

# Proposed acquisition by Prosafe SE of Floatel International Limited

Provisional findings report

Notified: 29 January 2020

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The Competition and Markets Authority has excluded from this published version of the provisional findings report information which the inquiry group considers should be excluded having regard to the three considerations set out in section 244 of the Enterprise Act 2002 (specified information: considerations relevant to disclosure). The omissions are indicated by [X]. [Some numbers have been replaced by a range. These are shown in square brackets.] [Non-sensitive wording is also indicated in square brackets.]

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## 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.

# Provisional findings

## 1. The reference

- 1.1 On 17 September 2019, the CMA, in exercise of its duty under section 33(1) of the Act, referred the anticipated acquisition by Prosafe SE (Prosafe) of Floatel International Limited (Floatel) (together, the Parties or Party where appropriate) (the Merger) for further investigation and report by a group of CMA panel members (the Inquiry Group).
- 1.2 In exercise of its duty under section 36(1) of the Act, the CMA must decide:
- (a) whether arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation; and
  - (b) if so, whether the creation of that situation may be expected to result in an SLC within any market or markets in the UK for goods or services.
- 1.3 We are required to prepare and publish a final report by 23 March 2020.
- 1.4 Our terms of reference, along with information on the conduct of the inquiry, are set out in Appendix A.
- 1.5 This document, together with its appendices, constitutes the Inquiry Group's provisional findings published and notified to Prosafe and Floatel in line with the CMA's rules of procedure.<sup>1</sup> Further information can be found on our webpage.<sup>2</sup>

## 2. The Parties

- 2.1 In this chapter of our provisional findings we set out brief information on the Parties (including information on their vessels) and the Merger.

### Prosafe

- 2.2 Prosafe, is a European public limited liability company, listed on the Oslo Stock Exchange. Prosafe is the ultimate owner of the Prosafe group companies.

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<sup>1</sup> Rules of procedure for merger, market and special reference groups (CMA17), paragraphs 11.1 to 11.7.

<sup>2</sup> Prosafe/Floatel webpage.

- 2.3 Prosafe owns and operates offshore accommodation vessels. Customers use these where there is a need for additional accommodation and storage offshore, related to oil and gas activities.
- 2.4 Prosafe's strategy is to be the 'preferred provider of high-end accommodation vessels globally.'

### ***Brief history***

- 2.5 Prosafe was formed in 1997 as a separate company, when the platform drilling and technical services divisions de-merged from Transocean, and became listed on the Oslo Stock Exchange as Procon Offshore ASA. Procon Offshore ASA later merged with Safe Offshore ASA, to become Prosafe ASA.
- 2.6 In 2007, Prosafe became a European Joint Stock Public Company.

### ***Principal business and operations***

- 2.7 Prosafe owns and operates eight semi-submersible accommodation vessels and one Tender Support Vessel (TSV).
- 2.8 Prosafe's fleet has operated in a number of offshore environments, including in Norway, the United Kingdom, Brazil, Australia and Mexico.
- 2.9 The average age of the fleet is approximately 15 years, with an accommodation capacity ranging between around 200 and 500 beds per vessel.

### ***Financial performance***

- 2.10 Table 1 provides key financial metrics for the financial years ending 31 December in 2016, 2017 and 2018.

**Table 1 Key Financial Metrics of Prosafe (Consolidated group)**

	Financial year ending 31 December in		
	2016	2017	2018
<b>USD m</b>			
Turnover	474	283	330.8
Operating Profit / (loss)	52.8	(578.2)	53.0
Net profit / (loss)	172.6	(647.1)	(114.5)
Total equity	1,129.5	497.6	400.2
<b>Operating revenues by geographical location</b>			
Europe	389.2	224.8	272.4
Americas	84.8	58.2	56.3
Australia / Asia	0	0	2.1
<b>Reported fleet utilisation %</b>			
	43	38.4	47.3

Source: Prosafe audited financial statements

- 2.11 The forecast revenue and operating profit for 2019 by geographic area is summarised below, [✂]

**Table 2 Forecast revenue and operating profit**

USD m	Europe	RoW	Total
Turnover	[✂]	[✂]	[✂]
Operating profit/(loss)	[✂]	[✂]	[✂]
Net profit / (loss)	[✂]	[✂]	[✂]

Source:

- 2.12 The Q3 2019 results reflected a net loss of USD 361m and an impairment of USD 341m. At the time of these results, Prosafe noted that it “will commence dialogue with its lenders with a view to ensure sufficient flexibility for the longer-term.”<sup>3</sup>
- 2.13 On 14 January 2020, Prosafe noted it “has received consent to defer payments under the USD 288 million facility from 15 January until 13 February 2020. Other identified defaults in the period have also been temporarily waived under both the USD 1,300 million and USD 288 million facilities... to create stability while a long-term solution and runway is being sought.”

## Floatel International Limited

- 2.13 Floatel was established in 2006 and began offshore operations in 2010.<sup>4</sup>

<sup>3</sup> Page 5, Prosafe quarterly results and market update

<sup>4</sup> <http://www.floatel.se/floatel-international>.

- 2.14 Floatel was listed on the Oslo Stock Exchange in 2010 and was delisted in 2011. Floatel's headquarters are located in Bermuda. Its management is located in Sweden.<sup>5</sup>
- 2.15 Floatel is owned 49.9% by Keppel, 42.6% by Oaktree Capital Management, L.P. ("Oaktree") and 7.5% by private investors.

### ***Principal business and operations***

- 2.16 Floatel owns and operates five semi-submersible accommodation and construction service vessels.<sup>6</sup>
- 2.17 The average age of its vessels is approximately 6 years with an accommodation range of between 440 and 560 beds per vessel.
- 2.18 All of Floatel's vessels are equipped with dynamic positioning systems.<sup>7</sup>

### ***Financial performance***

- 2.19 Table 3 shows the Floatel group's consolidated turnover, operating profit, and net assets for the financial years ending 31 December in 2016, 2017 and 2018.

**Table 3: Key Financial Metrics of Floatel Consolidated Group**

<b>Financial year ending 31 December</b>			
	<b>2016</b>	<b>2017</b>	<b>2018</b>
<b>USD m</b>			
Turnover	289.0	310.8	303.4
Operating Profit	106.0	88.6	104.5
Net Profit	35.3	26.7	26.7
Total equity	496.6	523.9	547.2
<b>Operating revenues by geographical location</b>			
Europe	200.9	183.8	174.8
Americas	8.6	0	
Australia / Asia	79.6	127	128.6
<b>Reported fleet utilisation %</b>			
	81%	68%	73%

Source: Floatel annual reports

<sup>5</sup> <http://www.floatel.se/floatel-international>.

<sup>6</sup> Floatel Annual Report 2018, general information, page 25

<sup>7</sup> Dynamic positioning (DP) is a computer-controlled system to automatically maintain a vessel's position and heading by using its own propellers and thrusters. Position reference sensors, combined with wind sensors, motion sensors and gyrocompasses, provide information to the computer pertaining to the vessel's position and the magnitude and direction of environmental forces affecting its position.



2.20 The forecast revenue and operating profit for 2019 by geographic area is summarised below, [✂]

**Table 4 Forecast revenue and operating profit**

<b>USD m</b>	<b>Europe</b>	<b>Asia</b>	<b>RoW</b>	<b>Total</b>
Turnover	[✂]	[✂]	[✂]	[✂]
Operating profit/ (loss)	[✂]	[✂]	[✂]	[✂]
Net profit	[✂]	[✂]	[✂]	[✂]

Source: Floatel

## **The Parties' vessels**

2.21 Both Parties are specialised providers of semi-submersible Accommodation Support Vessels (ASVs) with the two largest fleets operating in and around the North Sea.

2.22 Table 5 provides an overview of the Parties' semi-submersible ASVs which are capable of operating in the UKCS as submitted by the Parties.<sup>8</sup>

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<sup>8</sup> 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)".

**Table 5: UKCS-capable semi-submersible ASVs**

Owner	Vessel name	Delivery	PoB	DP system	UK HSE licence	NCS compliant	Current status (as of January 2020)	Present location
Prosafe	Safe Caledonia	1982	454	No	Yes	No	Active	UKCS
Prosafe	Safe Bristolia	1983	316	No	Yes	No	[✂]	UKCS
Prosafe	Regalia	1985	306	DP2	Yes	Yes	[✂]	UKCS
Prosafe	Safe Boreas	2015	450	DP3	Yes	Yes	[✂]	UKCS
Prosafe	Safe Zephyrus	2016	450	DP3	Yes	Yes	Active	Norway
Prosafe	Safe Notos	2014	500	DP3	No	No	Active	Brazil
Prosafe	Safe Scandinavia*	1984	180	No	Yes	Yes	[✂]	Norway
Prosafe	Safe Eurus	2019	500	DP3	No	No	Active	Brazil
Floatel	Floatel Superior	2010	440	DP3	Yes	Yes	Laid - up	Norway
Floatel	Floatel Victory	2013	500	DP3	Yes	No	Laid - up	Norway
Floatel	Floatel Endurance	2015	440	DP3	Yes	Yes	Active	Norway
Floatel	Floatel Triumph	2016	500	DP3	Yes	No	Laid - up	Malaysia

Source: Parties' Merger Notice, [✂] and Parties' response to the section 109 dated the 19<sup>th</sup> of September 2019, [✂] and [✂]

Notes: Present location and status based on January 2020 or last known position before that.

\* The Safe Scandinavia was converted to a TSV in 2015/2016.

2.23 As shown in Table 5, the Parties have a similar service proposition in that they each have a range of ASVs with similar personnel capacity. However, they are also differentiated to a degree. In particular:

- (a) Floatel's fleet is modern with all of its ASVs having been delivered in 2010 (when Floatel entered the market) or later, whereas Prosafe's fleet is a mix of older and more modern vessels: half of Prosafe's UKCS-capable semi-submersible ASVs were delivered in the 1980s; and
- (b) Prosafe has a mix of DP and moored vessels, whereas all of Floatel's vessels have DP.

2.24 The Parties have explained that DP vessels can also be moored. When choosing between DP and mooring for a DP capable vessel, the Parties stated that there is a trade-off between using more fuel for DP, and the costs of hiring and setting up mooring equipment:

- (a) Floatel stated that *'the break-even is something like five or six months: if the charter is longer than five or six months, it is better to moor; if it is shorter, it is better to go on DP.'*
- (b) Prosafe noted that *'four months, DP, over four months then DP or moored, but depending on the project.'*

### **3. The merger and its rationale**

- 3.1 The transaction is the proposed acquisition by Prosafe of the entire share capital of Floatel from affiliates of Keppel Corporation (Keppel) and Oaktree Capital Management (Oaktree), pursuant to a sale and purchase agreement entered into on 3 June 2019.
- 3.2 The transaction would entail a transfer of all existing ordinary Floatel shares to Prosafe in exchange for newly issued shares in Prosafe. Prosafe would remain listed on the Oslo Stock Exchange.
- 3.3 The current shareholders in Floatel will become minority shareholders in Prosafe. The combined companies' largest shareholders will be a subsidiary of Keppel, funds managed by Oaktree, and Hitec, which will hold 22%, 19% and 17% of the shares respectively, on completion of the transaction (on a fully diluted basis).
- 3.4 Keppel operates a number of business divisions globally specialising in offshore and marine, property, infrastructure and asset management businesses.<sup>9</sup>
- 3.5 Oaktree is a global asset management firm with a 49% interest in OSM Maritime, a company that provides crew management services.<sup>10</sup>
- 3.6 Hitec is an investor in the North Sea region's energy industry, offering financing and structuring capabilities to a range of companies, including natural oil and gas producers, energy infrastructure owners and providers of specialist services, such as financing or logistics.<sup>11</sup>
- 3.7 The transaction is conditional upon CMA and Norwegian Competition Authority (NCA) clearance.

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<sup>9</sup> Keppel [website](#)

<sup>10</sup> <https://www.oaktreecapital.com/>

<sup>11</sup> <https://www.hitecvision.com/about-us>

- 3.8 On 28 October 2019, the NCA announced that it had prohibited Prosafe from acquiring Floatel.
- 3.9 On 25 November 2019, Prosafe announced that it had filed its appeal to this decision.<sup>12</sup>
- 3.10 The transaction will also be subject to lender's approval, approval from Floatel Bondholders and approval by an Extraordinary General Meeting by Prosafe SE.<sup>13</sup>
- 3.11 The Parties consider that:
- (a) adding five modern semi-submersible accommodation units to Prosafe's fleet would significantly reduce the average age of its 'core fleet';
  - (b) The transaction would increase customer reach globally, as each of the Parties has customer relationships that the other does not<sup>14</sup>; and
  - (c) The Merger would put the Parties on a sounder financial footing, enabling them to compete more effectively globally.
- 3.12 The turnover for the Parties for the year ended 31 December 2018 is summarised below.

**Table 6 Parties turnover for year ended 31 December 2018**

	UK Turnover (£m)	EEA Turnover (£m)	Worldwide Turnover (£m)
Prosafe	[REDACTED]	[REDACTED]	247.6
Floatel	[REDACTED]	[REDACTED]	227.1
Parties' Combined Turnover	[REDACTED]	[REDACTED]	474.7

Source: Parties

- 3.13 The Parties expect recurring cost synergies from the transaction of approximately USD [REDACTED], to include [REDACTED].

## 4. Industry Background

- 4.1 This section of our provisional findings sets out background information on the Parties' services, their customers, the range of accommodation support

<sup>12</sup> Prosafe News and Media, [update on the merger process with Floatel International](#), 25 November 2019

<sup>13</sup> Floatel International - Update on merger process - extension of transaction agreement with Prosafe, press release 2 January 2020.

<sup>14</sup> The Prosafe / Floatel merger audiocast 4 June 2019 at 10am

options available to customers, suppliers of these options and reported industry trends.

## **The Parties' services**

4.2 The Parties' position in the life cycle of an oil field is typically connected to activities described as:

- (a) Hook-up and commissioning work;
- (b) Maintenance, modification and operations; and
- (c) Decommissioning.

### ***Hook-up and commissioning ("HUC")***

- 4.3 A fixed production facility involves the installation of the facility's topside, an area on top of the grounded structure (known as the "jacket") on which relevant equipment and living quarters are installed. HUC work is needed on new (or "greenfield") developments.
- 4.4 An ASV is often required to support this hook-up and commissioning work to accommodate personnel working before the facility has usable accommodation in place.
- 4.5 Such projects are typically known prior to first oil production and prior to the contract for ASVs starting. Contract lengths may be at least six months and can extend up to several years depending on the size of the project.
- 4.6 Demand for ASVs for HUC work has been affected by the type of production facility being installed, with the industry now having more floating production facilities (e.g. a semi-submersible platform). The accommodation on a floating production facility is generally operational from the outset of the deployment, reducing the likelihood (or limiting the size) of an ASV that would be needed. However, there are some instances where ASVs are used to support accommodation needs for work to floating production facilities.

### ***Maintenance, modification and operation ("MMO")***

- 4.7 MMO work generally takes place on fields that are already in production. Contracts for offshore accommodation services for MMO work generally last between several weeks and several months. An ASV is required where the personnel numbers required for the work are more than can be accommodated on the rig, such as for relatively major maintenance work.

- 4.8 The lead time for contracting ASVs for such work is typically at least a few months in advance of the need. Historically, we understand MMO work has comprised [the majority] [X] of the market for ASVs.

### **Decommissioning**

- 4.9 Decommissioning involves the removal of the production facility's topside, and the remaining subsea structure. Supporting activities can generally be planned in advance.
- 4.10 Decommissioning activity can be done in 'small pieces', for example by deconstruction of the facility over time, or in 'large pieces', for example by deploying lifting vessels to remove all or large parts of the facility for subsequent deconstruction onshore.

### **Customers**

- 4.11 Customers contract with the Parties for the use of ASVs to provide temporary additional accommodation, storage and working space for employees working on offshore oil and gas facilities.
- 4.12 The customers of the Parties include multinational or state-owned oil and gas companies with global operations. Their main customers are:
- (a) Equinor (formerly Statoil), a Norwegian state-owned integrated oil and gas company.
  - (b) British Petroleum plc ("BP"), a British multinational integrated oil and gas company.
  - (c) Aker BP ASA, an oil exploration and development company focusing petroleum resources on the Norwegian Continental Shelf.<sup>15</sup>
  - (d) ConocoPhillips, an American multinational energy corporation. ConocoPhillips sold oil and gas assets in the British North Sea to Chrysaor in September 2019.<sup>16</sup> Chrysaor is an independent oil and gas company with an interest in 14 operated and 9 non-operated fields in the North Sea.<sup>17</sup>

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<sup>15</sup> Aker BP ASA was formed in 2016 when Det norske oljeselskap ASA completed an agreement with BP p.l.c. to merge with BP Norge AS.

<sup>16</sup> [Rigzone News](#), 'ConocoPhillips Completes \$2.78B UK Asset Sale to Chrysaor', 30 September 2019

<sup>17</sup> Chrysaor website, <https://www.chrysaor.com/about-us/at-a-glance>, 6 January 2020

- (e) Royal Dutch Shell plc (“Shell”), a multinational British-Dutch oil and gas company, which acquired BG Group plc in 2015.
- (f) Total SA, a French multinational integrated oil and gas company with global operations, which acquired Maersk Oil in 2017.
- (g) Chevron Corporation, an American multinational energy corporation.

## **Tendering**

- 4.13 Contracts for semi-submersible ASVs are typically awarded via tenders. The tender process is as follows;
- (a) Customers invite providers to tender through a procurement platform.
  - (b) Invited providers are given the contract specifications.
  - (c) Providers submit offers.
  - (d) Customers assess offers, collate a longlist and then shortlist providers.
  - (e) Customers conduct bilateral negotiations with one or more providers before awarding the contract.
  - (f) There are sometimes post-contract negotiations, particularly when an extension is being agreed.
- 4.14 Each tender is based on the specific set of customer requirements, which may change or become more specific from the time of initial contract tender to vessel deployment.
- 4.15 In addition, customers and suppliers may engage with one another, to discuss possible projects and customer requirements, prior to invitation to tender.
- 4.16 Providers will typically consider a range of factors when considering whether to tender, and on the terms and pricing to offer, including:
- (a) fleet availability and capability;
  - (b) the availability of other providers’ vessels;
  - (c) mobilisation and demobilisation costs;
  - (d) the nature of the customer requirements including contract duration, helicopter, catering, fuel provisions, mooring and anchoring equipment, crew, and any ancillary requirements;

- (e) alternative deployment choices for the vessel(s) to be tendered, alongside the expected financial outcomes associated with those choices; and
- (f) alternative options that may be available to the customer.

## **Offshore accommodation support**

- 4.17 Facility operators have a range of accommodation options available to them, although not all accommodation options will be viable for every project.
- 4.18 There is a range of accommodation support vessels (ASVs), as set out below. Their role is to provide additional accommodation for exploration drilling, construction/installation, and production crews:
- (a) Jack-up ASVs are platforms which are elevated above the sea's surface on adjustable legs that reach down to the ocean floor.
  - (b) Monohull ASVs are 'ship-shaped' vessels which are moored or dynamically positioned next to a drilling rig.
  - (c) Walk-to-work (W2W) vessels 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) Unconverted drilling rigs are vessels which have previously been deployed to provide contract drilling services. These rigs can be deployed either on accommodation-only contracts, or in conjunction with the provision of drilling services.
- 4.19 Table 7 shows differences and areas of overlap between vessel capabilities in terms of personnel-on-board (**PoB**) 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 of the different vessel types.



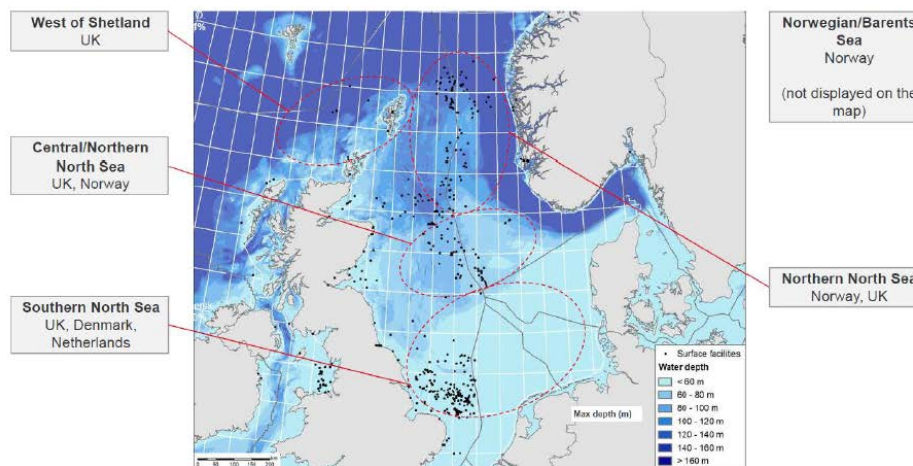
**Table 7: ASV capabilities by vessel type**

<i>Vessel type</i>	<i>PoB capacity</i>	<i>Depth capability</i>	<i>Compatible with platform type</i>	<i>Operating condition</i>	<i>Maximum Significant wave Height (Hs) for disconnect / reconnect (in metres)</i>
Semi-submersible ASV	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. Note that the capabilities of individual ASVs may vary from these parameters.

4.20 Figure 1 below sets out the depth of waters in the North Sea. It shows that the deeper waters are in the West of Shetland and Northern North Sea regions.

**Figure 1 Map illustrating depth of North Sea Waters**



Source: Parties

4.21 The type of work to be undertaken, the nature of the relevant offshore production facility, the operating environment, price, PoB capacity, vessel availability and level of gangway connectivity will all influence an operator's choice of offshore accommodation solution.

4.22 Offshore accommodation options available to customers may also include:

- (a) use of existing accommodation on-board the production facility; and
- (b) use of existing accommodation on nearby production facilities (which may be the customer's own or one operated by a third party), using a helicopter or walk to work vessels to shuttle personnel to their facility.

4.23 The Parties have stated that the likelihood that a project will require a jack-up, semi-submersible or monohull ASV, or walk-to-work (W2W) vessels, will depend on a range of project and vessel specific factors. The Parties have also stated that semi-submersible ASVs compete with some or all of jack-ups, monohulls, W2Ws and unconverted drilling rigs.

4.24 We provide further brief factual information on the various types of ASV below.

### ***Semi-submersible accommodation support vessels***

4.25 We set out below an image of a typical semi-submersible ASV.

**Figure 2: a semi-submersible accommodation support vessel**



Source: Floatel.

4.26 We have been told that:

- (a) ASV providers typically tend to contract vessels (with the crew needed to operate the ASV) in exchange for fixed amounts payable per day which cover the use of the ASV, the provision of the ASV's crew and ancillary service costs such as catering costs;
- (b) Other service costs can include the provision of a heli-deck crew or on-board administrative or medical services (if needed); and

(a) Fuel costs may be charged at cost (or procured separately by the customer).

