

Anticipated acquisition by Ensco plc of Rowan Companies plc

Decision on relevant merger situation and substantial lessening of competition

ME/6768/18

The CMA's decision on reference under section 33(1) of the Enterprise Act 2002 given on 15 February 2019. Full text of the decision published on 14 March 2019.

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

SUMMARY

1. Ensco plc (**Ensco**) has agreed to acquire Rowan Companies plc (**Rowan**) (the **Merger**). Ensco and Rowan are together referred to as the **Parties**.ⁱ
2. The Competition and Markets Authority (**CMA**) believes that it is or may be the case that each of Ensco and Rowan is an enterprise; that these enterprises will cease to be distinct as a result of the Merger; and that the share of supply test is met. 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 offshore drilling services using North Sea capable (**NSC**) jack-up rigs in North West (**NW**) Europe, excluding Norway, because Ensco's jack-up rigs are not technically capable or certified to operate in Norwegian waters. The CMA has therefore assessed the impact of the Merger and considered its impact in the provision of offshore drilling services using NSC jack-up rigs in NW Europe (excluding Norway), without concluding on the exact frame of reference.

4. The CMA assessed whether there is a realistic prospect that the Merger gives rise to a substantial lessening of competition (**SLC**) as a result of horizontal unilateral effects.
5. The CMA found that the differences between the rigs in the Parties' respective fleets meant that they are not close competitors. In addition, the CMA found that the merged entity would face a number of competitive constraints post-Merger, including strong competition from other providers of offshore drilling services using NSC jack-up rigs in NW Europe (excluding Norway) and, to a lesser extent, jack-up rigs operating in Norway with a Norwegian acknowledgment of compliance ('**AoC**').
6. Therefore, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC.
7. The Merger will therefore **not be referred** under section 33(1) of the Enterprise Act 2002 (the **Act**).

ASSESSMENT

Parties

8. Ensco, a company incorporated in England and Wales and listed on the New York stock exchange, is a provider of offshore contract drilling services to the oil and gas industry. Ensco owns and operates an offshore drilling fleet of 59 mobile offshore drilling units (**MODUs**), comprising 35 jack-up rigs, 12 semisubmersible rigs, and 12 drillships.¹ The turnover of Ensco in the 2017 financial year was approximately £1.34 billion worldwide of which approximately £120 million was generated in the UK.
9. Rowan, a company incorporated in England and Wales and listed on the New York stock exchange, is a provider of offshore contract drilling services to the oil and gas industry. Rowan owns and operates an offshore drilling fleet of 15 MODUs, comprising 11 jack-up rigs and four drillships. Rowan also owns 50% of ARO Drilling, a joint venture company with Saudi Aramco. ARO Drilling currently operates a fleet of 16 jack-up rigs. The turnover of Rowan in the 2017 financial year was £936 million, of which approximately £42 million was attributable to the UK.

¹ This includes one jack-up and two drillships under construction.

Transaction

10. The proposed transaction is the acquisition by Ensco of Rowan. The Parties have entered into an agreement under which Rowan will acquire Ensco in an all-share transaction.
11. The Parties informed the CMA that the Merger is also the subject of review by competition authorities in the USA and Saudi Arabia.

Jurisdiction

12. Each of Ensco and Rowan is an enterprise. As a result of the Merger, these enterprises will cease to be distinct.
13. The Parties overlap in the supply of offshore drilling services, with a combined share of supply of [50-60]% in NW Europe and [60-70]% in the UK (increment [10-20]% in NW Europe and [10-20]% in the UK).² The CMA therefore believes that the share of supply test in section 23 of the Act is met.
14. 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.
15. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 9 January 2019 and the statutory 40 working day deadline for a decision is therefore 5 March 2019.

Counterfactual

16. 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.³

² The CMA estimated shares of supply based on the number of days a rig was under contract during the year, see also paragraph 56 below.

³ *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).

17. 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

18. Exploration and production ('E&P') companies⁴ use offshore drilling services to discover offshore oil and gas reservoirs and extract their contents.
19. Offshore drilling services are provided by drilling contractors using various types of MODUs, which can be subdivided based on their technical specification and water depth capabilities:
- (a) **Jack-up rigs** – bottom supported drilling units capable of operating in shallow water at depths of up to 500 feet. They are differentiated and vary in terms of their technical specifications (such as maximum water depth capability, maximum drilling depth, cantilever reach and configuration), making different jack-ups more or less suitable for different projects. Based on their size and water depth capabilities, jack-ups can be subdivided into the following categories:
- (i) **Benign (standard)** – smaller rigs not designed for harsh environments, with hulls of around 140 feet⁵ and a typical maximum depth of 200 feet.⁶ In the North Sea, these rigs operate only in southern regions.
- (ii) **Harsh environment ('HE')** – larger rigs with hulls between 156 and 164 feet and a typical maximum depth of 300 feet. These rigs are able to operate in central areas of the North Sea.
- (iii) **Ultra-harsh environment ('UHE')** – rigs with extra-large hulls (exceeding 200 feet) and able to operate in water depth of 400-500 feet. UHE rigs are able to operate in all parts of the North Sea.
- (b) **Floaters**, unlike jack-ups, do not rest on the seafloor but float on the water:

⁴ E&P companies include multinational companies such as BP, ConocoPhillips, Shell and Total as well as some smaller independent companies, such as Cairn Energy.

