Anticipated acquisition by Acteon Group Limited of Viking SeaTech rig-positioning and mooring businesses

Decision on relevant merger situation and substantial lessening of competition

ME/6708/17

The CMA's decision on reference under section 33(1) of the Enterprise Act 2002 given on 28 November 2017. Full text of the decision published on 7 December 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.

SUMMARY

1. Acteon Group Limited and its subsidiaries InterMoor Limited, IOS InterMoor AS and InterMoor Pte. Limited (together **Acteon**) have agreed to acquire Viking SeaTech Limited, Viking SeaTech (Aus) Pty Ltd, PT Viking SeaTech Indonesia, and certain trades and assets of Viking SeaTech Norge AS (Norway) and Viking SeaTech (Singapore) Pte Limited (together **Viking SeaTech**) (the **Merger**). Acteon and Viking SeaTech 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 share of supply 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. Both Parties supply services for the positioning and mooring of off-shore rigs in the North Sea, including: (i) rental of mooring equipment; (ii) sale of mooring equipment; (iii) engineering and marine services; and (iv) survey positioning services. The main overlap occurs in the rental supply of mooring

equipment. The CMA did not identify any plausible competition concerns with regard to the other services.

4. The CMA focussed its assessment on the rental of mooring equipment to rigs located in the part of the North Sea which falls within the territorial waters of the UK (**UK North Sea**).[1] According to the available evidence, it is important to have a physical presence from which to provide equipment to rigs offshore, which, for rigs located in the UK North Sea, usually means having equipment in Aberdeen, Montrose or another suitable location on the east coast of Scotland.

5. The CMA assessed whether the Merger could raise competition concerns as a result of horizontal unilateral effects in the rental supply of mooring equipment to rigs in the UK North Sea.

6. The CMA believes that, whilst the Parties have bid against each other in many tenders for the rental of mooring equipment, they are not particularly close competitors. Specifically, whilst some customers identified Acteon's UK subsidiary, InterMoor Limited (**InterMoor**), as a strong provider, with a high volume of equipment and robust processes and procedures, some customers indicated that Viking SeaTech is a weak competitor.

7. The CMA also believes that there are other credible suppliers of this equipment, some of which were closer competitors to InterMoor than Viking SeaTech pre-Merger and which together will continue to constrain the merged entity post-Merger (namely First Marine Solutions and Deep Sea Mooring). Additionally, [✂] other suppliers have confirmed their intentions to enter this market in the next 12 months, [✂]. Moreover, the CMA believes that self-supply exerts some constraint in this market, with some customers indicating that they self-supply or would consider this option.

8. The CMA believes that these constraints, taken together, are sufficient to ensure that the Merger will not give rise to a realistic prospect of a substantial lessening of competition (**SLC**) in the rental supply of mooring equipment in the UK North Sea, as a result of horizontal unilateral effects.

9. The Merger will therefore **not be referred** under section 33(1) of the Enterprise Act 2002 (the **Act**).

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[1] The same geographic area was referred to in a previous OFT decision of 13 March 2008 as the North Sea section of the UK Continental Shelf (ME/3503/08, Anticipated acquisition by Seawell Holding (UK) Limited of Noble Drilling (UK) Limited).

ASSESSMENT

Parties

10. Acteon Group Limited is a UK registered company specialising in subsea services, mainly to the oil, gas and renewables industries. The turnover of Acteon Group Limited in 2016 was approximately £351 million worldwide and approximately £80.1 million in the UK.

11. InterMoor is specialised in the mooring and foundation business, and its principal service is the rental supply of mooring equipment to rigs. Its turnover was approximately £26.3 million worldwide and around £16.8 million in the UK in 2016.

12. Viking SeaTech is a global provider of marine services to the energy industry, including marine engineering and consultancy services, rental of mooring equipment, and survey and rig positioning services. The turnover of Viking SeaTech in the financial year ending 31 August 2017 was approximately [✄] worldwide, and around [✄] in the UK.

Transaction

13. The transaction involves the proposed acquisition by Acteon of Viking SeaTech pursuant to a sale and purchase agreement entered into on 16 August 2017.

Jurisdiction

14. As a result of the Merger, the enterprises of Acteon and Viking SeaTech will cease to be distinct.

15. The Parties overlap in the rental supply of mooring equipment for oil rigs and platforms, with a combined share of supply of approximately [40-50]% (with an increment of [10-20]% brought about by the Merger), based on the number of rigs in the UK North Sea that each of the Parties is currently supplying. The CMA therefore believes that the share of supply test in section 23 of the Act is met.