- 4.27 Some semi-submersibles are kept in position using “dynamic positioning” (or “DP”). DP-enabled ASVs use in-built propulsion systems, controlled by an onboard computer, to maintain the vessel’s position. Consequently, DP-enabled ASVs are able to move themselves to the site where they are to be deployed. Typically, this requires greater fuel consumption than moored ASVs.
- 4.28 Moored ASVs are kept in position by mooring lines attached to anchors on the ocean floor and may need tugs or lifting vessels to transport them between deployment locations.
- 4.29 While some semi-submersible ASVs are only capable of moored or DP station-keeping, many have dual capability.

### ***Jack-ups***

- 4.30 Jack-ups are platforms which are elevated above the sea’s surface on adjustable legs that reach down to the ocean floor. During relocation, the jack-up’s legs are extended above the hull.
- 4.31 Once in position, the legs are lowered until they are resting on the ocean floor and the hull of the vessel is “jacked-up” above the surface. The legs anchor the rig and hold the hull above the waves.
- 4.32 An image of a jack-up is provided below.

Figure 3: Master Marine's jack up: The Haven<sup>18</sup>



Source: Master Marine.

- 4.33 Jack-up ASVs can only be placed in locations with certain sea bed conditions, where subsea infrastructure permits and in waters that are not too deep for the length of their legs. Most jack-up ASVs are designed to operate in waters less than 125m deep, although a small number may be able to operate at the top end of that range (or slightly above that).
- 4.34 Some jack-ups will be designed as ASVs from the outset. Sometimes a jack-up drilling rig may be converted into an ASV; for example, the *Maersk Guardian* was converted in 2016 from a drilling rig into an accommodation unit.<sup>19</sup>

### **Drilling rigs**

- 4.35 We understand that drilling rigs are mainly used for exploration rather than accommodation services. However, a number of unconverted drilling rigs (not specifically converted for accommodation) have been marketed for accommodation services in the North Sea.
- 4.36 As examples:
- (a) In November 2019, the Petroleum Safety Authority Norway stated that it had given its consent to Equinor to use the Maersk Intrepid<sup>20</sup> jack-up rig

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<sup>18</sup> Image sourced from Master Marine's technical specification sheet

<sup>19</sup> Offshore Energy Today, 10 August 2016

<sup>20</sup> Petroleum Safety Authority Norway published [22 November 2019](#)

for accommodation on the Martin Linge field offshore Norway until 31 August 2020; and

- (b) In 2018, World Oil<sup>21</sup> reported that Maersk Drilling and Aker BP agreed to a new two-year contract to deploy a jack-up rig, the Maersk Reacher in the Norwegian part of the North Sea.

### **Monohulls**

- 4.37 Monohulls are single hull or ‘ship-shaped’ vessels. Monohull ASVs are of varying sizes, with some capable of accommodating in excess of 400 PoB, whilst some accommodate 200-300 personnel or fewer.

**Figure 4: A monohull vessel**



Source: The Parties.

- 4.38 Monohull ASVs are typically capable of operating in the North Sea, although potentially not on a year-round basis (in particular, in the winter months).

### **W2W vessels**

- 4.39 W2W vessels are smaller monohulls. Unlike semi-submersible and jack-up ASVs, these vessels only remain stationed while the workforce is transferred (at the beginning/end of a shift), rather than remaining attached to the offshore production facility.

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<sup>21</sup> World Oil, Gulf Publishing Company LLC



**Figure 5: Image of a walk to work vessel'**



Source: The Parties.

- 4.40 W2W vessels can operate in southern-to-central parts of the North Sea. In central-to-northern parts of the North Sea, the efficient operating window for W2W vessels may be limited to the summer operating window.

*Additional suppliers of accommodation support vessels*

- 4.41 The principal other suppliers of ASVs in terms of contracts awarded in the North Sea over a ten-year period include:

(a) Dolphin Drilling and COSL in the UKCS.

We understand Dolphin Drilling filed for bankruptcy as part of a restructuring plan in 2019<sup>22</sup>, transferring control to its creditors and placing operating subsidiaries into a new holding company, Dolphin Drilling Holdings Limited.

(b) Master Marine and COSL in the NCS.

- 4.42 Further suppliers of accommodation support services include Teekay Offshore, Maersk, POSH, OOS and Edda Fides.

***Industry Trends***

- 4.43 A number of technological changes to construction vessel design have affected the demand for offshore accommodation services during HUC and

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<sup>22</sup> [The Maritime Executive](#), 'Dolphin Drilling Files for Bankruptcy in Restructuring Plan', 26 June 2019

decommissioning projects. For example, the *Pioneering Spirit* from Allseas is capable of lifting platform topsides of up to 48,000 t and jackets up to 20,000 t in a single piece. For the installation of fixed production facilities, this means that the majority of HUC work can be carried out on the topside while it is onshore; the topside is then carried out to the deployment site and installed on the jacket in a single lift. Likewise, the *Pioneering Spirit* can remove an entire topside in a single lift during decommissioning.<sup>23</sup>

- 4.44 In addition, changes in customer requirements for ASVs in relation to MMO work have also affected demand, for example by:
- (a) oil and gas companies spreading the MMO work over a longer period, or improving their inspection technologies, resulting in lower personnel requirements at a single point in time. This means that, in some cases, they have been able to use accommodation capacity on existing facilities/platforms or other accommodation solutions.
  - (b) oil and gas companies moving away from large, fixed production facilities towards smaller platforms and floating production facilities and gas companies moving away from large, fixed production facilities towards smaller platforms and floating production facilities. This reduces the demand for ASVs, as smaller facilities can be fully assembled on land and installed in one-piece, minimising hook up commissioning work and reducing offshore personnel requirements.
- 4.45 We consider the impact of changes in the industry in our assessment of the competitive effects of the Merger (see chapter 8).

## 5. Jurisdiction

- 5.1 This chapter addresses the first of the two statutory questions which we are required to answer under section 36 of the Act and pursuant to our Terms of Reference (see Appendix A), namely: whether arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
- 5.2 The concept of a relevant merger situation has two principal elements: two or more enterprises cease to be distinct enterprises within the statutory period

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<sup>23</sup> Brent Bravo is one of several platforms to be decommissioned and removed from the Brent oil and gas field, where Shell has utilized *Pioneering Spirit*'s single lift, motion-compensated technology. The Brent Bravo platform is located off the northeast coast of the Shetland Islands. (Offshore Energy Today, 19 June 2019).

for reference;<sup>24</sup> and the turnover test and/or the share of supply test is satisfied.<sup>25</sup>

## **Enterprises ceasing to be distinct**

### ***Enterprises***

- 5.3 The Act defines an ‘enterprise’ as ‘the activities or part of the activities of a business’.<sup>26</sup> A ‘business’ is defined as including ‘a professional practice and includes any other undertaking which is carried on for gain or reward or which is an undertaking in the course of which goods or services are supplied otherwise than free of charge’.<sup>27</sup>
- 5.4 Each of Prosafe and Floatel is active in the supply of semi-submersible ASVs. In 2018, Prosafe generated worldwide turnover of approximately £248 million of which approximately £[~~248~~] was in the UK; and Floatel generated worldwide turnover of approximately £227 million worldwide, of which approximately £[~~227~~] was in the UK.
- 5.5 We are therefore satisfied that each of Prosafe and Floatel is a ‘business’ within the meaning of the Act and that, accordingly, the activities of each of Prosafe and Floatel are ‘enterprises’ for the purposes of the Act.

### ***Ceasing to be distinct***

- 5.6 The Act provides that two enterprises cease to be distinct if they are brought under common ownership or common control.<sup>28</sup>
- 5.7 The Merger concerns the acquisition by Prosafe of the entire share capital of Floatel, so Prosafe will have a ‘controlling interest’ in Floatel within the meaning of the Act.<sup>29</sup> On completion of the Merger, these enterprises will be under the common ownership and control of Prosafe. Accordingly, we are satisfied that arrangements are in progress or in contemplation which, if carried into effect, will result in the enterprises of Prosafe and Floatel ceasing to be distinct.

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<sup>24</sup> Sections 23 and 24 of the Act.

<sup>25</sup> Section 23 of the Act.

<sup>26</sup> Section 129(1) of the Act.

<sup>27</sup> Section 129(1) and (3) of the Act.

<sup>28</sup> Section 26 of the Act.

<sup>29</sup> Section 26 of Act recognises three levels of control: a controlling interest (*de jure* control), *de facto* control and material influence.



5.8 The Merger has not yet completed, so Prosafe and Floatel remain independent enterprises. Therefore, we are satisfied that the four-month time limit (the statutory period for reference) for a relevant merger situation under the Act is not engaged in the present circumstances.<sup>30</sup>

## **The turnover and share of supply test**

5.9 The second element of the test for a relevant merger situation seeks to establish sufficient connection with the UK on a turnover and/or share of supply basis.

### ***Turnover test***

5.10 The turnover test is satisfied where the value of the turnover in the UK of the enterprise being taken over exceeds £70 million.<sup>31</sup> As the turnover of Floatel in the UK in its last financial year was approximately £[~~80~~] million the turnover test is not satisfied.

### ***Share of supply test***

5.11 The share of supply test is satisfied where, as a result of enterprises ceasing to be distinct, the following condition prevails or prevails to a greater extent: at least one quarter of goods or services of any description which are supplied in the UK, or in a substantial part of the UK,<sup>32</sup> are supplied either by or to one and the same person.<sup>33</sup>

5.12 The concept of goods or services of ‘any description’ is very broad. The CMA is required by the Act to measure shares of supply by reference to such criterion (whether value, cost, price, quantity, capacity, number of workers employed or some other criterion, of whatever nature), or such combination of criteria as the CMA considers appropriate.<sup>34</sup>

5.13 The share of supply test is a flexible test that gives the CMA discretion to consider forms of supply separately or in combination (whether as a whole or taken in groups) and to consider whether transactions differ materially as to their nature, their parties, their terms or the surrounding circumstances.<sup>35</sup> In

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<sup>30</sup> Section 24 of the Act. In summary, the four-month time limit applies only where the enterprises *have ceased* to be distinct.

<sup>31</sup> Section 23(1)(b) of the Act.

<sup>32</sup> The UK territorial sea extends to 12 nautical miles from the shore (section 1(1) of the Territorial Sea Act 1987).

<sup>33</sup> Section 23(2), (3) and (4) of the Act.

<sup>34</sup> Section 23(5) of the Act.

<sup>35</sup> Section 23(6) and (7) of the Act.

each case the criteria are to be such as the CMA considers appropriate in the circumstances of the case.<sup>36</sup>

5.14 We have calculated shares of supply in terms of number of contracts won and the value of contracts won.

5.15 Table 8 shows the shares of supply of semi-submersible ASVs based on the number and value of contracts won in the UKCS in the last 3 years.<sup>37</sup>

**Table 8: Shares of supply of semi-submersible ASVs in the UKCS by contract wins (2017-2019)**

	<i>Based on Parties' Dataset</i>		<i>Based on Customer Dataset</i>		
<i>Competitors who have won</i>	<i>No of contracts won</i>	<i>Share of all contracts</i>	<i>No of contracts won</i>	<i>Share of all contracts</i>	<i>Share of all contracts based on value</i>
Prosafe	[✂]	[80-90%]	[✂]	[80-90%]	[80-90%]
Floatel	[✂]	[10-20%]	[✂]	[10-20%]	[10-20%]
Total	[✂]	[✂]	[✂]	[✂]	[✂]

Source: CMA's analysis of the Parties' and Customer tender data.

Note: This table covers data on all contracts where the work started in the period 2017-2019 and was won by a semi-submersible ASV in the respective dataset.

5.16 In view of the above, our provisional view is that - under several reasonable descriptions of a set of goods or services – as a result of the Merger, the Parties' combined share of supply of semi-submersible ASVs in the UKCS satisfies the share of supply test and therefore the second limb of the test for a relevant merger situation is satisfied.

### ***Provisional conclusion on the relevant merger situation***

5.17 In view of the above, 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.

## **6. The counterfactual**

6.1 The counterfactual is an analytical tool which serves as a benchmark against which the effects of a merger can be assessed. In a phase 2 inquiry, the CMA will select as the counterfactual only the most likely situation in the absence of the merger. Due to its inherently hypothetical nature, the analysis to

<sup>36</sup> Section 23(8) of the Act.

<sup>37</sup> We examined 3 years of data as we recognise that tenders can be infrequent and demand in this sector can be uneven or lumpy. Market shares for NW Europe are set out in the competitive effects chapter (see chapter 8).

determine the counterfactual is generally not comparable in detail to that of the competitive effects of a merger.<sup>38</sup>

- 6.2 The CMA's analysis of the counterfactual is affected by the extent to which events or circumstances and their consequences are foreseeable and the CMA seeks to avoid importing into its assessment any spurious claims to accurate prediction or foresight. Given that the counterfactual incorporates only those elements of situations that are foreseeable, it will not in general be necessary to make finely balanced judgements about what is and what is not the counterfactual.<sup>39</sup>
- 6.3 In an anticipated merger (as in this case), our starting point typically is the continuation of the prevailing conditions of competition.
- 6.4 During the course of this inquiry we have been provided with only limited contemporaneous evidence on the counterfactual.

### Summary of the Parties' submissions

- 6.5 In their Merger Notice, the Parties submitted that they did not consider that the CMA should assess the competitive effects of the Merger against a counterfactual other than the current or pre-existing competitive situation.
- 6.6 In their response to the Phase 1 Decision, the Parties submitted that:
- “It is critical that the CMA's investigation of the Merger is forward-looking, in order properly to take into account:
- (a) The structural demand reduction (on the North Sea in particular); and
- (b) The increasing global (and UKCS) over-supply of UKCS-capable vessels and the competitive constraint that RoW-located vessels will exert on the merged entity.”
- 6.7 In their response to the annotated issues statement, the Parties submitted that the relevant counterfactual is one where the Parties [redacted]. They also said that:
- (a) “The reality is that absent the Merger, the Parties would expect to [redacted]. This is rational in a market with shrinking and insufficient demand.”
- (b) “Prosafef [redacted]”

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<sup>38</sup> CC2 Revised, paragraphs 4.3.1 and 4.3.6.

<sup>39</sup> CC2 Revised, paragraphs 4.3.2 and 4.3.6.

(c) “Similarly Floatel is expected [REDACTED]”

(d) [REDACTED]

## **Our assessment**

6.8 The Parties’ internal documents indicate [REDACTED] and that the due diligence process was expected to commence [REDACTED].

6.9 [REDACTED].

6.10 We have also considered more recent evidence on the Parties’ financial positions. We consider the Parties’ submissions regarding the future demand for semi-submersible ASVs in our assessment of the competitive effects of the Merger (see chapter 8).

## **Prosafe**

6.11 Prosafe’s strategy at the time the Merger was first in contemplation was to:

(a) Improve its market share;

(b) Control a greater percentage of the active fleet; and

(c) Protect its competitive position, ensuring rates are sustainable and the vessels are best in class.

## ***The fleet***

6.12 At the main party hearing Prosafe told us that it currently has two warm vessels in the North Sea area – [REDACTED]. It said that its aim would be to keep [REDACTED] operational in the North Sea but that if Prosafe [REDACTED].

6.13 We note that Prosafe currently has two contracts in NW Europe, the final of which will expire in [REDACTED].

## ***Current financial position***

6.14 We have also considered Prosafe’s more recent financial performance. Its Q3 2019 results and market update reports describe the market outlook as follows:

(a) “A prolonged downturn and weaker outlook in the North Sea in particular”;

(b) “No tenders in the North Sea and few contract opportunities anticipated in the next years in Norway in particular”;

(c) “Brazil offering opportunities, although at lower rates. Two tenders currently outstanding”;

(d) “Increasing focus on other markets including Mexico”.

6.15 Prosafe’s 2019 income statement shows [REDACTED]<sup>40</sup>.

6.16 Prosafe incurred impairments of USD 341m in Q3 2019, and it has told us that it expects [REDACTED] Q3 2020. However, a DNB equity research report dated 20 August 2019 sets out a market recommendation to hold shares in Prosafe - indicating that at least some market participants still have confidence in the financial sustainability of Prosafe.

6.17 In addition, Prosafe had USD 216 million cash on its balance sheet at the end of Q3 2019.<sup>41</sup>

6.18 In November 2019, Prosafe stated it would commence discussions with its lenders with a view to ensuring sufficient financial flexibility for the longer term. In January 2020, Prosafe stated its discussions with its lenders were ongoing and constructive.<sup>42</sup>

## Floatel

### *The fleet*

6.19 Floatel has five vessels of which four are UKCS-compliant, three of which are in NW Europe.

6.20 At the main party hearing, Floatel said that in the counterfactual even though demand will reduce there would still be competition between the two Parties and that in the event that there was only one contract in NW Europe they would fight for that contract. [REDACTED].

6.21 In December 2019, it won a new contract in NW Europe with Ineos, starting in May 2020 [REDACTED].<sup>43</sup> Floatel is currently working on the Equinor Martin Linge contract which has [REDACTED].

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<sup>40</sup> Prosafe summary income statement by geographic area

<sup>41</sup> [Prosafe Q3 2019 results and market update](#), 5 November 2019, page 14

<sup>42</sup> <https://www.globenewswire.com/news-release/2020/01/14/1970114/0/en/Prosafe-SE-Update-on-discussions-with-lenders.html>, 14 January 2020

<sup>43</sup> <http://www.floatel.se/news/1312395687/floatel-international-awarded-new-contract-uk-summer-2020>

### **Current financial position**

- 6.22 We note that there has been a substantial fall in the value of Floatel's bonds (traded on the Oslo stock exchange) during 2019. Floatel has the following bonds outstanding:
- (a) The USD 75m bond value has fallen from 89 cents on 21 February 2019 to 25 cents on 29 October 2019.
  - (b) The USD 400m bond value has fallen from 91.25 cents on 4 February 2019 to 53 cents on 15 November 2019.
- 6.23 Floatel's income statement, [REDACTED]. However, Floatel still has substantial cash reserves (over USD 90m as at September 2019).

### **Assessment of Prosafe's and Floatel's position**

- 6.24 Both Prosafe and Floatel are facing some financial challenges and both companies have told us that absent the Merger they would [REDACTED]. Prosafe has submitted that if it cannot find work for its vessels it [REDACTED] and both Parties have said that they anticipate there would [REDACTED] competing for work in the future.
- 6.25 At the main party hearing, Floatel told us that in the counterfactual in the event there was [REDACTED].
- 6.26 However we have not been provided with internal documents from either Party that demonstrate a firm commitment to exit the market absent the Merger.
- 6.27 We also note that the Parties are currently serving customer contracts in NW Europe which extend into the future and that Floatel has recently won a new contract. In addition, as we describe in our analysis of future demand (see chapter 8) there is still demand for projects in NW Europe for which semi-submersible ASVs are required or strongly preferred.
- 6.28 In light of the above, we consider that absent the Merger both Parties would be likely to remain in NW Europe [REDACTED].
- 6.29 We therefore provisionally conclude that the counterfactual is the prevailing conditions of competition [REDACTED] albeit in a market which is likely to be characterised by relatively low and unpredictable future demand.<sup>44</sup>

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<sup>44</sup> We consider future demand conditions in our assessment of competitive effects (see chapter 8).

## 7. Market definition

- 7.1 Market definition is an analytical tool whose purpose is to provide a framework for the analysis of the competitive effects of the Merger. The relevant market contains the most significant competitive alternatives available to the customers of the merger firms and includes the sources of competition to the merger firms that are the immediate determinants of the effects of the merger (i.e. the CMA's aim when identifying the relevant market is to include the most relevant constraints on behaviour of the merger firms).<sup>45</sup>
- 7.2 Market definition is a useful tool, but not an end in itself, and identifying the relevant market involves an element of judgement. The boundaries of the market do not determine the outcome of the analysis of the competitive effects of a merger in any mechanistic way. In assessing whether a merger may give rise to an SLC the CMA may take into account constraints from outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important than others.<sup>46</sup>
- 7.3 Examining how competition works through bidding for different contracts is central to the analysis of this Merger. Our analysis of this evidence is set out in our competitive assessment of the effects of the Merger (see Competitive effects in the supply of semi-submersible ASVs in NW Europe 8) where the closeness of competition between the Parties and the competitive discipline provided by other actual and potential participants is considered in more detail. The evidence on bidding is also relevant for our assessment of the market definition as the framework for considering the competitive alternatives available to customers.
- 7.4 Bidding markets differ from other markets because suppliers choose what price and product offering to submit on a case-by-case basis, based on a range of factors including the customer's specific requirements or preferences, the suppliers' views on which competitors are also bidding and at what price level, and the current market conditions. Competition between bidders is specific to each particular instance or tender including the offering of services and at what pricing. The bidding market characteristics allow suppliers to price discriminate from customer-to-customer and tender-to-tender. If firms are selling differentiated products and competing for many tenders over time the differentiation of products means that firms do not necessarily have to bid the lowest price in order to win a tender since buyers may prefer a particular product even when it is not the cheapest available.

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<sup>45</sup> [Merger Assessment Guidelines](#), paragraph 5.2.1.

<sup>46</sup> [Merger Assessment Guidelines](#), paragraph 5.2.2.

- 7.5 Competition depends on there being a number of effective competitors, that is, suppliers who customers consider are capable of offering good alternatives to meet their needs, with the capacity required to bid competitively. These credible bidders exert competitive constraints on each other. Removing such bidders, as a result of a merger, can therefore lessen competition and lead to higher prices being bid by the remaining competitors. When assessing whether firms in bidding markets are close competitors, one method is to look at whether and how often the two firms are the lowest and next lowest priced firms in a tender. If this situation frequently arises, it implies that there would be a loss of competition post-merger because the winning bid could be higher if the two firms bid as one.
- 7.6 In this section, we address the main dimensions of market definition; namely the relevant product and geographic markets. As background to our assessment we first set out the way in which the bidding process works for ASVs, which is relevant to the market definition analysis in order to understand how customers are choosing between vessel types based on their specific requirements, and that suppliers are pricing to the requirements and conditions of individual tenders.

## **How the bidding process works**

### ***Bidding market operation***

- 7.7 We have set out above in the section on the industry background (see Industry Background) key facts about the products, information on the main firms, and how the industry operates. In this section, we explain the bidding process, which provides important context for the market definition as part of the framework for the analysis of the competitive effects of the Merger.
- 7.8 Customers choose between suppliers on a tender-by-tender basis. Effective competition depends on there being a sufficient number of rivals, with capacity in terms of appropriate vessels for customer requirements, who are bidding head-to-head against each other. The work specified in each tender has differentiated parameters, including aspects such as the depth of water, wave height, PoB required, and duration, which all impact on the suitability of different vessels and suppliers for customers (as set out in more detail in paragraph 7.20 to 7.24).
- 7.9 The differentiated requirements of each project mean that, when bidding, suppliers bid prices to each tender based on the specific circumstances of that tender, including the specific customer requirements, and the expected competition for each tender. The expected competition depends on the vessel



specifications of competitors and whether their capacity is utilised or available. Customers consider alternatives (substitutes) for each tender.