⁵ The hull size is measured as the distance between the jack-up's legs.

⁶ The CMA understands that a rig's maximum water depth capabilities may vary depending on the environmental conditions the rig is operating under. For instance, if a rig is drilling in harsh or very harsh environments, it may have to maintain a higher air gap between the water and the hull of the rig. As a result, rig's actual operating capabilities may be lower than those provided in the rig's technical specifications.

- (i) **Semi-submersible rigs** sit on giant pontoons and hollow columns and maintain their position during drilling using multiple mooring lines secured to the seabed by anchors. Semi-submersible rigs are capable of operating in water depths of up to 10,000 feet and are well suited to drilling in harsh environments due to their inherent stability.⁷
 - (ii) **Drillships** are seagoing vessels which have drilling equipment installed on the deck. Drillships operate in water depths of up to 12,000 feet. They are not stable in rough water which makes them unsuitable for harsh environments.
20. Offshore drilling contracts are awarded on a dayrate basis, which is usually fixed over the contract term. Rig demand and dayrates paid are strongly influenced by oil prices, ie the demand for rigs increases when oil prices are high and *vice versa*.

Frame of reference

21. 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 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.⁸

Product scope

22. The Parties overlap in the supply of offshore drilling services using jack-up rigs.

Parties' submission

23. The Parties submitted that the relevant product scope for the purposes of this Merger should be the provision of offshore drilling services using jack-up rigs that are suitable for use in the North Sea. They said that jack-ups and floaters differ in terms of their cost of construction and in terms of their dayrates which make semi-submersible rigs less competitive than jack-up rigs for offshore

⁷ Like jack-ups, semi-submersible rigs can also be further subdivided based on their technical specifications and ability to operate in different environmental conditions. Since neither of the merging Parties operate any semi-submersible rigs in NW Europe [3<], the CMA has not examined semi-submersible rigs further.

⁸ [Merger Assessment Guidelines](#), paragraph 5.2.2.

drilling contracts in shallower waters (ie where their capabilities overlap). The Parties said that, while there are narrower potential frames of reference (eg segmentation by UHE vs HE vs benign jack-ups, or water depths), these differences could be taken into consideration in the competitive assessment.

Previous cases

24. The OFT has previously considered the provision of offshore drilling services in its 2007 decision on the anticipated merger between Transocean Inc. and Globalsantafe Corporation.⁹ However, the parties in that case did not overlap in the provision of jack-up rigs but the provision of floaters. Based on the differences in capabilities between jack-ups and floaters, the OFT considered the provision of drilling services with jack-ups and floaters to form two separate frames of reference.¹⁰

Third parties' views

25. Third-parties submitted that there was some, although very limited, overlap between jack-up and semi-submersible rigs. While some customers said that they specify the type of rig they require in their contracts, others said that they did not always do so, allowing drilling contractors to bid any rig that met the technical requirements.

CMA assessment

26. The CMA assessed whether (i) jack-up rigs and semi-submersible rigs are part of the same frame of reference, and (ii) whether there exist narrower frames of reference according to the environment in which different types of jack-up rig operate.

Jack-up vs semi-submersible rigs

27. As set out in the background section (see paragraph 19), different types of MODUs are more or less suitable to operate in different environmental conditions. In the North Sea, operations are generally limited to NSC jack-up rigs and semi-submersible rigs, which are designed for the particularly harsh weather conditions (ie strong winds and large waves) of the North Sea. Therefore, the CMA has limited its assessment of the impact of the Merger to

⁹ OFT Decision, ME/3310/07 [Anticipated merger between Transocean Inc. and Globalsantafe Corporation](#), 26 November 2007 (**Transocean/Globalsantafe**)

¹⁰ The OFT did not look at jack-up rigs in detail in its decision and focused rather on a possible further segmentation within floaters; Transocean/Globalsantafe paragraphs 9 to 15.

the substitutability between NSC jack-up rigs and semi-submersible rigs, and has not further examined the constraint from drill-ships or other non-NSC rigs.

28. The data submitted by the Parties indicates that [§<]. This, together with third party responses, indicates that, while jack-up rigs may face some constraint from semi-submersible rigs for offshore drilling contracts in NW Europe, the constraint is limited. The CMA also found that, on the supply side, the market structure differs significantly, as different operators compete for contracts using jack-up and semi-submersible rigs.¹¹
29. Therefore, on a cautious basis, the CMA assessed the impact of the Merger in the provision of offshore drilling services using jack-up rigs only.

