Anticipated acquisition by John Wood Group plc of Amec Foster Wheeler plc

Decision on relevant merger situation and substantial lessening of competition

ME/6687/17

The CMA's decision on reference under section 33(1) of the Enterprise Act 2002 given on 2 August 2017. Full text of the decision published on 15 August 2017.

Please note that [✄] indicates figures or text which have been deleted or replaced in ranges at the request of the parties for reasons of commercial confidentiality.

Contents

SUMMARY

1. John Wood Group plc (**Wood Group**) has agreed to acquire Amec Foster Wheeler plc (**Amec**) (the **Merger**). Wood Group and Amec are together referred to as the **Parties**.

2. The Competition and Markets Authority (**CMA**) believes that it is or may be the case that the Parties will cease to be distinct as a result of the Merger, that the turnover test is met and that accordingly arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.

3. The Parties overlap in the supply of (i) engineering and construction (**E&C**) services; (ii) operations and maintenance (**O&M**) services; (iii) hook-up (**HU**) and commissioning (**C**) (together – **HUC**) services; and (iv) dutyholdership services to the Upstream Offshore oil and gas sector.

4. The CMA assessed the supply of E&C services to the Upstream Offshore oil and gas sector as a single frame of reference. However, the CMA took into account, to the extent relevant, the differing competitive constraint offered by the Parties and their rivals in relation to different contract values and types of work within its competitive assessment.

5. The CMA assessed the provision of O&M services to the Upstream Offshore oil and gas sector as a single product frame of reference. However, the CMA took into account, to the extent relevant, the differing competitive constraint offered by the Parties and their rivals, and in particular the extent to which Tier 1 and Tier 2 suppliers may compete for different customers and project scopes, within its competitive assessment.

6. The CMA assessed the supply of HUC services to the Upstream Offshore oil and gas sector as a single product frame of reference. However, it was not necessary for the CMA to reach a conclusion on the precise product frame of reference as no competition concerns arise on any reasonable basis.

7. The CMA assessed the supply of dutyholdership services to the Upstream Offshore oil and gas sector as a single product frame of reference. However, it was not necessary for the CMA to reach a conclusion on the precise product frame of reference as no competition concerns arise on any reasonable basis.

8. The Parties submitted that the narrowest hypothetical geographic frame of reference for the services provided by both Parties to the Upstream Offshore oil and gas sector is the UK Continental Shelf (**UKCS**). The CMA received no evidence from the Parties or from third parties to suggest that the geographic scope should be narrower or wider in this case.

9. With respect to the supply of (i) E&C services; and (ii) O&M services to the Upstream Offshore oil and gas sector in the UKCS, the CMA found that the Parties’ combined share of supply is significant within an already concentrated market and that the Merger will bring about a material increment.

10. The CMA also found that the Parties are close competitors in the supply of (i) E&C services; and (ii) O&M services to the Upstream Offshore oil and gas sector in the UKCS and that only two other competitors impose a substantial competitive constraint on the Parties at the moment – Petrofac Services Ltd (**Petrofac**) and Aker Solutions ASA (**Aker**). The Merger would therefore result in a reduction of the main suppliers of E&C and O&M services from four to three, with only a limited competitive constraint being provided by the smaller suppliers.

11. The CMA considered possible entry or expansion into the supply of E&C or O&M services by (i) suppliers active in other geographies; (ii) suppliers active in neighbouring markets; and/or (iii) smaller suppliers. However, based on the views of customers and competitors, limited examples of recent entry on a significant scale, and given the current stage in the lifecycle of the oil and gas industry in the North Sea, the CMA found that such entry or expansion would not be timely, likely and sufficient.

12. The CMA also found that countervailing buyer power (in terms of (i) multi-sourcing and unbundling; (ii) bringing services in-house; and/or (iii) sponsored entry) is not sufficient to mitigate the adverse effects of the Merger on competition in relation to E&C services and O&M services. Although multi-sourcing and unbundling are present in these sectors, not all customers are able or willing to adopt this purchasing behaviour and, even when customers unbundle their contracts, the main suppliers continue to take responsibility for the main scopes of a contract.

13. Accordingly, the CMA found that the Merger gives rise to a realistic prospect of a substantial lessening of competition (**SLC**) as a result of horizontal unilateral effects in relation to the supply of (i) E&C services; and (ii) O&M services to the Upstream Offshore oil and gas sector in the UKCS.

14. With respect to the supply of HUC services, the CMA found that Amec's share of supply is significant. Wood Group does not, however, have any HUC contracts and has not been successful in winning any HUC contracts in the last few years. The CMA found that, while the Parties compete with each other for the supply of HUC services, they are not particularly close competitors. The CMA believes that Wood Group is likely to place only a limited constraint on Amec and that other competitors will continue to constrain the merged entity post-Merger. The CMA therefore found that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the supply of HUC services to the Upstream Offshore oil and gas sector in the UKCS.

15. With respect to the supply of dutyholdership services, the CMA found that Wood Group's share of supply is significant. Amec does not, however, have any dutyholdership contracts and has not been successful in winning any dutyholdership contracts in the last few years. The CMA found that, while the Parties compete with each other for the supply of dutyholdership services, they are not particularly close competitors. The CMA believes that Amec is likely to place only a limited constraint on Wood Group, and that Petrofac, along with the ability of customers to bring dutyholdership services in-house, will continue to constrain the merged entity post-Merger. The CMA therefore found that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the supply of dutyholdership services to the Upstream Offshore oil and gas sector in the UKCS.

16. Having found a realistic prospect of an SLC in the supply of (i) E&C services; and (ii) O&M services to the Upstream Offshore oil and gas sector in the UKCS, the CMA is considering whether to accept undertakings under section 73 of the Enterprise Act 2002 (the **Act**). The Parties have until 9 August 2017 to offer an undertaking to the CMA that might be accepted by the CMA. If no such undertaking is offered, then the CMA will refer the Merger pursuant to sections 33(1) and 34ZA(2) of the Act.

ASSESSMENT

Parties

17. Wood Group is an international technical services company which designs, modifies, constructs and operates industrial facilities, principally in the oil and gas sector. Wood Group provides a range of studies, E&C, O&M, dutyholdership, industrial gas turbine overhaul and repair services, and the supply and repair of electrical submersible pumps, as well as well-head equipment to the oil and gas and power generation industries worldwide. The turnover of Wood Group in the financial year ending 31 December 2016 was £3,049.9 million worldwide and £640.3 million in the UK.

18. Amec provides a range of services in the oil and gas, chemicals, mining, power and environment and infrastructure (**E&I**) sectors. In particular, Amec offers certain consultancy, project management and delivery, studies, E&C, O&M, HUC and power equipment services. The turnover of Amec in the financial year ending 31 December 2016 was £5,440.6 million worldwide and £[✂] in the UK.

Transaction

19. The Merger is a recommended all-share offer by Wood Group to acquire the entire issued and to be issued share capital of Amec.

20. The Parties informed the CMA that the Merger is also the subject of review by competition authorities in Australia, Canada, Kazakhstan, Turkey, the USA, Bulgaria, CEMAC, Mexico, the Philippines, Poland, Russia, South Africa and Colombia.

Procedure

21. The Merger was considered at a Case Review Meeting.[1]

Jurisdiction

22. As a result of the Merger, the enterprises of Wood Group and Amec will cease to be distinct.

23. The UK turnover of Amec exceeds £70 million, so the turnover test in section 23(1)(b) of the Act is satisfied.

24. The CMA therefore 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.

25. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 13 June 2017 and the statutory 40 working day deadline for a decision is therefore 7 August 2017.

Counterfactual

26. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual). For anticipated mergers, the CMA generally adopts the prevailing conditions of competition as the counterfactual against which to assess the impact of the merger. However, the CMA will assess the merger against an alternative counterfactual where, based on the evidence available to it, it believes that, in the absence of the merger, the prospect of these conditions continuing is not realistic, or there is

[1] See *Mergers: Guidance on the CMA's jurisdiction and procedure* (CMA2), January 2014, from paragraph 7.34.

a realistic prospect of a counterfactual that is more competitive than these conditions.[2]

27. In this case, neither the Parties nor any third party has submitted that a different counterfactual should be used and there is no other evidence in this regard. Therefore, the CMA believes the prevailing conditions of competition to be the relevant counterfactual.

Frame of reference

28. Market definition provides a framework for assessing the competitive effects of a merger and involves an element of judgement. The boundaries of the market do not determine the outcome of the analysis of the competitive effects of the merger, as it is recognised that there can be constraints on merger parties from outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important than others. The CMA will take these factors into account in its competitive assessment.[3]

Product scope

29. The Parties submitted that they are active across a range of sectors, but both are active in providing technical services to the oil and gas sector. In this sector, the Parties primarily overlap in the provision of certain services to the Upstream Offshore oil and gas sector.

30. 'Upstream' refers to the production (ie extraction) within the oil and gas supply chain. By contrast, 'downstream' refers to the refining, processing and purifying of crude oil and natural gas, and the transformation of it into other refined or chemical products.

31. Upstream production activities can be either Offshore or Onshore:

    (a) Offshore refers to the extraction of oil and gas from under the ocean. The Parties submitted that Offshore activities include oil and gas production and storage facilities (ie oil rigs and floating production, storage and offloading vessels) and onshore oil and gas reception terminals.

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[2] *Merger Assessment Guidelines* (OFT1254/CC2), September 2010, from paragraph 4.3.5. The *Merger Assessment Guidelines* have been adopted by the CMA (see *Mergers: Guidance on the CMA's jurisdiction and procedure* (CMA2), January 2014, Annex D).
[3] *Merger Assessment Guidelines*, paragraph 5.2.2.

(b) Onshore refers to the extraction of oil and gas on the mainland (eg shale gas).

32. In relation to the Upstream Offshore oil and gas sector,[4] the Parties overlap in the supply of the following services:[5]

(a) E&C services, which cover a broad spectrum of work which varies in terms of the level of conceptual work, detailed design (including front end engineering and design), engineering capacity, construction resources and costs involved, and ranges from turnkey projects (ie projects in which the supplier undertakes the entire responsibility from design through completion and commissioning) to a single area of service;

(b) O&M services, which involve the provision of ongoing support services for the operation and maintenance of existing offshore oil and gas facilities and onshore reception terminals;

(c) HUC services, which cover the final stage in the construction of an oil and gas production asset before it can start producing oil and/or gas;[6] and

(d) Dutyholdership services, which entail responsibility for the overall management of an oil and gas installation, including regulatory responsibility for health and safety on the installation. This role includes substantial onshore management and support capability given the considerable responsibility placed on the dutyholder with respect to the Health and Safety Act 1974 and the various Offshore Safety Regulations.[7]

33. The Parties submitted that decommissioning is a phase in the lifecycle of an asset where the relevant asset is dismantled and removed once production has ceased. The Parties explained that decommissioning involves services across each of the O&M, E&C, dutyholdership and studies market segments.

[4] Throughout this decision, by 'upstream offshore' the CMA means the so-called 'midstream' as well, ie the onshore reception terminals where the oil and gas first comes to shore.
[5] E&C, O&M, HUC and dutyholdership services are collectively referred to as 'engineering services' in this decision.
[6] As discussed in paragraph 157, Wood Group does not currently hold any HUC contracts (except with Maersk). Wood Group has, however, been actively bidding for HUC contracts and has all capabilities necessary to serve HUC contracts, and so would be able to bid for these contracts in future. The CMA therefore considers that the Parties compete in the supply of HUC services.
[7] As discussed in paragraph 185, Amec does not currently hold any dutyholdership contracts. Amec has, however, been actively bidding for dutyholdership contracts and continues to have all capabilities necessary to serve dutyholdership contracts, and so would be able to bid for these contracts in future. The CMA therefore considers that the Parties compete in the supply of dutyholdership services.

34. The Parties also overlap in the supply of (i) studies[8] to the oil and gas, wind power, and E&I sectors; (ii) E&C and O&M services for the solar and biomass sectors; (iii) E&C services for the conventional power sector; and (iv) E&C services to the oil and gas downstream sector. Based on the evidence available to the CMA – in particular the limited increment brought about by the Merger in each case[9] – these services are not considered further within this decision.

E&C

35. The Parties submitted that there should be no segmentation of the product frame of reference within E&C services. The CMA considered further segmentation, as discussed below, but ultimately concluded that this would not be appropriate. The CMA has also considered whether E&C services might form part of a broader frame of reference (which might include, in particular, the provision of O&M services). Tender data shows, however, that customers typically tender for the provision of E&C services separately from other engineering services, suggesting that a wider frame of reference would also not be appropriate in this case.

General versus project work

36. The Parties submitted that there are two broad types of E&C contracts:

(a) general ('day to day') E&C work, which is typically conducted pursuant to a contract of between two and five years in duration and which usually covers modifications and projects needed by the customer in question on the facilities covered by the contract; and

(b) project work, which covers *ad hoc* pieces of work, which the customer will generally tender for individually either during the life of the facility or for its decommissioning.

37. Competitors and customers of the Parties indicated that they do not distinguish between general and project work. The tender data provided by the Parties and collated by the CMA also indicates that there is no distinction between general and project work (in particular because there are no

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[8] The Parties submitted that studies are predominantly desk-based consultancy services which are provided at the preliminary phases of larger (non-routine) E&C contracts and Projects work (see paragraph 36(b)). Studies work involves preliminary engineering and economic feasibility studies, site identification and evaluation, hazard identification and operability studies, cost estimates and schedule development on a particular project contemplated by an oil and gas operator.