7.10 Tendering for ASVs appears to be quite transparent in terms of the information available to suppliers about the current and past behaviour of their rivals. For example, brokers can be active in sharing intelligence in the market, and suppliers publish details of tenders which they have won on their websites.<sup>47</sup> Suppliers also actively monitor their competitors and appear to have good visibility over their available capacity when bidding on different tenders. For example:

(a) Floatel stated that it generally has a fairly good idea of who is bidding as it tracks competition all the time.

7.11 Prosafe stated that through its information gathering it gains *‘a fairly good idea of the vessels that are being considered by various owners for the opportunities, hence why we have a fairly good idea that, when customers throw the net out, the net goes wide.’* Prosafe added that *‘we also get feedback from various owners about what their expectations are’*. Further, Prosafe stated that that *‘we know when other bidders are going in to talk’* and *‘the knowledge [of who we might be up against in particular bids] is somewhere between specific and expectational’*. Our analysis shows that, at times, the Parties believe they face a greater number of bidders than customers have told us they do (see paragraph 8.33). While bidders may believe that they are well informed over who else is bidding in a particular contract, we note that customers have an incentive to overplay the extent of the competition; for example by indicating that there are a greater number of rival bidders than there are, both during the initial stages and when bidders have been shortlisted, in order to make bidders believe competition is more intense in order to elicit lower bids.

7.12 In bidding, a supplier will consider other options for the vessels being bid, including other likely tenders for which their vessel is suitable and the costs that the vessel will face if it wins no alternative contract; for example, costs of stacking and subsequent reactivation. For example, in relation to the opportunity cost<sup>48</sup> of a contract, Floatel noted that [X]. In this regard, we note that suppliers will bid more intensely to win work when there are fewer alternative contracts available and the likely alternative would be that the

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<sup>47</sup> See for example: announcement by Floatel of a contract in summer 2020 with Ineos: <http://www.floatel.se/news/1312395687/floatel-international-awarded-new-contract-uk-summer-2020>, see also announcement by Prosafe indicating that Equinor had extended its use of the Safe Boreas for one month at a value of 5M USD: <https://www.prosafe.com/safe-boreas-further-extended-at-mariner/>

<sup>48</sup> That is, the next best alternative option.

vessel is stacked (see paragraph 8.49 for evidence of this behaviour by the Parties).

### ***How the Parties bid for ASV opportunities***

7.13 That the Parties tailor their bids to the specific circumstances including customer requirements, market conditions and their expectations of other competing bidders has been confirmed both by the Parties in the Main Party Hearings, and is evident from their internal documents:

(a) Floatel stated that its price is tailored for specific circumstances such as [REDACTED].

(b) Prosafe stated that its pricing strategy takes into account a range of factors including [REDACTED].

(c) A Floatel market update sets out:

[REDACTED]

(d) Similarly, an internal Prosafe slidepack dated 2018 categorises [REDACTED]

### ***Relevance of bidding market context for market definition***

7.14 The way in which bidding works for ASVs highlights that suppliers tailor their bids to specific circumstances and therefore to analyse substitutability for the purposes of market definition we need to consider the bidding information on a tender-by-tender basis, as we do below. A wider set of alternatives for some tenders does not necessarily affect the competitive intensity and pricing in other tenders where the requirements differ and there is a narrower set of alternatives.

## **Product Market**

7.15 The relevant product market is a set of products that customers consider to be close substitutes, for example in terms of utility, brand or quality.<sup>49</sup> In identifying the relevant product market the CMA will pay particular regard to demand side factors (the behaviour of customers and its effects). However, the CMA may also consider supply-side factors (the capabilities and reactions of suppliers in the short term) and other market characteristics.<sup>50</sup>

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<sup>49</sup> [Merger Assessment Guidelines](#), paragraph 5.2.5(a).

<sup>50</sup> [Merger Assessment Guidelines](#), paragraph 5.2.6.

- 7.16 On the basis that the Parties overlap in the supply of semi-submersible ASVs, we consider the supply of semi-submersible ASVs as our starting position and review evidence from third-parties, our bidding analysis and internal documents to analyse substitutability.
- 7.17 The supply of semi-submersible ASVs is characterised by customers having differentiated requirements and preferences depending on both the customer and the particular project. As set out in chapter 4 (industry background), customers may require offshore accommodation when carrying out HUC, MMO or decommissioning work.
- 7.18 The Parties submitted that semi-submersible ASVs compete with some or all of jack-ups, monohulls, W2Ws and unconverted drilling rigs.
- 7.19 The table in the industry background section sets out the differences and areas of overlap between vessel capabilities in terms of key factors including PoB, ability to operate in different water depths and weather conditions, and compatibility with different platform types. In the following sections we consider the different sources of evidence on the substitutability between different types of ASVs.

### ***Customer evidence***

#### *Factors customers take into account when selecting a semi-submersible ASV*

- 7.20 There was broad agreement amongst customers that for certain projects and customer requirements semi-submersible ASVs are required or strongly preferred, and for these projects no other ASV would be suitable. Customers listed the main determining factors for requiring/preferring a semi-submersible ASV over other vessel types. The majority of customers explained that the most important factor when choosing an accommodation vessel is the suitability of the vessel to the project/customer's needs given the technical requirements of the project, whereas price is a secondary consideration.
- 7.21 Customer evidence indicates that the need or preference for a semi-submersible ASV (rather than any other type of ASV) generally results from a combination of factors rather than one individual factor. The main factors identified by customers as driving the choice of a semi-submersible ASV are as follows (in no particular order):
- (a) Location of project and associated water depth – projects located in deep water and/or with a structurally complex seabed meaning a jack-up cannot be used and a semi-submersible ASV is more likely to be preferred (while monohull or W2W vessels could also be considered);

- (b) Weather conditions and associated wave heights (sometimes also associated with the duration of the project) – projects facing harsh weather conditions and higher associated wave heights are more likely to require a semi-submersible ASV, as compared with alternative vessels such as monohulls and W2Ws;
- (c) PoB and scale of project – the larger the project the more likely it is that a semi-submersible ASV will be required. Most customers noted PoB as one of the most important or important factors when choosing a semi-submersible ASV. In general, mono-hulls would also be able to deal with large PoBs (as well as large jack-ups, such as the *Haven*).
- (d) Type of platform – the evidence from customers shows that semi-submersible ASVs are more likely to be required/preferred in the case of work conducted in relation to fixed production platforms, but may sometimes also be required/preferred when using floating platforms. This is because, by its nature, more work on the floating platform can be done onshore (as it can float to shore), reducing the need to accommodate the needed personnel offshore.

7.22 We set out below evidence from specific customers which illustrates these factors:

- (a) Total said that it would usually use a semi-submersible ASV in the North Sea due to harsh weather conditions. [REDACTED]
- (b) Premier Oil noted that the determining factors that will dictate that a project will require a semi-submersible ASV are water depth, the scale of the activity/personnel needed and the duration of the activity. Premier Oil added that a semi-submersible ASV would never be chosen unless it is absolutely necessary for the project because semi-submersible ASVs are generally the most expensive option. BP said that the determining factors for requiring a semi-submersible ASV as opposed to other ASVs are POB, water depth/location and gangway availability.
- (c) [REDACTED]
- (d) [REDACTED] explained the characteristics of the project dictate the type of vessel chosen. [REDACTED] confirmed that the most relevant factors to require a semi-submersible ASV relate to bed-space capacity required to complete the task; interface requirements (regarding gangway-connectivity, [REDACTED] said having as much uptime as possible is preferable); and water depth constraints.

- (e) Shell submitted that its number one consideration is whether the vessel will be able to fulfil the work required safely given its technical specifications – important considerations are PoB and availability of vessel to support project timelines.
- (f) Repsol Sinopec explained that generally PoB is the main driver and dependent on the size / stage of the project. Other relevant factors are station keeping/ gangway uptime and water depth.

7.23 Evidence from customers of their requirements and the trade-offs they make demonstrate that customer requirements are differentiated by project, and by their own approach to offshore projects. Some customers have their own specific requirements that suppliers must adhere to in addition to those listed above, including specific gangway requirements and specific DP and/or mooring requirements. In addition, there are also cases of customers using a semi-submersible ASV and another type of ASV simultaneously, meaning that in some cases these vessel types are complementary rather than substitutes. In particular:

- (a) A number of customers raised the importance of suppliers' semi-submersible ASVs adhering to additional safety or other customer requirements. In particular, almost all customers noted that additional safety requirements are considered crucial or important.
- (b) Most customers explained that compliance with the OTGs<sup>51</sup> is crucial or a pre-requisite when assessing whether a semi-submersible ASV is suitable to conduct a project (the OTGs only apply to certain locations in the UKCS);
- (c) [REDACTED] and [REDACTED] noted the importance of DP in semi-submersible ASVs for at least some projects.
- (d) Almost all customers noted the importance of favourable gangway connection and uptimes when selecting semi-submersible ASVs.
- (e) [REDACTED]
- (f) [REDACTED]<sup>52</sup>

7.24 When assessing their needs for an ASV in a future project, customers explained that they seek to manage the work in such a way as to reduce their need for a semi-submersible ASV. This includes keeping the PoB as low as

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<sup>51</sup> DNV GL class society guidelines (also known as OTGs) which are a type of regulatory requirement.

<sup>52</sup> [REDACTED]

possible for the project and organising projects in the summer months when weather conditions are less harsh ([REDACTED]). However, customers stated that they have limited control over these factors so they cannot always avoid the need for a semi-submersible ASV:

- (a) First, because these factors are not completely flexible in planned projects. For example, the technical specifications and characteristics of the work may require a certain PoB which cannot be reduced to a level where a semi-submersible would not be required.
- (b) Second, because there is uncertainty regarding demand – for example, urgent non-planned projects, or projects that have been planned in advance but where requirements change later on. For example, in situations where a need for work arises at short notice, it is not necessarily possible to delay the work for a time when weather conditions are less harsh.

### *Customers' responsiveness to pricing*

7.25 Substitutability is typically considered through assessing customers' responsiveness to changes in relative prices or quality of offering.<sup>53</sup> We assess customers' actual decisions as evidenced in the bidding data below. Here we set out information provided by customers on the basis on which they make choices between alternatives.

7.26 Most customers' descriptions of the choices they face show that they are relatively insensitive to price between semi-submersible ASVs and other options as the technical considerations are the most important consideration, and commercial aspects are secondary (see paragraph 7.20). Semi-submersible ASVs are used only when required or strongly preferred, given the nature of the project. One customer ([REDACTED]) explained that semi-submersible ASVs are generally more expensive and, as explained at paragraph 7.24, where possible, the customers plan so as to minimise their need to use these vessels.

- (a) Three customers explained that if prices of semi-submersible ASVs were to increase by a small amount, they would still use a semi-submersible ASV in projects where semi-submersible ASVs are required or preferred.
- (b) Three customers noted that if prices became very high for semi-submersible ASVs in NW Europe, they would consider other options to enable using a different type of ASV - such as extending the project

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<sup>53</sup> [Merger Assessment Guidelines](#), paragraph 5.2.7.

duration, and dealing with any additional limitations - or using RoW suppliers/suppliers with no UKCS track record. The fact that some customers consider they would switch to an alternative only in the event of a very high price further supports that other types of ASVs are only distant substitutes to semi-submersible ASVs.

- 7.27 The actual customer behaviour we have observed confirms their relative insensitivity to the price of semi-submersible ASVs compared to other vessels, and that pricing has been largely driven by head-to-head competition between suppliers of semi-submersible ASVs. In this regard, we note that when the supply of semi-submersible ASVs was constrained, semi-submersible ASV prices were substantially higher, by at least 100%; and conversely competition between semi-submersible ASVs in recent years has been associated with very substantial price reductions, associated with head-to-head rivalry between semi-submersible ASV suppliers - see paragraph 8.49.

### ***Competitor and other suppliers of ASVs evidence***

- 7.28 Competitors and other suppliers of ASVs confirmed that for certain projects and project requirements semi-submersible ASVs are required or strongly preferred, identifying similar factors (and combinations of factors) as customers. In particular:
- (a) COSL noted that the requirement of a semi-submersible ASV seems to be connected to POB, duration and depth – above certain cut-off points for these, a semi-submersible ASV would be required. COSL explained that gangway connection time also matters: *“if the oil company requires 100% gangway connection then it would also probably require a semi-submersible ASV, depending on the weather calmer conditions.”*
  - (b) POSH said that, in general, a semi-submersible ASV would be required and not substitutable by other ASV types when water depth is too deep or too congested for jack ups or moorings and the weather conditions in terms of wave height, wave frequency and wind speed and direction are beyond the limits of all other competing types of ASV. POSH also said that *“semi-submersible ASVs are the most expensive type of accommodation vessels and are only used when other options such as monohull or jack-up ASVs are unsuitable”*.
  - (c) [REDACTED] said that the North Sea is a semi-submersible ASV market and that monohull ASVs are not suitable for the northern region of the North Sea due to the weather conditions, with semi-submersible ASVs being more stable. [REDACTED] said that jack-up ASVs mostly can be used up to a 50m water

depth maximum. However, once the water depth is more than 80m, the only option is a semi-submersible ASV.

- (d) Teekay Offshore explained that water depth is the most relevant variable for determining whether a particular project will require a semi-submersible ASV, [✂]
- (e) Master Marine noted semi-submersible as well as jack-up ASVs may be used when there is a demand for significant additional beds. Wintertime, a semi-submersible ASV or jack-up will be preferred on most projects (depending on water depth).
- (f) According to Edda Accommodation, a project would likely require the use of a semi-submersible ASV during harsh weather conditions and depending on gangway connection needs.

7.29 Competitors and other suppliers of ASVs also noted that customers have their own specific requirements, including DP and/or mooring.

### ***Bidding analysis***

- 7.30 We analysed bidding information from past tenders in order to inform the product market definition by considering the circumstances in which different vessel types are chosen, and how often semi-submersible ASVs could be substituted by different vessel types, according to the views of customers.
- 7.31 Consistent with the third party descriptions of differentiated customer requirements (as set out in paragraphs 7.20 to 7.24 and 7.28 to 7.29), we identified that customer requirements differed substantially in the bidding data provided to us on a tender-by-tender basis, and this affected the vessels which were considered and which won tenders (for detail on our bidding analysis see Appendix B).
- 7.32 The main reasons given by customers for choosing a semi-submersible ASV in the tender data were: the PoB requirements, water depth, and the ability to move the ASV during work. Table 9 below gives an overview of some of the key differences for tenders won by different categories of vessels in the Customer Dataset.



**Table 9: Comparison between tenders by vessel type that won in Customer Dataset, average (and range)**

	<i>Walk to work vessels</i>	<i>Jack up ASVs</i>	<i>Semi-submersible ASV</i>
PoB requirement	61 (46-68)	255 (130-380)	338 (150-480)
Water depth (m)	93 (91-94)	101 (91-110)	152 (80-400)
Wave height (m)	3.5	6	8.3 (6-12.5)
Duration (days)	55 (30-96)	379 (210-547)	272 (30-1080)
Number of tenders in dataset	[✂]	[✂]	[✂]

Source: CMA analysis of Customer Dataset; see Appendix B for details.

Note: Figures are the average characteristics of tenders won by specific vessel type. Minimum and maximum ranges within brackets. Jack up figures only based on two tenders, [✂]. There are no tenders in the Customer Dataset won by Monohulls so we have no data on them.

7.33 We have observed in the bidding data (see Appendix B) that the tenders for which Prosafe and Floatel bid semi-submersible ASVs can be categorised according to customer specifications into two segments:

- (a) those for which a semi-submersible ASV is the only option requested by customers; and
- (b) those for which customers have specified that other types of ASV as well as semi-submersible ASVs can fulfil their requirements (which we have termed ‘Multi’ contracts).

7.34 The bidding data indicates that when a customer has a requirement for a semi-submersible ASV, the project requirement cannot usually be fulfilled by a different vessel type:

- (a) Most of the 38 tenders in the Customer Dataset relate to tenders where only semi-submersible ASVs were required; six tenders relate to tenders where other vessel types were required.
  - (i) For 29 tenders, the customers indicated that a semi-submersible ASV was the only vessel type specifically requested for the tender (and no other vessel types were shortlisted).
  - (ii) For one tender, the customer specified that a Jack up ASV was the requested vessel for the tender.
  - (iii) For five tenders, the customer specified that a walk-to-work vessel was the requested vessel for the tender.

(b) Only three out of the 38 tenders specified that *either* a semi-submersible ASV *or* another ASV type were requested ('Multi' tenders).

7.35 In addition, of the three Multi tenders, two were won by semi-submersible ASVs with the other being won by a Jack-up [REDACTED].

### **Internal documents**

7.36 Consistent with the fact that semi-submersible ASVs have different features to other vessel types, the Parties' internal documents recognise the particular features of semi-submersible ASVs that mean other types of ASVs are not suitable alternatives for a range of projects. In particular:

(a) Floatel's internal document of May 2018 states that "[REDACTED]"

(b) Prosafe's November 2018 Board meeting strategy document states that the '[REDACTED]' and that [REDACTED]'

7.37 Broker reports are also consistent with this assessment that semi-submersible ASVs can operate in different environments to other vessel types. For example, a report by Clarksons in 2019 states that "*if required [PoB] 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*".<sup>54</sup>

7.38 However, the Parties' documents also identify some situations where vessel types other than semi-submersible ASVs would be suitable and are considered as competition:

(a) A Prosafe Board presentation in 2016 listed [REDACTED] vessels including [REDACTED] as vessels '*capable of UKCS operations and considered viable competition*'. However, the presentation goes on to state that the [REDACTED]

(b) While noting that the [REDACTED] are predominantly areas where semi-submersible ASVs operate, a February 2018 Prosafe internal presentation notes that there is [REDACTED] from other vessel types: [REDACTED]

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<sup>54</sup> We note the Parties' submission in relation to this document, that it does not suggest that other ASVs cannot compete effectively at higher water depths and that 'markets' is 'business-speak' in this context. (Annotated Phase 1 Decision – Parties Responses, paragraph 30). We consider that these points do not undermine our interpretation of the document as demonstrating that there are certain conditions and situations when different vessel types may be favoured.

(c) A Floatel market update presentation in May 2019, [✂]

7.39 Consistent with the factors identified by customers as requiring a semi-submersible ASV, the Parties also identified situations in which a semi-submersible ASV might be specified in a tender:

(a) Floatel stated that: *‘one criteria would be ultra-deep water, it would be deeper than jack-up territory, [...] and it would also be work stretching over the winter period. [...] then the client will favour a semi. [...] there are very few of these opportunities, but they are existing, of course.’*

(b) Prosafe noted that it has historically been the case that tenders have tended to specify a preference for either semi-submersible ASVs or other vessel types, but that recently there had been more experience of customers tendering for multiple vessel types together.

### **Provisional conclusion on the relevant product market**

7.40 Taking into account the range of requirements giving rise to the need for an ASV, which differ on a tender-by-tender basis, the evidence provided to us (see paragraphs 7.20 to 7.39) demonstrates that there is a distinct market for semi-submersible ASVs. While there are some projects where it may be possible to use vessels other than semi-submersible ASVs, there are also certain project criteria which mean a semi-submersible ASV is required or strongly preferred. The latter category, where no other vessel type can readily be substituted, makes up the vast majority of tenders in the Customer Dataset. In particular:

(a) There have been substantially higher prices for semi-submersible ASVs (when there were capacity constraints in the supply of these vessels), and conversely, competition between semi-submersible ASVs in recent years has been associated with very substantial price reductions.

(b) Most tenders won by semi-submersible ASVs have been tenders for only semi-submersible ASVs, and few have been won by other vessel types where semi-submersible ASVs also bid.

(c) Customers have clearly identified certain project types where they have a requirement or strong preference for semi-submersible ASVs and in these circumstances other vessel types would not be close substitutes.

(d) Internal documents indicate that semi-submersible ASVs can operate in different operating conditions to other vessel types.

7.41 In conclusion, for the reasons set out above, our provisional finding is that the relevant product market for the assessment of the Merger is the market for the supply of semi-submersible ASVs. For certain specific contracts, other ASV types may impose some degree of constraint. We have taken into account competitive constraints from other types of ASVs, to the extent relevant, within our competitive assessment (see Competitive effects in the supply of semi-submersible ASVs in NW Europe).

## **Geographic Market**

7.42 The relevant geographic market may be local, regional, national or wider.<sup>55</sup> The Parties overlap in the supply of semi-submersible ASVs in the UKCS. We consider firstly, whether it is appropriate to include semi-submersible ASVs located in the NCS in the relevant geographic market, and secondly, whether to include semi-submersible vessels located in the RoW.

### ***Vessels located in the NCS***

7.43 The phase 1 decision found that it was appropriate to include semi-submersible ASVs in the NCS within the geographic frame of reference. In our Issues Statement, we said that we would consider new evidence on the relevant market definition if we were to receive any. As regards the relevant geographic market, in our phase 2 inquiry we have not to date received any new evidence which would lead us to take the view that it is not appropriate to include the NCS in the relevant geographic market for assessing the Merger.

7.44 In view of this, and having re-assessed the evidence provided to the CMA in the phase 1 investigation, our provisional assessment is that:

- (a) Many customers noted that a track record in NW Europe was crucial or important (see paragraph 7.78). We note that UKCS customers indicated that experience in the North Sea was a determinative factor when choosing a supplier.
- (b) The evidence provided indicates that the costs of mobilisation to the UKCS would be relatively low for a provider with semi-submersible ASVs stationed in the NCS.

7.45 Our provisional view is therefore that it is appropriate to include vessels from the NCS in the relevant geographic market.

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<sup>55</sup> [Merger Assessment Guidelines](#), paragraph 5.2.5(b).

### ***Vessels located in the RoW***

7.46 This section considers whether it would be appropriate to include vessels located in the rest of the world (RoW) in the relevant geographic market.

7.47 Our analysis considers:

- (a) The Parties' views;
- (b) Relevant costs: mobilisation costs and costs associated with complying with UK regulatory requirements;<sup>56</sup>
- (c) Evidence on the actual movements of semi-submersible ASVs between regions;
- (d) Evidence on bidding;
- (e) Third party evidence;
- (f) The Parties' internal documents; and
- (g) Pricing evidence.

