

## Summary

1. The Competition and Markets Authority (CMA) has provisionally found that the anticipated merger between Prosafe SE (Prosafe) and Floatel International Limited (Floatel) (the Merger) may be expected to result in a substantial lessening of competition (SLC) in the supply of semi-submersible Accommodation Support Vessels (ASVs) in NW Europe (that is, the UK Continental Shelf (UKCS) and the Norwegian Continental Shelf (NCS)).
2. This is not our final decision. We now invite submissions from any interested parties on these provisional findings by 20 February 2020.
3. Alongside these provisional findings, we have published a notice of possible remedies, which sets out the CMA's initial views on the measures that might be required to remedy the SLC that we have provisionally found and/or the resulting adverse effects. We also invite submissions from any interested parties on these initial views by 6 February 2020.
4. We will take all submissions received by the above dates into account in reaching our final decision, which will be issued by 23 March 2020.

## The questions we must decide

5. We are required to decide the following core questions in our inquiry.
6. First, whether arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation within the meaning of section 23 of the Enterprise Act 2002 (the Act). We have provisionally found that a relevant merger situation will be created by the Merger.
7. The second question we must decide is whether the creation of that relevant merger situation may be expected to result in an SLC within any market or markets in the United Kingdom for goods or services. In this case, we have provisionally found that the Merger may be expected to result in an SLC in the supply of semi-submersible ASVs in NW Europe, including the United Kingdom.
8. In view of these provisional findings, we must go on to decide whether and if so what action we should take (or recommend to be taken by others) for the purpose of remedying any SLC and/or its resulting adverse effects that are found. This is the subject of the notice of possible remedies we have published alongside these provisional findings, in which we consult on whether to prohibit the Merger, or whether any other measures would

effectively remedy the SLC and/or its resulting adverse effects we have provisionally found.

## **The merger parties**

9. Prosafe, through its subsidiaries, owns and operates a fleet of eight semi-submersible ASVs (six of which are located in NW Europe; the other two are in Brazil). The worldwide turnover of Prosafe in 2018 was approximately £248 million.
10. Floatel, through its subsidiaries, owns and operates a fleet of five semi-submersible ASVs (three of which are located in NW Europe; one is in Malaysia and the other is in Tenerife). The worldwide turnover of Floatel in 2018 was approximately £227 million.
11. We refer to Prosafe and Floatel collectively as the Parties, or (post-Merger) the Merged Entity.

## **Transaction**

12. On 3 June 2019, Prosafe entered into a sale and purchase agreement to purchase the entire share capital of Floatel. The Merger was also notified to the Norwegian Competition Authority (the NCA). As at the date of these provisional findings, the Parties have appealed the decision of the NCA to prohibit the Merger and a decision on this appeal is expected in early March 2020.

## **Background**

13. The Parties both provide semi-submersible ASVs to offshore oil and gas operators. Semi-submersible ASVs are large floating structures which are connected to an offshore platform via a gangway and provide additional accommodation and other support services where the operator needs to perform work on the platform and the on-platform accommodation is insufficient to enable the work to be performed safely and efficiently. They are used to support a number of activities including: the hook-up and commissioning of new platforms (HUC); maintenance, modification and operation work to existing platforms (MMO) – for example, to extend the lifetime of the oil field; and the de-commissioning of platforms.

## **Our provisional findings**

### ***Jurisdiction***

14. We have provisionally found that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation within the meaning of the Act.
15. The Parties overlap in the supply of semi-submersible ASVs in NW Europe (which includes the UK). As a result of the Merger the Parties would cease to be distinct and their combined share of supply would exceed 25%. We have therefore provisionally found that there is a sufficient nexus within the UK on a share of supply basis to give us jurisdiction to investigate the Merger.

### ***Counterfactual***

16. We have assessed the Merger against a counterfactual of prevailing conditions of competition, albeit in a market which is likely to be characterised by relatively low and unpredictable future demand; see paragraphs 30 to 31 below.