Narrower frames of reference

30. The CMA also considered whether it was appropriate to assess the impact of the Merger in narrower frames of reference.
31. As a result of their different technical specifications and water depth capabilities (see paragraph 19 above), different types of jack-up rig compete only rarely for the same contract. Benign jack-ups in NW Europe are only used in shallower water depths in the southern part of the North Sea and, while UHE jack-ups might be able to operate in shallower waters, it would not typically be economic to use this resource in this way (given that a UHE jack-up rig is more expensive to operate than a benign jack-up rig).
32. The CMA assessed whether there was a competitive constraint (albeit asymmetric), whereby UHE jack-ups compete for the same contracts with HE jack-ups in lower water depths, but not vice versa.
33. The Parties and third parties submitted that HE jack-ups often have a cost advantage compared to UHE rigs due to their lower build and operating costs, and some modern HE jack-up rigs have higher efficiency capabilities compared to some UHE rigs.
34. Data submitted by the Parties suggests that HE and UHE jack-up rigs tend to operate in different geographic areas, with active HE and benign jack-up rigs operating in the UK (11 rigs), the Netherlands (two rigs) and Denmark (one rig), while the majority of active UHE jack-up rigs are located in Norway, where the weather conditions are harshest. Only about a quarter (three out of

¹¹ Eg, neither of the merging Parties operate any semi-submersible rigs in NW Europe or Norway. See also [§<].

11) of active UHE jack-up rigs in NW Europe are located outside Norway, all of which are currently in the UK.¹²

35. The data also shows that the UHE jack-up rigs operating outside Norway tend to be significantly older, eg the average age of UHE jack-up rigs currently operating in the UK is 17 years, whereas the average age of UHE rigs which are active in Norway is 4 years. This suggests that the competitive constraint from UHE jack-up rigs on HE jack-up rigs is limited to older, less efficient UHE rigs which may be less able to compete effectively in the more demanding conditions of Norway.
36. Bidding data submitted by the Parties (see paragraphs 63 to 65 below) suggest that UHE rigs compete with HE rigs in some instances. During the period from 2014 to 2018, despite offering different types of jack-up rig,¹³ Rowan and Ensco bid against each other in [X] out of [X] tenders (ie [X] instances) in NW Europe (excluding Norway¹⁴), with Rowan winning [X] bid with a UHE rig. Third parties suggested that, in particular in the current market environment characterised by weak demand and low dayrates in NW Europe, UHE jack-ups were more likely to compete for all types of project.
37. Based on the evidence set out above the CMA believes that there is at least some constraint exerted by UHE jack-up rigs on HE jack-up rigs in NW Europe.¹⁵ However, since no competition concerns arise on any plausible basis, it was not necessary for the CMA to conclude on whether different types of jack-up rig represent a single product frame of reference.
38. Given that the Parties provide offshore drilling services in NW Europe, including Norway, using different types of jack-up rig, on a cautious basis, the CMA has assessed the impact of Merger by reference to all types of NSC jack-up rig. Any differentiation between benign, HE and UHE jack-up rigs has been taken into account in the competitive assessment.

Conclusion on product scope

39. For the reasons set out above, and on a cautious basis, the CMA has assessed the impact of the Merger in the provision of offshore drilling services

¹² Two of these rigs are operated by Rowan and one by Maersk; only Maersk's rig has an AoC to operate in Norway.

¹³ Ensco only operates HE and benign jack-ups, while Rowan only operates UHE jack-ups in NW Europe.

¹⁴ Ensco does not operate any jack-up rigs in Norway.

¹⁵ The CMA understands that only one benign jack-up is currently operating in NW Europe. The CMA has therefore not been able to estimate to what extent benign and HE jack-up rigs compete with each other in NW Europe. As with the constraint between HE and UHE rigs, the competitive constraint is likely to be asymmetric, with HE rigs likely constraining benign rigs but not vice versa.

using all types of NSC jack-up rig. However, it was not necessary for the CMA to reach a conclusion on the product frame of reference, since no competition concerns arise on any plausible basis.¹⁶

Geographic scope

Parties' submissions

40. The Parties submitted that the market for offshore drilling services using jack-up rigs is global. The Parties said that the narrowest plausible geographic frame of reference for the purposes of the CMA's assessment of the Merger was NW Europe, including Norway. This was because rigs were mobile by design, there were no material regulatory requirements and costs of moving jack-up rigs were low compared to the value of drilling contracts. The Parties provided examples of rig movements between regions.