7.48 The evidence in this section is also relevant to our assessment of the likelihood of post-Merger entry and/or expansion, which we consider in section 9 (countervailing factors).

### ***Parties' views***

7.49 The Parties consider that the appropriate geographic market is global and have stated that the Merged Entity will face an effective competitive constraint from vessels located in the RoW.

7.50 The Parties have also submitted that there is global excess capacity, and that they [REDACTED]. We note that there is an inconsistency between the implication of the Parties' submissions that, on the one hand, competition in NW Europe will become very intense due to competitors from the RoW seeking to move their vessels there, whilst at the same time the Parties face such low and falling demand in NW Europe [REDACTED]. We note that prices in NW Europe have fallen

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<sup>56</sup> For this part of our assessment, we have considered the relevant mobilisation costs and costs associated with regulatory requirements with regard to the UKCS rather than NW Europe, as the relevant test for our purposes is in respect of competition within any market in the UK. Therefore, in assessing whether vessels from other regions could effectively compete with vessels for contracts in the UKCS, we do not need to assess whether they also meet the higher standards applicable in the NCS.

relative to the RoW, making it a relatively less attractive region to compete in than in the past (see paragraphs 7.84 to 7.86).

### *Relevant costs*

- 7.51 When moving a semi-submersible ASV from the RoW to the UKCS, the relevant costs to consider are:
- (a) mobilisation costs: time and costs associated with moving vessels from the RoW to the UKCS; and
  - (b) costs associated with complying with the UK regulatory requirements, that is, to gain a UK HSE safety case.
- 7.52 A supplier considering these costs will compare these to the prospect of winning a contract, and the value of that contract (as against alternative contracts it might tender for and the costs associated with the vessel being idle in the event of not winning a contract).

### *Mobilisation costs*

- 7.53 The Parties submitted estimates of the costs of mobilisation of semi-submersible ASVs from the RoW to the UKCS, which range between US\$[X] for relocation from Brazil and Mexico, to up to US\$[X] for relocation from China. The Parties submitted that the time required to move a vessel from the RoW to the UKCS ranges between around [X] days from Mexico to [X] days from China.<sup>57</sup>
- 7.54 The Parties have provided indicative costs of physical relocation<sup>58</sup> as per table 10.

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<sup>57</sup> The Parties submitted that a vessel's first mobilisation after purchase from the yard will generally be factored into the purchase price. This is therefore at the extreme upper end of the relocation cost scale and would likely not be reached. For our analysis of mobilisation costs see paragraphs 7.62 to 7.71.

<sup>58</sup> The Parties labelled the costs in the table as being 'net of stacking', which we understand to mean that the Parties have subtracted from the mobilisation costs the costs had the vessel been stacked locally. The assumption is that the vessel would have been stacked if it had not relocated. It is not clear from the submission whether the Parties were referring to warm or cold stacking. We do not agree with this approach because it is not necessarily the case that the vessel would have been stacked absent mobilisation (for example, it might have moved to a different project in the same region) so we do not consider it appropriate to subtract stacking costs in this way, and nor can we replicate the calculation in the table.

**Table 10: Cost of relocation provided by the Parties**

	<i>Brazil</i>	<i>Mexico</i>	<i>China</i>	<i>Singapore</i>
Cost of physical relocation (\$)	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Travel days (average)	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Source: Phase 2 Initial Submission, paragraph 7.8, page 14

Note: Brazil and Mexico relate to relocation from an oil-producing region, China and Singapore relate to mobilisation from the yard.

7.55 The mobilisation costs provided by the Parties are substantially lower than those provided by competitors and other suppliers of ASVs (when comparing costs from the same locations):

(i) [REDACTED]

(a) [REDACTED] explained mobilisation costs from [REDACTED] to North Sea would be around [REDACTED].

(b) [REDACTED].

7.56 As regards the time required for mobilisation, the Parties submitted that the time required for RoW vessels to relocate to the North Sea is also not a barrier to competition. The Parties submitted that customers can plan their projects sufficiently in advance, to allow for a tender process and mobilisation from the RoW and that, “even for MMO work” customers will have visibility for substantially longer than three months. We considered mobilisation times and agree that the evidence does not show that mobilisation times in themselves would hinder a vessel from the RoW from seeking to compete for a contract in NW Europe. Customers have generally stated that lead times are 8 months or more (see paragraph 8.154), which is longer than the maximum time required to mobilise a vessel from the RoW as submitted by the Parties (ie, from China, 104 days), though competitors and other suppliers of ASVs have stated that lead times could be as short as three months. We also note that one reason for shorter lead times is the available capacity in the market, which implies that customers can increase lead times if they consider it necessary to help secure an appropriate vessel (see paragraph 8.154).

#### *Regulatory costs*

7.57 The Parties submitted that none of the eight competing semi-submersible ASVs which are located in the RoW but would be capable of operating in the UKCS currently has a UK HSE safety case.

- 7.58 The Parties submitted that UK Health & Safety Executive (HSE) certification required to operate in the UKCS costs approximately USD [X] thousand and takes [X] months to obtain.
- 7.59 We checked whether the estimated costs and time to obtain a UK safety case are accurate from the HSE's perspective:
- (a) The HSE provided lower cost estimates than the Parties: costs in the approximate region [X] However, we note that these costs do not include costs borne by the vessel's owner, such as those associated with the preparation of documents and inspections, that the vessel's owner would have to incur in addition to paying the HSE directly.
- (b) The HSE's estimated timings are broadly consistent with those provided by the Parties: HSE explained it takes around 6 months (and at least 3 months) to get a UKCS-safety case.
- 7.60 We note that in addition to costs of obtaining a UK safety case, certain vessels would also require modifications to the vessel in order to obtain such a case, at additional cost. The Parties have provided estimates of these costs of around US\$ [X]million. The Parties note that these OTG costs apply depending on where the vessel will be deployed in the UKCS and that is not necessarily an incremental cost for RoW vessels as it is possible that vessels already located within the UKCS might need to incur some of these costs for a given deployment.
- 7.61 We received information on costs/time to obtain a UK safety case from competitors and other suppliers of ASVs, which is broadly in line with the Parties' estimates, including on the modification costs:

[X]

#### *Costs compared to contract values*

- 7.62 We considered how regulatory costs together with mobilisation costs compared to the prices charged on UKCS contracts.
- 7.63 Our analysis shows that the values of recent contracts in NW Europe range between [X] and [X] million GBP (with an average of [X] million GBP).
- 7.64 In our analysis, we consider the relative cost of vessels from RoW by taking the mobilisation cost provided by the Parties in relation to mobilising from Mexico (the closest region and lowest cost to mobilise from) of [X] million



USD<sup>59</sup> and adding regulatory costs of [X] million USD, resulting in the total average entry cost of [X] million USD.<sup>60</sup> We have estimated that this would account for [X]% of the average value of a NW Europe contract. We therefore consider that the costs of mobilising an ASV from the RoW to NW Europe are significant in the context of overall contract values.

- 7.65 This estimation of costs of relocation is on a very conservative basis because we have used the Parties' estimates of relocation costs which are lower than competitors' and other suppliers of ASVs' estimates, and we have not included any modification (or OTG) costs, which would increase these estimates further.
- 7.66 The estimate from an alternative supplier, [X], is a cost of \$[X] to mobilise the [X] and in addition it estimated a cost between \$[X] to obtain a UK safety case. Taking the midpoint of the safety case costs we get to a mobilisation cost of \$[X].<sup>61</sup> We estimate that this would account for [X]% of the average value of a NW Europe contract which points to the costs of mobilising a semi-submersible ASV being even more significant than the Parties' estimates.
- 7.67 We also observe that customers choose an appropriate vessel based on non-price factors, including the technical specification but also preferring vessels with a NW Europe track record and compliance with relevant OTGs for operation in certain regions of the UKCS (see paragraphs 7.23).
- 7.68 Furthermore, we note that, in general, relative costs of relocation are likely to be higher in the future. In the context of lower levels of future demand than historically, and with structural changes in the way work is carried out perhaps implying shorter projects, contract values may be lower than historically. This is because historically there has been a large number of HUC contracts which tend to be longer and therefore higher value. In this context, relevant costs may be larger relative to average contract values, making it relatively less attractive than in the past to mobilise semi-submersible ASVs to NW Europe from the RoW.
- 7.69 We note that the Parties have submitted that as contracts are awarded on a project-by-project basis, RoW-located vessels are more likely to have the opportunity to compete for multiple contracts in the North Sea. In our view this

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<sup>59</sup> We used the lowest of the Parties' mobilisation estimates to understand whether mobilisation might be profitable from the closest regions.

<sup>60</sup> [X] USD equates to [X] based on the exchange rate on 22/01/2020.

<sup>61</sup> [X] Note also that this excludes any modification costs which may be required.

is inconsistent with the Parties' submission, in relation to future demand, that there will be very limited future prospects in NW Europe.

7.70 The Parties stated that reasonable and conservative estimates of contract costs (including mobilisation costs) show that RoW-located vessels would easily be able to cover their costs, break even, and earn a positive contribution – and still price competitively vis-à-vis the Parties – typically significantly below the higher of the Parties' bids.

7.71 We do not accept the Parties' analysis in this regard:

- (a) The right comparator is not whether competitors could price under the higher of the Parties' bids. Given customer preferences for both an active vessel and one with North Sea experience (see paragraphs 7.80), competitors would likely have to bid below the level of those existing vessels in order to win a North Sea contract.
- (b) The evidence for 2019, when there was already low demand and excess capacity (which mirrors the conditions the Parties consider likely in the future), is that other competitors have not been able to bid competitively (see paragraph 7.74). Moreover, there is a range of 'warm' semi-submersible ASVs for customers to choose from currently located in the North Sea (that is, the Parties' vessels).

#### *Evidence on vessel moves*

7.72 The Parties provided examples of the actual movement of their semi-submersible ASVs and their competitors' semi-submersible ASVs across the world for contracts. Table 11 vessel movements shows that:

- (a) In the past 5 years, there have been only four occasions where a semi-submersible ASV has moved from the RoW to NW Europe, and none of those were in the last three years.
- (b) No competitors have moved semi-submersible ASVs into NW Europe in this time period.

**Table 11 vessel movements: semi-submersible movement patterns to the NW Europe from RoW (2014-2019)**

Year of move	Name of vessel	Owner	To UKCS/NCS	From	Comment
2015	Safe Boreas	Prosafe	NCS	Singapore	First deployment from yard
2015	Floatel Victory	Floatel	UKCS	Gulf of Mexico	
2016	Safe Zephyrus	Prosafe	NCS	Singapore	First deployment from yard
2016	Floatel Endurance	Floatel	NCS	Australia	

Source: Annex 2 to the response to Phase 1 RFI2 from the Parties.

7.73 We consider that ASV historic movement data may be overstating the willingness of suppliers to move an ASV to the UKCS. In particular, two of the vessel movements from the RoW into NW Europe were the initial deployments of the vessels after they were delivered from the yard. In our view, the fact that Prosafe was building up its fleet in NW Europe by deploying new vessels in circumstances in which there was high demand and limited capacity in NW Europe does not mean that the market ought to include vessels currently situated in the RoW.

#### *Evidence on bidding*

7.74 Our analysis of the bidding data shows that vessels located outside NW Europe have very rarely been shortlisted and have not won any NW Europe tenders where semi-submersible ASVs won in the last 5 years:

- (a) The Parties' competitors located outside NW Europe have not won a contract in the UKCS in the past 5 years:
- (b) Taking into account companies still in operation, [REDACTED] [REDACTED].
- (c) Looking at the 25 tenders in the Customer Dataset where a semi-submersible ASV won and the other bidders are known, RoW semi-submersible ASVs [REDACTED].

7.75 The Parties submitted that their bidding data evidences that competitors are increasingly targeting the North Sea, and in particular that RoW competitors had participated in [REDACTED]% of North Sea tenders between 2014 and 2019.

7.76 Based on our analysis, the Parties Dataset significantly overstates the presence of RoW bidders. In particular, in the 25 tenders that have been matched between the Customers Dataset and the Parties' Dataset:

- (a) Prosafe indicated in [REDACTED] and Floatel indicated in [REDACTED] that [REDACTED] (potentially) bid. [REDACTED].

(b) Prosafe indicated in [REDACTED] and Floatel indicated in [REDACTED] that [REDACTED] (potentially) bid. [REDACTED].

(c) Prosafe and Floatel indicated in [REDACTED] tender that [REDACTED] bid. [REDACTED].

### *Third Party Views*

7.77 In this section we consider both views from customers and views from competitors and other suppliers of ASVs.

#### *Customer views*

7.78 For a semi-submersible ASV to be considered acceptable to provide services in the UKCS, most customers explained that it is crucial or at least important for the vessel to be compliant with the relevant regulation and be certified by the relevant authority – in the UKCS this comprises having a UK safety-case – or being able to obtain one by the time work is due to start.

7.79 In general, most customers explained that they do not consider vessels located outside NW Europe to be credible bidders in tenders compared to bids of vessels located in NW Europe. The main reasons listed were:

7.80 Mobilisation costs and time from other parts of the world to NW Europe being relatively high and therefore, becoming uncompetitive when compared to a NW Europe-located vessel;

(a) Preference for track record in NW Europe – five customers noted this was crucial/important.

7.81 Several customers noted that suppliers from outside NW Europe would only be considered as relevant suppliers in situations where no other suppliers in NW Europe have acceptable available capacity of semi-submersible ASVs (but this has not happened in practice) or if prices in the market became unattractive in comparison to RoW options. We note this points to RoW suppliers being outside the relevant geographic market. In particular:

(a) [REDACTED]

(b) [REDACTED] explained that local presence will always be preferred if available. If prices became very high post-Merger it would expect RoW suppliers to enter the market which [REDACTED] could use.

(c) Shell indicated that ASVs located in the UKCS who have North Sea experience were “critical” to its tender process explaining “*North Sea experience was part of our technical criteria as well as vessels holding an*

*approved UK Safety Case.*” Additionally, Shell noted that until now it has never had to consider RoW suppliers as there have always been at least 2 potential bidders with available vessels, but if in the future this was not available - or the terms for those available were unacceptable even after negotiation - Shell could potentially consider being more flexible regarding lack of track record in the UKCS. It would depend on how much risk Shell would be willing to take.

- (d) Repsol Sinopec explained that if there are multiple ASVs available in NW Europe that can meet its requirement, it would be difficult for a vessel located elsewhere in the world to compete commercially (as the cost for mobilising is likely to be significantly higher compared to mobilising from the UKCS).

#### *Competitor and other suppliers of ASVs views*

7.82 Several competitors and other suppliers of ASVs highlighted that suppliers which do not hold vessels in the UKCS with UK safety cases and/or have no UKCS track record are not as effective competitors as those that do. In particular:

- (a) POSH noted that:

(i) although it has tried to put competitive bids in the UKCS, its semi-submersible ASVs were not successful due to “*high mobilisation costs*” and “*lack of track record, local presence and Safety Case*”;

(ii) [REDACTED]

- (b) [REDACTED] explained that mobilisation costs from RoW to NW Europe create a competitive disadvantage to RoW located suppliers and that it does not make sense for RoW suppliers to try to compete in NW Europe. [REDACTED] said that it would not consider getting a UK Safety Case [REDACTED] after the Merger, because “*it is unsure how it will compete against Prosafe and Floatel’s combined fleet.*”

- (c) Teekay Offshore further noted that the main barriers to supplying semi-submersible ASVs in NW Europe are operational and financial. Suppliers of ASVs require a track record and a technically acceptable available unit. Teekay Offshore explained that based on its own strategy in relation to investing in a safety case the barrier to entering the UK market is technically quite high. Teekay Offshore told us it would depend on the market activity. If activity in the market increases enormously Teekay Offshore told us that it might be interesting for a few RoW suppliers in the

market. If it stays as it is now, Teekay Offshore did not see many of the competitors coming in.

### *Internal documents*

- 7.83 Internal documents considering geographic regions where semi-submersible ASVs are required tend to refer to the North Sea as a single region, or consider the UKCS and NCS separately. For example:
- (a) A Floatel Board slide dated September 2018 states: [REDACTED]
  - (b) A December 2016 Prosafe Board Pack exploring strategy considers client frequency and tendering wins for the UKCS and NCS separately. It then considers both UKCS and NCS [REDACTED] and North Sea Fleet before reviewing [REDACTED].
  - (c) A Board presentation in January 2017 regarding day-rates *stated* [REDACTED].
  - (d) A presentation in November 2017 stated: [REDACTED].
  - (e) Floatel's Board presentations, for example, March 2018, present graphs on [REDACTED].

### *Pricing evidence*

- 7.84 The evidence provided to us shows that prices would have to increase significantly for RoW vessels to be attractive: this is due to mobilisation costs (which on the Parties' evidence we have conservatively estimated to be [REDACTED]% of average contract values in the North Sea, or estimated at [REDACTED]% based on information from an alternative supplier) and a customer preference for vessels with North Sea experience and presence.
- 7.85 Moreover, evidence of price trends and differences between NW Europe and the RoW shows that whereas historically NW Europe commanded higher prices relative to the RoW, these have converged somewhat.
- (a) A 2018 Floatel Board document includes a chart showing the historic development of dayrates in the North Sea versus the RoW. The chart shows that between 2007-2015 North Sea day rates were generally above [REDACTED] USD, and RoW rates almost uniformly below this threshold.<sup>62</sup>

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<sup>62</sup> With the exception of some of Floatel's own contracts, which we note may be due to the nature of the work that Floatel carries out with its vessels.

Post-2015, the day rates have converged in recent years to be between [X] USD for both regions.

- (b) An industry report by Clarksons Plateau<sup>63</sup> indicates that price ranges for semi-submersible ASVs differ in the North Sea (NW Europe) compared to the RoW. For example, the daily rates for a North Sea DP semi-submersible ASV are \$110 - 180K (\$300K+ in Norway) as compared to a daily rate of \$75,000 - \$130,000 for a Global DP semi-submersible ASV.

7.86 We observe that even in the presence of large price differences between the regions (when prices in NW Europe were on average above those in the RoW), RoW vessels were not a significant constraint in the North Sea. Given that the relative price gap has narrowed, making it relatively less attractive than historically for RoW vessels to relocate to the North Sea, this makes it unlikely vessels located in the RoW would impose a competitive constraint in NW Europe.

***Provisional conclusion on the relevant geographic market***

7.87 In view of the above, we provisionally conclude that NW Europe (ie, the UKCS and the NCS combined) is the relevant geographic market in this case.

7.88 Taking the evidence in the round, we provisionally conclude that the market should not be widened to include the RoW because:

- (a) The costs of moving vessels between regions are substantial compared to the value of contracts.
- (b) Customers have a strong preference for North Sea experience and an existing safety case.
- (c) There are few instances of RoW vessels being shortlisted, and no examples of RoW vessels winning, in tenders in NW Europe, and few vessels have moved from the RoW to NW Europe in the recent past (and those that have moved belonged to the Parties). The evidence from the bidding data is of vigorous competition being between suppliers of vessels located in NW Europe, as set out in paragraphs 7.74 to 7.76.
- (d) The lower relative prices in NW Europe are unlikely to provide incentives for moving vessels to NW Europe.

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<sup>63</sup> Clarksons Plateau 2019, Q3 Offshore accommodation Quarterly, page 6.

7.89 We consider further the possible competitive constraint provided by semi-submersible ASVs located in the RoW in our assessment of entry and/or expansion (see section 9).

## **Provisional conclusion on market definition**

7.90 We have provisionally concluded that the relevant market definition in this case is the supply of semi-submersible ASVs in NW Europe.

## **8. Competitive effects in the supply of semi-submersible ASVs in NW Europe**

8.1 In this section, we assess the competitive effects of the Merger as they relate to the supply of semi-submersible ASVs in NW Europe.<sup>64</sup> 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 their products or customer service, and/or reduce the range of their products/services. This is a horizontal unilateral effects theory of harm.

8.2 This section is structured as follows:

- (a) We briefly describe the key characteristics of how the market works, building on the market definition assessment.
- (b) We present market shares.
- (c) We present evidence on excess capacity.
- (d) We assess the closeness of competition between the Parties through an analysis of data, from both the Parties and customers, on bidding, and by considering views of customers and competitors and other suppliers of ASVs and reviewing internal documents.
- (e) We then assess the constraint on the Parties from other competitors:
  - (i) In the market; and
  - (ii) Outside the market.
- (f) We consider likely future demand.

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<sup>64</sup> This includes the UK. Section 22(6) of the Act provides that reference to a 'market in the United Kingdom' includes (among other matters), so far as it operates in (or in a part of) the United Kingdom, any market which operates there and in (or in a part of) another country or territory.



(g) Finally, we set out our provisional assessment of the impact of the Merger on competition.

8.3 Before undertaking our analysis, we note that the Parties submitted that the CMA will not obtain meaningful insights from retrospective evidence, including tender data and internal documents, because these documents are rendered obsolete by the fact that there has been, in the Parties' view, a "paradigm shift" in the way the market operates, which the Parties identified through its conversations with customers around September/October 2019. Instead, the Parties consider that the CMA ought to use views from customers to verify the projected lack of demand from customers, and to inform its assessment on the alternatives available to customers and the constraint posed by other vessels.

8.4 We consider the Parties' submissions on future demand and whether there has been a fundamental change in the way the market operates in paragraphs 8.124 to 8.180. In our view, although the Parties have submitted that there has been a *'paradigm shift'*, the factors that they point to as support for this, such as increasing usage of next generation lifting vessels and a change in customers' operating models to reduce costs, are gradual changes. Prosafe also identified the gradual nature of customers changing their operations in the Main Party Hearing, noting that *'Norway is ahead of the curve and MMO work has been completely eliminated for five years'* and that *'it seems that UK has been a bit behind the curve in that development, although the trend is fairly clear.'* Prosafe also noted that different customers have changed their practices to different degrees.

8.5 Given our view that any changes in future demand have and will continue to evolve gradually, we consider that recent historic evidence is highly relevant. Therefore, in the following assessment we rely on a range of evidence sources, including evidence of past behaviour, taking the evidence in the round, because:

(a) Evidence on past behaviour, such as bidding behaviour and internal documents, provides valuable insights on how competition works in the market and the Parties' views on this, and the gradual nature of any changes implies that recent evidence is informative of current and likely future competitive conditions.

(b) We agree that customer evidence is important in a market such as this where choices are driven by specific customer preferences. We have spoken to customers to obtain their views on substitutability and evidence of their actual past behaviour in the market, as well as their future project plans regarding semi-submersible ASVs and their views on the Merger.

## Key market characteristics

- 8.6 As set out at in paragraphs 7.7 to 7.12, the market for semi-submersible ASVs is a bidding market in which suppliers bid in tenders to win contracts. In a bidding market removing a bidder that is an effective rival can have a substantial impact on outcomes. This is exacerbated where there are very few effective rivals to start with.
- 8.7 The following sections assess whether and, if so, the extent to which, the Merger may be expected to reduce the competitive constraint on the Parties and other bidders in upcoming tenders.