### ***Market definition***

17. We have assessed the Merger by reference to a market for the supply of semi-submersible ASVs in NW Europe. Semi-submersible ASVs have a large 'personnel on board' (POB) capacity which can support larger operations than some other types of ASV. Additionally, due to their technical characteristics, semi-submersible ASVs are able to operate at greater water depths than other types of ASVs: in harsher weather conditions; in areas of higher wave conditions; and where the seabed is such that it is not possible to use an offshore ASV fixed to the seabed alongside the platform.
18. Our investigation so far has established that the market for the supply of semi-submersible ASVs in NW Europe is a bidding market in which suppliers bid in tenders to win contracts. These bidding market characteristics allow suppliers to tailor their bids to specific circumstances from customer-to-customer and from tender-to-tender.
19. In reaching our provisional conclusion as to the relevant product market, we have reviewed a range of evidence including: the results of past tenders for offshore ASVs; customer and competitor views; and the Parties' internal documents. This evidence shows that, for many offshore projects, only a semi-submersible ASV is a suitable option as other types of ASV will not have the capabilities (see paragraph 17 above) required to undertake the project. To the extent that non-semi-submersible ASVs may provide a constraint on the Merged Entity, we have considered this potential constraint in our competitive assessment of the Merger; see paragraph 28 below.

20. In reaching our provisional conclusion as to the relevant geographic market, we have reviewed a wide range of evidence including evidence on mobilisation costs and past movement of vessels between regions. On the basis of this evidence, we considered it appropriate to include semi-submersible ASVs currently located in NW Europe within the same market. However, we did not consider it appropriate to broaden the geographic market to include semi-submersible ASVs located in the rest of the world (RoW). We have considered the extent to which such vessels may provide a constraint on the Merged Entity in our assessment of the prospects for any post-Merger entry; see paragraph 34 below.

### ***Competitive assessment***

21. We have assessed whether removing one Party as a direct independent competitor would likely allow the Merged Entity to increase prices and/or lower the quality of its products or customer service. This is in accordance with a horizontal, unilateral effects theory of harm.
22. We have assessed information relating to market shares. By both number of vessels and value of contracts, the Merger would combine the two largest suppliers in an already highly-concentrated market. However, we note that market shares may be less informative of competition in a market, such as this one, which is a bidding market.
23. We observed that the supply of semi-submersible ASVs in recent years has been characterised by substantial excess capacity, mostly in the hands of the Parties, which has underpinned increased competition and consequently, resulted in lower prices.
24. We have assessed the closeness of competition between the Parties by looking at: tender data; the similarities in the Parties' service proposition; customer and competitor views; and the Parties' internal documents.
25. Our provisional view following the assessment of this evidence is as follows:
- (a) The tender data shows that the Parties are the main head-to-head competitors in the market for semi-submersible ASVs in NW Europe and win the vast majority of tenders. Only one other supplier (COSL) has won a tender in recent years (other suppliers have won tenders in the past but all have now exited the market).
  - (b) The Parties have a similar service proposition, albeit that Floatel's fleet is generally newer than Prosafe's fleet and all of Floatel's vessels have a

particular type of station-keeping capability known as ‘Dynamic Positioning’ whereas not all Prosafe’s vessels have this capability.

(c) Customers and competitors view the Parties as strong competitors and close alternatives to each other, with a similar service proposition.

(d) The Parties’ internal documents show that the Parties are the closest competitive constraints on each other.

26. We also asked customers and competitors for their views on the Merger. Whilst customers were not overly concerned by the Merger, most customers noted that there would be an impact on competition (competitor views were similar), with several customers highlighting potential higher prices.
27. We have considered the competitive constraint of COSL, which is the only other semi-submersible ASV provider currently present in NW Europe. Its (single) vessel is currently idle and so inactive. It has not won a contract for some time. Based on this, and also our analysis of the bidding data, we consider that COSL exerts only a very limited competitive constraint on the Parties.
28. In relation to other ASV providers in NW Europe, we note the presence of Teekay Offshore (which has a “cylindrical vessel” design ASV in the region) and Macro Offshore (previously known as Master Marine), which owns the ‘Haven’ (a so-called modified “jack-up”, which shares some but not all of the same capabilities as a semi-submersible ASV, namely it cannot float and so is unsuitable for certain sea depth/wave height areas). The evidence provided to us indicates that both Teekay and Macro Offshore may be able to constrain the Merged Entity for certain specific tenders but that neither competitor is able to impose a competitive constraint across all tenders and in any event, neither competitor has the scale of either of the Parties.
29. The Parties submitted that there has been a permanent structural reduction in demand for semi-submersible ASVs; that, going forward, there is (at most) very limited demand for semi-submersible ASVs in the North Sea in the foreseeable future; and that they will continue to compete for this demand with other types of ASVs (wherever located), and with semi-submersible ASVs in the RoW.
30. As per our Merger Assessment Guidelines, we assess mergers on a forward-looking basis and so we assessed the impact of future demand as part of our competitive assessment. We spoke to customers about their expected future requirements for a semi-submersible ASV in NW Europe. In summary, we identified six future projects which may require a semi-submersible ASV in

