

Anticipated acquisition by Prosafe SE of Floatel International Limited

Decision on relevant merger situation and substantial lessening of competition

ME/6816/19

The CMA's decision on reference under section 33(1) of the Enterprise Act 2002 given on 5 September 2019. Full text of the decision published on 28 October 2019.

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

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SUMMARY

1. Prosafe SE (**Prosafe**) has agreed to acquire Floatel International Limited (**Floatel**) (the **Merger**). Prosafe and Floatel are together referred to as the **Parties**, and, after the Merger, as the Merged Entity.
2. The Competition and Markets Authority (**CMA**) believes that it is or may be the case that each of Prosafe and Floatel 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. The CMA also considered whether Oaktree Capital Management (**Oaktree**), Keppel Corporation (**Keppel**) and/or HitecVision may acquire material influence over the Merged Entity but it has not been necessary to reach a definitive conclusion on this point.

3. The Parties overlap in the supply of semi-submersible accommodation support vessels (**ASVs**) in North West Europe (**NW Europe**), including the United Kingdom Continental Shelf (**UKCS**) and the Norwegian Continental Shelf (**NCS**). The CMA has therefore assessed the impact of the Merger in the supply of semi-submersible ASVs in NW Europe.
4. The CMA believes that the Merger gives rise to very serious competition concerns in the supply of semi-submersible ASVs in NW Europe in particular because:
 - (a) The Parties hold a very strong incumbent market position; they account for a combined share of supply in excess of [80-90]%, operate the vast majority of semi-submersible ASVs competing for business in NW Europe and consistently win the vast majority of contracts;
 - (b) The Parties are close competitors; they have a similar service proposition, compete against each other frequently for tenders and monitor each other extensively in their internal documents;
 - (c) The Parties face only limited competition from other suppliers; all of the available evidence (including bidding data, the Parties' internal documents and the views submitted by third Parties) indicates that other suppliers are only a limited constraint on the Parties;
 - (d) While the Parties submit that the changes in the structure of the market – an expected reduction in demand in the UKCS and the development of excess global capacity – should limit the weight placed on recent market practice, the CMA received little evidence to support this position.
5. The CMA therefore believes that the Merger gives rise to a realistic prospect of a substantial lessening of competition (**SLC**) as a result of horizontal unilateral effects.
6. The CMA is therefore considering whether to accept undertakings under section 73 of the Enterprise Act 2002 (**the Act**). The Parties have until 12 September 2019 to offer an undertaking to the CMA that might be accepted

by the CMA. If no such undertaking is offered, then the CMA will refer the Merger pursuant to sections 33(1) and 34ZA(2) of the Act.

ASSESSMENT

Parties

7. Prosafe, through its subsidiaries, owns and operates a fleet of eight semi-submersible ASVs.¹ The turnover of Prosafe in 2018 was approximately £248 million worldwide and approximately £100 million in the UK.
8. Floatel, through its subsidiaries, owns and operates a fleet of five semi-submersible accommodation vessels.² The turnover of Floatel in 2018 was approximately £174 million worldwide and approximately £[redacted] in the UK.

Transaction

9. The transaction is the proposed acquisition by Prosafe of the entire share capital of Floatel from affiliates of Keppel and Oaktree (together, the **Sellers**), pursuant to a sale and purchase agreement entered into between the Sellers and Prosafe on 3 June 2019.
10. The Parties informed the CMA that the Merger is conditional upon CMA and Norwegian Competition Authority clearance.

Procedure

11. The Merger was considered at a Case Review Meeting.³

Jurisdiction

12. Each of Prosafe and Floatel is an enterprise. As a result of the Merger, these enterprises will cease to be distinct.

¹ These eight semi-submersible ASVs are *Regalia*, *Safe Boreas*, *Safe Bristolia*, *Safe Caledonia*, *Safe Concordia*, *Safe Notos*, *Safe Zephyrus*, *Safe Scandinavia*. The CMA notes that Prosafe's *Safe Eurys* was delivered in July 2019. In addition, Prosafe has an option to acquire two new semi-submersible ASVs, and part-owns and manages a monohull ASV, the *Safe Swift*. Also, the Merged Entity and Teekay Offshore (**Teekay**), which owns the *Arendal Spirit*, a semi-submersible ASV located in the North Sea, may be under common control following the Merger. Brookfield Business Partners LP and its affiliates (**Brookfield**) recently acquired Teekay and Brookfield is currently undertaking the acquisition of 62% in Oaktree. As explained in the section on Jurisdiction, the CMA considers that Oaktree may be able to exercise material influence over the decisions of the Merged Entity by virtue of its 19% shareholding in the Merged Entity.

² These five semi-submersible ASVs are the *Floatel Superior*, *Floatel Victory*, *Floatel Endurance*, *Floatel Triumph* and *Floatel Reliance*.

³ See [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2), January 2014, from paragraph 7.34.

13. The Parties overlap in the supply of semi-submersible ASVs, with a combined share of supply of [80-90]% by number of vessels in NW Europe (with an increment of [20-30]% brought by the Merger), as set out in the CMA's competitive assessment below. On this basis, the CMA 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 11 July 2019 and the statutory 40 working day deadline for a decision is therefore 5 September 2019.
16. In addition, the CMA considered:
 - (a) Whether three additional relevant merger situations could arise as a result of the Merger, namely by virtue of the acquisition by Oaktree,⁴ Keppel⁵ and HitecVision⁶ of circa 22%, 19% and 17% shares in the Merged Entity on a fully diluted basis, respectively; and
 - (b) Whether the Merger should be treated as giving rise to a single relevant merger situation by which Prosafe, Floatel and any or all of Keppel, Oaktree and/or HitecVision would cease to be distinct.
17. The CMA considered, on the evidence available to it, that it may be appropriate on a "may be the case" basis to regard each of Oaktree, Keppel and HitecVision as acquiring material influence over the Merged Entity, and hence ceasing to be distinct from it:
 - (a) Each of these three parties would be likely to retain and/or appoint one director (out of five) to the Board of the Merged Entity as a result of the Merger;

⁴ Oaktree is a US global asset management firm specialising in alternative investment strategies. It invests in areas ranging from distressed debt and high-yield bonds to private equity, real estate and listed equities. Current investments range from interests in global health and fitness group Fitness First to surf-wear company Billabong, wastewater treatment firm MWH Constructors and aircraft financing company Elix Aviation Capital. Oaktree has an interest in OSM Maritime, which is a potential upstream provider of certain services to ASV providers. Oaktree would hold circa 19% of shares in the Merged Entity on a fully diluted basis.

⁵ The Keppel group of companies, headquartered in Singapore, operates a number of business divisions globally specialising in offshore and marine, property, infrastructure and asset management businesses. The offshore and marine segment offers offshore rig design, construction and repair, ship repair, upgrading and conversion and specialised shipbuilding of a diverse range of vessels, with shipyards located around the world. Keppel would hold circa 22% of shares in the Merged Entity on a fully diluted basis.

⁶ HitecVision is a private equity firm headquartered in Stavanger. It currently holds shares in Prosafe through two of its funds, North Sea Strategic Investments (holding 18.9%) and HV VI Invest Sierra Malta Ltd (holding 10.6%). Funds managed by HitecVision would hold circa 17% of shares in the Merged Entity on a fully diluted basis.

- (b) Each of the appointed directors of the Board (including the Chair) would be likely to have some industry knowledge and/or experience;
 - (c) Each of Keppel, Oaktree and/or HitecVision are themselves engaged in, or have an interest in other businesses related to and/or adjacent to that of the Merged Entity;
 - (d) Other shareholders of the Merged Entity would all have considerably smaller shares than each Keppel, Oaktree and/or HitecVision;
 - (e) Whilst a vote of one-third is expected to be required post-Merger to veto changes to the Articles of Association of the Merged Entity as a result of its incorporation under Norwegian law, each of Keppel, Oaktree and/or HitecVision could reach such a share if smaller shareholders did not vote, or on the basis of historic voting patterns of Prosafe (where voting attendance was as low as 45.56% over the past 3 years).
18. However, it was not necessary for the CMA to reach a definitive conclusion on whether Keppel, Oaktree and/or HitecVision may have acquired material influence over the Merged Entity since, as set out in the competitive assessment below, no competition concerns arise in relation to any of the potential vertical relationships between the Parties and either or all of Oaktree, Keppel and/or HitecVision brought about by the Merger.

Counterfactual

19. 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.⁷
20. In this case, there is no evidence supporting a different counterfactual, and neither the Parties nor third parties have not put forward arguments in this respect. Therefore, the CMA believes the prevailing conditions of competition to be the relevant counterfactual. For completeness, the CMA notes that the

⁷ [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).

Parties submitted that the demand conditions are changing, and the CMA has taken this argument into account in the competitive assessment.

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
22. The Parties overlap in the supply of semi-submersible ASVs in NW Europe.

Product scope

23. The Parties submitted that the product frame of reference should be the provision of all ASVs, including:
 - (a) Jack-up ASVs – platforms which are elevated above the sea’s surface on adjustable legs that reach down to the ocean floor;
 - (b) Monohull ASVs – ‘ship-shaped’ vessels which are moored or dynamically positioned next to a drilling rig;
 - (c) Walk-to-work vessels (**W2Ws**) – vessels that are smaller than monohull ASVs. Rather than remaining attached to the offshore production facility, the gangway only remains connected while the workforce is transferred at the beginning and/or end of a shift;
 - (d) Tender support vessels (**TSVs**) – vessels which are visually similar to semi-submersible ASVs but are fitted with additional specialised equipment, such as for mud handling and storage, which allow them to be used to support drilling activities;
 - (e) Unconverted drilling rigs – vessels which had previously been deployed to provide contract drilling services and have been left idle. These rigs can be deployed either on accommodation-only contracts, or in conjunction with the provision of drilling services.

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

24. In response to the Issues Letter, the Parties submitted a list of examples of vessels other than semi-submersible ASVs that the Parties considered had previously won contracts in NW Europe.⁹ The CMA noted that many of these vessels had not been considered to be responsive to an earlier request in which the CMA asked the Parties to provide all instances in which one of the Parties competed in a tender for a UKCS contract (which was, for the purposes of substantive assessment, intended to capture the tenders for which the Parties are most likely to compete). The information provided by the Parties did not enable the CMA to confirm whether these additional instances of competition were relevant to the CMA's assessment, in particular because it was not clear whether these opportunities related to the UKCS or whether one (or both) of the Parties competed for these opportunities. The CMA noted that, in some instances, the contracts were clearly not relevant to the CMA's analysis (eg because the contract was not for a UKCS customer). The CMA therefore considered that the examples submitted by the Parties did not, in and of themselves, support a broadening of the frame of reference.
25. In addition, the Parties submitted that different types of vessels have different capabilities in terms of personnel-on-board (**personnel**) capacity, ability to operate in different depths of water, compatibility with fixed or floating platforms, ability to operate under harsh weather conditions and different wave heights. This is shown in Table 1 below.

⁹ The Parties' response to the Issues Letter of 9th August 2019, para 4.12(iii).

Table 1: ASV capabilities by vessel type

	Personnel capacity	Depth capability	Compatible with platform type	Operating condition	Maximum wave height for disconnect / reconnect (in metres)
Semi-submersible	300-500	>40 m	Fixed and floating	No limitation	5.0-5.5 / 4.0-4.5
Jack-up	300-500	<125m	Fixed	No limitation	No limitation
Monohull	Large: >400 Small: 200-300	Unlimited	Fixed and floating	Few seasonal limitations	4.0-4.5 / 3.0-3.5
W2W	80-120	Unlimited	Fixed and floating	Some seasonal limitations	3.5-4.0 / 2.5-3.0
Jack-up drilling rig (unconverted)	80-120	<125m	Fixed	No limitation	No limitation

Source: Parties' Merger Notice.

26. The CMA considers that the information provided by the Parties in Table 1 generally shows that there are certain differences in terms of the capabilities of different types of vessel. The CMA discusses these aspects in more detail below (see paragraphs 29 to 63).
27. The CMA has not previously considered the provision of offshore accommodation services in detail. However, the CMA has considered the supply of offshore contract drilling services which also use either fixed or floating platforms. In *Ensco/Rowan*,¹⁰ the CMA considered whether it would be appropriate to segment product markets between fixed and floating platforms, based on factors such as water depth, weather conditions and technical specifications. In *Transocean/GlobalSantaFe Corporation*,¹¹ the CMA concluded on a distinct segment for ultra-deep-water floating drilling rigs (as distinct from ordinary floating rigs).¹²

CMA assessment

¹⁰ CMA Decision ME/6768/18, *Anticipated acquisition by Ensco plc of Rowan Companies plc*, 15 February 2019.

¹¹ OFT Decision ME/3310/07, *Anticipated merger between Transocean Inc and Globalsantafe Corporation*, 26 November 2007.

¹² "Ultra-deep" refers to water depths of 7,000-7,500 feet.

28. The CMA considered whether semi-submersible ASVs and other types of vessels listed in paragraph 23 are part of the same frame of reference. Each type of vessel is discussed in turn below.

