

ANTICIPATED ACQUISITION BY PROSAFE SE OF FLOATEL INTERNATIONAL LIMITED

Issues statement

29 October 2019

The reference

1. On 17 September 2019, the Competition and Markets Authority (CMA), in exercise of its duty under section 33(1) of the Enterprise Act 2002 (the Act), referred the anticipated acquisition by Prosafe SE (Prosafe) of Floatel International Limited (Floatel) (the Proposed Merger) for further investigation and report by a group of CMA panel members.
2. In exercise of its duty under section 36(1) of the Act, the CMA must decide:
 - (a) whether arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation; and
 - (b) if so, whether the creation of that relevant merger situation may be expected to result in a substantial lessening of competition within any market or markets in the United Kingdom for goods or services.
3. In answering these two questions we will apply a ‘balance of probabilities’ threshold to our analysis. That is, we will decide whether it is more likely than not that the Proposed Merger will result in an SLC.¹
4. In this statement, we set out the main issues we are likely to consider in reaching our decision on the SLC question (paragraph 2(b) above), having had regard to the evidence available to us to date, including the evidence referred to in the CMA’s phase 1 decision (the Phase 1 Decision).²
5. We are publishing this issues statement in order to assist parties submitting evidence to our investigation. The issues statement sets out the issues we

¹ [Merger Assessment Guidelines](#) (CC2/OFT1254), paragraph 2.12. The Merger Assessment Guidelines have been adopted by the CMA board (see [Mergers: Guidance on the CMA’s jurisdiction and procedure](#) (CMA2), Annex D).

² [The Phase 1 Decision](#).

currently envisage being relevant to our investigation and we invite parties to notify us if there are any additional relevant issues which they believe we should consider.

6. Throughout this document we refer to Prosafe and Floatel collectively as ‘the Parties’.
7. The Phase 1 Decision contains much of the detailed background to this issues statement and parties are encouraged to read the two documents in conjunction. We intend to focus our investigation on the area in which the CMA found that the Proposed Merger gives rise to a realistic prospect of an SLC. That is, in the supply of semi-submersible ASVs³ in NW Europe.⁴ Although this does not preclude the consideration of any other issues which may be identified during the course of our investigation, we are only likely to consider other issues in light of new evidence being brought to our attention by third parties. We consider this to be a proportionate way in which to conduct our inquiry.

Background

8. On 3 June 2019, Prosafe entered into a sale and purchase agreement to purchase the entire share capital of Floatel. The Proposed Merger is conditional upon CMA and Norwegian Competition Authority clearance.

The Parties

9. Prosafe, through its subsidiaries, owns and operates a fleet of eight semi-submersible ASVs. The turnover of Prosafe in 2018 was approximately £248 million worldwide and approximately £100 million in the UK⁵.
10. Floatel, through its subsidiaries, owns and operates a fleet of five semi-submersible ASVs. The turnover of Floatel in 2018 was approximately £174 million worldwide and approximately £[~~100~~] million in the UK⁶.

Our intended inquiry

11. Below we set out some specific areas of our intended assessment in order to help parties who wish to make representations to us. However, these will not be the only areas for our assessment. For example, we will also look at key

³ Accommodation Support Vessels. ASVs are offshore vessels which support (primarily) oil and gas operations. See paragraph 248 Phase 1 Decision.

⁴ Including the UK Continental Shelf and Norwegian Continental Shelf. See paragraph 248 Phase 1 Decision.

⁵ Paragraph 7 Phase 1 Decision.

⁶ Paragraph 8 Phase 1 Decision.

characteristics of how the market operates, the appropriate counterfactual,⁷ and any evidence available to us in relation to efficiencies arising from the Proposed Merger.⁸

The Parties' services and market definition

12. Market definition provides a framework for assessing the competitive effects of a merger.⁹ It involves an element of judgement. The boundaries of a 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. We will take these factors into account in our competitive assessment.¹⁰
13. The CMA's Phase 1 Decision considered the impact of the Proposed Merger in the supply of semi-submersible ASVs in NW Europe¹¹.
14. We intend to consider whether customers consider other types of ASVs to be substitutable for semi-submersible ASVs, and whether ASVs currently located outside of NW Europe provide a sufficiently strong competitive constraint so as to warrant inclusion in the relevant geographic market. In addition, we will consider any new evidence we receive which is relevant to the appropriate market definition for assessing the Proposed Merger.

