

Parker-Hannifin - Meggitt

**A report to the Secretary of State for Business,
Energy and Industrial Strategy on the anticipated
acquisition by Parker-Hannifin Corporation of
Meggitt plc**

18 March 2022



© Crown copyright 2022

You may reuse this information (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence.

To view this licence, visit www.nationalarchives.gov.uk/doc/open-government-licence/ or write to the Information Policy Team, The National Archives, Kew, London TW94DU, or email: psi@nationalarchives.gsi.gov.uk.

CONTENTS

1.	Executive summary	5
	The CMA's report and decisions	5
	The CMA's competitive assessment	6
	Horizontal unilateral effects in the worldwide supply of AWB.....	6
	Conclusion on competitive assessment.....	8
	Undertakings in lieu.....	8
	Public Interest.....	9
2.	Legal framework.....	9
3.	PARTIES AND TRANSACTION.....	10
	Parties' relevant activities	10
	Parker	10
	Meggitt.....	11
	Transaction.....	11
	Rationale	12
	Procedure.....	13
4.	JURISDICTION	13
	Legal Framework.....	13
	Assessment.....	13
	Conclusion on jurisdiction	14
5.	COUNTERFACTUAL	14
6.	INDUSTRY BACKGROUND	14
	Types of aircraft.....	14
	The aerospace supply chain.....	15
	The aerospace product lifecycle and procurement process	16
7.	FRAME OF REFERENCE	17
	Product scope	18
	Features of AWB.....	19
	Segmentation by aircraft size and type	20
	Supply to civil and military aircraft.....	21
	OE and aftermarket supply	21
	Geographic scope	22
	Parties' submissions	22
	CMA's assessment	22
	Conclusion on frame of reference	22

8.	Competitive assessment	23
	Nature of competition	23
	The Parties' activities	24
	Fixed wing aircraft	25
	Internal documents	26
	Shares of supply	32
	Tender data.....	35
	Third party views.....	39
	Conclusion on competitive assessment – fixed wing aircraft	43
	Rotorcraft.....	43
	Internal documents	43
	Shares of supply	47
	Tender data.....	48
	Third party views.....	49
	Conclusion on competitive assessment – rotorcraft.....	51
9.	Countervailing factors.....	52
	Entry and expansion.....	52
	Efficiencies	54
10.	Conclusion on substantial lessening of competition	54
11.	Public interest consideration.....	54
	Summary of representations from interested parties	54
	Ministry of Defence (the MOD).....	55
	Third parties	55
12.	SLC Remedies – undertakings in lieu	56
	Introduction.....	56
	Hypothetical Remedy to address the competition concerns identified	58
	Assessment of the Hypothetical Remedy	60
	Effectiveness of the Hypothetical Remedy to address the identified SLC	60
	Conclusion on UILs	63
13.	PUBLIC INTEREST Remedies – undertakings in lieu.....	63
14.	Assessment and advice to the secretary of state	63

Tables

Table 1: Shares of supply for supply of AWB by value (OEM and AM) (global, 2018-2020)

Table 2: Shares of supply for supply of business jet AWB by value (OEM only) (global, 2018-2020)33

Table 3: Shares of supply for supply of general aviation AWB by value (OEM only) (global, 2018-2020)33

Table 4: Shares of supply for supply of military aircraft AWB by value (OEM only) (global, 2018-2020)34

Table 5: Shares of supply for supply of civil helicopter AWB by value (OEM) (global, 2018-2020) 47

Table 6: Shares of supply for supply of military rotorcraft AWB by value (OEM) (global, 2018-2020)47

Figures

Figure 1: Aircraft categories..... 15

Please note that [X] indicates figures or text which have been deleted or replaced in ranges for reasons of commercial confidentiality.

1. EXECUTIVE SUMMARY

- 1.1 This CMA report relates to the proposed acquisition by Parker-Hannifin Corporation (**Parker**) of Meggitt plc (**Meggitt**) (the **Merger**). Parker and Meggitt together are referred to as the **Parties** in this report, and for statements referring to the future (if the Merger were to proceed), as the **Merged Entity**.
- 1.2 This report is provided to the Secretary of State for Business, Energy and Industrial Strategy (the **Secretary of State**) pursuant to a [public interest intervention notice](#) (the **Notice**). This summary focuses on the CMA's competition assessment of the Merger.
- 1.3 Parker is a US-headquartered company which supplies components to the mobile, industrial, and aerospace markets globally, including in the UK. Parker is listed on the New York Stock Exchange. Meggitt is a UK-headquartered company which supplies components to the aerospace, defence, and energy sectors globally. Meggitt is listed on the London Stock Exchange.
- 1.4 Parker and Meggitt overlap in the supply of several components used in the aerospace manufacturing industry, namely aerospace actuators, aerospace pneumatic valves, aerospace sensors, aerospace seals, electronics cooling systems, and aircraft wheels and brakes.
- 1.5 The CMA's investigation involved engagement with numerous customers and competitors in the aerospace sector. In conducting its investigation, the CMA has worked closely with other competition authorities around the world to carefully consider the impact of the Merger.

The CMA's report and decisions

- 1.6 The Notice requires the CMA to investigate and report on its assessment of the Merger's effects on competition by midnight at the end of 18 March 2022, following which the Secretary of State shall make its decision on the relevant public interest considerations. The CMA's decisions in this report are summarised below.
- 1.7 Jurisdiction: The CMA believes that Parker and Meggitt are enterprises that would cease to be distinct as a result of the Merger, and that the turnover test under section 23(1)(b)(i) of the Act is met. Accordingly, arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
- 1.8 Competitive assessment: The CMA has concluded that the Merger gives rise to a realistic prospect of a substantial lessening of competition (**SLC**) within a market

or markets in the United Kingdom (**UK**) and that the test for reference is met on competition grounds. The CMA found a realistic prospect of an SLC in relation to the worldwide supply of AWB.

- 1.9 Remedies: Parker set out a hypothetical remedy to address the CMA's competition concerns (the **Hypothetical Remedy**). The Hypothetical Remedy does not constitute a formal offer of Undertakings in Lieu of a reference to a phase 2 investigation (**UILs**), but the Parties have indicated that they would be prepared to offer this remedy in the event that the CMA found a realistic prospect of an SLC. The Hypothetical Remedy would involve the structural divestment of Parker's entire AWB business. The CMA concluded that it may be appropriate to deal with the competition concerns arising from the merger situation by way of UILs, but that further information and consultation is needed to ensure that the Hypothetical Remedy, or a modified version of it, would comprehensively address the SLC.

The CMA's competitive assessment

- 1.10 The Parties overlap in the supply of several components supplied in the aerospace manufacturing industry. The CMA's investigation did not find any competition concerns in respect of most of the products where the Parties overlap; however, the CMA did identify concerns in respect of the supply of aircraft wheels and brakes (**AWB**). The CMA therefore assessed the Merger by reference to **horizontal** effects. The CMA did not identify any vertical or conglomerate concerns arising as a result of the Merger.

Horizontal unilateral effects in the worldwide supply of AWB

- 1.11 Both Parties are active in the worldwide supply of AWB to customers, including aircraft manufacturers and landing gear integrators:
- (a) Parker mainly supplies AWB for general aviation aircraft, but also supplies AWB for other categories of aircraft, including business jets, civil helicopters, and fixed wing and rotary military aircraft.
 - (b) Meggitt mainly supplies AWB for large and regional jet aircraft, and business jets, but also supplies AWB for other categories of aircraft, including general aviation aircraft, civil helicopters, and fixed wing and rotary military aircraft.
- 1.12 Based on an assessment of the fixed wing aircraft for which the Parties have bid to supply AWB since 2012, the CMA identified a range of fixed wing aircraft (based on aircraft Maximum Take Off Weight, or **MTOW**) for which they each have the technical capability and commercial interest in supplying AWB (the **Overlap Window**). For rotorcraft, the Parties are capable of and have demonstrated a commercial interest in supplying AWB for rotorcraft of all sizes.

Fixed wing aircraft in the Overlap Window

- 1.13 In order to assess the competitive constraint that the Parties exercise on each other, as well as the competition they face from other suppliers, the CMA considered a range of evidence.
- 1.14 While recognising that the Parties' internal documents often focussed on their broader activities in AWB, the CMA found that the Parties were generally identified as close competitors to each other in the documents that were relevant to the supply of AWB for fixed wing aircraft in the Overlap Window. The CMA also found that these internal documents did not support the Parties' position that there is a range of alternative suppliers for fixed wing aircraft in the Overlap Window.
- 1.15 The CMA also considered shares of supply submitted by the Parties. Shares of supply were submitted for general aviation, business jets, civil helicopters, and military fixed wing aircraft, but not specifically for aircraft falling within the Overlap Window. While recognising that shares of supply may not fully capture competition in these segments, the CMA nonetheless found that the Parties had significant combined shares for the supply of AWB to general aviation aircraft, business jets, military fixed wing aircraft (which are the segments most relevant to the assessment of competition within the Overlap Window), and that the shares provided were consistent with the conclusion that there are a limited number of suppliers active in the Overlap Window.
- 1.16 The CMA analysed tender data submitted by the Parties in relation to tenders for the supply of AWB in which either Party was invited to bid in the period 2012-2021. Contrary to the Parties' submissions, the CMA found that the number of tenders for aircraft within the Overlap Window in which one Party imposed a competitive constraint on the other was significant.
- 1.17 Finally, several third parties told the CMA that the Parties were close competitors for supply of AWB for small and medium-sized aircraft, and that there is a very limited number of alternative suppliers with the technical capability and commercial interest in supplying aircraft of this size. A number of third parties expressed concerns that the Merger would materially reduce competition for the supply of AWB.

Rotorcraft

- 1.18 In order to assess the competitive constraint that the Parties exercise on each other, as well as the competition they face from other suppliers, the CMA again considered a range of evidence.
- 1.19 To the extent that the Parties' internal documents were relevant to the supply of AWB for rotorcraft, the CMA found that they considered each other to be close competitors for the supply of AWB for rotorcraft. The CMA also the Parties' internal

documents relating to bids to supply AWB to rotorcraft did not support the Parties' position that there is a range of suppliers of AWB for rotorcraft.

- 1.20 Shares of supply were submitted for civil and military rotorcraft separately. The CMA found that the Parties had significant combined shares for the supply of AWB for both civil and military rotorcraft.
- 1.21 The tender data submitted by the Parties also included opportunities relating to rotorcraft. The CMA found that the Parties' tender data supports the conclusion that, contrary to the Parties' submissions, both Parties are active in the supply of AWB to rotorcraft, and that there was a material degree of competitive interaction between them.
- 1.22 Finally, multiple third parties told the CMA that the Parties were close competitors for supply of AWB for rotorcraft. The CMA also found that third party views generally supported the conclusion that there are a limited number of alternative suppliers for AWB for rotorcraft. A number of third parties expressed concerns that the Merger would materially reduce competition for the supply of AWB to rotorcraft.

Conclusion on competitive assessment

- 1.23 The CMA therefore believes that it is or may be the case that the Merger may be expected to result in an SLC in as a result of horizontal unilateral effects in relation to the supply of AWB worldwide.

Undertakings in lieu

- 1.24 Parker outlined a Hypothetical Remedy to address the CMA's competition concerns. The Hypothetical Remedy does not constitute a formal offer of Undertakings in Lieu of a reference (**UILs**). However, the Parties have indicated that they would be prepared to offer this remedy in the event the CMA found a realistic prospect of an SLC. The Hypothetical Remedy consists of the structural divestment of Parker's entire AWB business.
- 1.25 The CMA believes that it is or may be the case that the Hypothetical Remedy or a modified version of it may be able to comprehensively address the competition concerns identified in its investigation, but notes that further information and consultation would be necessary to determine this.
- 1.26 Conversely, the CMA does not believe that a UIL which did not involve the divestment of one of the Parties' AWB businesses would be sufficiently clear-cut and comprehensive to meet the standard set out in CMA guidance for phase 1 remedies.

Public Interest

- 1.27 As required by section 44(3)(b) of the Act, the CMA has summarised representations received from third parties which relate to the national security public interest consideration mentioned in the Notice.

2. LEGAL FRAMEWORK

- 2.1 When assessing mergers which are not subject to the public interest regime, the CMA is required to make a reference for an in-depth phase 2 inquiry where it believes that it is or may be the case that the creation of a relevant merger situation may be expected to result in an SLC within any market or markets in the UK for goods or services (section 33(1) of the Enterprise Act 2002 (the **Act**)).
- 2.2 The Act permits intervention by the Secretary of State in cases where he or she believes that it is or may be the case that one or more public interest considerations are relevant to a merger.¹ In such a case section 33(1) does not apply,² and instead the CMA is required to give a report to the Secretary of State within a time period that he or she requires.³ The report must contain:⁴
- (a) advice on the considerations relevant to the making of a reference under section 22 or 33 of the Act which are also relevant to the Secretary of State's decision as to whether to make a reference under section 45 of the Act; and
 - (b) a summary of any representations about the case received by the CMA and which relate to any public interest consideration mentioned in the intervention notice concerned (other than a media public interest consideration) and which is or may be relevant to the Secretary of State's decision as to whether to make a reference under section 45 of the Act.
- 2.3 In particular, the report must include decisions as to whether the CMA believes it is or may be the case that:⁵
- (a) a relevant merger situation has been created or arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation;

¹ Section 42(2) of the Act. As to public interest mergers more generally, see Chapter 16, [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2revised), December 2020 (**Guidance on the CMA's jurisdiction and procedure**).

² Section 33(3)(d) of the Act.

³ Section 44(2) of the Act.

⁴ Section 44(3) of the Act.

⁵ The full list of requirements is set out in section 44(4) of the Act.

- (b) the creation of that situation has resulted or may be expected to result in an SLC within any market or markets within the UK for goods and services;
- (c) it would be appropriate to deal with the matter (disregarding the relevant public interest consideration) by way of undertakings in lieu of a reference to phase 2.⁶

2.4 Following receipt of the CMA's report, the Secretary of State may make a phase 2 reference to the CMA on public interest grounds.⁷ In deciding whether to make such a reference, the Secretary of State is required to accept the CMA's decision on the matters listed in paragraph 2.3 above.⁸ The relevant legal framework in relation to the CMA's assessment of jurisdiction is set out in section 4.

3. PARTIES AND TRANSACTION

Parties' relevant activities

Parker

- 3.1 Parker is a manufacturing company which supplies motion and control technologies and systems, as well as precision engineered solutions for a variety of mobile, industrial, and aerospace markets. Parker is headquartered in Cleveland, Ohio, United States of America (**USA**), and is listed on the New York Stock Exchange. Parker operates in 50 countries, including the UK.
- 3.2 Parker is organised into two business divisions:
 - (a) **Diversified Industrial Segment:** this business division is an aggregation of several business units which manufacture motion-control and fluid power system components for builders and users of various types of manufacturing, packaging, processing, transportation, agricultural, construction, and military vehicles and equipment. It sells products to original equipment manufacturers (**OEMs**) and distributors who serve the replacement markets.
 - (b) **Aerospace Systems Segment:** this business division produces hydraulic, fuel, pneumatic and electro-mechanical systems and components for the aerospace manufacturing industry, which are typically used on commercial, military and general aviation aircraft, rotorcraft and other related aerospace equipment. It sells products primarily in the commercial and military

⁶ Under paragraph 3 of Schedule 7 of the Act.

⁷ Pursuant to section 45 of the Act.

⁸ Section 46(2) of the Act. The Secretary of State is also required by section 46(2) to accept the CMA's decision as to whether it believes that it is or may be the case that it would be appropriate to deal with the matter (disregarding any public interest considerations mentioned in the intervention notice) by way of undertakings under paragraph 3 of Schedule 7 of the Act. This is considered in section 12 of this report.

aerospace sectors to both OEMs and to end users for spares; and for maintenance, repair, and overhaul (**MRO**).

- 3.3 Parker's turnover for the financial year ending 30 June 2021 was £11,350.5 million worldwide, and £[] million in the UK.

Meggitt

- 3.4 Meggitt is a manufacturing company which designs and manufactures high-performance components and sub-systems for the aerospace and defence sector, and selected energy applications. Meggitt is headquartered in Ansty Park, UK, and is listed on the London Stock Exchange. Meggitt's UK activities are largely focused on civil aerospace and energy with some defence-specific technology.

