

Anticipated acquisition by Jacobs U.K. Limited of Wood Nuclear Limited, its subsidiary and certain affiliated companies

Decision on relevant merger situation and substantial lessening of competition

ME/6853/19

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

SUMMARY

1. Jacobs UK Limited (**Jacobs**) has agreed to acquire Wood Nuclear Limited, its subsidiary¹ and certain affiliated companies² (**Wood Nuclear**) (the **Merger**). Jacobs and Wood Nuclear are together referred to as the **Parties** and, for statements referring to the future, the **Merged Entity**.
2. The Competition and Markets Authority (**CMA**) believes that it is or may be the case that each of Jacobs and Wood Nuclear is an enterprise; that these enterprises will cease to be distinct as a result of the Merger; and that the turnover test is met. Accordingly, arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
3. The Parties overlap in the supply of nuclear services both to customers in the **Civil Nuclear** sector, such as the operation of nuclear power plants, and the **Nuclear Defence** sector, which relates to the production and maintenance of nuclear weapons or submarines with a nuclear component, in the UK.

¹ Amec Foster Wheeler International Limited.

² Energy Safety and Risk Consultants (UK) Limited, Amec Foster Wheeler Asia K.K., Wood Nuclear France S.A.S., Wood Nuclear Slovakia s.r.o., Amec Foster Wheeler s.r.o., Amec Nuclear Consultants International Limited, National Nuclear Corporation Limited and Nuclear Consultants International.

4. The CMA has assessed the impact of the Merger in the following frames of reference in the UK:
 - (a) Supply of nuclear services for Civil Nuclear New Build;
 - (b) Supply of nuclear services for Civil Nuclear Maintenance;
 - (c) Supply of nuclear services for Civil Nuclear Decommissioning;
 - (d) Supply of nuclear services for Other Civil Nuclear Projects;
 - (e) Supply of nuclear services for Nuclear Defence Weapon Infrastructures;
 - (f) Supply of nuclear services for Nuclear Defence Submarine Platforms; and
 - (g) Supply of nuclear services for Nuclear Defence Submarine Infrastructures.
5. The CMA examined whether the Merger gives rise to horizontal unilateral effects in each of these frames of reference.
6. In relation to the supply of nuclear services for Civil Nuclear New Build in the UK, the CMA found that the Parties are not, overall, particularly close competitors and that they compete with a range of other strong suppliers, including in relation to the specific types of nuclear services where they overlap within this frame of reference (ie Engineering Safety and Technical services).
7. In relation to the supply of nuclear services for Civil Nuclear Maintenance in the UK, the CMA found that the Parties are not, overall, close competitors and compete with a range of other strong suppliers, including in relation to the specific type of nuclear services where they overlap within this frame of reference (ie Project and Programme Management services).
8. In relation to the above two frames of reference for Civil Nuclear New Build and Civil Nuclear Maintenance, the CMA also assessed the impact of [X]. It was, however, not ultimately necessary for the CMA to conclude on [X], as the CMA found that sufficient competition would remain in the supply of nuclear services for Civil Nuclear New Build and Civil Nuclear Maintenance in the UK, even in a 'worst case' scenario [X].

9. The CMA therefore found that the Merger does not give rise to a realistic prospect of a substantial lessening of competition (**SLC**) as a result of horizontal unilateral effects in relation to the supply of nuclear services for Civil Nuclear New Build and Civil Nuclear Maintenance in the UK.
10. As regards the supply of nuclear services for Civil Nuclear Decommissioning, the CMA found that, the Parties' combined shares of supply are high, but may not be representative of conditions of competition (in particular because infrequent large contracts are the norm in this industry). On the basis of the Parties' bidding data, internal documents and evidence from third parties, the CMA found that the Parties are generally not close competitors for most Civil Nuclear Decommissioning contracts in the UK and will be constrained by a significant number of credible competitors post-Merger.
11. While the Parties previously competed closely at the final stage of one particularly large and complex tender (Sellafield PPP Lot 2), the available evidence indicates that a number of other suppliers also had the capability to compete effectively for that tender (and, in any case, that such large and complex tenders are unlikely to take place in future).
12. The CMA therefore believes that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to this frame of reference.
13. In relation to the supply of each of Other Civil Nuclear Projects, Nuclear Defence Weapons Infrastructure, Nuclear Defence Submarines Platform and Nuclear Defence Submarines Infrastructure, the CMA found that post-Merger the Parties' market position would be moderate and/or with limited change in market structure being brought about by the Merger. The Parties do not compete closely with each other and several capable competitors would remain in each of the above frames of reference. The CMA believes that these constraints, taken together, are sufficient to ensure that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in these frames of reference.
14. The Merger will therefore **not be referred** under section 33(1) of the Enterprise Act 2002 (the **Act**).

ASSESSMENT

Parties

Jacobs

15. Jacobs is a UK-based wholly-owned subsidiary of Jacobs Engineering Group Inc., which is a US international engineering services company providing a range of technical, professional, and construction services to a large number of industrial, commercial, and governmental clients.³ Jacobs provides nuclear services in relation to nuclear new build, existing nuclear power plants, and decommissioning across the UK Civil Nuclear and Nuclear Defence sectors.⁴ The turnover of Jacobs in the financial year ending September 2018 was approximately £12.6 billion worldwide and approximately £[~~12.6~~] in the UK.

Wood Nuclear

16. Wood Nuclear (the **Target**) comprises ten Wood Group companies all active in the nuclear services sector, of which the primary company is Wood Nuclear Limited. Wood Nuclear Limited is a UK company that provides full nuclear life-cycle services in nuclear new build, reactor support (for existing reactors), and decommissioning across the UK Civil Nuclear and Nuclear Defence sectors. Wood Nuclear Limited and the other companies comprising the Target are subsidiaries of The John Wood Group PLC (the **Wood Group**), a UK based multinational energy services company with headquarters in Aberdeen, Scotland. The turnover of Wood Nuclear Limited in 2018 was approximately £213 million worldwide and approximately £[~~213~~] in the UK.

Transaction

17. On 19 August 2019, a Share Purchase Agreement (**SPA**) was signed by several legal entities of the Wood Group and legal entities of Jacobs Engineering Group Inc.⁵ Pursuant to the SPA, the Wood Group will sell 100%

³ Jacobs Engineering Group Inc. has two global lines of business: 1) Aerospace, Technology and Nuclear for aerospace, defence, technical and automotive industries; and 2) Buildings, Infrastructure and Advanced Facilities for transit, aviation, built environment, mission critical, rail and civil construction projects, pharmaceutical, biotechnology and high technology manufacturing. See Final Merger Notice (**FMN**) submitted on 6 January 2020, paragraph 12.

⁴ FMN, paragraph 15.

⁵ I.e the Wood Group, Wood Nuclear Holdings Limited, Amec Nuclear Overseas Limited (a Wood Group subsidiary), Jacobs Engineering Group Inc and Jacobs.

of the shares of Wood Nuclear Limited and the other Target companies to Jacobs for £250 million on a debt-free, cash-free basis.

18. The Parties have stated that the rationale for the Merger is to create synergies in those sectors where the Parties provide different but complementary services, by combining Jacobs' relative strength in project and programme delivery with Wood Nuclear's strong technical expertise. The Parties submit that this aligns with Jacobs' strategy to be a global nuclear provider.⁶
19. The CMA found that the Parties' internal documents considering the Merger are broadly consistent with their stated rationale. The CMA found, however, that Jacobs' advisers also characterised the transaction as being [redacted] in nature,⁷ and that a Jacobs presentation to its most senior management described the possibility of [redacted] the acquisition of Wood Nuclear as 'a [redacted] to [our] existing portfolio.'⁸
20. The CMA notes that the Merger is part of a broader trend of industry consolidation in recent years. For example, in 2017, Jacobs acquired CH2M Hill Companies Ltd a provider of consulting, engineering, construction management and maintenance services in the UK nuclear industry.⁹ Again in 2017, SNC-Lavalin, [redacted], acquired Atkins, a provider of engineering, design, planning and project management services in the UK nuclear industry. The CMA also notes that Westinghouse, [redacted], has recently purchased certain Rolls Royce nuclear services businesses.

