

Anticipated acquisition by Survitec Group Limited of the marine division of Cosalt plc

ME/5018/11

The OFT's decision on reference given on 17 August 2011. Full text of decision published 19 October 2011.

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

PARTIES

1. **Survitec Group Limited ('Survitec')** supplies marine and aviation safety products,¹ defence related products and contractor logistics support. Survitec is ultimately owned by Warburg Pincus & Co, a US based global private equity firm. Survitec manufactures marine safety products including liferafts and marine evacuation systems (MES) for use in commercial shipping. Survitec is also active in the distribution and servicing of marine safety equipment through its wholly owned subsidiary, Seaweather Holdings Ltd ('Seaweather'). Survitec supplies liferafts and MES under the RFD, Beaufort, DSB, and RFD Toyo brand names.
2. **Cosalt plc ('Cosalt')** is a global supplier of safety equipment and services for the offshore (oil and gas) and marine industries and is listed on the London stock exchange. For the purposes of the transaction, Survitec is only acquiring Cosalt's marine division² (the '**Target Business**'). The Target Business has three business divisions:

¹ The term 'marine safety products' denotes a wide range of safety and survival products for use at sea and includes marine liferafts, marine evacuation systems, rescue boats, life boats, life jackets, immersion suits, pyrotechnics and fire safety products.

² Excluding the workwear business.

- a. Crewsaver, a manufacturer of marine safety clothing and equipment including marine life jackets and immersion suits Marine UK, which has three principle areas of activity:
 - i. distribution and servicing of marine safety products
 - ii. production and distribution of fibre and wire ropes and
 - iii. supply of lifting, inspection and tooling equipment and services, and
 - b. Marine Europe, which distributes and services marine safety products and other products across seven sites in Belgium, Germany, Spain and the Netherlands.
3. In the year to 31 October 2010, the Target Business' worldwide turnover was £[] million, of which £[] million was generated in the UK.

TRANSACTION

4. On 3 May 2011, Survitec entered into a conditional sale and purchase agreement to acquire the Target Business from Cosalt for a consideration of £31 million.
5. The administrative deadline (extended) for the OFT to make a decision on this case is 17 August 2011.

JURISDICTION

6. As a result of the transaction, Survitec and the Target Business will cease to be distinct. The parties have a combined share of supply of [25-35] per cent by revenue in the distribution and servicing of marine safety products in the UK (with an increment of [five-10] per cent). Therefore the share of supply test in section 23(4) of the Act is met. As a result, the OFT believes 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.

RATIONALE FOR MERGER

7. The parties submit that the rationale for the transaction is to expand the Survitec product range (particularly in relation to marine life jackets and immersion suits) and its distribution and servicing network. The parties also consider that by creating a more vertically integrated, streamlined business, the transaction will enable Survitec to ensure quality of service across its distribution and servicing network.

MARKET DEFINITION

Background

8. The parties overlap in the distribution and servicing of marine safety products. The marine safety products sector comprises the supply, distribution and servicing of marine safety products.

Supply and distribution

9. Producers of marine safety products may be vertically integrated and supply their products direct to end-users and/or to third party distributors.
10. Distributors in the UK (whether independent or owned by a manufacturer) will typically stock a broad range of marine safety products (that is, liferafts, rescue boats, life jackets, immersion suits, pyrotechnics and other safety products) in order to supply both commercial and leisure users. As such, distributors will typically:
 - a. produce some of the marine safety products which they sell (that is, either in-house or via outsourced or white-label arrangements),³ and
 - b. enter into, often multiple, cross-distribution arrangements with producers of other marine safety products.
11. In addition to purchasing marine safety products outright, end-consumers also have the choice of renting the equipment from a supplier/distributor

³ Commercial liferafts are, in some cases, produced by the distributor of the liferaft, for example, Viking and Survitec. Survitec outsources the production of its commercial liferafts to a third party Chinese manufacturer.

such that they can trade-in their old equipment in part-exchange for new products (buy back and hire). Alternatively, customers may enter into straightforward hire arrangements where no buy back is provided.⁴

Regulation and servicing

12. The testing and approval process will depend on the regulatory regime to which the marine safety products are subject. Marine safety products used on commercial vessels in open seas will generally be subject to the testing and approval requirements set out in the International Convention for the Safety of Life at Sea ('SOLAS') and related codes and guidance issued by the International Maritime Organisation ('IMO') which have been implemented in the EEA by means of the Marine Equipment Directive (MED).^{5,6}

13. The IMO has set out the requirements for servicing of certain marine safety products, particularly those commercial products which are subject to SOLAS requirements. Most categories of SOLAS approved liferafts require servicing on an annual basis. Where the IMO guidelines apply, marine safety products including commercial liferafts and MES can only be serviced by persons authorised to do so by the manufacturer of the particular product. In such cases, the site will be inspected by the manufacturer and Maritime & Coastguard Agency (MCA) in the UK.⁷ The manufacturer must provide access to the product handbook and individuals who will be responsible for the servicing may be required to attend a one to two week training course.