- 3.5 Meggitt is organised into four customer-focused divisions:

- (a) **Airframe Systems:** this division provides braking systems for commercial, business and defence aircraft, fire protection and safety systems, power and motion, fuel systems, avionics and sensors and advanced polymer seals for civil and defence aircraft.
- (b) **Engine Systems:** this division produces advanced engine composites, thermal and safety systems with a broad range of technologies and aerospace engine flow control and sensing solutions.
- (c) **Energy and Equipment:** this division focuses on energy and defence equipment ranging from electronics cooling to ammunition handling systems and heat transfer equipment for offshore oil and gas facilities and renewable energy applications.
- (d) **Services and Support:** this division provides a full-service aftermarket offering in respect of Meggitt products.

- 3.6 Meggitt's worldwide turnover for the financial year ending 31 December 2020 was £1,642 million worldwide, and £[] million in the UK.

Transaction

- 3.7 The Merger concerns the acquisition by Parker of the whole of the entire issued and to be issued share capital of Meggitt pursuant to a Cooperation Agreement entered into on 2 August 2021 by Parker and Meggitt. This agreement sets out the key terms of agreement between the Parties to effect the Merger.
- 3.8 On 2 August 2021, pursuant to a Rule 2.7 Announcement under the UK Takeover Code, Parker announced a public offer to acquire the entire issued and to be issued share capital of Meggitt. Parker's offer values Meggitt at approximately £6.3

billion on a fully diluted basis, with a transaction value of approximately £7.1 billion, subject to adjustments for dividends and/or other distributions.

- 3.9 The Merger was approved by Meggitt shareholders at a Court Meeting and General Meeting held on 21 September 2021. The Merger will be completed by way of Scheme of Arrangement under Part 26 of the UK Companies Act 2006.
- 3.10 Completion of the Merger is conditional on receiving merger control clearance from the CMA, as well as several other merger control and national security and foreign investment authorities around the world. The Parties expect to complete the Merger by Q3 2022.
- 3.11 In addition to the UK, the Merger is the subject of review by competition authorities in Australia, Brazil, China, the EU, Mexico, New Zealand, Saudi Arabia, Singapore, Turkey, and the USA.

Rationale

- 3.12 Parker submitted that the Merger presents an opportunity to grow its Aerospace Systems Segment and have a more balanced aerospace portfolio across cycles as a result of the Parties' complementary products, systems, capabilities, technologies and customer types.⁹
- 3.13 Parker submitted that the Merger would enhance the future prospects of the Merged Entity within the global aerospace and defence industries, and therefore provide a stronger value proposition for customers.¹⁰ The CMA notes that Parker's internal documents are consistent with its stated rationale for the Merger of expanding into adjacent product areas and acquiring complementary product portfolios.¹¹
- 3.14 The Meggitt Board of Directors' stated rationale for recommending Parker's offer to shareholders was that the Merger substantially accelerates and de-risks the delivery of value to Meggitt shareholders in the context of ongoing uncertainty regarding the timing and speed of the aerospace sector's recovery from the COVID-19 pandemic.¹² This value was represented by a premium of approximately 70.5% to the Closing Price of 469.1 pence per Meggitt Share on 30 July 2021, the last business day before the announcement.¹³

⁹ Final Merger Notice (FMN) submitted to the CMA on 25 January 2021, paragraph 13.

¹⁰ FMN, paragraph 14.

¹¹ Parker Internal Document, Annex MN-A-016 to the FMN, 'Meggitt overview', of 2 August 2021, slides 4 and 20.

¹² Rule 2.7 Announcement, page 16.

¹³ Rule 2.7 Announcement, page 17.

3.15 The CMA has not identified any internal documents (or other evidence) that point to an alternative rationale for the Merger.

Procedure

3.16 On 18 October 2021, the Secretary of State for Business, Energy and Industrial Strategy (**BEIS**) issued a public interest intervention notice on the public interest ground of national security in accordance with sections 42(2), 58(1) and 58(2) of the Act in relation to the Merger.

3.17 On 19 October 2021, the CMA commenced its investigation and published an invitation to comment.

3.18 The Merger was considered at a Case Review Meeting.¹⁴

4. JURISDICTION

Legal Framework

4.1 The CMA has jurisdiction over transactions where it believes that it is or may be the case that a relevant merger situation has been created. In the case of an anticipated transaction, a relevant merger situation has been created when:

- (a) arrangements are in progress or in contemplation which, if carried into effect, will lead to two or more enterprises ceasing to be distinct.¹⁵ Two enterprises will cease to be distinct if they are brought under common ownership or control;¹⁶ and
- (b) either the thresholds under sections 23(1) (the turnover test) or 23(2) (the share of supply test) of the Act are satisfied.

Assessment

4.2 Each of Parker and Meggitt is an 'enterprise' under section 129 of the Act. As a result of the Merger, these enterprises will be brought under common ownership and control and thus will cease to be distinct for the purposes of sections 23(1)(a) and 26 of the Act.

¹⁴ See Guidance on the CMA's jurisdiction and procedure, from page 46. Ahead of the Case Review Meeting, the CMA set out its concerns to the Parties in an Issues Letter on 27 January 2022, and a Supplementary Issues Letter on 22 February 2022.

¹⁵ Section 33(1)(a) of the Act and Section 23 of the Act. 'Enterprise' is defined in section 129 of the Act as the activities, or part of the activities, of a business. See too, Guidance on the CMA's jurisdiction and procedure, paragraph 4.10.

¹⁶ Section 26 of the Act.

- 4.3 Meggitt's UK turnover exceeds £70 million, so the turnover test in section 23(1)(b) of the Act is satisfied.

Conclusion on jurisdiction

- 4.4 For the reasons listed above, the CMA considers that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation for the purposes of section 44(4)(a) of the Act.

5. COUNTERFACTUAL

- 5.1 The CMA assesses a merger's impact relative to the situation that would prevail without the merger (ie the counterfactual).¹⁷ In an anticipated merger the counterfactual may consist of the prevailing conditions of competition, or conditions of competition that involve stronger or weaker competition between the merger firms than under the prevailing conditions of competition.¹⁸ In determining the appropriate counterfactual, the CMA will generally focus only on potential changes to the prevailing conditions of competition where there are reasons to believe that those changes would make a material difference to its competitive assessment.¹⁹
- 5.2 The Parties submitted that the appropriate counterfactual is the prevailing conditions of competition.
- 5.3 In this case, the CMA found no evidence supporting a different counterfactual, and the Parties and third parties have not put forward arguments in this respect.
- 5.4 Therefore, the CMA believes the prevailing conditions of competition to be the relevant counterfactual.

6. INDUSTRY BACKGROUND

- 6.1 Both Parties are active in the aerospace manufacturing industry. In this section, the CMA summarises some of the key features of this industry by way of context to its competitive assessment.

Types of aircraft

- 6.2 Aircraft may be segmented into categories by type and size. In their submissions to the CMA, the Parties presented a segmentation of aircraft types and sizes

¹⁷ [Merger Assessment Guidelines](#) (CMA129, March 2021) (**Merger Assessment Guidelines**), paragraph 3.1.

¹⁸ Merger Assessment Guidelines, paragraph 3.2.

¹⁹ Merger Assessment Guidelines, paragraph 3.9.

based on the European Commission's *Safran/Zodiac Aerospace* merger decision.²⁰ This divides aircraft into the following categories:

Figure 1: Aircraft categories

Segment	Description
Commercial / large	Large commercial aircraft equipped with over 100 seats that can travel at least 2,000 nautical miles (3,704 km), excluding aircraft included in 'Military'.
Regional / mid-size	Fixed wing aircraft with: 20 – 99 passenger seats; more than 99 passenger seats, but with a range of less than 2,000 nautical miles; or 19 passenger seats or fewer, but with a Maximum Take-Off Weight (MTOW) exceeding 19,000 lb (8,618 kg), excluding aircraft included in 'Business jets' or 'Military'.
Business jets	Jet powered fixed wing aircraft with 19 passenger seats or fewer, excluding aircraft included in 'Military'.
General aviation / small	Propeller powered fixed wing aircraft with: 19 passenger seats or fewer; and a MTOW of 19,000 lb (8,618 kg) or less, excluding aircraft included in 'Military'.
Helicopters	Any civil rotary wing aircraft of any size, excluding rotorcraft included in 'Military'.
Military (fixed wing & rotary)	All fixed and rotary wing aircraft acquired by militaries globally, including fighter jets, military transports, military tankers, drones and helicopters. This includes purchases of dual use airframes such as the Boeing 737NG (available for military use as the C40 Clipper, Poseidon P8 and E-7A Wedgetail).

Source: FMN table 11.

The aerospace supply chain

6.3 According to the Parties, the supply chain in the aerospace manufacturing industry is made up of four different tiers of companies that supply to aircraft manufacturers and OEMs either directly or indirectly:

- (a) **Tier-1 suppliers (system integrators):** integrate components and sub-components into whole systems and equipment.
- (b) **Tier-2 suppliers (assembly/equipment providers):** manufacture and supply components and sub-components to Tier-1 suppliers or OEMs, which are later integrated into the systems/equipment by either the aircraft manufacturer or the Tier-1 supplier. The Parties are Tier-2 suppliers of AWB to landing gear system integrators.
- (c) **Tier-3 suppliers (sub-assembly suppliers):** manufacture and supply sub-components (eg machined parts for use in assembly of AWB) to Tier-2 suppliers.
- (d) **Tier-4 suppliers (material supply or processing):** manufacture and supply materials and processes (eg metals and composite materials) to Tier-3 suppliers.

²⁰ FMN, paragraph 192; and FMN table 11, citing Case M.8425 – *Safran/Zodiac Aerospace*, European Commission decision of 21 December 2017.

- 6.4 Depending on the type of system, equipment, component or sub-component involved, a company may be active in more than one tier. The Parties are both primarily active in Tiers 1 and 2.
- 6.5 In addition to providing components to OEMs, suppliers also provide components and MRO services to the aftermarket. Aftermarket products and services generally include the supply of spare parts and repair services, and this supply is frequently handled by the original supplier of the relevant component in each case. Component suppliers typically do not repair or replace other suppliers' components as those components are unique to the supplier.

The aerospace product lifestyle and procurement process

- 6.6 Aircraft are developed, constructed, and maintained following aircraft 'programmes' or 'platforms'. These programmes bring together all the expertise necessary to design, develop, construct, and maintain an aircraft from multiple disciplines and companies.
- 6.7 The length of an aircraft programme (including the selection, tendering for, purchasing, integration, maintenance, and replacement of aircraft components) can last 30-40 years, or more.
- 6.8 At the outset of a programme, customers (aircraft manufacturers or 'airframers') may choose to self-source, single source, dual source and/or multi-source components depending on: (i) whether the component in question is highly-specific to the aircraft in question and requires significant engineering resources, or (ii) whether it is a standard piece of equipment. The Parties submitted that while customers for some programmes may use a dual or multi-source procurement strategy to maintain a degree of ongoing competitive tension between suppliers throughout the product lifecycles, and potentially to maintain security of supply, this is relatively rare for bespoke components.²¹ For other programmes, customers may use a single source supplier selected through a competitive tender at the start of the product lifecycle to secure the best offer while avoiding duplicative engineering and capital investments for bespoke products.
- 6.9 In most cases, customers in the aerospace manufacturing industry source systems and equipment via competitive tenders, usually for the duration of the aircraft programme in question. Aircraft manufacturers may perform functions in-house such as landing gear integration, or procure these functions from third parties, who in turn manage the procurement of the necessary parts from third parties or use their own in-house manufacturing capability. Due to the long lifecycle of aircraft, procurement processes for aircraft programmes are infrequent. Suppliers bid to be part of an aircraft programme, usually from the design stage as

²¹ FMN, paragraph 83.

a number of the products required for each aircraft programme are bespoke and so need to be designed and developed at the same time as the aircraft.

Customers have confirmed that they typically set the OEM and aftermarket terms in the initial tender, as they prefer not to switch suppliers once one has been selected as this would incur considerable expenses in redesigning the aircraft.

- 6.10 The structure of the tender process varies according to the aircraft type, customer involved and/or programme in question. The procedure may involve an initial request for information (**RFI**), to identify prospective suppliers with the requisite capability, followed by a request for quotation (**RFQ**) or Request for Proposal (**RFP**) and the submission of competitive offers, followed by one or more rounds of final negotiations. In some cases suppliers may be asked to submit a high-level non-binding Rough Order of Magnitude (**ROM**) with approximate costings for supply of a component. Prior to the issue of an RFI, the customer may engage in informal discussions with suppliers to gauge their capabilities and interest in supplying the component for the aircraft in question, and this process may last several years. Not every supplier which receives an RFI – or with which a customer has informal early-stage discussions – will go on to receive a ROM request, an RFQ or an RFP. The process culminates in the selection of one or more suppliers in accordance with the customer's procurement practice.

7. FRAME OF REFERENCE

- 7.1 The assessment of the frame of reference is an analytical tool that forms part of the analysis of the competitive effects of the merger and should not be viewed as a separate exercise.²² Market definition involves identifying the most significant competitive alternatives available to customers of the merger firms. In some cases, market definition can be an important part of the overall merger assessment process. In other cases, the evidence gathered as part of the competitive assessment, which will assess the potentially significant constraints on the merger firms' behaviour, will capture the competitive dynamics more fully than formal market definition.²³
- 7.2 While market definition can sometimes be a useful tool, it is not an end in itself. The outcome of any market definition exercise does not determine the outcome of the CMA's analysis of the competitive effects of the merger in any mechanistic way. In assessing whether a merger may give rise to an SLC, the CMA may take into account constraints outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important than others.²⁴

²² Merger Assessment Guidelines, from paragraph 9.1.

²³ Merger Assessment Guidelines, from paragraph 9.2.

²⁴ Merger Assessment Guidelines, from paragraph 9.4.

- 7.3 There may be no need for the CMA's assessment of competitive effects to be based on a highly specific description of any particular market (including, for example, descriptions of the precise boundaries of the relevant markets and bright-line determinations of whether particular products or services fall within it).²⁵ The approach taken by the CMA will reflect the circumstances of the case.
- 7.4 The Parties overlap in the supply of several components used in the aerospace manufacturing industry, namely aerospace actuators, aerospace pneumatic valves, aerospace sensors, aerospace seals, electronics cooling systems and aircraft wheels and brakes.²⁶ However, the CMA's investigation found no basis for concerns in relation to any overlapping products except in respect of AWB.
- 7.5 Parker supplies AWB for fixed wing and rotary wing aircraft to OEMs and the aftermarket, with global sales totalling £[redacted] million in FY 2020.²⁷ Meggitt supplies AWB for fixed wing and rotary wing aircraft for new aircraft and to the aftermarket, with global sales totalling £[redacted] million in FY 2020.²⁸

Product scope

- 7.6 The Parties proposed a single frame of reference for all AWB, including Original Equipment (**OE**, ie parts that are supplied for incorporation into the aircraft as it is manufactured) and aftermarket (ie spare and replacement parts for use in existing aircraft) sales. The Parties also submitted that the frame of reference should not be segmented by the size of the aircraft.²⁹
- 7.7 Relevant precedent cases include the Office of Fair Trading's (**OFT**) phase 1 decision in *Meggitt plc / K&F Industries Holdings Inc* and the European Commission's (**EC**) clearance decision in *Safran / Zodiac Airspace*:
- (a) In *Meggitt plc / K&F Industries Holdings Inc*, the OFT considered that AWB form part of a single market and they are purchased together.³⁰ The OFT did not conclude on whether the supply of AWB should be segmented by civil vs military customers.³¹ Spare parts also came within the same frame of reference as OEM supply.³² While the OFT did not formally segment the market for the supply of AWB based on aircraft size, it took this into account

²⁵ Merger Assessment Guidelines, from paragraph 9.5.

²⁶ FMN, paragraph 17.

²⁷ FMN, paragraph 151.

²⁸ FMN, paragraph 154.

²⁹ FMN, paragraph 158.

³⁰ Case ME/2952/07, [Meggitt plc / K&F Industries Holdings Inc](#), OFT decision of 13 June 2007, paragraph 20.

³¹ Case ME/2952/07, [Meggitt plc / K&F Industries Holdings Inc](#), OFT decision of 13 June 2007, paragraph 16.