## Market Shares

- 8.8 In this section, we consider the market shares of the Parties and other suppliers in the market for the supply of semi-submersible ASVs in NW Europe. The market shares are considered in terms of the Parties' capacity, the value of the tenders won, and the number of the tenders won. On all of these measures, the Parties are by far the most substantial competitors in NW Europe and the Merger will result in a very substantial increase in concentration.
- 8.9 Table 12 shows the market shares based on number of semi-submersible ASVs in NW Europe in 2019 and Table 13 shows the market shares based on the number and value of contracts won in NW Europe in the last 3 years.<sup>65</sup>

**Table 12: Market shares of semi-submersible ASVs in NW Europe by number of vessels (2019)**

<i>Competitors</i>	<i>Number of vessels</i>	<i>Share by number of vessels</i>
Prosafe	6	60%
Floatel	3	30%
<b>Parties combined</b>	<b>9</b>	<b>90%</b>
COSL	1	10%
<b>Total</b>	<b>10</b>	<b>100%</b>

**Source:** CMA's analysis of the Parties' Merger Notice, Parties' response to the section 109 notice dated 19 September 2019, Annex 6.001 (Floatel contract history) and 6-001 (Vessel contract status Prosafe) and responses from competitors

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<sup>65</sup> We examined 3 years of data as we recognise that tenders can be infrequent and demand in this market can be uneven or lumpy. Shares of supply on the UKCS only are set out in the chapter on jurisdiction (see Jurisdiction).

**Table 13: Market shares of semi-submersible ASVs in NW Europe by contract wins (2017-2019)**

Competitors who have won	Based on Parties' Dataset		Based on Customer Dataset		
	No of contracts won	Share of all contracts	No of contracts won	Share of all contracts	Share of all contracts based on value
Prosafe	[X]	[50-60%]	[X]	[60-70%]	[50-60%]
Floatel	[X]	[40-50%]	[X]	[30-40%]	[40-50%]
Total	[X]	100%	[X]	100%	100%

Source: CMA's analysis of the Parties' Dataset and Customer Dataset.

Note: This table covers data on all contracts where the work started in the period 2017-2019 and was won by a semi-submersible ASV in the respective dataset.

8.10 From these market shares we note that the market is highly concentrated in the hands of the Parties:

- (a) post-Merger, the Parties will have a combined market share by value of contracts of 100% in relation to work done in the last three years, with an increment of [40-50%] to Prosafe's market share; and
- (b) post-Merger, the Parties will account for almost the entire market in terms of vessels with an increment of [30-40%] to Prosafe's market share, with only one other semi-submersible ASV currently in NW Europe (for an analysis of the limited competitive constraint imposed by COSL, see paragraph 8.87 to 8.97).

8.11 The Parties submitted that market shares are not a reliable indicator of the dynamics of competition in this market as this is a bidding market where competition effectively 'resets' for each new contract. The Parties further submitted that the structural shift in demand that has occurred means that a backward-looking assessment of market shares offers little insight into the dynamics of future competition.

8.12 We recognise that the analysis of market shares is historical and should be considered in light of any recent structural changes in the market (where supported by the evidence). We have, of course, considered in the round all of the evidence provided to it. In terms of tenders we have also looked at shares over three years as we recognise the demand in this market can be infrequent and uneven / lumpy.

8.13 However, we consider that when looking at shares both in terms of vessels and contracts/value won the combined shares of supply are at a level that, in itself, raises *prima facie* competition concerns. While shares in terms of tenders won are historical, the shares in terms of vessels look at current capacity and explain the position in the immediate future.

- 8.14 However, while shares of supply give an indication of the competitive strength of different suppliers in the market, they do not provide a complete picture. We consider market shares to be less informative of competition in a bidding market where the competitive landscape will differ between tenders as different customers have different requirements (see paragraph 7.8).
- 8.15 We consider the closeness of competition between Prosafe and Floatel relative to the closeness of their competition with other suppliers in the following sections.

### **Excess capacity**

- 8.16 The intensity of competition depends on rivals having the capacity to bid competitively for tenders. As recognised by the Parties, there has been a reduction of demand for semi-submersible ASVs in recent years (for our assessment of likely future demand refer to paragraphs 8.124 to 8.180). This has led to substantial excess capacity, mostly in the hands of the Parties, which has underpinned increased competition and lower prices in recent years.
- 8.17 In this section, we consider:
- (a) The extent of any excess capacity in the market based on our analysis; and
  - (b) The implications of any excess capacity for our analysis.

### ***Parties' evidence***

- 8.18 We have looked at utilisation figures in the period 2015-2019 provided by the Parties to form a view on excess capacity. The data in Table 14 shows that:
- (a) Floatel's vessels had an average utilisation rate of [X]%; and
  - (b) Prosafe's utilisation rate had an average utilisation rate of [X]%

**Table 14: Utilisation rate of the Parties' UKCS compliant vessels in 2015-2019**

vessel	Utilisation rate in 2015-2019	Utilisation rate in 2019 only
Floatel Superior	[REDACTED]	[REDACTED]
Floatel Victory	[REDACTED]	[REDACTED]
Floatel Endurance	[REDACTED]	[REDACTED]
Floatel Triumph	[REDACTED]	[REDACTED]
Prosafe Safe Caledonia	[REDACTED]	[REDACTED]
Prosafe Regalia	[REDACTED]	[REDACTED]
Prosafe Safe Scandinavia	[REDACTED]	[REDACTED]
Prosafe Safe Bristolia	[REDACTED]	[REDACTED]
Prosafe Safe Boreas	[REDACTED]	[REDACTED]
Prosafe Safe Zephyrus	[REDACTED]	[REDACTED]

Source: CMA analysis of Floatel's and Prosafe's response to Question 6 of the section 109 information request dated 19 September 2019.

Note: utilisation calculated as share of months either working or in standby for contract from January 2015 until December 2019. Some of these vessels did not start operating until later, for these vessels calculations start at the first month they started operating.

8.19 The data underlying Table 14 shows that:

[REDACTED]

8.20 The results above understate the actual utilisation of the Parties' vessels as:

- (a) There are often small gaps between projects that are not possible to be filled by any project; and
- (b) Vessels often spent a significant amount of time in the yard for maintenance, during which time they were unavailable for deployment on projects. [REDACTED].

***Implications of excess capacity for our analysis***

8.21 In principle, we 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-times and better prices) rather than reduce it (see paragraph 8.49 for evidence of this). With respect to excess supply, we note that the vast majority of excess capacity of semi-submersible ASVs held in NW Europe is accounted for by the Parties. 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.

8.22 The Parties have submitted that this position is incorrect because it ignores that each of the Parties would have [REDACTED], and it ignores the constraint from RoW located vessels. We consider the appropriate counterfactual in chapter 6 (counterfactual); for our analysis of why the relevant geographic market does

not include vessels currently located in the RoW, see paragraphs 7.46 to 7.86.

- 8.23 The Parties further submitted that [✂] regardless of its level of spare capacity, and that to the contrary, the evidence shows the intensity of competition between them has not increased as the CMA suggests. We consider this is factually incorrect (see paragraphs 8.53 to 8.55 and paragraph 8.49 for evidence on close rivalry between Prosafe and Floatel in circumstances where capacity was constrained).

### **Closeness of competition between the Parties**

- 8.24 In this section we assess how closely Prosafe and Floatel compete with one another, relative to their closeness of competition with other suppliers in the market. We consider:

- (a) Similarities in Parties' service proposition;
- (b) Tender data;
- (c) Views of the Parties' customers;
- (d) Views of the Parties' competitors and other suppliers of ASVs; and
- (e) Internal documents.

- 8.25 We focus our analysis in the following sections on the constraints provided by each Party on the other.

#### ***The Parties' service proposition***

- 8.26 As set out in chapter 2 (the Parties), the Parties both have a similar service proposition. In particular:

- (a) Both Parties are specialist suppliers of semi-submersible ASVs with significant NW Europe experience;
- (b) Most of the Parties' ASVs are UKCS-capable;
- (c) Both Parties have multiple vessels located in NW Europe; and
- (d) Both Parties have a number of newer vessels within their fleet.

- 8.27 While the Parties have a similar service proposition in general terms, there is a degree of differentiation between the fleets of vessels that each company operates. Whereas Floatel's fleet is comprised almost exclusively of higher

specification vessels (that is, those which are newer and have DP capabilities), Prosafe's fleet includes both higher specification vessels and a number of lower specification vessels (those which are older, smaller in terms of PoB, and can only be moored).

8.28 The size of their fleets in NW Europe enables the Parties to bid flexibly for contracts, and we have been provided with evidence that they have done so, for example:

(a) [REDACTED].

(b) One customer [REDACTED]

(c) Floatel stated us that it matches vessels to requirements, and selects a suitable vessel for particular work: *'We only have five vessels, where four are approved for the North Sea, so pick one of the four. But, basically, for most work in the UK section, all four vessels that are approved for the UK are suitable for the work.'* Floatel further explained that it generally becomes a question of (vessel) availability.

(d) Prosafe explained that it offers multiple vessels in tenders as a matter of course, and that customers generally choose the cheapest vessel.

8.29 Consistent with this, in a Board presentation in 2016, Prosafe recognised the value of a diversified fleet, stating that:

[REDACTED]

### **Tender analysis**

8.30 By looking at which suppliers participated in tenders, and which suppliers lost and won those tenders, we can assess closeness of competition. As explained in paragraph 8.5, we consider that historical bidding information is highly relevant in explaining both how competition works in the market and likely future competitive conditions.

8.31 We received and analysed data on tenders bid on by each of the Parties over the last 5 years. We also received tender data from customers. Our provisional view based on our analysis of the tender data is that it shows that:

(a) The Parties are the main head-to-head competitors in NW Europe. In both the Parties' Dataset and the Customer Dataset, the Parties won the majority of tenders.

(b) In tenders where semi-submersible ASVs are the only requested vessel type the Parties won virtually all tenders. [REDACTED].

### *Approach to tender analysis*

- 8.32 We requested data on all tenders of ASVs in the period 2014 to 2019 from the Parties and from customers. We matched tenders between the Parties Dataset and the Customer Dataset where possible. Further details, including on the assumptions we have made, can be found in Appendix B.
- 8.33 There are several differences between the Parties' Dataset and Customer Dataset, namely:
- (a) In the Parties' Dataset, a greater number of tenders are identified as being applicable to multiple vessel types ('Multi') than in the Customer Dataset. For the 25 tenders that we have been able to match between the two datasets we note there were 8 tenders which the Parties indicated were 'Multi' while the customer indicated the tender was specified for semi-submersible ASVs only.<sup>66</sup>
  - (b) The Parties appear to have overestimated the number of other suppliers bidding on the same tender. In the 25 tenders matched between the two datasets, Prosafe identified on average [X] competitors bidding apart from itself and Floatel identified an average of [X] competitors bidding apart from itself. We know from the Customer Dataset that on average these tenders only had [X] initial bidders in total (including the Parties).<sup>67</sup> We also know from the Customer Dataset that there is a difference between being an initial bidder and being shortlisted, with many suppliers not being progressed to the final list.
  - (c) As described in paragraph 7.75, the Parties' Dataset overstates the amount of bidding done by RoW vessels.
- 8.34 It is our provisional view that customers have the best information on: what they requested and why, who bid, who was shortlisted, who won and why they won. In light of this as well as the differences between the Customer Dataset and the Parties Dataset mentioned above, we place greater weight on the results from the Customer Dataset. In our analysis we have used the Parties Dataset to explore the behaviour of the Parties. Additional results from the Parties Dataset can be found in Appendix B.

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<sup>66</sup> In relation to vessel requirements we asked customers the following: Vessel type(s) **specifically** requested? (semi-submersible ASV, monohull ASV, jack-up ASV, W2W, unconverted drilling rig)

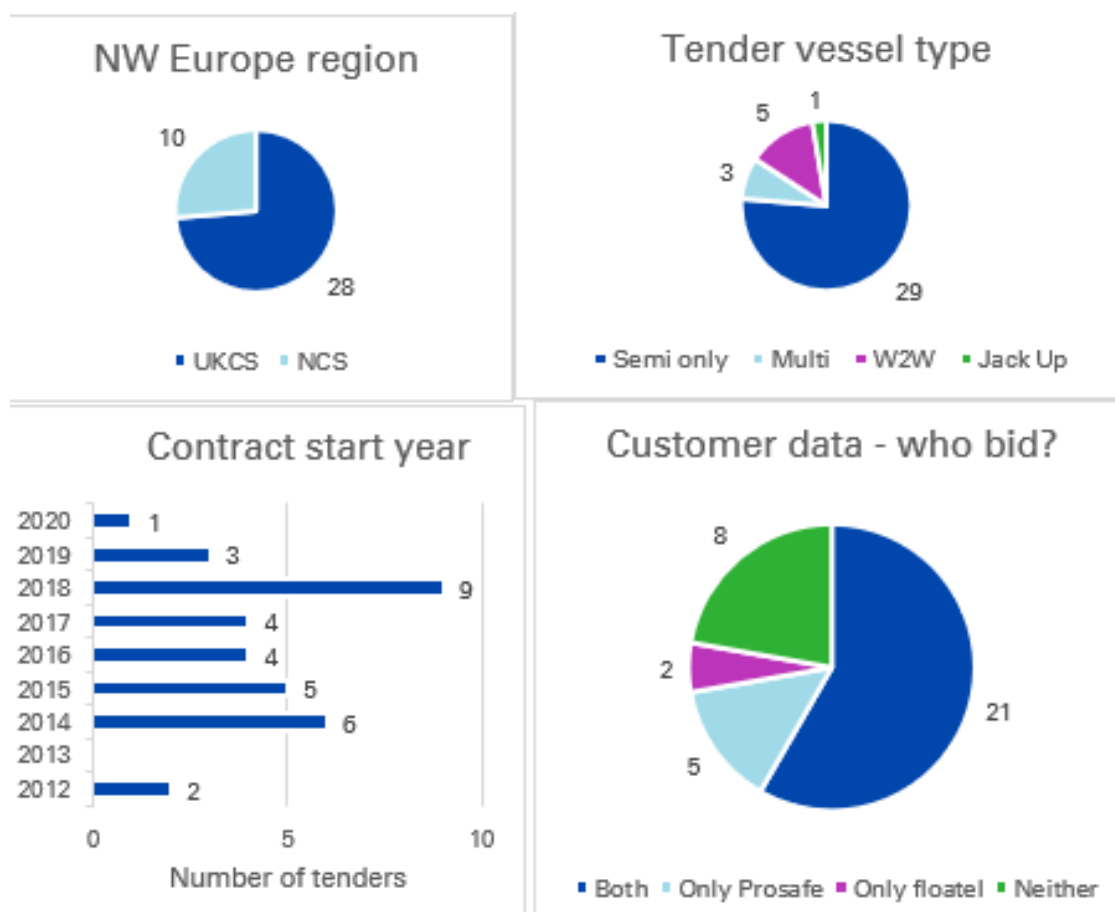
<sup>67</sup> The Parties provided information on both additional bidders and potential additional bidders they were aware off. These figures do not consider the 'potential' additional bidders flagged by the Parties which would mean these figures are even bigger.



## Customer dataset

- 8.35 The Customer Dataset covers 38 tenders from 8 customers over the period January 2014 to October 2019. We have constructed this dataset from the 8 customer responses, please see Appendix B for more details. Where customers have provided additional tenders for earlier dates, for example because negotiations happened earlier but the work took place between 2014 and 2020, these tenders have also been included in the analysis. We asked customers what vessel types were requested for each tender and were then able to categorise tenders as either 'semi-submersible ASV only' or 'Multi'.
- 8.36 Graph 1 shows some of the characteristics of the tenders in the Customer Dataset. This graph shows:
- For the majority of tenders, a semi-submersible ASV only was requested; and
  - In the majority of tenders, both of the Parties bid.

**Graph 1: Customer Dataset overview**



Source: CMA analysis of Customer Dataset

Note: Start year is unknown for some of the tenders and relates to when work started. One of the tenders was farmed out, 3 were negotiated directly, and the rest were tendered in a competitive process.

## Tender winners in the Customer Dataset

8.37 Table 15 shows the winners in the Customer Dataset and their share of wins both for all tenders and the subset of tenders where the requirements specified only a semi-submersible ASV. It only considers tenders in the dataset where at least one semi-submersible ASV participated (there are 32 tenders of these in total). We also present the share of value won for each tender.

**Table 15: Tender winners in the Customer Dataset**

Supplier	# of wins (all tenders)	All tenders		Tenders where a semi-submersible ASV only was requested		
		% Share of wins	% share of value	# of wins (semi-submersible only)	% Share of wins	% share of value
Prosafe	[X]	[50-60%]	[40-50%]	[X]	[50-60%]	[40-50%]
Floatel	[X]	[20-30%]	[40-50%]	[X]	[30-40%]	[40-50%]
Master Marine	[X]	[0-10%]	[0-10%]	[X]	[0-10%]	[0-10%]
COSL	[X]	[0-10%]	[0-10%]	[X]	[0-10%]	[0-10%]
Fred Olsen*	[X]	[0-10%]	Not known	[X]	[0-10%]	Not known
Noble	[X]	[0-10%]	[0-10%]	[X]	[0-10%]	[0-10%]
Total	[X]	100%	100%	[X]	100%	100%

Source: CMA analysis of the Customer Dataset

\* Fred Olsen has since left the market

8.38 In line with the results of the bidding analysis based on the Parties' Dataset (set out in Appendix B), Table 15 shows the following:

- (a) The Parties won the majority of the tenders in the full customer dataset with a combined share of [75-85%] [X], and a similarly high share in terms of value at [80-90%] [X].
- (b) The Parties' shares are even higher in the subset of tenders where only a semi-submersible ASV was requested, with the Parties winning a share in terms of tenders of [80-90%] [X] and [90-100%] [X] in terms of value.
- (c) [X].

### Shortlisting in Customer dataset

8.39 As explained in the Industry Background chapter, tenders start with an initial stage where all interested suppliers bid; the customer will then narrow this down to a shortlist of qualified bidders based on their specifications and the commercial aspects of the offer. Table 16 gives an overview on how often suppliers got shortlisted and in which position, considering only the 32 tenders

in the Customer Dataset where at least one semi-submersible ASV participated.

**Table 16: Shortlisting of suppliers in the Customer dataset**

Supplier	# of times shortlisted	# of times won	# of times 2 <sup>nd</sup>	# of times 3 <sup>rd</sup>	# of times 4 <sup>th</sup>
Prosafe	[X]	[X]	[X]	[X]	[X]
Floatel	[X]	[X]	[X]	[X]	[X]
COSL	[X]	[X]	[X]	[X]	[X]
Master Marine	[X]	[X]	[X]	[X]	[X]
Axis*	[X]	[X]	[X]	[X]	[X]
Sea Accommodation**	[X]	[X]	[X]	[X]	[X]
POSH	[X]	[X]	[X]	[X]	[X]
Teekay Offshore	[X]	[X]	[X]	[X]	[X]
Fred Olsen†	[X]	[X]	[X]	[X]	[X]
Noble	[X]	[X]	[X]	[X]	[X]
Ensco	[X]	[X]	[X]	[X]	[X]
Rowan	[X]	[X]	[X]	[X]	[X]
Maersk	[X]	[X]	[X]	[X]	[X]

Source: CMA analysis of the Customer Dataset

Note: Only looks at tenders in the Customer Dataset where at least one semi-submersible ASV participated (32 tenders). There are 5 tenders in this subset where the other bidders are unknown, for one additional tender there were no other bidders as it project was farmed out.

\* Axis vessels have since been acquired by Prosafe

† Fred Olsen has since left the market

\*\* Sea Accommodation was a start-up that has since left the market

#### 8.40 The Table shows that:

- (a) The Parties have been shortlisted in the large majority of these tenders: [X] out of 32 for Floatel; and [X] out of 32 for Prosafe.
- (b) The next-most shortlisted competitor was COSL which had only been shortlisted [X] times.
- (c) The Parties won or were “shortlisted second” much more often than their competitors.
- (d) These figures understate how often the Parties were shortlisted as for 5 of the tenders we only have the winning party ([X]) and not the other suppliers who were shortlisted.

8.41 In the 21 tenders in the Customer Dataset where we know both Parties bid, it is clear that Prosafe and Floatel were in direct competition for the vast majority of these tenders, and were each other’s only competition for many of these:

- (a) The Parties won almost all of the tenders in which they both bid: Prosafe won [REDACTED] of these tenders, Floatel won [REDACTED].<sup>68</sup>
- (b) The Parties were the only ASV suppliers shortlisted in just under half of the tenders ([REDACTED]).
- (c) Floatel was the “second shortlisted” bidder in [REDACTED]
- (d) [REDACTED].

8.42 The shortlisting in the Customer Dataset shows that the Parties are by far each other’s closest competitive constraint, with clear evidence of head-to-head rivalry between them. The evidence shows that other suppliers do not exert a significant competitive constraint. The shortlisting data also shows that Prosafe is a stronger constraint on Floatel than vice versa because Floatel always faced Prosafe as a shortlisted bidder in the tenders that it won, whereas Prosafe sometimes faced alternative bidders.

8.43 Consistent with the bidding data, [REDACTED] However[REDACTED]

#### *Pricing*

8.44 In this section we consider the Parties’ pricing. This data shows that:

- (a) Prices vary widely at the same point in time, which is reflective of differences in the contracts such as duration, price discrimination based on customer requirements, and (perceived) competition.
- (b) [REDACTED].

8.45 The bidding price contains a range of elements such as a day rate, mobilisation costs and other costs not included in the day rate. For the Parties’ prices, we have calculated an adjusted day rate that incorporates all these other costs into the day rate (see Appendix B for more information).

8.46 Floatel submitted that it is the award date not the start date that is relevant for considering day rates over time. We acknowledge that the competitive conditions at the time of the tender (as set out at paragraph 7.9) are an important factor in determining the price. However, we also consider that suppliers make forward looking judgements when submitting tenders, so to some extent prices tendered will take account of expected conditions at the time of the work being carried out. To the extent that there is a difference in competitive conditions between the time that the tender was awarded and

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<sup>68</sup> For our full assessment of the competitive constraint of Macro Offshore see paragraphs 8.108 to 8.121

when the work was carried out, this should shift the trend in prices according to the lag between award date and time the works begin and will have limited impact on the trend itself (subject to the length of the lead time).

- 8.47 Graph 2 and 3 show Prosafe's and Floatel's adjusted day rate over time split by tenders where a semi-submersible ASV only was requested (semi) or Multi tenders. We have only included Multi bids when we have been able to verify that this was requested by the customer; see paragraph 8.33.