Previous cases

41. In *Transocean/Globalsantafe* the OFT concluded that the geographic frame of reference was wider than the UK continental shelf ('**UKCS**') but took a cautious approach and assessed the effects of the transaction in the UKCS, while also taking into account possible entry into the UKCS by floaters coming from elsewhere in NW Europe or other regions.¹⁷

Third party views

42. Third-party responses received by the CMA suggested that rig transportation costs are often significant and can limit contractors' incentives to move rigs over large distances. Third parties said that drilling contractors would only consider moving rigs from other worldwide locations in limited circumstances, eg where the customer agreed to cover transportation costs or where the contract was sufficiently large to allow recovery of the costs incurred. Similarly, some customers stated that they would be more likely to choose a rig located near the area of operation and would only consider contracting a rig located further away if the rig could offer a particularly attractive dayrate.

¹⁶ See competitive assessment at paragraphs 54 et seq.

¹⁷ *Transocean/Globalsantafe* at paragraph 31.

CMA assessment

Worldwide vs North Sea (ie NW Europe and Norway)

43. The Parties provided estimates showing that the costs associated with moving a jack-up rig between continents may range between [§<] to [§<], representing between [§<] to [§<] of the average annual revenue obtained by NSC jack-up rigs worldwide. By contrast, moving a rig within the North Sea costs between [§<] to [§<], representing between [§<] to [§<] of the average annual revenue obtained by NSC jack-up rigs in the North Sea.¹⁸ These significantly different transportation costs would indicate that competition on rigs in the North Sea from rigs located outside the North Sea may be limited.
44. In addition, the rig movement data submitted by the Parties shows that between 2013 and 2018 only one NSC jack-up rig was moved to the North Sea and four jack-up rigs were moved from the North Sea to other worldwide locations.¹⁹ The CMA noted comments from various parties that there is currently oversupply of rigs in the North Sea, with several rigs either warm or cold stacked.
45. The Parties' internal documents also indicated that the [§<] as, for example:
- (a) [§<].
 - (b) [§<].
46. Based on this evidence, the CMA believes that the appropriate geographic frame of reference for its assessment of the Merger is no wider than the North Sea. Nevertheless, the competitive constraints exerted by NSC jack-up rigs located outside NW Europe and Norway have been taken into account as part of its competitive assessment.²⁰

Narrower geographic frames of reference within NW Europe

47. The CMA has also assessed whether it is appropriate to delineate narrower geographic scopes within the North Sea, particularly whether Norway should be considered as part of the same geographic frame of reference as the rest of NW Europe.

¹⁸ The actual costs of moving a rig may be even higher, as additional funds may be needed to acquire necessary regulatory certificates and further adjustments, [§<].

¹⁹ There are currently 42 jack-up rigs in the North Sea, 25 of which are currently under contract.

²⁰ The CMA notes that ARO Drilling currently operates a fleet of 16 jack-up rigs. However, given the different economic and environmental conditions in these regions the CMA considers it unlikely that these rigs would move from the Gulf to NW Europe. The CMA has therefore not taken ARO Drilling's fleet into account.

48. The data provided by the Parties shows frequent rig movements between the UK, the Netherlands and Denmark, indicating that jack-up rigs located in these areas compete frequently with each other. By contrast, rig movements between Norway and other areas of NW Europe are significantly less frequent. The data submitted by the Parties indicates that only four of the 17 AoC certified²¹ jack-up rigs are currently located outside Norway and only one out of nine currently active AoC jack-up rigs is located outside Norway.
49. The Parties and some third parties submitted that the dayrates earned in Norway tend to be higher than in the rest of NW Europe, which limited the incentives to bid AoC compliant rigs for contracts outside Norway, unless demand for offshore drilling services in Norway was low. Their higher operating costs also made AoC jack-up rigs less attractive for projects outside Norway.
50. Based on this evidence, the CMA believes that Norway may form a separate geographic frame of reference from the rest of NW Europe as the competitive constraint from AoC jack-up rigs on rigs located outside Norway appears to be limited. However, since no competition concerns arise on any plausible basis, it has not been necessary for the CMA to conclude on this matter.
51. As EnSCO does not have an AoC jack-up rig in its fleet and thus does not operate in Norway, there is no overlap in the provision of offshore drilling services using jack-up rigs in Norway. Therefore, on a cautious basis, the CMA assessed the impact of the Merger by reference to the provision of offshore drilling services using NSC jack-up rigs in NW Europe, excluding Norway. Nevertheless, the competitive constraints exerted by jack-up rigs located in Norway on jack-up rigs located in the rest of NW Europe have been taken into account in the competitive assessment.

Conclusion on geographic scope

52. For the reasons set out above, the CMA has assessed the impact of the Merger in NW Europe, excluding Norway.

²¹ The Parties submitted that the regulatory requirements in Norway are particularly stringent. In order to be able to operate in Norway, a rig must meet specific technical requirements and obtain an AoC, which can be particularly costly. As a result, only 17 of 42 jack-up rigs currently located in NW Europe (including cold-stacked and warm-stacked rigs and those rented for accommodation) had a Norwegian AoC.