³² Case ME/2952/07, [Meggitt plc / K&F Industries Holdings Inc](#), OFT decision of 13 June 2007, paragraph 22.

in the competitive assessment.³³ The OFT adopted a global frame of reference for AWB.³⁴

- (b) In *Safran / Zodiac Airspace*, the EC considered that AWB belong to the same market.³⁵ The EC considered whether there should be a segmentation according to aircraft types, but the market investigation results were inconclusive, and the EC left this question open.³⁶

Features of AWB

- 7.8 AWB are generally procured as a single unit, as the braking components must efficiently utilise the available space within the wheels.³⁷ They are part of a broader landing system, which also includes components such as struts, actuators and tyres. Neither Parker nor Meggitt are active in the integration of the AWB with the other components of the landing gear system, with this work being carried out by landing gear systems integrators, who are Tier 1 suppliers in the supply chain, or airframers themselves.
- 7.9 The main wheels and brakes on a fixed wing aircraft must be capable of absorbing a large amount of energy without failing due to excessive heat, as they stop the aircraft during landings and aborted take-offs. The kinetic energy of an aircraft, and therefore the size and complexity of its brakes, is determined by its MTOW and landing speed.³⁸ Other wheels on a fixed wing aircraft, such as nose wheels, are not involved in stopping the aircraft during landing. These wheels may have no brakes or simple brakes for taxiing and parking only.
- 7.10 Aircraft brakes may use either steel or carbon as the braking material. Carbon brakes are lighter than steel brakes of equivalent size and have a longer lifespan, though are more expensive upfront and require more complex landing gear systems. Generally, larger aircraft are more likely to use carbon brakes, and smaller aircraft steel brakes. On mid-sized aircraft, both carbon and steel brakes are used.³⁹ Parker and Meggitt supply, and offer to customers, both steel and

³³ Case ME/2952/07, [Meggitt plc / K&F Industries Holdings Inc.](#), OFT decision of 13 June 2007, paragraph 25.

³⁴ Case ME/2952/07, [Meggitt plc / K&F Industries Holdings Inc.](#), OFT decision of 13 June 2007, paragraph 28.

³⁵ Case M.8425, [Safran / Zodiac Aerospace](#), European Commission decision of 21 December 2017, paragraph 81.

³⁶ Case M.8425, [Safran / Zodiac Aerospace](#), European Commission decision of 21 December 2017, paragraphs 82 – 84.

³⁷ FMN, paragraph 145.

³⁸ FMN, paragraph 147.

³⁹ FMN, paragraphs 183 and 184.

carbon brakes, although carbon accounts for a far greater proportion of Meggitt's brake sales than those of Parker.⁴⁰

- 7.11 Rotorcraft, including civil helicopters, military helicopters and tiltrotor aircraft, may have wheels and brakes for taxiing and parking. Some rotorcraft also have rotor brakes. Both wheel and rotor brakes on rotorcraft are generally smaller and simpler than those on fixed wing aircraft as they do not need to absorb the full landing energy of the aircraft.⁴¹

Segmentation by aircraft size and type

- 7.12 Past merger cases in aerospace industries have found it appropriate to segment the frame of reference by aircraft type, using the categories listed in Figure 1 or similar categories. These categories are broadly recognised within the industry, although there is little consensus on the precise definitions of segments between different industry participants.
- 7.13 Given the link between the size of a fixed wing aircraft and the complexity of its AWB, the CMA considers some form of segmentation by size is an appropriate basis on which to analyse competition in this case. However, the CMA also considers that the categories listed in Figure 1 do not fully reflect differences, on the demand-side, in the technical requirements for AWB for different aircraft and, on the supply-side, in the technical capabilities and commercial interest of suppliers to supply AWB across different aircraft.
- 7.14 Given the limitations set out above, rather than adopting the segmentation by aircraft type set out in Figure 1, the CMA's investigation has sought to focus on the supply of AWB to the aircraft that both Parties compete to supply. As the Parties overlap in the supply of AWB to fixed wing aircraft in the general aviation and business jet categories (and military fixed wing aircraft of similar size), and rotorcraft of all sizes (including military rotorcraft), supply of AWB for these categories of aircraft comprise the broadest frame of reference for any assessment (ie the supply of AWB for large commercial fixed-wing aircraft and regional fixed-wing aircraft are not considered further in this Report). Within this frame of reference, the CMA's competitive assessment focuses on (i) the supply of AWB for fixed wing aircraft within a particular MTOW range and (ii) the supply of AWB for rotorcraft of all sizes. This better captures the market segments in which the Parties compete based on technical and commercial considerations, as explained in paragraph 8.9.

⁴⁰ Meggitt's sales of carbon brakes account for over [%] of its total brakes sales. Parker currently supplies carbon brakes to one programme – [%]. FMN, paragraphs 187 and 188. The CMA notes that the brake Parker supplies to the [%] is a [%] brake, rather than a [%] of the type typically used on fixed wing aircraft. [%].

⁴¹ FMN, paragraphs 148 and 149.

Supply to civil and military aircraft

- 7.15 The Parties submit that it would not be justified to segment the supply of AWB between military and civilian aircraft.⁴² They submit that the function that AWB must perform on an aircraft is the same regardless of whether that aircraft is military or civilian, and that the same broad set of suppliers are active in both.⁴³
- 7.16 The CMA considers that it is not necessary to distinguish between the supply of AWB to civil and military aircraft. Third parties the CMA contacted during its investigation, including airframers and defence primes, told the CMA that AWB perform the same role on both civil and military aircraft, and that there are few technical differences between AWB these applications. Further, the CMA notes that the same group of suppliers is active in supplying AWB to civil and military aircraft.

OE and aftermarket supply

- 7.17 Aircraft parts, including AWB, are supplied both to OEMs and to the aftermarket.⁴⁴ Counterpoint⁴⁵ estimates that aftermarket supply may account for approximately 60% of sales of AWB, with OEM sales accounting for 20% and maintenance repair and overhaul (**MRO**) services the remaining 20%.⁴⁶ The Parties argue that it is not necessary or helpful to segment OEM and aftermarket supply of AWB.⁴⁷
- 7.18 Customers of the Parties told the CMA that they generally set prices and terms for the aftermarket supply of parts in the initial tender negotiations alongside prices and terms for OEM supply. Further, the CMA has found that outside of the very lightest civil aircraft, there are no aftermarket-only suppliers. For larger and more complex aircraft, suppliers of OEM AWB generally also supply aftermarket AWB for the same aircraft. On the basis of this evidence, the CMA considers that OEM and aftermarket supply should not be segmented into separate frames of reference, although the ability of AM-oriented AWB suppliers to compete for OEM aircraft programmes has been taken into account in the competitive assessment.

⁴² FMN, paragraph 173.

⁴³ FMN, paragraph 174.

⁴⁴ FMN, paragraph 80.

⁴⁵ Counterpoint Market Intelligence Limited is an independent management consulting firm which produces market intelligence reports on the defence and aerospace sectors. Counterpoint produces reports estimating market sizes and competitor shares of supply by tracking global aircraft deliveries, identifying the components within those aircraft, estimating a value for those components and identifying the supplier of those components.

⁴⁶ Counterpoint Market Intelligence Limited report, Annex MN-009 to the FMN, 'Counterpoint Landing Gear 2021', section 7.2.1.

⁴⁷ FMN, paragraph 167.

Geographic scope

Parties' submissions

- 7.19 The Parties submitted that the geographical scope for the supply of AWB should be considered global.⁴⁸ As evidence for this, they point to the fact that both Parties supply to OEMs and operators in a large number of countries, and that finished aircraft are supplied and used all around the globe.
- 7.20 The Parties submitted that the OFT previously identified a global market for AWB in *Meggitt plc / K&F Industries Holdings Inc.*⁴⁹ and that in *Safran / Zodiac Aerospace* the European Commission defined the geographic market for the supply of various aerospace systems and components, including AWB, as worldwide.⁵⁰

CMA's assessment

- 7.21 Evidence gathered by the CMA in the course of its investigation supports the position of the Parties, indicating that customers are able and willing to use suppliers of AWB regardless of where the suppliers are located.⁵¹ As such, the CMA considers that the appropriate geographic frame of reference for the supply of AWB is global.
- 7.22 The CMA notes that the markets for the supply of aircraft are similarly global in nature, with UK-based customers, such as airlines and the UK Armed Forces, purchasing from North American and European-headquartered airframers. As such, any effect of the Merger on competition globally may be expected to affect UK-based customers (whether directly for AWB or for aircraft in which AWB are deployed).

Conclusion on frame of reference

- 7.23 The CMA considers that the appropriate frame of reference for assessing the effect of the Merger on competition is the supply of AWB to general aviation and business jet fixed wing aircraft, and military fixed wing aircraft of equivalent weight, and to rotorcraft worldwide. However, the CMA notes that the characteristics of fixed wing AWB depend heavily on the aircraft's landing energy, where aircraft weight is an important factor. This is further considered in the competitive assessment section.

⁴⁸ FMN, paragraph 189.

⁴⁹ Case ME/2952/07, [Meggitt plc / K&F Industries Holdings Inc.](#), OFT decision of 13 June 2007.

⁵⁰ Case M.8425, [Safran / Zodiac Aerospace](#), European Commission decision of 21 December 2017.

⁵¹ With respect to military aircraft, a small number of defence primes stated that some national defence procurers may have preferences around the nationality of the suppliers of defence programmes. The CMA does not think it necessary to incorporate this into its frame of reference, as it has found it has little relevance to competition between the Parties.

8. COMPETITIVE ASSESSMENT

- 8.1 In assessing the theories of harm that might be raised by a merger, the CMA will consider how the merger might affect rivalry between firms seeking to win customers' business over time by offering them a better deal. The theories of harm will depend on the levels of the supply chain at which the merger firms operate; the links between the merger firms and with their rivals; the nature of competition and how firms seek to win customers; and any long-run dynamics in the relevant sectors.⁵²

Nature of competition

- 8.2 The procurement process used for the supply of aerospace components, explained in paragraph 6.6 to 6.10 above, has several implications for the competitive assessment of the supply of AWB.
- 8.3 These processes are typically long and involve multiple stages of interaction between customers and potential suppliers prior to the submission of a final bid and negotiation of terms of supply. Procurement processes are also confidential, and suppliers typically are not told which other suppliers are participating in the process. As a result, suppliers' visibility of the competitors which are involved in a procurement process and the stages they have reached in them is limited. Further, participation in procurement processes is costly for suppliers, especially in submitting a formal bid.
- 8.4 Evidence seen by the CMA shows that AWB suppliers often anticipate competition from other suppliers who are active in supplying AWB for aircraft of that type, and will not have good visibility over whether those other suppliers are actually involved in the tender process at a particular stage.⁵³ Suppliers take into consideration the constraint from other suppliers throughout the procurement process, including when deciding whether to bid on an opportunity, in deciding the content of their bid, and in negotiating with the customer before and after the submission of a bid. This constraint will be imposed by suppliers who are perceived by bidders as being technically capable and commercially interested in the opportunity.
- 8.5 For this reason, the CMA does not consider that tender data, which only captures formal participation in a tender process, paints a complete picture of competition between suppliers of AWB. The CMA has therefore also had regard to other

⁵² Merger Assessment Guidelines, paragraph 2.12.

⁵³ For example, in the Parker and Meggitt internal documents discussing the opportunity to supply AWB to the [X] both of the Parties list each other and [X] as being competitors for the opportunity. Meggitt stated that '[X]'. [X] told the CMA that, in fact, [X] did not respond to them and was not a participant in this process. See further discussion of these documents in paragraphs 8.25 – 8.30.

evidence, including the Parties' internal documents in relation to specific tenders. This is discussed further below.

The Parties' activities

- 8.6 The Parties submitted that they both supply AWB for the following sub-segments of aircraft (which are defined in Figure 1 above):
- (a) Business jets: Meggitt supplies a number of large and mid-size business jets, whereas Parker supplies only [REDACTED] business jet ([REDACTED]).⁵⁴
 - (b) General aviation: Parker focuses on supplying steel AWB for general aviation aircraft. On the other hand, Meggitt supplies AWB to only one general aviation aircraft that is currently in production (the [REDACTED]).⁵⁵
 - (c) Civil helicopters: both Parker and Meggitt supply AWB for a number of helicopters.⁵⁶
 - (d) Military aircraft (including rotorcraft and fixed wing aircraft): Meggitt supplies AWB to a range of military fixed wing aircraft.⁵⁷ On the other hand, Parker only supplies AWB for small fixed wing military aircraft.⁵⁸ Both Parties supply AWB to military rotorcraft.
- 8.7 The CMA notes that the categories of aircraft described above are used in certain of the Parties' internal documents.⁵⁹ However, the CMA's investigation established that these categories are of limited use for the competitive assessment because they do not accurately reflect the competitive dynamics in the supply of AWB. For example, the performance requirements of brakes increase proportionately with the kinetic energy which they are required to dissipate on landing, which is a function of aircraft weight and landing speed.⁶⁰ When considering aircraft based on their weights and landing speeds, there is significant overlap between the categories discussed above: for example, large general aviation aircraft may have a MTOW greater than small business jets (albeit the latter will typically have higher landing speeds),⁶¹ and fixed wing military aircraft may have similar braking requirements to aircraft in both the general aviation and business jet categories.

⁵⁴ FMN, paragraph 216.

⁵⁵ FMN, paragraph 221.

⁵⁶ FMN, paragraphs 217, 223.

⁵⁷ FMN, paragraph 225.

⁵⁸ FMN, paragraph 219.

⁵⁹ For example, Meggitt internal document Annex MN-B-005 to the FMN, [REDACTED], dated [REDACTED].

⁶⁰ Parties' presentation to the CMA, 24 November 2021, slide 13.

⁶¹ For example, the CMA notes that the Textron Sky Courier, a general aviation aircraft, has a MTOW of 19,000lb (the maximum permitted for aircraft in the general aviation category under the US Federal Aviation Authority's 14 CFR Part 23 category), whereas the Hondajet FD-2, a light business jet aircraft (also certified for airworthiness under 14 CFR Part 23) has a MTOW of 10,701lb.

- 8.8 The Parties' internal documents also indicate that the competitor set for AWB may be different for opportunities within the same aircraft category. For example, a Parker internal document commented in relation to a general aviation aircraft with a planned MTOW of [REDACTED].⁶² This indicates that the supplier set is not consistent across the whole general aviation category, and a segmentation based on aircraft weight more accurately reflects the range of suppliers available to aircraft manufacturers when designing an aircraft of a given size.
- 8.9 The CMA considers that the Parties' tender data provides a reasonable basis to establish the range of aircraft for which they each have the technical capability and commercial interest in supplying AWB. According to the tender data submitted by the Parties, the aircraft with the lowest MTOW for which Meggitt bid to supply AWB was [REDACTED] lb, while the highest MTOW for which it bid was [REDACTED] lb. Meanwhile, the lowest MTOW for which Parker bid to supply AWB was [REDACTED] lb, and the highest MTOW for which it bid to supply a full wheel and brake system was [REDACTED] lb.⁶³ Therefore, the Parties overlap in the supply of AWB for fixed wing aircraft between 9,921 lb MTOW and 24,251 lb MTOW. This MTOW range is referred to as the **Overlap Window**.

Fixed wing aircraft

- 8.10 In order to assess the competitive constraint that the Parties exercise on each other, as well as the competition they face from other suppliers, the CMA considered a range of evidence.
- 8.11 In practice, each of the sources of evidence available to the CMA is subject to certain limitations. As explained in more detail below, the activities where the Parties overlap are not a commercial priority for them (particularly for Meggitt), within the context of their broader activities, so competitive dynamics do not appear to be extensively analysed in strategic internal documents prepared outside of specific bidding opportunities. Share of supply data are not available for the main segment of the market in which the Parties' activities overlap (and share of supply data are, in any case, generally of less probative value in bidding markets such as those at issue), but do provide an indication of AWB suppliers' historic competitive strength. Tenders are relatively infrequent (given the size of the customer base and the overall number of aircraft platforms in production) and the tender data available to CMA is subject to material limitations (described further below), so offers limited insight into the full extent of competition between Parties, and even less insight into the nature of third-party constraints.

⁶² Parker document Annex RFA-0262 to EC RFI 2 [REDACTED].

⁶³ The CMA notes that there are [REDACTED] bids included in Parker's tender data for aircraft with MTOW greater than 24,251 lb. However, these bids do not appear to relate to supply of wheels and brakes together, and the CMA consequently does not consider them to be relevant to the competitive assessment of the Parties' activities in respect of AWB. See paragraph 8.50 below.