Procedure

21. The Merger was considered at a Case Review Meeting.¹⁰

Jurisdiction

22. Each of Jacobs and Wood Nuclear is an enterprise. As a result of the Merger, these enterprises will cease to be distinct.

⁶ FMN, paragraph 30.

⁷ Annex 9(1)A to the FMN, [redacted].

⁸ Annex 9(1)A to the FMN, [redacted].

⁹ The transaction was examined by the European Commission and approved on 25 October 2017. See European Commission decision of 25 October 2017 in case M.8641 – *Jacobs Engineering Group/CH2M Hill Companies*.

¹⁰ See [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2), January 2014, from paragraph 7.34.

23. The UK turnover of Wood Nuclear exceeds £70 million so the turnover test in section 23(1)(b) of the Act is satisfied.
24. The CMA therefore believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
25. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 9 January 2020 and the statutory 40 working day deadline for a decision is therefore 4 March 2020.

Counterfactual

26. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual). For anticipated mergers the CMA generally adopts the prevailing conditions of competition as the counterfactual against which to assess the impact of the merger. However, the CMA will assess the merger against an alternative counterfactual where, based on the evidence available to it, it believes that, absent the merger, the prospect of these conditions continuing is not realistic, or there is a realistic prospect of a counterfactual that is more competitive than these conditions.¹¹
27. In this case, there is no evidence supporting a different counterfactual, and the Parties and third parties have not put forward arguments in this respect. Therefore, the CMA believes the prevailing conditions of competition to be the relevant counterfactual.

Industry Background

28. The nuclear sector can broadly be divided into the Civil Nuclear sector, which includes the construction, operation, maintenance and decommissioning of nuclear power plants, and the Nuclear Defence sector, which relates to the production, maintenance and decommissioning of nuclear weapons or submarines with a nuclear component (for example, services associated with nuclear reactors powering submarines).

¹¹ [Merger Assessment Guidelines](#) (OFT1254/CC2), September 2010, from paragraph 4.3.5. The [Merger Assessment Guidelines](#) have been adopted by the CMA (see [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2), January 2014, Annex D).

Segments

29. Nuclear services can be categorised in different segments (**Segments**) depending on the stage in the life-cycle of the plant or platform and the type of nuclear project.
30. Within the Civil Nuclear sector, nuclear services are provided throughout the life-cycle of a nuclear reactor to support new build power plants, existing power plants and the decommissioning and clean-up of legacy nuclear power plants.¹² The Civil Nuclear sector can therefore be segmented as follows:
- (a) **New Build**, which relates to the design, construction and commissioning of new power plants. There are currently three new nuclear power plants under construction in the UK: Hinkley Point C (**HPC**),¹³ⁱ Sizewell C (**SZC**)¹⁴ⁱⁱ and Bradwell B.¹⁵ⁱⁱⁱ The main customers in this Segment are EDF Energy (**EDF**) and China General Nuclear Power Corporation (**CGN**) which – through three different subsidiaries – are responsible for the construction of these three nuclear power plants.
 - (b) **Maintenance**, which relates to services supporting operative nuclear power plants.¹⁶ There are currently eight nuclear sites operating in the UK: Torness, Sizewell B, Huntington, Hinkley Point B, Heysham 1 and 2, Hartlepool and Dungeness B. EDF operates all existing Civil Nuclear power plants in the UK and is therefore the main customer.
 - (c) **Decommissioning**, which relates to services taking any legacy nuclear facility to the state where it no longer requires measures for radiation protection, ie the clean-up of radioactivity and progressive dismantling of the plant. The main customers are the Nuclear Decommissioning Authority's (**NDA**) five major site licence companies which are responsible for the decommissioning of nuclear power plants and other sites or

¹² FMN, paragraph 81.

¹³ HPC concerns the construction of two new Evolutionary Pressurized Reactors (**EPR**) at Hinkley Point in Somerset. The legal entity responsible for the delivery of HPC is called HPC GenCo and is jointly owned by EDF (66.5%) and CGN (33.5%). HPC GenCo is responsible for the design, development, construction, testing, commissioning, operation, maintenance and the eventual commissioning of HPC is expected to complete in 2025.

¹⁴ This relates to the construction of two new EPRs at Sizewell in Suffolk. SZC GenCo is the project owner. CGN has a 20% share and EDF has the remaining 80% in that entity.

¹⁵ The Bradwell B project entails constructing a new UK Hualong Pressurized Reactor 1000 at Bradwell in Essex. General Nuclear Systems Ltd (**GNS**) is the project owner of Bradwell B and GNS is a joint venture between CGN which has a 66.5% share and EDF which has a 33.5% share.

¹⁶ Maintenance of Civil New Build nuclear power plants is also referred to as 'power generation'.

material: Dounreay Site Restoration Ltd, Low Level Waste Repository Ltd, Magnox Ltd, Radioactive Waste Management, and Sellafield Ltd.

- (d) **Civil Nuclear projects not falling within the above categories**, such as services relating to nuclear enrichment, nuclear fuel, projects relating to nuclear fusion, and smaller projects from universities and medical facilities (**Other Civil Nuclear Projects**). Major customers are Urenco (nuclear enrichment), Springfields (nuclear fuel) and the UK Atomic Energy Authority (responsible for the development of nuclear fusion power).

31. The Nuclear Defence sector, which relates to the production and maintenance of nuclear weapons and nuclear submarines, can be segmented as follows:¹⁷

- (a) **Nuclear Weapon Platforms**, which relates to services for the nuclear warhead itself. The main customer is the UK Atomic Weapons Establishment (**AWE**),¹⁸ which is responsible for maintaining the Trident warheads which provide the UK nuclear deterrent. AWE is also responsible for maintaining a production facility for new weapons if required, and for completing the dismantling and disposal of older warheads.
- (b) **Nuclear Weapon Infrastructures**, which relates to services for the support facilities surrounding the nuclear warhead, eg the main AWE site at Aldermaston and other facilities located at Burghfield, Blacknest and RNAD Coulport.
- (c) **Nuclear Weapon Decommissioning**, which relates to services in relation to the decommissioning activities for the weapon and other facilities.
- (d) **Nuclear Submarine Platforms**, which relates to services for the nuclear submarine itself. The main customer is the Ministry of Defence (**MOD**), ie certain divisions within the MOD such as the Defence Nuclear Organisation (**DNO**) and the Submarine Delivery Agency (**SDA**), with

¹⁷ FMN, paragraph 102.

¹⁸ AWE plc is responsible for the day to day running of all sites and is owned by a consortium of Jacobs, Lockheed Martin and Serco (with the government also in possession of a 'golden share').

services also provided to BAE Systems, Rolls Royce and Babcock Marine, part of the Babcock International Group.¹⁹

- (e) **Nuclear Submarine Infrastructures**, which relates to services around the support facilities of the submarines such as the port and manufacturing facilities in Barrow. The main customer is the MOD Defence Infrastructure Organisation,²⁰ with services also provided to BAE Systems, Rolls Royce and Babcock Marine, part of the Babcock International Group.²¹
- (f) **Nuclear Submarine Decommissioning**, which relates to services for dismantling the reactors powering submarines. The main customer is the MOD.²²

32. Civil and Defence customers frequently organise tenders for their projects and award their contracts typically by:²³

- (a) Framework agreements, where suppliers periodically compete to be placed on a framework agreement and projects are then 'called off' under the agreement. These agreements can have a single supplier or multiple suppliers, and sometimes include 'mini-competitions' between suppliers that are on the framework panel; or
- (b) Awarding an individual contract for a single project or task, following a competitive process, without establishing a framework.