⁴ The parties note that the only marine safety equipment which can be hired are commercial and leisure liferafts, lifejackets, and immersion suits.

⁵ Council Directive 96/98/EC of 20 December 1996 on Marine Equipment, as amended. The MED has been implemented in the UK through the Merchant Shipping (Marine Equipment) Regulations 1999 (SI 1999/1957).

⁶ Only those commercial vessels which meet certain size and type requirements are required to carry SOLAS liferafts. Commercial vessels which do not meet these size and type requirements are not required to carry SOLAS liferafts and are free to use 'leisure' liferafts. In addition, marine safety products which are used by commercial vessels in coastal or inland waters or on leisure or other non-commercial vessels do not require SOLAS approval.

⁷ The site will be inspected by a Notified Body which in the UK is appointed by the Maritime & Coastguard Agency. In the UK, the list of Notified Bodies, according to MarED, is Lloyd's Register, British Standards Institute, QinetiQ and ABS Europe Ltd.

Product and geographic scope

14. The OFT's approach is to first consider if narrow candidate product markets can be widened through substitution on the demand-side, and then, if appropriate, to consider if substitution on the supply-side allows several products, which are not demand-side substitutes, to be aggregated into one wider market.⁸
15. The OFT has set out in detail in its decision relating to the proposed acquisition by Survitec of the SOLAS Division of Zodiac Marine & Pool SASU (Zodiac) a description and analysis of the supply, distribution and servicing activities relating to each of commercial liferafts and MES.⁹ That analysis concluded that the appropriate markets for consideration were:
 - a. the supply of commercial liferafts in the EEA
 - b. the supply of MES in the EEA
 - c. the distribution and servicing of commercial liferafts in the UK and
 - d. the servicing of MES in the UK.
16. The OFT believes that, for the reasons given in that decision and given the activities of the parties in this case, similar markets are of relevance here, save that this transaction results in a horizontal overlap in the distribution and servicing of commercial liferafts and the servicing of MES.¹⁰
17. Given that no competition concerns arise as a result of the transaction, however, it has not been necessary to conclude on the precise product and geographic scope.

⁸ See Merger Assessment Guidelines, Joint publication of the Competition Commission and the OFT, September 2010, paragraph 5.26.

⁹ See ME/5017/11 'Anticipated acquisition by Survitec Group Ltd of Zodiac Marine & Pool SASU', paragraphs 16 to 59.

¹⁰ In terms of other marine safety products, the OFT notes that the increments resulting from the merger for the distribution and servicing of life jackets and the distribution and servicing of marine immersion suits were minimal and did not raise competition concerns. Further, no third party concerns were raised in relation to these products and hence these products are not considered further in the decision.

COUNTERFACTUAL¹¹

18. The OFT notes that Survitec is simultaneously seeking to acquire the SOLAS Division of Zodiac. Zodiac is a supplier of commercial liferafts and MES in the UK.
19. As set out in the OFT's guidance,¹² 'the Authorities may be required to consider a merger at a time when there is the prospect of another merger in the same market (a parallel transaction). For the OFT, the question is, as always, whether the transaction under review creates the realistic prospect of a substantial lessening of competition (SLC), and it is likely to consider whether the statutory test would be met whether or not the parallel transaction proceeds (unless the parallel transaction can clearly be ruled out as too speculative).'
20. In this case, the relevant question for the OFT is whether, given the proposed acquisition by Survitec of Zodiac, the addition of the Target Business itself creates a realistic prospect of an SLC.

HORIZONTAL ISSUES

UNILATERAL EFFECTS

21. The OFT has first considered unilateral effects in relation to MES and secondly for commercial liferafts. In each case, it has considered supply separately from servicing (in the case of MES) and distribution and servicing (in the case of commercial liferafts).

A. MES

Supply of MES

22. The Target Business is not active in the supply of MES in the EEA or UK and therefore no unilateral effects issues arise in this area. The following sections relate to the servicing of MES.

¹¹ The parties submitted a number of arguments regarding the counterfactual relating to the financial situation of Cosalt. However, as no realistic prospect of a substantial lessening of competition has been found in relation to the merger on the basis of the pre-merger situation, the OFT did not need to consider an alternative counterfactual.

