem necessary in the present case. Indeed, according to the data submitted by the parties, Nordberg does not have manufacturing assets or personnel dedicated to the production of gyratory crushers, because demand for those products is too infrequent to make such an approach economic. Instead, it appears that components are sub-contracted out to third parties, and that the gyratory crusher is then usually assembled at the customer's premises.

(236) Furthermore, although the divestment will not include that personnel directly involved in the manufacturing, engineering or R&D relative to Nordberg's primary gyratory crushers, they will include the Svedala personnel currently engaged in the R&D, engineering and manufacture of Svedala's range of gyratory crushers. Based on the data provided by the parties, it appears that that personnel could support the development and manufacture of Nordberg's range of primary gyratory crushers, since the underlying technology of Svedala's

and Nordberg's products is essentially the same. In particular, with respect to the XP-50 technology, the purchaser of the divested business will both be able to attend at Metso's factory in the United States so as to obtain a full transfer of that technology, and also to receive all data relating to the testing of that technology currently being achieved at a customer's premises in the United States.

Conclusion

(237) In the light of the above, the Commission concludes that the commitments given by the Parties are sufficient to remove the competition concerns identified by the Commission during its investigation of the proposed operation.

IX. **CONCLUSION**

(238) In the light of the above, and subject to compliance with the commitments set out in Annex II, the proposed operation does not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the EEA or in a substantial part of it. The operation is therefore to be declared compatible with the common market and the functioning of the EEA agreement, pursuant to Article 8(2) of the Merger Regulation.

HAS ADOPTED THIS DECISION:

Article 1

The notified operation whereby Metso Corporation acquires Svedala Industri AB is hereby declared compatible with the common market and the functioning of the EEA Agreement, on condition that the commitments set out in Annex II are fully complied with.

Article 2

This Decision is addressed to:

Metso Corporation
Fabianinkatu 9A
PO Box 220
FIN-00101 Helsinki.

Done at Brussels, 24 January 2001.

For the Commission
Mario MONTI
Member of the Commission

ANNEX I

The original text may be consulted on the following Commission website:

http://europa.eu.int/comm/competition/index_en.html

ANNEX II

The full original text of the conditions and obligations referred to in Articles 1 and 2 may be consulted on the following Commission website:

http://europa.eu.int/comm/competition/index_en.html