Semi-submersible ASVs

29. The Parties overlap in the supply of semi-submersible ASVs and they submitted that there are few constraints on the water depth in which semi-submersible ASVs are capable of operating.¹³
30. The Parties' internal documents show that certain features of semi-submersible ASVs allow them to operate where other types of ASVs would not be suitable alternatives. In particular:
- (a) Prosafe's Q1 2019 market report¹⁴ states that "*if required [personnel] number offshore push beyond circa 130 and Water Depths above 90 metres then this moves in to Semi-Submersible Flotel territory.*" The report provides an update on the availability of semi-submersible ASVs, as well as on the market trends, separately from the other types of ASVs (such as jack-up, W2W and monohull vessels) each of which are addressed individually and referred to as separate "*markets*".
 - (b) Floatel's internal document of May 2018¹⁵ states that "*semi-submersibles dominating North Sea market as they can operate more seamlessly in the difficult conditions during winter due to positioning capabilities.*" The document includes a detailed analysis of competitors' semi-submersible vessels.
 - (c) Floatel's Investor presentation of September 2018¹⁶ refers to [✂].
31. Evidence received by the CMA from third parties indicates that customers require semi-submersible ASVs where other types of ASVs are not suitable. For example, one customer told the CMA that it would usually use a semi-submersible ASV in the North Sea due to harsh weather conditions. Another customer said that, for a project in greater water depths, "*a semi-submersible ASV will provide the best year-round gangway availability*". Also, a competitor said that "*semi-submersible ASVs are the most expensive type of*

¹³ The Parties submitted that whilst semi-submersible ASVs with dynamic positioning (**DP**) have no water depth restrictions, moored semi-submersible ASVs are typically able to operate in water depths of 250-340 metres, which encompasses the vast majority of the North Sea.

¹⁴ Annex 3(b) Offshore Accommodation Quarterly Q1 2019.pdf to the Parties' response to RFI 1.

¹⁵ Annex 69. 06.b Floatel Market_May 2018.pdf to the MN.

¹⁶ Annex 78. Floatel International Bond Investor Presentation.pdf to the MN.

accommodation vessels and are only used when other options such as monohull or jack-up ASVs are unsuitable”.

Jack-up ASVs

32. While the Parties submitted that there is significant demand-side substitutability between jack-up and semi-submersible ASVs, they also recognised that jack-up ASVs may not a suitable alternative to semi-submersible ASVs in certain weather, water depth and sea bed conditions and/or where the offshore production facility is a floating platform.¹⁷ In particular, the Parties submitted that jack-up ASVs can only operate in water depth up to 125 metres and cannot be used alongside floating production facilities in deeper waters (such as the West of Shetland).
33. The Parties submitted that jack-up and semi-submersible ASVs have similar personnel capacity (accommodating over 300 personnel). However, an industry report of Q2 2017 provided by the Parties indicates that the personnel capacity varies from vessel to vessel and that, generally, jack-up ASVs have a lower capacity of around 100 personnel.¹⁸
34. Similarly, evidence from third parties indicates that while some jack-up ASVs have larger personnel capacity, a number of jack-up ASVs have a lower capacity and would not be a suitable alternative to the Parties’ semi-submersible ASVs where a project requires larger capacity. A competitor told the CMA that the capacity of its [X] jack-up ASVs is between [X] personnel. Another competitor said that its jack-up ASV has a capacity of [X] personnel. The view that the capacity of jack-up ASVs is lower than that of semi-submersible ASVs was confirmed by another competitor and some customers. Most of this evidence indicates that jack-up ASVs may not provide an alternative to semi-submersible ASVs where projects require larger personnel capacity.
35. Evidence received by the CMA from third parties confirms that jack-up ASVs cannot provide an alternative to semi-submersible ASVs in certain water depths. Most third parties (including two providers of jack-up ASVs who responded to the CMA’s third-party investigation said that jack-up ASVs face water depth limitations and can only compete with semi-submersible ASVs in shallower waters of up to 100-115 metres depth. Based on the individual projects described in a report produced by Rystad Energy¹⁹ (the **Rystad**

¹⁷ MN, paras. 13.1-13.3.

¹⁸ Annex 79. Offshore Accommodation Quarterly Q2 2017.pdf to the MN.

¹⁹ Rystad Energy is a specialist consultancy which produced reports intended to inform the competition analysis of the present Merger, which include research conducted to inform Prosafe’s day-to-day operations.

report)²⁰ water depths of less than 100-115 meters in the UKCS prevail in the Southern North Sea and Central North Sea. The water depth is higher in the following parts of the UKCS: West of Shetlands (Atlantic Ocean), the Northern parts of the North Sea, and parts of the Central North Sea. A customer told the CMA: “*jack-up ASV’s are not available for deeper water depths. For recent contracts in the West of Shetland, water depth is too great for a jack-up ASV.*”

36. One of the Parties’ competitors said that jack-up ASVs also may not be a preferred option when there is a more complex sea bed structure.
37. In addition, the CMA received evidence that jack-up ASVs can be considerably cheaper when compared to semi-submersible ASVs. The CMA has compared the Parties’ day rates with one of the jack-up ASV providers. The competitor’s jack-up ASV’s day rates were [X],²¹ which is significantly lower than the average day rates of Prosafe and Floatel in the same year. The CMA found that such a significant price difference between jack-up and semi-submersible ASVs does not support the view that jack-up ASVs compete with semi-submersible ASVs. This price difference is well outside the average difference in the semi-submersible ASVs’ day rates: according to the Parties’ submission,²² their average day rate difference was [X] USD in the UKCS over the last five years.
38. The CMA also considered how jack-up ASVs performed in tenders where either one of the Parties or another semi-submersible ASV provider was the winner in order to assess the competitiveness of jack-up ASVs for the contracts for which a semi-submersible ASV is the preferred or a particularly suitable option. The bidding data²³ provided by the Parties indicates that their customers identified jack-up ASVs as a possible option in just [X] out of [X] contracts in the UKCS in the last 5 years where at least one of the Parties participated and where semi-submersible ASVs won.²⁴ ²⁵ The CMA did not receive any evidence to suggest that a jack-up ASV proceeded beyond the initial stage of the tendering process in any of these [X] contracts.
39. Based on the evidence set out above, the CMA considers that jack-up ASVs do not represent a constraint on semi-submersible ASVs to the extent that would justify widening the product frame of reference to include jack-up ASVs. However, the CMA has taken the constraint from jack-up ASVs into account, to the extent relevant, within its competitive assessment.

²⁰ Annex 12 to the MN.

²¹ Based on data provided by a third party for 2015.

²² The Parties’ response to the Issues Letter of 9th August 2019.

²³ Annex 1 to the MN.

²⁴ Jack-up ASVs as possible options in tenders were identified based on the Parties’ knowledge.

²⁵ When at least one of the Parties submitted a bid, jack-up ASVs have not won a single contract.

Monohull ASVs

40. While the Parties submitted that there is significant demand-side substitutability between monohull and semi-submersible ASVs, they also recognised that, in comparison to semi-submersible ASVs, the efficiency of using a monohull ASV in certain parts of the North Sea at certain times of the year may, from a customer's perspective, be reduced.²⁶ In particular, the Parties explained that monohull ASVs pitch and roll as they move over the waves to a greater extent than semi-submersible ASVs, meaning that monohull ASVs may need to disconnect their gangways sooner in certain wave conditions. The greater degree of movement of monohull ASVs can also affect the crew's ability to operate, particularly due to sea-sickness.
41. Internal documents provided by the Parties are consistent with the position that monohull ASVs should not form part of the same frame of reference as semi-submersible ASVs. Prosafe's valuation proposal of Floatel dated November [redacted].^{27 28}
42. Evidence received by the CMA from third parties confirms that monohull ASVs would not provide an alternative to semi-submersible ASVs where waves are higher and/or in certain parts of the North Sea.
43. In particular, the majority of the Parties' competitors who responded to the CMA's merger investigation considered monohull ASVs to be a "low strength" alternative to semi-submersible ASVs. The other respondent competitors considered monohull ASVs to be a "medium strength" alternative to semi-submersible ASVs, adding, however, that monohull ASVs are only suitable for work in the summer months, or only in the Southern part of the North Sea (ie not in the West of Shetlands).
44. Some of the Parties' customers noted that, when compared to semi-submersible ASVs, monohull ASVs have limited gangway availability in the winter months due to sea motion. Several other customers told the CMA that monohull ASVs are not suitable for operations and/or are not considered as an option in the UKCS. One customer also said that a monohull vessel's "motions will be greater when compared to a semi-submersible ASVs and therefore gangway availability is likely to be poor through the winter period", noting also the limited track record of monohull vessels in the UKCS.
45. Although the Parties submitted that the capabilities of certain monohull ASVs in terms of the personnel and ability to operate in higher waves may, in

²⁶ MN, 12.34 – 12.35.

²⁷ Annex 4.Item 66.4-Iguana_2 update.pdf to the MN.

²⁸ Annex 4.Item 66.4-Iguana_2 update.pdf to the MN.

theory, allow some of them to operate in all parts of NW Europe all year round, evidence received by the CMA from third parties suggested that such monohull ASVs are an exception. Whilst some competitors of the Parties considered *Edda Fides*, a monohull ASV provided by Edda Accommodation, to be an alternative to the Parties' semi-submersible ASVs, one of them noted that this was limited to the central North Sea, whilst another explained that monohull ASVs are generally not a strong alternative to semi-submersible ASVs and that *Edda Fides* is the only purpose-built monohull ASV.

46. The CMA's analysis of the bidding data provided by the Parties' customers showed that monohull ASVs were initially considered for only some of the contracts in 2014-2019 in the UKCS when at least one of the Parties participated (ie submitted an offer or was considered by customers). The customers who responded to the CMA's investigation said that a monohull ASV did not qualify beyond the initial tendering stage for any of these contracts and did not win any contract. This is confirmed by the Parties' bidding data.
47. Based on the evidence set out above, the CMA considers that monohull vessels should not be included in the product frame of reference. However, the CMA has taken the constraint from monohull vessels into account, to the extent relevant, within its competitive assessment.

W2W vessels

48. The Parties submitted that W2W vessels are a viable alternative to semi-submersible ASVs when there is a lower personnel capacity requirement, the deployment is for a short duration, and/or the operating conditions are more benign.²⁹ The Parties also submitted, however, that in central-to-northern parts of the North Sea, the efficient operating window for W2W vessels may be limited to the summer operating window. In addition, W2W vessels would likely need to disconnect and reconnect at slightly lower significant wave heights than monohull ASVs.
49. The Parties' internal documents showed that the Parties face limited competition from W2W vessels. In particular:
 - (a) Prosafe's Board Document of November 2018³⁰ refers to W2W vessels as "*low risk*" competition;

²⁹ MN, para.12.38.

³⁰ Annex 51. Item 56 - Management Presentation to Board.pdf to the MN.

- (b) Prosafe's Rystad demand and supply report³¹ dated April 2019 suggests that customers choose semi-submersible ASVs where other types of ASVs, including W2W vessels, are not suitable; and
- (c) Floatel's internal document³² excludes [X] from the worldwide accommodation fleet.
50. While some internal documents reflect an alternative position (eg one internal document of Floatel notes that [X],³³ the CMA considers that there is generally limited evidence within the Parties' internal documents to support the inclusion of W2W vessels in the same frame of reference as semi-submersible ASVs.
51. Bidding data provided by the Parties indicates that W2W vessels did not win any contract in the UKCS where at least one of the Parties participated in the past 5 years. In addition, based on this bidding data, W2W vessels were not identified as a possible option by the customers for any of these contracts.³⁴
52. According to Offshore Accommodation Quarterly Q1 2019, W2W vessels' current day rates are in the range of 17,000 to 60,000 USD. This is significantly cheaper than the current day rates of the semi-submersible ASVs located in the NW Europe (range between 100,000 to 200,000 USD).³⁵ The Parties' internal documents also indicated that W2W vessels are considerably cheaper than semi-submersible ASVs. The CMA considers that such a significant price difference between W2W vessels and semi-submersible ASVs (well outside the average difference in the semi-submersible ASVs' day rates, which is [X] USD, on average, according to the Parties) does not support the view that they compete with each other.
53. Evidence from third parties confirmed that W2W vessels are not considered to be strong alternatives to semi-submersible ASVs. The majority of competitors who responded to the CMA's merger investigation viewed W2W vessels as a "*low strength*" alternative to semi-submersible ASVs. One competitor noted, in particular, the low capacity (of up to 60 personnel) as a reason why W2W vessels are not an alternative to semi-submersible ASVs. Two competitors considered W2W vessels to be a "low-to medium" alternative, noting, however, that W2W vessels are only alternatives in the southern North Sea,

³¹ Annex 16 to the MN.

³² Annex 65. 05.c Floatel Market_December 2017.pdf to the MN.

³³ Annex 68. FIL_MoM_BOD_No1_Signed (March 2018).pdf to the MN.

³⁴ Possible vessel options were identified based on the Parties' knowledge.

³⁵ Annex 3(b) to the MN, pages 6 and 9.

or that they are only suitable for summer work with low personnel capacity demand.

54. Similarly, the Parties' customers noted that, when compared to semi-submersible ASVs, W2W vessels have lower personnel capacity and are less suitable for larger projects. A number of customers also noted that W2W vessels have limited technical capabilities (especially in winter months), noting, in particular, their poor station-keeping capability, gangway connection, limited routine interfaces and limited lifting capability.
55. Based on the evidence set out above, the CMA does not consider that W2W vessels should be included in the same frame of reference as semi-submersible ASVs. However, the CMA has taken the constraint from W2W vessels into account, to the extent relevant, within its competitive assessment.

TSVs

56. The Parties included Prosafe's TSV *Safe Scandinavia* in the total market size for the purposes of the share of supply calculations, noting that *Safe Scandinavia* was an ASV prior to its conversion to a TSV, and is still capable of being deployed purely as an ASV accommodating about 200 personnel when operating in the UKCS. However, the Parties also recognised that the personnel capacity of other TSVs is likely to be lower than comparable-sized ASVs because provision of accommodation is not the primary purpose of TSVs (their primarily purpose is the provision of drilling support).³⁶
57. Several third parties who responded to the CMA's merger investigation noted that they were unaware of any TSVs other than Prosafe's *Safe Scandinavia* that could be used as an alternative to a semi-submersible ASV.
58. All customers who responded to the CMA's investigation explained that they do not consider TSVs to be an alternative to semi-submersible ASVs, with some of them noting the low personnel capacity of TSVs. Several competitors also noted the lower personnel capacity of TSVs when compared to semi-submersible ASVs. One competitor considered that TSVs were not suitable to operate in the UKCS. However, a number of competitors who provided their views on TSVs noted that they were a strong alternative to semi-submersible ASVs.³⁷

³⁶ MN, para.12.4.