8.12 The CMA has assessed all of the evidence available to it in the round. In this section, the CMA first considers the evidence from the Parties' internal documents, which it considers provides important context for the analysis of share of supply data and tender data which follows (and, in particular, shows why the Parties' position that there is limited overlap in either the share data or the tender data available to the CMA is of limited relevance). The CMA then considers evidence provided by third parties.

Internal documents

8.13 The Parties submitted two main types of internal documents relating to their AWB businesses. The first type relates to high-level business planning and strategy for the Parties' AWB businesses overall, and discuss each Party's activities for the supply of AWB to various types of aircraft.⁶⁴ In some cases, these documents also covered other aerospace components supplied by the relevant division. The second type relates to documents prepared by the AWB businesses of each Party requesting corporate approval to submit a response for a given supply opportunity. For Parker these are generally Request for Approval (**RFA**) documents, which are prepared to seek internal approval for pricing proposals for opportunities for which Parker may ultimately bid, and accompanying 'Executive Briefing' presentations, and for Meggitt these are generally Commercial Committee Report (**CCR**) documents, which are prepared to seek internal approval to bid for tenders exceeding certain value thresholds.

Parties' submissions

Closeness of competition

8.14 The Parties submitted that their internal documents supported the conclusion that they are not close competitors for the supply of AWB for the following reasons:

- (a) Internal documents show that the Parties focus on supplying different customers for different types of aircraft. In particular, several Meggitt internal documents showed that it is not focused on supplying [REDACTED] (where Parker is strong). For example, a Meggitt internal document listed [REDACTED].⁶⁵
- (b) Although the Parties refer to one another in several RFA and CCR documents for AWB opportunities, Meggitt CCRs only referred to Parker in relation to [REDACTED]% of new OE opportunities in the Overlap Window, and Parker

⁶⁴ For example, Meggitt Internal Document, Annex MN-B-029 to the FMN, [REDACTED], and Parker Internal Document, Annex MN-A-074 to the FMN, [REDACTED].

⁶⁵ FMN, paragraph 213.

RFAs only referred to Meggitt in [REDACTED]% of new OE opportunities in the Overlap Window.⁶⁶

Alternative suppliers

- 8.15 The Parties also submitted that their internal documents show that there is a range of other suppliers imposing a constraint for the supply of AWB in the Overlap Window:
- (a) A Meggitt internal document shows that Meggitt does not view Parker as a constraint, particularly when compared with other stronger competitors. For the overall AWB competitive landscape across large jets, regional jets, business jets/general aviation and military, the document shows that [REDACTED] are competitors to Meggitt, but does not mention Parker.⁶⁷
 - (b) The Parties' RFA and CCR documents for AWB opportunities in the Overlap Window refer to a number of other suppliers besides each other, including Raytheon, Beringer, Safran and Jay-Em Aerospace.⁶⁸
- 8.16 Across general aviation aircraft as a whole (without focusing on the Overlap Window), the Parties submitted that they would face constraints from Beringer, Raytheon, Dawin, Rapco, APS, Grove, Marc Ingegno, and Alaskan Bushwheel.⁶⁹

CMA assessment

- 8.17 For the reasons set out below, the CMA does not accept the Parties' arguments that their internal documents show they do not compete closely for supply of AWB in the Overlap Window, nor that there are a range of alternative suppliers which would continue to impose a constraint post-Merger.

Closeness of competition

- 8.18 The CMA considers that the high-level business planning and strategy documents of the Parties do show some differences in their strategy for AWB when considering all categories of aircraft together. For instance, Meggitt's documents giving a strategic view of its wheels and brakes division do reflect Meggitt's [REDACTED], and its competitor assessments focusing on Raytheon, Safran and Honeywell, which supply these aircraft currently, reflect this. However, the CMA also notes that where high-level business planning and strategy documents consider the supply of AWB for specific aircraft categories, the Parties refer to one another among a small group of competitors:

⁶⁶ Supplementary Issues Paper Response, paragraph 3.18.

⁶⁷ Meggitt Internal Document, Annex MN-B-029 to the FMN, [REDACTED], dated [REDACTED], slide 30.

⁶⁸ Supplementary Issues Paper Response, paragraph 3.18(c).

⁶⁹ Issues Paper Response, paragraph 31(g).

- (a) A Meggitt internal document, [REDACTED],⁷⁰ dated May 2019 shows on slide 32 that Meggitt considers [REDACTED], Parker [REDACTED] to be the current competitors for ‘Business/GA [ie general aviation] Braking Equipment’. However, [REDACTED], the Parties have also clarified that [REDACTED] supplies only [REDACTED],⁷¹ leaving only [REDACTED] suppliers in this segment, of which Parker is one. [REDACTED].
- (b) A Parker internal document, ‘[REDACTED],⁷² dated October 2020 shows on slide 9 that Parker considers both it and Meggitt to be active in supply of AWB for ‘UAV/ TP trainers’ (ie ‘Unmanned Aerial Vehicles’/drones, and turboprop trainer aircraft), ‘VLJ/ Bizjet’ (ie ‘very light jets’ and business jets), ‘Helicopter’ and ‘Turboprop’ aircraft. [REDACTED].

8.19 Moreover, the CMA considers that the corporate approval documents relating specifically to supply of AWB to aircraft in the Overlap Window show that the Parties consider each other to be close competitors. In relation to the statistics in paragraph 8.14(b) above, which the Parties claimed showed that they do not compete closely, the CMA notes that the proportion of opportunities where the Parties refer to each other is in fact high when taking account of the fact that only [REDACTED]% of Parker’s RFAs and only [REDACTED]% of Meggitt’s CCRs contain any information on presumed competitors at all.⁷³

8.20 Several of the Parties’ internal corporate approval documents support the conclusion that they see each other as close competitors for the supply of AWB to fixed wing aircraft in the Overlap Window. The CMA assesses below the available RFA and CCR documents for each of the [REDACTED] OEM opportunities for AWB in the Overlap Window since 2012 which the Parties identified as bid matches.

- [REDACTED]

8.21 A Parker internal document, [REDACTED],⁷⁴ dated [REDACTED], discusses a tender for AWB incorporating steel brakes for [REDACTED] turboprop aircraft (a general aviation aircraft). Slide 8 sets out Parker’s view of the competitive landscape for the tender, and lists [REDACTED] and Meggitt as competitors for this opportunity.

⁷⁰ Meggitt Internal Document, Annex MN-B-005 to the DMN, [REDACTED] of [REDACTED], slide 32.

⁷¹ FMN, footnote 150.

⁷² Parker Internal Document, Annex MN-A-072 to the FMN, [REDACTED], of [REDACTED], slide 9.

⁷³ Issues Paper Response, paragraph 44(b). The CMA notes that these figures relate to the number of tenders in which both Parties were involved as a proportion of the total number in which either of them was involved, whereas the CMA considers it more informative to take each Party’s tender list in turn, and assess the proportion of tenders on which the other Party competed. See paragraph 8.52(b).

⁷⁴ Parker Internal Document, Annex RFA-0299 to EC RFI 2, [REDACTED], slide 8.

- 8.22 A Meggitt internal document, '[REDACTED]',⁷⁵ dated [REDACTED], also discusses the tender for [REDACTED]. Page 15 discusses Meggitt's view of competitors for this opportunity, and refers only to [REDACTED] and Parker, observing '[REDACTED]'.
- 8.23 The Parties submitted that this [REDACTED] opportunity was of low strategic importance to Meggitt, which only bid in order to grow its relationship with [REDACTED] and expand its presence on [REDACTED].⁷⁶ Regardless of the strategic reasoning behind Meggitt's bid, the Parties' internal documents clearly indicate that they saw each other as key competitors for this opportunity.
- [REDACTED]
- 8.24 A Parker internal document, '[REDACTED]',⁷⁷ dated [REDACTED], discusses a tender for AWB incorporating steel brakes for the [REDACTED] (a turboprop general aviation aircraft). Slide 9 sets out Parker's view of the competitive landscape for the tender, and lists only [REDACTED] and Meggitt as competitors.
- [REDACTED]
- 8.25 A Parker internal document, '[REDACTED]',⁷⁸ dated [REDACTED], discusses a tender for AWB for the Hondajet FD-2 aircraft (a business jet), [REDACTED]. Slide 11 sets out Parker's view of the competitive landscape for the tender, and lists [REDACTED] and Meggitt as competitors. However, the document states that '[REDACTED]'. Slide 11 also explains that [REDACTED].
- 8.26 A Meggitt internal document, '[REDACTED]',⁷⁹ dated [REDACTED], also discusses the tender for the [REDACTED] aircraft. Page 11 discusses Meggitt's view of the competition for this opportunity, and refers only to Parker [REDACTED]. The document clearly states that 'Parker is expected to be the main competition on [REDACTED].' In addition, the document observes that '[REDACTED]'.
- 8.27 The Parties submitted that [REDACTED]. However, the CMA notes that this Meggitt internal document comments: '[REDACTED]'. The CMA therefore believes the Parties saw each other as key competitors for this opportunity.
- [REDACTED]

⁷⁵ Meggitt Internal Document, Annex CCR-0246 to EC RFI 2, [REDACTED], page 15.

⁷⁶ Supplementary Issues Paper Response, paragraph 3.14(b).

⁷⁷ Parker Internal Document, Annex RFA-0300 to EC RFI 2, [REDACTED], slide 9.

⁷⁸ Parker Internal Document, Annex RFA-0261 to EC RFI 2, '[REDACTED]', of [REDACTED], slide 11.

⁷⁹ Meggitt Internal Document, Annex CCR-0235 to EC RFI 2, '[REDACTED]', of [REDACTED], page 11.

- 8.28 A Parker internal document, '[REDACTED]',⁸⁰ dated [REDACTED], discusses a [REDACTED] to be produced by [REDACTED]. Slide 11 sets out Parker's view of the competitive landscape for the tender, and lists only Meggitt as a competitor.
- 8.29 The Parties submitted that [REDACTED], so neither Party imposes a constraint on the other for this opportunity. However, the CMA notes that the Parker internal document states that [REDACTED]. The CMA therefore believes the Parties are close competitors for this opportunity.
- [REDACTED]
- 8.30 Parker internal document, '[REDACTED]',⁸¹ dated [REDACTED], discusses [REDACTED]. Slide 10 sets out Parker's view of the competitive landscape for the tender, and lists [REDACTED], Meggitt [REDACTED] as competitors. Parker notes that [REDACTED]. The opportunity is described as [REDACTED].
- 8.31 For the same reasons as set out in paragraph 8.29, the CMA believes the Parties are close competitors for this opportunity.

Alternative suppliers

- 8.32 In relation to the constraint posed by alternative suppliers, the CMA considers that the Parties' internal documents show a very limited range of competitors are active in supplying AWB for aircraft in the Overlap Window. For AWB opportunities relating to aircraft in the Overlap Window:
- (a) Parker submitted data showing that it was invited to bid in [REDACTED] new OE opportunities in the Overlap Window.⁸² Of these, [REDACTED] opportunities had an associated RFA, and competitors for AWB were mentioned with the following frequency:⁸³
- (i) Meggitt was cited as a competitor for [REDACTED] opportunities;
 - (ii) Raytheon was cited as a competitor for [REDACTED] opportunities;
 - (iii) Safran was cited as a competitor for [REDACTED] opportunity;
 - (iv) Beringer was cited as a competitor for [REDACTED] opportunity; and
 - (v) Jay-Em Aerospace was cited as a competitor for [REDACTED] opportunity.

⁸⁰ Parker Internal Document, Annex RFA-0269 to EC RFI 2, '[REDACTED]', of [REDACTED], slide 11.

⁸¹ Parker Internal Document, Annex RFA-0227 to EC RFI 2, '[REDACTED]', of [REDACTED], slide 10.

⁸² The CMA considers it appropriate to limit consideration of the Parties' tender data to new OE supply opportunities only, because aftermarket and OE renewal opportunities are much less likely to be open to competition.

⁸³ One document also cited [REDACTED], but only in respect of a Brake Control System, which does not relate to AWB supply and is therefore not relevant to the competitive assessment.

- (b) Meggitt submitted data showing that it was invited to bid in [REDACTED] new OE opportunities in the Overlap Window. Of these, [REDACTED] opportunities had an associated CCR, and competitors for AWB were mentioned with the following frequency:⁸⁴
 - (i) Raytheon was cited as a competitor for [REDACTED] opportunities;
 - (ii) Parker was cited as a competitor for [REDACTED] opportunities; and
 - (iii) Safran was cited as a competitor for [REDACTED] opportunity.

8.33 Taking the Parties' internal documents in the round, the CMA notes that this evidence indicates (in relation to the degree of constraint offered by competitors) that:

- (a) Raytheon appears to exercise a material constraint on the Parties (although the CMA notes that third parties expressed doubts about Raytheon's interest in supplying AWB for smaller aircraft: see paragraphs 8.65 – 8.66 below).
- (b) Safran does not appear to impose a material constraint on the Parties. It is mentioned in only [REDACTED] document for each Party, both for [REDACTED]. The Meggitt document is followed by a later document clarifying that the opportunity was not in fact competitive, explaining '[t]he customer has specified wheel and brake equipment in a size that we can only offer'. The Parker document notes that Safran '[REDACTED]'.
- (c) Beringer does not appear to impose a material constraint on the Parties. It is mentioned in only one document where Parker notes that '[REDACTED]'.⁸⁵
- (d) Jay-Em Aerospace does not appear to impose any constraint on the Parties. It is mentioned in only [REDACTED] document, which closer inspection reveals to relate to a 'Nose Wheel Assembly' without provision of an accompanying brake, and this opportunity may not represent the conditions of competition for main wheels and brakes.

8.34 The other suppliers cited by the Parties as broadly active in supplying general aviation aircraft (referred to in paragraph 8.16 above) were not mentioned in the Parties' internal documents for new OE opportunities in the Overlap Window, indicating that they are unlikely to impose a constraint on the Parties.

⁸⁴ One document also cited Crane Aerospace, but only in respect of a Brake Control System, which does not relate to AWB supply and is therefore not relevant to the competitive assessment.

⁸⁵ Parker Internal Document, Annex RFA-0263 to EC RFI 2, [REDACTED], slide 18.

Shares of supply

Parties' submissions

8.35 The Parties initially submitted shares of supply for AWB overall (with no segmentation based on aircraft type). Shares for 2020 were based on data from Counterpoint covering both total market size and supplier shares, for both OEM and aftermarket supply.⁸⁶ Shares of supply for 2018 and 2019 were estimated by the Parties, assuming the total market size in those years to have been stable, and estimating competitors' shares of supply based on the 2020 shares reported by Counterpoint, adjusted by the Parties' estimates of competitors' growth rates.⁸⁷

Table 1: Shares of supply for supply of AWB by value (OEM and AM) (global, 2018-2020)

Competitor	2018 (%)	2019 (%)	2020 (%)
Parker	[0-5]%	[0-5]%	[0-5]%
Meggitt	[10-20]%	[10-20]%	[20-30]%
Parties Combined	[10-20]%	[10-20]%	[20-30]%
Raytheon	[30-40]%	[30-40]%	[20-30]%
Safran	[20-30]%	[20-30]%	[10-20]%
Honeywell	[5-10]%	[5-10]%	[5-10]%
Others	[10-20]%	[10-20]%	[20-30]%
Total	100%	100%	100%

Source: FMN, Table 12

8.36 The Parties also submitted shares of supply for the aircraft categories shown in Figure 1 above. The aircraft type segment shares below have been calculated on the basis of the Parties' analysis of AWB equipped on aircraft delivered in the 2018, 2019 and 2020 calendar years, and they therefore capture OEM supply only.⁸⁸

⁸⁶ FMN, paragraph 194(a).

⁸⁷ FMN, paragraph 194(a).

⁸⁸ FMN, paragraph 197.