16. Accordingly, the CMA 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.

17. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 19 October 2017 and the statutory 40 working day deadline for a decision is therefore 13 December 2017.

Counterfactual

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

19. In this case, there is no evidence supporting a different counterfactual, and the Parties and third parties have not put forward arguments in this respect. Therefore, the CMA believes the prevailing conditions of competition to be the relevant counterfactual.

Background

20. According to the Parties, there are broadly three types of rigs currently in use in the UK North Sea:

    (i) **moored rigs**: generally suitable for depths between 50 to 1,500 metres. These rigs are connected by anchors and chains to the seabed and the rig moves in a limited arc on the sea surface;

    (ii) **jack-up rigs**: suitable for depths up to 140 metres. These rigs are moved into position with hydraulics and rest on the seabed, with the drilling equipment 'jacked-up' above the water surface; and

    (iii) **dynamic positioning** (**DP**): suitable for depths below 70 metres. These rigs maintain their position through use of the rig's engines and do not, therefore, usually require mooring equipment.

21. The Parties primarily provide rental mooring equipment to moored rigs. The Parties have indicated that the use of DP systems for rig positioning has

[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).

accelerated over the past decade due to technological development and reduce DP system costs. According to the Parties, most new rigs being built are either jack-up rigs or rigs designed to be fitted with DP systems and it has been over ten years since a new moored rig was built.

22. In general, rigs are either in operation (ie active), fully crewed with the necessary assets to become active within the next 12 months (ie warm stacked), or have no crew on board or positioning assets attached and are not expected to re-enter the active phase within the next 12 months (ie cold stacked). Since cold stacked rigs usually do not have mooring equipment attached, the CMA has focused its assessment on active and warm stacked rigs only.

23. The main customers of rental mooring equipment are oil companies, rig operators and rig positioning companies.

- **Oil companies** are the primary customer. According to the evidence available to the CMA, oil companies either delegate the rental of mooring equipment to the rig operator or contract directly with the provider of rental mooring equipment.

- **Rig operators** and **drilling companies** sometimes own the mooring equipment and use it to moor the rig itself. However, according to the evidence available to the CMA, these operators do not always own all necessary equipment and may prefer to rent from suppliers of rig mooring equipment due to the high costs associated with storing and maintaining this equipment and the need for regular inspections.

- **Rig positioning companies** sometimes cross-rent mooring equipment from their competitors (ie other rig positioning companies) in order to secure a contract, which they are unable to fulfil solely with their own equipment.

24. According to the Parties and some third parties, over the last few years there has been a decline in the licensing of new fields and the market price of oil and gas. As a consequence, there is a large volume of mooring assets which are not currently utilised, and are available for rental at any time.[3]

Frame of reference

25. Market definition provides a framework for assessing the competitive effects of a merger and involves an element of judgement. The boundaries of the

[3] For example, Viking SeaTech currently has [✄] of its assets in use globally.

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 merging 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.[4]

26. The Parties overlap in the rental supply of mooring equipment to rigs located in the UK and globally.

Product scope

27. The Parties both supply services for the positioning and mooring of off-shore oil rigs, including rental of mooring equipment, sale of mooring equipment, engineering and marine services, and survey positioning services.

28. The Parties' UK turnover in sales of mooring equipment, and engineering and marine services, are limited, and Viking SeaTech does not offer survey positioning services in the UK at all. Third parties did not raise any concerns regarding the impact of the Merger on these services. Therefore, the CMA has not identified any plausible competition concerns with regard to these services and they are not discussed further in this decision.

29. The Parties' main overlap is in the rental supply of mooring equipment. Oil and gas offshore rigs (in particular, moored rigs) need mooring equipment to fix them in position, with the help of anchors, chains and buoys. The Parties did not submit any evidence indicating a wider product frame of reference. However, the CMA considered whether there was evidence for a narrower product frame of reference, involving segmentation by (a) the type of rig, or (b) the type of equipment provided.

Rental supply of mooring equipment to moored rigs, jack-up rigs and DP rigs

30. The Parties submitted that DP and jack-up rigs do not generally require mooring equipment. This is because jack-up rigs rest on the ocean floor and do not require mooring equipment to anchor them; and DP rigs maintain their position through the use of the rigs' engines.

31. The Parties acknowledged that mooring equipment is occasionally rented for DP and jack-up rigs, primarily for safety and back-up purposes, eg in harsh weather conditions. However, the Parties stated that the mooring equipment required for jack-up rigs and DP rigs is minimal in comparison to the volume

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[4] *Merger Assessment Guidelines*, paragraph 5.2.2.

required for moored rigs. The Parties indicated that operators of jack-up rigs typically require, by value, only around 2-5% of the mooring equipment that would be required for a moored rig.