Conclusion on frame of reference

53. As set out above, the CMA has assessed the impact of the Merger in the supply of offshore drilling services using NSC jack-up rigs in NW Europe, excluding Norway.

Competitive assessment

Horizontal unilateral effects

54. 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.²² 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 supply of offshore drilling services using NSC jack-up rigs in NW Europe, excluding Norway.

Shares of supply

55. The Parties submitted that market shares are not a reliable indicator of their competitive position because:
- (a) 'lumpy' demand for a low number of high value contracts meant that the win or loss of a single contract could have a material impact on the market shares, and
 - (b) the shares do not reflect the significant differentiation between the Parties.
56. The CMA estimated shares of supply based on the number of days a rig was under contract during the year. The CMA estimated that the Parties' combined share of supply in 2018 for the provision of offshore drilling services using jack-up rigs in NW Europe excluding Norway was [50%-60%] (with an increment of [10%-20%] resulting from the Merger).

²² [Merger Assessment Guidelines](#), from paragraph 5.4.1.

Table 1: Shares of supply of offshore drilling services using jack-up rigs in NW Europe (excluding Norway) (2016 - 2019)

| Drilling contractor | 2016 | | 2017 | | 2018 | | 2019 | |
|-------------------------|------|---------|------|---------|------|---------|------|---------|
| | Rigs | % share | Rigs | % share | Rigs | % share | Rigs | % share |
| EnSCO | [X] | [X] | [X] | [X] | [X] | [X] | [X] | [X] |
| Rowan | [X] | [X] | [X] | [X] | [X] | [X] | [X] | [X] |
| Parties combined | [X] | [X] | [X] | [X] | [X] | [X] | [X] | [X] |
| Borr Drilling | [X] | [X] | [X] | [X] | [X] | [X] | [X] | [X] |
| Maersk | [X] | [X] | [X] | [X] | [X] | [X] | [X] | [X] |
| Noble | [X] | [X] | [X] | [X] | [X] | [X] | [X] | [X] |
| Transocean | [X] | [X] | [X] | [X] | [X] | [X] | [X] | [X] |
| Total | [X] | 100.0% | [X] | 100.0% | [X] | 100.0% | [X] | 100.0% |

Source: CMA analysis based on Parties' data extracted from RigPoint and third parties' data.

Notes: (1) Shares of supply are based on the number of days (as a proportion of the number of calendar days that year) a rig was under contract during the year and thus excludes any rigs which were cold-stacked, warm-stacked, rented for accommodation or not drilling for any other reason. (2) Parties' data extracted from RigPoint for 2019 only includes contracts which started in 2018 or in earlier years and has been updated using data from third Parties, thus shares of supply for this year may not be complete; (3) Transocean has since exited the market for jack-up rigs and (4) Borr Drilling entered the market in August 2016 and acquired Paragon Offshore on 29 March 2018. The jack-up rigs owned and operated by Paragon Offshore before 29 March 2018 have been included in Borr Drilling's rig count.

57. Table 1 shows that EnSCO was, prior to 2019, the largest provider of offshore drilling services using jack-up rigs in NW Europe (excluding Norway) while Rowan was the smallest. All the remaining competitors are similar in size to or larger than Rowan. The CMA notes that, while Maersk had a share of supply of [X] in NW Europe (excluding Norway) in 2018, its share of supply in the North Sea, in NW Europe and Norway, was [X], making it the largest jack-up rig operator in this region.
58. The CMA notes that the jack-up rigs owned and operated by the Parties are differentiated and the contracts for the provision of offshore drilling services are generally awarded by way of tender. In such circumstances, market shares may not be a particularly good indicator of the competitive strength of the Parties. For this reason, the CMA put limited weight on the market share estimates in its assessment.

Closeness of competition

Parties' submission

59. The Parties submitted that they are not very close competitors because:
- (a) The Parties operate different types of jack-up rig: EnSCO's jack-up fleet in the North Sea consists predominantly of HE jack-ups and one benign jack-up, whereas all of Rowan's jack-up rigs in the North Sea are UHE jack-ups. While UHE jack-ups may be able to compete with HE jack-ups for contracts in more shallow waters, benign and HE are unable to

compete for contracts in ultra-harsh environments or deeper waters, where UHE jack-ups primarily operate.

- (b) The competitive constraint exerted by Rowan's UHE rigs on Ensco's HE and benign rigs is limited as their higher construction and operation cost mean they are more expensive to run and require higher dayrates.
- (c) As a result of the different make-up of their respective fleets, the Parties focus on different geographic areas. Two out of four of Rowan's UHE jack-up rigs currently located in the North Sea are certified to operate in Norway, where they are located.