[9] The Parties submitted that the Merger will result in [0-5]% increment with respect to the provision of studies for the oil and gas sector in the UK and with respect to the provision of studies for the wind energy projects in the UK; and in [0-5]% increment with respect to the provision of E&C services to the oil and gas Downstream sector.

separate tenders for general or project work). The CMA therefore did not segment between general and project work within the frame of reference.

Segmentation by contract value

38. The Parties submitted that, while they are both active across the E&C market, their activities principally overlap in relation to work of up to £250 million in value. The CMA assessed whether segmenting the product frame of reference into E&C contracts up to and over £250 million in value is appropriate.

39. The tender data[10] (containing all contracts tendered since 2012, as well as a number of older ones) shows that at least six out of 57 E&C contracts in the dataset were larger than £250 million in value. Wood Group bid for [✂] of these six contracts, and Amec bid for [✂] of them, and both have had some success in winning these contracts. The tender data therefore does not support the Parties' submission that they do not, in practice, compete for E&C contracts that are over £250 million in value.[11]

40. The tender data also shows that other suppliers similarly also bid for contracts that are both up to and over £250 million in value. The CMA also notes that the tender data does not suggest that £250 million would be a particularly significant point of distinction (as opposed to any other contract value).

41. Third parties who have responded to the CMA's investigation have not indicated that there is any distinction between E&C contracts of up to and over £250 million in value. The CMA therefore did not segment the product frame of reference based on contract value.[12]

Decommissioning

42. The CMA also considered whether decommissioning might form a separate frame of reference.

43. The Parties have submitted [✂] examples of E&C and O&M contracts that contained important elements of decommissioning work, suggesting that this service is frequently tendered for as part of a broader package. Moreover, the competitor set for decommissioning services appears to be similar to that for E&C in general, suggesting that the capability necessary to provide

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[10] The tender dataset included tenders provided by the Parties, as well as information on tenders submitted to the CMA by third parties (see paragraph 80).
[11] The limitations of the tender data collected by the CMA are discussed in paragraph 80 below.
[12] As discussed in the competitive assessment below, this does not mean that E&C contracts are not differentiated on a number of other factors.

decommissioning services is not materially different from that necessary to provide other types of E&C and O&M services. Therefore, while decommissioning is an increasingly important segment within engineering services in general and E&C in particular, the CMA did not consider that these activities give rise to a separate frame of reference.

Conclusion

44. For the reasons set out above, the CMA assessed the supply of E&C services to the Upstream Offshore oil and gas sector as a single frame of reference, without segmenting these further between general and project work or by contract value (or in any other way). The CMA took into account, to the extent relevant, any differentiation in the competitive capabilities and track record of suppliers in relation to different contract values and types of work within its competitive assessment.

O&M

45. The tender data submitted by the Parties and collected by the CMA shows that customers typically tender for the provision of O&M services separately from other engineering services. This indicated that a wider frame of reference would not be appropriate in this case. This also indicated that a segmentation on the basis of the specific types of O&M services that providers offer would also not be appropriate.

46. The Parties submitted that suppliers of O&M services can be broadly characterised as Tier 1 or Tier 2 suppliers.[13] Tier 1 suppliers offer a broadly comprehensive O&M service, including project and contract management. Tier 2 suppliers, on the other hand, typically offer a sub-set of services which fulfil only some of the customer's O&M requirements. In their submission, the Parties listed themselves, Aker, and Petrofac as Tier 1 suppliers.

47. The Parties also submitted that, from a demand- and supply-side perspective, the distinction between Tier 1 and Tier 2 suppliers is a question of breadth of service offered and the availability of management/supervising staff and management systems that have the capability and training to manage the operations/maintenance of the relevant oil and gas facilities. The Parties argued that there are no (or only very limited) barriers to a Tier 2 supplier

[13] The Parties submitted that there also exists another potential category of Tier 3 suppliers. Tier 3 suppliers offer a more limited range of services than Tier 2 suppliers. These companies are typically made up of a small number of employees (usually 10 or fewer) and offer services in their local geographic area only. Tier 3 companies will generally be subcontractors to Tier 1 and 2 suppliers and will not contract directly with customers.

becoming a Tier 1 supplier, and that this could be achieved quickly and at low cost.

48. The Parties also stated that there is, increasingly, less of a distinction between Tier 1 and Tier 2 suppliers because customers have tended to move away from awarding contracts for an integrated service to a single supplier towards awarding contracts for smaller scopes of work to multiple suppliers. The Parties consider that this has resulted in both Tier 1 and Tier 2 suppliers competing for the smaller contracts tendered by customers (and that even when contracts have been awarded to Tier 1 suppliers, elements of these have often been sub-contracted out to Tier 2 suppliers).

49. For both these reasons, the Parties submitted that there should be no segmentation between Tier 1 and Tier 2 providers within O&M services.

50. Third party evidence collected by the CMA suggests that a small number of customers have been reducing the average contract value in recent years in order to make it easier for Tier 2 suppliers to bid. This evidence also indicates that Tier 2 suppliers may have the capability to bid on and win some O&M contracts. The available evidence also indicates, however, that the constraint from the Tier 2 suppliers on Tier 1 suppliers may be limited, and that Tier 2 suppliers face material barriers to expansion (see paragraphs 229-233).

51. For the reasons set out above, the CMA assessed the provision of O&M services to the Upstream Offshore oil and gas sector as a single product frame of reference. However, the CMA took into account, to the extent relevant, the differing competitive offerings of the Parties and their competitors – including, in particular, the extent to which Tier 1 and Tier 2 suppliers may compete for different customers and project scopes and have different competitive strengths – within its competitive assessment.

HUC

52. The Parties initially submitted that HUC services should be considered as a single product frame of reference, as the capabilities and skills required to perform a HUC contract are distinct from those required to provide other services. In particular, specialist labour and expertise is required to perform a HUC contract, which is why HUC contracts are often tendered separately. The Parties later submitted that HUC consists of two distinct elements, hook-up (**HU**) and commissioning (**C**) services, which should be assessed separately. The Parties stated that Amec has commissioning capabilities, but Wood Group does not, and therefore that the Parties should only be considered to overlap in the supply of HU services.

53. The CMA notes that the Parties’ suggestion that HU and C services should be treated separately was made at a late stage of the CMA’s phase 1 investigation, which meant that the CMA did not have the opportunity to sufficiently test this suggestion with third parties. The Parties also did not provide any evidence to support these narrower frames of reference.

54. The CMA has received no evidence from third parties to suggest that the supply of HUC services is not an appropriate frame of reference. No third parties suggested any possible segmentation within the provision of HUC services. Tender data also shows that customers most frequently tender for the provision of HU and C services together, as well as separately from other engineering services, suggesting that neither a narrower nor a wider frame of reference would be appropriate in this case. The Parties’ internal documents also refer to HUC, rather than HU and C separately.[14]

55. Therefore, the CMA assessed the supply of HU and C services (ie HUC services) to the Upstream Offshore oil and gas sector as a single product frame of reference. However, it was not necessary for the CMA to reach a conclusion on the precise product frame of reference, since, as set out below, no competition concerns arise on any reasonable basis.

Dutyholdership

56. The Parties submitted that they consider it appropriate to view dutyholdership services to the Upstream Offshore oil and gas sector as constituting a single product frame of reference.

57. The CMA has received no evidence from the Parties or from third parties to suggest that dutyholdership is not an appropriate frame of reference. In particular, while the CMA asked a number of the Parties’ customers whether dutyholdership should be considered as part of a supplier’s O&M offering, this possibility was consistently rejected by respondents. For example, one customer explained that a party acting as dutyholder has regulatory responsibility for health and safety on the facility which goes beyond the provision of O&M services. The tender data also showed that customers frequently tender for the provision of dutyholdership services separately from other engineering services, suggesting that a wider frame of reference would not be appropriate in this case. No third parties suggested any possible segmentation within the provision of dutyholdership services.

58. For the reasons set out above, the CMA assessed the supply of dutyholdership services to the Upstream Offshore oil and gas sector as a

[14] For example, [✄].

separate product frame of reference. However, it was not necessary for the CMA to reach a conclusion on the precise product frame of reference, since, as set out below, no competition concerns arise on any reasonable basis.

Conclusion on product scope

59. For the reasons set out above, the CMA assessed the impact of the Merger on the supply of:

(a) E&C services to the Upstream Offshore oil and gas sector;

(b) O&M services to the Upstream Offshore oil and gas sector;

(c) HUC services to the Upstream Offshore oil and gas sector; and

(d) dutyholdership services to the Upstream Offshore oil and gas sector.

Geographic scope

60. The Parties submitted that the narrowest hypothetical geographic frame of reference for the services provided by both Parties to the Upstream Offshore oil and gas sector is the UKCS.

61. This is consistent with the approach adopted by the OFT in *Wood Group/Production Services Network*,[15] in which it concluded that the relevant geographic scope for the provision of (i) E&C services; and (ii) O&M services to the Upstream Offshore oil and gas sector is the UKCS.

62. The CMA has received no evidence from the Parties or from third parties to suggest that the geographic scope should be narrower or wider in this case. In particular, the CMA also found that the geographic scope of the vast majority of tenders is typically governed by the relevant assets to which the contract relates. Moreover, as discussed in paragraphs 215-221, third party evidence indicates that there are significant barriers for suppliers active in other geographies to start providing engineering services in the UKCS.

63. For the reasons set out above, the CMA assessed the impact of the Merger on the supply of (i) E&C services; (ii) O&M services; (iii) HUC services; and (iv) dutyholdership services to the Upstream Offshore oil and gas sector in the UKCS.

[15] Office of Fair Trading, *Wood Group/Production Services Network*, 2011.

Conclusion on frame of reference

64. For the reasons set out above, the CMA assessed the impact of the Merger on the supply of:

    (a) E&C services to the Upstream Offshore oil and gas sector in the UKCS;

    (b) O&M services to the Upstream Offshore oil and gas sector in the UKCS;

    (c) HUC services to the Upstream Offshore oil and gas sector in the UKCS; and

    (d) dutyholdership services to the Upstream Offshore oil and gas sector in the UKCS.

Competitive assessment

Horizontal unilateral effects

65. Horizontal unilateral effects may arise when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged firm to increase prices, lower quality, reduce the range of their services and/or reduce innovation.[16] After the merger, it would be less costly for the merging company to bid at a higher price (or propose a lower quality service offering) because it would have a lower likelihood of losing the bid than it would in the counterfactual, as there would be one fewer company that might win the tender instead.[17] This incentive to increase prices (or decrease quality) is stronger where the merging parties are close competitors pre-merger (and therefore would continue to compete closely with each other in the counterfactual).

66. The CMA assessed whether it is or may be the case that the Merger has resulted, or may be expected to result, in an SLC in relation to unilateral horizontal effects in the supply of: (i) E&C services; (ii) O&M services; (iii) HUC services; and (iv) dutyholdership services to the Upstream Offshore oil and gas sector in the UKCS.

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[16] *Merger Assessment Guidelines*, from paragraph 5.4.1.
[17] The impact of a merger on this trade-off between higher prices and lower likelihood of winning generally arises in first-price auctions, as discussed further below. A merger may have different effects on other types of auction processes (such as second-price auctions).

Competitive dynamics in the Upstream Offshore oil and gas sector in the UK

67. The Parties are both among the main suppliers of engineering services (ie E&C, O&M, HUC and dutyholdership) to the Upstream Offshore oil and gas sector in the UKCS.

68. Prior to assessing each type of service separately, the CMA provides an overview of the approach adopted to the assessment of certain evidence – namely tender data, share of supply estimates, margin data – that is relevant for the competitive analysis across all of the product segments at issue.

Tender data

69. The tendering method used in the engineering services sector is a first-price single-bid auction. In these tenders, the most attractive bid wins and contracts at the price and non-price levels in the bid itself. Bidders only get one opportunity to bid. The economic theory of bidding markets[18] suggests that, in that case, each competitor faces a trade-off: bidding at a higher price means that they earn a higher profit if they win the contract, but at the same time it means an increased risk that they will not win the contract at all. The increase in probability that the contract will be lost depends on that bidder's competitive strength, as well as the competitive strength of the other bidders.

70. Moreover, each bidder, when preparing its own bid, must make an expectation about the bids of other competitors. If a competitor has frequently been successful previously, then this may indicate that it will bid competitively for any future contracts. Therefore, a bidder is likely to place significant weight on such a competitor when determining its own price.[19] There may be a number of factors which influence how a bid is priced above cost. However, the CMA considers that the history of success by key competitors is likely to be a significant factor. Therefore, at the rate at which each bidder has won contracts in the past and at each bidder's existing market share provides an indication of the likely competitive strength of each supplier, particularly if there is a degree of consistency in market shares over time.

71. The Parties submitted that in first-price single-bid auction tender, prices would need to reflect (i) an expectation of the best price that will emerge from other likely participants in the tender; with (ii) prices set to beat the expected level of this 'next best bid' from competitors. This was based on the assumption that bids are designed to win versus 'the market' and that no specific competitors

[18] Cf. Klemperer (2005).

[19] This may occur whether or not that competitor ultimately bids for a particular contract, and whether or not its bid is competitive or not, which will not generally be known to the bidder when preparing its own bid.

are considered (and therefore that it is not relevant to consider whether the Parties are 'close competitors').