**Graph 2: Prosafe adjusted day rates over time for all and won bids**

[✂]

Source: CMA Analysis of Prosafe tender data

Note: Only includes multi bids that have been matched with the Customer Dataset and confirmed to be multi tenders

**Graph 3: Floatel adjusted day rates over time for all and won bids**

[✂]

Source: CMA analysis of Floatel tender data

Note: Only includes multi bids that have been matched with the Customer Dataset and confirmed to be multi tenders

- 8.48 These graphs show that even for contracts starting around the same time there is a large price dispersion which is consistent with price discrimination depending on customer requirements and the competitive pressure for each tender. [✂].

- 8.49 Further, the pricing graphs show that prices decreased over the periods examined and in particular prices decreased from adjusted day rates of up to [✂] (which we note also depends on other contract features). We consider that this is evidence of rivalry between the Parties (and limited other competitors) having led to price falls, on the basis of the following evidence when considered together:

- (a) The price falls coincided with a period in which the Parties had greater capacity (or excess capacity): see paragraph 8.18 to 8.20 and slides presented at the site visit show the falling number of projects in NW Europe in 2015 to 2019 during a period in which new UKCS vessels were being delivered.
- (b) As set out at paragraphs 8.37 to 8.42, the Parties won or were shortlisted in most tenders, and therefore the competition taking place has in the main been head-to-head rivalry between the Parties, rather than with other competitors.

(c) Customer evidence set out at paragraphs 8.61 to 8.65 demonstrates that rivalry between the Parties when they each had spare capacity has driven price decreases over time.

(d) Prosafe acknowledges that excess capacity led to price falls in internal documents (see paragraph 8.83) and the Parties' statements in the Main Party Hearing demonstrate that they are aware that prices depend on the number of vessels available:

(i) Floatel stated that, when pricing, it looks at *'what is the alternative bids competing for this period. So, let us say we identify five vessels are available, but there are seven enquiries due at the same time; [REDACTED] [...] but if there is five vessels available and there is only one opportunity, [REDACTED]. [...] So, it is purely supply and demand.'*

(ii) Prosafe explained that the driving factor behind prices coming down over time was the combination of the [REDACTED].

8.50 Moreover, [REDACTED]. Consistent with the reasoning set out above that falling prices have been as a result of intense competition during times of excess capacity, we note that:

(a) [REDACTED]

(b) We infer from the document in paragraph 8.83(d) that Prosafe implemented a [REDACTED] strategy in order to ensure [REDACTED].

(c) Prosafe's fleet includes some older and lower specification vessels (which Floatel's fleet does not), see paragraph 8.27, [REDACTED].

8.51 We recognize that there are many factors that can impact the day rate other than (perceived) competition, such as customer requirements. Therefore, we looked at differences on a vessel-by-vessel basis to try and factor out some of the requirement differences to see whether Prosafe bid differently when it was bidding against Floatel. Table 17 compares Prosafe's day rate when it was bidding against Floatel and when it was not bidding against Floatel.

**Table 17: Prosafe pricing comparison versus Floatel bidding**

<i>Prosafe vessel</i>	<i># of bids where Floatel did bid</i>	<i># of bids where Floatel did not bid</i>	<i>Average adjusted day rate when Floatel did bid (\$)</i>	<i>Average adjusted day rate when Floatel did not bid (\$)</i>	<i>% difference when Floatel did not bid compared to when it did</i>
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Source: CMA analysis of Parties tender data

Note: It should be noted that Prosafe indicated in its tender data that it believed Floatel was also participating for every tender they provided, including the tenders where it was not itself participating. Looking at the Floatel tender data we note that it did not participate in all the tenders Prosafe believed it did.

8.52 When looking at Table 17 it should be noted that the vessels with a higher number of bids, both where Floatel did bid and where it did not bid, will be less influenced by outliers because there will be a bigger sample on each side. While acknowledging the limited number of data points, [REDACTED].

*Parties' comments on the price constraint of Floatel*

8.53 The Parties submitted that Floatel exerts only a limited constraint on Prosafe, drawing on bidding data indicating that Floatel has not won a contract since 2016, and that [REDACTED].

8.54 In this regard, we note that:

- (a) Our tender analysis shows Floatel has won tenders such that its fleet has been well utilised. Indeed Floatel has recently won a UKCS contract from Ineos at the Unity platform<sup>69</sup> [REDACTED].
- (b) Floatel has had higher capacity utilisation than Prosafe which implies it could not have bid for every opportunity. [REDACTED].
- (c) Floatel's contracts have focussed on contracts for HUC work, which on average take longer and thus command higher contract values than those contracts which Prosafe won. We note that a number of factors are important for customers and can affect the price (see in particular paragraph 7.8). We also note that Floatel's vessels are higher specification vessels which tend to command a higher price (for instance,

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<sup>69</sup> <http://www.floatel.se/news/1312395687/floatel-international-awarded-new-contract-uk-summer-2020>

we note that DP vessels tend to command a higher price than non-DP vessels in the North Sea).<sup>70</sup>

(d) [REDACTED].

(e) A firm does not need to bid more cheaply to impose a constraint where the other bidders do not know the prices being bid in advance (in the absence of coordination); it imposes a constraint by being a head-to-head competitor with appropriate and available vessels for the requirements of the customer. In this regard, [REDACTED].

8.55 Given all of the above, we consider that, contrary to the Parties' submissions, the evidence provided to us shows that Floatel has imposed a material constraint on Prosafe

#### *Provisional conclusion on bidding analysis*

8.56 The bidding analysis demonstrates that the Parties are the main head to head rivals in the market and have won the almost all of the contracts for semi-submersible ASVs. The evidence demonstrates that this head-to-head competition as between the Parties in an environment of excess capacity has led to benefits for customers through lower prices.

#### **Customer evidence**

8.57 As part of our assessment, we have considered customers' views on closeness of competition between the Parties and the strength of competitive constraints posed by other suppliers in the market.

8.58 The Parties submitted that the CMA may not have contacted the right UKCS operators during its Phase 1 investigation and provided contact details for relevant contacts within UKCS operators whom they considered we should speak to.

8.59 As part of our phase 2 investigation, we have contacted all the key customers (including specific named-individuals) that were suggested to us by the Parties, as well as others that we identified as being potentially relevant. Further, we obtained information from the largest UKCS and NCS customers, based on the Customer Dataset where semi-submersible ASVs have won tenders:

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<sup>70</sup> An industry report by Clarksons Plateau reports daily price ranges for semi-submersible ASVs of \$110 - 180K (\$300K+ in Norway) for North Sea DP semi-submersible ASV compared to \$100 - \$150K for a North Sea Older Non DP semi-submersible ASV. Clarksons Plateau 2019, Q3 Offshore accommodation Quarterly, page 6.



- (a) In the UKCS, the 3 biggest customers by number of tenders in customer bidding dataset are BP, Shell and Total, whereas by value these are BP, Equinor and Premier Oil/Repsol.
- (b) In the NCS, the customer bidding data only include two customers – Equinor and Var Energi. Equinor accounts for more tenders and value of tenders than Var Energi.

8.60 This section looks at evidence on closeness of competition provided by customers, including evidence in relation to:

- (a) Closeness of Parties to each other; and
- (b) Customer views on the Merger.

#### *Closeness of Parties to each other*

8.61 As discussed in paragraphs 7.20 to 7.24, each project/customer will have its individual needs and preferences regarding the technical specifications of the ASV required, such that, when choosing between semi-submersible ASV providers customers consider the extent to which the vessel meets certain conditions and technical specifications.

8.62 The majority of customers noted the Parties as being strong and close alternatives to each other with a similar service proposition, with some customers indicating that the Parties were the only competitors in the market. In particular:

- (a) Premier Oil noted that the Parties have very similar capabilities (although Floatel has a more modern fleet).
- (b) A customer (BP) noted that “*Prosafe and Floatel are the two leading providers in the North Sea.*” The same customer stated that in its recent tenders, its final choice has been between Prosafe and Floatel. BP stated that it has negotiated call off contracts with both Prosafe and Floatel who are the established providers and that having such contracts in place can accelerate the tender process.<sup>71</sup> [REDACTED]
- (c) [REDACTED]

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<sup>71</sup> In order to operate on the NCS, ASV providers must comply with more stringent requirements set by the Norwegian Petroleum Safety Authority (“PTIL”) in order to secure an “acknowledgement of compliance” (“AoC”).

(d) Another customer (Shell) noted the Parties' similarity by saying the Parties are the only providers of UK Safety Case DP flotels with North Sea experience with available vessels to support their projects.. The same customer also explained the fact they previously had two bidders (Prosafe and Floatel) in the market that met their requirements, including related to track record, has not led them to search for other possibilities and that "*at the time of going to market there absolutely was only Prosafe and Floatel*".

(e) [REDACTED]

(f) Repsol Sinopec said that the Parties have "*similar spec of vessels*" and as far as it is aware are the only suppliers with UKCS track record for this type of vessel.

(g) [REDACTED]

(h) [REDACTED]

8.63 In general, customers confirmed that the Parties currently have excess capacity and that there is excess capacity in the NW Europe semi-submersible ASV market.

8.64 Some customers observed that excess capacity has been associated with more vigorous competition and lower prices in recent years. In particular:

(a) BP explained 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.*" BP stated that the Clair Ridge 2012 tender was a good example. BP secured the semi-submersible Victory when it was still in the shipyard due to low availability in the market. BP explained that the market has completely changed since then, there is now an oversupply of vessels. BP added that if it was to contract a semi-submersible ASV now, it would have much more of a choice and the competition between the key suppliers for the smaller amount of available work has driven prices down. During the Clair Ridge campaign, BP had a requirement for the vessel for longer and, having become aware the market rates for these vessels were decreasing, it linked extensions of the contract to reasonable negotiation on the day rate to reflect lower prices. BP said that this was "just very simply supply and demand." BP provided further context indicating that the downturn in the oil and gas industry had further driven steps to reduce costs in all areas including in the day rates for flotels.

(b) With respect to one of its tenders, Total said that it thought that Prosafe had decided it was [✂]

(c) [✂]

(d) Repsol Sinopec explained that the differences in the rates between its 2012 and 2015 tenders for Montrose was down to the market and there being more availability of bidders with vessels in NW Europe in the 2015 tender.

8.65 Several customers raised the issue that the number of bidders and respective availability of a fleet in the market matters when it comes to price and tender outcomes. In particular:

(a) [✂]

(b) Repsol Sinopec explained that with fewer companies in the market supplying vessels, availability may be impacted when demand is high, and with fewer suppliers the ability to negotiate is weakened, which will be translated into higher prices. Repsol Sinopec noted that prices will depend on the number of operators going out to tender at the same time that fulfil the same requirements.

### *Views on the Merger*

8.66 We asked customers for views on the impact of the Merger, on competition and on their own business. A summary of these views follows:

(a) Most customers noted there would be an impact on competition as a result of the Merger, with several customers highlighting potential higher prices and one customer highlighting issues with regard to the potential degradation of quality.

(b) Most customers do not appear overly concerned with the impact of the Merger on their business.

(c) Most customers raised the issue of the importance of maintaining semi-submersible ASV capacity in NW Europe and that, in their view, there may not be enough demand for both Parties to operate profitably in the market.

8.67 The views from customers present a mixed picture in that most customers do not appear overly concerned with the Merger despite clearly identifying the potential for impact on competition and potential higher prices/degradation of quality.

- 8.68 The Parties submitted that there is a clear tension between most customers not appearing to be concerned with the Merger and most customers noting that the Merger is likely to have an impact on competition, suggesting either that there is an insignificant impact on prices or “*customers do not see realistic future demand for the Parties’ services*”.
- 8.69 It is possible that customer views on the impact on their businesses are likely to be motivated by the primary importance of being able to obtain a suitable vessel to conduct their projects safely, with price being of secondary importance (see paragraph 7.20).
- 8.70 In any event, the focus of our analysis, consistent with our Guidelines, is on the impact of the Merger on competition in the market and consequent potential impact on price and quality outcomes for customers. As such, we note that most customers consider that there will be an impact on competition as a result of the Merger, with several customers highlighting potential higher prices, and one customer highlighting issues in regard to the potential degradation of quality. This customer evidence is consistent with the overall direction of other evidence provided to us as to the likely impact of the Merger on competition.
- 8.71 Overall, the evidence provided by customers corroborates other evidence discussed in this section, which is that Prosafe and Floatel are close rivals in the supply of semi-submersible ASVs in NW Europe.

### ***Competitor and other suppliers of ASVs evidence***

- 8.72 This section looks at evidence on closeness of competition from competitors and other suppliers of ASVs including:
- (a) Closeness of Parties to each other.
  - (b) Views on the Merger.

#### ***Closeness of the Parties to each other***

- 8.73 All of the Parties’ competitors and other suppliers of ASVs who provided their views on the Parties considered that the Parties compete closely in relation to semi-submersible ASVs in NW Europe. Most of these competitors and other suppliers of ASVs noted they expected the Parties to participate in similar tenders and operate in similar geographic locations and fulfil similar customer preferences as each other, with limited alternatives. As an example, one of the other suppliers of ASVs noted that the Parties have large fleets of semi-submersible ASVs with similar specifications, with most of their vessels

located in NW Europe. This ASV supplier 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.

8.74 Most competitors and other suppliers of ASVs observed that the Parties currently hold excess capacity in NW Europe. Two suppliers of semi-submersible ASVs also observed that excess capacity has been associated with more vigorous competition and lower prices in recent years:

- (a) POSH recognised excess capacity in the market and explained that there is currently a trend in the market of low prices. In 2015, the market was “*buoyant*” with rates between \$[REDACTED]. POSH noted that by 2018/2019, it was clear that the market activity had dropped along with respective rates.
- (b) COSL confirmed that the drop in day-rates in the market was linked to the drop in the level of activity in the market. Suppliers had to drop prices in order to keep the vessels being used and try to cover costs.

8.75 Most competitors and other suppliers of ASVs raised the issue that the views over likely bidders and respective availability of fleet in the market matters when it comes to price and tender outcomes. In particular:

- (a) Master Marine notes it sets prices according to whether it perceives it has a competitive advantage over other bidders;
- (b) [REDACTED]
- (c) Edda Accommodation prices according to its views on market competition.
- (d) POSH explained that when pricing, a key factor would be the level of competition, based on demand vs supply outlook. Cost is a secondary consideration, it mostly depends on the outlook of the market. [REDACTED]

#### Views on the Merger

8.76 We asked competitors and other suppliers of ASVs for their views on the Merger:

- (a) Most competitors and other suppliers of ASVs said that there would be a decrease in competition in NW Europe as a result of the Merger.
- (b) Most competitors and other suppliers of ASVs were not concerned about the impact of the Merger on their business. The reasons given for not being concerned were, variously:

- (i) Not exerting a competitive constraint on the Parties in the first place;
  - (ii) Not being focused on the market the Parties operate in;
  - (iii) Lack of demand in the market was the main concern.
- (c) Some competitors and other suppliers of ASVs raised the issue that the Merged Entity might be able to leverage market power in NW Europe and cut rates in other geographic markets, pointing to examples of previous tenders where this has happened, in their opinion. We have not found the need to explore this further given our geographic market definition of NW Europe.

8.77 Overall, the evidence provided by competitors and other suppliers of ASVs corroborates other evidence discussed in this section, which is that Prosafe and Floatel are the closest competitors in the supply of semi-submersible ASVs in NW Europe with limited alternatives.

### ***Internal documents***

8.78 Internal documents are a useful source of evidence as they reflect how the Parties assess the market in the ordinary course of business and when making strategic decisions. We have reviewed the Parties' internal documents provided to us to understand their assessment of competitive conditions within the market for semi-submersible ASVs in order to help us understand how rivalry is likely to be affected by the Merger.

8.79 In assessing the content of an internal document, we take into account the purpose for which it was prepared. We typically place greater weight on documents ultimately prepared to inform decision making by senior management as these are likely to be most reflective of the Parties' strategic thinking. We have set out below a representative sample of documents provided to us rather than an exhaustive list of all the documentary evidence provided by the Parties.

8.80 We considered the extent to which the Parties view each other as close competitors based on their internal documents.

8.81 Prosafe's internal documents reflect its views of Floatel as its closest competitor; in particular in the context of the UKCS and/or NW Europe. For example:

- (a) Prosafe's Commercial Update presented by Jesper Andresen CEO and Ryan Steward CCO in the April 2017 Board Meeting notes that [REDACTED].

- (b) Prosafe's General Commercial Update presented by Jesper Andresen CEO at its March 2018 Board Meeting indicates that Prosafe was considering Floatel as its competitor for BP's Clair Ridge 2018 tender. The document refers to [REDACTED], noting that [REDACTED]. The document does not mention any other competitors in respect of that specific tender.
- (c) Prosafe's strategy presentation at its November 2018 Board Meeting presented by Jesper Andresen [REDACTED].
- (d) Prosafe's Board materials for March 2018 identify [REDACTED] for UKCS as the following vessels currently operating in the North Sea: [REDACTED], and the following vessels currently operating outside the North Sea or under construction: [REDACTED]. This indicates that [REDACTED].

8.82 Internal documents show that there is a limited number of alternative credible suppliers of semi-submersible ASVs in NW Europe. In particular:

- (a) Floatel's Market Update slides for February 2019 (submitted to its Board) provides a list of suppliers of semi-submersible ASVs. [REDACTED].
- (b) Floatel's Market Update slides for December 2017 (submitted to its Board) state that "*semi-sub[mersible] supply market going forward after 2020 will comprise of [REDACTED] players: [REDACTED], it excludes [REDACTED]* in the context of North Sea semi-submersible ASV supply.
- (c) In demand forecasts entitled '*North Sea Semi Submersible market balance*' in its Market Update slides in both April 2017 and March 2018 (both submitted to its Board), when referring to the total supply of North Sea semi-submersible ASV vessels, Floatel categorises vessels as [REDACTED]
- (d) Prosafe's 'Commercial Update' slides, presented by Jesper Andresen CEO and Ryan Stewart CCO at Prosafe's May 2017 Board Meeting showing regional deployment of vessels indicate that, in addition to the Parties, there are [REDACTED] competitors supplying vessels in the North Sea. Yet, we note that [REDACTED] of these competitors' vessels [REDACTED] were marked as "*idle/stacked (no contract next 9 months).*" [REDACTED]

8.83 It is evident from Prosafe's internal documents that it recognises that excess capacity has been associated with lower prices due to more intense competition. For example:

- (a) A December 2016 Board paper stated that for 2017-2018: [REDACTED] We note that the reference to [REDACTED] implies the presence of excess capacity in this context.

- (b) Prosafe's Board minutes in May 2017 record that [REDACTED] and that [REDACTED]
- (c) An internal strategy presentation in February 2018 noted 'How we work: [REDACTED]
- (d) We infer that intense competition led Prosafe to implement a [REDACTED]: Prosafe's 2016 Board slides state: [REDACTED]

8.84 Overall, the evidence from internal documents is consistent with other evidence examined in this section showing that Prosafe and Floatel are each other's closest competitors and a strong constraint on each other. The evidence on internal documents is also consistent with other evidence of past behaviour by the Parties showing that when there was excess capacity the result was a reduction in prices.

### ***Provisional conclusion on closeness of competition***

8.85 Our provisional finding is that Prosafe and Floatel compete very closely with one another and are each other's closest competitors. All the evidence points in the same direction: the Parties have a similar service proposition, compete against each other frequently and win the vast majority of tenders in the market, and are viewed as strong alternatives by customers. Moreover, the evidence demonstrates that when capacity was constrained customers were able to negotiate price reductions based on head-to-head rivalry between Prosafe and Floatel, and should the Merger go ahead, there is the prospect of higher prices.

### **Competitive constraints from others**

8.86 In this section we consider the strength of the competitive constraints on the Parties from others. We first consider the constraint from other suppliers within the market, before considering the 'out-of-market' constraints, that is providers of non-semi-submersible ASVs currently situated in NW Europe (for our analysis of entry and expansion see Countervailing factors 9).

#### ***Competition in the market (other semi-submersible ASV suppliers in NW Europe)***

8.87 We note that only COSL (other than the Parties) has a semi-submersible ASV in NW Europe.



### *Constraint from COSL*

- 8.88 COSL has one semi-submersible ASV, the *COSL Rival*. The *COSL Rival* is a moored vessel, and it was delivered in 1978. The *COSL Rival* accounts for [REDACTED]
- 8.89 COSL stated that:
- (a) It is mainly a provider of drilling services, with accommodation services accounting for [REDACTED] of its business and it has been focused on obtaining contracts in the drilling market rather than on the accommodation market..
  - (b) The *Rival* will continue to be its unit for the UKCS and COSL has no plans to scrap its vessel. However, COSL needs to renew the *Rival*'s SPS [REDACTED] UKCS safety case and its UKCS safety case ahead of commencing any activity.
  - (c) The age of its ASV is its biggest issue when it comes to competing in the market. COSL does not believe it is in competition with the Parties' new units.
- 8.90 From our bidding analysis, we found that in the Customer Dataset COSL has won [REDACTED].
- 8.91 COSL provided data on [REDACTED] in the UKCS:
- (a) For the tenders it did not win, [REDACTED]
  - (b) [REDACTED]
- 8.92 Prosafe's internal documents indicate that COSL has provided a competitive constraint on Prosafe in the past:
- (a) Prosafe attributed [REDACTED] to COSL in a December 2016 Board paper which stated that for 2017-2018: [REDACTED] and that the *COSL Rival* was [REDACTED].
  - (b) The same Prosafe Board presentation in December 2016 indicated that COSL's *Rival* was one of [REDACTED] *Active Vessels + TSV*' that comprised the North Sea Fleet at that time that Prosafe termed [REDACTED]. We infer from this slide that [REDACTED].
- 8.93 The Parties submitted that they would continue to face effective competition from COSL, but also noted that COSL's *Rival* [REDACTED]. Similarly, Prosafe estimated the reactivation cost for the *Rival* would be [REDACTED] million USD, and noted that customers prefer a warm vessel and not a cold stacked vessel.

8.94 Floatel stated that COSL would be one of its main rivals in addition to Prosafe. However, we also note that Floatel identified certain circumstances where [REDACTED].

8.95 Customers' views were mixed over whether COSL is a close alternative to the Parties:

(a) Most customers indicated that COSL is not a close alternative to the Parties citing age of vessel, limited fleet and other concerns (such as that COSL is more known as a supplier of drilling rigs rather than ASVs).

(b) Some customers indicated that COSL was a close alternative to the Parties. However, even these identified concerns with COSL's vessel, such as the age of the vessel or the fact it has been inactive for some time. In particular:

(i) [REDACTED]

8.96 Competitors' and other suppliers of ASVs's views on the competitive constraint exerted by COSL varied but overall most competitors and other suppliers of ASVs viewed it as a weak constraint. In particular:

(a) One ASV supplier regarded COSL as a competitor in the UKCS.