32. The Parties submitted that currently InterMoor only supplies moored rigs, whereas Viking SeaTech supplies moored rigs and, to a much lesser extent, jack-up and DP rigs.

33. Some third parties confirmed that mooring equipment is primarily hired for moored rigs, although it can also be hired for DP and jack-up rigs. Third parties also confirmed that, although there may be some differences between the grades of anchors and chains for each type of rig, the same mooring equipment can be used on most types of rigs, and that personnel servicing each type of rig is also broadly similar.

34. In light of the above and, in particular, the lack of differentiation between the mooring equipment required by different types of rig, the CMA does not believe it necessary to further segment the frame of reference by type of rig.

Rental supply of mooring equipment by type of product

35. According to the Parties and third parties, in general, contracts will specify the mooring equipment needed, which usually includes chain, anchors, buoys, wire and rope. The CMA therefore considered whether the supply of rental mooring equipment could be narrowed further by the type of product supplied.

36. Many customers who replied to the CMA’s market testing stated that they look for a supplier to provide all the necessary equipment, and that they would not rent different types of equipment from different suppliers for the same rig. Most customers also indicated that the key factors they prioritise in awarding contracts are the price and technical capability, including stock levels and product range.

37. This evidence indicates that, whilst customers will choose a supplier based on the product range and availability, they do not choose their supplier on a product-by-product basis. This broadly supports the Parties’ submission that the relevant product scope is the supply of rental mooring equipment, without distinction by type of equipment.

38. In light of the above, the CMA does not believe it necessary to further segment the frame of reference by type of product. However, to the extent relevant, the CMA has considered the product range and availability of suppliers in its competitive assessment.

Conclusion on product scope

39. For the reasons set out above, the CMA has assessed the impact of the Merger on the rental supply of mooring equipment (for all types of rigs).

Geographic scope

40. The Parties submitted that some features of the market suggest that the geographic scope for the rental supply of mooring equipment is global, including that suppliers are active internationally, the Parties provide rental equipment to countries where they have no personnel or infrastructure (eg Papua New Guinea and India), there are common terms and internationally accepted guidelines set by independent classification societies, and geographic location has no impact on the Parties' pricing, advertising or marketing strategies, which are set globally.

41. However, the evidence available to the CMA indicates that it is essential for suppliers to have national, or even regional, presence in order to serve local customers. Several large customers active in the UK North Sea, which responded to the CMA's market testing, indicated that they only invite a company with an established presence in the UK to bid for their supply contract. Further, most customers indicated that, due to procedural and safety concerns and transportation costs, operators must have a base in the UK. In addition, the CMA noted that the Parties stock most of the rental equipment that they use to serve customers located in the North Sea in either Aberdeen or Montrose (for the UK North Sea) or Stavanger, Mongstad or Wergeland (for the part of the North Sea which falls within the territorial waters of Norway – the **Norwegian North Sea**).[5]

42. On the basis of this evidence, and on a cautious basis, the CMA has assessed the impact of the Merger on supply in the UK North Sea.

Conclusion on frame of reference

43. For the reasons set out above, the CMA has considered the impact of the Merger on the rental supply of mooring equipment in the UK North Sea.

[5] According to the information provided by the Parties, InterMoor stocks [20-30]% of its equipment in the UK and [40-50]% in Norway. Viking SeaTech has [40-50]% of its assets located in the UK and [30-40]% in Norway. Apart from the North Sea, InterMoor stocks the rest of its equipment mainly in the United States and Singapore, and Viking SeaTech stocks its equipment in Australia, Singapore and Indonesia.

Competitive assessment

Horizontal unilateral effects

44. Horizontal unilateral effects may arise when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged firm profitably to raise prices or to degrade quality on its own and without needing to coordinate with its rivals.[6] Horizontal unilateral effects are more likely when the merging parties are close competitors. 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 horizontal unilateral effects in the rental supply of mooring equipment in the UK North Sea.

45. In order to assess the likelihood of the Merger resulting in horizontal unilateral effects, the CMA considered:

(a) shares of supply;

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

(c) competitive constraints from other suppliers.