72. This is not, however, consistent with the evidence available to the CMA.

73. In particular, internal documents provided by Amec[20] indicate that [✂]. The internal documents of both Parties also show that there are number of factors (other than the price) that affect the likelihood of a supplier winning a tender. For example, Wood Group's document [✂].

74. This is consistent with third party submissions (see paragraphs 76-78 below), which indicate that customers consider factors beyond price when choosing their suppliers of engineering services.

75. More broadly, the evidence available to the CMA does not support the Parties' suggestion that they should not be considered as close competitors. Internal documents submitted by the Parties suggest that they consider themselves to be close competitors across all engineering services. The documents also generally show a significant degree of competitive interaction between the Parties. For example:[21]

(a) [✂].

(b) [✂].

76. Third party respondents to the CMA's investigation also consistently indicated that the Parties compete very closely with each other.

77. For example, some customers submitted that the Parties had specific expertise or resources that made them particularly well placed to be awarded certain types of engineering contracts. One customer explained that *'both Parties are well placed to compete for multi-discipline, multi-asset maintenance, modifications contracts where the Parties can provide a "one-stop shop" service, offering economies of scale efficiencies. They also have significant knowledge and experience of the North Sea Offshore environment.'*

78. Competitor responses also consistently indicated that the Parties compete very closely with each other. For example, competitors submitted that:[22]

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[20] For example, [✂].
[21] Emphasis added.
[22] As previously noted, this evidence is not explicitly tied to a specific type of engineering service provided by the Parties (ie to a particular frame of reference in this decision). The CMA believes, however, that this evidence is nevertheless relevant in assessing the closeness of competition between the Parties in the supply of engineering services, including the closeness of competition within each individual frame of reference.

(a) Aker, Wood Group, Amec and Petrofac all have similar levels of capabilities and that they all often pursue the same contracts;

(b) *'both Parties are very strong in brownfield solutions, most of which are contracted through the Aberdeen market (small part is contracted through London, however for many routine projects, clients would not go to London). The 3 incumbents (Wood Group/PSN, Amec and Petrofac) have almost exclusive access to that work. The 4th small participant is Aker Solutions, but it is very small. Both Parties have a lot of expertise in asset management, dutyholdership, as well as commissioning, which becomes a manpower supply issue'*;

(c) *'both parties are strong in the EPC* [E&C] *and White Collar O&M, they are the two major suppliers of these services in the UKCS. They provide long term duty holder and operational maintenance services to many of the major operators* [customers] *in the North Sea. In the EPC* [E&C] *services to the parties are the two market leaders for hook-up, modules, modification to North Sea assets'*; and

(d) *'Over and above E&C capabilities the parties carry out ops & maintenance and in some cases act as duty holder. If the Operators* [customers] *preference was to have an integrated services contract (O&M and E&C combined) then the parties would have a considerable advantage and be better placed'*.

79. Accordingly, the evidence available to the CMA (as summarised above) does not support the Parties' submission that they bid 'against the market' and that factors other than price are not relevant for a customer's choice of the winning bid and, therefore, for each bidder's expectation of winning.

80. The Parties provided a dataset of recent E&C, O&M, HUC and dutyholdership tenders for which they bid. The Parties explained that, whilst they have been able to gather some bidding data for contracts won by their competitors, particularly in cases where one or other Party bid unsuccessfully, this data is incomplete, meaning that the data in the sample is significantly skewed towards contracts won by the Parties.[23] The CMA collected additional tender data from third parties (ie the Parties' customers and competitors) to compile a tender dataset that is as comprehensive as possible. Nevertheless, the CMA recognises that the tender dataset that it has compiled may also have limitations, depending on the extent to which customers and competitors provided complete data on the tenders in which they participated, which could

[23] Therefore, the tender data would not include tenders in which neither of the Parties bid and may not be complete in identifying competitors which have bid against the Parties for contracts.

overstate the position of the Parties relative to competitors. The CMA has taken these limitations into account, to the extent relevant, within its competitive assessment.

Shares of supply

81. The Parties provided share of supply estimates using a third party source for the total market sizes (Rystad), the Parties' knowledge of the market and the Parties' own information regarding their business.

82. The share of supply estimates provided by the Parties include (with the exception of the share of supply estimates for HUC services) a significant proportion of 'Unknown' sales that the Parties have not been able to allocate to a specific supplier. The Parties submitted that they would not account for any of the 'Unknown' part of the market (because they are able to identify all of their own activities) and therefore that their shares of supply could not be understated. The Parties therefore suggested that the shares of supply likely understated the competitive positions of their competitors.

83. The CMA notes that the evidence in relation to the total market size for both E&C services and O&M services is mixed. The total market sizes (and the Parties' shares) estimated by Rystad for these segments are not consistent with the estimates set out in the Parties' internal documents.[24] The CMA was also unable to sufficiently verify the methodology used by Rystad to estimate the total market size and how it aligned to the frames of reference adopted by the CMA for the purposes of its competition analysis.[25] The available evidence therefore does not support the position that the shares of the Parties' competitors are necessarily understated.

84. Notwithstanding its limitations in specifying the precise shares of all competitors, the CMA notes that the available share of supply evidence (from all sources) consistently indicates that the markets at issue are concentrated and, for the supply of E&C and O&M services, that the Parties are two of the most significant competitors within those markets.

85. Accordingly, in the context of the first-price single-bid auction framework described above, the CMA believes that the Parties' shares of supply (and, to some extent, the shares of supply of their competitors) are a meaningful indicator of the extent to which each competitor takes each of the other competitors into account when deciding how much to bid for a given contract.

[24] The estimated shares in the Parties' internal documents are considered further in paragraphs 95-96 and 126 below.
[25] The CMA has seen evidence that Rystad's research, particularly with respect to the 'Unknown' part of the total market, focuses on the suppliers' revenues in Europe, and not specifically in the UKCS.

The CMA has taken such data into account when assessing the impact of the Merger within each frame of reference.

The Parties' margins

86. The Parties submitted that:

(a) the *'intensity of competition in the market today'* in relation to the supply of engineering services in the UK is illustrated by the Parties' profit margins for these services, which are low;

(b) the Parties' margins decreased in 2015-2016, relative to 2012-2014, indicating an increasingly competitive market;

(c) there is no discernible evidence that the margins vary systematically with contract size, indicating that there is no niche (particularly in terms of the size of a contract), in which competition appears to be less effective; and

(d) there is no discernible evidence that the margins are lower on contracts for which the Parties compete head-to-head, as compared to contracts for which they did not compete.

87. The CMA notes that it is difficult to interpret margins (ie whether they are low or high in the context of the industry standards and by comparison with the relevant cost of capital). The Parties did not provide such analysis.

88. The data submitted by the Parties in relation to the approximate margins they have earned on the tenders they won does show that margins have declined in the last few years. The CMA notes, however, that there may be numerous factors which could explain this trend and that the evidence submitted by the Parties did not seek to control for any other factors (such as the recent decline in global oil prices) which may have contributed to the decline in margins.[26]

89. Moreover, even if declines in margins were taken to suggest an increasingly competitive engineering services sectors, the markets at issue will become more concentrated as a result of the Merger, which could therefore undermine any increase in competition recently experienced in the sector.

[26] The CMA believes that the evidence submitted by the Parties also illustrates that margins are an imperfect indicator of the intensity of competition (and therefore can only be given limited weight in this case). In particular, [✂]. This suggests that the margin that a company can earn on a contract depends on other contract characteristics, such as the complexity of the contract and the risk that the contractor is willing to take on, as well as the intensity of competition for these contracts. The evidence collected by the CMA also indicates that these contract characteristics have also changed in recent years and therefore that it is not possible to isolate the impact that the degree of competition in the sector has had on profit margins.

90. The CMA notes that the Parties' submission that margins were similar between contracts where the Parties bid head-to-head and where they did not is not probative of how the Parties may influence each other's bids when they do not know whether they will bid head-to-head or not. As explained earlier, in the form of bidding considered, each bidder has to create an expectation about whether and, if so, how its rivals will bid. The CMA believes that a competitor's previous history of success will be informative of how competitive their bids will be in future. However, the margins provided to the CMA were realised margins, not the margins that the Parties expected to achieve when they bid. Moreover, there could be other factors which could affect the realised margins on these bids that would need to be controlled for.

91. The CMA therefore believes that the data on margins submitted by the Parties does not provide strong support for their contention that the Parties would be effectively constrained post-Merger.

Supply of E&C services to the Upstream Offshore oil and gas sector in the UKCS

92. The CMA assessed the likelihood of the Merger resulting in horizontal unilateral effects with respect to the supply of E&C services to the Upstream Offshore oil and gas sector in the UKCS. In order to assess the likelihood of the Merger resulting in horizontal unilateral effects, the CMA considered evidence in relation to:

(a) the shares of supply of the Parties and their competitors;

(b) the closeness of competition between the Parties; and

(c) the competitive constraints posed by alternative suppliers.

Shares of supply

93. The Parties' estimates of their own and their competitors' shares of supply of E&C services to the Upstream Offshore oil and gas sector in the UKCS, are provided in Table 1 below.

Table 1 Shares of supply of E&C services, based on revenue

Supplier	Share of supply (2014)	Share of supply (2015)	Share of supply (2016)
Wood Group	[20-30]%	[20-30]%	[10-20]%
Amec	[20-30]%	[20-30]%	[20-30]%
Combined	**[40-50]%**	**[50-60]%**	**[30-40]%**
Petrofac	[0-5]%	[5-10]%	[5-10]%
Aker	[0-5]%	[0-5]%	[0-5]%

KBR	[0-5]%	[0-5]%	[0-5]%
TechnipFMC	[0-5]%	[0-5]%	[0-5]%
Sembcorp Marine	[0-5]%	[5-10]%	[0-5]%
PD&MS	[0-5]%	[0-5]%	[0-5]%
PD&MS, Stork, and CPS	[0-5]%	[0-5]%	[0-5]%
Costain	[0-5]%	[0-5]%	[0-5]%
WorleyParsons	[0-5]%	[0-5]%	[0-5]%
Fabricom	[0-5]%	[0-5]%	[0-5]%
Heerema	[0-5]%	[0-5]%	[0-5]%
Other	[0-5]%	[5-10]%	[0-5]%
Unknown	[30-40]%	[10-20]%	[30-40]%
Total	**100%**	**100%**	**100%**

Source: the Parties.

94. Notwithstanding the limitations of the share of supply estimates (see paragraph 82), the share data indicates that the Parties are the two largest suppliers of E&C services to the Upstream Offshore oil and gas sector in the UKCS. For the reasons explained above (see paragraphs 69-70), the CMA also believes that the share of supply data indicates that the Parties are close competitors within this segment. This is particularly the case because the Parties are consistently the largest suppliers in E&C (given that the Parties' ability to bid credibly for contracts, and their assessment of the constraint from others, is likely to relate to their performance over time, rather than in one particular year in a market where contract sizes may be relatively large).

95. The CMA notes, in addition, that several of the Parties' internal documents suggest that their shares of supply could be more significant. In particular, Wood Group's internal document [✂] refers to Wood Group and Amec having shares of supply in E&C services in the UKCS of [40-50]% and [10-20]% respectively in 2016 (which would give rise to a combined share of supply of [60-70]%). Similarly, Amec's internal document [✂] refers to Wood Group and Amec having shares of supply in E&C services in the UKCS of [30-40]% and [20-30]% respectively as of March 2017 (which would give rise to a combined share of supply of [60-70]%).

96. The Parties submitted that Wood Group's internal document [✂]. The Parties further noted that Amec's internal document [✂]. The CMA nevertheless considers that these shares are contemporaneous evidence of shares of supply used by Wood Group in its day-to-day business and that shares higher than those estimated in the Merger Notice appear to have been used in a number of cases in the internal documents provided by the Parties. The CMA also notes that the Parties' combined shares of supply as calculated internally and individually by each of Wood Group and Amec are very similar.

97. On any basis, the available evidence indicates that the E&C sector is concentrated.

98. Accordingly, for the reasons described above, the CMA believes that the available share of supply evidence indicates that the Parties' combined share of supply is significant within an already concentrated market and that the Merger will bring about a material increment in supply.

Closeness of competition

99. The CMA assessed the closeness of competition between the Parties. For the purposes of this assessment, the CMA has (in addition to the evidence in relation to closeness of competition more generally described in paragraphs 75-78 above) used the following evidence where relevant:

(a) tender data;

(b) evidence from internal documents; and

(c) third party views on closeness of competition.

Tender data

100. The CMA's tender dataset contains 57 E&C contracts. Wood Group bid on [50-60] of them, and Amec on [40-50]. In [30-40] cases – representing a total contract value of £[✄]bn out of a total of £[✄]bn for all E&C tenders in the CMA database – both Parties bid. The Parties bid against each other more frequently than either Party bid against any other supplier of E&C services. Given the role that the customer plays in determining the suppliers who tender for each contract – typically the customer invites only a handful of suppliers to tender – this shows both that the Parties are frequently invited to tender for the same types of contracts, and that the Parties frequently take up that invitation.

101. Even though the typical bidding process for engineering services contracts is characterised as a single-bid first-price auction, rather than an ascending auction, the CMA considers that the typical rankings of the Parties provide useful evidence of closeness of competition (in particular because the rankings are likely to reflect customer views on the closeness of competition between the Parties).

102. The CMA has received data on the rankings assigned to bidders regarding 17 E&C contracts. In 3 of those tenders, the Parties ranked first and second, including one instance where Production Services Network Limited (**PSN**) ranked third (ie prior to the acquisition by Wood Group of PSN). In a further 4

instances, the Parties both ranked in the top 3. Individually, no other supplier ranked in the top 3 as frequently as each of the Parties did, and no other supplier ranked in the top 3 with one of the Parties as frequently as they did with each other.