Internal documents

60. The Parties' internal documents indicate that each Party often considers the other as a potential competitor when evaluating their bidding strategy for a tender, but only as one amongst several. For example:
- (a) [REDACTED].
 - (b) [REDACTED].
 - (c) [REDACTED].
 - (d) [REDACTED].
 - (e) [REDACTED].
61. The Parties' internal documents also suggest that, [REDACTED], which could indicate a stronger competitive constraint from UHE jack-up rigs on HE or benign jack-up rigs currently. However, as discussed below, this does not seem to have had a significant effect on the frequency with which Ensco and Rowan have been competing.

Third party views

62. The majority of the merging Parties' customers viewed Ensco and Rowan as close competitors to each other, although some responses confirmed that the offshore-drilling services offered by each the Parties were differentiated. In particular, several customers indicated that Ensco's strengths lay in its large jack-up fleet, consisting of HE and benign jack-ups, and its strong safety and

operational record in the UK, whereas Rowan's strengths²³ related to the capabilities of its fleet of high-specification UHE jack-ups.

Bidding data analysis

63. Bidding data submitted by the Parties and third parties suggested that the Parties have competed for some of the same contracts. Out of [X] competitive tenders which took place between 2014 and 2018 in NW Europe (excluding Norway), Ensco and Rowan participated in [X] and [X] tenders respectively. In [X] of all tenders ([X]), the Parties submitted competing bids for the same contract, of which Ensco won [X] and Rowan [X].²⁴
64. The data showed that Rowan tended to win in deeper waters, where Ensco's HE rigs are not able to operate – ie [X] out of the [X] tenders Rowan won in NW Europe (excluding Norway) were in water depths of approximately 300 feet or above. [X].
65. When Rowan did compete with Ensco in shallower waters, Rowan's UHE jack-up rigs often did not exert a strong competitive constraint on Ensco – in [X] instances where Rowan and Ensco submitted competing bids, Rowan bid [X]. [X] did Rowan submit a lower bid than Ensco, winning [X] of them.²⁵ [X]. The Parties said that these tenders were therefore not representative of the normal competitive interaction between them.
66. Overall, the bidding data suggested that Rowan is not a particularly strong competitor for offshore drilling services using jack-up rigs in NW Europe (excluding Norway). Rowan won [X] tenders ([X] out of [X]) of the tenders in which it participated, whereas Ensco won [X] ([X] out of [X]) of the tenders in which it participated. This is consistent with Rowan's UHE jack-up rigs being less competitive with respect to tenders requiring lower specification HE or benign rigs.

²³ Rowan's inability to offer benign jack-ups was viewed as a weakness by some customers [X]. Some responses were not clear whether that was considered a strength or a weakness, [X].

²⁴ The analysis in this section is based on the data submitted by the Parties and third-party responses. Responses received from the third parties did not always match the Parties' data (eg third-party responses showed that the Parties compete against each other more often than the Parties' data would suggest). This could be the result of (i) the Parties' data being incomplete, (ii) inconsistencies in the third-party responses (eg some third parties could have included all the contractors to which they sent invitations to submit a bid rather than only those actually submitting a bid) and (iii) difficulties in matching the data. However, even taking account of these possible errors/omissions in the Parties' data, the data still indicates the results shown.

²⁵ Based on the data submitted by the third parties, Ensco and Rowan competed against each other in [X] other instances. However, since these were not recorded in the Parties data, no further information on these bids exists.

Conclusion on closeness of competition

67. On the basis of the evidence set out above, the CMA believes that the differences between the rigs in the Parties' respective fleets means that, while the Parties are competitors, they are not close competitors in the supply of offshore drilling services using NSC jack-up rigs in NW Europe, excluding Norway.

Competitive constraints from other suppliers

Parties' submission

68. The Parties submitted that there are a number of other providers of offshore drilling services using NSC jack-up rigs in NW Europe (excluding Norway), such as:
- (a) Borr Drilling started offshore drilling in 2016 and subsequently acquired jack-up rigs from other drilling contractors, Hercules Offshore and Transocean. It acquired Paragon Offshore in 2018. Currently it has 34 jack-ups (and one semisubmersible) worldwide. Its fleet includes one semisubmersible, ten NSC jack-ups and 12 jack-ups currently under construction. It announced in October 2018 that it would activate four new build jack-ups, without having secured firm contracts. At the end of 2018, Borr Drilling had seven HE jack-up rigs in NW Europe (excluding Norway), three of which were active.
 - (b) Maersk Drilling is a Danish drilling company which has been operating for 40 years and has a fleet of 23 rigs (jack-ups, semi-submersibles and drillships) across Europe, Asia, the Americas and Africa. At the end of 2018, Maersk Drilling had three UHE and four HE jack-up rigs in NW Europe (excluding Norway), of which one UHE and two HE jack-ups were active.
 - (c) Noble Corporation is a UK drilling company which has 25 rigs (drillships, jack-ups and semisubmersibles) worldwide. It focuses on ultra-deepwater and high-specification jack-up drilling. Noble has three HE jack-ups and one UHE jack-up rig in the UK and Denmark, and a further nine jack-ups outside NW Europe (of which 6 are NSC). All of Noble's three HE jack-up rigs located in NW Europe (excluding Norway) were active at the end of 2018. Its UHE rig was used for accommodation.