³⁷ One of them noted that TSV is not suitable for work in the UKCS.

59. Based on the evidence set out above, the CMA believes that TSVs should not be included in the same frame of reference as semi-submersible ASVs. In any event, the CMA notes that there are no competing TSVs in NW Europe.

Unconverted drilling rigs

60. The Parties submitted that the position in relation to the operational limitations of unconverted drilling rigs is similar to that for jack-up ASVs.
61. A number of customers and competitors who responded to the CMA's investigation, including several drilling rig providers, told the CMA that the primary purpose of such vessels is drilling and, therefore, they provide offshore accommodation services only when they are not engaged in drilling contracts, or when there is a reduction in the demand for drilling projects.
62. A number of customers and competitors, including drilling rig providers, also noted that jack-up drilling rigs have limited personnel capacity.
63. Therefore, the CMA does not consider that it is appropriate to include unconverted drilling rigs in the same frame of reference as semi-submersible ASVs and did not consider this type of vessel in its competitive assessment (given that no further evidence was provided to suggest that it offers any constraint on suppliers active in the relevant frame of reference).

Customer requirements

64. The CMA has also considered whether the product scope should be further segmented by customer requirements. Customer requirements for contracting semi-submersible ASVs differ to some extent from tender to tender (eg in terms of location, contract length, personnel capacity). Therefore, applying the hypothetical monopolist test in a mechanistic way might result in each individual tender being identified as a relevant frame of reference. There are, however, also material similarities in requirements between different tenders.
65. The CMA did not segment the market, for the purposes of its analysis, on a tender-by-tender basis. Rather, the CMA assessed the extent to which different suppliers are competitive in satisfying requirements that are typically considered to be important in tenders, as well as the variations in preferences across tenders, within its competitive assessment. In keeping with the CMA's established practice, market definition is only the starting point for competitive assessment. While the nature of competition varies within the relevant frame of reference (because the nature of customer demand varies and the Parties are liable to be closer competitors for certain types of contracts), the fact that customers typically purchase services through individual tenders provides considerable scope for discrimination between customers. For this reason,

customers for which the Parties are particularly likely to compete would not be 'protected' by being part of a wider frame of reference.

66. In conclusion, for the reasons set out above, the CMA has considered the impact of the Merger in the supply of semi-submersible ASVs. However, the CMA has taken into account competitive constraints from other types of ASVs, to the extent relevant, within the competitive assessment.

Geographic scope

67. The Parties submitted that the geographic frame of reference is global and stated that customers consider semi-submersible ASVs located anywhere in the world as they can easily move between oil producing regions.
68. In *Enesco/Rowan*,³⁸ the CMA considered the market for provision of jack-up drilling rigs by reference to a geographic market comprising NW Europe excluding Norway due to different requirements in Norwegian waters, although it did not have to conclude since no competition concerns arose on any basis. In *Transocean/GlobalSantaFe Corporation*,³⁹ the OFT considered that the geographic market for provision of floating rigs could be NW Europe, potentially splitting it further into UKCS, as distinguished from the NCS. In both cases the reasoning for splitting NW Europe into the NCS and the rest of NW Europe (or distinguishing UKCS from NCS) was due to the evidence of higher day rates and technical standards in the NCS.
69. The Parties overlap in the UKCS, which the CMA considered to be its starting point as the narrowest geographic market. The CMA considered whether it would be appropriate to widen the geographic frame of reference by including suppliers operating outside the UKCS.
70. From the demand point of view, customers in the UKCS can only use vessels when their suppliers are willing to move them to the UKCS and fulfil a UKCS contract. Therefore, the relevant consideration for the geographic frame of reference is supply-side substitution, that is:
- (a) Whether firms with production assets (such as vessels) located in other geographic areas would have the ability and incentive to shift capacity to the UKCS sufficiently quickly depending on demand; and
 - (b) Whether the same suppliers compete to supply in these different geographic areas, and the conditions of competition between the

³⁸ CMA Decision ME/6768/18, *Anticipated acquisition by Enesco plc of Rowan Companies plc*, 15 February 2019.

³⁹ OFT Decision ME/3310/07, *Anticipated merger between Transocean Inc and Globalsantafe Corporation*, 26 November 2007.

suppliers are the same in each geographic area such that analysing these areas as a single frame of reference would not affect the CMA's analysis of competitive effects.

71. In particular, the CMA considered whether it would be appropriate to widen the geographic frame of reference to:
- (a) NW Europe;
 - (b) The rest of the world (**RoW**).
72. In its analysis, the CMA considered evidence of the costs associated with moving vessels to the UKCS, the costs associated with complying with the UK regulatory requirements, and the actual movements of ASVs between regions. This evidence is discussed separately for NW Europe and the RoW below.

NW Europe (ie UKCS and NCS)

Costs of mobilisation from the NCS to the UKCS

73. The Parties estimated that the costs of mobilising and moving a semi-submersible ASV from the NCS to the UKCS amount to approximately [X] USD.⁴⁰ This is in addition to the cost of obtaining a UKCS certification, if the vessel is not yet certified and compliant.⁴¹
74. Evidence received by the CMA indicated that the values of most contracts in the UKCS range between [X] and [X] million USD (with an average of [X] million USD), while the nominal gross margins for most contracts range between [X] and [X] million USD (with an average of [X] million USD).⁴²
75. The CMA therefore considers that mobilisation costs for moving a semi-submersible ASV from the NCS to the UKCS are not, by themselves, prohibitive.
76. In addition to the mobilisation costs, suppliers in the NCS are faced with the regulatory costs associated with moving an ASV to the UKCS.

⁴⁰ Annexes provided by the Parties in the email dated July 24, 2019.

⁴¹ Teekay's *Arendal Spirit* is not certified to provide services in the UKCS and thus the Parties estimated its mobilisation cost to be 500,000 USD higher, ie circa 615,000 USD.

⁴² The figures are based on the CMA's analysis of the Parties' bidding data. The data excludes one of the contracts that has not been finalised with Total but for which the winner is *Prosafe Caledonia*. These figures also exclude an exceptionally long (2.5 years) contract won by *Floatel Victory* in Clair Ridge which is worth [X] USD.

77. The Parties submitted that UK Health & Safety Executive (**HSE**) certification required to operate in the UKCS costs around [X] USD and takes 6 months to obtain.
78. In addition, evidence received from the Parties' customers and competitors indicated that customers in the UKCS sometimes also require that an ASV complies with additional technical safety guidelines, such as DNV GL class society guidelines (also known as **OTGs**). The Parties submitted that OTG-related expenditure is circa [X] million USD for vessels not currently located in the UKCS. Together with the HSE certification, these costs would account for circa [X] million USD.
79. The CMA considered how HSE and OTG certification-related costs compared to the prices charged and margins earned on the UKCS contracts.
80. The Parties' bidding data showed that the values of contracts in the UKCS range from [X] to [X] million USD (with an average of [X] million USD), while the nominal gross margins for these contracts range between [X] and [X] million USD (with an average of [X] million USD). The CMA considers that a cost of [X] million USD is not insignificant compared to an average contract value of [X] million USD.
81. In addition, based on the bidding data provided by the Parties, the average day rates offered by Prosafe and Floatel in the last 5 years have been higher for the projects in the NCS when compared with the projects in the UKCS. See Table 2 below for comparison. The CMA recognises that these average figures do not control for the characteristics of those projects, and takes this into account when putting weight on these figures in its assessment.

Table 2: average final day rates offered by the Parties in the UKCS and NCS for projects in the last 5 years

	Average day rates in the UKCS (USD)	Average day rates in the NCS (USD)
Prosafe	[X]	[X]
Floatel	[X]	[X]

82. This means that, although able to fulfil the UKCS requirements, suppliers may be less incentivised to move vessels stationed in the NCS to the UKCS (given lower returns, plus the fixed cost of certification). However, the CMA considers that if a supplier has available ASVs which are already certified, it

may have an incentive to move a vessels to the UKCS, in particular in circumstances when there are limited contracts in the NCS.

Third parties' views

83. The majority of customers who responded to the CMA's investigation said that HSE certification was important to them when selecting an ASV supplier for a project in the UKCS.
84. One customer said that *"to be able to use, [an ASV] must have current HSE safety case"*. Another customer said that an *"existing safety case ... will always be preferred"*. Similarly, another customer said that *"it was certainly advantageous for [ASV suppliers] if they had a UK safety case and experience of working in the UKCS."*
85. Evidence received by the CMA indicated that at least some competitors consider the requirement to obtain an HSE safety case as an important factor when deciding whether to operate in the UKCS. One competitor listed obtaining an HSE case as one of the barriers to starting to supply semi-submersible ASVs in the UKCS. Another competitor said that it *"would not consider getting a [HSE] UK safety case for its older vessels because it is unsure how it will compete with the Parties' combined fleet."*
86. On this basis, the CMA believes that the Parties are facing limited competitive constraint from the suppliers of ASVs which do not have an HSE safety case, in particular in light of the evidence that this is an important requirement for customers requiring a semi-submersible ASV in the UKCS.

Movement of vessels from the NCS to the UKCS

87. The Parties submitted examples of customers inviting bids from suppliers with ASVs located in other regions,⁴³ as well as of suppliers submitting bids for their ASVs located in other regions.⁴⁴ The Parties also provided examples of the actual movement of their ASVs and their competitors' ASVs across the world for contracts.^{45, 46}

⁴³ For instance, in Total's Elgin-Franklin field, POSH Semco and OOS International were invited to bid and submit offers despite not currently having any ASVs located in the UKCS. On the call, Total noted that the winner of the contract is *Safe Caledonia* which since 2010 has not moved outside the UKCS. The only other shortlisted vessel belonged to Floatel.

⁴⁴ The Parties provide an example of Petrobras auction where the vessels submitting the bids were located in such regions like China, Brazil, Argentina, Singapore, Australia, UK, Norway.

⁴⁵ Among one of the examples is Prosafe's *Safe Bristolia* which since 2006 has been deployed in: Sakhalin Island, Malaysia (warm-stacked), the UKCS (twice on active deployment and once cold-stacked) and Mexico.

⁴⁶ MN, paras 13.18 - 13.29.

88. The CMA considered the history of relocation of the Parties' fleet, which suggested that many of the Parties' vessels have tended to operate in particular regions, with only occasional relocations.
89. In the round, the CMA considers that the available evidence in relation to the movement of semi-submersible ASVs and monohulls to the UKCS indicates that suppliers in the UKCS are facing a material competitive constraint from the suppliers operating vessels stationed and competing in the NCS.
90. In particular, as shown in Table 3 below, there have been 8 instances of moves to the UKCS since 2010 (with the great majority accounted for by Floatel's and Prosafe's ASVs). The CMA's investigation has revealed that there have been around 35 contracts awarded in the UKCS since 2010, meaning that around one in every four contracts since 2010 has been fulfilled using a vessel that was stationed in the NCS. The CMA notes, however, that there was only one movement from the NCS to the UKCS in the past 3 years.

Table 3: semi-submersible and monohull movement patterns to the UKCS

Year of move	Name of vessel	Owner	From Norway ⁴⁷	From RoW (ex. NWE)
2009	<i>Safe Scandinavia</i>	Prosafe	Yes	
2010	<i>Safe Bristolia</i>	Prosafe		Yes (Mexico)
2011	<i>COSL Rival</i>	COSL	Yes	
2011	<i>Edda Fides</i>	Edda Accommodation (monohull)		Yes (Spain)
2013	<i>Safe Bristolia</i>	Prosafe		Yes (Mexico)
2013	<i>Safe Scandinavia</i>	Prosafe	Yes	
2014	<i>Regalia</i>	Prosafe	Yes	
2014	<i>Safe Scandinavia</i>	Prosafe	Yes	
2015	<i>Floatel Superior</i>	Floatel	Yes	
2015	<i>Floatel Superior</i>	Floatel	Yes	
2015	<i>Floatel Victory</i>	Floatel		Yes (US Gulf of Mexico)
2016	<i>Safe Boreas</i>	Prosafe	Yes	
2019	<i>Safe Zephyrus</i>	Prosafe	Yes	
	Total		9	4

Source: Annex 2 to the response to RFI2 by the Parties.

91. The CMA notes that other than the Parties, there are only two other competitors with vessels stationed in the NCS, namely COSL and Teekay.

⁴⁷ There were no vessels that moved from the rest of NW Europe (excluding the NCS) to the UKCS.

92. One competitor said that its vessel [REDACTED].⁴⁸ Another competitor said that [REDACTED]. Currently both competitors' vessels [REDACTED] are [REDACTED].
93. One customer indicated that it was important that a vessel was located in Europe and that, for projects in the UKCS, semi-submersible ASVs are mobilised from the UKCS or the NCS. Although another customer indicated that ASVs being located in the UKCS was "critical" to its tender process, also noting that: "*North Sea experience was part of our technical criteria as well as holding a UK Safety Case.*"
94. This is consistent with vessels in the NCS showing interest in the UKCS tenders. However, to the extent participation is not costly, the CMA does not consider participation in a tender is necessarily evidence that a competitor perceives itself as having a realistic chance of winning a contract and entering the UKCS. Therefore, it is important to consider the success of bids by vessels in the NCS for the UKCS tenders.
95. The Parties' submissions and evidence from third parties indicated that environmental conditions in the NCS are generally more extreme and that regulatory requirements are more stringent when compared to the UKCS. In this regard, the CMA noted that the barriers faced in moving from the UKCS to the NCS may be more significant than *vice versa*.
96. The focus of the CMA's competitive assessment is on the possible effect of the Merger on the competition for the UKCS contracts, including from the vessels stationed and competing in the NCS. Therefore, the CMA found that it is appropriate to widen the frame of reference to NW Europe to take account of the competitive constraints from vessels stationed and competing in the NCS on the UKCS contracts.