103. Despite the limitations of the CMA's dataset (see paragraph 80 above), the CMA believes that the tender data supports the other evidence, in particular third party views, indicating that the Parties compete closely for the supply of E&C services to the Upstream Offshore oil and gas sector in the UKCS.

Evidence from internal documents

104. As discussed in paragraph 75, internal documents submitted by the Parties suggest that they view each other as a close competitor for the provision of engineering services in general. The Parties' internal documents also suggest that they view each other as close competitors specifically with respect to the provision of E&C services. For example:[27]

(a) [✂].

(b) [✂].

(c) [✂].[28]

105. The CMA therefore believes that the internal documents support the position that the Parties are competing closely for the supply of E&C services to the Upstream Offshore oil and gas sector in the UKCS.

Third party views

106. As discussed in paragraphs 76-78, third party evidence indicates that the Parties are close competitors with respect to the supply of all overlapping engineering services in the UKCS. The CMA assessed whether third parties consider the Parties to be close competitors specifically in the supply of E&C services. The CMA asked customers to list and rate suppliers of E&C services in the UKCS by their competitiveness, stating whether they consider them to be strong, medium or weak competitors and to explain the reasons why.

107. The majority (8 out of 15) of customers who told the CMA that at least one of the Parties is a strong competitor for the provision of E&C services also

[27] Emphasis added.
[28] [✂].

considered the other Party as a strong competitor for the provision of E&C services.

108. The majority (15 out of 19) of customers who told the CMA that at least one of the Parties is a strong or medium competitor for the provision of E&C services, also considered the other Party as a strong or medium competitor for the provision of E&C services.

109. Some customers provided further reasoning to support their ranking of the E&C suppliers' competitiveness. For example, one customer described both Parties as *'experienced contractor*[s] *with extensive track record*[s]*'*. Another customer ranked both Parties as strong competitors because they have *'strong experience of North Sea and competitive on costs'*. Another customer described Amec as the *'biggest player in the market'*, and Wood Group as *'not as big as Amecfw* [Amec]*, but still capable of competing for and winning E&C work.'*

110. Some customers submitted that the Parties have particular expertise compared to their competitors with respect to the provision of E&C services. In particular, one customer explained that both Parties have *'the ability to provide full turnkey EPC* [E&C] *services which is a fairly rare service provision in the UK oil and gas market'*. Another customer submitted that the Merger has the potential to limit options within the oil and gas sector for turnkey projects. Other customers commented that both Parties are able to offer a breadth of services, including integrated service contracts encompassing E&C, O&M and facilities management, which few other competitors are able to offer. It was noted that Amec, in particular, has considerable experience in some emerging technology areas which is very important for E&C, and that such expertise would be highly regarded in the competitive tendering process. In this regard, one customer submitted that *'Amecfw* [Amec] *and Wood Group are the dominant players in both of the above* [E&C and O&M] *sectors'*.

111. Based on evidence described above, the CMA believes that third parties view the Parties as close competitors for the supply of E&C services to the Upstream Offshore oil and gas sector in the UKCS. Third party evidence also indicates that the Parties are considered to be particularly close competitors for certain (eg turnkey, integrated service) E&C contracts.

Conclusion on closeness of competition

112. Based on tender data, evidence from internal documents and third party views described above, the CMA believes that the Parties are competing closely for the supply of E&C services to the Upstream Offshore oil and gas sector in the UKCS.

Competitive constraints from alternative suppliers

113. Analysis of the tender data shows that other suppliers have bid against the Parties significantly less frequently than the Parties have bid against each other.

114. Within the 57 E&C tenders included in the CMA's tender dataset, only Aker and Petrofac bid against either of the Parties on more than 10 occasions. Aker bid against Wood Group and Amec on [✂] and [✂] occasions, respectively. Petrofac bid against Wood Group and Amec on [✂] and [✂] occasions, respectively. The next most frequent bidder against the Parties was PD&MS, which bid against Wood Group and Amec on [✂] and [✂] occasions, respectively.

115. Third party responses indicate that only Petrofac and Aker exercise a substantial competitive constraint on the Parties in relation to the supply of E&C services. No other supplier of E&C services was ranked as a 'strong' competitor within this segment by more than 3 (out of 23) customers. In contrast, Wood Group and Amec were identified as 'strong' competitors by 16 and 9 customers, respectively. Customer views also suggest that Petrofac and Aker exercise a more limited constraint on the Parties than the Parties do on each other; Petrofac and Aker were ranked as strong competitors by only 5 and 4 customers, respectively.

116. As noted above, this is consistent with evidence from the Parties' internal documents, in which Petrofac and Aker are consistently listed as key competitors.[29] In addition, Wood Group's document [✂].[30]

117. The Parties submitted that, in addition to Petrofac and Aker, larger worldwide suppliers (eg WorleyParsons, Fluor, Jacobs, Technip and KBR) compete for the supply of E&C services and that there are no barriers to these suppliers to expand. The Parties also submitted that, in addition to Petrofac, Aker and the larger worldwide suppliers, there are also other (emerging) competitors that can and do compete for each type of contract – PD&MS, Apollo, CPS, Costain, Step Change Engineering and Fabricom.

118. The CMA found that there are significant barriers for competitors without an established presence in the UKCS oil and gas sector (particularly the Upstream Offshore sector) to compete in the UKCS (see paragraphs 215-221). The CMA also notes that the limited competitive constraint from both the larger worldwide suppliers and other emerging suppliers in the UKCS is

[29] Wood Group's internal document [✂].
[30] The CMA notes that [✂].

consistent with the available share of supply data (notwithstanding the Parties' suggestion that certain competitor shares may be understated), which consistently indicates that these players' shares are relatively low.

119. Third party responses also indicate that the competitive constraint imposed by smaller E&C suppliers is limited. For example, one customer submitted: *'We do not believe Tier 2* [smaller] *E&C providers (…) can immediately provide the required competition as suppliers of integrated offerings'.* As discussed further below (see paragraphs 246-253) some customers have taken steps to facilitate the ability of emerging competitors to bid more effectively for contracts. However, the CMA does not believe that these measures would be sufficient to ensure that these emerging competitors would be able to provide an effective competitive constraint that would replace the loss of competition that would be brought about by the Merger.

120. The CMA therefore believes that suppliers other than Petrofac and Aker do not impose a sufficient competitive constraint on the Parties in relation to the supply of E&C services to the Upstream Offshore oil and gas sector in the UKCS.

Conclusion on horizontal unilateral effects

121. For the reasons set out above, the CMA believes that the Parties' combined share of supply of E&C services to the Upstream Offshore oil and gas sector in the UKCS is significant within an already concentrated market and that the Merger will bring about a material increment in supply. The CMA believes that the Parties are close competitors in the supply of E&C services to the Upstream Offshore oil and gas sector in the UKCS and that there are only two other competitors imposing a substantial competitive constraint on the Parties at the moment – Petrofac and Aker. The Merger would therefore result in a reduction of large E&C suppliers from four to three (through the combination of the number one and number two suppliers for the supply of E&C services in the UK), with the remaining smaller suppliers providing only a limited competitive constraint.

122. Accordingly, the CMA believes that the Merger raises significant competition concerns in relation to the supply of E&C services to the Upstream Offshore oil and gas sector in the UKCS.

Supply of O&M services to the Upstream Offshore oil and gas sector in the UKCS

123. In order to assess the likelihood of the Merger resulting in horizontal effects, the CMA considered evidence in relation to:

(a) the shares of supply of the Parties and their competitors;

(b) the closeness of competition between the Parties; and

(c) the competitive constraints posed by alternative suppliers.

Shares of supply

124. The Parties' estimates of their own and their competitors' shares of supply of O&M services to the Upstream Offshore oil and gas sector in the UKCS, are provided in Table 2 below.

Table 2 Shares of supply of O&M services, based on revenue

Supplier	Share of supply (2014)	Share of supply (2015)	Share of supply (2016)
Wood Group	[20-30]%	[20-30]%	[20-30]%
Amec	[5-10]%	[5-10]%	[10-20]%
Combined	**[30-40]%**	**[30-40]%**	**[30-40]%**
Petrofac	[30-40]%	[20-30]%	[20-30]%
Aker	[0-5]%	[5-10]%	[5-10]%
Fabricom	[0-5]%	[0-5]%	[0-5]%
Cape	[5-10]%	[5-10]%	[5-10]%
Bilfinger	[5-10]%	[5-10]%	[5-10]%
Other	[0-5]%	[0-5]%	[0-5]%
Unknown	[10-20]%	[10-20]%	[10-20]%
Total	**100%**	**100%**	**100%**

Source: the Parties.

125. Notwithstanding the limitations of the share of supply estimates (see paragraph 82), the CMA believes that the Parties are two of the largest suppliers of O&M services to the Upstream Offshore oil and gas sector in the UKCS. For the reasons explained above (see paragraphs 69-70), the CMA also believes that the share of supply data indicates that the Parties are close competitors within this segment. This is particularly the case because the Parties have consistently held a strong market position over time (given that the Parties' ability to bid credibly for contracts, and their assessment of the constraint from others, is likely to relate to their performance over time, rather than in one particular year in a market where contract sizes may be relatively large).

126. As with the E&C segment (as discussed in paragraph 95 above), several of the Parties' internal documents suggest that their shares of supply could be more significant. In particular, Wood Group's internal document [✂] refers to Wood Group and Amec having shares of supply of O&M services in the UKCS of [40-50]% and [10-20]% respectively in 2016 (which would give rise to a combined share of supply of [60-70]%). Similarly, Amec's internal

document [✂] refers to Wood Group and Amec having shares of supply of O&M services in the UKCS of [40-50]% and [20-30]% respectively as of March 2017 (which would give rise to a combined share of supply of [60-70])%.[31]

127. For the reasons set out in paragraphs 83 and 96, the CMA considers that some weight should be placed on these estimates (notwithstanding the Parties' suggestion that these are not as accurate as the shares estimated in the Merger Notice).

128. On any basis, the available evidence indicates that the O&M sector is concentrated.

129. Accordingly, for the reasons described above, the CMA believes that the available share of supply evidence indicates that the Parties' combined share of supply is significant within an already concentrated market and that the Merger will bring about a material increment in supply.

Closeness of competition

130. The CMA assessed the closeness of competition between the Parties. For the purposes of this assessment, the CMA has (in addition to the evidence in relation to closeness of competition more generally described in paragraphs 75-78 above) used the following evidence where relevant:

(a) tender data;

(b) evidence from internal documents; and

(c) third party views on closeness of competition.

Tender data

131. The CMA's tender dataset contains 23 O&M contracts. Wood Group bid on [20-30] of them, and Amec on [10-20]. In [10-20] cases – representing a total contract value of £[✂]bn out of a total of £[✂]bn for all O&M tenders in the CMA database – both Parties bid. The Parties bid against each other more frequently than either Party bid against any other supplier of O&M services. Given the influence of the customer issuing an invitation to tender – typically they only invite a handful of suppliers to tender – this shows both that the Parties are frequently invited to tender for the same types of contracts, and that the Parties frequently take up that invitation.

[31] The Parties provided similar explanations with respect to O&M services to those outlined in paragraph 96.

132. Even though the typical bidding process for engineering services contracts is characterised as a single-bid first-price auction, rather than an ascending auction, the CMA considers that the typical rankings of the Parties provide useful evidence of closeness of competition (in particular because the rankings are likely to reflect customer views on the closeness of competition between the Parties).

133. The CMA has received data on the rankings assigned to bidders regarding 9 O&M contracts. In 4 of those tenders, the Parties ranked first and second. In a further 4 instances the Parties both ranked in the top 3.[32] Individually, no other supplier ranked in the top 3 as frequently as the Parties did, and no other supplier ranked in the top 3 with one of the Parties as frequently as they did with each other.

134. Despite the limitations of the CMA's dataset (see paragraph 80 above), the CMA believes that the tender data supports the other evidence, particularly third party views, indicating that the Parties compete closely for the supply of O&M services to the Upstream Offshore oil and gas sector in the UKCS.

Evidence from internal documents

135. As discussed in paragraph 75, internal documents submitted by the Parties suggest that they view each other as a close competitor for the provision of engineering services in general. The Parties' internal documents also suggest that they view each other as close competitors specifically with respect to the provision of O&M services. For example:[33]

a) [✄].

b) [✄].

c) [✄].[34]

d) [✄].

136. The CMA therefore believes that the internal documents indicate that the Parties are competing closely for the supply of O&M services to the Upstream Offshore oil and gas sector in the UKCS.

[32] The only instance where the Parties did not both rank in the top 3 is an instance where Amec did not bid.
[33] Emphasis added.
[34] See footnote 28.

Third party views

137. As discussed in paragraphs 76-78, third party evidence indicates that the Parties are close competitors with respect to the supply of all overlapping engineering services in the UKCS. The CMA assessed whether third parties consider the Parties to be close competitors specifically in the supply of O&M services. The CMA asked customers to list and rate suppliers of O&M services in the UKCS by their competitiveness, stating whether they consider them to be strong, medium or weak competitors and to explain the reasons why.

138. The majority (7 out of 10) of customers who told the CMA that at least one of the Parties is a strong competitor for the provision of O&M services also considered the other Party as a strong competitor for the provision of O&M services.