69. The Parties submitted that Rowan tends to compete most closely with UHE jack-ups owned by Maersk, Noble and North Atlantic Drilling,²⁶ whereas Ensco's HE and benign jack-ups have greater similarity to the HE jack-ups owned and operated by Borr Drilling, Maersk and Noble.

Third party views

70. Third parties said that Maersk and Noble in particular, both with extensive drilling experience and diverse fleets, are close competitors to both Ensco and Rowan. Although some customers viewed Borr Drilling as a relatively new operator in the market, most said that this did not in any way reduce its ability to compete effectively for offshore drilling contracts in NW Europe (excluding Norway). On the contrary, some responses suggested that Borr Drilling had a large jack-up drilling fleet, consisting of good size and newer rigs, and was an active player in the market.
71. Most respondents thought that the Merger was unlikely to lead to competition concerns as a number of strong alternative drilling contractors and a large number of jack-up rigs will remain in the market. One response mentioned that some competitors are actively looking to bring further rig options into the market in the next few years, which will increase options for E&P companies. A few customers also mentioned that the Merger was likely to have a positive effect on the merged entity's financial standing, which was beneficial in the current market conditions.

Bidding data

72. The bidding data discussed above (see paragraphs 55 to 66) suggested that a number of alternative providers exist which compete actively with the Parties, even though their shares of supply may not be as large. The data showed that:
- (a) During the period between 2014 and 2018 Ensco lost against Maersk and Borr Drilling²⁷ far more often than it did against Rowan (in [X] and [X] instances respectively, compared with [X] instance against Rowan). Ensco competed against Maersk, Borr Drilling and Noble Drilling more often than against Rowan. This suggests that Maersk and Borr Drilling

²⁶ North Atlantic Drilling is only active in Norway and, thus, has only limited constraint on the Parties in NW Europe.

²⁷ Borr Drilling acquired Paragon Offshore and its fleet on 29 March 2018. As customers did not consider brand name an important competitor parameter, any previous instances in which the Parties competed against Paragon Offshore have been treated as competition against Borr Drilling, [X].

exert the strongest competitive constraint on Ensco, whilst the competitive constraint from Rowan is limited.

(b) In the [X] instances in which Rowan lost a tender in NW Europe (excluding Norway), Ensco won most ([X]), followed by Maersk ([X]), Borr Drilling ([X]) and Noble ([X]). In contrast, in the [X] instances in which Rowan submitted a winning bid, it competed most often with Maersk, Noble and Borr Drilling (each participated in [X] tenders), while Ensco did not participate as often (ie in [X] tender only). This supports the Parties' view that Rowan is more competitive in ultra-harsh environments where Ensco's fleet cannot operate.

73. In each of the tenders in which the Parties submitted competing bids, a competing bid was received from at least one other competitor, and usually more than one (the average number of competitors submitting bids was [X]).²⁸

Internal documents

74. The Parties' internal documents suggest that they each often consider other competitors when evaluating their bids for different tenders (see paragraph 60). Which competitors are considered in each tender process depends on the availability of rigs for the relevant contract. One of Ensco's internal documents states, for example: '[X]' Ensco's internal documents suggest that [X], in particular, are often regarded as their main competitive constraints.

Constraints from semi-submersible rigs and AoC jack-up rigs located in Norway

75. The CMA assessed whether semi-submersible rigs constitute a competitive constraint on providers of offshore drilling services in NW Europe (excluding Norway). As stated above (see paragraphs 27 to 29), in certain situations semi-submersible rigs may compete with jack-up rigs for offshore drilling contracts. The data submitted by the Parties indicates that a [X].²⁹ Some third-party responses also indicate that, in certain tenders, both types of rig were bid, although in none of these instances was the contract awarded to a semi-submersible rig. The CMA believes that this indicates that, at least in some circumstances, competition from semi-submersible rigs may exert an additional, albeit limited, competitive constraint on providers of offshore drilling services in NW Europe (excluding Norway).

²⁸ Although it is not uncommon for the same operator to bid several rigs for the same contract.

²⁹ As not all tenders specify what type of rig is required, the actual number of instances where semi-submersible rigs compete with jack-up rigs is likely to be higher.

76. The CMA also considered whether AoC jack-ups located in Norway could constrain the Parties post-Merger. The data submitted by the Parties suggests that only one out of nine currently active AoC jack-ups is located outside Norway, and the movement of jack-up rigs between Norway and other areas of NW Europe has been limited in the past six years. However, the Parties' internal documents suggest that [REDACTED]. Therefore, the CMA believes that the seven currently active AoC jack-up rigs in Norway do exert some additional, albeit limited, competitive constraint on providers of offshore drilling services using NSC jack-up rigs in NW Europe (excluding Norway).