Table 2: Shares of supply for supply of business jet AWB by value (OEM only) (global, 2018-2020)

<i>Competitor</i>	<i>2018 (%)</i>	<i>2019 (%)</i>	<i>2020 (%)</i>
Parker	[0-5]	[0-5]	[0-5]
Meggitt	[50-60]	[50-60]	[60-70]
Parties Combined	[50-60]	[60-70]	[60-70]
Raytheon	[30-40]	[20-30]	[20-30]
Beringer	[0-5]	[5-10]	[5-10]
Safran	[5-10]	[5-10]	[0-5]
Others	[0-5]	[0-5]	[0-5]
Total	100%	100%	100%

Source: FMN, Table 13

Table 3: Shares of supply for supply of general aviation AWB by value (OEM only) (global, 2018-2020)

<i>Competitor</i>	<i>2018 (%)</i>	<i>2019 (%)</i>	<i>2020 (%)</i>
Parker	[60-70]	[40-50]	[50-60]
Meggitt	[0-5]	[0-5]	[0-5]
Parties Combined	[60-70]	[50-60]	[50-60]
Beringer	[10-20]	[30-40]	[30-40]
Raytheon	[5-10]	[5-10]	[5-10]
Others	[5-10]	[10-20]	[5-10]
Total	100%	100%	100%

Source: FMN, Table 14

Table 4: Shares of supply for supply of military aircraft AWB by value (OEM only) (global, 2018-2020)

Competitor	2018 (%)	2019 (%)	2020 (%)
Parker	[10-20]	[10-20]	[10-20]
Meggitt	[20-30]	[20-30]	[30-40]
Parties Combined	[40-50]	[30-40]	[40-50]
Honeywell	[30-40]	[40-50]	[30-40]
Safran	[10-20]	[10-20]	[5-10]
Raytheon	[5-10]	[5-10]	[5-10]
Beringer	[0-5]	[0-5]	[0-5]
Others	[5-10]	[0-5]	[0-5]
Total	100%	100%	100%

Source: FMN, Table 16

CMA's assessment

8.37 In light of the nature of competition for the supply of AWB (as summarised in paragraphs 8.2 to 8.5 above), and the data available to the CMA, the shares of supply set out above are not liable to fully reflect the degree of competitive constraint which the Parties and their competitors impose on one another in the supply of AWB. In particular:

- (a) Opportunities to supply AWB are large in size and of long duration, meaning current output of AWB – the basis on which the Parties have estimated shares – may reflect tenders won by suppliers historically. As such, shares of supply may not fully reflect the current conditions of competition facing suppliers; and
- (b) The available shares of supply are presented for the categories of aircraft discussed in Figure 1 above. These shares of supply therefore do not accurately capture competitive dynamics for the supply of AWB, given that the supplier set will differ for aircraft of different weights within the same category.

8.38 Furthermore, shares of supply for segments by category of aircraft are based on the Parties' estimates, as no industry reports estimate shares of supply on this basis.⁸⁹ The CMA has not been able to independently verify the Parties' estimates.

8.39 Notwithstanding these limitations, the CMA notes that shares of supply do provide an indication of AWB suppliers' historic competitive strength, as well as their

⁸⁹ Parties' Response to CMA's RFI 2, paragraph 51.

existing technical capability in each aircraft sub-segment and their manufacturing capacity.

- 8.40 Tables 2 and 3 above show combined shares of supply in 2020 of [60-70]% for business jets and [50-60]% for general aviation aircraft, with a low increment of [0-5]% (from Parker) and [0-5]% (from Meggitt) respectively. However, the CMA considers that these limited increments in share do not accurately reflect each of the Parties' strengths in the Overlap Window, and therefore the change in market structure brought about by the Merger, because shares of supply presented on the basis of the aircraft categories presented in Figure 1 above obscure the significant overlap between the Parties' capabilities for the subset of aircraft in the Overlap Window, which includes aircraft in both the general aviation and business jet categories. In this regard, the CMA notes that the Merger would result in the combination of Meggitt's strong position (with a share of supply of [60-70]% in 2020) in the supply of business jet AWB with Parker's strong position (with a share of supply of [50-60]% in 2020) in the supply of general aviation AWB, along with the Parties' combined strong position (with a share of supply of [40-50]% in 2020) in military aircraft AWB. Given that sales within the Overlap Window will form part of each of these categories, the CMA considers that the Parties' combined position within the Overlap Window segment would be material, with a significant increment in position brought about by the Merger.
- 8.41 Evidence gathered during the CMA's investigation indicates that the 'other' suppliers included in shares of supply for the general aviation category are concentrated in supplying the smallest general aviation aircraft, which fall outside the Overlap Window (see the discussion on third party views on alternative suppliers in paragraphs 8.63 – 8.70 below).

Tender data

Parties' submissions

- 8.42 The CMA requested that the Parties submit separate lists of all the tenders for supply of AWB in which either of them was invited to bid (including by way of receipt of an RFI, ROM request, RFP, or RFQ) in the period 2012 – 2021, along with certain additional information on each tender including the category of aircraft concerned, and its MTOW.
- 8.43 Parker gathered data on tenders in which it had been invited to bid as follows:
- (a) For the period 2016 – 2021, Parker compiled lists of OE and AM tenders on which it bid or intends to bid based on the available RFA documents in its internal records.⁹⁰ RFA documents are documents prepared to seek internal

⁹⁰ Parties' Response to RFI 1, question 12, paragraph 119 (updated 21 January 2022).

approval for pricing proposals for opportunities for which Parker may ultimately bid.⁹¹ Parker then compiled lists of OE and AM tenders on which it did not bid, again by reference to the available RFA documents. Parker's tender lists therefore do not include any opportunities where Parker was invited to bid via an RFI but where it did not prepare an RFA.⁹²

- (b) Parker subsequently expanded the dataset to cover the period 2012 – 2015, using the same methodology as that described above.⁹³

8.44 Meggitt gathered data on tenders in which it had been invited to bid as follows:

- (a) For the period 2016 – 2021, Meggitt compiled lists of OE and AM tenders on which it bid or intends to bid based on entries in its internal Salesforce database (for 2019 onwards), complemented by the available CCRs for years not covered by the Salesforce database.⁹⁴ CCRs were prepared only for tenders exceeding certain value thresholds,⁹⁵ and so may not capture the entirety of the tenders to which Meggitt was invited to bid. Meggitt's tender lists therefore do not include any opportunities prior to 2019 where Meggitt was invited to bid, but it did not prepare a CCR (and which were not otherwise included in Salesforce).
- (b) Meggitt subsequently expanded the dataset to cover the period 2012 – 2015, using the same methodology as that described above.⁹⁶

Closeness of competition

8.45 The Parties submitted that their tender lists showed that they were not close competitors for supply of AWB in the Overlap Window, and that they did not pose a meaningful constraint on one another.⁹⁷ In particular, the Parties submitted that they bid against each other (referred to as **bid matches**) in only [X] out of [X]

⁹¹ Parties' Response to RFI 1, question 12, paragraph 119 (updated 21 January 2022).

⁹² Parties' Response to RFI 2, question 12, paragraph 70 (updated 21 January 2022).

⁹³ Parties' Response to s.109 Notice dated 3 February 2022, paragraph 4.

⁹⁴ Parties' Response to RFI 1, question 12, paragraph 124 (updated 21 January 2022).

⁹⁵ Parties' Response to RFI 1, question 12, paragraph 125 (updated 21 January 2022).

⁹⁶ Parties' Response to s.109 Notice dated 3 February 2022, paragraph 5.

⁹⁷ Supplementary Issues Paper Response, paragraph 3.12.

new OEM opportunities for AWB in the Overlap Window since 2012 (ie [REDACTED]%) : the [REDACTED].⁹⁸

- 8.46 Furthermore, the Parties submitted that only [REDACTED] further opportunities (for the [REDACTED]⁹⁹ and [REDACTED]) in the Overlap Window appeared in both Parties' tender lists where one of them did not submit a bid (referred to as **no-bid matches**) (ie [REDACTED]%).¹⁰⁰

Alternative suppliers

- 8.47 The Parties submitted that the limited percentage of tenders on which they both bid (ie [REDACTED]%) must imply the presence of other competitors bidding for opportunities within the Overlap Window. The Parties supported this argument by citing two tenders for aircraft in the Overlap Window which were won by competitors, namely Dawin's supply of AWB for the Leonardo M-345 in 2014 and Raytheon's supply of AWB for the Boeing T-X in 2017.¹⁰¹

CMA's assessment

- 8.48 The CMA firstly notes that although the Parties characterised their tender data as 'comprehensive and rigorous',¹⁰² the CMA observed deficiencies in the data which limited its use for assessing the closeness of competition between the Parties. In particular, the CMA noted that some entries in the Parker data appeared not to relate to the supply of an integrated AWB, but rather to sub-components of a wheel or brake, or products unrelated to AWB.¹⁰³ Furthermore, the CMA considers that in one case both Parties submitted a bid for an opportunity that is described as no-bid match, and that this opportunity should therefore be treated as a bid match.¹⁰⁴
- 8.49 When responding to the CMA's Supplementary Issues Paper, the Parties re-submitted tender data that purported to have dealt with these deficiencies, having removed [REDACTED] opportunities that were not within scope of AWB, [REDACTED] of which were new OE opportunities.¹⁰⁵ The Parties did not, however, provide any further

⁹⁸ The Parties also submitted that they had only bid against each other twice (for the [REDACTED]), but the CMA notes that they also confirmed that they submitted responses to invitations to bid for the other three opportunities (ie [REDACTED]): Parties' Response to CMA RFI 5, Annex RFI 5-001, paragraph 1; Parties' Response to CMA RFI 1, paragraph 77.

⁹⁹ However, the CMA notes that the Parties' submissions elsewhere made clear that both Parties submitted a response to an RFP from [REDACTED] for the [REDACTED]. The CMA therefore considers that this opportunity should be treated as a bid-match. Parties' Response to RFI 1, question 11, paragraphs 94 – 95 (updated 21 January 2022).

¹⁰⁰ Supplementary Issues Paper Response, paragraph 3.15.

¹⁰¹ Supplementary Issues Paper Response, paragraph 3.18(a).

¹⁰² Supplementary Issues Paper Response, paragraph 2.3.

¹⁰³ For example, Parker tender data submitted with the Parties' Response to the Issues Paper included a tender for the supply of '[REDACTED]' for the [REDACTED].

¹⁰⁴ The CMA considers that for fixed wing aircraft in the Overlap Window, this was the case for the [REDACTED]

¹⁰⁵ Supplementary Issues Paper Response, paragraph 2.6.

information when responding to the Supplementary Issues Paper to substantiate whether other questionable entries relate to the supply of an integrated AWB.

- 8.50 Having reviewed the Parties' updated tender data, the CMA considers that a number of tenders continue to be included which may not constitute the supply of AWB. For example, the data appears (on its face) to include a number of opportunities to supply nose wheels only,¹⁰⁶ which, as discussed in paragraph 7.9, have no brakes or simple brakes for taxiing and parking only, and therefore may not provide relevant insight into the conditions of competition for main wheels and brakes.¹⁰⁷
- 8.51 For this reason, while the CMA considers that that the statistics provided by the Parties on the proportion of tenders in the Overlap Window on which they were both involved provide some insight into assessing the closeness of competition, the deficiencies described above materially reduce the weight that can be attached to this data.

Closeness of competition

- 8.52 Notwithstanding the limited weight that the CMA considers should be attached to the Parties' statistical analysis of the tender data, the CMA notes that, contrary to the Parties' position, this statistical analysis (even when based on a dataset that is likely to understate the extent of competitive interaction between the Parties) indicates that there is significant competitive interaction between the Parties in the Overlap Window:
- (a) As explained above, the CMA considers that competition between the Parties takes place in all opportunities where both Parties are technically capable and commercially interested in supplying AWB to aircraft of that type, and is not limited to those opportunities where both Parties submitted a formal bid, or where both Parties were invited to participate by a customer. Therefore, the CMA considers that both bid matches and no-bid matches are relevant to assessing how closely the Parties compete with each other. The relevant statistic for assessing the frequency with which the Parties encountered each other on opportunities in the Overlap Window should therefore be [X] % of OEM opportunities for AWB in the Overlap Window since 2012 (rather than the figure of [X] % put forward by the Parties).
 - (b) The analysis above is based on the number of tenders in which both Parties were involved as a proportion of the total number in which either of them was involved. However, the CMA considers that it is more informative to take

¹⁰⁶ For example, Parker tender data submitted with the Parties' Response to the Supplementary Issues Paper included a tender for a '[X]', and a tender for '[X]'. The CMA notes that there appear to be at least [X] such opportunities included in Parker's updated tender data for opportunities in the Overlap Window.

¹⁰⁷ FMN, paragraph 145.

each Party's tender list in turn, and to assess the proportion of tenders for which the other Party competed, as this will provide a better indication of the extent to which they represent a competitive constraint on one another for opportunities in the Overlap Window.

- (i) Taking Meggitt's tenders for fixed-wing aircraft in the Overlap Window, the CMA found that, Parker also bid on [X] % of the opportunities on which Meggitt bid. Parker was also invited to bid on [X] % of the opportunities to which Meggitt was invited to bid.
- (ii) Taking Parker's tenders for fixed-wing aircraft in the Overlap Window, the CMA found that Meggitt also bid on [X] % of the opportunities on which Parker bid. Meggitt was also invited to bid on [X] % of the opportunities to which Parker was invited to bid.

Alternative suppliers

- 8.53 The CMA does not agree with the Parties' submission that the limited percentage of tenders on which they both bid must imply the presence of other competitors bidding for opportunities within the Overlap Window. On the contrary, the CMA considers that data provided by the Parties on the known winner of the tenders on which they participated shows the Parties won a large proportion of the opportunities for which they bid, with few tenders known to have been won by alternative suppliers.
- 8.54 In any event, the CMA notes that the Parties' tender data contains very limited information about the other suppliers involved in tenders besides the Parties, and therefore cannot be used to infer the number of other suppliers active in supplying aircraft in the Overlap Window, nor to establish the extent of the constraint imposed by alternative suppliers.

Third party views

- 8.55 The CMA contacted a range of third parties, including both customers and competitors identified by the Parties, to gather their views on the closeness of competition between the Parties and the alternative suppliers available for AWB. In particular, the CMA asked airframers and defence primes to list the suppliers they would approach if they were to launch a tender for AWB on a new aircraft, to rate the strength of these suppliers' offerings on a scale of one to five (where five is the strongest), and to comment on the areas in which these suppliers are strong and in which they are weak or absent.

Closeness of competition

- 8.56 One airframer customer (**Customer A**), which manufactures several fixed wing aircraft falling within the Overlap Window, told the CMA that:¹⁰⁸
- (a) It considered Parker and Meggitt to be the only two viable competitors for the supply of AWB for certain aircraft it produces.
 - (b) If it were to hypothetically launch a tender for AWB supply for a new aircraft, it would approach both Meggitt and Parker. It rated the strength of Meggitt as five and Parker as four.
 - (c) Meggitt has a 'good technical solution at competitive price on wheel and braking systems for all models of aircraft', that Parker has a 'good technical solution and competitive pricing for piston aircraft (steel) but limited technical experience with wheel and brakes for turbo prop aircraft and jets'.
- 8.57 Another airframer customer (**Customer B**) which manufactures fixed wing aircraft within the Overlap Window told the CMA that it saw the Parties as having overlapping capabilities in the supply of AWB for business jets.¹⁰⁹
- 8.58 Another airframer customer (**Customer C**) told the CMA that if it were to hypothetically launch a tender for AWB supply for a new aircraft, it would approach both Parker and Meggitt. Parker was described as 'expert in small wheels and brakes; significant [off-the-shelf] options available for light aircraft' and Meggitt was stated to be 'expert in small to medium wheels and brakes'. The airframer also said that 'Parker and Meggitt market pursuit and offerings both overlap for the ~10,000-25,000 lb aircraft weight market', which is consistent with the Overlap Window.¹¹⁰
- 8.59 Another airframer customer (**Customer D**) told the CMA that 'Parker and Meggitt compete predominately in the supply of small size wheels and steel brakes.'¹¹¹
- 8.60 A landing gear systems integrator customer (**Customer E**) told the CMA that for integrated landing gear and AWB tenders for mid-sized aircraft, Parker and Meggitt were the only two viable alternatives for supply of AWB.¹¹²
- 8.61 Two further customers (**Customers F and G**) told the CMA that if they were to hypothetically launch tenders for AWB supply for a new aircraft, they would see Meggitt as a supplier they would approach but not Parker. Both customers specialise in aircraft larger than those included in the Overlap Window.¹¹³

¹⁰⁸ Third party call note.

¹⁰⁹ Third party call note.

¹¹⁰ Response to third party questionnaire.

¹¹¹ Response to third party questionnaire.

¹¹² Third party call note.

¹¹³ Responses to third party questionnaires.