The rest of NW Europe

97. The data submitted by the Parties to the CMA did not reveal any instances of semi-submersible ASVs moving from the rest of NW Europe other than the NCS to the UKCS. The CMA therefore excluded areas other than the NCS (ie Denmark and the Netherlands) from the geographic frame of reference.

RoW

Costs of mobilisation from the RoW to the UKCS

⁴⁸ COSL's response to the Questionnaire.

98. The Parties submitted estimates of the costs of mobilisation⁴⁹ of semi-submersible ASVs from the RoW to the UKCS, which range between [X] USD. This is in addition to the cost of UKCS certification to the extent that an ASV is not yet compliant. The Parties' submitted that none of the eight competing semi-submersible ASVs which are located in the RoW but are capable of operating in the UKCS has a UK HSE safety case.^{50 51 52}
99. The Parties submitted that the time required to move a vessel from the RoW to the UKCS ranges between [X] and [X] days. The Parties submitted that although lead times may vary, these have been reducing considerably, and range from three to six months,⁵³ adding that ASVs with longer mobilisation lead times are on the verge of missing contracts with shorter lead times.
100. In its analysis, the CMA assessed the cost of entry by taking the midpoint mobilisation cost of [X] million USD and adding regulatory costs of [X] million USD, resulting in the total average entry cost of [X] million USD. The CMA estimated that this would account for [X]% of the average value of a UKCS contract (excluding Clair Ridge). The CMA therefore considers that the costs of mobilising an ASV from the RoW to the UKCS are significant.

Movement of ASVs from the RoW to the UKCS

101. Based on the bidding data provided by the Parties' customers, in the past 5 years, out of [X] contracts in the UKCS for which at least one of the Parties was considered, competitors with ASVs located outside NW Europe were considered in 5 contracts. However, for only 2 of these 5 contracts did such a competitor qualify beyond the initial tendering stage.
102. Table 3 shows that in the past 5 years, there has been only one occasion when a semi-submersible has moved from the RoW for a contract in the UKCS: *Floatel Victory* moved to the UKCS from Mexico in 2015 for a contract with Premier Oil. The Parties' competitors located outside NW Europe have not won a contract in the UKCS in the past 5 years.
103. In the past 9 years, only 4 ASVs have moved from the RoW (all owned by Prosafe and Floatel). As there have been [X] contracts in the UKCS during that period, this means that around [X]% of UKCS contracts have been won by vessels stationed in the RoW.

⁴⁹ The following estimation deducts the cost of stacking had the ASV not been deployed and does not include the following expenses: OTG-related expenses, activation cost for newly-built vessels.

⁵⁰ Annex 14 to the MN.

⁵¹ Mobilisation costs are lower for the two monohull ASVs.

⁵² Annexes provided by the Parties in the email dated July 24, 2019.

⁵³ MN, p. 71.

104. The CMA considers that ASVs' historic movement data may be overstating the willingness of the suppliers to move an ASV to the UKCS. In particular, demand is declining, and possible entrants would face a large Merged Entity with substantial excess capacity in the UKCS. The CMA considers that these factors reduce the likelihood that potential entrants could be confident of defraying their entry costs over several contracts (and therefore are liable to generally reduce the incentive to enter).

Third parties' views

105. One customer told the CMA that *"typically units from outside from the North Sea would have high mob/demob which would potentially make them uncompetitive commercially...but there is always a chance."*
106. Another customer noted that *"mobilisation of a vessel from outside of Europe is possible although in these cases the vessel would usually make a brief stop at a nominated European port to allow for the completion of audits, inspections and trials thus extending the mobilisation period and therefore the mobilisation cost."* In relation to one of the Parties' competitors with semi-submersible ASVs located in the RoW, it also noted that [X] does not seem to be interested in the UKCS as that it has ASVs with high capacity and longer deployment periods. The two POSH's semi-submersible ASVs are located in Brazil and Indonesia and have never operated in the UKCS.⁵⁴
107. On the other hand, a customer indicated that ASVs located in the UKCS were *"critical"* to its tender process explaining *"North Sea experience was part of our technical criteria as well as holding a UK Safety Case."*
108. One competitor submitted that although they have tried to put competitive bids for a Conoco Phillips project in the UKCS in 2019, their ASVs were not successful due to *"high mobilisation costs"* and *"lack of track record, local presence and Safety Case"*.
109. Another competitor said that relocation means increased mobilisation costs that put firms at a disadvantage when competing for bids. Its two semi-submersible ASVs are [X].⁵⁵

Conclusion on geographic scope

110. With respect to NW Europe, the CMA found that a substantial proportion of contracts in the UKCS have been won by vessels stationed and competing in the NCS. Evidence from customers did not suggest that being stationed or

⁵⁴ Annex 14 to the MN.

⁵⁵ Annex 14 to the MN.

experienced in the UKCS (as opposed to in NW Europe) was a determinative factor when choosing a supplier. Moreover, the available evidence did not indicate that the costs of mobilisation to the UKCS and/or regulatory costs would be prohibitive for the Parties' competitors with vessels stationed in the NCS. Moreover, the Parties' competitors with vessels in the NCS have not indicated that competitive conditions in the UKCS differed to the broader NW Europe. On this basis, the CMA believes that it is appropriate to widen the geographic frame of reference to NW Europe (excluding Denmark and the Netherlands), to take account of the constraint from the vessels stationed in the NCS, in respect of the UKCS contracts.

111. With respect to the RoW, evidence received by the CMA indicated that the costs of mobilisation to the UKCS from regions outside of NW Europe, coupled with the regulatory costs, are sufficiently significant to deter entry to the UKCS. Bidding data has shown that contracts in the UKCS have been won by vessels stationed in the RoW only in a very limited number of cases, the majority of which are accounted for by the Parties. Customers consistently emphasised the importance of vessels being located in Europe and/or having experience in NW Europe. Evidence from competitors indicated that mobilisation costs affect their ability to compete. On this basis, the CMA believes that evidence does not support widening of the geographic frame of reference to the RoW.
112. For these reasons, the CMA has considered the impact of the Merger in NW Europe geographic frame of reference (including the NCS but excluding Denmark and the Netherlands).
113. The frame of reference does not determine the competitive assessment in any mechanistic way. As discussed in the competitive assessment, whether the CMA conducts its assessment on the basis of a narrower (UKCS) or a wider (NW Europe) geographic frame of reference does not materially affect the CMA's competitive assessment of the Merger.

Conclusion on frame of reference

114. For the reasons set out above, the CMA has considered the impact of the Merger in the supply of semi-submersible ASVs in NW Europe.

Competitive assessment

Evolving market dynamics

115. The Parties submitted that the CMA's assessment of the competitive effects of the Merger should take into account an expected reduction in demand for

semi-submersible ASVs in the UKCS, and a significant amount of excess capacity in the market.

116. The CMA's assessment of the Parties' submission on these two points is set out below.

Future prospects in the UKCS

117. The Parties submitted that there will be very limited demand in the UKCS for semi-submersible (and monohull) ASVs until at least 2025. The Parties pointed to several reasons for this change:

- (a) A shift from hook-up (**HUC**, ie the setting up of new platforms) to maintenance and modification (**MMO**) work. MMO work generally has a shorter duration than HUC work, requires lower personnel capacity, and provides oil companies with more flexibility to adjust the timing of the project (eg to plan work to take place during the summer period) to enable customers to use an alternative type of vessel (ie not a semi-submersible ASV), or even to carry out the work without using additional offshore accommodation (by either utilising internal personnel capacity and/or completing work onshore).
- (b) A shift toward floating production facilities. HUC work on floating production facilities can be carried out on-shore before the facility moves to its operational site and, as a result, ASV support is not required.
- (c) The introduction of next generation lifting vehicles. These vehicles can lift the entire platform topside. As a result, most HUC work for fixed production facilities can also be carried out on-shore before the platform topside is lifted into place and, as a result, ASV support is not required.

118. The Parties submitted that, as a result of these changes, and as a result of lower oil prices leading to less production activity, the number of projects suitable only for semi-submersible and/or monohull ASVs would decrease significantly and would account for only around [0-10]% of all demand for ASVs in the next five years. The Parties submitted that for the remaining 90-100]% of demand, semi-submersible (and monohull) ASVs would be facing competition from other types of ASVs, which would generally offer lower rates.⁵⁶

119. As explained in detail elsewhere in this decision, the CMA considers that the Parties' characterisation of the constraint offered by other types of ASVs is

⁵⁶ Annex 12 to the MN, pages 6-7.

liable to be overstated. Moreover, as noted in paragraph 65 above, tenders are individually negotiated and therefore customers in those tenders (which account for a meaningful amount of business) would not, in any case, be ‘protected’ by being a wider frame of reference.

120. The CMA has considered statements made by the Parties to investors over the past year regarding prospects in the market for semi-submersible ASVs. The Parties have stated that statements made to investors in 2018 reflected market conditions at that particular point in time, and are not reflective of future prospects today. For example, a Floatel Bond Investor presentation in September 2018 was made in the context where “*the oil price was around \$30 and [X], and so [X]*”.⁵⁷ The Parties also submitted that the CMA should have regard to the context to the statements made to investors, including that: (i) certain statements relate to global activities, rather than to UK activities; (ii) references to increases in activity are made by reference to a baseline of historically low activity; and (iii) “*a small rebound in MMO work*” would not make up for the loss of HUC work, which has been the Parties’ key source of work in the UKCS.
121. The CMA recognises that some statements in the Parties’ investor presentations may be intended to refer to the global market, and may not reflect the market in the UKCS. The CMA notes, however, that, as recently as May 2019, Prosafe told investors during its Q2 investor call: “*If we then look at the key geographical markets that typically are important for Prosafe, again its a generally positive outlook... they have production growth in the UK, a whole bunch of new players coming in. Focusing on existing fields and production, driving up recovery rates from the reservoirs, all positive for the industry. And all positive – should be positive – also for a company like Prosafe because existing installations, life extensions, tie-backs are typically bread and butter business for Prosafe in a historic perspective. So, what’s happening in the UK is generally positive for Prosafe. And, as you will note, the majority of jobs we have gotten in the recent times is UK. So, clearly UK has started to pick up before Norway, looking at the North Sea. But in Norway it’s also very positive...*”⁵⁸
122. Floatel’s Interim Report for Q2 2019 of August 2019⁵⁹ states that “*The overall offshore market is slowly improving from the downturn*” and that “*A higher drilling activity and general improvement within offshore oil services [...] will*

⁵⁷ The Parties’ response to the Issues Letter of 9th August 2019, para. 4.21.

⁵⁸ See Prosafe Q1 2019 [results presentation webcast](https://www.prosafe.com/webcast/webcast-q1-2019-article3010-291.html) at 10 min 40s available online: <https://www.prosafe.com/webcast/webcast-q1-2019-article3010-291.html> (accessed by the CMA on 30th August 2019).

⁵⁹ See: <http://floatel.se/sites/default/files/1009636623/Q2%20Report%202019.pdf> (accessed by the CMA on 30th August 2019).

pave the way for future accommodation charters.” “Within the offshore accommodation market, we [Floatel] have seen a slightly higher bidding activity especially in the maintenance and modification market.” Floatel further states: “We [Floatel] expect on the balance, given increase in tendering activity, improved utilization from 2021 and going forward as a result of improved market demand.”

123. The CMA recognises that there is some uncertainty about future prospects, and that both Parties have noted this uncertainty during investor calls in 2019. The statements made by the Parties to their investors do not, however, in the round support the position put forward that there is “*a permanent, structural reduction in demand that can be met only by semi-submersible (or monohull) ASVs*”⁶⁰ that would radically change competitive conditions going forward.
124. Internal documents of the Parties similarly suggested that the Parties expected an increase in demand. For example, Prosafe’s Board presentation of November 2018 noted, with respect to the UKCS, that “[X]”⁶¹ and, with respect to the North Sea (NCS and UKCS), that “[X]”.
125. Furthermore, the Rystad report⁶² identified [X] projects where the probability that additional accommodation would be required is assessed as positive, out of which [X] future projects which may require either a semi-submersible or monohull ASV are in the UKCS. The CMA noted that these projects were identified by the consultants commissioned by the Parties in the period of when the Merger was in contemplation, and the subjective assessments of the probabilities of these projects taking place were generated by the same consultants. The CMA is therefore unable to verify the reliability of these probability estimates. Nevertheless, to the extent that the [X] projects identified in the Rystad report are not *de minimis*, they are relevant for the CMA’s assessment of the possible competitive effect of the Merger.
126. The CMA also notes that:
 - (a) Based on the Parties’ bidding data, in [X] out of [X] contracts in the UKCS won by a semi-submersible ASVs in the last 5 years, customers identified jack-up ASVs as a possible ASV option. Such projects would be excluded from the [X] future projects because they would not be deemed as ‘requiring’ a semi-submersible or monohull ASV. As explained above, the bidding data suggests that other types of ASVs provided, at best, a

⁶⁰ Response to issues letter, para 4.22

⁶¹ Annex 1. Item 61.1 - Strategy discussion support documentation.pdf to the MN.

⁶² Annex 12 to the MN.

very limited constraint even in those contracts for which they were initially identified as a possible option.