¹² See Merger Assessment Guidelines, Joint publication of the Competition Commission and the OFT, September 2010, paragraph 4.3.25 and 4.3.26

Servicing of MES

23. Survitec (through its subsidiary Seaweather) and the Target Business each service MES. There is no overlap in distribution, reflecting the fact that suppliers of MES in general supply customers directly rather than via independent distributors,¹³ as the service requires some bespoke design.
24. Survitec's UK revenues from the servicing of MES were estimated to be nearly £[]m in 2010. By contrast, Cosalt, which undertakes servicing on behalf of third party suppliers, had estimated revenues of £[]. This may indicate that due to the bespoke design of MES, servicing is often undertaken by the supplier in-house.
25. The parties estimate that post-merger, they will have a combined share of supply of [35-45] per cent (with an increment of [five-10] per cent) in the servicing of MES in the UK, based on value. The OFT notes that the increment is relatively small reflecting the fact that Cosalt, as an independent service station, undertakes limited servicing of MES. Further, the OFT notes that Cosalt largely services MES supplied by LSA whose product range is specific to smaller cruise ships or ferries. On this basis, the OFT does not consider that the merging parties are closest competitors in the servicing of MES.
26. One third party, however, expressed the view that there would be few, if any, independent service stations in the UK that could provide an equivalent service to that which Cosalt currently provides. The OFT notes that not all service stations are of a sufficient size to service MES and that the demand for servicing may be more seasonal than for other marine safety products.¹⁴
27. Nevertheless, the parties submit that the merged entity will continue to face vigorous competition from Viking and any distributor authorised by LSA (see the vertical effects section, below).
28. Although Cosalt is the largest independent service station in the UK with nine sites, the OFT is aware that there are more than 25 independent

¹³ Zodiac is an exception in that it has exclusive supply arrangements with two UK distributors and hence does not supply MES direct to end customers in the UK.

¹⁴ One third party commented that the MES servicing season is condensed into four to six-month period annually, October to March (the low season for passenger vessels).

service stations in the UK. In addition, due to the relatively low costs of entry and/or expansion,¹⁵ the OFT considers that barriers to entry into servicing of MES are relatively low and therefore there should be sufficient servicing capacity available in the UK. A number of service stations contacted during the course of the investigation indicated that they would have capacity to consider servicing MES or if necessary expanding in order to undertake the work.

29. In addition, the parties submitted that MES tend to be transported further distances than other types of marine safety products for servicing as transport costs (as a portion of the total cost of servicing of MES) are proportionately lower than for other types of marine safety products and the time available for such servicing also tends to be longer. Therefore the OFT does not consider that an independent service station will need to replicate Cosalt's network of stations in order to service MES; rather, a single service station could compete nationally with the merged entity by transporting MES across the UK.
30. The OFT considers that post-merger the merged entity will continue to face strong competition from Viking and independent service stations that have the capacity (and authorisation) to service MES in the UK.¹⁶
31. As a result, the OFT considers that the evidence available to it does not point to a realistic prospect of a SLC in the servicing of MES in the UK.

B. Commercial liferafts

Supply of commercial liferafts

32. The Target Business is not active in the supply of commercial liferafts in the EEA or UK and therefore no unilateral effects issues arise in this area. The following sections relate to the distribution and servicing of commercial liferafts.

¹⁵ The parties estimated that setting up a new service station would cost around £[50,000-200,000] and require five to seven employees. Third party estimates vary between £500,000 and £1 million. Expansion into servicing MES by an existing service station would cost considerably less than this.

¹⁶ The OFT notes that the total value for the servicing of Survitec branded and Zodiac branded MES is £[] million. However, given that the value of Cosalt's share of servicing of Survitec/Zodiac MES is only £[], the increment is minimal and in the absence of third party concerns does not raise concerns over unilateral effects.

Distribution and servicing of commercial liferafts

33. Survitec (through its subsidiary Seaweather) and the Target Business distribute and service Survitec branded commercial liferafts (under the RFD, Beaufort and DSB brand names).¹⁷

Shares of supply

34. The parties estimate that post-merger, they will have a combined share of supply of [45-55] per cent (with an increment [15-25] per cent) in the distribution and servicing of commercial liferafts in the UK, based on value.
35. Third parties broadly confirmed these figures with regard to commercial liferafts although one third party commented that there is a lack of reliable data with which to estimate shares of supply. Viking is expected to remain the merged parties' strongest competitor post merger.
36. The parties' share of supply figure for commercial liferafts is sufficiently high to give the OFT prima facie cause for concern over potential unilateral effects such as to warrant further examination.