Tiers

33. The Parties have submitted that the Nuclear Industry Association defines three tiers (**Tiers**) as follows:²⁴

¹⁹ The nuclear services in relation to submarines may also be provided through contracting with Tier 1 suppliers such as BAE Systems, Rolls Royce and/or Babcock Marine. The existing submarine fleet was built by BAE Systems in Barrow and equipped with nuclear powertrains manufactured by Rolls Royce in Derby. FMN, paragraph 209.

²⁰ FMN, paragraph 120.

²¹ FMN, paragraph 209.

²² FMN, paragraph 209.

²³ Suppliers may also form multi-contractor arrangements for certain projects when one supplier either does not have the capability or capacity or may want to limit its liability exposure. See the Parties' response to RFI 2, Question 14.

²⁴ FMN, paragraph 74.

- (a) Tier 1: ownership and operational management of large facilities / programmes and major sites;
- (b) Tier 2: delivery of a range of services (eg major projects, routine servicing contracts etc) under contract with Tier 1 operators or direct with asset owners themselves; and
- (c) Tier 3: provision of specialist or consultancy services. Tier 3 service providers either contract with Tier 2 customers or directly with Tier 1 contractors or asset owners.

34. Both Parties are primarily active in supplying Tier 2 and 3 projects in the UK.

Activities

35. Within each of the Civil Nuclear and Nuclear Defence Segments described above, nuclear service providers offer a number of nuclear services which can be broadly categorised into the following four activities (**Activities**):

- (a) *Engineering, Safety and Technical services* – includes front-end studies and consulting undertaken in advance of large planned nuclear infrastructure projects, and safety case reports etc (**EST**). The Parties submitted that EST services are commonly further broken down into:
 - (i) Owner's Engineer (**OE**): where the supplier uses its expertise and regulatory knowledge to ensure that a project adheres to design specifications (with services provided in the UK likely to be limited to the UK aspects of the applicable regulations);
 - (ii) Architect Engineer (**AE**): where the supplier acts as the design integrator for construction partners;
 - (iii) Design: where the supplier provides plant and equipment design for systems, structures and components.²⁵
- (b) *Project and Programme Management services* – includes, for instance, the management of large infrastructure projects (**PPM**);

²⁵ The Parties' response to the CMA's Issues Letter, submitted on 14 February 2020 page 38.

- (c) *On-Site Activities* – includes, for instance, the installation of new facilities, maintenance or refurbishment of existing facilities, and decommissioning of old facilities; and
 - (d) *R&D/Lab services* – such as licensing and regulatory support, independent verification and certification and R&D (laboratory-based) services.
36. The CMA understands that suppliers may take different approaches to bidding for contracts (and that the approach taken by suppliers may vary between different contracts), for example by sometimes bidding independently, but in other cases by creating bidding consortia to bundle their expertise, or by forming ‘prime contractor’ and ‘sub-contractor’ agreements.

Frame of Reference

37. Market definition provides a framework for assessing the competitive effects of a merger and involves an element of judgement. The boundaries of the market do not determine the outcome of the analysis of the competitive effects of the merger, as it is recognised that there can be constraints on merging parties from outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important than others. The CMA will take these factors into account in its competitive assessment.²⁶
38. The Parties overlap in the supply of nuclear services for the New Build, Maintenance, Decommissioning and Other Civil Nuclear Projects Segments of the Civil Nuclear sector (see paragraph 30 above) in the UK. The Parties also overlap in the supply of nuclear services for the Nuclear Weapon Infrastructures, Nuclear Submarine Platforms, and Nuclear Submarine Infrastructures Segments of the Nuclear Defence sector (see paragraph 31 above) in the UK.²⁷

²⁶ See [Merger Assessment Guidelines](#), September 2010, paragraph 5.2.2.

²⁷ As the Parties do not overlap in Nuclear Weapon: Platforms, Nuclear Weapon: Decommissioning, and Nuclear Submarine: Decommissioning, these segments will not be discussed further in this decision.

Product scope

39. In *Amec/Serco*,²⁸ the OFT considered segmenting the market by customer type and noted the distinction between the Civil Nuclear and Nuclear Defence sectors;²⁹ the distinction between Tiers (ie Tier 1, 2, and 3), based for example on classifications used by the Nuclear Industry Association; and that further segmentation could occur on a more granular basis, such as by service type (for example between decommissioning and safety case assessment services). The OFT did not reach a conclusion on the product frame of reference in that case as no competition concerns arose on any basis.

The Parties' submissions

40. The Parties submitted that the relevant product frame of reference comprises the supply of all nuclear service activities to the global nuclear industry. The Parties submitted that, even though there is limited demand-side substitutability across the Civil Nuclear and Nuclear Defence sectors, suppliers have the ability to switch between the narrower segments from a supply-side perspective.³⁰ However, they submitted that the definition of the product frame of reference could be left open as no competition concerns arise on any basis.³¹

Potential for supply-side substitution

41. The CMA acknowledges that demand-side substitutability for specific nuclear-related projects and related contracts is limited, as the requirements of these projects are highly customised to suit the specific needs of the customer.
42. However, the CMA may aggregate products/services which are not demand-side substitutes when:

²⁸ ME/5595/12 *Completed acquisition by Amec Nuclear Holdings limited of Energy, Safety and Risk Consultants (UK) limited from Serco Limited* (21 December 2012). (**Amec/Serco**).

²⁹ Previous OFT decisions also support such segmentation: Anticipated acquisition by Babcock International Group plc of VT Group plc (2010); Completed acquisition by Babcock International Group plc of the Strachan & Henshaw Division of the Weir Group plc. (2008). In both decisions the OFT assessed each transaction with reference to 'defence' and 'non-defence' sectors.

³⁰ FMN, paragraph 55.

³¹ FMN, paragraph 65.

- (a) production assets can be used by firms to supply a range of different products that are not demand-side substitutes, and the firms have the ability and incentive quickly (generally within a year) to shift capacity between these different products depending on demand for each; and
 - (b) the same firms compete to supply these different products and the conditions of competition between the firms are the same for each product; in this scenario aggregating the supply of these products and analysing them as one market does not affect the CMA's decision on the competitive effect of the merger.³²
- 43. By way of example, these two conditions may be satisfied in markets characterised by bidding and tendering processes where firms bid on the basis of the service they can offer to supply customers with bespoke products, if the same set of firms would have been credible bidders.³³ In light of the lack of demand-side substitutability across nuclear-related projects, the key consideration as to whether different tenders or different Segments can be considered together is the extent of supply-side substitutability.
- 44. The CMA considered, in particular, whether the frame of reference should be segmented on the basis of:
 - (a) the different Segments identified in paragraphs 30 and 31 above;
 - (b) the different Tiers in the classifications used by the Nuclear Industry Association;
 - (c) the different Activities described in paragraph 27 above;
 - (d) a distinction between large tenders and smaller tenders; and
 - (e) regulatory barriers that could restrict the field of competitors that are able to compete for certain projects.

Segments

- 45. The CMA considered whether the Segments identified at paragraphs 30 and 31 should be assessed separately or grouped together with other Segments.

³² See [Merger Assessment Guidelines](#), September 2010, paragraph 5.2.17.

³³ See [Merger Assessment Guidelines](#), September 2010, paragraph 5.2.18.