8.62 A competitor told the CMA that together, Parker and Meggitt would own 90% or more of the BGA ('Business and General Aircraft') space for AWB. This competitor also estimated that the Parties were two of four competitors for supply of AWB for business jets and general aviation aircraft.¹¹⁴

Alternative suppliers

8.63 **Customer A** told the CMA that if it were to hypothetically launch a tender for AWB supply for a new aircraft, besides Meggitt and Parker, the only other supplier it would approach was Raytheon, and rated its strength as five (compared to five for Meggitt and four for Parker). The customer said Raytheon has 'good technical expertise and competitive pricing; technical expertise with wheel and brakes for all models of aircraft.' However, the airframer noted that Raytheon 'will only bid on a steel wheel and brake assembly if it can use a design from an existing program. UTAS [Raytheon] will not bid on a program that will require UTAS to design a new steel braking system'.¹¹⁵

8.64 **Customer B** told the CMA that several of the larger AWB suppliers were uninterested in supplying brakes to smaller business jets.¹¹⁶

8.65 **Customer C** told the CMA that if it were to hypothetically launch a tender for AWB supply for a new aircraft, besides Meggitt and Parker it would approach Raytheon and Safran. Raytheon was rated five in terms of strength, and stated to be 'expert in medium to large wheels and brakes; carbon expertise. Not typically interested in small wheel and brake applications'. Safran was rated four in terms of strength and described as 'expert in large wheels and brakes' though 'not interested in small wheels and brake applications'.¹¹⁷

8.66 **Customer D** told the CMA that Raytheon and Safran are strong in large-size carbon brakes, but will typically not bid on steel brakes, and that Honeywell tends not to bid on new programmes.¹¹⁸

8.67 **Customer E** told the CMA that for integrated landing gear and AWB tenders for mid-sized aircraft, Parker and Meggitt were the only two viable suppliers for the supply of AWB.¹¹⁹

8.68 The CMA notes that none of these airframer customers mentioned Beringer or Jay-Em Aerospace. When asked about Beringer, Customer A said it was not familiar with them as a supplier of AWB, and the CMA considers that this supports

¹¹⁴ Response to third party questionnaire.

¹¹⁵ Response to third party questionnaire.

¹¹⁶ Third party call note.

¹¹⁷ Response to third party questionnaire.

¹¹⁸ Response to third party questionnaire.

¹¹⁹ Third party call note.

the view that Beringer does not impose a material competitive constraint on the Parties for supply of AWB for aircraft in the Overlap Window.¹²⁰

- 8.69 In relation to the other suppliers of AWB to small general aviation aircraft which were cited by the Parties (see paragraph 8.16 above), including Grove and Rapco, one customer told the CMA that these suppliers were not viable alternatives to the Parties, and in many cases lacked the ability to supply OE AWB at all, being limited to aftermarket supply due to their lack of design and testing capabilities.¹²¹
- 8.70 In the CMA's market testing, the only other supplier of AWB mentioned by a third party was AVIC.¹²² The CMA notes that AVIC is principally active in manufacturing landing gear for aircraft outside the Overlap Window and its offering was rated as relatively weak by that customer.

Third-party concerns about the Merger

- 8.71 The CMA notes that several customers of one or both of the Parties raised concerns about the Merger:
- (a) Customer A said that it expected the Merger to result in reduced competition and 'significant price increases' for AWB.¹²³
 - (b) Customer B noted that the Parties were the two main options it had available for supply of AWB, and it expected that the Merger would have an effect on the prices it would have to pay.¹²⁴
 - (c) Customer D's view was that 'Price and availability of aircraft wheels and (steel) brakes may be negatively impacted by the merger of the two predominate competitors'.¹²⁵
 - (d) Customer E said that following the Merger it would have limited alternatives to the price proposed for AWB by the Merged Entity.¹²⁶

CMA assessment

- 8.72 The CMA considers that the evidence from third parties set out above is consistent with the evidence from the shares of supply and the Parties' internal documents that the range of alternative suppliers for AWB in the Overlap Window is very limited.

¹²⁰ Response to third party questionnaire.

¹²¹ Third party call note.

¹²² Response to third party questionnaire.

¹²³ Response to third party questionnaire.

¹²⁴ Third party call note.

¹²⁵ Response to third party questionnaire.

¹²⁶ Third party call note.

8.73 On this basis of the evidence discussed above, the CMA's view is that only Raytheon is likely to impose a material constraint on the Merged Entity for the supply of AWB to fixed wing aircraft within the Overlap Window, and in some circumstances Raytheon may not have the commercial interest to do so, leaving some customers with no alternative to the Merged Entity.

Conclusion on competitive assessment – fixed wing aircraft

8.74 The CMA believes that the evidence from internal documents, shares of supply, the Parties' tender data and third parties, when considered together, indicates that the Parties compete closely for supply of AWB for fixed wing aircraft falling within the Overlap Window. The same evidence also indicates that there are very limited alternative suppliers for AWB for fixed wing aircraft in the Overlap Window, with only Raytheon likely to impose a material constraint on the Merged Entity.

Rotorcraft

8.75 In order to assess the competitive constraint that the Parties exercise on each other, as well as the competition they face from other suppliers, the CMA considered a range of evidence (each source of which is subject to certain limitations) in the round. In keeping with the approach adopted for fixed wing aircraft, the CMA again first considers the evidence from the Parties' internal documents, which it considers provides important context for the analysis of share of supply data and tender data which follows (and, in particular, shows why the Parties' position that there is limited overlap in either the share data or tender data available to the CMA is of limited relevance). The CMA then considers evidence provided by third parties.

Internal documents

8.76 As for fixed wing aircraft, the Parties submitted two main kinds of internal document with respect to their supply of AWB to civil and military rotorcraft: strategy documents which generally concern their entire AWB businesses, and documents concerning specific opportunities to supply AWB.

Parties' submissions

8.77 The Parties submitted that Meggitt's strategy documents show that it does not view rotorcraft as an area of strategic focus and so poses a weak competitive constraint on Parker. They submit¹²⁷ that Meggitt's internal documents discussing

¹²⁷ FMN, paragraph 224.

the strategy of its AWB business [REDACTED].¹²⁸ Further, they submit¹²⁹ that one Meggitt strategy document about its AWB business comments [REDACTED].¹³⁰

CMA assessment

Closeness of competition

- 8.78 The CMA considers that the Parties' internal documents do not support the Parties' argument that Meggitt does not represent a competitive constraint to Parker in the supply of AWB to rotorcraft:
- (a) Even in the Meggitt strategic plan cited by the Parties, the comment that Meggitt is [REDACTED] is positioned within an analysis of [REDACTED] (emphasis added), highlighting Meggitt's continued interest in the supply of AWB to rotorcraft.
 - (b) Elsewhere in Meggitt's strategic plan documents, a chart of Meggitt's supply of AWB to various categories of aircraft and their intention towards each category states that Meggitt's intention is to [REDACTED] in military rotorcraft.¹³¹
 - (c) A Parker document discussing the strategy of its AWB division shows Parker's view of the shares of supply of suppliers in different categories of aircraft. In the category 'helicopters' Parker and Meggitt are shown as similarly sized, having a combined share exceeding [60-70]%, with [REDACTED] as a similarly-sized competitor and [REDACTED] as a smaller competitor.¹³²
- 8.79 The CMA considers that the Parties' contemporaneous internal bidding documents also show that they considered each other to be among their closest competitors for AWB for rotorcraft:
- (a) A Parker internal document '[REDACTED]',¹³³ dated [REDACTED] discusses an RFP for a tender for AWB for the [REDACTED]. Slide 20 sets out Parker's view of the competitive landscape for the tender, and lists only [REDACTED] and Meggitt as competitors for this opportunity.
 - (b) A Parker internal document '[REDACTED]',¹³⁴ dated [REDACTED] discusses an RFP for a tender for AWB for the [REDACTED], a landing gear integrator. Slide 18 sets out Parker's view of the competitive landscape for the tender, and lists [REDACTED] and Meggitt as competitors for this opportunity.

¹²⁸ Meggitt Internal Document, Annex MN-B-029 to the DMN, '[REDACTED]'.

¹²⁹ Supplementary Issues Paper Response, paragraph 4.8.

¹³⁰ Meggitt Internal Document, Annex B-005 to FMN, [REDACTED], slide 33.

¹³¹ Meggitt Internal Document, Annex MN-B-029 to the DMN, '[REDACTED]', slide 22.

¹³² Parker Internal Document, Annex MN-A-072 to the FMN, [REDACTED], slide 9.

¹³³ Parker Internal Document, Annex RFA-0361 to EC RFI 2, [REDACTED].

¹³⁴ Parker Internal Document, Annex RFA-0344 to EC RFI 2, '[REDACTED]'.

- (c) A Parker internal document '[REDACTED]',¹³⁵ dated [REDACTED] discusses an RFP for a tender for AWB for the [REDACTED]. Slide 8 sets out Parker's view of the competitive landscape for the tender, and lists [REDACTED] and Meggitt as competitors for this opportunity.
- (d) A Parker internal document '[REDACTED]',¹³⁶ dated [REDACTED] discusses an RFP for a tender for AWB for the demonstrator programme for the [REDACTED]. Slide 21 sets out Parker's view of the competitive landscape for the tender, and lists [REDACTED], and Meggitt as competitors for this opportunity.
- (e) A Parker internal document '[REDACTED]',¹³⁷ dated [REDACTED] discusses an RFI for Wheel and Brake Assemblies for AWB for the [REDACTED]. Under the heading 'competition / recent bid history', the document notes that '[t]he current supplier of the brake is Meggitt, [REDACTED].' This document is an example of Parker considering the competitive constraint from Meggitt in the early stages of a tender, prior to the submission of a formal bid.
- (f) A Meggitt internal document '[REDACTED]',¹³⁸ dated [REDACTED] discusses an [REDACTED]. Under the heading '[REDACTED]', the document notes '[REDACTED] are believed to be working with Parker [REDACTED]'. [REDACTED], this internal document discusses [REDACTED] (another landing gear integrator) who Meggitt believed was working with [REDACTED] as AWB supplier, and [REDACTED], but it is noted that [REDACTED]. Finally, it is mentioned that Meggitt believes [REDACTED] (another landing gear integrator) is working with other AWB suppliers, but Meggitt does not know who.
- (g) A Meggitt internal document '[REDACTED]',¹³⁹ dated [REDACTED] discusses a ROM submission for the [REDACTED]. Under the heading '[REDACTED]', Meggitt observes '[REDACTED] we have been out bid by Parker [REDACTED]'. The document does not refer to any other competitors for supply of AWB.
- (h) A Meggitt internal document [REDACTED],¹⁴⁰ dated [REDACTED] discusses a ROM submission to [REDACTED] for the [REDACTED]. Under the heading '[REDACTED]', Meggitt observes 'Concerned about competitiveness against Parker. [REDACTED].' The document does not refer to any other competitors for supply of AWB ([REDACTED]).

¹³⁵ Parker Internal Document, Annex RFA-0314 to EC RFI 2, [REDACTED].

¹³⁶ Parker Internal Document, Annex RFA-0315 to EC RFI 2, [REDACTED].

¹³⁷ Parker Internal Document, Annex RFA-0374 to EC RFI 2, [REDACTED].

¹³⁸ Meggitt Internal Document, Annex CCR-0177 to EC RFI 2, [REDACTED].

¹³⁹ Meggitt Internal Document, Annex 06 to EC RFI 6, [REDACTED].

¹⁴⁰ Meggitt Internal Document, Annex 07 to EC RFI 6, [REDACTED].

Alternative suppliers

8.80 In relation to the constraint posed by alternative suppliers, the CMA considers that the Parties' internal documents show that a limited number of competitors are active in supplying AWB for rotorcraft.¹⁴¹

- (a) Parker submitted data showing that it was invited to bid in [REDACTED] new OE opportunities for rotorcraft in the period 2012-2021. Of these [REDACTED] opportunities had an associated RFA, and competitors for AWB were mentioned with the following frequency:¹⁴²
 - (i) Meggitt was cited as a competitor for [REDACTED] opportunities;
 - (ii) Raytheon was cited as a competitor for [REDACTED] opportunities;
 - (iii) Safran was cited as a competitor for [REDACTED] opportunity;
 - (iv) Dawin was cited as a competitor for [REDACTED] opportunity; and
 - (v) Northwest Dynamics was cited as a competitor for [REDACTED] opportunity.¹⁴³
- (b) Meggitt submitted data showing that it was invited to bid in [REDACTED] new OE opportunities for rotorcraft. Of these, only [REDACTED] opportunity had an associated CCR, and the following competitors for AWB were mentioned:¹⁴⁴
 - (i) Parker was cited as a competitor for [REDACTED] opportunity;
 - (ii) Dawin was cited as a competitor for [REDACTED] opportunity; and
 - (iii) Safran was cited as a competitor for [REDACTED] opportunity.

¹⁴¹ The CMA also notes that tender data submitted by the Parties, and the statistics included in this paragraph, include opportunities to supply rotor brakes, the competitive conditions of which may differ from rotorcraft AWB.

¹⁴² The CMA notes that in addition to the AWB suppliers listed, Parker documents also cited Triumph Aerospace Systems, Heroux Devtek, Magnaghi, which the CMA understands supply landing gear systems and not AWB. The CMA also notes that one document referred to National Machine as a competitor, but only in respect of wheel supply, and not for a combined AWB package. The CMA does not consider this reference relevant to the competitive assessment.

¹⁴³ This opportunity was to supply rotor brakes, without AWB.

¹⁴⁴ The CMA notes that in addition to the AWB suppliers listed, Meggitt documents also cited Triumph Aerospace Systems, Heroux Devtek, and Mecaer, which the CMA understands supply landing gear and not AWB.

Shares of supply

Parties' submissions

8.81 The Parties submitted estimates of shares of the supply of AWB to civil helicopters on the basis of the shares estimated for 2020 by Counterpoint, combined with their own figures and analysis to extrapolate the shares for 2018 and 2019.

Table 5: Shares of supply for supply of civil helicopter AWB by value (OEM) (global, 2018-2020)

Competitor	2018 (%)	2019 (%)	2020 (%)
Parker	[30-40]%	[30-40]%	[20-30]%
Meggitt	[20-30]%	[20-30]%	[10-20]%
Parties Combined	[50-60]%	[60-70]%	[40-50]%
Safran	[20-30]%	[0-5]%	[20-30]%
Honeywell	[5-10]%	[10-20]%	[10-20]%
Others	[10-20]%	[10-20]%	[20-30]%
Total	100%	100%	100%

Source: FMN, Table 15

8.82 The Parties also submitted estimates of shares of supply of AWB to military rotorcraft between 2018 and 2020.

Table 6: Shares of supply for supply of military rotorcraft AWB by value (OEM) (global, 2018-2020)

Competitor	2018 (%)	2019 (%)	2020 (%)
Parker	[70-80]%	[70-80]%	[60-70]%
Meggitt	[20-30]%	[20-30]%	[30-40]%
Parties Combined	[90-100]%	[90-100]%	[90-100]%
Safran	[0-5]%	[0-5]%	[0-5]%
Others	[0-5]%	[0-5]%	[0-5]%
Total	100%	100%	100%

Source: Parties' response to European Commission RFI dated 17 January 2022, Table 18

CMA's assessment

8.83 The CMA notes that many of the limitations in relation to the competitive insight provided by of shares of supply in this market apply as were discussed in paragraphs 8.37 and 8.38 in the context of fixed wing aircraft. In particular, shares of supply will reflect the tenders won by suppliers historically (possibly decades

ago) and so may not fully reflect the current conditions of competition or commercial strategies of suppliers.

- 8.84 Table 6 above shows the Parties' combined share of supply of AWB for civil helicopters as being between [40-50]% and [60-70]%, with them both being substantially-sized suppliers along with Safran and to a lesser extent Honeywell. Table 7 shows a very high combined share for the Parties in the supply of AWB for military rotorcraft of between [90-100]% and [90-100]%, with Safran – the only named alternative supplier – having a very small presence in this sector.
- 8.85 The CMA considers that these shares of supply indicate that the Parties are two of the leading suppliers of AWB to rotorcraft, and particularly military rotorcraft. While the shares of supply do not provide full insight into the current conditions of competition, they do provide an indication of AWB suppliers' historic competitive strength, which is in turn likely to reflect their existing technical capability and their manufacturing capacity (which are relevant to the constraint that they are likely to pose at present).