Closeness of competition

37. Where products are differentiated, for example by branding or quality, unilateral effects are more likely where the merging firms' products compete closely. This includes situations where the parties are often amongst the leading candidates for the award of supply contracts.
38. The parties compete in the distribution of commercial liferafts – specifically Survitec branded commercial liferafts and both undertake servicing of these liferafts. As a result, it is expected that the parties compete against each other for the same customers. Nevertheless, the parties submit that they are not each other's closest competitors.
39. The OFT understands that a distributor and service station of a given brand of commercial liferafts would face two competitive pressures. The firm has to compete against other distributors and/or service stations of the same brand on one hand, and on the other, it has to compete against other distributors and/or service stations of other brands. The parties provided

¹⁷ Survitec's main brand in the UK is DSB; its other brands are RFD, Beaufort, Toyo, Eurovinil.

bidding data which is discussed further below that shows instances where Cosalt and Seaweather compete against each other for a contract to supply a given customer and also instances where either one or both of them competes against Viking and/or Ocean Safety for a given contract. The bidding data also indicates that distributors who sell and service the brands produced by Asian manufacturers are providing a stronger competitive constraint to Survitec than their shares of supply would suggest.

40. Overall, the OFT considers that the parties, Survitec and the Target Business, are close competitors in the distribution of commercial liferafts both nationally and locally, although they may not be closest competitors.

Constraints from existing competitors

41. The parties note that UK customers typically purchase commercial liferafts from service stations. The parties submit that there is a number of alternative distributors and service stations of commercial liferafts in the UK, in particular Viking which largely has a vertically integrated service network. The OFT considered whether other distributors such as Ocean Safety, Norwest Marine and ADEC Marine could also place a competitive constraint on the merged entity. For these distributors to provide such a constraint, they need to be able to distribute and service a commercial liferaft that can compete effectively with Viking and Survitec.
42. The parties submit that there are a range of low cost Asian manufactured liferafts such as CSM, Youlong, Fujikura and Samgong that distributors can stock and compete with the merged entity. The parties provided bidding data for 2009-2011 to show the extent of inter-brand switching by end-customers at the downstream distribution level of the market.
43. The OFT considers that there are limitations on the extent to which the data can be wholly relied upon and notes that:
 - a. the data has not been independently collected and therefore may contain certain biases, and
 - b. the data has been collated by a limited number of service stations and therefore does not provide an industry wide review.

44. Despite these reservations, the OFT considers that the data can provide an indication of the strength of the Asian brands in the UK market.
45. The parties submit that CSM, Youlong (Seasafe), Fujikura and Samgong compete aggressively on price. The bid data shows that distributors¹⁸ of these brands have bid against those of Survitec in over a third of cases and have been successful in the majority of those cases. Whilst many of these contracts may be relatively small in value, the OFT considers that the increasing competitive constraint placed on Survitec by these brands may reflect changes in the dynamics of competition in the sector as these manufacturers become successful in building their shares of supply in the UK. This evidence suggests that distributors that stock these brands of liferafts are providing a stronger competitive constraint on the more established brands than their shares of supply would suggest, particularly in competition for smaller customers. Further, the parties provided evidence to indicate that some of these competing manufacturers are seeking to expand their servicing network in the UK and Europe and hence it is expected that the competition constraint that these brands currently have on the merged entity will continue to strengthen.¹⁹ The presence of these brands has been particularly evident in relation to hire contracts (and is discussed further under 'ease of switching' below).
46. The OFT notes that some comments received from third parties indicate that customers do not consider that the low cost Asian manufacturers are of equivalent quality to European manufacturers. However, the OFT understands that all commercial liferafts in the UK must meet SOLAS requirements and have been notified and received approval from a Notified Body, for example Lloyds Register in the UK. As such, all commercial liferafts are closely substitutable from a design and quality perspective. Further, the OFT notes that CSM and Youlong are significant suppliers of commercial liferafts in the European market with each having approximately an estimated [5-15] per cent share of supply.²⁰ The OFT is therefore not persuaded that distributors of commercial liferafts manufactured in Asia cannot compete effectively with those of the merging parties.

¹⁸ The distributors identified were Blue Anchor (CSM), Norwest Marine (Seasafe), Denholm Fishselling (CSM), Liferafts International (Fujikura).

¹⁹ See www.areamoura.com/html/estaciones_ingles.htm

²⁰ Parties' estimates (see response to OFT's Issues paper: table 2).

47. The OFT considers that at the distribution level there is currently inter-brand competition between distributors in the sale of commercial liferafts which will continue post merger as customers will have a choice of distributor to go to when seeking to purchase a commercial liferaft, providing a sufficient competitive constraint on the merged entity.