46. The Parties stated that most competitors, including the Parties, are engaged across a range of what the Parties recognise as ‘Segments’ and ‘Activities’ and are able to shift resources between these Segments and Activities such that these Segments are not separate relevant frames of reference.³⁴
47. The Parties’ internal documents support the assessment of the effects of the Merger in each Segment separately. Whilst certain of these documents assess competition and customers per tender or per framework (such as the Sellafield Programme and Project Partners tender), a number of documents distinguish between specific Segments in the Civil Nuclear sector (eg New Build, maintenance,³⁵ and decommissioning)³⁶ and Nuclear Defence sector.³⁷
48. This position was broadly supported by the evidence received from third parties.
49. The majority of the customers who responded to the CMA’s Merger investigation generally agreed with a segmentation between Civil Nuclear and Nuclear Defence sectors, and with further segmentation within those sectors between the Segments identified in paragraphs 30 and 31 above. Almost all of the customers for nuclear services who responded to the CMA’s Merger investigation told the CMA that, when choosing a nuclear service provider, the provider’s experience in similar nuclear service projects is either an important or a very important factor. For example, in relation to one Segment, one customer said that suppliers with no prior experience in that Segment would find it difficult to get on the bid list for a tender and that it would take approximately 12-24 months to achieve this. The customer also stated that the most feasible way to fulfil the requirement for experience to join the bid list would be if the supplier bid in partnership/JV or through an M&A transaction with other more experienced ‘traditional’ suppliers.
50. The majority of competitors who responded to the CMA’s Merger investigation submitted that it is common for suppliers to use resources (assets, staff, know-how) from other nuclear Segments to compete in a particular nuclear

³⁴ FMN, paragraph 60.

³⁵ Referred to as ‘power generation’ in the Parties’ internal documents.

³⁶ Referred to as ‘clean-up’ in the Parties’ internal documents.

³⁷ Annex to Jacobs’ response to the Section 109 Notice of 18 October 2019: [redacted]; Annex to Jacobs’ response to the Section 109 Notice of 18 October 2019: [redacted]. Annex 31 to Wood Nuclear’s response to the Section 109 Notice of 18 October 2019: [redacted]. Annex 109 to Wood Nuclear’s response to the Section 109 Notice of 18 October 2019: [redacted]. Annex 123 to Wood Nuclear’s response to the Section 109 Notice of 18 October 2019: [redacted]. Annex to Jacobs’ response to the Section 109 Notice of 18 October 2019: [redacted].

Segment (albeit that this is the case to a lesser extent in the Nuclear Defence sector). Several competitors and customers noted, however, that there is ultimately limited supply-side substitutability between the different Segments identified above, mainly because of the requirement in practice for relevant experience within a given Segment.

51. One competitor submitted that customers use the pre-qualification phase of a tender to reduce the number of bidders to those that have directly relevant experience and applicable capabilities for the Segment. Another competitor told the CMA that specific knowledge of the Segment is generally required for operational personnel and that security clearances and enhanced Suitably Qualified and Experienced Personnel (**SQEP**)³⁸ requirements are a key restriction to movement between Segments.³⁹ One competitor submitted that, in practice, resources (such as assets, staff and know-how) will have particular relevance within a given Segment that is not readily transferable across different Segments.
52. Based on the available evidence, the CMA believes that, while a degree of supply-side substitution exists between different Segments, a number of barriers to supply-side substitution are reflected in customer requirements in tenders in different Segments, in particular the requirement for previous experience in the same Segment.
53. The CMA also believes that the available evidence shows that the conditions of competition differ between different Segments. Although a number of players are active across all Segments, the shares of supply held by these suppliers vary significantly between the different Segments, as do customer views about the suppliers' competitive strengths. There are also material differences in the competitive set (in particular the number and, to some extent, the identity of competitors) within each Segment.⁴⁰
54. The CMA therefore believes that it is appropriate to assess the Merger by reference to the supply of nuclear services for each of the different Segments, as described in paragraphs 30 and 31, within separate frames of reference.

³⁸ A set of requirements used in the Nuclear industry, as referenced in the Parties' response to the Issues Letter submitted on 14 February 2020 (page 32 and 60) and third party responses.

³⁹ [redacted].

⁴⁰ Annex 14c to the FMN, for example, in Civil New Build smaller competitors include Framatome and Mott Macdonald. In Civil Maintenance, smaller competitors include Interserve, NG Bailey. In Defence Nuclear Weapons Lockheed Martin is a large competitor that is however not active in the Civil Nuclear Sector.

Tiers

55. The CMA considered whether the different Tiers in the classifications used by the Nuclear Industry Association, generally including Tiers 1, 2 and 3, should be assessed separately.
56. The Parties submitted that a division into Tiers is not very meaningful as they are 'increasingly porous', and it is difficult to distinguish between Tier 2 or Tier 3 opportunities in particular.⁴¹
57. Only a very limited number of third parties⁴² submitted that the market for nuclear services might be segmented into Tiers as a basis for how suppliers are contracted.
58. The CMA therefore believes that the available evidence does not support a further segmentation of the applicable frames of reference by Tiers.

Activities

59. The CMA considered whether the different Activities described in paragraph 35 above should be assessed separately.
60. The Parties submitted that nuclear customers traditionally consider these Activities as separate nuclear services.⁴³ However, the Parties also submitted that they both provide or would be able to provide one or more of the Activities, ie EST services, PPM services, On-site Activities and/or R&D/Lab.⁴⁴ and that the dividing line between Activities within segments is not always clear cut. For example, the Parties submitted that large On-site Activities will also require PPM skills and therefore suppliers active in On-site Activities would also have the ability to provide PPM services.⁴⁵

⁴¹ Parties' submission entitled Note for the CMA: An Overview of the approach to market segmentation – Jacobs/Wood Nuclear (October 14, 2019), page 2.

⁴² One third party considered the market as belonging to particular Tiers but did not disagree with the definition of the market by Segments.

⁴³ FMN, paragraph 119.

⁴⁴ Wood Nuclear (but not Jacobs) provides licensing and regulatory support, independent verification and certification, R&D (laboratory based) services. FMN, paragraph 70.

⁴⁵ FMN, paragraph 59.

61. Third party evidence received by the CMA was mixed. The evidence indicates that while key players are active in several, or even all, Activities, the ability of suppliers to shift resources between Activities varies:
- (a) Around half of the competitors who responded to the CMA's Merger investigation submitted that it is common to use assets/staff from other Activities for the provision of R&D/Lab and/or EST services.
 - (b) The majority of third-party competitors stated that it is common to use assets/staff for On-site activities and/or PPM from other Activities.
62. The shares of supply set out below indicate that conditions of competition may differ between Activities within a Segment, with key players having a different presence between Activities.
63. Evidence from the Parties' internal documents on further segmentation within Segments into Activities is very limited, for example there are certain internal documents that discuss the Activities but only in respect of specific customers or frameworks.
64. On balance, the CMA therefore believes that the available evidence does not support a further segmentation of the applicable frames of reference by Activities. However, the CMA has considered the extent to which competitive conditions may vary between Activities in its competitive assessment below.

Size of tenders

65. In the course of its Merger investigation, the CMA noted that the conditions of competition, with respect to Decommissioning in particular, may vary for large tenders (such as the Sellafield Programme and Project Partners (PPP) tender), where only a limited number of suppliers may be in a position to compete. (This tender is discussed in more detail in paragraphs 227 to 234 below.) The CMA does not believe that the available evidence supports a further segmentation of the applicable frames of reference by size of tender but has considered the extent to which competitive conditions may vary by size of tender in its competitive assessment below.

Regulatory barriers

66. Finally, the CMA also noted in the course of its investigation that the conditions of competition might vary where regulatory barriers could prevent certain companies already active in a particular segment in the UK from participating in tenders (see, for example, paragraphs 71 to 74 below). The CMA does not believe that the available evidence supports a further segmentation of the applicable frames of reference by reference to regulatory barriers but has considered the extent to which competitive conditions may vary because of regulatory barriers in its competitive assessment below.

The CMA's assessment

67. The CMA notes that the available evidence shows some differences in the conditions of competition within certain Activities or types of tender (in particular larger tenders or tenders for which firms that only meet certain regulatory requirements can compete).
68. Consistent with the approach adopted in previous cases,⁴⁶ the CMA considers that it would not be appropriate, given that the Parties' activities overlap within a broad spectrum of differentiated nuclear services, to assess the effects of the Merger within a very large number of narrowly confined separate frames of reference. Market definition is, of course, not an end in itself in any case and, as noted in paragraph 37 above, the boundaries of the frame of reference do not determine the outcome of the analysis of the competitive effects of the Merger. Accordingly, the CMA has taken differences in the conditions of competition within certain Segments (in relation to certain Activities or types of tenders) into account, to the extent relevant, within its competitive assessment of each Segment.