Shares of supply

46. The Parties submitted that there are currently 33 rigs in the UK North Sea (active and warm stacked). InterMoor supplies rental mooring equipment to [✄] of these rigs and Viking SeaTech supplies this equipment to [✄] of these rigs. Consequently, on this basis, the Parties have a combined share of supply of [40-50]%, with an increment of [10-20]% brought about by the Merger, based on the number of rigs in the UK North Sea that each of the Parties is currently supplying.[7]

47. However, the Parties were unable to submit complete share of supply data. They submitted that other rig positioning companies may also be providing rental equipment to the rigs they are supplying, and that sometimes they are required to provide rental mooring equipment for a particular type of rig without knowing which rig the equipment will be used on.

48. The CMA attempted to verify the shares of supply provided by the Parties by collecting data from third parties. Some competitors confirmed that they are providing rental mooring equipment to other rigs in the UK North Sea and

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[6] *Merger Assessment Guidelines*, from paragraph 5.4.1.

[7] The CMA believes these shares may reflect some self-supply but, as set out below, has not been able to calculate more accurate market shares.

some customers confirmed that they self-supply this equipment whenever possible. However, although this additional data enabled the CMA to make some adjustments to the estimates provided by the Parties, it was not possible to estimate precise shares of supply.

49. While shares of supply can generally be informative regarding the relative strength of various suppliers in a market, shares in bidding markets can change substantially as contracts change hands through tenders, particularly if there are relatively few large contracts.

50. The Parties submitted that competition between rental suppliers of mooring equipment occurs through bidding processes. They said that, when contracts are put out for tender, all suppliers competent to provide services in the UK North Sea are typically invited to bid.

51. Many customers confirmed that they typically award business through competitive tenders, and this was also confirmed by most competitors.

52. The CMA observed that tenders or contracts are typically renewed on a one to five-year cycle and so only a portion of the market is contestable by a new entrant at any given point in time.[8] While this could represent a barrier to entry/expansion, it could also cause the shares of supply of recent entrants to understate their competitive effect in the market.

53. In addition, the Parties and some third parties indicated that there is a high degree of cross-hiring of mooring equipment between suppliers (ie Viking SeaTech will cross-hire from InterMoor, etc), which makes shares of supply to final customers harder to interpret.

54. In light of the above, the CMA placed limited weight on shares of supply and instead focussed on an assessment of closeness of competition and the extent to which alternative suppliers would constrain the Parties post-Merger.

Closeness of competition between the Parties

55. The Parties indicated that they are not each other's closest competitors. In particular, the Parties said that Viking SeaTech's performance has been weakening and customers have been switching away due to delayed supply.

[8] One customer indicated that tenders could also be renewed on a three to seven-year cycle.

56. The CMA sought the views of competitors and customers of the Parties on the extent to which the Parties compete. Whilst some considered the Parties to be alternative providers, most of them did not consider them close competitors:

(a) Some customers noted that Viking SeaTech lacks experience and competent personnel, and said that it has lost presence in some regions of the North Sea. Just one customer indicated that over the last twelve months Viking SeaTech has improved its ability to provide rental mooring equipment. Several customers indicated that they preferred InterMoor over Viking SeaTech, including because of their good level of service and support.

(b) Many customers noted that InterMoor has a large stock of equipment and this placed it in a strong position against its rivals. By contrast, the evidence with regard to Viking SeaTech was mixed, with some customers indicating that equipment availability has been an issue for Viking SeaTech but others submitting that it has good equipment stocks.

(c) Most UK customers, when asked about alternative suppliers of mooring equipment, did not list the other merging party as a possible alternative supplier. Most customers mentioned a different player in the market as their alternative first-choice.

(d) Whilst tender data shows that the Parties have bid against each other in most tenders for the rental supply of mooring equipment, it indicates that other providers may be closer competitors to InterMoor.

57. On the basis of this evidence, the CMA believes that, whilst InterMoor and Viking SeaTech compete for the rental supply of mooring equipment in the UK North Sea, they are not each other's closest competitor. As set out below, there are other suppliers, such as First Marine Solutions, which appear to be closer competitors to InterMoor than Viking SeaTech is.

Competitive constraints from other suppliers

58. Unilateral effects are more likely where customers have little choice of alternative suppliers. The CMA therefore considered whether there are alternative suppliers which would provide a competitive constraint on the merged entity.

59. The Parties submitted that there are a number of companies active in the UK North Sea that participate regularly in supplying assets and bidding for tenders. The CMA investigated the extent to which these alternatives were considered credible alternatives by customers.

First Marine Solutions

60. First Marine Solutions (**FMS**) is a leading international energy service and equipment organisation that claims to have the largest inventory of mooring equipment in the North Sea.[9] FMS has also recently acquired the mooring equipment business of Interocean Marine Services.[10]

61. FMS [✂].

62. Most customers and some competitors considered that FMS competes closely with InterMoor and Viking SeaTech. The vast majority of customers contacted by the CMA said that they use FMS for the rental supply of mooring equipment, or that they would consider using it for future contracts. One of these customers stated that the Merger will not have an effect on competition as FMS is becoming a very large competitor to InterMoor and will be able to exert a strong competitive constraint on the merged entity.