Ease of switching

48. The OFT considers that switching between distributors is largely determined by the ease of switching between different brands of commercial liferaft. The parties submit that it is relatively easy to switch commercial liferaft brands as they are manufactured in the same size and formats. The parties' bidding data indicated that between 2009 and 2011, over [] of contracts involved the customer switching the brand of commercial liferaft as well as the service station.
49. Some third parties contacted during the investigation indicated that once a branded commercial liferaft is fitted on a new vessel, it is unusual to switch to an alternative brand during the lifetime of the vessel due to the associated costs, for example, the cost of changing the retaining cradle. However, the parties provided examples to show that cradles do not necessarily need to be replaced or if they are, their cost is relatively small and therefore does not represent a barrier to switching. The parties also clarified that there is a move to a more standardised cradle which removes the need for changing it in the majority of cases.
50. The parties submit that the option of hiring liferafts has further reduced the barriers to switching and that it now accounts for over [] of the revenues from the distribution of commercial liferafts. The parties argue that the presence of 'buy back and hire' schemes mean that customers are not 'locked in' to the manufacturer authorised service stations for their servicing needs.
51. The parties submitted that their bid data indicates that [35-45] per cent of contracts (in terms of volume) involved the customer switching away from ownership to hire. The parties submitted examples to demonstrate that customers have swapped liferafts from ownership to hire in year one due to the pricing benefits (that is, lower, more predictable costs) and flexibility

provided by hire arrangements.²¹ Further, the parties' bid data indicates that the vast majority of customers enter into a hire agreement with a service station for a one year period²² thereby giving customers the option of switching brands in future.

52. While the OFT believes that the merger may result in a restriction of choice of service station for customers currently holding a Survitec brand of commercial liferaft, the OFT believes that inter-brand competition would be strong enough to prevent Survitec from raising prices or reducing services to its own customers. As discussed above, the costs associated with switching brands of commercial liferafts are relatively low. In addition, there is no reason to suggest that the increasing switching by customers from buying to hiring would not further reduce the possibility of customers being locked-into a brand, thereby lessening any possible intra-brand harm to customers.
53. On the evidence available, the OFT considers that relatively low barriers exist in relation to customer switching between brands of commercial liferafts. The option of hiring can reduce barriers further and appears to be having a strong impact on the existing dynamics in the distribution and servicing market as the available evidence indicates that customers are increasingly switching their brands of commercial liferafts.

Barriers to entry and expansion²³

54. The OFT also considered whether there are barriers to entry or expansion in the distribution and servicing of commercial liferafts.
55. In terms of entry, service stations are relatively small operations, generally an industrial unit with two to four personnel authorised to service commercial liferafts. Third parties estimate that establishing a new service station that has the necessary authorisations and investment would cost between £500,000 and £1 million. The parties estimate a comparable figure of £[50,000-200,000]. Third parties estimate the cost of training an

²¹ [] both decided to switch to hire even though the liferafts were less than one year old.

²² Some [] per cent of Cosalt's hire fleet is subject to annual agreements and in the case of Seaweather, [] per cent of its hire fleet is subject to annual agreements.

²³ When assessing barriers to entry and expansion, the OFT will consider whether entry and expansion is (i) timely, (ii) likely, and (iii) sufficient. In terms of timeliness, the guidance suggests that the OFT will look for entry to occur within two years (See Merger Assessment Guidelines,

individual is less than £3000 (the parties estimate £[1,500-3,000]) and it would take less than a month to complete the training. The parties also identified a new entrant, Star International, which has recently been set up in the Birkenhead area.

56. In terms of expansion, the parties submitted that there are a significant number²⁴ of marine safety service stations in the UK which currently have the capability to service leisure marine liferafts and other marine safety products.
57. The parties submitted that the investment required by existing service stations in order to have the capability to service commercial liferafts is insignificant and, in most cases, would simply require the service station to give additional training to certain of its existing servicing personnel to have the ability to service commercial liferafts. The parties estimate that it would take less than two weeks to train two service station employees, and an incremental cost of £[1,500-3,000] for an existing leisure liferaft service station to have the full capability to service commercial marine liferafts. The OFT notes that recent years have seen the service stations Blue Anchor and South Eastern Marine Services receive authorisation from CSM, Norwest Marine from Youlong, Premium Liferafts from CRV and Liferafts International from Fujikura.
58. The OFT therefore considers, on the basis of the evidence available, that barriers to entry and expansion in the distribution and servicing of commercial liferafts to be relatively low.

Local issues

59. At a local level, the parties submit that that the transaction will not result in an SLC on the basis that even on the narrowest plausible local analysis (that is, within a 50-mile radius) there are at least four alternative distributors/service stations that will continue to lease, distribute and service commercial liferafts post-merger. The parties have identified two local areas where Survitec and the Target Business overlap in terms of service station locations. These are Liverpool/Birkenhead and Southampton.