139. The majority (12 out of 13) of customers who told the CMA that at least one of the Parties is a strong or medium competitor for the provision of O&M services also considered the other Party as a strong or medium competitor for the provision of O&M services.

140. Some customers provided further reasoning to support their ranking of the O&M suppliers' competitiveness. For example, one customer explained that *'Amecfw* [Amec] *and WGPSN* [Wood Group] *are the biggest most established players in the market'*. Another customer submitted that both Parties *'offer the full range of services we require for our O&M service requirements'*. Another customer submitted that both Parties have *'strong experience of O&M in the North Sea'.* Commenting more generally on competitiveness, one customer submitted: *'In our experience both parties would be on a level in terms in respect of O&M services'*.

141. One competitor submitted that *'large O&M contracts remain with the main four Tier 1 service providers: Wood Group, Amec, Petrofac and Aker Solutions'*. Another competitor submitted that *'both parties are strong in (…) White Collar O&M, they are the two major suppliers of these services in the UKCS.'*

142. Based on the evidence described above, the CMA believes that third parties view the Parties as close competitors for the supply of O&M services to the Upstream Offshore oil and gas sector in the UKCS. Third party evidence also indicates that the Parties are considered to be particularly close competitors for certain (eg large) O&M contracts.

Conclusion on closeness of competition

143. Based on tender data, evidence from internal documents and third party views described above, the CMA believes that the Parties are competing closely for the supply of O&M services to the Upstream Offshore oil and gas sector in the UKCS.

Competitive constraints from alternative suppliers

144. Analysis of the tender data shows that other suppliers have bid against the Parties significantly less frequently than the Parties have bid against each other.

145. Within the 23 O&M tenders included in the CMA tender dataset, only Aker and Petrofac bid against either of the Parties on more than three occasions. Aker bid against Wood Group and Amec on [✂] and [✂] occasions, respectively. Petrofac bid against Wood Group and Amec on [✂] and [✂] occasions, respectively.

146. Third party responses indicate that only Petrofac and Aker exercise a substantial competitive constraint on the Parties in relation to O&M services. No other supplier of O&M services was ranked as a 'strong' competitor within this segment by more than one (out of 17) customer. In contrast, Wood Group and Amec were identified as 'strong' competitors by 10 and 7 customers, respectively. Customer views also suggest that Petrofac and Aker exercise a more limited constraint on the Parties than the Parties do on each other; Petrofac and Aker were ranked as 'strong' competitors by only 3 and 2 customers, respectively.

147. As noted above, this is consistent with the evidence from the Parties' internal documents, in which Petrofac and Aker are consistently listed as key competitors. In addition, Wood Group's document [✂].

148. The Parties submitted that, in addition to the Parties, Petrofac and Aker, Tier 2 suppliers can and do compete effectively for O&M contracts. The Parties submitted that there are no capacity constraints or other obstacles preventing Tier 2 competitors from competing and increasing their share of the O&M segment. The Parties provided an example of Petrofac, which was able to develop its position from a Tier 2 provider to a dutyholder and full-service Tier 1 provider over the space of only a few years. The Parties submitted that, while there have been limited historical examples of this, this is because there is and has been strong and effective competition between Tier 1 suppliers for O&M tenders.

149. The evidence collected by the CMA shows that Tier 2 suppliers impose some competitive constraint on the Tier 1 suppliers (including the Parties) in relation to the tenders for which Tier 2 suppliers are able to bid (ie when a customer splits contract scopes allowing smaller Tier 2 suppliers to compete for parts of the overall package of work). However, customers have consistently told the CMA that the competitive constraint provided by Tier 2 suppliers is limited, as these suppliers are individually small and bid in only a few O&M tenders. Moreover, as discussed in paragraphs 246-253 below, the available evidence shows that not all customers are able or willing to change their purchasing behaviour by multi-sourcing and unbundling. In any case, even when customers unbundle their contracts, the main Tier 1 suppliers often continue to take responsibility for the main scopes of a contract.

150. For example, one customer submitted that *'whilst we recognise that tier 2 companies are becoming more sought after in the current climate, should* [the] *oil price increase in the coming months/years the demand for a tier 1 contractor is likely to increase and the available options would be reduced.'*

151. Another customer submitted that *'Despite the Tier 2 engineering contractors providing a good challenge to the Tier 1 contractors, when there is complexity and scale, Operators* [customers] *need to rely on Ties* [sic] *1s. There are only four players currently operating in this space – WG, AFW, Petrofac and Aker. (...) consolidation could lead to price escalation that could threaten sustainability. It is questionable whether new entrants can be encouraged to stimulate competition – it would be a challenge given the experience and track record required to operate successfully as a Tier 1 within the UKCS regime; it is more likely that a new entrant could be Tier 2 or 3, which would not be a replacement for AFW.'*

152. A further customer stated that: *'We do not believe (…) Agency O&M providers can immediately provide the required competition as suppliers of integrated offerings. By "Agency O&M" providers we mean recruiters such as Sheffield Drilling People, Raeburn or Cammach (each of whom we have operational experience for recruitment of ad-hoc personnel).'*

153. The CMA found that there are significant barriers for expansion for smaller suppliers (see paragraphs 229-233). The CMA also notes that the limited competitive constraint from Tier 2 suppliers is consistent with the available share of supply data (notwithstanding the Parties' suggestion that certain competitor shares may be understated), which consistently indicates that these players' shares are relatively low.

154. The CMA therefore believes that suppliers other than Petrofac and Aker do not impose a sufficient competitive constraint on the Parties in relation to the

supply of O&M services to the Upstream Offshore oil and gas sector in the UKCS.

Conclusion on horizontal unilateral effects

155. For the reasons set out above, the CMA believes that the Parties' combined share of supply of O&M services to the Upstream Offshore oil and gas sector in the UKCS is significant within an already concentrated market and that the Merger will bring about a material increment in supply. The CMA believes that the Parties are close competitors in the supply of O&M services to the Upstream Offshore oil and gas sector in the UKCS and that there are only two other competitors imposing a substantial competitive constraint on the Parties at the moment – Petrofac and Aker. The Merger would therefore result in a reduction of large O&M suppliers from four to three, with the remaining smaller suppliers providing only a limited competitive constraint.

156. Accordingly, the CMA believes that the Merger raises significant competition concerns in relation to the supply of O&M services to the Upstream Offshore oil and gas sector in the UKCS.

Supply of HUC services to the Upstream Offshore oil and gas sector in the UKCS

157. The Parties submitted that, although Wood Group does not currently provide HUC services, it has done so in the past and currently has the capability to offer such services. The Parties submitted that Wood Group currently supplies some labour to Maersk for a HUC contract which Maersk manages in-house. The Parties stated that Wood Group did not decide to exit the supply of HUC services but rather has not successfully won any HUC contracts in the UKCS since its most recent HUC contract ended in 2014.

158. As discussed in paragraph 52 above, the Parties submitted that Wood Group has no C capability. The Parties noted, however, that suppliers without C capability (including Wood Group, Petrofac and Aker) have been able to bid for and win tenders for a combined HUC package by engaging subcontractors for the C element.

159. For the reasons set out in paragraphs 53-55, the CMA assessed the impact of the Merger on the basis that the Parties currently compete for the supply of HUC services to the Upstream Offshore oil and gas sector in the UKCS.

160. The Parties submitted that there have been very few HUC opportunities in the UKCS to pursue in the past three years and that the pipeline for future HUC services is very small. The CMA believes that, even if future demand for HUC

services in the UKCS may be lower than in previous years, it cannot exclude, based on the available evidence, that there will be some demand for HUC services in the future.[35] In this regard, the CMA also notes Wood Group's expectation that one HUC contract is likely to be awarded every 18 months from 2018 to 2026.

161. In order to assess the likelihood of the Merger resulting in horizontal effects, the CMA considered evidence in relation to:

(a) the shares of supply of the Parties and their competitors;

(b) the closeness of competition between the Parties; and

(c) the competitive constraints posed by alternative suppliers.

Shares of supply

162. The Parties' estimates of their own and their competitors' shares of supply of HUC services to the Upstream Offshore oil and gas sector in the UKCS are provided in Table 3 below.

Table 3 Shares of supply of HUC services, based on revenue

Supplier	**Share of supply (2014)**	**Share of supply (2015)**	**Share of supply (2016)**
Wood Group	[10-20]%	[0-5]%	[0-5]%
Amec	[20-30]%	[40-50]%	[70-80]%
Combined	**[40-50]%**	**[40-50]%**	**[70-80]%**
Petrofac	[40-50]%	[30-40]%	[10-20]%
Aker	[10-20]%	[10-20]%	[10-20]%
Other	[0-5]%	[0-5]%	[0-5]%
Total	**100%**	**100%**	**100%**

Source: the Parties.

163. The share of supply estimates in this case do not include any proportion of supply that is allocated to 'Unknown' suppliers. The CMA has not found any share data that is inconsistent with that in Table 3 within the Parties' internal documents. Accordingly, the CMA considers that the shares of supply presented in Table 3 are likely to be more accurate than the shares of supply provided for other engineering services (in particular E&C and O&M) and has therefore placed more weight on these estimates for the purposes of its competitive assessment.

[35] In particular if the exploration of certain fields becomes economically viable in the future (eg as a result of technological developments or changes in economic conditions for oil and gas exploration).

164. There is no overlap between the Parties within this service area, based on the share of supply estimates for 2015 and 2016. While Amec's share of supply of HUC services is significant, no increment is brought about by the Merger (based on 2015 and 2016 shares).

165. Overall, the share data shows that the HUC sector is concentrated.

166. As explained in paragraph 85 above, the CMA considers that the Parties' shares of supply provide an indication of the relative closeness of competition between the Parties (because the history of success of competitors in bidding for previous contracts is likely to influence the weight that is placed on each of these competitors when one of the Parties is preparing a bid). This, in turn, is likely to indicate the extent of the competitive constraint that any competitor (including the other merging Party) exerts.

167. The share figures in Table 3 show that Amec and Aker have been the most successful bidders for HUC contracts that generated revenues in 2016. Petrofac has also had some consistent success in winning contracts but has won contracts less frequently (and/or generally won lower value contracts) than Amec and Aker. By contrast, Wood Group has been far less successful in winning contracts in recent years. In particular, the Parties' submitted that Wood Group's prior experience in providing HUC services in the UKCS in the last ten years is limited to [✂] contracts for [✂] ([✂]).

Closeness of competition

168. The CMA has examined the closeness of competition between the Parties. For the purposes of this assessment, the CMA has (in addition to the evidence in relation to closeness of competition more generally described in paragraphs 75-78 above) used the following evidence where relevant:

(a) tender data; and

(b) third party views on closeness of competition.

169. The CMA has not identified internal documents referring specifically to HUC services and going beyond those discussed in paragraph 75 above.

Tender data

170. The CMA's tender dataset contains 6 or 7 HUC contracts,[36] depending on how the recent Maersk Oil tender is classified.[37] Both Parties bid for all the

[36] As noted previously, the CMA recognises that its tender dataset may be incomplete.
[37] The Parties explained that [✂].

tenders in the CMA's dataset. However, the Parties further explained that Wood Group only submitted final bids for [✂] of the 6 or 7 contracts in the CMA's dataset – [✂]. The Parties submitted that Wood Group did not submit final bids for the other [✂] contracts: the Parties explained that [✂].

171. Even though the typical bidding process for engineering services contracts is characterised as a single-bid first-price auction, rather than an ascending auction, it is still useful to consider the typical rankings of the Parties as this may reflect the views of customers about how closely the Parties compete. The CMA has received data on the rankings assigned to bidders regarding three HUC contracts. In all three of those instances, both Parties ranked in the top 3. However, given a small number of suppliers of HUC services in the UKCS (see Table 3), being ranked in the top 3 may not be a particularly strong indicator of the closeness of competition between the Parties. The CMA also notes that the [✂] instances where Wood Group did not pre-qualify is likely to reflect the fact that Wood Group is not ranked highly by customers.

172. While Wood Group continues to bid, it is likely to place some competitive constraint on rivals. The relatively low rate of success (reflected in the share of supply and tender data) suggests that the likelihood of Wood Group winning any particular new contract would not be given much weight by Amec when preparing its bid, and would be given considerably less weight than the likelihood of Aker and Petrofac being successful.

173. The CMA notes that, as discussed in paragraphs 219 and 223-228, track record is important for customers. The CMA therefore believes that Wood Group, whose previous experience of the supply of HUC services is limited (see Table 3 above and third party submissions below), imposes only a limited constraint on Amec, whose successful track record in the supply of these services is reflected in the significant number of contracts it has won in the recent years.

174. Based on the evidence set out above, the CMA believes that, even though the Parties have bid against each other in a material proportion of recent tenders, Wood Group does not impose a strong competitive constraint on Amec in relation to the supply of HUC services to the Upstream Offshore oil and gas sector in the UKCS.

Third party views

175. The CMA assessed whether third parties consider the Parties to be close competitors in the supply of HUC services. The CMA asked customers to list and rate suppliers of HUC services in the UKCS by their competitiveness,

stating whether they consider them to be strong, medium or weak competitors and to explain the reasons why.