Assessment of the competitive effects of the Proposed Merger

Theory of harm

15. The term 'theory of harm' describes the possible ways in which an SLC could arise as a result of a merger. The theory of harm often provides the framework for our analysis of the competitive effects of a merger. Identifying a theory of harm in this issues statement does not preclude an SLC from being identified on another basis following receipt of additional evidence. We welcome views on the theory of harm described below.
16. We will assess whether the Proposed Merger gives rise to an SLC in the supply of semi-submersible ASVs in NW Europe¹². This is a horizontal, unilateral effects theory of harm. Through the Proposed Merger, removing one

⁷ [Merger Assessment Guidelines](#), section 4.3.

⁸ [Merger Assessment Guidelines](#), section 5.7.

⁹ [Merger Assessment Guidelines](#), paragraph 5.2.1.

¹⁰ [Merger Assessment Guidelines](#), paragraph 5.2.2.

¹¹ See paragraph 114 Phase 1 Decision.

¹² See paragraph 248 Phase 1 Decision.

party as a direct competitor might allow the Parties to increase prices, lower the quality of their products or customer service, reduce the range of their products/services, and/or reduce innovation.

17. As the Merger Assessment Guidelines say, unilateral effects can arise in a horizontal merger where one firm merges with a direct competitor that previously provided a competitive constraint.¹³ Unilateral effects resulting from a merger are more likely where the merger eliminates a significant competitive force in the market or where customers have little choice of alternative suppliers.¹⁴
18. As set out in the Merger Assessment Guidelines, we will assess the Proposed Merger in terms of its effect on rivalry over time in the market or markets affected¹⁵, ie our analysis will be forward-looking. We will use the data and information collected in phase 1 and seek to expand and augment this evidence-set as appropriate, to assess the theory of harm set out in paragraph 17. We will consider:
 - (a) the Parties' market position (including any market power) by assessing market shares by revenue and other metrics using data from the Parties and third parties¹⁶;
 - (b) the closeness of competition between the Parties, and their post-merger incentives by analysing bidding data including information about negotiations on pricing and other key terms;
 - (c) the remaining post-merger competitive constraints (including from suppliers of semi-submersible ASVs and suppliers of other types of ASV, whether based in NW Europe or elsewhere in the world);
 - (d) evidence from the Parties' internal documents;
 - (e) third-party questionnaire responses and views; and
 - (f) the extent to which any changes in future demand and/or supply may affect competitive conditions.
19. We will also consider evidence on entry and/or expansion by third parties, including any evidence on barriers to entry/expansion, and whether such entry

¹³ [Merger Assessment Guidelines](#), paragraph 5.4.1.

¹⁴ [Merger Assessment Guidelines](#), paragraph 5.4.12.

¹⁵ [Merger Assessment Guidelines](#), paragraph 4.1.3.

¹⁶ We will also consider information about any spare capacity in the market.

or expansion would be timely, likely and sufficient to prevent any SLC from arising as a result of the Proposed Merger.¹⁷

Theories of harm we are not currently minded to investigate

20. The Phase 1 Decision noted that the Proposed Merger would create a number of vertical links with companies either upstream or downstream of the Parties, but concluded that the Proposed Merger does not give rise to a realistic prospect of an SLC as a result of vertical effects.¹⁸
21. Subject to any further evidence submitted in response to this issues statement or in the course of the investigation, we are not currently minded to investigate any vertical effects theories of harm, including those considered in Phase 1.

Possible remedies and relevant customer benefits

22. Should we conclude that the Proposed Merger may be expected to result in an SLC within one or more markets in the UK, we will consider whether, and if so what, remedies might be appropriate.
23. In any consideration of possible remedies, we may in particular have regard to their effect on any relevant customer benefits that may be expected to arise as a result of the Proposed Merger and, if so, what these benefits are likely to be and which customers would benefit.¹⁹

Responses to the issues statement

24. Any party wishing to respond to this issues statement should do so in writing, by **no later than 5pm on 12 November 2019**. Please email ProsafeFloatel@cma.gov.uk or write to:

**Project Manager
Prosafe/Floatel merger investigation
Competition and Markets Authority
The Cabot
25 Cabot Square
LONDON
E14 4QZ**

¹⁷ [Merger Assessment Guidelines](#), section 5.8.

¹⁸ [See paragraphs 223-239 of the Phase 1 Decision](#).

¹⁹ [Merger Remedies](#) (CMA87), paragraphs 3.4 and 3.15 to 3.24.