63. On the basis of this evidence, the CMA believes that FMS competes closely with InterMoor and Viking SeaTech, and that it would continue to exert a strong competitive constraint on the merged entity.

Deep Sea Mooring

64. Deep Sea Mooring (**DSM**) claims to have a market leading position in the Norwegian North Sea and is expanding internationally.[11] DSM [✂]. One customer confirmed that [✂], and several customers told the CMA that they expect DSM to build a presence in the UK market in the next 12 months. Some stated that they would consider inviting DSM to their future tenders in the UK.

65. On the basis of this evidence, the CMA believes that DSM will compete closely with the merged entity.

Other competitors: Delmar Systems Inc and Triton Marine

66. The CMA identified some other current or future competitors to the Parties. These included Delmar Systems Inc (**Delmar**) and Triton Marine & Engineering Consultants Ltd (**Triton Marine**). [✂].

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9 http://www.firstmarinesolutions.com/

10 http://subseaworldnews.com/2017/04/18/first-marine-solutions-and-interocean-join-forces/

11 http://deepseamooring.com/about/

67. Delmar is a US-based company that has a wide variety of equipment and systems for any mooring application.[12] Delmar [✄]. Some customers said that Delmar may build a presence in the UK in the next 12 months.

68. Triton Marine is a UK-based company founded in 2017 that claims to have extensive experience in marine operations gained from working with operators and rig owners worldwide.[13] Triton Marine [✄].

69. Some customers and competitors expressed concern that the Merger would reduce the number of suppliers providing rented mooring equipment in the UK North Sea. However, most third parties did not consider the Parties to be close competitors and, when asked about alternative suppliers of mooring equipment, they named a number of different providers.

70. On the basis of this evidence, the CMA believes that there are alternative suppliers of rented mooring equipment in the UK North Sea, which would continue to constrain the merged entity.

Self-supply

71. The Parties submitted that customers often have the option of self-supplying their mooring equipment, noting that the volume of mooring equipment owned by the drilling companies exceeds current demand by between four and six times. The Parties indicated that InterMoor's key customers have reduced their required scope of work significantly as they are increasingly choosing their own equipment rather than renting it from third party suppliers.

72. Around a third of the customers that replied to the CMA's market testing indicated that they self-supply mooring equipment whenever it is possible as this minimises the costs. Additionally, one customer indicated that, although it does not self-supply at the moment, in the event of any price rise it would buy its own equipment and start self-supplying.

73. Most of the customers who indicated that they do not self-supply explained that they could not do this, eg due to the high cost of mooring equipment, the temporary nature of its use, the associated maintenance and inspection liabilities, and/or because it is not their core business.

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[12] http://www.delmarus.com/site2.php

[13] http://www.tmaec.co.uk/

Conclusion on competitive constraints from other suppliers

74. As set out above, the CMA believes that FMS competes closely with the Parties, whilst DSM exerts a significant constraint on the Parties. There is also some constraint from other current or possible suppliers, such as Delmar. Self-supply also poses a constraint on the Parties for some customers.

Conclusion on horizontal unilateral effects

75. For the reasons set out above, the CMA believes that the Parties are not particularly close competitors and that the merged entity will continue to be constrained by a number of other suppliers and, for some customers, by the option to self-supply. 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 the rental supply of mooring equipment in the UK North Sea.

Barriers to entry and expansion

76. Entry, or the 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.

77. The evidence received by the CMA regarding the entry of new suppliers into the market of rental mooring equipment has been considered within the competitive assessment above.

78. The CMA has not had to conclude on barriers to entry or expansion as the Merger does not give rise to competition concerns on any basis.

Third party views

79. The CMA contacted customers and competitors of the Parties. One competitor and a small minority of customers raised concerns indicating that InterMoor and Viking SeaTech are two significant suppliers of rented mooring equipment and, after the Merger, there will be few suppliers in the UK North Sea. No other third parties raised concerns about the Merger.

80. Third party comments have been taken into account where appropriate in the competitive assessment above.

Decision

81. Consequently, the CMA does not believe that it is or may be the case that the Merger may be expected to result in an SLC within a market or markets in the UK.

82. The Merger will therefore **not be referred** under section 33(1) of the Act.

Andrew Wright
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Competition and Markets Authority
28 November 2017