Conclusion on product scope

69. On the basis of the evidence summarised above, the CMA believes the appropriate product frame of reference should be based on the supply of nuclear services in different Segments, and has therefore considered the impact of the Merger within the following product frames of reference:

⁴⁶ See, for example, [Report on the completed acquisition of Wincor Nixdorf AG by Diebold](#), Incorporated, 16 March 2017.

- (a) Supply of nuclear services for Civil Nuclear New Build;
- (b) Supply of nuclear services for Civil Nuclear Maintenance;
- (c) Supply of nuclear services for Civil Nuclear Decommissioning;
- (d) Supply of nuclear services for Other Civil Nuclear Projects;
- (e) Supply of nuclear services for Nuclear Defence Weapon Infrastructures;
- (f) Supply of nuclear services for Nuclear Defence Submarine Platforms; and
- (g) Supply of nuclear services for Nuclear Defence Submarine Infrastructures.

Geographic scope

National vs world-wide frame of reference

70. In *Amec/Serco*, the OFT considered a UK-wide geographic frame of reference. Although the OFT noted that the market was becoming increasingly international at that time, it found that not all third-party competitors had operations outside the UK.⁴⁷ The OFT also found that customer preferences for suppliers to have a proximate geographic presence to their nuclear facilities might make it harder for internationally-based suppliers to compete for contracts. The OFT did not reach a conclusion on the geographic frame of reference as no competition concerns arose on any basis.

The Parties' submissions

71. The Parties submitted that the relevant geographic frame of reference for the provision of nuclear services in which the Parties overlap is worldwide, particularly in the Civil Nuclear sector, where there are no regulatory barriers which prevent organisations overseas from competing for contracts.⁴⁸ The

⁴⁷ *Amec/Serco*, paragraph 32.

⁴⁸ FMN, paragraph 66.

Parties further submitted that this position is supported by other previous decisions of the OFT⁴⁹ and the European Commission.⁵⁰

Third party views

72. Overall, third parties indicated that the regulatory barriers for companies not operating in the UK to provide Civil Nuclear services in the UK (such as UK nationality requirements) are less stringent compared to the Nuclear Defence sector in the UK.
73. However, the majority of third parties who responded to the CMA's Merger investigation indicated that it was important for suppliers to have a physical presence, such as staff, in the UK around nuclear sites. Third parties highlighted the importance of suppliers meeting UK regulatory SQEP requirements (see paragraph 51 above) and some third parties indicated that suppliers would also require clearance under the relevant safety regulations and the UK security requirements for certain nuclear power plants (eg in the building and maintenance stage).
74. Third parties also stated that there are costs associated with bringing resources from outside the UK, which mean that overseas suppliers may find it hard to compete on price. For example, evidence from third parties indicates that there are costs associated with establishing a UK workforce,⁵¹ and achieving the UK regulatory SQEP requirements.⁵²

Internal documents

75. Evidence from the Parties' internal documents also indicates that it is important for suppliers of nuclear services in the UK to have a local presence. For example:

⁴⁹ ME/4488/10, *Anticipated acquisition by Babcock International Group plc of VT Group plc.*, OFT decision of 29 July 2010.

⁵⁰ Case No COMP/M.4153, *Toshiba/Westinghouse*, decision of 19 September 2006.

⁵¹ [REDACTED].

⁵² [REDACTED].

- (a) A Wood Nuclear document titled [REDACTED] states that Wood Nuclear was seeking to 'provide localised services where possible' in its provision of nuclear services [REDACTED];⁵³
- (b) A Jacobs presentation titled [REDACTED], dated [REDACTED] notes [REDACTED] – UK support only;⁵⁴
- (c) A Jacobs presentation titled [REDACTED] which assesses Jacobs' main competitors for Lot 1 and Lot 2 frameworks at Sellafield notes '[REDACTED]'.⁵⁵

76. The Parties' internal documents also indicate that there are entry barriers for suppliers from outside the UK. For example, a Jacobs presentation titled [REDACTED], dated [REDACTED] notes under 'market entry' in respect of the UK (and the US) that [REDACTED].⁵⁶

Conclusion on geographic scope

77. For the reasons set out above, in particular the importance of suppliers of nuclear services in the UK having a local presence and meeting UK regulatory requirements, the CMA believes that the appropriate geographic frame of reference is UK-wide. Constraints posed by competitors outside the UK have nevertheless been taken into account, to the extent relevant, within the CMA's competitive assessment.

Conclusion on frame of reference

78. For the reasons set out above, the CMA has considered the impact of the Merger in the following frames of reference:

- (a) Supply of nuclear services for Civil Nuclear New Build in the UK;
- (b) Supply of nuclear services for Civil Nuclear Maintenance in the UK;
- (c) Supply of nuclear services for Civil Nuclear Decommissioning in the UK;
- (d) Supply of nuclear services for Other Civil Nuclear Projects in the UK;

⁵³ Annex 128 to Wood Nuclear's response to the Section 109 Notice of 18 October 2019: [REDACTED].

⁵⁴ Annex to Jacobs' response to the Section 109 Notice of 18 October 2019: [REDACTED].

⁵⁵ Annex to Jacobs' response to the Section 109 Notice of 18 October 2019: [REDACTED].

⁵⁶ Annex to Jacobs' response to the Section 109 Notice of 18 October 2019: [REDACTED].

- (e) Supply of nuclear services for Nuclear Defence Weapon Infrastructures in the UK;
- (f) Supply of nuclear services for Nuclear Defence Submarine Platforms in the UK; and
- (g) Supply of nuclear services for Nuclear Defence Submarine Infrastructures in the UK.

Competitive assessment

Background

79. Horizontal unilateral effects may arise when one firm merges with a competitor that previously provided a competitive constraint. The concern that typically arises in this scenario is that the removal of one party as a competitor could allow the merged firm profitably to raise prices or to degrade quality on its own and without needing to coordinate with its rivals.⁵⁷ The CMA has assessed whether, as a result of this theory of harm, it is or may be the case that the Merger may be expected to result in an SLC in relation to horizontal unilateral effects in the supply of nuclear services in each of the frames of reference mentioned in paragraph 78 above.
80. Horizontal unilateral effects may also arise in other circumstances. A merger could bring about a restriction [✂].
81. In both cases, the concern is that the removal of the competitive constraint previously provided by a firm (either the constraint posed by Jacobs and Wood Nuclear on each other in the first case, or the constraint posed by Wood Nuclear on other suppliers in the second) may enable firms⁵⁸ to profitably raise prices or degrade quality on their own without needing to coordinate with their rivals.⁵⁹ Horizontal unilateral effects are more likely under this theory of harm where the eliminated constraint represents a

⁵⁷ [Merger Assessment Guidelines](#), from paragraph 5.4.1.

⁵⁸ In the first case, the Merged Entity, and in the second case, competitors of Wood Nuclear.

⁵⁹ [Merger Assessment Guidelines](#), from paragraph 5.4.1.

close competitor,⁶⁰ and customers do not have sufficient choice of alternative supplier.⁶¹

The supply of nuclear services for Civil Nuclear New Build in the UK

Theory of Harm 1: The elimination of competition between the Parties

82. The Parties both provide nuclear services for Civil Nuclear New Build customers in the UK, ie including supporting the design, construction and commissioning of new nuclear power generating assets. Following the Merger, the Parties will no longer compete with each other for the provision of these nuclear services.
83. As noted above at paragraph 30(a), there are currently three Civil Nuclear new build projects (together referred to as the **NNB Projects**) in the UK, which are all jointly owned by EDF and CGN. EDF is the majority shareholder for the entities responsible for HPC and SZC. CGN is the majority shareholder for the entity responsible for Bradwell B. These three customers are referred to as the **NNB Customers**. These three NNB Projects together currently comprise the entirety of the Civil Nuclear New Build Segment in the UK.
84. The Parties submitted that Jacobs provides limited PPM services for HPC and SZC and a limited number of PPM and ground investigation services at Bradwell B. The Parties submitted that Wood Nuclear provides EST services at HPC and limited consultancy services at SZC and Bradwell B.
85. In order to assess the likelihood of the Merger resulting in horizontal unilateral effects under this theory of harm, the CMA considered:
- (a) Shares of supply; and
 - (b) Closeness of competition between the Parties and competitive constraints from alternative suppliers.