Joint publication of the Competition Commission and the OFT, September 2010, paragraph 5.8.3).

60. The parties submit that, in both of these areas, the merged entity will continue to face competition from a number of alternative distributors and service agents post-merger, including Viking in both areas. The OFT notes also that barriers to entry and expansion into distribution and servicing of commercial liferafts are relatively low. Therefore, the OFT considers on the evidence available to it that there will be sufficient choice for customers of distributors and service stations offering different brands.
61. As a result, the OFT considers that the evidence available to it does not point to a realistic prospect of an SLC in the distribution and servicing of commercial liferafts at a local level.

Conclusion on unilateral effects

62. On the basis of the evidence available, the OFT considers that the parties post merger will be sufficiently constrained and does not consider that the merger creates a realistic prospect of a substantial lessening of competition in the distribution and servicing of commercial liferafts in the UK.

CO-ORDINATED EFFECTS

A. MES

63. During the investigation, the OFT did not receive any evidence suggesting that there is existing coordination in the supply or servicing of MES. However, taking account of the proposed acquisition by Survitec of Zodiac, the OFT has considered whether this merger could make it more likely that co-ordination between suppliers of MES will take place going forward by increasing the vertical integration of Survitec.
64. The OFT considers that three conditions must be satisfied for co-ordination to be possible.²⁵ First, firms need to be able to reach and maintain the terms of co-ordination. Secondly, co-ordination needs to be internally sustainable. And thirdly, co-ordination needs to be externally sustainable.

²⁴ There are currently over 25 independent service stations in the UK servicing marine safety products.

²⁵ See Merger Assessment Guidelines, Joint publication of the Competition Commission and the OFT, September 2010, paragraph 5.5.9.

65. Due to the difficulties in obtaining robust estimates, it has been difficult to make inferences regarding symmetry in terms of shares of supply. However, the OFT notes the lack of symmetry regarding the degree of vertical integration between the main suppliers of MES and hence it is unclear whether all suppliers will have the ability to reach and maintain the terms of co-ordination.
66. Co-ordination will only be sustainable where the additional profit from co-ordination is sufficiently high, and there is an effective mechanism to punish deviation. The OFT notes that switching is limited and hence there is not the repeated interaction (particularly if servicing costs are included in the initial contract price) that may facilitate monitoring or provide the ability to punish one party in the event of deviation from an agreed strategy. Further, the OFT notes that these contracts are relatively few with the parties identifying only [] bidding opportunities in the UK in the last three years.
67. Lastly, in respect of external stability, the OFT considers that co-ordination would be unsustainable in the face of countervailing buyer power (which is discussed below). The OFT also notes that no concerns have been expressed by third parties about the impact of the merger in terms of the possibility of coordinated effects in the supply of MES.
68. On the evidence available, the OFT does not consider that this merger will create the conditions for co-ordinated behaviour.

B. Commercial liferafts

69. During the investigation, the OFT did not receive any evidence suggesting that there is existing co-ordination between suppliers or distributors and service stations of commercial liferafts. However, taking account of the proposed acquisition by Survitec of Zodiac, the OFT has considered whether this merger could make it more likely that co-ordination between suppliers of commercial liferafts will take place going forward which would have an impact downstream on distribution and servicing.
70. The OFT has considered the three conditions that must be satisfied for co-ordination to be possible (as set out in paragraph 64) in turn.

71. In terms of ability to reach and monitor a co-ordinated outcome is concerned, the OFT observes that the merger will not result in increased symmetry in terms of the share of supply between Survitec and Viking. On the contrary, the OFT notes that the merger will reduce the level of symmetry in terms of the number of UK service stations the two companies will operate.
72. Nevertheless, the OFT notes that the product ranges offered by Viking and the merged entity are considered to be similar and there is a degree of price transparency due to the publication of price lists and feedback from customers to allow competitors to monitor each other's behaviour. However, the parties submitted that while price lists are provided to distributors, Survitec and Viking have no distributors in common and moreover, discounts to such price lists are not published.
73. Co-ordination will be sustainable only where the additional profit from co-ordination is sufficiently high, and there is an effective mechanism to punish deviation. The OFT notes that the only likely monitoring mechanism appears to be in the form of bidding for a number of contracts, albeit of varying sizes, over time, rather than a single 'winner takes all' contract very occasionally. This repeated interaction may provide an ability for one party to punish the other in the event of deviation from an agreed strategy.
74. However, in respect of external stability, the OFT considers it is unlikely that Survitec and Viking would be able collectively to exercise a degree of market power. The OFT notes that barriers to entry and expansion in the distribution and servicing of commercial liferafts are relatively low. There is evidence that existing distributors of commercial liferafts supplied by CSM and Youlong are challenging the service stations of Survitec and Viking by competing aggressively on price, and the option of hiring is further reducing the barriers to switching. The OFT also considers that there is a degree of countervailing buyer power (which is discussed further below) that would also affect the stability of any co-ordination.
75. Finally, the OFT notes that no concerns have been expressed by third parties about the impact of the merger in terms of the possibility of coordinated effects in the supply of commercial liferafts. On the evidence available, the OFT does not consider that this merger will create the conditions for co-ordinated behaviour.