- (b) The assessment in the Rystad report appears to be incomplete. Third parties responding to the CMA have identified additional likely projects with need for semi-submersible ASVs. One customer was relatively certain about the need to contract a semi-submersible ASV in 2021 in relation to MMO or shutdown of a facility. Two other customers could not confirm identified relatively likely projects. Another customer noted that there will likely be a project requiring a semi-submersible ASV in the next 5 years. This evidence suggests that these projects either have not been identified in the Parties' commissioned report at all, or are much more likely to require a semi-submersible ASV than described in the Parties' commissioned report. Four customers each identified between 1 and 3 projects in the next 5 years for which they anticipated contracting a semi-submersible ASV. Additional customers indicated that they might contract a semi-submersible ASV in the next 5 years depending on the results of exploration activities, or other factors.
- (c) Some evidence suggested that 5 years into the future exceeds the time frame in which suppliers are able to identify certain prospective projects. In particular, the Parties' own estimates suggest that many of the projects could not be identified as early as 5 years in advance of the project, including HUC (3-5 years), TAR (1-2), Tie-backs (2-4 years), Life extensions (0-2 years) and platform decommissioning (3-6 years).⁶³ This indicates that demand estimates in the Rystad report for the 5 years into the future may not be complete and are likely to miss some projects.
- (d) While the Parties submitted that W2W vessels may be a viable alternative to semi-submersible ASVs for some projects and that customers may plan the project over the summer months when a wider range of vessels can be used, the CMA notes that projects may last for more than 3 months and therefore may not be completed in the summer, meaning that other alternatives such as, in particular, W2W vessels would not provide for a suitable alternative.
- (e) With respect to the Parties' submission that a shift to MMO projects would mean that some of the future projects would require fewer personnel capacity and therefore other vessel types would be able to provide for a suitable alternative (and/or that internal personnel capacity would be sufficient), the CMA notes that some of the projects identified by the

⁶³ Annex 12 to the MN, page 40.

Parties' customers as possibly requiring a semi-submersible ASV in the next 5 years relate to MMO and decommissioning activities.

Excess capacity

127. The Parties submitted that the collapse of oil prices in 2014 led to a softening of demand for semi-submersible ASVs. The Parties further submitted that the placing of orders for new ASVs before 2014 by some suppliers has led to a global oversupply of ASVs. The Parties submitted in this regard that only a third of semi-submersible and monohull ASVs are currently contracted.
128. With respect to excess supply, the CMA notes that when considering a NW Europe geographic frame of reference (to take into account constraints from vessels stationed and competing in the NCS), the vast majority of excess capacity held in the market is accounted for by the Parties. In principle, the CMA would generally consider that excess capacity held by two competitors would tend to intensify competition between them (leading, in turn, to better outcomes for customers such as shorter lead-time and better prices) rather than reduce it. The fact that the Parties hold the majority of excess capacity in the market would therefore exacerbate, rather than remove, any concerns about the Merger's effect on competition.
129. The CMA also found that the Parties' submissions are likely to overstate the total relevant excess capacity. The Parties' internal documents suggest that their capacity utilisation has been high even in 2018. The basis on which the excess capacity is measured in the Parties' submissions to the CMA⁶⁴ does not seem to be reliable in particular because:
 - (a) Measurements include global capacity, rather than NW Europe capacity;
 - (b) The capacity measurements (in vessel years) do not appear to account for the activation, mobilisation and/or maintenance time periods, or other such factors that would reduce the extent of excess capacity in practice.
130. The Parties' customers confirmed the comparatively lower demand for, and presence of excess capacity in, the supply of semi-submersible ASVs.
131. The CMA therefore considered that the Parties' submissions that the CMA should place particular weight on an expected reduction in demand for semi-submersible ASVs in the UKCS and a significant amount of excess capacity in the market are not supported by the available evidence.

⁶⁴ Calculations and graphs presented to the CMA at the Issues Meeting on 8th August 2019.

Horizontal unilateral effects

132. 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.⁶⁵ Horizontal unilateral effects are more likely when the merging parties are close competitors.
133. 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 supply of semi-submersible ASVs in NW Europe.
134. In its assessment, the CMA considered:
- (a) Shares of supply;
 - (b) Bidding data;
 - (c) The closeness of competition between the Parties; and
 - (d) Competitive constraints from alternative suppliers.

Shares of supply

135. The Parties submitted estimated shares of supply based on (i) the number of UKCS-capable semi-submersible and monohull ASVs worldwide and in the North Sea, and (ii) the number and value of UKCS contracts.
136. However, as explained in the frame of reference section, the CMA is considering the supply of semi-submersible ASVs (excluding monohulls) in NW Europe focusing on the contracts in the UKCS. Table 4 shows the shares of supply based on number of vessels in NW Europe and the UKCS and Table 5 shows shares of supply based on the number and value of contracts won in the UKCS.

Table 4: Shares of supply of semi-submersible ASVs in the UKCS and NW Europe (2019)

⁶⁵ [Merger Assessment Guidelines](#), from paragraph 5.4.1.

Competitors	UKCS		NW Europe ⁶⁶	
	Number of vessels	Share by number of vessels	Number of vessels	Share by number of vessels
Prosafe	[X]	[80-90] %	[X]	[60-70] %
Floatel	[X]	[20-30] %	[X]	[20-30] %
Combined	[X]	[90-100]%	[X]	[80-90] %
COSL	[X]	[0-5]%	[X]	[10-20] %
Teekay	[X]	[0-5]%	[X]	[10-20] %
TOTAL	[X]	100%	[X]	100%

Source: CMA's analysis of the Parties' Merger Notice.

Table 5: Shares of supply of semi-submersible ASVs based on contracts in the UKCS (2014-2019)

Competitors	2014 - 2019 (UKCS) based on the Parties' bidding data			2014-2019 (UKCS) based on submissions from the Parties' customers ⁶⁷		
	No of contracts won	Share of all contracts	Share of all contracts based on the estimated value ⁶⁸	No of contracts won	Share of all contracts	Share of all contracts based on the estimated value ⁶⁹
Prosafe	[X]	[60-70]%	[30-40]%	[X]	[70-80]%	[50-60]%
Floatel	[X]	[30-40]%	[50-60]%	[X]	[10-20]%	[40-50]%
Combined	[X]	[90-100]%	[90-100]%	[X]	[90-100]%	[90-100]%
COSL	[X]	[X]%	[X]%	[X]	[X]%	[X]%
TOTAL	[X]	100%	100%	[X]	100%	100%

Source: CMA's analysis of the Parties' Merger Notice and third party information.

Note: This data set includes all contracts for which at least one of the Parties' submitted a bid in 2014-2019 and a semi-submersible ASV won the contract.⁷⁰ The data set also excludes the contracts won by Fred Olsen as it has exited the market.

137. Tables 4 and 5 show that the Parties would by far be the largest supplier. Based on the number of vessels, the Parties' share of supply of semi-submersible ASVs located in NW Europe would be more than [80-90]% with an increment of [20-30]%. The CMA notes that, if only vessels located in the UKCS were considered, the Parties would have a combined share of [90-100]% with an increment of [20-30]%. As shown in Table 4, the Parties'

⁶⁶ Includes *Safe Scandinavia* TSV which is located in the NCS (Annex 2).

⁶⁷ For data description, see paragraph 145.

⁶⁸ If BP's exceptionally large Clair Ridge (July 2015) contract, which was won by Floatel, was excluded, then Prosafe and Floatel won [60-70]% and [30-40]% by value respectively, with COSL's contract accounting for [1-5]%.
⁶⁹ If BP's exceptionally large Clair Ridge (July 2015) contract, which was won by Floatel, was excluded, then Prosafe and Floatel won [80-90]% and [5-10]% by value respectively, with COSL's contract accounting for [1-5]%.
⁷⁰ Includes those cases when *Safe Scandinavia* TSV was chosen as a winner. This is consistent with the Parties approach. In addition, *Safe Scandinavia* was converted to an ASV in 2015/2016.

combined share of supply both by value and volume of contracts would be [90-100]%. Based on the data submitted by the Parties, the increment is [30-40]% by value and [30-40]% by number of contracts.

138. The shares of supply also show that is the other supplier to have won a contract in the UKCS. Its share is between [X]% by value and [X]% by number of contracts. [X] has one ASV located in NCS and thus, its share of supply in NW Europe is [X]%.
139. 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;
 - (b) the shares do not reflect the high differentiation in projects (for example, in terms of duration, personnel capacity and water depth), and that analysing all tenders together could make the Parties look as close competitors while in fact they compete for different types of work and/or customers;
 - (c) structural changes in the demand in the market in 2014 mean that the backward-looking assessment of the market shares is not reliable.
140. Notwithstanding the Parties' submission that static shares of supply are a poor indicator because tenders are 'lumpy', the CMA notes that the Parties' combined shares and increment are still large when calculated by the number of contracts. When expanding the dataset to consider 10 years of contracts (ie based on [X] contracts), the Parties' share of supply remains above [80-90]% with an increment of [10-20]% brought about by the Merger. The Parties' analysis of tenders in the NCS also suggests a high combined share of more than [70-80]% of contracts (with an increment of [30-40]% brought about by the Merger).⁷¹
141. With regard to the Parties' submissions regarding the differentiation in projects, the CMA has taken these into account within its assessment of the closeness of competition between the Parties and the competitive constraint exercised by others, as set out in more detail below. This analysis does not, however, support the position that the Parties compete for different types of

⁷¹ CRA bidding data analysis, slide 19. This may understate the Parties' competitive strength because it includes Fred Olsen, which has exited the market, [X] and jack-ups, suggesting the Parties may have included contracts for which they did not compete.

work and/or customers such that the share data tends to overstate their competitive significance.

142. The CMA recognises that the analysis of the shares of supply is historical and should be considered in light of any recent structural changes in the market (where supported by the evidence). As explained above, the CMA considers that the available evidence does not support the Parties' submissions that changes in the market structure have brought about material changes in market dynamics. The CMA has, of course, considered all of the available evidence in the round (and notes, in this regard, that the strong market position indicated in the share data above is consistent with the characterization of the Parties' position by customers and in the Parties' internal documents). The CMA therefore considers that the Parties' combined shares of supply are at a level that raises *prima facie* competition concerns.

Bidding data analysis

143. The Parties submitted bidding data for [X] contracts awarded in the UKCS in the last 5 years where at least one of the Parties participated and where the winning vessel was a semi-submersible ASV. As shown in Table 4 above, the Parties won all but [X] of these contracts (Prosafte won [60-70]% of contracts by number and [30-40]% by value while Floatel won [30-40]% by number and [60-70]% by value). There was only [X] awarded to a competitor of the Parties, in [X].
144. For completeness, the CMA also looked at all contracts where at least one of the Parties submitted a bid in the last 5 years and the winner was not a semi-submersible ASV. The CMA identified only one contract in this category, which was won by a jack-up drilling rig.⁷²
145. The bidding data provided to the CMA by the Parties' customers was broadly consistent with the Parties' bidding data. Out of the [X] contracts for which at least one of the Parties made an offer in the last 5 years in the UKCS for which the CMA received data from the Parties' customers, [X] contracts could be matched with the data submitted by the Parties.⁷³ The CMA analysed this data to assess the suppliers' performance in-tender (including which suppliers qualified beyond the initial stage of the tender and how their

⁷² Among the contracts in the UKCS in the last 5 years for which at least one of the Parties bid, the Parties also included a contract where the winner has not been officially announced. For these reasons the CMA could not include the contract in the share of supply estimation.

⁷³ [X] of these contracts matched the ones as provided by the Parties in the bidding data. [X] contracts could not be matched to the ones provided by the Parties. The CMA is aware that there may be discrepancies with how the contracts' start dates, day rates and/or other information has been registered by the Parties and their customers.

bids compared). The CMA considered the information on this subset of customer tenders.

146. Bidding data received from the customers indicated that all other competitors:
 - (i) were considered by customers and/or submitted an offer in the initial tendering stage; and/or (ii) qualified beyond the initial tendering stage; and/or (iii) won a lesser number of contracts than each of the Parties. Among all the competitors that were considered and/or qualified beyond the initial tendering stage, only one competitor other than the Parties won a contract. In line with the results of the bidding analysis based on the Parties' data, the Parties won [REDACTED] of contracts (both by number and by value).
147. Based on the information provided by the Parties' customers, the CMA assessed how customers choose an ASV supplier and the extent to which the Parties are close competitors within this process.
148. First, in relation to the which providers were considered by the Parties' customers at the initial stage of contracting an ASV provider, the CMA found that:
 - (a) For all except one of these contracts, both Parties were considered or submitted offers with at least one of their semi-submersible ASVs. In relation to the one contract where one of the Parties was not among the suppliers considered, the customer indicated that neither this Party nor any other supplier, [REDACTED];
 - (b) The extent to which other providers were considered differed between contracts. In particular, out of the [REDACTED] contracts where both Parties were considered:
 - (i) The Parties were the only two ASV providers considered by customers in just under half of the contracts.
 - (ii) In addition to the two Parties, one other ASV provider was considered for a limited number of contracts.
 - (iii) In addition to the two Parties, more than one other ASV provider was considered in just under half of the contracts.
 - (iv) When both Parties and at least one other ASV provider were considered, COSL was the competitor that was considered most often. No other competitor was considered for more than a limited number of contracts.

- (c) Some of the customers' contracting documents point to the lack of interest from other semi-submersible ASV providers submitting offers, even when they were approached directly by the customer.
149. This suggests that both Parties are in competition for the vast majority of tenders and, in a considerable number of cases, are each other's only competitors. Moreover, where both Parties are considered, they face limited competitive constraint from competitors other than COSL.
150. Second, the CMA considered how successful the Parties and their competitors were when customers decided which of the ASVs qualified for the final stage. The CMA found that:
- (a) Both Parties qualified for the majority of the contracts where they were both considered at the initial stage; and in the majority of these, they were the only two qualified candidates.
 - (b) At least one of the Parties qualified in almost all contracts where both Parties were considered.
 - (c) Floatel qualified for [X] number of contracts for which Prosafe did not qualify. Prosafe [X]. There were no other competitors that qualified.
 - (d) Prosafe qualified for some contracts for which Floatel did not qualify⁷⁴. For around half of these contracts, [X]. For the remaining contracts [X].
 - (e) For a very small number of contracts, neither of the Parties qualified. This is due to [X].
151. Third, the CMA found that the Parties were very successful at winning contracts when at least one of them qualified. The CMA therefore considered how close the Parties were to each other (and their competitors) when both Parties qualified. The CMA found that out of around half of contracts, both Parties qualified and that for almost all of these contracts, they were the only two qualified candidates. Of these contracts:
- (a) A minority was won by Floatel's ASV due to it having a better [X] capability and [X] and a better [X].
 - (b) [X] were won by Prosafe's ASVs. Customers noted that Prosafe offered [X] and provided a [X] commercial offering. For one of these contracts,

⁷⁴ This number excludes one contract where Floatel was not considered.

the customer also noted that the [REDACTED] for Prosafe's ASVs was better when compared to Floatel.

