

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

Decision on acceptance of undertakings in lieu of reference

ME/6687/17

The CMA's decision to accept undertakings in lieu of reference under section 73(2) of the Enterprise Act 2002 given on 12 September 2017. Full text of the decision published on 14 September 2017.

Introduction

1. John Wood Group plc (**Wood Group**) has agreed to acquire Amec Foster Wheeler (**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 9 August 2017, the Parties offered undertakings in lieu of reference to the CMA for the purposes of section 73(2) of the Act. The CMA gave notice to the Parties on 15 August 2017, pursuant to section 73A(2)(b) of the Act, that it considered that there were 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 was considering the Parties' offer (the **UILs Provisional Acceptance Decision**).
4. The text of the SLC Decision and the UILs Provisional Acceptance Decision are available on the CMA webpages.¹

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, the Parties have offered 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 **UILs**).² The Parties have offered to divest substantially all of Amec's assets, personnel and liabilities that contribute to these businesses (the **Divestment Business**).

Consultation

7. On 18 August 2017, pursuant to paragraph 2(1) of Schedule 10 to the Act, the CMA published the UILs, inviting interested parties to give their views on the UILs. The relevant text from the consultation is set out at Annex 1 of this decision.³ For the reasons set out in the consultation, the CMA's preliminary view was that the UILs would resolve the SLCs identified in the SLC Decision in a clear-cut manner, ie without giving rise to material doubts about the overall effectiveness of the UILs or concerns about their implementation.⁴
8. The CMA received submissions from a small number of third parties during the consultation period. One third party submitted that it agrees with the CMA's preliminary view that the UILs should be accepted. Other third parties expressed some concerns in relation to the UILs, primarily relating to the proposed scope of the Divestment Business, as described below.
9. One respondent to the consultation suggested that the non-inclusion of QED International Limited (**QEDI**) within the Divestment Business would leave the standalone entity at a significant disadvantage to competitor strategies and market demands.

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 UILs.

³ The full consultation text was published on <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).

10. QEDI provides completions, commissioning and technology services to the oil and gas sector and therefore is not active in the frames of reference within which the CMA believes that a realistic prospect of an SLC may arise. The SLC Decision did not find a realistic prospect of an SLC in relation to the supply of hook-up and commissioning services to the Upstream Offshore oil and gas sector in the UKCS (the frame of reference within which QEDI is active). The CMA therefore does not believe that inclusion of QEDI in the Divestment Business is necessary to resolve the SLCs identified in the SLC Decision. Moreover, the CMA has not received any evidence to suggest that the inclusion of QEDI is necessary to ensure the viability or competitiveness of the Divestment Business (or to otherwise ensure the effectiveness of the UILs).
11. One respondent to the consultation raised concerns that the Divestment Business would be a weak competitor because of the challenging market outlook for the UKCS.
12. The CMA considers, however, that the available evidence (including, in particular, the financial statements for the Divestment Business) indicates that the Divestment Business will be able to operate as a viable and active business in competition with Wood Group and other competitors. The CMA also notes that the economic conditions in the UKCS will impact on all operators and therefore that the risks raised by these conditions are not unique to the Divestment Business.
13. Finally, one respondent suggested that the Divestment Business would be most effectively able to compete if purchased by an operator with (i) sufficient scale in the wider North Sea region; and (ii) industry-specific expertise.
14. The CMA notes, however, that such factors fall to be considered within its assessment of the suitability of the proposed purchaser(s) rather than in relation to its assessment of the proposed UILs.
15. For the reasons set out above, third party submissions did not cause the CMA to change its preliminary view that the UILs would be acceptable.
16. The CMA therefore considers that the UILs offered by the Parties are clear-cut and appropriate to remedy, mitigate or prevent the competition concerns identified in the SLC Decision.

Decision

17. For the reasons set out above, the CMA considers that the UILs provided by the Parties are as comprehensive a solution as is reasonable and practicable and remedy, mitigate or prevent the SLC identified in the SLC Decision and any adverse effects resulting from it. The CMA has therefore decided to accept the

UILs offered by the Parties pursuant to section 73 of the Act. The Merger will therefore not be referred for a phase 2 investigation.

18. The undertakings, which have been signed by the Parties and will be published on the CMA webpages,⁵ will come into effect from the date of this decision.

Kate Collyer
Deputy Chief Economic Adviser
Competition and Markets Authority
12 September 2017

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

Annex 1

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

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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.⁶
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**).

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

⁶ See <https://www.gov.uk/cma-cases/john-wood-group-amec-foster-wheeler-merger-inquiry>.

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.⁷ 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**).⁸

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.⁹ 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.
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,

⁷ 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.

⁸ See <https://www.gov.uk/cma-cases/john-wood-group-amec-foster-wheeler-merger-inquiry>.

⁹ *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).

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.¹⁰
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.¹¹
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

¹⁰ See <https://www.gov.uk/cma-cases/john-wood-group-amec-foster-wheeler-merger-inquiry>.

¹¹ Under paragraph 2(4) of Schedule 10 to the Act.