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

Decision that undertakings might be accepted

ME/6687/17

The CMA's decision under section 73A(2) of the Enterprise Act 2002 that undertakings might be accepted, given on 15 August 2017. Full text of the decision published on 16 August 2017.

Introduction

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. On 2 August 2017, the Competition and Markets Authority (**CMA**) decided under section 33(1) of the Enterprise Act 2002 (the **Act**) that it is or may be the case that the Merger consists of arrangements that are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation, and that this may be expected to result in a substantial lessening of competition (**SLC**) within a market or markets in the United Kingdom (the **SLC Decision**).

3. On the date of the SLC Decision, the CMA gave notice pursuant to section 34ZA(1)(b) of the Act to the Parties of the SLC Decision. However, the CMA did not refer the Merger for a phase 2 investigation pursuant to section 33(3)(b) on the date of the SLC Decision in order to allow the Parties the opportunity to offer undertakings to the CMA in lieu of such reference for the purposes of section 73(2) of the Act.

4. Pursuant to section 73A(1) of the Act, if a party wishes to offer undertakings for the purposes of section 73(2) of the Act, it must do so within the five working day period specified in section 73A(1)(a) of the Act. Accordingly, on 9 August 2017, the Parties offered undertakings to the CMA for the purposes of section 73(2) of the Act.

5. The CMA now gives notice, pursuant to section 73A(2)(b) of the Act, to the Parties that it considers that there are reasonable grounds for believing that the undertakings offered, or a modified version of them, might be accepted by the CMA under section 73(2) of the Act and that it is considering the offer.

The undertakings offered

6. Under section 73 of the Act, the CMA may, instead of making a reference, and for the purpose of remedying, mitigating or preventing the SLC concerned or any adverse effect which has or may have resulted from it or may be expected to result from it, accept from such of the merger parties concerned as it considers appropriate undertakings to take such action as it considers appropriate.

7. The SLC Decision found that the Merger gives rise to a realistic prospect of an SLC in relation to the supply of (i) engineering and construction (**E&C**) services; and (ii) operations and maintenance (**O&M**) services to the Upstream Offshore oil and gas sector in the UK Continental Shelf (**UKCS**). To address this SLC, the Parties have offered to give undertakings in lieu of a reference to divest Amec's Upstream Offshore oil and gas business located in the UK and serving UK customers, including E&C, O&M, hook-up and studies services and dutyholdership capability, as well as its onshore pipeline business located in the UK and serving UK customers (the **Proposed Undertakings**).[1] The Parties have offered to divest substantially all of Amec's assets, personnel and liabilities that contribute to these businesses (the **Divestment Business**).

8. The Divestment Business comprises the divisions of the oil and gas business of Amec which fall within the permiter described in paragraph 7, as well as a number of subsidiaries wholly or partially engaged in work for Amec's Upstream oil and gas sector activities in the UK, namely: (i) Scopus Group (Holdings) Limited; (ii) Ingen Holdings Limited; (iii) Specialist Equipment Solutions Limited; (iv) Primat Recruitment Limited; and (v) Performance Improvements (PI) Group Limited. The brands associated with these subsidiaries will transfer with the Divestment Business.

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[1] The CMA's SLC Decision did not find that the Merger would give rise to a realistic prospect of an SLC in the supply of studies, hook-up or dutyholdership services to the Upstream Offshore oil and gas sector in the UKCS, as well as in relation to the Parties' onshore activities. However, the Parties have included Amec's studies, hook-up activities and dutyholdership capability, as well as its onshore pipeline business within the scope of the Divestment Business in order to support the viability of the Divestment Business and to enhance the clear-cut and comprehensive nature of the Proposed Undertakings.

9. The Divestment Business does not include:

(a) the Amec Foster Wheeler brand or any part or variant thereof;

(b) a small number of Amec's subsidiaries engaged in discrete activities that currently support the Divestment Business (through the provision of certain completions, commissioning and technology services, consulting and systems services, engineering and drafting services, and publications, document and records management and archiving services), the exclusion of which has no bearing on the viability or competitiveness of the business providing E&C and O&M services to the Upstream Offshore oil and gas sector in the UKCS; and

(c) a small number of contracts and accounts receivable and personnel that are associated with Amec's UK head office.

The CMA's provisional views

10. The CMA considers that undertakings in lieu of a reference are appropriate when they are clear-cut and capable of ready implementation. The CMA's starting point when assessing undertakings is to seek an outcome that restores competition to the level that would have prevailed absent the merger.[2]

11. The CMA believes that the Proposed Undertakings, or a modified version of them, might be acceptable as a suitable remedy to the SLCs identified by the CMA, given that they would enable a third party to compete effectively in the supply of E&C and O&M services to the Upstream Offshore oil and gas sector in the UKCS by purchasing the Divestment Business. The Proposed Undertakings may therefore result in the replacement of the competitive constraint currently provided by Amec that would otherwise be lost following the Merger.

12. The CMA currently believes that the Proposed Undertakings are capable of amounting to a sufficiently clear-cut and effective resolution of the CMA's competition concerns. The CMA also believes at this stage that the Proposed Undertakings may be capable of ready implementation. The CMA notes that the Parties have already begun to formally market the Divestment Business and have provided evidence of a number of potentially suitable purchasers who have expressed an interest in the business. Moreover, while the

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[2] *Mergers: Exceptions to the duty to refer and undertakings in lieu of reference guidance (OFT1122)*, December 2010, Chapter 5 (in particular paragraphs 5.7–5.8 and 5.11). This guidance was adopted by the CMA (see *Mergers: Guidance on the CMA's jurisdiction and procedure (CMA2)*, January 2014, Annex D).

divestiture package does not operate as a standalone business at present, the evidence available to the CMA indicates that the transfer of the divisions and subsidiaries that will constitute the Divestment Business into a newly incorporated entity does not appear to raise significant 'carve out' risks. The CMA therefore considers that, if it were to accept the Proposed Undertakings, an upfront buyer would not be required.

13. For these reasons, the CMA currently thinks that there are reasonable grounds for believing that the Proposed Undertakings, or a modified version of them, might be accepted by the CMA under section 73(2) of the Act.

14. The CMA's decision on whether ultimately to accept the Proposed Undertakings or refer the Merger for a phase 2 investigation will be informed by, among other things, third party views on whether the Proposed Undertakings are suitable to address the competition concerns identified by the CMA.

Consultation process

15. Full details of the undertakings offered will be published in due course when the CMA consults on the undertakings offered as required by Schedule 10 of the Act.[3]

Decision

16. The CMA therefore considers that there are reasonable grounds for believing that the Proposed Undertakings offered by the Parties, or a modified version of them, might be accepted by the CMA under section 73(2) of the Act. The CMA now has until 12 October 2017 pursuant to section 73A(3) of the Act to decide whether to accept the undertakings, with the possibility to extend this timeframe pursuant to section 73A(4) of the Act to 7 December 2017 if it considers that there are special reasons for doing so. If no undertakings are accepted, the CMA will refer the Merger for a phase 2 investigation pursuant to sections 33(1) and 34ZA(2) of the Act.

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

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[3] *CMA2*, paragraph 8.29.