NON-HORIZONTAL ISSUES

VERTICAL ISSUES

76. The OFT has considered whether vertical concerns could arise in respect of the merger, specifically in terms of customer foreclosure²⁶ for the servicing of MES.
77. The SOLAS regime requires the manufacturer of SOLAS MES to authorise and audit its service stations. For competitors to compete effectively with Survitec in the supply of MES in the UK, they will need to authorise a service station that has sufficient capacity to undertake the servicing of MES.
78. Third parties have therefore raised concerns regarding this merger in that it represents a loss of a strong independent service station (Cosalt) for MES.²⁷ Specifically, the concern is that as a result of the merger suppliers of MES who currently authorise the Target Business will be foreclosed either by the merged entity refusing to service its products or by raising prices for servicing. This would affect the ability of third party suppliers of MES to compete effectively upstream. A further concern relates to the loss of intellectual property, in that, the removal of Cosalt as an independent service station, could increase the risk of a supplier's 'intellectual property' being obtained by Survitec, a competitor.
79. In assessing the likelihood of such a customer foreclosure strategy resulting from the merger, the OFT considers in turn the ability of the parties to harm rivals; the incentive to engage in such a strategy; and the effect on competition in the foreclosed market of such action.²⁸
80. In terms of ability, the OFT considers that the merged entity has the ability, in so far as it is able to refuse to service MES products of a competitor or to raise the price of such servicing. As discussed above, the OFT's investigation has identified capacity amongst existing service stations that would consider servicing MES or if necessary expanding in order to

²⁶ See Merger Assessment Guidelines, Joint publication of the Competition Commission and the OFT, September 2010, paragraph 5.6.13.

²⁷ Cosalt currently services MES supplied by LSA and Survitec.

²⁸ See Merger Assessment Guidelines, Joint publication of the Competition Commission and the OFT, September 2010, Section 5.6.

undertake the work. Further, the OFT considers that barriers to entry into servicing of MES are relatively low and therefore there should be sufficient servicing capacity available in the UK and hence do not consider that the parties' would have the ability to foreclose other supplies of MES from the market.

81. The OFT has also considered the incentive of such a strategy. The OFT considers that although the merged entity competes at both the supply and servicing level, foreclosure may not be a credible strategy for it to adopt. As mentioned above, the OFT considers that the suppliers of MES will have a choice of third party service stations to authorise and therefore are not expected to exit the supply of MES. As a result, the merged entity will be prevented from recouping profits at the supply level which would have been lost at the servicing level.
82. Due to the doubts expressed over the ability and incentive by the merged entity to follow a foreclosure strategy, the OFT has not found it necessary to consider effect of such a strategy.
83. The OFT considers that there are sufficient service stations capable of providing services to MES customers of a third party supplier. As a result, the OFT does not consider, on the basis of the evidence available, that the merger creates a realistic prospect of a SLC in relation to foreclosure of suppliers of MES.

BUYER POWER

84. The parties submit that manufacturers of MES often supply end customers directly. Customers include shipyards (in the case of new build vessels), cruise lines, ferry companies and operators of passenger vessels. In the UK, the main customers are ferry companies and operators of smaller passenger vessels. The OFT considers that these customers will have a degree of countervailing buyer power in relation to the purchase of MES and this was indicated in the responses from some third parties.
85. In relation to commercial liferafts, the parties provided examples to show that customers can and do use procurement processes to increase their buyer power, for example, []. The parties also provided evidence of smaller

customers entering into joint purchasing agreements in order to gain negotiating strength. The parties consider that with the increasing trend towards hire and fixed price servicing, individual customer's negotiating strength will improve as customers will more easily be able to compare prices and switch demand between service stations.

86. The OFT therefore believes that there may be a degree of countervailing buyer power enjoyed by customers in these markets, albeit that the strength of it will vary amongst customers.