Tender data

Parties' submissions

- 8.86 The Parties submitted data on the opportunities to supply AWB to rotorcraft on which they had bid or been invited to bid. The basis on which this tendering data was assembled is the same as that discussed in paragraphs 8.43 – 8.44. All rotorcraft are included in this data as the CMA found no basis for the segmentation of the supply of AWB for rotorcraft on the basis of weight or other factors.
- 8.87 The Parties submitted that the tendering data indicates that there has been 'no meaningful competition' between the Parties in the past 10 years.¹⁴⁵ They submitted that there have been [redacted] rotorcraft opportunities where both Parties considered bidding:
- (a) [redacted] for which Meggitt submitted a formal bid. The programme was suspended due to lower than anticipated demand;
 - (b) [redacted] where both Parties responded to requests for information from [redacted] on the AWB solutions they would implement; and
 - (c) [redacted] – who were both competing to supply [redacted] – and with [redacted] – who were considering outsourcing the supply of AWB for [redacted].
- 8.88 The Parties submitted that Meggitt's tendering activity in rotorcraft shows that Meggitt has limited interest in the supply of AWB to rotorcraft. In particular, they

¹⁴⁵ Supplementary Issues Paper Response, paragraph 4.1.

argued that Meggitt made formal bids on [redacted] rotorcraft opportunities in the past 10 years compared to Parker's [redacted] bids, and that Meggitt has not won an opportunity to supply AWB to a rotorcraft in more than [redacted] years.¹⁴⁶

CMA's assessment

- 8.89 The CMA notes that the same set of deficiencies described above in the tender data for fixed wing aircraft in paragraphs 8.48 – 8.50 also apply to the rotorcraft tender data. These include opportunities for the same platforms and customers which may represent duplicates, and concerns around certain products not falling within the scope of AWB.¹⁴⁷ On this basis, the CMA considers that the tender data provided by the Parties does not accurately reflect the activities of the Parties in competing to supply AWB to rotorcraft (and may, in particular, underestimate the extent of competitive interaction between them). It is also the case that the tender data contains no information about the activity of suppliers other than the Parties, so cannot inform the assessment of third-party constraints.
- 8.90 In spite of its deficiencies, the CMA considers that the tender data supports the position that Meggitt has a continued commercial interest in supplying AWB to rotorcraft, particularly large programmes and military programmes, consistent with the internal documentary evidence. The CMA therefore considers that the tender data does not support the Parties' position that Meggitt's tendering activity in rotorcraft shows that it has limited interest in the supply of AWB to rotorcraft.
- 8.91 All [redacted] of the rotorcraft opportunities considered by Meggitt overlap with Parker. These overlapping tenders are high-value, representing long-duration and high-volume programmes and so represent a very large proportion of the total value of the market for the supply of AWB for military rotorcraft. The Parties state that the supplier of AWB for the eventual winning platform of the [redacted] process will become the 'most significant' supplier of rotorcraft AWB.¹⁴⁸ The CMA therefore considers that Meggitt's involvement in multiple [redacted] tenders, in particular, indicates that Meggitt remains a major presence competing for the supply of rotorcraft AWB.

Third party views

- 8.92 The CMA contacted a range of third parties to gather their views on the closeness of competition between the Parties and the alternative suppliers available for AWB for rotorcraft. The CMA asked helicopter airframers and defence primes to list the suppliers they would approach if they were to launch a tender for AWB on a new aircraft, to rate the strength of these suppliers' offerings on a scale of one to five

¹⁴⁶ Supplementary Issues Paper Response, paragraphs 4.7 – 4.8.

¹⁴⁷ The CMA also notes that tender data submitted by the Parties includes opportunities to supply rotorcraft AWB, the competitive conditions of which may differ from rotorcraft AWB.

¹⁴⁸ Supplementary Issues Paper Response, footnote 37.

(where five is the strongest), and to comment on the areas in which these suppliers are strong and in which they are weak or absent.

Closeness of competition

- 8.93 A helicopter airframer customer (**Customer H**) listed only Parker and Meggitt as suppliers it would approach for AWB on a new aircraft, rating both of their strengths at 3 out of 5. It stated that Parker has good experience compared to Meggitt, though Meggitt has good overall capability in the supply of AWB.¹⁴⁹
- 8.94 Another helicopter airframer customer (**Customer I**) stated that the only AWB supplier it would approach for a new aircraft is Meggitt.¹⁵⁰
- 8.95 Another (**Customer J**) told the CMA it would approach landing gear systems integrators rather than procuring AWB directly, so were unaware of the suppliers of AWB.¹⁵¹
- 8.96 **Customer E** (a landing gear systems integrator) told the CMA that Parker and Meggitt are currently the only two suppliers who are willing to supply AWB to independent systems integrators.¹⁵²

Alternative suppliers

- 8.97 **Customer E** told the CMA that, besides Parker and Meggitt, Safran and Raytheon are the main suppliers who offer AWB to rotorcraft, though only as a part of an integrated landing gear system. This customer believes Safran and Raytheon would not supply AWB to independent landing gear systems integrators who do not have AWB manufacturing capabilities. This customer also believes that Honeywell has limited interest in supplying AWB to smaller aircraft, including rotorcraft.¹⁵³
- 8.98 **Customer E** told the CMA that Raytheon and Safran supply AWB for rotorcraft as part a of complete landing gear systems, competing with independent landing gears systems integrators.¹⁵⁴
- 8.99 **Customer F** told the CMA that Safran is currently its main source of AWB for helicopters. This customer told the CMA that they 'could envisage' using Parker or the landing gear systems integrator Mecaer in the future. Separately, this

¹⁴⁹ Response to third party questionnaire.

¹⁵⁰ Response to third party questionnaire.

¹⁵¹ Third party call note.

¹⁵² Third party call note.

¹⁵³ Third party call note.

¹⁵⁴ Third party call note.

customer listed Meggitt as an AWB supplier it would consider if it were launching a tender for a new platform, rating Meggitt's strength as three out of five.¹⁵⁵

Third-party concerns about the Merger

8.100 The CMA notes that some rotorcraft AWB customers of the Parties have expressed concerns about the effect of the Merger on competition:

- (a) **Customer E** expressed strong concerns about the effect of the Merger on competition and on its business. This customer told the CMA that the Parties are the only suppliers of AWB who are willing to work with independent landing gear systems integrators, so this Merger would leave it with no choice of suppliers.¹⁵⁶
- (b) **Customer H** told the CMA that it is opposed to the Merger because it will negatively impact its ability to provide a cost-effective solution to commercial and military customers. This customer was concerned competition will decrease, which will result in increased difficulty in price negotiation and terms and conditions.¹⁵⁷
- (c) **Customer I** told the CMA it is concerned that the Merger will affect its ability to purchase the items it currently does, and to receive them in a timely manner and at a competitive price.¹⁵⁸

CMA assessment

8.101 The CMA considers that the evidence from third parties summarised above is consistent with the evidence from shares of supply and the Parties' internal documents that the Parties are close competitors for the supply of AWB to rotorcraft, and the number of alternative suppliers for AWB for rotorcraft is limited. Based on third party views, Safran and, to a lesser extent, Raytheon are the only alternative suppliers likely to impose a constraint on the Merged Entity in this segment.

Conclusion on competitive assessment – rotorcraft

8.102 The CMA believes that the evidence from internal documents, shares of supply, the Parties' tender data and third parties, when considered together, indicates that the Parties compete closely for supply of AWB to rotorcraft. The same evidence also indicates that there are limited alternative suppliers for rotorcraft, with only Safran and Raytheon likely to impose a constraint on the Merged Entity.

¹⁵⁵ Response to third party questionnaire

¹⁵⁶ Third party call note.

¹⁵⁷ Response to third party questionnaire.

¹⁵⁸ Response to third party questionnaire.

9. COUNTERVAILING FACTORS

Entry and expansion

9.1 Any analysis of a possible SLC includes consideration of the direct responses to the merger by rivals, potential rivals and customers. If effective entry and/or expansion occurs as a result of the merger and any consequent adverse effect (for example, a price rise), the effect of the merger on competition may be mitigated. In these situations, the CMA might conclude that no SLC arises as a result of the merger. The CMA considers that entry and/or expansion preventing an SLC from arising would be rare.¹⁵⁹ In assessing whether entry or expansion might prevent an SLC, the CMA considers whether such entry or expansion would be timely, likely and sufficient.¹⁶⁰

Parties' submissions

9.2 The Parties submitted that barriers to entry and expansion in the supply of AWB are not prohibitive, particularly for helicopters and small general aviation aircraft.¹⁶¹

9.3 The Parties submitted that some upfront capital expenditure is required to develop a new set of AWB, but the expenditure can be largely incurred once the tender to supply AWB for the relevant aircraft programme has been won.¹⁶²

9.4 The Parties also submitted that there has been at least one successful new entrant in the past (Beringer), which supports the Parties' argument that barriers to entry and expansion in this market are not prohibitive. The Parties indicated that Beringer entered the market in 2005 and has rapidly scaled up, supplying AWB between four and 10 inches in diameter for a wide range of light and general aviation aircraft. The Parties submitted that Beringer's successful entry is further demonstrated by the fact that Beringer has displaced Parker as the OEM supplier of brakes for [redacted].¹⁶³

9.5 The Parties are also aware of another company (Brembo) that has expressed interest in entering the market for AWB. The Parties submitted that, even though this company has not yet entered the market, it has the technical expertise, facilities, scale, and reputation to do so.¹⁶⁴

¹⁵⁹ Merger Assessment Guidelines, paragraphs 8.28-8.29.

¹⁶⁰ Merger Assessment Guidelines, paragraph 8.31.

¹⁶¹ FMN, paragraph 250.

¹⁶² FMN, paragraph 250.

¹⁶³ FMN, paragraph 251.

¹⁶⁴ FMN, paragraph 252.

CMA's assessment

- 9.6 The CMA notes that several features of the supply of AWB indicate that barriers to entry are high:
- (a) a new entrant to manufacturing AWB is likely to face significant sunk costs on initial set-up, such as plant and machinery;¹⁶⁵
 - (b) customers told the CMA that they place a high value on the reputation and track-record for suppliers of AWB;¹⁶⁶
 - (c) economies of scale are likely to play a significant factor in determining the extent to which suppliers of AWB are successful;¹⁶⁷
 - (d) an entrant to the supply of AWB would need to obtain significant know-how in respect of (among other things) customer procurement processes, supply chain logistics, engineering and design, certification and testing procedures, operations and quality control, and manufacturing;¹⁶⁸ and
 - (e) regulation may also act as a barrier, given that all aerospace components, including AWB, must pass strict certification requirements imposed by national government authorities such as the UK Civil Aviation Authority, the US Federal Aviation Administration and the EU Aviation Safety Agency.¹⁶⁹
- 9.7 Third parties that responded to the CMA's market testing noted that barriers to entry were high, in particular because:
- (a) there are high commercial and technical barriers for new entrants due to the complexity of the AWB system, which requires a high degree of expertise in its design, validation and manufacture;¹⁷⁰
 - (b) smaller providers of AWB are not credible providers and would need to be certified by the airframer;¹⁷¹ and
 - (c) it is very rare to change the original equipment supplier of a component unless it is malfunctioning because the applicable regulatory framework makes it extremely difficult to do so. It is also very expensive for the company to make any major changes to the airframes of existing aircraft platforms due to regulatory re-certification requirements.¹⁷²

¹⁶⁵ Merger Assessment Guidelines, paragraph 8.41(a).

¹⁶⁶ Merger Assessment Guidelines, paragraph 8.41(b).

¹⁶⁷ Merger Assessment Guidelines, paragraph 8.41(d).

¹⁶⁸ Merger Assessment Guidelines, paragraph 8.41(f).

¹⁶⁹ Merger Assessment Guidelines, paragraph 8.41(h).

¹⁷⁰ Response to third party questionnaire.

¹⁷¹ Third party call note.

¹⁷² Third party call note.

9.8 Overall, the evidence received by the CMA indicates that there are significant barriers to entry or expansion in the supply of AWB. The CMA does not consider that any entry or expansion would be timely, likely or sufficient to mitigate the competition concerns arising as a result of the Merger.

Efficiencies

9.9 The CMA's framework for assessing merger efficiencies involves an assessment of whether they enhance rivalry in the supply of those products where an SLC may otherwise arise, are timely, likely and sufficient, are merger-specific and will benefit customers in the UK.¹⁷³ The greater the expected adverse effect of a merger, the greater the expected efficiencies must be.¹⁷⁴ The CMA will consider whether, even if the merger does give rise to efficiencies, the merged entity would have the incentive to allow customers in the UK to benefit from the efficiencies.¹⁷⁵ At phase 1, the evidence must be sufficient to satisfy the CMA within the time available in an initial investigation that efficiencies would prevent the realistic prospect of an SLC.¹⁷⁶

9.10 The Parties did not make any representations on merger-specific efficiencies. The CMA has not seen any evidence that merger efficiencies in this case would be sufficient to prevent an SLC from arising.

10. CONCLUSION ON SUBSTANTIAL LESSENING OF COMPETITION

10.1 Based on the evidence set out above, the CMA believes that it is or may be the case that the Merger may be expected to result in an SLC in as a result of horizontal unilateral effects in relation to the supply of AWB worldwide.

11. PUBLIC INTEREST CONSIDERATION

Summary of representations from interested parties

11.1 Section 44(3)(b) of the Act requires the CMA to provide a summary of representations it has received (i) which relate to the public interest consideration in question (in this case, national security) and (ii) which are or may be relevant to the Secretary of State's decision as to whether to make a reference for a phase 2 assessment under section 45 of the Act.

¹⁷³ Merger Assessment Guidelines, paragraph 8.8 et seq.

¹⁷⁴ Merger Assessment Guidelines, paragraph 8.14.

¹⁷⁵ Merger Assessment Guidelines, paragraph 8.20.

¹⁷⁶ Merger Assessment Guidelines, paragraph 8.15.

Ministry of Defence (the MOD)

- 11.2 The MOD conducted an Enterprise Act 2002 phase 1 investigation into national security risks posed by the Merger. The MOD found that Meggitt is an important supplier as a subcontractor on a number of defence programmes, and that the US based Parker is also well known to the MOD as an established defence contractor. Parker supplies the MOD with certain chemicals and remotely piloted air system hydraulics equipment and is active within the supply chain.
- 11.3 The MOD's investigation raised three broad risks which can be summarised as:
- (a) Security of Supply. A failure to meet existing contractual commitments which supply components for UK MOD platforms may cause a disruption to UK defence capability.
 - (b) Information Security. Structural changes to the Meggitt business could lead to a breach of the conditions established under Facility Security Clearance arrangements which regulate the handling of sensitive UK government information, or a failure to abide by legal obligations around such information, which may place certain MOD capabilities at risk.
 - (c) Sovereign UK capabilities. The acquisition of Meggitt by Parker, a US company, could lead to the introduction of personnel, IP, skills or knowhow which cause their products to be affected by US International Traffic in Arms (**ITAR**) restrictions. It is plausible that such restrictions might lead to a loss of UK 'freedom of operation' relating to certain critical capabilities.
- 11.4 The MOD is engaged in discussions with the Parties around these identified risks, and is considering possible remedies by way of behavioural undertakings in lieu in order to mitigate those risks.

Third parties

- 11.5 The CMA received a limited number of representations from third parties, which expressed the following concerns relating to national security:
- (a) The Merger would result in a reduced number of potential sources for defence technologies, and comes in the context of recent consolidation in the defence and aerospace sectors (such as Safran's acquisition of Zodiac in 2018 and Raytheon's acquisition of UTC in 2020);¹⁷⁷

¹⁷⁷ Response to third party questionnaire.

(b) Concerns regarding the level of commercial support for supply to defence platforms, which was said to be poor pre-Merger, and which related to both legacy products and new programmes;¹⁷⁸ and

(c) [✂].¹⁷⁹

11.6 All representations which the CMA received from third parties relating to national security were shared with the MOD.