⁶⁰ In the first case, to the other Party, and in the second case, to the remaining suppliers.

⁶¹ [Merger Assessment Guidelines](#), paragraph 5.4.6.

Shares of supply

86. By way of context to the analysis set out below, the CMA notes that nuclear services are highly differentiated, and it has therefore considered shares of supply only as a broad potential indicator of the Parties' overall performance in the relevant Segment. The CMA further notes that these share data are not liable to reflect the extent to which the Parties may compete more closely with each other or with other suppliers (whether within a Segment as a whole or in relation to specific Activities or other specific types of contract).
87. Moreover, the CMA has observed that there are some large and infrequent contracts (also referred to as 'lumpy' contracts) in nuclear services, meaning that some individual contracts account for a substantial proportion of demand in the relevant Segment and therefore could have a disproportionate impact on shares of supply (which could, in turn, cause shares of supply to overstate or understate the Parties' overall competitive significance in the relevant Segment). The presence of lumpy contracts is another reason to put some less weight than otherwise might be the case on shares of supply, and greater weight on evidence that is more directly relevant to the extent to which the Parties are close competitors and face strong constraints from remaining competitors.
88. The CMA has considered shares of supply at the overall Segment level, as well as shares of supply further broken down by Activities within the Segment.
- *Shares of supply (overall Segment)*
89. With respect to the Parties' shares in the overall supply of nuclear services for Civil Nuclear New Build, the Parties submitted that their combined share of supply in 2018 within this Segment was [0-5]%, with an increment of [0-5]% from Wood Nuclear.
90. The CMA believes that the shares of supply submitted by the Parties may be underestimated, at least to some extent, because of certain assumptions applied in calculating their estimates.⁶² As part of its

⁶² Examples of these assumptions include:

investigation, the CMA gathered revenue data directly from the Parties' key competitors (as identified by the Parties) in order to compile its own shares of supply.⁶³ The CMA excluded certain competitors from its share of supply estimates including where these competitors did not provide any information to the CMA. The CMA's share of supply estimates may therefore ultimately overestimate the shares of supply of each supplier, including the Parties' shares.

91. In its assessment of shares of supply, the CMA relied on its own share estimates to a greater extent than those of the Parties (in light of the limitations inherent in the Parties' analysis and the cautious nature of a Phase 1 investigation). However, it also took into account that these estimates likely overstate the Parties' position.
92. According to the CMA's estimates, the Parties' combined share of supply in 2018 was [10-20]%, with an increment of [5-10]% from Wood Nuclear. The CMA also estimates that there are three competitors with similar or larger shares than the Merged Entity: Babcock, SNC Lavalin Atkins and Nuvia with shares of supply of [10-20]%, [10-20]% and [20-30]% respectively.
93. Taking the CMA's estimates as the basis for assessment, the Parties' combined shares of supply at the overall Segment level (ie taking all Activities together) is moderate. The share estimates also show three competitors with similar or larger shares. However, for the reasons explained above, the CMA considers this only to be a broad potential indicator of overall performance in the Segment and has attached greater weight to evidence on closeness of competition.

-
- assuming the Parties' shares of supply in relation to Civil Nuclear New Build;
 - basing the market size on the Parties' specialist knowledge;
 - allocating revenues from projects to different activities based on the Parties' judgement;
 - assuming the share of supply that goes into the UK supply chain.

⁶³ The Parties submitted that these competitors cover the major rivals encountered most frequently when bidding for new business. The Parties submitted that the above-mentioned competitors also include those that hold the majority of historic contracts (FMN, paragraphs 202-203). The CMA asked competitors to provide approximate revenues broken down by segment.

- *Shares of supply (further broken down by Activity)*

94. The Parties also submitted share of supply data for each of the specific Activities within this Segment. These estimates suggested that:
- (a) The Parties do not overlap in relation to PPM, On-site services or R&D Labs within the Civil Nuclear New Build Segment;⁶⁴
 - (b) The Parties overlap with regard to EST services within the New Build Segment and had a combined share of supply of [10-20]% in 2018, with an increment of [5-10]% from Jacobs.
95. With respect to the CMA's own share estimates, the data the CMA received were not sufficiently granular to calculate shares of supply for each Activity per Segment, and therefore the CMA's estimates are only available at the Segment level.
96. The Parties' estimates suggest that the Parties each have a small share of supply (and therefore a moderate overall presence) within specific Activities and limited increment (and therefore little change in market structure) being brought about by the Merger. However, the CMA recognises that these shares may be underestimated and has therefore put more weight on evidence relating to closeness of competition and alternative competitive constraints.

Closeness of competition and alternative competitive constraints

- *The Parties' submissions*

97. The Parties submitted that they are not particularly close competitors and compete with a range of suppliers for contracts in this market. The Parties further emphasised the existence of significant complementarities between them in relation to the Activities for which they provide nuclear services in this frame of reference.

⁶⁴ Only Jacobs generates turnover in PPM and On-Site services, and only Wood Nuclear generates turnover in R&D/Lab services.

- *Third party views*

98. Views submitted by third parties were consistent with the position that the Parties are not, overall, particularly close competitors in this frame of reference.
99. The CMA asked competitors of the Parties to rate suppliers (i) for the provision of nuclear services for Civil Nuclear New Build in the UK, and (ii) to rate their strengths in specific Activities. Competitors were asked to provide a rating of 1 to 5 (1 not being a strong competitor and 5 being a very strong competitor) for the Parties and their competitors.
100. In Civil Nuclear New Build, Wood Nuclear scored an average of [X] out of 5, while Jacobs scored an average of [X] out of 5. Competitors mentioned a number of other suppliers with similar or higher average scores, including SNC Lavalin Atkins ([X]), Mott MacDonald ([X]), Costain ([X]), Rolls Royce ([X]) and Laing O'Rourke ([X]).
101. Third parties generally considered that the Parties compete closely in EST, but less so in other Activities. Third parties stated that SNC Lavalin Atkins and Babcock were close competitors to the Parties for EST services. Similarly, third parties also stated that Mott Macdonald and Assystem were also close competitors to the Parties. These two companies were considered to compete with the Parties to a more limited extent but were generally considered to nevertheless be significant suppliers. Consistent with this position, one third party stated that the Merger would have a limited impact on competition.

- *CMA's assessment*

102. On the basis of the evidence summarised above, the CMA considers that the Parties are not, overall, particularly close competitors in the supply of Civil Nuclear New Build services. The Parties do not overlap in respect of most Activities in this Segment: Wood Nuclear is not active in On-Site Activities and PPM, while Jacobs is not active in R&D/Lab. The Parties only overlap in relation to EST services, where they will continue to face a number of strong competitors post-Merger in addition to the competitors referred to in paragraph 101 above).

Conclusion on Theory of Harm 1

103. The share data suggest that the Parties' presence in the market is moderate, and that little change in market structure will be brought about by the Merger. The share data also supports the position that there are several other competitors present in the market, some of which currently have a larger position than the Parties.
104. Notwithstanding this position, in the context of differentiated products and lumpy contracts, the CMA considers it important to examine further evidence on closeness of competition. Based on the evidence set out above, the CMA believes that the Parties are not particularly close competitors in the supply of nuclear services for NNB Projects in the UK. The Parties' activities in this market are generally complementary. To the extent that the Parties' do compete more closely in respect of specific Activities (ie in respect of EST) they will continue to be constrained by a range of strong competitors post-Merger.
105. Accordingly, the CMA found that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects as a result of this theory of harm in relation to the supply of nuclear services for Civil Nuclear New Build in the UK.