(b) [REDACTED]

(c) Two ASV suppliers rated COSL as a low strength competitive constraint on the Parties. In particular, two suppliers provided the following information:

(i) [REDACTED]

(ii) [REDACTED] explained it does not consider COSL as a competitor in the provision of semi-submersible ASVs market as it is mainly a drilling company.

8.97 Based on the evidence provided to us, our provisional view is that COSL is not in a position to exert a significant competitive constraint on the Parties and in turn the Merged Entity.

*Provisional conclusion on constraint from inside the market*

8.98 COSL is the only other current supplier in the market and customers highlight that it does not compete closely with the Parties. Therefore, in our view the Merged Entity would not face a significant competitive constraint from inside the market.

## ***Constraint from outside the market***

### *Constraint from Teekay Offshore*

- 8.99 Teekay Offshore has one semi-submersible cylindrical monohull ASV, the *Arendal Spirit*, which is currently warm-stacked in the North Sea and the provision of ASV services is a small proportion of its business. Teekay Offshore does not have a UK HSE safety case.
- 8.100 We note that Teekay Offshore's vessel is different to the Parties' vessels because of its cylindrical mono-hull design which was designed to meet the requirements of the Brazilian accommodation market (primarily for Petrobras). As Teekay Offshore's vessel is not a semi-submersible ASV, we have assessed Teekay Offshore as a constraint from outside the relevant market.
- 8.101 [REDACTED].
- 8.102 Teekay Offshore has stated:
- (a) [REDACTED]
  - (b) [REDACTED]
  - (c) it imposes only a medium constraint on the Parties due to its lack of track record and lack of safety case. Teekay Offshore stated that it may consider unstacking its ASV if it wins a contract with adequate duration to justify unstacking and mobilisation costs, but that the effect on the market of unstacking would be negligible given that it only has one ASV.
- 8.103 From our bidding analysis we have found that:
- (a) Teekay Offshore has not won any tender in the Parties' or Customer dataset.
  - (b) In the Customer Dataset, Teekay Offshore bid for [REDACTED]:
    - (i) [REDACTED] Teekay Offshore bid with the [REDACTED], [REDACTED].
    - (ii) [REDACTED]
- 8.104 Most customers that commented on Teekay Offshore explained that Teekay Offshore was not an alternative to the Parties noting concerns with Teekay Offshore's offer such as its limited fleet and lack of experience in the UKCS. In particular:

(a) Repsol Sinopec noted that as far as it is aware the provision of ASVs is not Teekay Offshore's core business and that its vessel cannot be seen as a competitor to those of the Parties; however it is not aware of Teekay Offshore's current capability for the provision of ASVs;

(b) [REDACTED]

(c) [REDACTED]

(d) [REDACTED]

8.105 Three customers indicated that Teekay Offshore might provide an alternative to the Parties. However, 2 of these customers qualified their response noting Teekay Offshore's lack of UKCS safety case. In particular:

(a) [REDACTED]

(b) Premier Oil stated that Teekay Offshore's ASV would require a UK safety case in order to possibly be competitive.

8.106 The three competitors and other suppliers of ASVs that provided views on Teekay Offshore regarded it as a weak or medium strength competitor in the UKCS. In particular:

[REDACTED]

8.107 Based on this information, our provisional view is that Teekay Offshore is not a close competitor and in view of this Teekay Offshore would not exert a material competitive constraint on the Merged Entity.

#### *Constraint from Macro Offshore*

8.108 Macro Offshore is a provider of ASVs and is the entity formed by a recent merger of Master Marine with Crossway Holdings.<sup>72</sup>

8.109 Master Marine explained it currently has 3 jack-up vessels, with the following specifications:

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<sup>72</sup> <https://macro-offshore.com/news/data/macro-offshore-a-new-high-end-accommodation-player-created-through-a-merger-of-master-marine-and-crossway-holdings>

**Table 18: Description of Master Marine's fleet**

Name	Year of delivery	Personnel on board (PoB)	Operating water depth	Current location	Holds a UKCS licence	Able to obtain UKCS licence
Haven	2010	443	<130m	NCS	Yes	N/A
Crossway Eagle	2016	354	<106m	DCS (Denmark)	No	Yes
Crossway Dolphin	2017 (not yet delivered from yard)	354	<106m	China	N/A – still in yard	Yes

Source: Information provided by Master Marine to the CMA.

8.110 We focus this analysis on the Haven, as the Crossway Dolphin is not yet delivered, and the Crossway Eagle does not hold a UKCS licence and has a much lower capacity and water depth capability than semi-submersible ASVs.

8.111 The Parties submitted that [REDACTED] will continue to impose a competitive constraint on the Merged Entity, and in particular:

- (a) Floatel stated that the Haven is [REDACTED].
- (b) Prosafe also stated that the Haven has [REDACTED].
- (c) Prosafe noted that deeper water depth (i.e. beyond the length of a jack-up's legs) is a specific circumstance where a jack-up would not be appropriate.

8.112 The Haven is a modern accommodation jack-up that was upgraded in 2015 in order to be able to operate at greater water depths than other jack-ups (in response to an Equinor tender).

8.113 We note that as a jack-up, this vessel has an advantage compared to semi-submersible ASVs of uninterrupted gangway time. However, in order for a jack-up to be used, the seabed conditions must be suitable and the water depth not too deep.

8.114 Master Marine stated:

- (a) that it only competes with the Parties in NW Europe up to the extent of a water depth of 115m for the Haven and only if the seabed conditions allow the use of a jack-up ASV.
- (b) [REDACTED]

8.115 In the Customer Dataset, the Master Marine Haven has [REDACTED] It also bid in one of the [REDACTED] but did not get shortlisted due to price.

8.116 [REDACTED]

8.117 [X] Therefore, we note that in these tenders the Haven was a complement rather than a substitute to semi-submersible ASVs for some demand.

8.118 Prosafe stated that the Haven [X].

8.119 [X] We note that this customer was reflecting its own requirements, which are not necessarily consistent with the requirements of all customers in NW Europe.

8.120 [X]

8.121 We note that, although the *Haven* may impose a constraint on the Merged Entity for certain specific tenders, there will also be many situations where it cannot be used and as such the *Haven* will not impose a constraint on the Merged Entity across many tenders.

#### *Constraint from other types of ASV*

8.122 We consider that the constraint from other suppliers (apart from Teekay Offshore and Master Marine considered at paragraphs 8.99 to 8.121) of other ASV types (for example, jack-ups, monohulls, W2Ws and unconverted drilling) is not significant on the basis that these suppliers have rarely, if at all, been shortlisted in the bidding data (see paragraph 8.40).

#### *Provisional conclusion on constraint from outside the market*

8.123 We provisionally conclude that the constraint from ASV suppliers outside the market is limited based on the fact that their offering is differentiated from the Parties themselves, they have not been a significant constraint in the past, and customers do not view them as strong alternatives to the Parties.

### **Future demand**

8.124 In this section we consider how demand is likely to evolve in the market for semi-submersible ASVs in NW Europe.

8.125 The Parties have submitted that there has been a “permanent structural reduction in demand”, which means that:

- (a) Where customers do seek to contract an ASV, semi-submersible ASVs will compete with some or all of jack-ups, monohulls, W2Ws and unconverted drilling rigs; and

(b) Discussions with customers suggest that for the foreseeable future, the demand for semi-submersible ASVs on the North Sea equates to less than [REDACTED].

8.126 As per our Merger Assessment Guidelines, we assess mergers on a forward-looking basis<sup>73</sup> and so we have assessed the impact of future demand as part of our competitive assessment. We do however note at the outset that the Parties have not submitted that there will be no future demand for semi-submersible ASVs.

8.127 We note that the Parties' submission also relates to competitive constraints (see paragraph 8.123).

8.128 The Parties submitted that future demand can only be reliably established by speaking to the Parties' customers. The Parties have spoken to some of their UKCS customers to assess future demand. During those discussions Prosafe provided customers with a presentation entitled '*Competition Process and Merger Status*', which set out the Parties' view on the limited nature of future demand in NW Europe as well as their understanding of customers' views in relation to the Norwegian competition review process. Prosafe also presented customers with a framework proposal offering [REDACTED]. We have spoken to relevant customers (see paragraphs 8.138 to 8.155).

8.129 This section is structured as follows:

- (a) Parties' representations;
- (b) Evidence from customers;
- (c) Evidence from competitors and other suppliers of ASVs;
- (d) Other third-party evidence;
- (e) Evidence from bidding data;
- (f) Internal documents; and
- (g) Provisional view on future demand

### **Parties' representations**

8.130 The Parties submitted that there has been a permanent structural reduction in demand on the North Sea for semi-submersible ASVs for both HUC and MMO

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<sup>73</sup> [Merger Assessment Guidelines](#), paragraph 4.1.3.

workThe Parties also submitted that certain industry developments (including a greater use of next-generation lifting vessels and customer efforts to streamline their MMO processes) have led to a significant decrease in demand for semi-submersible ASVs, and in particular for:

- (a) HUC work: future HUC-related activity has shifted toward floating or subsea facilities (for which there is no need for an ASV), or if fixed platforms are used customers are using next generation lifting vessels (significantly reducing or eliminating the requirements for offshore accommodation).
- (b) MMO-related work: oil companies have permanently changed aspects of their operating models so as to reduce or eliminate their need for semi-submersible ASVs to support their MMO projects.

8.131 [REDACTED].

8.132 Further, the Parties submitted that there is only expected to be sufficient demand to justify [REDACTED] in the North Sea for the foreseeable future:

- (a) They submitted that there would be demand of less than [REDACTED] through to 2025 in the UKCS.
- (b) Regarding the NCS, the Parties were able to identify [REDACTED].

8.133 In support of this, the Parties submitted a table summarising potential future contracts for supply of a semi-submersible ASV up until 2025 in the UKCS, but noted that since these prospects were identified, the Parties have learned that [REDACTED] will not require an ASV and will proceed without utilising any additional offshore accommodation. Prosafe also submitted that [REDACTED]. Table 19 reproduces the Parties' table, excluding the project that will not require a semi-submersible ASV.

**Table 19: Possible semi-submersible ASV projects in the UKCS until 2025**

[REDACTED]

8.134 The Parties submitted that some of the demand they have identified may not materialise. In support of this, the Parties identified [REDACTED] recent examples where demand that was previously seen as 'firm prospective demand' for accommodation to support MMO work has not materialised. In particular:

- (a) Floatel stated that there had been a planned project by [REDACTED] that would have required a vessel for [REDACTED] months. However, [REDACTED]



(b) Prosafe submitted that demand that had been considered firm is 'not firm anymore'. By way of example Prosafe [~~§~~] that were cancelled during the course of the merger inquiry.

8.135 In this regard, we recognise that demand is uncertain (see paragraphs 8.157, 8.168 and 8.180) and considers that the identification of projects no longer materialising is further evidence of that. That uncertainty, which arises partly due to shortening lead times and partly due to customers having knowledge over the likelihood of projects going ahead which is not shared with the Parties, implies both that projects may materialise with relatively limited notice, but equally that projects may not go ahead. In the case of the Parties' examples of projects that did not materialise, we note that although the Parties had categorised these projects as '*firm prospective demand*', this may not have been consistent with customers' views.

8.136 We also note that since the Parties put together this forecast Floatel has won a contract with Ineos for summer 2020 which was not forecasted/included in the Parties' demand estimate. We consider that this demonstrates that demand may emerge as well as not go ahead and demonstrates that it is not possible to identify all future demand with confidence, and that forecasts may materially differ from the actual demand experienced.

8.137 As set out at paragraph 8.4, we further note that although the Parties submitted that there had been a 'paradigm shift' in the way the market operates, the reality is that any change has been more gradual. In support of this we note that Prosafe explained that as regards the developments by customers in carrying out their modification activities in a new way, customers are making changes to differing extents and at different speeds.

### ***Customer evidence***

8.138 This section considers:

- (a) Customer evidence on market developments and future projects; and
- (b) Customer evidence on forecasting future projects

### ***Customer evidence on market developments and future projects***

8.139 We asked customers about their views on the evolution of demand for semi-submersible ASVs in the next 5 years in NW Europe and the factors impacting this. As set out in the following paragraphs, there is some support from customers that the structural changes referred to by the Parties (such as developments in efficiency of MMO operations and greater use of next-

generation lifting vessels) will lead to reduced demand for semi-submersible ASVs in the future. However, most customers recognised there will still be some future projects in NW Europe in the next 5 years where customers will require or strongly prefer semi-submersible ASVs (this view was provided by some customers who did not themselves currently have future projects planned, as well as by customers who do have such projects already planned).

8.140 In terms of general views on demand, customers stated that demand for semi-submersible ASVs in NW Europe is weak and there were mixed views as to whether demand might recover. In particular:

(a) Total said that it considered that there would be [✂]

(b) Premier Oil noted it has seen low demand since the “*oil price breakdown.*” It explained that, in the UK, there are fewer major projects than there used to be and that it would be currently quite unlikely to use semi-submersible ASVs in the UKCS in the near future. However, Premier Oil said that the use of semi-submersible ASVs in decommissioning programs for major units in the future seems potentially likely.

(c) BP explained its demand is low and that it does not predict changes in demand over the next 5 years.

(d) [✂]

(e) [✂]

(f) Shell noted demand in the market is currently low and according to market intelligence is expected to continue being low in the next few years. Shell also identified that there is a shift in the market towards shorter duration projects.

(g) Repsol Sinopec explained it considers there will be some requirement for semi-submersible ASVs for HUC in NW Europe but that “[*t*]here are not any significant major capital projects that are ongoing just now”, and that demand is currently low as the market downturn has affected developments for large projects.

8.141 The evidence from customers shows that HUC work is becoming less frequent, whereas there will still be maintenance and decommissioning projects in the market.

8.142 Some customers noted that there is an increase in the use of floating production facilities (such as FPSOs) in the market, with all of these

customers noting that this has the potential to reduce the need for a semi-submersible ASV where FPSOs are used. In particular:

- (a) Premier Oil noted that FPSOs normally include sufficient accommodation to complete hook-up and commissioning without the use of a semi-submersible ASV and floating production facilities are being used progressively more compared to fixed facilities.
- (b) [REDACTED] These will not require a semi-submersible ASV.
- (c) Hibiscus noted that there is a trend towards FPSO developments which are less likely to require an ASV as most work can be completed in the shipyard before sail-away.

8.143 Most customers stated that they, and/or the industry in general, are taking actions to try and minimise their need for offshore accommodation (such as efficiency improvements to their projects and the adoption of new technologies) which has the potential to decrease demand for semi-submersible ASVs.

8.144 For example, most customers noted that the use of next generation lifting vessels would potentially decrease the use of semi-submersible ASVs, and half of these customers mentioned that they expected an increase in use of next-generation lifting vessels in the market going forward. We note that this decreases rather than removes demand for semi-submersible ASVs; for example as noted by one customer ([REDACTED]): *next generation lifting vehicles are a “game changer and have totally changed the market for semi-submersible ASVs: whereas it traditionally used to take 12-24 months of semi-submersible ASV support, this can now be done with only 3-5 months support.’*

8.145 We asked customers about their future projects requiring semi-submersible ASVs in the next 5 years in NW Europe; that is until 2024. Customers identified 6 projects in total. Of these 6 projects, 4 were described by customers as “definitely” or “likely” to go ahead, comprising a significant aggregated contract value of over [REDACTED]. These projects are mostly MMO and are expected to last from a few months to a year. Table 20 includes details on the specific projects identified.

**Table 20: Predicted projects requiring a semi-submersible ASV according to customers, for 2020-2024 in NW Europe**

[REDACTED]

8.146 We compared the information provided to us by customers, and as set out in this table, with the information provided by the Parties.

- 8.147 Comparing the Parties' information regarding future projects with the information provided to us by customers required some adjustments so they could be compared on the same basis. The Parties considered projects until 2025, whereas we only gathered data until 2024 (this led to excluding one project from the Parties' set of projects and we also removed a project from the table, which the customer identified as "unlikely" to go ahead from the comparison).
- 8.148 The information provided by customers indicates a slightly greater number of projects than those identified by the Parties but is broadly consistent with the Parties' submission of currently-identifiable low future demand: overall, we identified 4 definite/likely projects and one project considered simply as "possible" as compared to [REDACTED] possible projects identified by the Parties which might require a semi-submersible ASV in NW Europe within the same period.<sup>74</sup> In addition, we note that we have identified projects likely to require a semi-submersible ASV, while semi-submersible ASV can also bid for projects where other ASVs may also be suitable.
- 8.149 Our comparison shows that there are at least two projects that might overlap in the same year in the UKCS (different customers, both lasting several months), meaning there might be [REDACTED] ([REDACTED]). This is contrary to the Parties' submission that there will only be demand for [REDACTED] in the UKCS and [REDACTED] in the NCS in the next 5 years for semi-submersible ASVs.<sup>75</sup> However, we note that regardless of whether demand materialises for more than [REDACTED] or not, competition is still valuable and worth preserving for demand of [REDACTED]. We also note that while we asked for projects where a semi-submersible ASV might be required, there may be additional demand where customers choose to use a semi-submersible ASV for projects where it is also an option (but not required).
- 8.150 In view of the above, our provisional view is that there will likely be some contracts where semi-submersible ASVs are required or preferred by customers in NW Europe in the next 5 years and it is our view that these contracts represent a lower bound in light of the uncertainty over future demand (set out in paragraphs 8.155, 8.166 and 8.178).

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<sup>74</sup> The same customers were identified in both the Parties' list of future projects and the list of future projects provided to us by customers.

<sup>75</sup> While we only received limited information on future projects in the NCS from customers, we note that the NCA identified 5 projects where there will or may be a need for offshore accommodation services over the next five years in the NCS, including a semi-submersible ASV. <https://konkurransetilsynet.no/decisions/vedtak-v2019-22-prosafe-se-floatel-international-limited-konkurranseloven-%c2%a7-16-jf-%c2%a7-20-inngrep-mot-foretakssammenslutning/>

## *Customer evidence on forecasting future projects*

8.151 The evidence from customers set out in the following paragraphs shows that it can be difficult to forecast future project requirements. In particular, there is evidence of customers needing to conduct tenders for semi-submersible ASVs at short notice, and that even when projects are planned, requirements might unexpectedly change.

8.152 Some customers have provided evidence of having had to conduct tenders for semi-submersible ASVs at short notice:

- (a) Premier Oil explained that the lead times in its 3 Solan projects had been “*exceptionally small*” and that normally a customer would plan much longer ahead.
- (b) Since BP submitted its response about future projects in Phase 2, its requirements changed – BP said it no longer considered it had a requirement for any ASVs in 2020, but rather a slightly longer requirement in 2021 or 2022.

(c) [REDACTED]

8.153 Some customers have explained that their requirements have changed before tendering, which has led to the need for a semi-submersible ASV arising, or alternatively, disappearing:

- (a) With respect to the [REDACTED] tender, [REDACTED] explained that its requirements for PoB kept changing, noting that it first believed it required 180 beds on the accommodation vessel but ended up requiring 270. This meant that a semi-submersible ASV had to be used instead of a jack-up ASV (despite the jack-up being capable of dealing with the water depth at the project location).
- (b) As mentioned at paragraph 8.136, Ineos stated in November 2019 that it would have no need for semi-submersible ASVs in NW Europe in the next 5 years. However, in December 2019, Ineos contracted a semi-submersible ASV from Floatel for a UKCS project to start in Summer 2020.<sup>76</sup>

(c) [REDACTED]

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<sup>76</sup> See <http://floatel.se/news/1312395687/floatel-international-awarded-new-contract-uk-summer-2020>

8.154 We obtained evidence from customers in order to understand whether lead times are likely to change in NW Europe in the next 5 years:

- (a) Customers' views on the future evolution of lead times were mixed: with some customers saying that lead times are expected to stay roughly the same as currently, and one customer noting that they might reduce.
- (b) Some customers noted that lead times are related to vessel availability, and that customers can approach the market later if capacity remains high.
- (c) The estimates of lead times varied between customers:
  - (i) the estimates ranged from the tendering process being started 12 to 15 months before work is due to start to having reached an internal view on the scale of offshore requirements being determined 2.5 to 4 years before the work is due to start.
  - (ii) One customer distinguished between planning its ASV needs at least 2-3 years in advance of the offshore campaign for HUC work against making an *approach to market 8 to 15 months in advance for an MMO campaign*.
  - (iii) Another customer [REDACTED] noted lead times are longer in special cases of requiring multiple vessels at the same time.

8.155 The evidence from customers shows that it is hard to forecast demand with accuracy. In particular, there have been examples of projects where a semi-submersible ASV was chosen as a result of a need arising at short notice or where forecast requirements for a project changed so that there was more or less demand than originally forecast. We also consider the fact that lead times are relatively short for some types of projects such as MMO or less complicated projects, and might be shorter in the context of excess capacity where customers are able to go to the market later, implies that forecasting demand over a longer horizon with accuracy is difficult.

### ***Competitor and other suppliers of ASVs evidence***

8.156 This section considers:

- (a) Competitor and other suppliers of ASVs evidence on market developments and future projects; and
- (b) Competitors and other suppliers of ASVs evidence on forecasting future projects

*Evidence from competitors and other suppliers of ASVs on market developments and future projects*

8.157 We asked competitors and other suppliers of ASVs about their views on the evolution of demand for semi-submersible ASVs in the next 5 years in NW Europe and the factors impacting future demand.

8.158 In terms of general views on demand, competitors and other suppliers of ASVs identified that demand for semi-submersible ASVs in the market is weak with varying expectations regarding how this is expected to evolve in the future. In particular:

- (a) Teekay Offshore explained its view is that the market will remain challenging even if the need for maintenance increases. However, Teekay Offshore explained there could be scope for demand for semi-submersible ASVs to increase from 2021, although currently this does not look likely.
- (b) [redacted] explained that it expects fewer jobs in the market and for those jobs to be short term (6 months and below) in nature. However, [redacted] also said there will still be maintenance contracts on all the ageing facilities currently in operation and that there is the possibility of development of fewer, bigger future gas and oil projects.
- (c) COSL explained that demand in the market is currently low but did not provide concrete views about future progress of demand, saying this was uncertain.
- (d) [redacted] No clear view about future of demand in general but noted that the [redacted] of the market will pick up in the next 5 years and this will affect both the northern and southern regions of the North Sea.
- (e) [redacted]
- (f) Edda Accommodation noted the market is currently very challenging with low utilisation and low rates. It said it is difficult to predict how the market will evolve, but that the downturn in the industry and the cost cutting initiatives are expected to result in bigger maintenance/upgrade campaigns.