(c) In the majority of cases where both Parties qualified beyond the initial stage of the tender process, the Parties were the only qualifying competitors, automatically making them each other's runners-up/closest competitors.⁷⁵

152. There were two occasions where another competitor's ASV was ranked higher than Floatel. One of these competitors, Fred Olsen, has since exited the market, and the other, Axis Offshore, was acquired by Prosafe. As a result, neither of these two suppliers could be expected to exercise a competitive constraint in future contracts.
153. Based on the contracts where only one of the Parties was considered or qualified beyond the initial stage of the tender process, Prosafe won a significant number and Floatel won a [REDACTED] number of contracts.
154. Contracting documents and bidding data of several customers indicated a lack of interest from a number of other semi-submersible ASV suppliers in submitting offers, even when they were approached by the customer.
155. Taking all of the evidence described above into account, the CMA finds that the bidding data provided by the Parties' customers and by the Parties themselves indicates that the Parties are close competitors with a very limited competitive constraint provided by other suppliers.
156. The CMA also analysed the bidding data submitted by the Parties' customers to understand the competitive constraint exerted by other types of offshore accommodation (ie not semi-submersible ASVs).
157. Bidding data indicates that the out-of-market constraint from vessels other than semi-submersible ASVs is limited. The CMA took into consideration all tenders where at least one of the Parties submitted a bid in the last 5 years, and the winner was not a semi-submersible ASV. Only on one occasion was a contract won by a vessel which was not a semi-submersible ASV but a jack-up drilling rig.⁷⁶ Similarly, the data received from the customers indicates that out of five occasions where vessels other than a semi-submersible ASV were also considered by customers, only in one case did such a vessel qualify:

⁷⁵ Only [REDACTED] of these contracts was won by Floatel's ASV since it had [REDACTED]. The remaining [REDACTED] of these contracts were won by Prosafe's ASVs. Customers noted that Prosafe offered [REDACTED]. For one of these contracts, the customer also noted that [REDACTED].

⁷⁶ Among the contracts in the UKCS in the last 5 years for which at least one of the Parties bid, the Parties also included a contract where the winner has not been officially announced. For these reasons the CMA could not include the contract in the share of supply estimation.

namely, a jack-up drilling rig which ranked behind [X]’s semi-submersible ASV that won the bid. The CMA considers that this indicates that out-of-market constraint from other types of vessels is very limited.

Econometric analysis

158. The Parties submitted to the CMA an econometric analysis conducted by Charles River Associates (**CRA**). The aim of the analysis was to establish:
- (a) How the number of bidders in tenders affect the margins earned;
 - (b) How the number of bidders affect the day rates charged; and
 - (c) Whether the identity of bidders affects margins and daily rates.
159. The analysis did not establish any relationship between the number of bidders and either margins or day rates. The Parties argued that this suggested that reducing the number of bidders by one would not affect outcomes for customers.
160. However, the CMA identified significant flaws in CRA’s analysis. In particular, the approach suffered from insufficient control for heterogeneity across tenders, which may confound the effect of the number of bidders on the margins and/or day rates. Further, accounting for this heterogeneity is not possible due to the limited number of observations. The document submitted by the Parties recognised the weaknesses incumbent in this analysis, noting that “[g]iven the limited number of contracts for which data are available, these results need to be interpreted with caution.”
161. Other factors that limit the weight that can be placed on CRA’s analysis include that:
- (a) Some of the data collected by the Parties and used in the assessment (eg in relation to other bidders) is based on the Parties’ market intelligence, so may not be fully accurate;
 - (b) The analysis covers a long time period of 10 years and may therefore not reflect current market conditions (in particular because it includes a period during which Floatel was a weaker competitor with limited capacity)⁷⁷;

⁷⁷ Floatel Superior was delivered in 2009, Floatel Reliance in 2010, Floatel Victory in 2013, Floatel Endurance in 2015 and Floatel Triumph in 2016.

- (c) The inclusion of data for the NCS may give rise to results that are not representative of competitive conditions in the UKCS (to the extent the NCS has a different competitive landscape).⁷⁸

162. The CMA has therefore not placed any material weight on CRA's analysis.

Closeness of competition

163. In assessing the closeness of competition between the Parties, the CMA considered (in addition to the bidding data summarised above):

- Similarities in the Parties' service proposition;
- Internal documents; and
- Third party views.

The Parties' service proposition

164. The Parties submitted that they do not exert a competitive constraint on each other as the Parties' bids show that there was a significant price difference in the price (day rates) between the Parties' offers in the UKCS over the last 5 years, which on average was [X] USD, equivalent to [X]% of the better of the two bids.

165. The CMA has not been able to verify whether the difference in the Parties' offers takes account of all elements of the price such as any fixed fees (for example, related to mobilisation costs) that are charged to customers.

166. In addition, the CMA notes that the Parties' approach is based on an assessment of the difference between the Parties' bids as a positive percentage (rather than difference between the averages of the Parties' bids across all tenders), and therefore does not take account of the fact that the lower bidder is not always the same Party. The CMA therefore believes that the Parties' approach is liable to overstate differences in positioning between the Parties across tenders.⁷⁹ The CMA notes, in this regard, that the average price difference between the Parties' bids across all tenders appears to be far

⁷⁸ As explained above, the focus of the CMA's assessment is on customers in the UKCS (taking account of the competitive constraint from the vessels stationed and competing in the NCS on the UKCS contracts but not of contracts won on the NCS).

⁷⁹ Consider two bidders, Bidder A and Bidder B. Let's say that, over the course of 10 tenders, Bidder A submits a price that is 10% higher than Bidder B's price in five tenders and submits a price that is 10% lower than Bidder B's price in five tenders. The average difference between the bidders is zero across tenders. The Parties' approach, using the absolute value in each case, only captures that there is an average difference of 10%.

lower (albeit that it is again not possible to verify whether all elements of the price are included).

167. The CMA considers that a number of factors might be driving the price gap for individual contracts such that the difference could be explained by factors other than price. Evidence from third parties indicated that other aspects such as, for example, features of the vessel, quality of service, track record, safety and/or experience in NW Europe are also important. The CMA notes in this respect that significant price differences existed between Prosafe’s own vessels in some tenders where Prosafe offered multiple vessels, which is consistent with other factors affecting price.
168. In light of the limitations described above, the CMA has not placed any material weight on the Parties’ submissions in relation to price differences.
169. Customers who responded to the CMA’s questionnaire noted that, in addition to the type of ASV and the price (day rates), the most significant factors they consider when selecting an ASV provider include the presence of a UK safety case, the age of the vessel, compliance with DNVR GL class society requirements, additional safety requirements, the supplier’s general track record or reputation in UKCS, and personnel capacity. The CMA has considered these factors in assessing the closeness of competition between the Parties.
170. Both Parties are specialised providers of semi-submersible ASVs with the largest fleets in NW Europe. Table 6 provides an overview of the Parties’ semi-submersible ASVs which are capable of operating in the UKCS as submitted by the Parties.⁸⁰

Table 6: UKCS-capable semi-submersible ASVs

Owner	Vessel name	Delivery	Personnel	UK HSE licence	Current status	Present location
Prosafe	<i>Safe Caledonia</i>	1982	454	Yes	Warm-Stacked	UKCS
Prosafe	<i>Safe Bristolia</i>	1984	316	Yes	Cold-stacked	UKCS

⁸⁰ The Parties defined UKCS-capable vessels as “vessels that are currently capable of operating on the UKCS, or could do so following limited investment and with little or no physical modification (to secure a UK HSE safety case which would allow them to operate efficiently in most parts of the UKCS for a material proportion of the year)”.

Prosafe	<i>Regalia</i>	1982	306	Yes	Warm-Stacked	Norway
Prosafe	<i>Safe Boreas</i>	2015	450	Yes	Active	UKCS
Prosafe	<i>Safe Zephyrus</i>	2016	450	Yes	Active	Norway
Prosafe	<i>Safe Notos</i>	2014	500	No	Active	Brazil
Prosafe	<i>Safe Scandinavia</i>	1984	212	Yes	Active	Norway
Prosafe	<i>Safe Concordia</i>	2005 (upgrade in 2015)	461	No	Active	Brazil
Floatel	<i>Floatel Superior</i>	2010	440	Yes	Active	Norway
Floatel	<i>Floatel Victory</i>	2013	560	Yes	Active	UKCS
Floatel	<i>Floatel Endurance</i>	2015	440	Yes	Maintenance	Singapore
Floatel	<i>Floatel Triumph</i>	2016	500	Yes	Warm-stacked	Malaysia

Source: Parties' Merger Notice.

171. As shown in Table 6, the Parties have a similar service proposition. In particular:

- Most of the Parties' ASVs are UKCS-capable;
- Both Parties have a significant share of young fleet; 4 out of 8 of Prosafe's UKCS-capable semi-submersible ASVs were delivered in 2015 or later and all of Floatel's ASVs were delivered in 2010 (when Floatel entered the market) or later;
- Both Parties have multiple vessels located in NW Europe; and
- Both Parties fleets have similar personnel capacity.

172. The information above suggests that the Parties' ASVs have relatively similar characteristics and that the Parties seem to offer a similar service proposition, while noting that there are certain difference between each of the vessels.

Internal documents

173. The CMA considered the extent to which the Parties viewed each other as close competitors based on their internal documents.

174. Prosafe’s internal documents suggest that it views Floatel as its closest competitor, in particular in the context of the UKCS and/or NW Europe. For example:

- Prosafe’s internal document “[X]” of November 2018⁸¹ refers to the Parties as the “*largest and second largest offshore accommodation providers.*” It also states that a number of Floatel’s ASVs are “[X]” Prosafe’s ASVs,⁸² which the Parties explained means that Prosafe considers such vessels to have very similar capabilities [X].⁸³ The CMA nevertheless notes that such references to “[X]” ASVs refer to either or both of the Parties, and not to any ASVs of any other competitors.
- Prosafe’s Minutes of Meeting of March 2017⁸⁴ note that “*ranking of North Sea fleets suggests that [Prosafe’s] [X] and [Floatel’s] [X] are in head-on competition for work in 2H17 1H18*” and that “[*Prosafe’s] [X] and [X] would be in direct competition with Floatel vessels for any UKCS work if relocated.*”
- Prosafe’s Board Meeting Minutes of March 2018⁸⁵ indicate that Prosafe was considering Floatel as its competitor for [X] on completion of its contract (in the UKCS). The document refers to [X] as an “*option*”, noting that “*the feeling is that [X] is in discussion with Floatel about the deployment of [X]*”. The document does not mention any other competitors.
- Prosafe’s [X] document for 5 November 2018⁸⁶ assesses tendering performance by looking at the win rates of Prosafe, Floatel and “*others*”.
- Prosafe board materials for March 2018 identify “*the [X]*” for UKCS as the following vessels currently operating in the North Sea: [X], and the following vessels currently operating outside the North Sea or under construction: [X]. This indicates that all [X] current vessels and all [X] potential entrants identified by Prosafe belonged to either Prosafe or Floatel.⁸⁷

Third party views

⁸¹ Annex 4. Item 66.4-Iguana _2 update.pdf to the MN.

⁸² Eg. Floatel’s [X] are “[X]” Prosafe’s [X] and [X] whereas Floatel [X] and Floatel [X] considered to be “[X]” Prosafe’s [X] and [X]; Floatel [X] considered to be “[X]” Prosafe’s [X].

⁸³ The Parties’ response to the RFI 3.

⁸⁴ Annex 11. Part 1 Board pack 1_Redacted.pdf.

⁸⁵ Annex 30. 00. Board Pack - Part 1_Redacted.pdf.

⁸⁶ Annex 1. Item 61.1 - Strategy discussion support documentation.pdf to the MN.

⁸⁷ Annex 30. 00. Board Pack - Part 1_Redacted.pdf to the MN, p. 17.

175. The majority of the Parties' customers and competitors who responded to the CMA's investigation considered that the Parties are strong competitors and close alternatives to each other.
176. More specifically:
- (a) All of the Parties' customers who provided views on the Parties, noted that the Parties are close alternatives to each other.
 - (b) A customer noted, for example, that "*Prosafe and Floatel are the two leading providers in the North Sea*", and in its recent tenders, its final choice has been between Prosafe and Floatel.
 - (c) Another customer said that "*there is now much more competition between the two established suppliers [Prosafe and Floatel] which has been driving the day-rates down. This has led to better negotiations with either firm where the focus is now on which one can provide the best day-rates for [a] technically acceptable vessel.*"
 - (d) Customers also noted that both Parties have a fleet with a safety case that "*will always be relevant*" and that they are "*two top-end providers in the industry*", and have similar capabilities and offering.
 - (e) A customer said that Prosafe to Floatel (and vice versa) is "*equivalent and primary UKCS direct competitor*".
 - (f) Another customer said that the Parties are the only two "*UK Safety Case DP flotels with North Sea experience*", adding that when it "*reviewed the vendors who could meet [its] minimum requirements only Floatel International and Prosafe were able to provide adequate vessels.*"
 - (g) Another customer noted the Parties' similarity by saying that the Parties have "*similar spec of vessels*".
 - (h) A customer observed that "*there is no doubt that Prosafe an[d] Floatel Int. are the dominant SS [semi-submersible] ASV providers in the UKCS. This is in terms of both fleet size and proven capability.*"
177. All of the Parties' competitors who provided their views on the Parties considered that the Parties compete closely in relation to semi-submersible ASVs; all of these competitors expected the Parties to participate in similar tenders and operate in similar geographic locations. Around half of these competitors expected the Parties to offer similar prices and fulfil similar customer preferences. One of the Parties' competitors, in particular, noted that the Parties have large fleets of ASVs with similar specifications, with most

of their vessels located in the North Sea. This competitor also noted that the Parties are frequently the only two serious contenders in tenders where price is the main deciding factor between the two companies.