[REDACTED]

106. [REDACTED].
107. [REDACTED].
108. [REDACTED].
109. [REDACTED].
110. [REDACTED].
111. [REDACTED].
112. [REDACTED].
113. [REDACTED].

114. [✂].

115. [✂].

116. [✂].

117. [✂].

118. [✂].

119. [✂].

120. [✂].

121. [✂].

122. [✂].

123. [✂].

124. [✂].

125. [✂].

126. [✂].

127. [✂].

128. [✂].

129. [✂].

130. [✂].

131. [✂].

132. [✂].

133. [✂].

134. [✂].

135. [✂].

136. [✂].

137. [✂].

138. [✂].

139. [✂].

140. [✂].

141. [✂].

142. [✂].

143. [✂].

144. [✂].

145. [✂].

146. [✂].

147. [✂].

148. [✂].

149. [✂].

150. [✂].

151. [✂].

152. [✂].

153. [✂].

154. [✂].

155. [✂].

156. [✂].

157. [✂].

158. [✂].

159. [✂].

160. [✂].

161. [✂].

162. [✂].

163. [✂].

164. [✂].

Conclusion on horizontal unilateral effects in Civil Nuclear New Build in the UK

165. As regards Theory of Harm 1 in this frame of reference, the share data suggest that the Parties' presence in the market is moderate and that little change in market structure will be brought about by the Merger. The share data also support the position that there are several other competitors present in the market, some of which currently have a larger position than the Parties. Notwithstanding this position, in the context of differentiated products and lumpy contracts, the CMA considers it important to examine further evidence on closeness of competition. The CMA believes that evidence of closeness of competition indicates that the Parties are not, overall, particularly close competitors in the supply of nuclear services for Civil Nuclear New Build in the UK and the Parties' activities are generally complementary. To the extent that the Parties overlap within this frame of reference (ie in respect of EST), they will continue to be constrained by a range of strong competitors post-Merger.

166. [✂].

167. Accordingly, the CMA found that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the supply of nuclear services for Civil Nuclear New Build projects in the UK.

The supply of nuclear services for Civil Nuclear Maintenance in the UK

168. In this frame of reference, the CMA has again assessed whether the Merger would lead to horizontal unilateral effects on the basis of two theories of harm: (i) the elimination of competition between the Parties and (ii) the [X].

Theory of Harm 1: The elimination of competition between the Parties

169. The Parties both provide nuclear services for Civil Nuclear Maintenance customers in the UK, ie supporting operative nuclear power plants in the UK. Following the Merger, the Parties will no longer compete with each other for the provision of these nuclear services.
170. All currently operating nuclear power facilities in the UK are owned by EDF. [X]. Jacobs provides project management services to the operators of all eight nuclear sites⁶⁵ and two technical centres. Wood Nuclear provides not only project management but also EST⁶⁶ to EDF's nuclear plants and technical centres. The Parties stated that they both are under the same Project Management Resource (PMR) framework for EDF.
171. In order to assess the likelihood of the Merger resulting in horizontal unilateral effects, the CMA considered:
- (a) Shares of supply; and
 - (b) Closeness of competition between the Parties and competitive constraints from alternative suppliers.

Shares of supply

172. As set out in paragraphs 86 and 87, because nuclear services are highly differentiated and demand is characterised by large and infrequent contracts, the CMA has considered shares of supply only as a broad potential indicator of the Parties' overall performance in the relevant

⁶⁵ Seven twin advanced gas cooled reactor plants (also known as AGRs) and one pressurised water reactor at Sizewell.

⁶⁶ These include plant safety and reliability, addressing fleet critical issues, refurbishment and operating life extensions and project management services.

Segment, and has placed particular weight on evidence around closeness of competition and the strength of constraints from remaining competitors.

173. The CMA has considered shares of supply at the overall Segment level, as well as shares of supply further broken down by Activities within the Segment.

- *Shares of supply (overall Segment)*

174. The Parties submitted that their combined shares in the supply of nuclear services for Civil Nuclear Maintenance in 2018 was [10-20]%, with an increment of [0-5]% from Jacobs.
175. The CMA has noted the limitations of the Parties' share estimates in paragraph 90. As discussed in paragraph 91, the CMA also produced share of supply estimates for the Parties. In its assessment of shares of supply, the CMA relied on its own share estimates to a greater extent than those of the Parties but took into account that the CMA's estimates likely overestimate the Parties' shares.
176. According to the CMA's estimates, the Parties' combined share of supply in Civil Nuclear Maintenance in 2018 was [10-20]%, with an increment of [0-5]% from Wood Nuclear. The CMA estimates suggest that there is one competitor with a larger share than the Merged Entity: Doosan Babcock with [20-30]%. The next-largest competitor is Atkins with a share of [5-10]%.
177. Taking the CMA's estimates as the basis for assessment, the Parties' combined shares of supply at the overall Segment level (ie taking all Activities together) are moderate and that a limited increment (and therefore little change in market structure) will be brought about by the Merger. The share estimates also show that one competitor that has a larger position than the Merged Entity would have, as well as other competitors that are larger than Wood Nuclear. However, for the reasons explained above, the CMA considers this only to be a broad potential indicator of overall performance in the Segment and has attached greater weight to evidence on closeness of competition.

- *Shares of supply (further breakdown by Activity)*

178. The Parties also submitted share of supply data for each of the specific Activities within this Segment. These estimates suggested that:

- (a) the Parties do not overlap in EST, On-Site activities or R&D/Lab within the Civil Nuclear Maintenance Segment;⁶⁷
- (b) in PPM, the Parties have a combined share of [70-80]% with and increment of [30-40]% from Jacobs.

179. With respect to the CMA's own share estimates, the data the CMA received were not sufficiently granular to calculate shares of supply for each Activity per Segment, and therefore the CMA's estimates are only available at the Segment level.

180. The Parties' estimates suggest that the Parties have a very high combined share of supply in PPM with a substantial increment from the Merger. These shares may give rise to prima facie concerns.

181. However, as noted in paragraph 87, the supply of nuclear services is characterised by large, infrequent contracts and the CMA notes that the Parties' revenue from PPM is primarily derived from one large contract. The CMA has taken into account a lack of concerns in this Segment raised by third parties, and comments indicating that there are sufficient suppliers active (see paragraph 185 below). In light of this evidence the CMA considers that shares of supply might not be representative of the conditions of competition in this frame of reference.

Closeness of competition and alternative competitive constraints

182. The Parties submitted that, even though they have a high combined market share in PPM services, their revenues in this activity are primarily based on the PMR framework in which both Parties are the only suppliers. The Parties stated that all work on this framework is requested by EDF on a formal basis and both Wood Nuclear and Jacobs can submit resources to be considered by EDF Energy on a 'best athlete process' (ie merit-

⁶⁷ Jacobs has no turnover in EST and R&D/Lab, and neither Party has turnover in On-Site Activities.

based).⁶⁸ The Parties submitted that the PMR framework was subject to heavy competition when it was initially opened to tender. The Parties submitted that further suppliers could readily be added to the PMR framework if EDF had any concerns about the Parties' ability to meet its needs. If the PMR framework was reopened, the Parties believe that many rivals would be interested in competing for the work, such as Atkins, Babcock, AECOM, KBR, Mace, Mott MacDonald and Costain.

- *Third party views*

183. The CMA asked competitors to provide a rating of 1 to 5, (1 not being a strong competitor and 5 being a very strong competitor) for competitors in Civil Nuclear Maintenance.⁶⁹ The views are summarised in **Table 1** below.