8.159 Evidence from competitors and other suppliers of ASVs provides some support that there is a structural change in the way customers are carrying out their operations:

- (a) Two ASV suppliers mentioned that the use of next-generation lifting vessels has the potential to decrease the demand for semi-submersible ASVs in NW Europe, although they did not provide views on whether the use of these vessels is becoming more prominent.
- (b) Three ASV suppliers mentioned a progressive streamlining of projects and/or the adoption of new technologies by customers as having the potential to decrease demand for semi-submersible ASVs.

8.160 As regards future demand for semi-submersible ASVs, two ASV suppliers recognised there will still be some future projects in NW Europe in the next 5 years where customers will require or strongly prefer semi-submersible ASVs. On the other hand, COSL said it had not thought about this as it is more focused on the drilling market. Others did not provide a view on this directly.

*Competitor and other suppliers of ASVs evidence on forecasting future projects*

8.161 We obtained evidence from competitors and other suppliers of ASVs on lead times in order to understand any differences in expected lead times depending on the type of work and also, their expectations on the evolution of lead times in NW Europe in the next 5 years. Competitors and other suppliers of ASVs' views are as follows:

- (a) [REDACTED]
- (b) Teekay Offshore explained that accommodation contracts need to be settled around 6-7 months before the work starts with some operators. [REDACTED] has not formed any views on evolution of lead times going forward.
- (c) [REDACTED] explained that tender submissions are made one to two years before work commencement for HUC work and tender submissions are made three to six months before work commencement for MMO work. Edda Accommodation expects lead times for HUC to stay the same in the future whereas it believes the lead times for MMO will decrease.
- (d) [REDACTED] explained that HUC work usually has 2 to 3 years lead time whereas MMO has around 1-year or shorter lead time. [REDACTED] expects these timings to stay the same going forward.
- (e) [REDACTED] explained lead times have decreased in the last couple of years, dropping from 1-2 years to 4-5 months - but that it expects these to stay stable going forward.

8.162 Consistent with the evidence obtained from customers, evidence from competitors and other suppliers of ASVs presents a view that demand levels



are currently low and that the structural changes identified by the Parties might persist.

### **Other third-party evidence**

8.163 The Oil and Gas Authority (OGA) stated that: *“Our tracking of project activities does not involve us acquiring routine information on the actual or planned use of ASVs. Projections of activity levels are inevitably uncertain with changes to project schedules being commonplace. The greatest utilisation of ASVs tends to be in the facilitation of hook-up and commissioning of new installations and during major upgrade and maintenance programmes. In this respect, there are advanced plans for a significant campaign of upgrades in the central North Sea during summer 2020 which is anticipated will generate a requirement for several ASVs.”*

8.164 The OGA indicated the new UKCS fields are likely to comprise a mix of new platforms, floating production systems and subsea tiebacks to existing installations. The OGA also noted that *“As with export routes, development options for many new fields have not yet been decided adding to the uncertainty over their need for ASVs during the construction phase.”*

8.165 The evidence provided by the OGA supports the evidence from customers on uncertainty of demand as well as highlighting that there is likely to be some demand for ASVs in the foreseeable future.

### **Evidence from bidding data**

8.166 We note that evidence from bidding data implies that future demand can be uncertain. In particular, even where future projects are identified, the evidence shows that there is a likelihood of those projects having an option for extension or being extended:

(a) Nearly a third of the projects won by a semi-submersible ASV in the Customer Dataset were extended; and

(b) [✂]

### **Internal documents**

8.167 This section considers internal documents on demand forecasts.<sup>77</sup>

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<sup>77</sup> For our approach to assessing internal documents, see paragraph 8.78 and 8.79

## Demand forecasts

8.168 The Parties' future demand projections have evolved over time, but consistently anticipate a recovery, particularly in MMO work. However, given that an upturn in future prospects has not yet materialised, this demonstrates that it has not been possible in the past for the Parties to forecast future demand with any degree of accuracy. For example:

- (a) Prosafe's 2017 Q3 presentation indicated an upturn in prospects [REDACTED]
- (b) Prosafe's 2018 management presentation to its Board noted that the [REDACTED]
- (c) For example, Prosafe's Board presentation of November 2018 noted, with respect to the UKCS, that [REDACTED] and, with respect to the North Sea (NCS and UKCS), that [REDACTED].
- (d) Floatel's demand forecasts entitled '*North Sea Semi Submersible market balance*' in its market update slides (presented to its Board) became less optimistic over time. For example, in a April 2017 slidepack Floatel was estimating high levels of predicted new work leading to utilisation of [REDACTED] units from 2018-2021, but had revised these forecasts down in the March 2018 slidepack to be [REDACTED] units. Between May 2019 and September 2019 Floatel further revised down its forecasts to read a prediction [REDACTED] units' utilisation between 2020-2024.

8.169 Parties' views to investors show that the Parties were, until recently, confident of a recovery in demand:<sup>78</sup>

- (a) We note, 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 it's 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,*

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<sup>78</sup> The Parties submitted at the time these statements were made they had not fully understood the paradigm shift in demand We understand that the Parties' views on future demand have changed subsequent to the production of these forecasts, and that is the point we wish to illustrate: that the Parties' views on future demand have been ever changing over time.

*clearly UK has started to pick up before Norway, looking at the North Sea. But in Norway it's also very positive..."*

- (b) Floatel's Interim Report for Q2 2019 of August 2019<sup>79</sup> 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 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 resulting in some awards recently, albeit at low rates relative to historical levels." 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 however current activity and prices do not support improved earnings before 2021."

8.170 These documents demonstrate that the Parties have revised their forecasts on a number of occasions, thereby showing that it is not possible to forecast demand accurately.

#### *Uncertainty over future demand*

8.171 Internal documents show that a large portion of Prosafe's business is focussed on MMO work:

- (a) A report by Rystad commissioned by Prosafe and presented in Board papers in 2016 states that the market share of [REDACTED] work was [REDACTED].
- (b) Prosafe Board slides in February 2019 noted that although previous work had focussed on [REDACTED] would feature strongly in the future: [REDACTED].

8.172 Prosafe's internal documents show that MMO work is difficult to forecast:

- (a) The same report by Rystad commissioned by Prosafe and presented in Board papers in 2016 states that there was [REDACTED].
- (b) Prosafe's August 2017 Board minutes recognise low visibility and short lead times for MMO work: [REDACTED].
- (c) Prosafe's February 2019 Board minutes recorded that market visibility was limited:

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<sup>79</sup> See: <http://floatel.se/sites/default/files/1009636623/Q2%20Report%202019.pdf> (accessed by the CMA on 30<sup>th</sup> August 2019).

[REDACTED]

8.173 Internal documents state that project lead times are falling, particularly for MMO work:

- (a) A Floatel Board slide in September 2018 states [REDACTED] and the accompanying graph illustrates [REDACTED], with the lead times identified in 2018 being approximately [REDACTED] respectively.
- (b) Prosafe's March 2017 Board minutes note the possibility for [REDACTED] for tenders: [REDACTED]

8.174 At the Main Party Hearing, consistent with evidence from internal documents, both Parties explained that lead times are reducing:

- (a) Floatel explained that lead times (that is between the date of award and the start-up) are reducing not because the knowledge of the project has changed, but because customers are slower in contracting due to the oversupply of vessels so they do not need to rush to contract a vessel. Floatel stated that the period between its knowledge of potential MMO work and the start of the project could be three years to 12 months.
- (b) Prosafe stated that customers have *'an increasing luxury in alternatives and availability so they have come later to the market.'* However, Prosafe believes that customers know what is coming *'some years down the line'*.

8.175 One of Prosafe's internal documents shows a degree of uncertainty in forecasting future demand, based on customer planning behaviour. In particular, an internal Prosafe slidepack dated 2018 categorises various of its customers [REDACTED] and in particular notes that certain customers are [REDACTED].

8.176 Independent market reports are consistent with the Parties' documents in that they show it is difficult to forecast future demand with accuracy. In particular, these documents highlight: (i) that there might be some recovery, but it is uncertain; and (ii) that there are short lead times for maintenance contracts. For example:

- (a) A Clarksons Plateau's 2019 Q3<sup>80</sup> update noted in the deep water update (which appears to cover large purpose built monohulls as well as semi-submersible ASVs) that *'The United Kingdom remains quiet for the 2020 period, however there might be some developments leading up to the end of the year resulting in potential last-minute enquiries. Charterers would*

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<sup>80</sup> Clarksons Plateau 2019, Q3 Offshore accommodation Quarterly, pages 2-4 and 6.

*be in a fortuitous position should they come to the market as availability is strong at present.'*

(b) A Pareto Accommodation Market update in 2019 stated '[f]ixture activity remains limited in the North Sea [...]' and 'utilisation unlikely to pick up next year [...]' but that it was '[s]till early to conclude for 2020 as maintenance contracts have short lead time – but current outlook not promising'. The update further noted that '2020 looks to be another modest year' and that 'MMO activity up, indicating that a shift is near (Noting that accommodation rigs are only required for larger projects).'

8.177 Prosafe explained that it agreed that there is a shorter visibility on MMO compared to hook-up work, but noted that overall uncertainty is limited because the overall volume of projects was low and declining. Prosafe stated that over *'the next 12 months or so, we are normally very precise'* and that *'there is a limited visibility but given the declining trends the concern is really whether there is anything when we get a few years down the line.'*

8.178 In view of the above, our provisional view is that, consistent with there being uncertainty over future demand, the internal documents taken in the round show that:

- (a) It is difficult to forecast demand with accuracy;
- (b) There is poor visibility and short lead times for certain types of work, MMO in particular; and
- (c) Demand is currently expected to remain fairly low.

#### ***Provisional view on future demand***

8.179 In view of the above, our provisional view is as follows:

- (a) Despite demand being at low levels compared to historically, we have identified that there still exists demand for some projects (with a substantial contract value) for which semi-submersible ASVs are required or strongly preferred.
- (b) We note that the projects identified are likely to be a lower bound given that demand is difficult to predict, and that with fairly short lead times, particularly for MMO work, there are likely to be additional projects that are not foreseeable at this time.
- (c) Although there is some customer evidence for changes in practices reducing demand as identified by the Parties, this serves to reduce rather

than entirely remove potential future requirements for semi-submersible ASVs.

8.180 We consider that, even if there were to be only very low demand as identified by the Parties, we would still be concerned about harm potentially arising from the Merger for those contracts, and so given that our view is that the likely number of projects will be greater than this, this serves to increase our concerns.

### **Provisional conclusion on the competitive effects of the merger**

8.181 In view of the above assessment, and taking the evidence in the round, we provisionally conclude that, subject to any countervailing factors (which are addressed in chapter 9), the Merger may be expected to result in an SLC in the supply of semi-submersible ASVs in NW Europe, including the UK.

8.182 In reaching this provisional conclusion we note, 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 combined market shares 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 are only a limited constraint on the Parties.
- (d) The Parties have excess capacity (that is, 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 8.150) 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 8.148), our provisional view is that (subject to any countervailing factors) 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.

8.183 As a result of the likely horizontal unilateral effects from the Merger, we have provisionally concluded that the following adverse effects may be expected to result from the Merger: higher prices and/or reduced service quality and/or reduced product range.

## 9. Countervailing factors

- 9.1 In this section, we consider whether entry or expansion by other providers of semi-submersible ASVs into NW Europe would be timely, likely and sufficient such that it might prevent an SLC arising.<sup>81</sup>
- 9.2 We also consider whether there are any merger-specific efficiencies<sup>82</sup> which may prevent an SLC arising.

### Entry or Expansion

#### *Parties' submissions*

- 9.3 In their response to the Phase 1 decision, the Parties submitted that:
- (a) “The CMA also needs to have regard to the substantial and increasing position of excess capacity globally ...which creates an obvious incentive on suppliers to compete for demand opportunities globally as they arise.”
- (b) “In addition, whilst ASV suppliers will certainly consider the likelihood of securing subsequent contracts in making a decision whether to relocate a vessel, they will also consider:
- (i) The costs of lay-up in the North Sea, which is generally a cost-efficient place to stack a vessel (with stacking costs being 30% lower than in the RoW)<sup>83</sup>; and
- (ii) Potential costs (and opportunity costs) of remaining in their present location. E.g. in Brazil, long-term stacking is not permitted and

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<sup>81</sup> [Merger Assessment Guidelines](#), paragraph 5.8.3.

<sup>82</sup> [Merger Assessment Guidelines](#), paragraph 5.7.4.

<sup>83</sup> However, we note that Floatel decided to stack one of its vessels in Tenerife rather than the North Sea.

operators will have to pay high import duties on the vessel (hence the relocation of the Arendal Spirit to the North Sea for lay-up purposes). Similarly, vessels located in Asian yards will eventually need to mobilise to one of the core deep sea oil-producing regions (Brazil, Gulf of Mexico or North Sea) if they are to secure work, and therefore not all of the costs of relocating a vessel from Asia to those regions should be viewed as incremental.”

9.4 In response to the Issues Statement, the Parties submitted:

“The merged entity will face an effective competitive constraint from vessels located in RoW. Mobilisation costs are not a barrier to effective competition for UKCS opportunities, and given the prevailing situation of global oversupply and the favourable stacking conditions in the North Sea region (due to less humid weather, deep-water quaysides and access to quality yards/suppliers), RoW-located vessels are incentivised to compete for any North Sea (and UKCS) contracts”.

9.5 The Parties have submitted that:

- (a) a new semi-submersible ASV may cost USD [X]. It may also take [X] years to build. However, the Parties noted that there are some newly built semi-submersible ASVs that the shipyards may be willing to sell for half the price or even cheaper; and
- (b) “vessels located in RoW face incremental costs in competing for UKCS contracts – however, these costs are not an impediment to effective competition. There are only two such costs directly related to relocating an ASV (and these are less relevant for the initial mobilisation of a new-build vessel, where the cost of mobilisation is factored into the purchase price by the ASV provider): i) mobilisation costs; and ii) the cost of an HSE safety case.”

9.6 The Parties submitted that neither mobilisation costs nor the costs of securing an HSE safety case present a barrier to RoW-located semi-submersible ASVs competing effectively for future UKCS prospects.” The Parties also submitted that:

“Reasonable and conservative estimates of contract costs (including mobilisation costs) show that RoW-located vessels would easily be able to cover their costs, break even, and earn a positive contribution – and still price competitively vis-à-vis the Parties – typically significantly below the higher of the Parties’ bids.”



### ***Main factors that affect the likelihood of entry or expansion***

- 9.7 We first consider the main factors affecting the likelihood of entry or expansion into the market.
- 9.8 We have considered evidence relating to whether to include semi-submersible ASVs located in the RoW in the same market as semi-submersible ASVs located in NW Europe in our assessment of the relevant market (see paragraph 7.87 to 7.89).
- 9.9 On the basis of the evidence set out there, our provisional conclusion is that vessels located outside NW Europe face the following barriers to winning tenders:
- (a) The costs of moving vessels from the RoW to NW Europe are substantial compared to the value of contracts; and, further
  - (b) Customers have a strong preference for NW Europe experience and an existing safety case.
- 9.10 We note that not all potential competitors will face all of these barriers – for example some vessels may be UKCS compliant but are located elsewhere and therefore face mobilisation costs and also (potentially) reputational barriers but not the costs of achieving compliance with UKCS regulatory standards.

### ***Likelihood of entry or expansion***

- 9.11 We next consider whether there has been any entry or expansion in recent years, before considering the likelihood of future entry or expansion.

### ***Recent entry or expansion***

- 9.12 We understand that the most recent new semi-submersible ASVs in NW Europe were the Parties expanding their fleets with Floatel Triumph and Prosafe Safe Zephyrus, both in 2016, although we note that these vessels were commissioned in a period of higher demand than is currently the case.<sup>84</sup>
- 9.13 Conversely, we note the exit by Borgholm Dolphin<sup>85</sup>, built in 1975 and later converted to a tender support vessel.<sup>86</sup>

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<sup>84</sup> "Offshore accommodation Quarterly Q3 2019" by Clarksons Platou, page 12

<sup>85</sup> [Offshore Energy Today](#), July 13, 2017

<sup>86</sup> [Offshore Energy Today](#), July 13, 2017

## *Future entry or expansion by other providers of semi-submersible ASVs*

### *Demand conditions*

- 9.14 As a preliminary observation, we believe that the effect of low demand in NW Europe, alongside excess capacity in semi-submersible ASVs already present in NW Europe (which has driven down day-rates in the recent past), is likely to make entry unlikely in the reasonably foreseeable future. In the main party hearing, Floatel indicated that incentives to relocate a RoW-located vessel to NW Europe on speculation are not high given the current 'depressed' day rates in NW Europe, but that entry was possible if a RoW-located vessel won a contract in the North Sea or if market conditions changed.
- 9.15 Moreover, we have observed (see paragraph 7.72 to 7.74)
- (a) [REDACTED];
  - (b) no examples of semi-submersible ASV competitors to the Parties located in the RoW winning any tenders in NW Europe; and
  - (c) few vessels having moved from the RoW to NW Europe in the recent past (and those that have moved were the Parties' vessels).
- 9.16 Whilst we recognise that any assessment of potential entry/expansion absent the Merger needs to be undertaken on a forward-looking basis, the evidence set out above is relevant to an assessment of the likelihood of future entry and/or expansion post-Merger.
- 9.17 The Parties have submitted that in a future where vessels are increasingly cold-stacked due to low future demand (for our assessment on this see paragraphs 8.124 to 8.180) mobilising vessels from RoW will become increasingly attractive as the cost of mobilisation of RoW vessels is lower than the cost of reactivating vessels located in the North Sea. In this regard, the Parties have submitted estimates for reactivating vessels ranging from [REDACTED].
- 9.18 We acknowledge that for any vessels currently cold-stacked, there will be an additional cost of taking the vessel out of storage. We further note that Prosafe has explained that the order of preference for customers for vessels is warm (i.e. active) in North Sea, mobilise a warm vessel from RoW, and then cold-stacked in North Sea. As set out in our counterfactual, while the Parties may stack some of their vessels absent the Merger, our provisional view is that all vessels would not be stacked, when there are contracts in NW Europe that they could actively compete for.

### *Evidence from third parties*

- 9.19 We have engaged with a number of semi-submersible ASV providers and other market participants about prospects for entry/expansion:
- (a) COSL told us that it may be considering investing in an existing semi-submersible ASV which is currently stacked to make it more attractive to customers. However COSL also told us that it has no intention of bringing new vessels into the market at the moment.
  - (b) BP told us that: “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”.
  - (c) Teekay Offshore told us that if activity in the market rises enormously it might be interesting for a few of the competitors to do it. If it stays as it is now, Teekay Offshore did not see many of the competitors coming in.
  - (d) One competitor told us that “...only if all Prosafe, Floatel and any other alternative units in North Sea is unavailable will clients consider mobilising a new unit outside of North Sea in”. However, it is currently not actively bidding for any European tenders.
  - (e) If it were invited to submit a tender, then [REDACTED]
  - (f) [REDACTED] told us that it is bidding in tenders in [REDACTED] and the North Sea and that when it tenders in the North Sea, it tenders for work on the UKCS. However, [REDACTED] said that it has not had a project in the UKCS to date. In addition [REDACTED] told us that it does not have any plans to expand its business in the accommodation market and was focusing on [REDACTED].

### *Customer-sponsored entry*

- 9.20 We also considered whether customers (many of whom are financially capable of doing so) would be likely to sponsor entry into this market. However, we have not been provided with evidence that any customers would consider sponsoring entry.

### ***Assessment of the likelihood of timely and sufficient entry or expansion***

- 9.21 We consider that barriers to entry or expansion appear to be high, for companies currently operating outside NW Europe to enter the market from the RoW. These barriers comprise:

- (a) The costs of obtaining UK regulatory approval.

- (b) Potentially significant mobilisation costs from the RoW.
- (c) The need for a proven track record in NW Europe.
- 9.22 No single barrier is sufficient to completely deter entry or expansion and we recognise that in past periods of high demand competitors have entered the market (for example, Floatel). However, the evidence provided to us indicates that customers have a strong preference for warm vessels currently in NW Europe and so cold-stacked vessels or those outside NW Europe will be less likely to enter.
- 9.23 The barriers to entry for an entirely de novo entrant appear to be even higher, given the capital cost requirements of a semi-submersible ASV are several hundred million dollars, in addition to the barriers set out above. Given the current market conditions and the over-supply of semi-submersible ASVs in NW Europe, any such entry would appear to be very unlikely.
- 9.24 We have not been provided with evidence of recent examples of entry or expansion by providers of semi-submersible ASVs; and the evidence provided in relation to existing semi-submersible ASV providers (in particular, given the over-supply of semi-submersible ASVs in NW Europe currently and the opportunity cost of moving a semi-submersible ASV into NW Europe from RoW) implies that expansion and/or entry would be very unlikely post-Merger.
- 9.25 We have not been provided with evidence that any customers would consider sponsoring entry.
- 9.26 In view of the above, we therefore provisionally conclude that entry or expansion would not be timely, likely and sufficient such that it might prevent an SLC arising from the Merger.

## **Efficiencies**

- 9.27 Efficiencies arising from a merger may enhance rivalry, with the result that the merger does not give rise to an SLC. For example, a merger of two of the smaller firms in a market resulting in efficiency gains might allow the merged entity to compete more effectively with the larger firms.<sup>87</sup>
- 9.28 To form a view that the efficiencies claimed by the merger parties will enhance rivalry so that the merger does not result in an SLC, the CMA must expect that the following criteria will be met:

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<sup>87</sup> [Merger Assessment Guidelines](#), paragraph 5.7.2.

- (a) the efficiencies must be timely, likely and sufficient to prevent an SLC from arising (having regard to the effect on rivalry that would otherwise result from the merger); and
- (b) the efficiencies must be merger specific, ie a direct consequence of the merger, judged relative to what would happen without it.<sup>88</sup>

9.29 The Parties told us that the Merger would drive efficiencies, [REDACTED]. The Parties told us that they estimated the potential for USD [REDACTED] in synergies, generated through saving [REDACTED].

9.30 We note that the Parties have provided very little evidence to substantiate their efficiency claims or to explain why these would be a direct consequence of the Merger. It is also unclear to what extent the proportion of any efficiency savings are variable cost reductions.

9.31 In any event, our provisional view is that the Parties would be very unlikely to pass on any cost savings to customers in the form of lower prices. On the contrary, it appears likely that the Parties would have an incentive to increase pricing to customers post-Merger.

## **10. Provisional conclusion on the SLC test**

10.1 On the basis of our assessment of the evidence, we have provisionally concluded that the Merger may be expected to result in an SLC in the supply of semi-submersible ASVs in NW Europe, including the UK.

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<sup>88</sup> [Merger Assessment Guidelines](#), paragraph 5.7.4(b).