176. One customer ranked Amec as a ‘strong’ competitor, explaining that Amec is the *‘largest and most experienced provider of HUC services in the UKCS. Amecfw* [Amec] *have been responsible for the vast majority of major HUC scopes in the UKCS over the last ten plus years.’* Wood Group, on the other hand, was ranked as a ‘medium’ competitor by this customer, who explained: *‘*[Wood Group] *have provided these services in the UKCS, however we are only aware of 1 only major capital project HUC scope performed by WG* [Wood Group] *in recent years. (for the Operator NEXEN). WG* [Wood Group] *market share has been small to very small in this service area.’* Another customer described Amec as having strong construction teams and a good track record for timely completion, whereas Wood Group, even though described as having all requisite capabilities, was understood by this customer as having some issues with timely delivery. Another customer ranked all suppliers of HUC services (ie Wood Group, Amec, Aker and Petrofac) as ‘medium’, explaining that the market is competitive and that those are all main suppliers with significant experience.

177. One customer submitted: *‘In terms of HUC work, this relates to the installation, construction and commissioning of new facilities (…) and is similar to E&C but is typically of a much greater scale, complexity and capital cost (…). In recent years, Amecfw* [Amec] *have almost singularly dominated these works* [HUC services]*’*. Another customer stated: ‘*In our experience Wood Group have a better established track record in the Duty Holder arena whereas AMEC are better established in the new build construction and HUC areas*.’

178. Only one competitor submitted that that *‘there is no doubt that AMECFW* [Amec] *and Wood Group are probably the only 2 contractors who can competitively execute HUC scopes for large topsides in the UK NorthSea, however the numbers of these scopes will be limited in the future due to natural decline in North Sea production.’*

179. Based on third party views described above, the CMA believes that the Parties are not viewed as particularly close competitors for the supply of HUC services to the Upstream Offshore oil and gas sector in the UKCS.

Conclusion on closeness of competition

180. For the reasons described above, the CMA believes that, even though the Parties have bid against each other in a material proportion of recent tenders, Wood Group does not impose a strong competitive constraint on Amec at

present, in particular because of Wood Group's limited track record in the supply of HUC services. Third party evidence also confirmed that the Parties are not viewed as close competitors. The CMA therefore believes that the Parties are not particularly close competitors in relation to the supply of HUC services to the Upstream Offshore oil and gas sector in the UKCS.

Competitive constraints from alternative suppliers

181. In general, there appear to be relatively few bidders for HUC contracts. The CMA's tender dataset suggests that, in addition to Amec, Aker has bid consistently for HUC contracts. The three other competitors that have also bid for HUC work over this period have bid more sporadically (ie for only a single opportunity each).

182. Based on the share of supply estimates (Table 3) and the frequency with which HUC contracts are bid for and won, the CMA believes that Aker imposes the strongest competitive constraint on Amec. The evidence on closeness of competition between the Parties described above indicates that the Merger will not result in elimination of a material competitive constraint on Amec with respect to the supply of HUC services to the Upstream Offshore oil and gas sector in the UKCS.

Conclusion on horizontal unilateral effects

183. For the reasons set out above, the CMA believes that Amec's share of supply of HUC services to the Upstream Offshore oil and gas sector in the UKCS is significant, but Wood Group has not been successful in winning HUC contracts in the last few years. The CMA believes that, while the Parties compete with each other for the supply of HUC services, they are not particularly close competitors, with Wood Group imposing only a limited competitive constraint on Amec. The CMA believes that other competitors will continue to impose a competitive constraint on the merged entity post-Merger.

184. Accordingly, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the supply of HUC services to the Upstream Offshore oil and gas sector in the UKCS.

Supply of dutyholdership services to the Upstream Offshore oil and gas sector in the UKCS

185. The Parties submitted that, although Amec does not currently provide dutyholdership services, it has done so in the past and currently has the capability to offer such services. The Parties stated that Amec did not decide

to exit from the supply of dutyholdership services but rather has not successfully won any dutyholdership contracts in the UKCS since its most recent contract ended. The CMA therefore assessed the impact of the Merger on the basis that the Parties currently compete in the supply of dutyholdership services to the Upstream Offshore oil and gas sector in the UKCS.

186. In order to assess the likelihood of the Merger resulting in horizontal effects, the CMA considered evidence in relation to:

(a) the shares of supply of the Parties and their competitors;

(b) the closeness of competition between the Parties; and

(c) the competitive constraints posed by alternative suppliers.

Shares of supply

187. The Parties' estimates of their own and their competitors' shares of supply of dutyholdership services to the Upstream Offshore oil and gas sector in the UKCS are provided in Table 4 below.

Table 4 Shares of supply of dutyholdership services, based on revenue

Supplier	Share of supply (2014)	Share of supply (2015)	Share of supply (2016)
Wood Group	[10-20]%	[20-30]%	[30-40]%
Amec	[0-5]%	[0-5]%	[0-5]%
Combined	**[10-20]%**	**[20-30]%**	**[30-40]%**
Petrofac	[50-60]%	[40-50]%	[40-50]%
Other	[0-5]%	[5-10]%	[0-5]%
Unknown	[20-30]%	[10-20]%	[20-30]%
Total	**100%**	**100%**	**100%**

Source: the Parties.

188. There is no overlap between the Parties within this service area based on the share of supply estimates for 2014, 2015 and 2016. While Wood Group's share of supply is significant, no increment would be brought about by the Merger (based on 2014, 2015 and 2016 data).

189. Notwithstanding the limitations of the share of supply data (see paragraph 82 the share data shows that the dutyholdership sector is concentrated.

190. As explained in paragraph 85 above, the CMA considers that the Parties' shares of supply provide an indication of the relative closeness of competition between the Parties (because the history of success of competitors in bidding for previous contracts is likely to influence the weight that is placed on each of these competitors when one of the Parties is preparing a bid). This, in turn, is

likely to indicate the extent of the competitive constraint that any competitor (including the other merging Party) exerts.

191. The share figures in Table 4 show that, in recent years, Wood Group and Petrofac have been the most successful bidders for dutyholdership contracts. By contrast, Amec has been far less successful. In particular, the Parties' submitted that Amec's experience in dutyholdership is limited to [✂].

Closeness of competition

192. The CMA assessed the closeness of competition between the Parties. For the purposes of this assessment, the CMA has (in addition to the evidence in relation to closeness of competition more generally described in paragraphs 75-78 above) used the following evidence where relevant:

(a) tender data; and

(b) third party views on closeness of competition.

193. The CMA has not identified internal documents referring specifically to dutyholdership services and going beyond those discussed in paragraph 75 above.

Tender data

194. The CMA's tender dataset contains five dutyholdership contracts, including the [✂] contract for which only limited information is available.[38] Wood Group bid on [✂] dutyholdership contracts in the CMA's dataset. Amec bid on at least [✂],[39] but did not win any of those contracts. Petrofac bid against either of the Parties as frequently as they bid against each other.[40] The CMA is aware of two instances when a company other than the Parties or Petrofac bid for a dutyholdership contract.[41]

195. While Amec continues to bid,it is likely to place some competitive constraint on rivals. The relatively low rate of success (reflected in the share of supply and tender data) suggests that the likelihood of Amec winning any particular new contract would not be given much weight by Wood Group when

[38] The Parties indicated that, as far as they were aware, [✂]. The CMA was unable to verify this with the customer, as [✂] has gone into liquidation since issuing the tender in question.
[39] The Parties told the CMA that they were [✂]. The CMA was unable to verify this with [✂].
[40] Given the small number of tenders for dutyholdership services, the specific number of tenders that Petrofac bid on has not been disclosed in order to ensure customer confidentiality.
[41] Given the small number of tenders for dutyholdership services, the CMA does not consider it appropriate to provide a more granular assessment of bidding rankings (due to confidentiality considerations).

preparing its bid, and would be given considerably less weight than the likelihood of Petrofac being successful.

196. The CMA notes that, as discussed in paragraphs 219 and 223-228, track record is important for customers. The CMA therefore believes that Amec, whose previous recent experience of the supply of dutyholdership services is limited to a single contract (see Table 4 and third party submissions below), imposes only a limited constraint on Wood Group, whose successful track record in the supply of these services is reflected in the significant number of contracts it won in the recent years.

197. Based on the evidence set out above, the CMA believes that, even though the Parties have bid against each other in a material proportion of recent tenders, Amec does not impose a particularly strong competitive constraint on Wood Group in relation to the supply of dutyholdership services to the Upstream Offshore oil and gas sector in the UKCS.

Third party views

198. The CMA assessed whether third parties consider the Parties to be close competitors in the supply of dutyholdership services. The CMA asked customers to list and rate suppliers of dutyholdership services in the UKCS by their competitiveness, stating whether they consider them to be strong, medium or weak competitors and to explain the reasons why. Only three customers provided their views in relation to the closeness of competition between the Parties, which may be due to low overall number of dutyholdership contracts in the market.

199. Two customers were only aware of Amec, Wood Group and Petrofac supplying dutyholdership services to the Upstream Offshore oil and gas sector in the UKCS. One customer thought that only these three suppliers had the core competency to provide these services, and that the reduction from three to two service providers would not be a positive outcome in relation to maintaining a competitive market. One customer submitted that the provision of dutyholdership services is a *'relatively competitive but tight market place with little to choose between each provider – will often come down to commercial offering and capacity at the time of requirement'*. Another customer listed Wood Group, Amec, Aker and Petrofac as suppliers of dutyholdership services in the UKCS and ranked them all as medium in terms of their competitive strength. One customer submitted: *'In our experience Wood Group have a better established track record in the Duty Holder arena whereas AMEC are better established in the new build construction and HUC areas.'*

200. The third party views outlined above suggest that the Parties are viewed as close competitors for the supply of dutyholdership services to the Upstream Offshore oil and gas sector in the UKCS. The CMA notes, however, that the customer sample is relatively small, and appears to be inconsistent, at least to some extent, with the evidence relating to customer decision-making in practice.

Conclusion on closeness of competition

201. For the reasons described above, the CMA believes that even though the Parties have bid against each other for a material proportion of recent tenders, Amec does not impose a strong competitive constraint on Wood Group in the supply of dutyholdership services. Even though third party submissions indicate that the Parties are viewed as close competitors, the CMA notes that this is based on only a limited number of third parties' views and that the views expressed are not consistent with customer decision-making in practice. The CMA therefore believes that the Parties are not particularly close competitors in relation to the supply of dutyholdership services to the Upstream Offshore oil and gas sector in the UKCS.

Alternative constraints

Competitive constraints from alternative suppliers

202. In general, there appear to be relatively few bidders for dutyholdership contracts. The CMA's dataset shows that only Petrofac, Aker and one smaller competitor have bid for dutyholdership contracts in recent years.

203. Based on the share of supply estimates (Table 4) and the frequency with which dutyholdership contracts are bid for and won, the CMA believes that Petrofac imposes the strongest competitive constraint on Wood Group. The evidence on closeness of competition between the Parties assessed above indicates that the Merger will not result in elimination of a material competitive constraint on Wood Group with respect to the supply of dutyholdership services to the Upstream Offshore oil and gas sector in the UKCS.

Constraints from bringing services in-house

204. The Parties submitted that all dutyholdership customers are able to in-source. The Parties provided examples of [✂], [✂] and [✂], and [✂] who performed dutyholdership in-house when they first entered. The Parties also submitted that [✂], [✂] and [✂] subsequently brought dutyholdership in-house, even

though it was initially supplied by third party suppliers, such as Wood Group or Petrofac.

205. The evidence collected by the CMA supports the Parties' submission that customers are able and do bring dutyholdership services in-house. In particular, a number of customers confirmed that they have brought dutyholdership services in-house. For example, one customer submitted that it had taken on responsibilities as a dutyholder, responsible for integrity and safety of its assets and of all personnel. Another customer indicated its intention to bring dutyholdership in-house.

206. The CMA also notes that the fact that only a small number of tenders were issued for dutyholdership services in the recent years could be an indicator that customers tend to bring these services in-house.

207. The CMA believes that the ability of customers to bring dutyholdership services in-house imposes a constraint on the suppliers of these services, including the Parties.

Conclusion on horizontal unilateral effects

208. For the reasons set out above, the CMA believes that Wood Group's share of supply of dutyholdership services to the Upstream Offshore oil and gas sector in the UKCS is significant but Amec has not been successful in winning dutyholdership contracts in the last few years. The CMA believes that, while the Parties compete with each other for the supply of dutyholdership services, they are not particularly close competitors with Amec imposing only a limited competitive constraint on Wood Group. The CMA believes that Petrofac, together with the potential for in-sourcing, will continue to impose a significant competitive constraint the merged entity post-Merger.

209. Accordingly, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the supply of dutyholdership services to the Upstream Offshore oil and gas sector in the UKCS.

Conclusion on horizontal unilateral effects

210. In light of the above evidence, the CMA believes that the Merger raises significant competition concerns as a result of unilateral horizontal effects in the supply of (i) E&C services; and (ii) O&M services to the Upstream Offshore oil and gas sector in the UKCS.

Countervailing constraints

211. Given that competition concerns arise only with respect to the supply of (i) E&C services; and (ii) O&M services to the Upstream Offshore oil and gas sector in the UKCS, the following sections focus on these areas.

Barriers to entry and expansion

212. Entry, or expansion of existing firms, can mitigate the initial effect of a merger on competition, and in some cases may mean that there is no SLC. In assessing whether entry or expansion might prevent an SLC, the CMA considers whether such entry or expansion would be timely, likely and sufficient.[42]

213. The Parties submitted that barriers to entry and expansion into the supply of engineering services in the UKCS are low. The Parties submitted that, in addition to incumbent providers, UKCS demand for E&C and O&M services can be met by (i) providers active in other geographies; (ii) expansion by smaller (emerging) and Tier 2 suppliers; and/or (iii) companies active in neighbouring markets, such as downstream oil and gas.

