

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

Notice under paragraph 2(1) of Schedule 10 to the Enterprise Act 2002 (the Act) – consultation on proposed undertakings in lieu of reference pursuant to section 73 of the Act

ME/6687/17

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 any market or markets in the United Kingdom (the **SLC Decision**). The text of the SLC Decision is available on the CMA webpages.¹
3. On 9 August 2017, the Parties offered undertakings in lieu of reference to the CMA for the purposes of section 73(2) of the Act.
4. On 15 August 2017, the CMA gave notice to the Parties, pursuant to section 73A(2)(b) of the Act, 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 Parties' offer (the **UIL Provisional Acceptance Decision**).

¹ See <https://www.gov.uk/cma-cases/john-wood-group-amec-foster-wheeler-merger-inquiry>.

The undertakings offered

5. As set out in the SLC Decision, the CMA found 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**).
6. As set out in the UIL Provisional Acceptance Decision, to address the SLC identified by the CMA the Parties have offered undertakings 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.² The Parties have offered to divest substantially all of Amec's assets, personnel and liabilities that contribute to these businesses (the **Divestment Business**). The text of the undertakings is available on the CMA webpages (the **Proposed Undertakings**).³
7. As set out at paragraph 12 of the UIL Provisional Acceptance Decision, the CMA does not consider it appropriate to seek an upfront buyer in respect of the Divestment Business.

CMA assessment

8. The CMA currently considers that, subject to responses to the consultation required by Schedule 10 of the Act, the Proposed Undertakings will resolve the SLCs identified in the SLC Decision in a clear-cut manner, ie the CMA currently does not have material doubts about the overall effectiveness of the Proposed Undertakings or concerns about their implementation.⁴ This is because the Proposed Undertakings 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.

² 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.

³ See <https://www.gov.uk/cma-cases/john-wood-group-amec-foster-wheeler-merger-inquiry>.

⁴ *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).

9. The CMA also considers that the Proposed Undertakings would be capable of ready implementation. In particular, the evidence available to the CMA indicates that the Divestment Business can be transferred into a newly incorporated entity (without significant 'carve out' risks arising) and sold to a suitable purchaser without undue complexity.

Proposed decision and next steps

10. For the reasons set out above, the CMA currently considers that the Proposed Undertakings are, in the circumstances of this case, appropriate to remedy, mitigate or prevent the competition concerns identified in the SLC Decision and form as comprehensive a solution to these concerns as is reasonable and practicable.
11. The CMA therefore gives notice that it proposes to accept the Proposed Undertakings in lieu of a reference of the Merger for a phase 2 investigation. The text of the Proposed Undertakings is available on the CMA web pages.⁵
12. Before reaching a decision as to whether to accept the Proposed Undertakings, the CMA invites interested parties to make their views known to it. The CMA will have regard to any representations made in response to this consultation and may make modifications to the Proposed Undertakings as a result. If the CMA considers that any representation necessitates any material change to the Proposed Undertakings, the CMA will give notice of the proposed modifications and publish a further consultation.⁶
13. Representations should be made in writing to the CMA and be addressed to:

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Mergers Group
Competition and Markets Authority
Victoria House
37 Southampton Row
London
WC1B 4AD

Email: karina.kucaidze@cma.gsi.gov.uk
Telephone: 020 3738 6730

Deadline for comments: 4 September 2017

⁵ See <https://www.gov.uk/cma-cases/john-wood-group-amec-foster-wheeler-merger-inquiry>.

⁶ Under paragraph 2(4) of Schedule 10 to the Act.