11.7 Consistent with section 44(2) and 44(3) of the Act, the CMA does not provide in this report advice or recommendations on the national security public interest consideration under section 44(6) of the Act.¹⁸⁰

12. SLC REMEDIES – UNDERTAKINGS IN LIEU

Introduction

12.1 Where competition concerns have been identified, the CMA is required to report to the Secretary of State on its decision as to whether, for the purpose of remedying, mitigating or preventing the SLC concerned or any adverse effect which may be expected to result from it, it would be appropriate to accept undertakings in lieu of making a reference in order to deal with the matter.¹⁸¹

12.2 To be acceptable, remedies proposed in phase 1 investigations must be clear-cut and capable of ready implementation. This means, amongst other things, that (i) the relevant authority¹⁸² must be confident that, if the UILs are accepted, there is no material doubt about their overall effectiveness; and (ii) all potential competition concerns that have been identified in its investigation would be resolved by means of the UILs without the need for further investigation.¹⁸³

12.3 The relevant authority shall in particular have regard to the need to achieve as comprehensive a solution to the SLC (and any adverse effects resulting from it) as is reasonable and practicable. Where the relevant authority is the CMA, its guidance and practice at phase 1 is to seek to remedy or prevent competition concerns rather than mitigate concerns. Accordingly, the CMA's starting point is to

¹⁷⁸ Response to third party questionnaire.

¹⁷⁹ Response to third party questionnaire.

¹⁸⁰ Guidance on the CMA's jurisdiction and procedure, paragraph 16.7 d).

¹⁸¹ Section 44(4)(f) of the Act requires the CMA to include in its report its decision as to whether it believes that it is or may be the case that it would be appropriate to deal with the matter (disregarding any public interest considerations mentioned in the intervention notice concerned) by way of undertakings under paragraph 3 of Schedule 7 to the Act.

¹⁸² In PIIN cases, the relevant authority is ultimately the Secretary of State.

¹⁸³ [CMA guidance on Merger Remedies, 13 December 2018](#) (CMA 87) (**Merger Remedies**), paragraph 3.27.

seek an outcome that restores competition to the level that would have prevailed absent the merger.¹⁸⁴

- 12.4 The more extensive the competition concerns, in terms of magnitude of potential customer harm, the more significant the error costs of an ineffective remedy, and hence the greater the belief must be that the UILs will comprehensively resolve those concerns. In cases where the potential magnitude of harm is large, the CMA will be particularly cautious in its approach to UILs.¹⁸⁵
- 12.5 At phase 1, the CMA is generally unlikely to consider behavioural undertakings sufficiently clear-cut to address the identified competition concerns. Whereas structural remedies deal with the concern at source, behavioural undertakings bring a number of risks which can reduce their effectiveness or create competition concerns elsewhere, and can be difficult to monitor and enforce.¹⁸⁶ Complex behavioural remedies that create continuing economic links and dependencies are unlikely to recreate the pre-merger competitive intensity of the market, can raise significant circumvention risks, and can become outdated as market conditions change. In some circumstances they can also distort the natural development of the market.¹⁸⁷ This is underscored further by the increasing complexity of dynamic markets and the need to undertake forward-looking assessments.
- 12.6 In practice, this means that in most instances where remedies are required, the CMA has selected structural remedies with behavioural remedies sometimes playing a supporting role.¹⁸⁸
- 12.7 At phase 1, where the remedies are structural in nature, in order to be acceptable, they must provide for a divestment period within which the merger parties must identify a suitable purchaser for the divestment business and conclude a sale agreement with that buyer where there is no upfront buyer.¹⁸⁹ Alternatively, where merger parties wish to offer an upfront buyer in their remedies offer, they may either identify a proposed buyer straight away or make the offer on the basis that any divestiture would be to an upfront buyer.¹⁹⁰
- 12.8 At phase 1, the relevant authority should agree with the merger parties a timetable of milestones through the UILs process to ensure that the merger parties are

¹⁸⁴ Merger Remedies, paragraphs 3.3, 3.30 and 3.31.

¹⁸⁵ Merger Remedies, paragraph 3.28 (a).

¹⁸⁶ Merger Remedies, paragraphs 3.32 and 7.4, in particular: specification, distortion, circumvention, and monitoring and enforcement risks.

¹⁸⁷ [Joint statement by the Competition and Markets Authority, Bundeskartellamt, and Australian Competition and Consumer Commission on merger control](#), 20 April 2021. See also Merger Remedies, paragraph 7.4.

¹⁸⁸ Merger Remedies, paragraph 3.47.

¹⁸⁹ Merger Remedies, paragraph 4.36.

¹⁹⁰ Merger Remedies, paragraph 4.31.

making timely progress towards the ultimate signing of an agreement with a suitable purchaser.¹⁹¹

Hypothetical Remedy to address the competition concerns identified

12.9 Parker proposed what it described as ‘hypothetical’ UILs based on the theory of harm which had been outlined in the CMA’s issues paper and supplementary issues paper sent to the Parties (the **Hypothetical Remedy**).¹⁹²

12.10 The Hypothetical Remedy consists of the divestment of Parker’s entire AWB business (the **Divestment Business**) to a suitable purchaser, and includes the following:¹⁹³

- (a) All of the land, land improvements, buildings, and leasehold improvements relevant for the Divestment Business, specifically the production site of Parker’s AWB Division located at Avon, Ohio, USA.
- (b) All relevant tangible assets used exclusively or primarily by the Divestment Business, including all office inventory and office equipment used exclusively or primarily by the AWB Division at the time of Closing as well as certain de minimis assets used by Parker’s AWB Division located at Parker’s plant in Guaymas, Mexico for limited basic machining.
- (c) Certain intangible assets used exclusively or primarily by the Divestment Business, including the ‘Cleveland Wheels & Brakes’ brand, any designs/drawings developed by Parker’s AWB Division, the two patents owned by Parker’s AWB Division, the products of Parker’s R&D [✂], other R&D products being pursued by Parker’s AWB Division, and Parker’s AWB Division’s trade secrets.
- (d) Certain necessary licences, permits and authorisations.
- (e) Subject to obtaining any necessary consent from contractual counterparties, the transfer of all contracts between customers, suppliers, or distributors and Parker’s AWB Division.
- (f) All customer, credit and other documentation and records, that exclusively or primarily relate to the Parker AWB Division.

¹⁹¹ Merger Remedies, paragraph 4.26.

¹⁹² Information on Hypothetical UILs, dated 25 February 2022. Parker’s submission was made without prejudice to its position that there is no realistic prospect of an SLC.

¹⁹³ Information on Hypothetical UILs, dated 25 February 2022, paragraph 18.

- (g) Certain key personnel, including appropriate incentive schemes (based on industry practice), to encourage all key personnel to remain with the Divestment Business.
- (h) Arrangements for the supply of transitional support services for IT, software, logistical and/or other business support services by Parker for a short transitional period of up to 3-6 months.

12.11 Parker submitted that the Parker AWB Division operates as a discrete, stand-alone business within Parker, with minimal reliance on the rest of the Parker Group for its operations, and the assets described above would form a comprehensive divestment package.¹⁹⁴

12.12 Conversely, the Divestment Business would not include:

- (a) Two employees associated with Parker Group-level machining carried out for Parker's AWB Division at Parker's plant in Guyamas, Mexico. However, the Divestment Business would include certain machinery used to carry out machining for Parker's AWB Division, which would be transferred to the Avon, Ohio production site of Parker's AWB Division.
- (b) Parker's central key account management team (**KAM**), covering certain OEM key accounts, and a customer support operations team (**CSO**), covering military aftermarket contract administration. Parker submitted that the existing sales and marketing team within the Divestment Business has the relevant capabilities to manage services performed by KAM and CSO within Parker's AWB Division, and that Parker would offer a purchaser to find and train one to two additional contract administrators to cover the additional workload.
- (c) Parker's central engineering team (but, as explained above, the Divestment Business would include the products of Parker's R&D [✂], and other R&D products being pursued by Parker's AWB Division).
- (d) Parker's company name, general brand name, mark, or logo in any form or deviations thereof, eg, the 'Parker Aircraft Wheel & Brake' brand.
- (e) Any licenses, permits or authorisations issued by government regulators that attach to the Divestment Business by means of a legal entity but transfer of which is not possible, for example ITAR registration and export licenses held by Parker.
- (f) Parker Group-level logistics contracts, IT systems and other support services, though Parker would offer the purchaser a transitional services

¹⁹⁴ Information on Hypothetical UILs, dated 25 February 2022, paragraph 19.

agreement to cover these for a period of up to 3 – 6 months (to be extended to a maximum of 12 months upon the purchaser's request).

- 12.13 In response to questions raised by the CMA, Parker provided the following further information:
- (a) Parker provided data on its AWB Division's EBITDA and EBITDA margin for the last three financial years.¹⁹⁵
 - (b) Parker provided a list of Parker Group employees within the central KAM, CSO and engineering functions which would not transfer with the Divestment Business, which currently work part-time for the AWB Division.¹⁹⁶
 - (c) Parker confirmed that all of the design rights, patents and other intellectual property used by the AWB Division would be transferred with the Divestment Business. The AWB Division does not utilise design rights, patents, or other intellectual property which is held by other Parker divisions or by non-Parker entities.¹⁹⁷
 - (d) Parker confirmed that the machining carried out in Guaymas, Mexico consists of basic machining services performed by two machinists with a band saw and drill, and is outsourced to a supplier for cost efficiency purposes.¹⁹⁸
 - (e) Parker confirmed that there are no other non-transferable licences relied upon by the Divestment Business apart from ITAR registrations held by Parker, which Parker anticipates a purchaser would either already hold or could obtain without material delay or disruption.

Assessment of the Hypothetical Remedy

Effectiveness of the Hypothetical Remedy to address the identified SLC

12.14 The CMA considers that the scope of the Hypothetical Remedy may be sufficient to resolve the SLC identified in paragraph 10.1 above, subject to further consultation with the Parties to establish the extent of any risks relating to the carve out of the Divestment Business from the broader Parker business.

CMA assessment of scope of Hypothetical Remedy

12.15 The CMA considers that the scope of the Hypothetical Remedy may be sufficient to resolve the SLC identified by the CMA's investigation. This is because the

¹⁹⁵ Parties' Response to CMA RFI 6, Table 1.

¹⁹⁶ Parties' Response to CMA RFI 6, paragraph 16.

¹⁹⁷ Parties' Response to CMA RFI 6, paragraphs 8 – 9.

¹⁹⁸ Parties' Response to CMA RFI 6, paragraph 15.

Hypothetical Remedy includes the entirety of Parker's AWB business, including all customer, distributor and supplier relationships, and the main tangible and intangible assets used by Parker to supply AWB. As such, the CMA believes that the Hypothetical Remedy or a modified version of it may allow a suitable purchaser to compete effectively in the global supply of AWB.

- 12.16 A UIL of the same scope as the Hypothetical Remedy should therefore result in the replacement of the competitive constraint previously provided by Parker that would otherwise be lost following the Merger as a result of horizontal unilateral effects. The CMA's investigation has not identified any other products besides AWB in respect of which the Merger may give rise to an SLC. Therefore, were the Parties to offer a formal UIL to the Secretary of State based on the Hypothetical Remedy, it may be the case that a UIL of this scope would be appropriate to deal with the competition concerns raised in this Report.
- 12.17 The CMA further notes that the Hypothetical Remedy appears (based on the CMA's limited assessment to date) to have the following characteristics, which the CMA considers necessary for any UIL offered to remedy the competition concerns identified, namely:
- (a) It is structural in nature, rather than behavioural;
 - (b) It consists of the entirety of one Party's AWB business;
 - (c) There is limited reliance by the business to be divested on the rest of the Parker Group for its operations and the assets;
 - (d) It is financially viable as a standalone business.
- 12.18 The CMA does not believe that it would be appropriate to accept any UIL which did not have these characteristics, as any such UIL would be insufficient to address the competition concerns identified in this Report to the phase 1 standard.
- 12.19 Parker submitted that its AWB Division (the **Divestment Business**) is run as a standalone business.¹⁹⁹ The CMA notes, however, that information provided by Parker indicates that the Divestment Business has some links with the rest of the Parker Group, including (but not limited to) the use of certain key IP rights owned by, and services provided by the Parker Group, such as:
- (a) Parker's central KAM team, covering certain OEM key accounts, and Parker's central CSO team, covering military aftermarket contract administration.

¹⁹⁹ Information on Hypothetical UILs, dated 25 February 2022, paragraph 9.

- (b) Parker's company name, general brand name, mark, or logo in any form or deviations thereof, e.g., the Parker Aircraft Wheel & Brake' brand.
- (c) Certain non-transferable licences, which may already be in place if the purchaser of the Divestment Business is a trade buyer, but which may not be in place if the purchaser is a non-trade buyer.
- (d) Parker's central KAM team, covering certain OEM key accounts, and Parker's central CSO team, covering military aftermarket contract administration.
- (e) Parker's company name, general brand name, mark, or logo in any form or deviations thereof, e.g., the 'Parker Aircraft Wheel & Brake' brand.
- (f) Certain non-transferable licences, which may already be in place if the purchaser of the Divestment Business is a trade buyer, but which may not be in place if the purchaser is a non-trade buyer.

- 12.20 The Hypothetical Remedy includes an offer to extend transitional services arrangements to the purchaser for IT, software, logistical and/or other business support services for a period of up to 3 – 6 months (to be extended to a maximum of 12 months upon the purchaser's request).
- 12.21 While the CMA currently considers that there appears to be limited reliance by the business to be divested on the rest of the Parker Group, the composition risks (ie the risk that the scope of the divestiture package may be too constrained or not appropriately configured) raised by this carve out would require further information gathering and analysis to confirm that this UIL is appropriate to address the SLC. Further information gathering and analysis is also required to consider whether the Hypothetical Remedy is capable of ready implementation.
- 12.22 Finally, while the Hypothetical Remedy has made reference to the sale of the Divestment Business, the Parties have not indicated whether they intend to offer a sale to an upfront buyer, or whether they will commit to making a divestment within a prescribed divestment period. As a result, no timetable has been agreed between the Parties for the sale of the Divestment Business.
- 12.23 In light of the above, the CMA considers that further information and consultation is needed to ensure that a modified version of the Hypothetical Remedy would comprehensively address the SLC.
- 12.24 However, the CMA considers on the basis of the available information that it may be the case that a UIL which contained the characteristics set out in paragraph 12.17 above, and which addressed the composition and implementation risks of the Hypothetical Remedy identified above, would be appropriate to deal with the competition concerns raised in this Report.

- 12.25 It is open to the Secretary of State to instruct the CMA to consult with the Parties on a formal UIL based on the Hypothetical Remedy (or otherwise compliant with the terms of this Report) under the mechanism set out in Section 93 of the Act.

Conclusion on UILs

- 12.26 For the reasons set out above, the CMA considers that it may be appropriate to deal with the competition concerns arising from the merger situation by way of undertakings under paragraph 3 of Schedule 7 to the Act.

13. PUBLIC INTEREST REMEDIES – UNDERTAKINGS IN LIEU

- 13.1 The MoD informed the CMA that it has been considering the specific risks identified in relation to national security matters and possible remedies to address those risks. The CMA understands that the MoD will advise the Secretary of State directly in this regard.
- 13.2 Although the CMA is aware of the general nature of national security concerns held by the MoD (as summarised in section 11 above), the CMA has at the time of this Report provided no views to BEIS or the MoD on the substance of any undertakings in lieu intended to address public interest concerns.

14. ASSESSMENT AND ADVICE TO THE SECRETARY OF STATE

- 14.1 The CMA produces this report to the Secretary of State pursuant to its duty under section 44(2) of the Act, following investigations carried out under section 44(7).
- 14.2 This report contains advice on considerations relevant to the making of a reference under section 33 of the Act which are also relevant to the Secretary of State's decision as to whether to make a reference under section 45 of the Act, namely that the CMA believes that is or may be the case that:
- (a) arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation;
 - (b) the creation of that merger situation may be expected to result in an SLC within a market or markets in the UK for goods or services;
 - (c) it may be appropriate to accept undertakings in lieu of a reference to a phase 2 inquiry; and

(d) such undertakings in lieu of a reference to a phase 2 inquiry must meet the minimum requirements set out in Section 12 above.²⁰⁰

14.3 This report also contains a summary of the representations about the case which it has received which relate to the national security public interest consideration mentioned in the Notice.

14.4 This report does not contain advice or recommendations on the public interest consideration under section 44(6) of the Act.

Colin Raftery
Senior Director, Mergers
18 March 2022

²⁰⁰ Pursuant to section 44(4) of the Act, the CMA does not believe it is or may be the case that (i) the market or markets concerned would be of insufficient importance to justify the making of a reference; (ii) the arrangements are insufficiently far advanced, or insufficiently likely to proceed, to justify the making of such a reference; or (iii) any relevant customer benefits in relation to the creation of the relevant merger situation concerned outweigh the substantial lessening of competition and any adverse effects of the substantial lessening of competition.