Competitive constraints

178. The Parties submitted that they face competitive constraints from the following competitors: COSL, Teekay, OOS, POSH, Cotemar, Edda Accommodation, HHI and COSCO.
179. The CMA assessed the extent of the competitive constraints faced by the Parties from these providers by taking into consideration similarity of service proposition, bidding data, third party views, and evidence from internal documents. The CMA considered each of these competitors in turn.

COSL

180. COSL has one ASV, the *COSL Rival*. This vessel has not won a contract since 2016 and has been warm stacked in the NCS. The *COSL Rival* accounts for 10% of all semi-submersible ASVs stationed in NW Europe.
181. The *COSL Rival* was delivered in 1978. The Parties submitted that the lifetime of a semi-submersible ASV is 30-35 years. Information gathered during the market test suggests that the *COSL Rival* may provide a limited competitive constraint due to its age. This view is also supported by the Parties' internal documents. For example, a Prosafe board presentation from 2017 stated that [REDACTED]."⁸⁸
182. The Parties' bidding data showed that COSL won only one contract in the UKCS in the last 5 years where at least one of the Parties participated. When looking at the cases when a winner was a semi-submersible ASV, COSL's share of supply is around [REDACTED] based on the number of contracts and around [REDACTED] based on the value of these contracts.
183. The majority of the Parties' customers that responded to the CMA's investigation indicated that COSL is not a close alternative to either of the Parties. The two customers who suggested COSL could be an alternative to the Parties both identified the age of COSL's ASV as a concern. Customers identified a number of reservations about COSL as a competitor:

⁸⁸ Prosafe, Annex Q9 - 26 to Merger Notice at p. 41.

- (a) Some of the customers indicated that COSL is more known as a supplier of drilling rigs rather than ASVs;
 - (b) In the internal documents provided by one customer in relation to one of the latest known tenders in the UKCS, it noted that it did not shortlist COSL due to the rig's age;
 - (c) One customer expressed concerns about the amount of work that might be required to [REDACTED]; and
 - (d) Only two customers considered COSL to be a close competitor to the Parties, noting, however the [REDACTED] and that it "*has been [REDACTED] for a while.*"
184. Only a limited number of competitors who responded to the question in the Questionnaire regarded COSL as a strong competitor in the UKCS. In particular:
- (a) Some competitors noted that COSL is a drilling company with an old ASV which has been laid up for quite some time.
 - (b) Some competitors noted that customers may find COSL's Rival less attractive as they find it easier to hire a unit that has just finished a job rather than use one that has been dormant. This is because the latter involves more risk such as delays and hidden costs.
 - (c) Some competitors indicated that COSL's Rival is at the lower-end of the market and, thus, bids with lower prices and competes more with Prosafe's older vessels, rather than with Floatel or with Prosafe's newer ASVs, which are more expensive. If operators prefer newer units, COSL would be unable to compete against Prosafe and Floatel.
185. Based on this information, the CMA considers that COSL would not be a close competitor or exert a significant competitive constraint on the Parties.

Teekay

186. Teekay is a non-specialised semi-submersible ASV provider and the provision of ASV services is a small proportion of its business. It has one cylindrical semi-submersible ASV, the *Arendal Spirit*, which [REDACTED] in the UKCS and does not have a UK HSE safety case. The *Arendal Spirit* is currently warm-stacked in the North Sea.
187. Teekay's semi-submersible ASV accounts for [REDACTED]% of all semi-submersible ASVs stationed in NW Europe.

188. The Merged Entity and Teekay may be under common control following the Merger. Brookfield recently acquired Teekay and Brookfield is currently undertaking the acquisition of 62% of Oaktree. As explained in the section on Jurisdiction (see paragraphs 12 to 18), the CMA considers that Oaktree may be able to exercise material influence over the decisions of the Merged Entity. The CMA also believes that this relationship may mean that Teekay is unlikely to exert a material competitive constraint on the Merged Entity.
189. Almost half of customers indicated that Teekay was not an alternative to the Parties. Even where customers indicated that Teekay might provide an alternative to the Parties, all but one customer qualified this response, noting concerns with Teekay's offer such as its lack of experience in the UKCS, and its [REDACTED]. In a call with the CMA, the one remaining customer did not identify Teekay as an alternative supplier in the UKCS.
- (a) Some customers noted that the provision of ASVs is not Teekay's core business and that Teekay only has one ASV;
 - (b) Some customers noted that they do not find the *Arendal Spirit* to be a suitable ASV and that its cylindrical design is not proven in harsh environments.
 - (c) Some customers also pointed to the lack of UKCS history and that the *Arendal Spirit* [REDACTED].
 - (d) One customer noted [REDACTED] with the *Arendal Spirit*.
190. No competitors who provided their views on Teekay regarded it as a strong competitor in the UKCS. In particular:
- (a) Some competitors emphasised that Teekay's only ASV is currently in lay-up, does not have track record in the UKCS and nor a UK HSE safety case;
 - (b) Around half of the competitors noted that *Arendal Spirit*'s cylindrical design was not accepted by clients after the serious gangway incidents in Brazil. One competitor noted the customers were "scared away" by it.
 - (c) Some competitors noted that Teekay tend to focus on longer duration contracts (which are not prevalent in the UKCS) and does not seem to have ever bid for projects in the UKCS.

191. Based on this information, the CMA believes that Teekay would not be a close competitor and/or exert a significant competitive constraint on the Parties post-Merger.

OOS

192. OOS has three semi-submersible ASVs (the *OOS Gretha*, *OOS Prometheus* and *OOS Tiradentes*) with 2 additional ASVs (the *OOS Serooskerke* and *OOS Walcheren*) yet to be delivered. OOS's ASVs are stationed in Brazil and have never been stationed elsewhere. OOS's fleet is specialised in decommissioning work: the whole fleet, except for one ASV, is equipped with powerful cranes.
193. OOS's vessels are not, and have never been, stationed in NW Europe.
194. Customers' views were mixed in relation to whether they view OOS as a close alternative to the Parties, with around half of them indicating that it was not an alternative. Even where customers indicated that OOS could be an alternative to the Parties, some customers identified constraints such as the fact that the large cranes on several OOS units typically result in a higher day rate. In particular:
- (a) Some customers pointed to the large size of these vessels and suggested that their purpose is heavy lifting. One of the customers noted that the ASVs are too large while another noted that large cranes of these vessels means that the rates charged are higher when compared to accommodation focused vessels.
 - (b) One customer in particular noted that "the vessels offered by OOS tend to be a combination of a heavy lift vessel and accommodation. For recent UKCS projects separate heavy vessels and ASV's have been utilised. For a long duration accommodation campaign, it is likely the heavy lift capability of these vessels would be idle. To our knowledge vessel have no previous UKCS experience."
195. Only a limited number of competitors provided views on whether OOS is considered to be strong competitor in the UKCS. In particular:
- (a) Some competitors noted that OOS' vessels are not present and do not have a track record in the North Sea or a UK safety case.
 - (b) Some competitors also noted that OOS' current vessels are not perceived to be North Sea ASVs in general, and their main focus has been Brazil. Some competitors noted that two of OOS' vessels are being built with the decommissioning market in the North Sea in mind rather than

accommodation. One of the competitors expressed doubts that OOS would be able to finance the building of the new vessels through to completion.

196. Based on this information, the CMA believes that OOS would not be a close competitor and/or exert a significant competitive constraint on the Parties post-Merger.

POSH

197. POSH (in full PACC Offshore Services Holdings) has two relatively new semi-submersible ASVs with large capacities (c. 700 personnel): the *POSH Xanadu* and *POSH Arcadia*. Although neither of those ASVs has ever been stationed in the North Sea, the Parties submitted that one of the vessels may be applying for UK HSE safety case.

198. Customers' views were split in relation to whether they view POSH as a close alternative to the Parties, with several indicating that it was not an alternative. Even where customers indicated that POSH could be an alternative to the Parties, they noted concerns including the large size of its vessels, its lack of UKCS experience, and its lack of a UK safety case. In particular:

- (a) One customer noted that it considered POSH ahead of its most recent tender but POSH was not included "*as the vessels air gap is too small.*"⁸⁹
- (b) Another customer noted that "*[POSH] operate two large semi-submersible ASV's which have not previously operated in the UKCS. The [personnel capacity] of 750 may be too large for many projects.*"
- (c) Another customer added the following about POSH: "*Has fleet but mainly based Asia & S America so mobilisation may not be attractive. Need UK safety case.*"

199. Only one competitor which provided views on POSH regarded it as a strong competitor in the UKCS. Other competitors considered that it was not a strong alternative to the Parties. In particular:

- (a) One competitor noted that POSH is "*Owner operator with 2 units, have not worked in the North Sea.*"
- (b) Another competitor noted that "*Vessels seem to be UK compliant but management is focused on benign waters.*" Another competitor added

⁸⁹ The CMA understands that the size of the air gap limits the ability of a vessel to operate in higher waves.

that POSH is [REDACTED] and that POSH has sustainable contracts in Brazil and Australia. Thus, it would make no sense for POSH to compete with Prosafe for the North Sea market.

200. Based on this information, the CMA believes that POSH would not be a close competitor and/or exert a significant competitive constraint on the Parties post-Merger.

Cotemar

201. Cotemar has two relatively new semi-submersible ASVs with large personnel capacity (circa 700): the *PSS Neptuno* and *PSS Atlantis*. Cotemar is a Mexican company with ASVs operating solely in Mexico. Cotemar was not mentioned by third parties as a potential supplier in the initial market testing. Cotemar was not mentioned in [REDACTED] (but was nevertheless suggested by the Parties as ‘an additional potential bidder’ for the UKCS).
202. The majority of customers indicated that Cotemar is not an alternative to the Parties. Even the customers who indicated that Cotemar could be an alternative supplier noted concerns about its position. In particular:
- (a) One customer noted that to its knowledge “*Cotemar have not previously sought contracts in the UKCS.*” The customer also noted that it believes ‘*Cotemar generally provide accommodation vessels for the Mexican market*’ and that “*configuration of vessel accommodation is not likely to be suitable for the UKCS with more than 2 personnel allocated to one room in order to achieve the maximum vessel [personnel capacity].*”
 - (b) Another customer noted that Cotemar is a Mexican company with limited UK North Sea experience.
203. No competitors who provided views on Cotemar regarded it as a strong competitor in the UKCS. In particular, one competitor described Cotemar as a “*Mexican operator with vessels designed for Mexico*”. It also noted that Cotemar “*lack[s] operating experience in UKCS and Safety Case.*” These views were shared by other competitors.
204. Based on this information, the CMA believes that Cotemar would not be a close competitor and/or exert a significant competitive constraint on the Parties post-Merger.

Edda Accommodation

205. Edda Accommodation has no semi-submersible ASVs. It only has one monohull ASV, the *Edda Fides*, with personnel capacity of 600.

206. The *Edda Fides* is not stationed in NW Europe. *Edda Fides* is currently warm-stacked in Singapore and does not have a UK safety case. It was last stationed in the UKCS in 2011. It has not won any contracts in the UKCS. Edda Accommodation had ordered a second, similar vessel, the *Edda Fortis*. This order was cancelled by Edda Accommodation and, the *Edda Fortis* is now owned by the shipyard HHI. The *Edda Fortis* has a UK safety case but is currently cold stacked in Singapore.
207. Customers' views were split in relation to whether they view Edda Accommodation as a close alternative to the Parties, with around half of them indicating that it was not an alternative. Even where customers indicated that Edda was a possible alternative, several noted limitations such as the large size of the vessel, and the fact that it had not met technical specification requirements in previous tenders. In particular:
- (a) One customer noted that Edda operates the *Edda Fides* "*which is a purpose-built accommodation vessel with a large [personnel capacity] which has one previous UKCS reference in 2011.*" It also noted that "*Unusually the vessel has a steel gangway (normally aluminium) and therefore the loads from the gangway imposed on the facility are greater which could require modification to facility gangway landing platforms. Station keeping of a ship shaped vessel in harsh environments will be inferior when compared to a semi-submersible vessel.*"
 - (b) Another customer noted that Edda Accommodation has limited fleet and is more suited to a walk to work campaign rather than longer term ASV provisions.
 - (c) One customer also noted that the *Edda Fides* has not been considered for the North Sea.
 - (d) One customer submitted that Edda's vessel could be potentially used, it is generally too large for the customer's UK requirements.
208. Only a limited number of competitors who provided their views on Edda Accommodation regarded it as a strong competitor in the UKCS. All of these competitors noted that Edda Accommodation provides only one monohull ASV which, according to one of the competitors, may not be a preferred option for customers.
209. Based on this information, the CMA believes that Edda Accommodation would not be a close competitor or exert a significant competitive constraint on the Parties post-Merger.

HHI

210. HHI (Hyundai Heavy Industries in full) is a ship building company. It only has one new monohull ASV, the *Edda Fortis*, with large personnel capacity (circa 800), as a result of a customer (Edda Accommodation) cancelling an order. The ASV does not have any contract history and is currently cold-stacked in Singapore.
211. No customers who responded to the CMA's investigation regarded HHI as a close alternative to the Parties. In particular, while some of the customers were unaware of HHI, others noted that HHI is a shipbuilding company and not an ASV supplier.
212. No competitors who responded to the CMA's investigation regarded HHI as a strong competitor in the UKCS. In particular, one competitor said that HHI is "not an accommodation provider, but a yard with vessels where clients have defaulted on their construction contracts". One competitor indicated that HHI is a shipyard that built the *Edda Fortis* monohull ASV for a customer; the customer cancelled the order and, as a result, HHI retained the *Edda Fortis*.
213. The CMA has received no evidence to suggest that HHI would compete to supply ASVs to oil and gas companies for projects.