214. The CMA assessed whether entry or expansion by (i) suppliers active in other geographies; (ii) suppliers active in neighbouring markets; and/or (iii) smaller suppliers would be timely, likely and sufficient to prevent a realistic prospect of an SLC as a result of the Merger.

Entry and expansion by suppliers active in other geographies

215. The Parties submitted that there are major global suppliers already active in the UKCS to some degree (eg WorleyParsons, Stork/Fluor, Jacobs and KBR), and others not yet active (eg Aibel, Broadspectrum and SNC-Lavalin) that the Parties believe are likely to enter the UKCS.

216. The competitive constraint imposed by global suppliers with some presence in the UKCS (other than Petrofac and Aker) was considered by the CMA in the competitive assessment above and the CMA found that these competitors have not succeeded in achieving a material share of supply in the UKCS. The evidence available to the CMA indicates that the competitive constraint currently imposed by those suppliers is limited and does not suggest that these competitors are likely to strengthen their market position and win significant contracts in the near future.

[42] *Merger Assessment Guidelines*, from paragraph 5.8.1.

217. With reference to the global suppliers that the Parties identified as likely to broaden their activities into the UKCS, the CMA was not provided with evidence to corroborate the Parties' assertion that those suppliers were likely to enter the UKCS market and achieve a market position that would sufficiently constrain the combined entity post-Merger. By contrast, the evidence available to the CMA suggests that the overall outlook of the supply of E&C and O&M services to the Upstream Offshore oil and gas sector in the UKCS make it unattractive to enter, given the significant set up costs involved.

218. The evidence submitted by the Parties indicates that the UKCS is amongst the more mature oil and gas markets in the world. The majority of the oil and gas activity in the UKCS is therefore 'brownfield' sites (where production is ongoing), as opposed to 'greenfield' sites (where production has not yet begun). One competitor submitted that *'output on the UK continental shelf has been sliding since 2000. Finding oil has become harder. There are plenty of barrels to be recovered – some 10bn known reserves lie beneath the sea on the UK continental shelf (UKCS) and as many as 24bn may be available for extraction, according to Oil & Gas UK. They are however being found in smaller batches, which can make them less attractive to larger operators such as BP and Shell.'* In the context of declining oil extraction in the UKCS, there are limited expansion possibilities in the UKCS, meaning that entry into the supply of E&C and O&M services to the Upstream Offshore oil and gas sector in the UKCS is unlikely to be attractive for new entrants.

219. The majority of customers who responded to the CMA submitted that they have not invited an engineering firm without an established presence in the UKCS market to compete for an engineering contract in the UKCS. The majority of customers explained that an established presence in the UKCS is important to demonstrate that the supplier has the necessary resources such as infrastructure and personnel (foreign suppliers will generally not have local knowledge of local subcontractors and sub-suppliers), capability (proven track record of working on North Sea assets and equipment), competence (ability to meet necessary technical, legislative and regulatory requirements)[43] and commercial competitiveness. For example, one customer submitted: *'Key challenges would be UK regulatory compliance, competence and a local organization to provide services to our local business. Also, any fabrication capability (when required as part of any EPC* [E&C] *services) must be local.'*

[43] The Parties submitted that a number of UK health and safety (eg BS EN 61892-1 Mobile and Fixed Offshore Units, Dangerous Substances in Harbour Areas Regulations 1987 (as amended), etc), as well as environmental (eg Energy Act 2008, Pipeline Safety Regulations 1996, etc) legislation and regulations are relevant for the supply of E&C and O&M services to the Upstream Offshore oil and gas sector in the UKCS.

220. It was also noted by customers that there are few foreign suppliers who meet the requirement of being FPAL registered.[44] Customers also stated that UKCS projects are generally not of sufficient value to warrant foreign supplier interest given set-up costs and associated overheads (particularly given the overall the decline in the UKCS market, as described in paragraph 218).

221. The CMA therefore does not believe that entry by suppliers active in other geographies would be timely, likely and sufficient to prevent a realistic prospect of an SLC as a result of the Merger.

Entry by suppliers active in neighbouring markets

222. The CMA assessed whether entry by suppliers active in neighbouring markets would be timely, likely and sufficient to prevent a realistic prospect of an SLC as a result of the Merger. In particular, the CMA considered: (i) suppliers without an established presence in the oil and gas sector; and (ii) suppliers without an established presence in the Upstream Offshore oil and gas sector, but with a presence in the oil and gas sector more generally.

Entry by suppliers without presence in the oil and gas sector

223. The majority of customers submitted that they have not considered awarding an engineering contract to a company without an established presence in the oil and gas sector. The majority of customers explained that the nature, complexities and standards associated with the offshore oil and gas sector make it more appropriate (eg for safety reasons) and more efficient (eg because mandatory emergency and safety training is expensive) to award work to companies with sufficiently well-developed sectoral experience. Customers explained that this is a high-risk industry and safety is a primary concern, and contractors without an established presence would therefore be unlikely to have sufficient depth of services, capability or experience.

[44] FPAL refers to the Achilles First Point Assessment for suppliers to the oil and has industry. FPAL defines the supplier pre-qualification standards required, and then collects, validates and shares this supplier pre-qualification information with its customers. This gives customers confidence that all existing and prospective suppliers they access on FPAL have gone through the same rigorous process of validated pre-qualification. Customers explained to the CMA that FPAL is their first source of information when deciding which suppliers to invite to tender. The Parties submitted that FPAL registration is relatively straightforward to obtain, ie companies have to show proof of their ability to work in the UKCS oil and gas industry through showing ISO accreditation, outlining processes procedures, and demonstrating their safety performance. However, the CMA believes that ‘proof of ability to work in the UK’ may include proven track record in performing work in the UKCS, and that the lack of foreign suppliers currently registered on FPAL and active in the supply of engineering services to the Upstream Offshore oil and gas sector in the UKCS indicates that there are significant barriers for such suppliers to enter the UKCS market.

Entry by suppliers without presence in the Upstream Offshore oil and gas sector

224. The Parties submitted that entry into the supply of E&C and O&M services to the Upstream Offshore oil and gas sector in the UKCS is possible by suppliers active in downstream oil and gas sector. The Parties provided the examples of Babcock, Marine and Doosan as possible new entrants. The evidence available to the CMA does not, however, support the Parties' position.

225. Customer responses in relation to awarding an engineering contract to a company without an established presence in the Upstream Offshore oil and gas sector (eg a company active in the downstream oil and gas sector) were mixed. Out of 16 customers who provided responses to the CMA, seven submitted that they had not considered awarding an engineering contract to a company without an established presence in the Upstream Offshore oil and gas sector. For example, one customer submitted: *'it is highly unlikely that we would award work that requires offshore knowledge to a company that does not have proven capabilities in this area. The Offshore standards, technical requirements, risks & liabilities and execution limitations are significantly different to those encountered in a downstream environment.'* Another customer explained that *'(…) engineering Companies need a full appreciation of the Offshore Oil and Gas industry before they can be considered for this type of work.'* This customer explained that companies active in the downstream oil and gas sector can be expected to have good HSE management systems, and the same understanding of design of equipment for hazardous areas. However, they are less likely (i) to have deep knowledge of oil and gas legislation and familiarity with regulators and industry bodies; or (ii) to be able to work in the severe offshore marine environment and account for how this influences design for optimum construction, installation and longevity costs and schedule etc. Another customer explained that it is *'Key to have related experience in upstream for delivery of compliant solutions. Upstream regulations/safety case/HSEX, DBEIS/OGA creates quite a burden in this area.'* Another customer submitted that experience in the Upstream Offshore oil and gas sector was a pre-requisite in their (engineering) subcontractor pre-qualification process.

226. Even where customers suggested that they had considered awarding an engineering contract to a company without an established presence in the Upstream Offshore oil and gas sector, the evidence provided did not fully support the position that these players would be able to effectively compete for such contracts. For example, one customer submitted that, while it did consider suppliers without having an established presence in the Upstream Offshore oil and gas sector in the UKCS, each of these alternatives fell through at different stages of evaluation (eg technical, commercial). This

customer further explained that, from its understanding, *'it would appear that some of these players may not actually be all that interested in entering the UKCS offshore sector at this stage.'* Other customers explained that their consideration of suppliers without an established presence in the Upstream Offshore oil and gas sector would be limited to fairly generic requirements, eg scaffolding.

227. Even if both (i) a downstream oil and gas engineering firm considered bidding for contracts in the Upstream Offshore sector; and (ii) a customer considered awarding a contract to such a firm, this does not mean that there would necessarily be an effective competitive constraint from downstream firms on the merging Parties. Not all customers consider such suppliers to be credible and, therefore, the Parties would not need to place significant weight on the threat of entry across all contracts when preparing their bids. In order to be an effective constraint, the CMA considers that downstream firms would need to develop (either individually or collectively) a record of successfully bidding for tenders. In this industry, given the relatively small number of contracts in any of the frames of reference considered, this is likely to take a number of years to achieve.

Conclusion on entry by suppliers active in neighbouring markets

228. Based on the evidence described above, CMA does not believe that entry by suppliers active in neighbouring markets (including suppliers active in the downstream oil and gas sector) would be timely, likely and sufficient to prevent a realistic prospect of an SLC as a result of the Merger.

Expansion by smaller suppliers

229. The Parties submitted that smaller companies currently active in relation to smaller E&C and O&M contracts could expand their activities. In relation to E&C services, the Parties identified the following suppliers that could expand in this way: AF Gruppen, Apollo Engineering and Step Change Engineering. In relation to O&M services, the Parties stated that, although a Tier 2 company may – at least at present – be unable to provide the full range of O&M services or to offer the supervisory roles, they have the ability (either individually or collectively) to offer alternative services to the Tier 1 companies.

230. More generally, the Parties submitted that smaller suppliers are further able to mitigate the risk of expansion by having such expansion 'sponsored' by a customer and that the expansion of smaller companies can also be facilitated by customers splitting contracts into a number of smaller scopes thereby enabling smaller suppliers to compete and take part of the customer's

business. The Parties also stated that entry and expansion by smaller players is also facilitated by TUPE transfers of skilled and experienced workers.

231. The evidence collected by the CMA indicates that there are significant barriers to expansion for smaller suppliers. In particular, smaller suppliers are limited in the extent to which they can grow due to the incumbency advantage of the main suppliers (see paragraphs 234-239), as well as not all customers being able or willing to change their purchasing behaviour by multi-sourcing and unbundling. The CMA notes that, even when customers unbundle their contracts, the main Tier 1 suppliers continue to take responsibility for the main scopes of a contract (see paragraphs 246-252). As discussed in paragraph 262 below, the CMA has not received any evidence of recent examples of sponsored entry.

232. Third party responses also indicate that the ability of smaller suppliers to expand is limited. For example, one customer submitted: *'No company would be in a position in the near-term to take over from Wood Group, Amec, Petrofac and Aker. It would be a gradual step up from $1 million contracts to $5 million contracts.'* Another customer submitted: *'Despite the Tier 2 engineering contractors providing a good challenge to the Tier 1 contractors, when there is complexity and scale, Operators [customers] need to rely on Ties [sic] 1s. (…) It is questionable whether new entrants can be encouraged to stimulate competition – it would be a challenge given the experience and track record required to operate successfully as a Tier 1 within the UKCS regime; it is more likely that a new entrant could be Tier 2 or 3, which would not be a replacement for AFW.'* One third party submitted that *'smaller companies would not be able to supply the level of O&M manpower support that Tier 1's do. Smaller companies would operate more on the construction side'*.

233. The CMA therefore does not believe that expansion by smaller suppliers would be timely, likely and sufficient to prevent a realistic prospect of an SLC as a result of the Merger. The fact that there have been limited examples of recent entry in a sufficient scale indicates that there are limits on the potential new entrants' ability to enter. The CMA has also not been provided with any evidence to suggest that specific suppliers would enter the UKCS market (with a sufficient degree of likelihood) if competitive conditions were to change post-Merger.

Incumbency

234. The CMA assessed whether the incumbent providers have a competitive advantage when competing for new contracts issued by the same customers for the same assets. Incumbency advantage makes entry and expansion

more difficult, particularly if experience is valued by customers and economies of scale or 'learning-by-doing' is important for smaller businesses to compete effectively and profitably over a wider range of contracts. This is particularly the case where a sector is not growing, or is in decline, and the incentives to enter may be limited. As discussed in paragraph 218 above, the UKCS is amongst the more mature oil and gas markets in the world and there are limited opportunities to learn and, therefore, limited possibilities to enter and/or expand.

235. The Parties submitted that there are no barriers to entry in the form of an incumbency advantage. The Parties explained that, from a customer's perspective, the benefits of remaining with an incumbent E&C and/or O&M supplier are primarily in relation to a supplier's experience and knowledge of the asset that it is supplying services to. In the context of E&C and O&M, this experience and knowledge is either retained within the customer organization (in relation to engineering expertise) or, in relation to construction and O&M expertise, within the offshore staff (many of whom would typically transfer to an incoming supplier under the TUPE provisions). The Parties therefore submitted that any potential incumbency advantage is minimal (or would otherwise be outweighed by cost considerations).[45]

236. The evidence available to the CMA indicates, however, that incumbency advantage further strengthens the barriers to entry and/or expansion with respect to the supply of engineering services in the UKCS.