THIRD PARTY VIEWS

87. The OFT received comments from customers (end customers and distributors) and competitors of the parties. Third party views have been discussed in other parts of the decision where appropriate.
88. A number of end customers raised concerns regarding the merger, specifically noting the loss of a large independent distributor in Cosalt. Concerns were also expressed regarding the potential reduction in the choice of service stations post merger. However, the OFT notes the significant number of service stations that operate in the UK. Further, the OFT considers barriers to entry into servicing are relatively low and it is expected post-merger that customers will continue to have a choice of service stations offering a number of different brands of commercial liferafts.
89. Concerns were expressed in relation to MES and whether the loss of Cosalt would foreclose suppliers of MES due to a lack of sufficient servicing capacity. Specifically, for competitors to effectively compete with the merged entity in the supply of MES, they will need to authorise a service station in the UK for their customers to be able to service their MES. The OFT considers that there will be sufficient service stations available in the UK that could provide such a service and hence do not consider that the parties' would have the ability to foreclose other suppliers of MES from the market.
90. Comments received from competitors were mixed with some expressing concern that the merger will limit customer choice while others believed the competitive perspective would remain the same.

91. Overall, third party views were mixed with concerns focusing on the increased concentration resulting from the merger. However, as discussed above the OFT considers that there will be sufficient competition for the servicing of MES and the distribution and servicing of commercial liferafts.

ASSESSMENT

92. The parties overlap in the distribution and servicing of marine safety products. Given the overlaps between the parties, the OFT's investigation focused on the servicing of MES and the distribution and servicing of commercial liferafts in the UK.

93. In relation to MES, the parties will have an estimated combined share of servicing of MES of [35-45] per cent (with an increment of [five-10] per cent) in the UK, based on value.

94. The OFT does not consider that the merging parties are closest competitors in the servicing of MES in the UK. This reflects the fact that MES is often supplied direct to end customers rather than via independent distributors and that servicing may also be done primarily by the supplier, which is the case for Survitec and Viking. Cosalt's revenues from servicing of third party MES products are estimated to be £[].

95. The OFT considers that the merged entity will be subject to sufficient competition from suppliers (specifically Viking and LSA) and their authorised service stations in the servicing of MES post-merger. As a result, the OFT does not consider that the merger creates a realistic prospect of a SLC in the servicing of MES in the UK.

96. The OFT considered whether the merging parties will have the ability to foreclose upstream suppliers of MES by raising prices for servicing or refusing to service third party customers. The OFT noted that, even if the parties were to refuse to service third party MES customers or raise the price for servicing, the OFT considers that there are sufficient alternative service stations capable of providing this service. As a result, the OFT does not consider that the merger will create a realistic prospect of a SLC in relation to foreclosure of third party suppliers of MES.

97. In relation to the distribution and servicing of commercial liferafts the parties will have an estimated combined share of supply of [45-55] per cent (with an increment of [15-25] per cent) in the UK, based on value.
98. In terms of the distribution and servicing of commercial liferafts, the OFT considers that the parties are close competitors although they may not be closest competitors. Bidding data provided by the parties at the distribution level suggests that Viking is Cosalt's closest competitor and is expected to continue providing an effective competitive constraint on the merged entity post-merger. The bidding data also indicated that distributors of Asian-based manufacturers compete strongly and successfully with Survitec's distributors suggesting that their current shares of supply in the UK understate the degree of competitive constraint they represent. The OFT notes that a number of Asian manufacturers have significantly higher shares of supply at a European level.
99. As a result of relatively low switching costs, the OFT considers that there is the potential for the Asian-based manufacturers to expand their share of supply in the UK to match those achieved in Europe. Evidence provided in relation to the increasing trend by customers in favour of hiring is expected to further reduce barriers to switching. The OFT also notes that barriers to entry and expansion into distribution and servicing of commercial liferafts are relatively low. The OFT therefore considers that there will be sufficient capacity in distribution and servicing to facilitate the expansion of Asian-manufactured brands of commercial liferafts post merger. As a result, the OFT does not consider that the merger results in a realistic prospect of a SLC in the distribution and servicing of commercial liferafts in the UK.
100. Consequently, the OFT does not believe that it is or may be the case that the merger may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom.

DECISION

101. This merger will therefore not be referred to the Competition Commission under section 33(1) of the Act.

ENDNOTES

1. With reference to footnote 6, the parties clarified that commercial vessels will require a commercial marine liferaft depending on size and type of vessel rather than location in inland or coastal waters. This clarification has no impact on the OFT's conclusions in this case.
2. With reference to footnote 17, the parties clarified that Survitec's main brand in the UK is RFD; its other brands are DSB, Beaufort, Toyo, Eurovinil. This clarification has no impact on the OFT's conclusions in this case.