NW Europe in the period 2020-2024, of which four are said to be likely to take place or definitely taking place. Two of the six projects (one “likely” and the other “possible”) might overlap in time (in 2024). This is less demand than in recent years.

31. However, based on a range of evidence – including the Parties’ internal documents, examples of project extensions, customer and competitor evidence, and external third-party projections – we consider that it is difficult to forecast demand accurately and that further, there is poor visibility and occasionally short lead times for certain types of requirements, especially for MMO work. Taking this evidence into account, our provisional view is that the four projects identified in paragraph 30 above are likely to represent a “lower bound” of demand for semi-submersible ASVs in NW Europe in the reasonably foreseeable future.

***Provisional conclusion as to the competitive effects of the Merger***

32. Taking into account the analysis summarised above, our provisional conclusion on the competitive effects of the Merger is that, subject to any countervailing factors (see paragraphs 34 to 35 below), the Merger may be expected to result in an SLC in the supply of semi-submersible ASVs in NW Europe, including the United Kingdom.
33. In reaching this provisional conclusion, we have taken into account in particular that:
  - (a) This is a horizontal merger of the two largest, and each other’s closest, competitors in the relevant market. They have a similar service proposition, compete against each other frequently for tenders, and monitor each other extensively in their internal documents.
  - (b) The Parties consistently win the vast majority of contracts. They hold a very strong incumbent market position; they account for a combined share of supply in excess of 80% and operate the great majority of semi-submersible ASVs competing for business in NW Europe (including the United Kingdom).
  - (c) All of the evidence provided to us (including bidding data, the Parties’ internal documents and the views submitted by third parties) taken together demonstrates that other suppliers impose only a limited constraint on the Parties.
  - (d) The Parties have excess capacity (ie, un-utilised vessels) which has helped drive competition in recent years. The Merger will consolidate this

capacity in the Merged Entity, removing Floatel as an independent competitive constraint.

- (e) We have explained above (see paragraph 31) our provisional view that it is likely that current forecasts of demand are likely to form a “lower bound” of demand for semi-submersible ASVs in NW Europe in the reasonably foreseeable future.
- (f) However, even if actual demand were to equate to current forecasts (see paragraph 30), our provisional view is that the Merger may be expected to result in an SLC, as the Merger brings together the two largest competitors and the evidence demonstrates that other competitors will provide only a limited competitive constraint on the Merged Entity.

### ***Countervailing factors***

- 34. We have considered the potential for entry/expansion from providers of semi-submersible ASVs located in the RoW so as to constrain the Merged Entity. Based on the evidence provided to us (in particular, evidence regarding barriers to entry and the relative unattractiveness of the market in NW Europe at this time for potential entrants), our provisional conclusion is that entry or expansion would not be timely, likely and sufficient such that it might prevent an SLC resulting from the Merger.
- 35. We have also considered whether there might be any efficiencies which would enhance rivalry so that the Merger does not result in an SLC. However, we have not been provided with evidence that any such rivalry-enhancing efficiencies will arise.

### **Provisional conclusions on the statutory questions**

- 36. For the reasons set out above, we have provisionally concluded that the anticipated acquisition by Prosafe of Floatel, if carried into effect:
  - (a) will result in the creation of a relevant merger situation; and
  - (b) may be expected to result in an SLC in relation to the supply of semi-submersible ASVs in NW Europe, including the United Kingdom.