COSCO

214. COSCO is a ship building company. It has one new cylindrical semi-submersible ASV, the *Stavanger Spirit*. The ASV does not have any contract history and is currently cold-stacked in China.
215. Only a limited number of customers who provided their views on COSCO regarded it as a close alternative to the Parties. In particular:
 - (a) Some of the customers specifically noted that COSCO is a shipbuilding company and not an ASV operator.
 - (b) Another customer added that "*vessels from COSCO have not featured on any previous market surveys for ASV's*".
216. No competitors who responded to the CMA's investigation regarded COSCO as a strong competitor in the UKCS. Similarly to HHI, one competitor described COSCO as a "*Shipyard that own a variety of cancelled vessels that are unsuitable for North Sea.*"

217. On the basis of the above evidence, the CMA considers that, individually and in the aggregate, the suppliers discussed above will impose a weak competitive constraint on the Parties post-Merger.

Internal documents

218. Internal documents indicate that there is a limited number of alternative credible suppliers of semi-submersible ASVs in NW Europe, including the UKCS. In particular:

- (a) One Floatel's internal document⁹⁰ provides a list of suppliers of semi-submersible ASVs. Out of the ten semi-submersible ASVs it lists in the North Sea area, only one is supplied by a competitor, whilst the other nine are supplied by the Parties.
- (b) While one Floatel's internal document⁹¹ says that "*semi-sub supply market going forward after 2020 will comprise of 5 players: [X]*", it excludes "*new potential entrants (like [X])*" in the context of the North Sea semi-submersible supply.
- (c) Prosafe's Minutes of Meeting dated March 2017⁹² showing regional deployment of vessels indicate that, in addition to the Parties, there are [X] competitors supplying vessels in the North Sea. Yet, the CMA notes that all four of these competitors' vessels (namely, COSL Rival, COSL Rigmar, Haven and Borgholm Dolphin) were marked as "*idle/stacked (no contract next 9 months)*." The other 9 (out of 13) vessels listed in the North Sea region were supplied by either of the Parties.

Conclusion on horizontal unilateral effects

219. Based on the evidence set out above, the CMA believes that the Merger gives rise to very serious competition concerns in the supply of semi-submersible ASVs in NW Europe in particular because:

- (a) The Parties hold a very strong incumbent market position; they account for a combined share of supply in excess of [80-90]%, operate the vast majority of semi-submersible ASVs competing for business in NW Europe and consistently win the vast majority of contracts;

⁹⁰ 75. 05.5. Floatel Market_Feb 19.pdf.

⁹¹ 65. 05.c Floatel Market_December 2017.pdf

⁹² Prosafe's 11. Part 1 Board pack 1_Redacted.pdf

- (b) The Parties are close competitors; they have a similar service proposition, compete against each other frequently for tenders and monitor each other extensively in their internal documents;
- (c) The Parties face only limited competition from other suppliers; all of the available evidence (including bidding data, the Parties' internal documents and the views submitted by third Parties) indicates that other suppliers are only a limited constraint on the Parties;
- (d) While the Parties submit that the changes in the structure of the market – an expected reduction in demand in the UKCS and the development of excess global capacity – should limit the weight placed on recent market practice, the CMA received little evidence to support this position.

220. Accordingly, the CMA believes that the Merger, if carried into effect, would lead to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the supply of semi-submersible ASVs in NW Europe.

Vertical effects

221. Vertical effects may arise when a merger involves firms at different levels of the supply chain, for example a merger between an upstream supplier and a downstream customer or downstream competitors of the supplier's customers.
222. Vertical mergers may be competitively benign or even efficiency-enhancing, but in certain circumstances can weaken rivalry, for example when they result in foreclosure of the merged firm's competitors. The CMA only regards such foreclosure to be anticompetitive where it results in an SLC in the foreclosed market(s), not merely where it disadvantages one or more competitors.⁹³
223. In the present case, the Merger will create several vertical relationships upstream and downstream to the Parties: (i) between Prosafe and Keppel; (ii) between Prosafe and Oaktree, and (iii) between Floatel and HitecVision.
224. The CMA's approach to assessing vertical theories of harm is to analyse (a) the ability of the Merged Entity to foreclose competitors, (b) the incentive of it to do so, and (c) the overall effect of the strategy on competition.⁹⁴ This is discussed below.

⁹³ In relation to this theory of harm 'foreclosure' means either foreclosure of a rival or substantial competitive weakening of a rival.

⁹⁴ [Merger Assessment Guidelines](#), paragraph 5.6.6.

Vertical links upstream to the Parties

225. Each of Keppel, Oaktree and HitecVision are active in the supply of services upstream of semi-submersible ASV suppliers, including the Parties and their competitors. In particular:
- (a) Keppel provides shipyard services, including “dry docking”;
 - (b) Oaktree provides crew management services through its subsidiary OSM Maritime; and
 - (c) HitecVision provides engineering consultancy services (such as mooring and DP analysis) through its subsidiaries Global Maritime and Vryhof.
226. Accordingly, the CMA considered whether each of Keppel, Oaktree and HitecVision would have the ability and incentive to foreclose input to the Parties’ competitors in the supply of semi-submersible ASVs by worsening and/or ceasing their offer of these upstream services to the Parties’ competitors.

Input foreclosure of ASV suppliers

Ability

227. The CMA did not find any prima facie concerns in this respect because a range of alternative suppliers are available.
228. The Parties submitted that a range of alternative suppliers identified at least 13 competing shipyards for Keppel (3 of them have dry docks and are located in Europe), 18 competitors for HitecVision (OSM Maritime), 16 competitors for HitecVision (Global Maritime), 6 competitors for HitecVision (Vryhof), 4 competitors for HitecVision (Aluminium Offshore).
229. Moreover, in the particular case of Keppel, the Parties submitted that Keppel did not have any shipyards located in Europe and therefore is less likely to be an important supplier for the Parties’ rivals, which would limit the extent to which it might be able to foreclose these rivals. In addition, only two ASV providers noted that they have a working relationship or would consider Keppel as a provider of shipyard services with dry docking.
230. The Parties’ rivals did not raise concerns about possible foreclosure by Keppel or Oaktree.
231. On the basis of the evidence set out above, the CMA believes that Keppel, Oaktree and/or HitecVision will not have the ability to foreclose the Parties’

rivals' access to their respective services in NW Europe, and the CMA has not therefore gone on to consider incentive or effect.

Customer foreclosure of upstream competitors

Ability

232. The CMA also considered whether the Parties would, post-Merger, be able to foreclose the competitors of Keppel, Oaktree and/or HitecVision by withdrawing their demand from their competitors in any of the upstream industries in which they are active in order to benefit Keppel, Oaktree and/or HitecVision.
233. However, the CMA did not find any *prima facie* concerns in this respect because the services provided by Keppel, Oaktree and HitecVision (and their competitors) are supplied to a broad range of customers rather than just to semi-submersible ASV providers. This indicates that the Parties would not be sufficiently important customers of the rivals of Keppel, Oaktree and HitecVision to be able to foreclose those rivals by switching the Parties' demand away from them post-Merger.
234. With respect to Oaktree, by way of example, one competitor in the supply of crew management services submitted that the loss of Prosafe's business would have an impact on their revenues. However, Prosafe accounted for a moderate proportion of sales of 12-15%, the competitor did not submit that it would result in foreclosure, and it noted that it was possible to "work harder to make up for the losses".
235. On the basis of the evidence set out above, the CMA believes that the Parties will not have the ability to foreclose competitors of Keppel, Oaktree and/or HitecVision in any of the upstream industries listed in paragraph 223 (by withdrawing their demand from the competitors) in NW Europe, and the CMA has not therefore gone on to consider incentive or effect.

Vertical links downstream to the Parties

236. HitecVision is also active in sectors that are downstream to the supply of semi-submersible ASVs. In particular, HitecVision is active in oil and gas exploration and production in the NCS through its subsidiary Vår Energi and therefore may be a customer of semi-submersible ASVs.
237. The CMA has therefore considered whether HitecVision would have the ability to foreclose the Parties' competitors in the supply of semi-submersible ASVs by withdrawing or withholding its demand from the Parties' competitors.

Customer foreclosure of competitors in the supply of semi-submersible ASVs

Ability

238. HitecVision is not currently a customer of COSL or Teekay (nor have they been since 2010). Therefore, the scope for HitecVision to have a negative impact on COSL or Teekay by switching its demand to the Parties is limited.
239. On the basis of the evidence set out above, the CMA believes that HitecVision will not have the ability to foreclose the Parties' competitors by withdrawing or withholding its demand for ASV services in NW Europe, and the CMA has not therefore gone on to consider incentive or effect.

Conclusion on vertical effects

240. For the reasons set out above, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC as a result of vertical effects in relation to:
- Input foreclosure of ASV suppliers in relation to Keppel's provision of shipyard services;
 - Customer foreclosure of upstream competitors in relation to Oaktree's provision of crew management services through its subsidiary OSM Maritime; and
 - Customer foreclosure of competitors in the supply of semi-submersible ASVs in relation to HitecVision's provision of engineering consultancy services through its subsidiaries Global Maritime and Vryhof.

Barriers to entry and expansion

241. Entry, or 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. In assessing whether entry or expansion might prevent an SLC, the CMA considers whether such entry or expansion would be timely, likely and sufficient.⁹⁵ In terms of timeliness, the CMA's guidelines indicate that the CMA will look for entry to occur within two years.⁹⁶
242. The CMA did not receive evidence of any competitors' plans to expand in, and/or enter the market for the supply of semi-submersible ASVs in the UK.

⁹⁵ [Merger Assessment Guidelines](#), from paragraph 5.8.1.

⁹⁶ [Merger Assessment Guidelines](#), paragraph 5.8.11.

Several competitors told the CMA they may consider expansion but the conditions of the market would have to change.

243. Another competitor told the CMA that it is not planning to invest in obtaining a HSE license for its vessel due to the uncertainty of how it would have competed with the Merged Entity in the UKCS.
244. Similarly, a customer said: *“there is not a great incentive for a new entrant to enter the [semi-submersible ASVs] market”* and that it *“does not expect any new players imminently”*.
245. The CMA has not received evidence demonstrating that customers would be able and/or willing to sponsor new entry. A customer explained to the CMA that it is *“not in a position to aid new entrants into this market because this is not [its] area of expertise.”*
246. Therefore, the CMA believes that, if prices were to rise as a result of the merger, these competitors would not expand sufficiently and/or enter the market to keep prices at the level prevailing absent the Merger.
247. For the reasons set out above, the CMA believes that entry or expansion would not be sufficient, timely and/or likely to prevent a realistic prospect of an SLC as a result of the Merger.

Conclusion on substantial lessening of competition

248. Based on the evidence set out above, the CMA believes that it is or may be the case that the Merger may be expected to result in an SLC as a result of horizontal unilateral effects in relation to the supply of semi-submersible ASVs in NW Europe.

Decision

249. Consequently, the CMA believes that it is or may be the case that (i) arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation; and (ii) the creation of that situation may be expected to result in an SLC within a market or markets in the United Kingdom.
250. The CMA therefore believes that it is under a duty to refer under section 33(1) of the Act. However, the duty to refer is not exercised whilst the CMA is considering whether to accept undertakings under section 73 of the Act

instead of making such a reference.⁹⁷ The Parties have until **12 September 2019**⁹⁸ to offer an undertaking to the CMA.⁹⁹ The CMA will refer the Merger for a phase 2 investigation¹⁰⁰ if the Parties do not offer an undertaking by this date; if the Parties indicate before this date that they do not wish to offer an undertaking; or if the CMA decides¹⁰¹ by **19 September 2019** that there are no reasonable grounds for believing that it might accept the undertaking offered by the Parties, or a modified version of it.

Colin Raftery
Senior Director, Mergers
Competition and Markets Authority
5 September 2019

Endnotes

Footnote 1 should be read as follows: “These eight semi-submersible ASVs are *Regalia*, *Safe Boreas*, *Safe Bristol*, *Safe Caledonia*, *Safe Concordia*, *Safe Notos*, *Safe Zephyrus*.”

In relation to paragraph 30, the CMA notes that Q1 2019 market report submitted by Prosafe to the CMA was produced by an independent industry body, the ship broker Clarksons Platou.

In relation to paragraph 30(b), the CMA notes that its reference to Floatel’s internal document of May 2018 is a reference to the internal document of September 2018.

In relation to paragraph 32, the CMA notes that the Parties did not submit that weather conditions constrain the use of jack-up ASVs.

In relation to paragraph 99, the Parties asked the CMA to clarify that the statement is the understanding of the CMA, based on the Parties’ submission, as opposed to the written submission of the Parties.”

Third sentence of paragraph 120 should be read as follows: “For example, a Floatel Bond Investor presentation in September 2018 was made in the context where “*the oil price was around \$80 and [X], and so [X].*”

Second sentence of paragraph 129 should be read as follows: “The Parties’ internal documents suggest that their capacity utilisation has been high even in 2019.”

First sentence of paragraph 138 should be read as follows: “The shares of supply also show that COSL is the other supplier to have won a contract in the UKCS.”

⁹⁷ Section 33(3)(b) of the Act.

⁹⁸ Section 73A(1) of the Act.

⁹⁹ Section 73(2) of the Act.

¹⁰⁰ Sections 33(1) and 34ZA(2) of the Act.

¹⁰¹ Section 73A(2) of the Act.