Constraints due to excess capacity

77. The Parties submitted that there was substantial available capacity in the form of active jack-up rigs coming off contract, warm and cold-stacked jack-up rigs,³⁰ sublet rigs, new built jack-up rigs and NSC jack-up rigs outside the North Sea which would limit the Parties ability to increase prices post-Merger.

Cold-stacked jack-up rigs and NSC jack-up rigs located outside the North Sea

78. Contracts for jack-up rigs are tendered well in advance of the supply date to increase the number of participants in the tender. The Parties submitted that, for this reason, rigs located in geographic areas other than NW Europe and cold-stacked rigs are relevant competitors as there would be sufficient time to move or re-activate them.
79. With regard to rigs located outside the North Sea, the data provided by the Parties showed that, as outlined above (see paragraphs 40 to 46), between 2013 and 2018, only one jack-up rig was moved to the North Sea. Moreover, the Parties only [REDACTED] their NSC jack-up rigs located outside the North Sea for offshore drilling contracts in the North Sea.³¹ In addition, third-parties expressed the view that rigs are only moved in exceptional circumstances for a very attractive offer.
80. With regard to cold-stacked rigs, while the Parties' internal documents suggest that [REDACTED], third-parties indicated that cold-stacked rigs are not generally considered as a viable alternative to active or warm-stacked jack-up

³⁰ A drilling contractor might choose to warm stack a jack-up rig when the rig is expected to be idle for a short period of time ([REDACTED]). Warm-stacked rigs undergo normal maintenance operations similar to those performed on an active rig and have their key members of the crew retained, making them available for a prompt use with only minor preparation. If drilling contractors do not expect the jack-up rig to be utilised in the near term (eg, cold stack rigs can be inactive for several months to one or more years), the rig may be cold stacked to reduce operating costs. Older rigs and those close to retirement tend to be the primary candidates for cold stacking. To reactivate a cold-stacked rig, the CMA understands a crew must be rehired and a series of inspection, testing and reactivation procedures are required, the cost of which could range from [REDACTED] to [REDACTED].

³¹ [REDACTED].

rigs by E&P companies in the current market environment, despite their ability to sometimes offer low dayrates. Several E&P companies indicated that hiring cold-stacked jack-up rigs may involve additional risks, such as the crew being unfamiliar with the rig or the rig requiring additional maintenance, which are likely to lead to periods of inactivity and, thus, additional costs for E&P companies.

81. The CMA noted that, while this evidence suggested that the competitive constraint from NSC jack-up rigs located outside the North Sea and cold-stacked rigs is limited in the current market conditions,³² it also indicated that, were the number of jack-up rigs available in NW Europe to go down (eg as a result of some older jack-ups being retired) or the demand for offshore drilling services in NW Europe to increase, both cold-stacked rigs and NSC jack-up rigs located outside the North Sea could represent credible alternatives.

Warm-stacked jack-up rigs and newbuilt jack-up rigs

88. In contrast to cold-stacked rigs, warm-stacked rigs have been inactive for only a short period of time, their key crew members continue to be employed and maintenance has been carried out regularly. Third parties told the CMA that, consequently, such rigs represent a credible supply option. Similarly, newbuilt jack-up rigs, which have entered the market or are scheduled to enter the market, can also represent an alternative.
89. The data available to the CMA suggests that a number of warm-stacked and newbuilt jack-up rigs owned by [X] are competing for offshore drilling contracts in NW Europe (excluding Norway). The CMA believes that these rigs will also constrain the Parties post-Merger. Therefore, even if market conditions improve and demand increases, the CMA believes that the Parties will continue to face strong competitive constraints.

Conclusion on horizontal unilateral effects

90. On the basis of the evidence set out above, the CMA believes that, in the supply of offshore drilling services using NSC jack-up rigs in NW Europe (excluding Norway):
- (a) the Parties are not particularly close competitors due to the differences in their respective fleets;

³² Ie, low demand and oversupply of jack-up rigs.

- (b) the Parties face strong competition from other providers such as Maersk, Borr Drilling and Noble, who appear to be closer competitors to the Parties; and
- (c) a number of warm-stacked and newbuilt jack-up rigs will remain post-Merger that add to the competitive constraint on the Parties.

91. For these reasons 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 supply of offshore drilling services using NSC jack-up rigs in NW Europe (excluding Norway).

Barriers to entry and expansion

92. 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.
93. In the present case, 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

94. The CMA contacted customers and competitors of the Parties. No third parties raised Merger-specific concerns.
95. Third party comments have been taken into account where appropriate in the competitive assessment above.

Decision

96. 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.
97. The Merger will therefore **not be referred** under section 33(1) of the Act.

Andrew Wright
Director, Mergers
Competition and Markets Authority
15 February 2019

ⁱ The CMA notes that the Parties consider the transaction to be a merger of equals between the Parties.