237. In particular, of the customers who responded to the CMA, almost half thought that an incumbent firm has an advantage in bidding for further work on an asset. The majority of these customers pointed to the incumbent's detailed knowledge and experience of the asset giving them an advantage in the technical bid assessment. This knowledge and experience could include an awareness of the commercial risks relating to the customer's work processes and the practical and physical challenges involved in executing a scope of work. Some customers emphasised that the cost and management impact associated with a change of contractor is factored into the bid evaluation process and set against any savings made.

238. The vast majority of competitors submitted that an incumbent would have an advantage in bidding for work on that asset. Most competitors cited the advantage stemming from knowledge of the asset, experience of the work,

[45] The Parties also submitted that for both E&C and O&M, there are more known bidders, on average, for contracts that are renewals than those that are not, and argued that this suggests that potential bidders are not discouraged from bidding by the prospect of an incumbency advantage. The CMA notes that incumbency advantage is reflected in a customer's preference to award a contract to an incumbent supplier (and therefore in the ability of other non-incumbent bidders to win a contract), rather than in the number of bidders.

understanding the customer's value drivers and well-established key relationships, including informal liaison and feedback from the customer, all of which can influence the incumbent's bidding strategy. One competitor explained that *'(…) the incumbent often has personnel 'imbedded'* [sic] *throughout the Operators* [customer's] *organisation and sometimes this may be in positions which have influence on contract awards.'*

239. Finally, in relation to the Parties' argument with respect to TUPE provisions, the CMA found that such provisions largely relate to blue-collar employees, whereas senior and key employees would not be subject to TUPE provisions. The CMA notes that, although there is a possibility of such senior employees to be recruited by a new supplier, there is no guarantee that these employees will be willing to switch their company.

Conclusion on barriers to entry and expansion

240. For the reasons described above, the CMA believes that there are significant barriers to entry and expansion in relation to the supply of engineering services in the UKCS, and that the incumbency advantage strengthens those barriers even further. The CMA therefore does not believe that any entry or expansion would be timely, likely and sufficient to prevent a realistic prospect of an SLC as a result of the Merger.

Countervailing buyer power

241. In some circumstances, an individual customer may be able to use its negotiating strength to limit the ability of a merged firm to raise prices. The existence of countervailing buyer power will be a factor in making an SLC finding less likely. If all customers of the merged firm possess countervailing buyer power post-merger, then an SLC is unlikely to arise. However, often only some – not all – customers of the merged firm possess countervailing buyer power. In such cases, the CMA assesses the extent to which the countervailing buyer power of these customers may be relied upon to protect all customers.[46]

242. The Parties submitted that the customers of engineering services are typically large and sophisticated multinational oil and gas customers who use expertly designed and well-established procurement processes to ensure that they pay the lowest price for the best possible service. These processes are well tested

[46] *Merger Assessment Guidelines*, paragraph 5.9.1.

and effective in ensuring that, absent improved performance, suppliers cannot increase their margins.

243. The CMA notes that even where the market is characterised by customers who are larger than the suppliers, it does not necessarily follow that there will be countervailing buyer power. Buyer power is unlikely to protect customers when they lack alternative suppliers.[47]

244. In its assessment of countervailing buyer power, the CMA considers whether and to what extent customers can easily switch their demand away from the supplier or constrain the behaviour of the supplier by sponsoring entry, vertically integrating (or self-supplying), or imposing costs on the supplier.[48]

245. Generally, an individual customer's negotiating position will be stronger if it can easily switch its demand away from the supplier, and typically the ability to switch away from a supplier will be stronger if there are several alternative suppliers to which the customer can credibly switch. Given that the Merger could result in a reduction in the number of credible competitors from four to three, the CMA does not believe that this buyer power condition is satisfied. The Parties' ability to increase prices depends on the extent to which they are constrained by rivals, and the CMA considers that after the Merger, supplier options will be limited given the loss of competition between the Parties, as noted by third parties.[49]

Multi-sourcing and unbundling

246. The Parties submitted that engineering services contracts are rarely exclusive and multi-sourcing and/or customers splitting contracts into smaller scopes of work is common as customers seek to use their bargaining power at the time of tender and through the life of the contract. The Parties explained that this is part of a recent trend of customers changing their contracting strategy to move from integrated services contracts with one supplier to framework or call off contracts with several suppliers.

247. The Parties further submitted that the trend for unbundling engineering contracts is illustrated by the average Upstream Offshore E&C contract sizes falling from £125.43 million pre-2014 to £20.05 million in the period after 2014;

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[47] *Merger Assessment Guidelines*, paragraph 5.9.2.
[48] *Merger Assessment Guidelines*, paragraph 5.9.4.
[49] The CMA notes that the evidence of buyer power provided by the Parties contains examples of customers renegotiating terms, which is not necessarily an indicator of buyer power. To the extent that renegotiation of terms was based on a threat of switching to one of the Parties, the exercise of buyer power which the Parties suggest may not have occurred in a situation in which the Parties had already merged.

and by the average Upstream Offshore O&M contract sizes falling from £167.70 million pre-2014 to £32.35 million in the period after 2014.

248. The CMA has seen some evidence to suggest that some customers have recently tended to reduce the average tender size, both in scope and value, allowing smaller suppliers to successfully bid for a particular scope of work. The CMA notes, however, that one customer which has adopted an unbundling strategy awarded Wood Group, Amec and Petrofac the contracts to provide the E&C, maintenance and support services, with the smaller suppliers who succeeded in winning aspects of the work being responsible only for *'minor modifications, ad hoc support and Repair Orders'*. This suggests that where a customer reduces the average tender size, the scope of work for which smaller suppliers are able to bid may be limited, with large suppliers (such as the Parties, Petrofac and Aker) taking responsibility for the main scopes of a contract.

249. The evidence collected by the CMA indicates that unbundling tenders and reducing scopes of tenders requires significant in-house capability. In particular, with respect to E&C services, third party evidence indicates that the customer, in order to take advantage of the competitive fringe of smaller suppliers, may have to take on substantial additional organisational responsibilities. Hiring a group of smaller providers, instead of working with a single integrated service provider, means taking on the responsibility for assigning different tasks to different contractors, and for coordinating their efforts. Not all customers will have the capacity to do this and not all projects can be unbundled in this way, particularly in the E&C sector, where some construction projects are unavoidably lumpy. This is supported by the fact that the majority (16 out of 26) of customers who responded to the CMA submitted that they have not changed their average tender size. Of the customers who have changed their average tender size, one submitted that it has in fact increased their tender size to integrate E&C, O&M and associated consultancy services.

250. The fact that contracts have traditionally covered a higher value or wider range of services may indicate that there are economies of scale and scope which can be achieved by a single provider (even is some of the work is subsequently outsourced). Therefore, while unbundling may be attractive to some customers as a way of generating greater intensity of competition or for other reasons (eg spreading risk), it may not be attractive for other types of contracts or customers. In addition, to the extent that a customer has a strong preference for a single supplier to be responsible for, and manage, a large scale project (ie the customer would strongly prefer not to unbundle the contract), then unbundling does not provide an effective way of ensuring competition.

251. Even though O&M contracts can be restructured more easily compared to E&C contracts, some customers explained to the CMA that they might be reluctant to have more than one supplier on the same asset because of the inefficiencies that would cause. The CMA therefore believes that there is a limit to the extent to which O&M contracts can be unbundled (ie it is unlikely that contracts for a single asset would be broken down further). Moreover, as with E&C, such unbundling will not be feasible or attractive for all customers.

252. It was not possible to conclude whether unbundling of E&C and O&M contracts increased in recent years from the CMA's analysis of tender data. Although the CMA identified some E&C customers who issued more than one contract in 2016, it was not possible to see the scope of these contracts and therefore to determine whether these were contracts issued for the same asset (eg customers unbundling the work by splitting projects between different suppliers) or for different assets (eg different projects).

253. In conclusion, the CMA recognises that some customers have engaged more actively in unbundling and multi-sourcing, and that one of the reasons for this may be to develop greater competition, particularly from smaller providers which may not otherwise wish for larger, more complex and riskier contracts. Nevertheless, the CMA notes that even some of those customers that have unbundled their contracts did not consider this to be sufficient to overcome any loss of competition due to the Merger and expressed concerns in relation to the impact of the Merger on competition. Therefore, for the reasons described above, the CMA does not believe that multi-sourcing and unbundling is sufficient to mitigate the adverse effects of the Merger on competition in relation to the supply of (i) E&C services; and (ii) O&M services to the Upstream Offshore oil and gas sector in the UKCS.

Bringing services in-house

254. The Parties submitted that all customers are able to in-source across E&C, O&M services.[50] The Parties explained that where customers choose to use third party suppliers, it is typically for reasons of cost and convenience.

255. The Parties submitted that both smaller and larger customers carry out elements (and in particular, management and supervision) of E&C and O&M contracts in-house. The Parties explained, however, that this constitutes approximately 10-20% of the E&C contract value, and approximately 8-18% of the O&M contract value. The CMA therefore believes that this does not

[50] As discussed in paragraphs 204-207, the CMA believes that in-sourcing will place a sufficient constraint on the merged entity with respect to the supply of dutyholdership services to the Upstream Offshore oil and gas sector in the UKCS.

represent a significant part of the contract, and shows that customers are still largely reliant on third party E&C and O&M service providers.

256. Out of 27 customers who responded to the CMA, only 9 indicated that they have changed the extent to which they do certain engineering work in-house and even then, there are limits to the scope of work carried out in-house. For example, one customer submitted that with respect to O&M, it took more ownership and control of these activities by undertaking certain activities in-house, such as maintenance management and materials procurement, whereas the remaining outsourced work will be limited to execution of work, undertaken by skilled manpower provided by the market. This customer also submitted that, with respect to E&C, it has taken in-house some aspects of engineering work at a conceptual level to ensure proper scope definition minimising rework and inefficiency in later stages of the design process. However, this customer explained that it still requires third party engineering support. Therefore, the evidence collected by the CMA indicates that capability to bring certain engineering services in-house is limited in terms of scope.

257. Of those customers who did not change the extent to which they do certain engineering work in-house, one customer submitted that *‘in-house capability has improved in some engineering areas in recent years, however we still rely heavily on external engineering service providers to support our day-to-day business.’* Another customer submitted that *‘it would not be efficient to carry out this type of work in-house’*. Moreover, the majority of customers who responded to the CMA stated that they have not successfully used the possibility of in-sourcing certain work in order to obtain a better deal.

258. One competitor submitted: *‘We have noticed operators taking concept engineering work inhouse; however front-end engineering and design work remains the preserve of engineering firms’*.

259. For the reasons described above, the CMA does not believe that ability of customers to bring services in-house is sufficient to mitigate the adverse effects of the Merger on competition in relation to the supply of (i) E&C services; and (ii) O&M services to the Upstream Offshore oil and gas sector in the UKCS.

Sponsored entry

260. The Parties submitted that customers may sponsor the entry/expansion of a competitor to ensure they get services which meet their expectations.

261. The CMA considered the possibility of customers sponsoring new entry. The majority of customers who responded to the CMA stated that they have not successfully used the possibility of sponsoring entry into the UKCS market in order to obtain a better deal. Only one customer submitted that it has *'used the possibility of market entry from players in other sectors (not necessarily from outside the UK, eg Babcock Marine, Doosan) to drive better deals.*' However, as discussed in paragraphs 223-228, the CMA found that there are significant barriers to entry for suppliers without an established presence in either oil and gas, or Upstream Offshore oil and gas sector in the UKCS. Moreover, as discussed in paragraph 219, the majority of customers are reluctant to invite and/or award contracts to engineering firms without an established presence in the UKCS, making sponsored entry less likely.

262. The CMA has not received any evidence of recent examples of sponsored entry. The CMA notes, that even if customers could have more incentive to sponsor entry as a result of any reduction in competition post-Merger, the fact that there have been limited examples of sponsored entry so far indicates that there are limits on the customers' ability to readily sponsor entry. The CMA has also not been provided with any evidence to suggest that specific suppliers would enter the UKCS market (with a sufficient degree of likelihood) if competitive conditions were to change post-Merger.

Conclusion on countervailing buyer power

263. For the reasons described above, the CMA does not believe that countervailing buyer power is sufficient to mitigate the adverse effects of the Merger on competition in relation to the supply of (i) E&C services; and (ii) O&M services to the Upstream Offshore oil and gas sector in the UKCS.

Decision

264. Consequently, the CMA believes that it is or may be the case that (i) arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation; and (ii) the creation of that situation may be expected to result in an SLC within a market or markets in the United Kingdom.

265. The CMA therefore believes that it is under a duty to refer under section 33(1) of the Act. However, the duty to refer is not exercised[51] whilst the CMA is considering whether to accept undertakings[52] instead of making such a

[51] Section 33(3)(b) of the Act.
[52] Section 73 of the Act.

reference. The Parties have until 9 August 2017[53] to offer an undertaking to the CMA.[54] The CMA will refer the Merger for a phase 2 investigation[55] if the Parties do not offer an undertaking by this date; if the Parties indicate before this date that they do not wish to offer an undertaking; or if the CMA decides[56] by 16 August 2017 that there are no reasonable grounds for believing that it might accept the undertaking offered by the Parties, or a modified version of it.

Kate Collyer
Deputy Chief Economic Adviser
Competition and Markets Authority
2 August 2017

[53] Section 73A(1) of the Act.
[54] Section 73(2) of the Act.
[55] Sections 33(1) and 34ZA(2) of the Act.
[56] Section 73A(2) of the Act.