Table 1: The competitors' ratings of the Parties and other competitors

| | | Average score for each competitor (from 1 to 5)* |
|---|--|--|
| | Wood Nuclear | [X] |
| | Jacobs | [X] |
| Competitors that were noted as strong⁷⁰ | SNC Lavalin Atkins | [X] |
| | Doosan Babcock | [X] |
| | Morgan Sindall | [X] |
| | Babcock (including subsidiaries) | [X] |
| | Laing O'Rourke | [X] |
| | 10 other companies were mentioned once as strong | NA |

Source: The Parties' competitors' response to the Questionnaire

* 5 being a very strong competitor and 1 not being a strong competitor

184. Based on Table 1 above, Wood Nuclear has been rated as strong in Civil Nuclear Maintenance, but Jacobs has received a significantly lower rating. There are four other suppliers with a similar or higher score than Wood Nuclear and one with a ranking broadly between those of the Parties.

⁶⁸ FMN, paragraph 223(c).

⁶⁹ Competitors were not prompted with the names of competitors.

⁷⁰ These include those cases where the competitor was given the score of 4 or 5 in the scale of 1 to 5 by at least one third party (with 1 being not a strong competitor and 5 being a very strong competitor).

185. Another third party also told the CMA that the Parties were not close competitors because Wood Nuclear is contracted mostly for its technical consultancy services and Jacobs mainly for PPM services. That third party stated that the Parties are moderately close competitors in PPM through [REDACTED]. However, that third party submitted that the market for this contract is a competitive one and that for such areas as PPM, it can add [REDACTED] suppliers on an existing framework. That third party further submitted that [REDACTED],⁷¹ [REDACTED].

- *CMA's assessment*

186. Taking the CMA's estimates as the basis for assessment, the Parties' shares of supply in the supply of Civil Nuclear Maintenance are moderate in the context of the overall frame of reference, with a limited increment from Wood Nuclear. While the Parties' estimates of their shares of supply in PPM (the only Activity in which they overlap) are very high, the Parties' revenues in this Activity are derived primarily from one contract. Therefore, the CMA considered it important to examine further evidence on closeness of competition and alternative competitive constraints.

187. On the basis of the above evidence, the CMA believes that the Parties overall are not close competitors in the supply of nuclear services for Civil Nuclear Maintenance and compete with a range of other strong suppliers. In relation to the specific Activity where they overlap within this frame of reference (Project and Programme Management services), while there is some competitive interaction between the Parties, the CMA ultimately found that there are several credible alternatives to the Parties that will provide a sufficient competitive constraint post-Merger.

Conclusion on Theory of Harm 1

188. Accordingly, the CMA found that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects as a result of this theory of harm in relation to the supply of nuclear services for Civil Nuclear Maintenance in the UK.

[REDACTED]

⁷¹ The Parties, [REDACTED].

189. [REDACTED].

190. [REDACTED].

[REDACTED]

191. [REDACTED].

[REDACTED]

192. [REDACTED].

[REDACTED]

193. [REDACTED].

194. [REDACTED].

195. [REDACTED].

196. [REDACTED].

197. [REDACTED].

[REDACTED]

198. [REDACTED].

199. [REDACTED].

[REDACTED]

200. [REDACTED].

201. [REDACTED].

Conclusion on horizontal unilateral effects in Civil Nuclear Maintenance in the UK

202. As regards Theory of Harm 1 in this frame of reference, the CMA's estimates of the Parties' shares of supply are moderate in the market as a

whole and little change in market structure will be brought about by the Merger. While the Parties' estimates of their shares of supply in the Activity where they overlap are very high, the Parties' revenues in this Activity are derived primarily from one contract. Therefore, the CMA considered it important to examine further evidence on closeness of competition and alternative competitive constraints. Based on the evidence set out above, the CMA believes that the Parties are not close competitors in the supply of nuclear services for Civil Nuclear Maintenance overall and compete with a range of other strong suppliers. In relation to the specific Activity where they overlap, while the Parties are moderately close competitors, third parties told the CMA that the market is competitive with several credible alternatives to the Parties. The CMA therefore believes that the Parties will continue to face sufficient competitive constraint from a number of credible competitors in respect of that Activity post-Merger.

203. [REDACTED].

204. Accordingly, the CMA found that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the supply of nuclear services for Civil Nuclear Maintenance in the UK.

The supply of nuclear services for Civil Nuclear Decommissioning in the UK

205. The Parties both provide Civil Nuclear Decommissioning services to nuclear power plants in the UK, ie the decommissioning and clean-up (including integrated waste management) of legacy nuclear power plants, and fuel-reprocessing taking place prior to decommissioning.

206. Civil Nuclear Decommissioning projects in the UK are the responsibility of the NDA, which finances decommissioning projects through contracts via five Site Licence Companies (**Site Licence Companies**).⁷² Both Parties supply three Site Licence Companies in particular:⁷³ Sellafield Ltd; Magnox Ltd; and Dounreay Site Restoration Ltd (**DSLRL**).⁷⁴ Further nuclear sites in the UK will be decommissioned in the future, with the decommissioning of

⁷² These Site Licence Companies include Sellafield Ltd, Magnox Ltd, Dounreay Site Restoration Ltd, Low Level Waste Repository (**LLWR**), and Springfields Fuels Ltd.

⁷³ The Parties did not submit that they are servicing either LLWR or Springfields Fuels Ltd.

⁷⁴ FMN, paragraph 83.

Hinkley Point B and Hunterston, for example, currently scheduled to commence in 2023.

207. The CMA assessed whether it is or may be the case that the Merger may be expected to result, in an SLC in relation to horizontal unilateral effects in the supply of nuclear services for Civil Nuclear Decommissioning in the UK.
208. In order to assess the likelihood of the Merger resulting in horizontal unilateral effects, the CMA considered:
- (a) Shares of supply; and
 - (b) Closeness of competition between the Parties and competitive constraints from alternative suppliers.

Shares of supply

209. As set out in paragraphs 86 and 87, because nuclear services are highly differentiated and demand is characterised by large and infrequent contracts, the CMA has considered shares of supply only as a broad potential indicator of the Parties' overall performance in the relevant Segment, and has placed particular weight on evidence around closeness of competition and the strength of constraints from remaining competitors.
210. The CMA has considered shares of supply at the overall Segment level, as well as shares of supply further broken down by Activities within the Segment.

Shares of supply (overall Segment)

211. The Parties submitted that their combined share of supply in the supply of nuclear services for Civil Nuclear Decommissioning in the UK in 2018 is [10-20]%, with an increment of [5-10]% from Jacobs.
212. The CMA has noted the limitations of the Parties' share estimates in paragraph 90. As described in paragraph 91, the CMA also produced share of supply estimates for the Parties. In its assessment of shares of supply, the CMA relied on its own share estimates to a greater extent than those of the Parties but also took into account that the CMA's estimates likely overestimate the Parties' shares.

213. On the basis of the turnover data received from third parties, the CMA estimates that the Parties' share of supply in 2018 was [40-50]%, with an increment of [10-20]% from Jacobs. The CMA estimates suggest that there are two competitors with shares of supply that are comparable to the individual merging parties (albeit materially smaller than the Merged Entity), namely Babcock and Nuvia, which had estimated shares of [10-20]% and [20-30]% respectively; and two other competitors with material shares of supply, namely James Fisher and Atkins, which had estimated shares of supply of [5-10]% and [5-10]% respectively.
214. Taking the CMA's estimates as the basis for assessment, the Parties' combined share of supply is at a level that would typically give rise to prima facie concerns and the Merger brings about a significant increment in share (albeit these shares are, for the reasons explained in paragraph 90 above, likely to be overestimated). Similar to other nuclear services, the Decommissioning Segment is characterised by 'lumpy' contracts, meaning that some individual contracts account for a substantial proportion of demand in the relevant Segment and therefore could have a disproportionate impact on shares of supply (which could, in turn, cause shares of supply to overstate or understate the Parties' overall competitive significance in the relevant Segment). Moreover, the Merged Entity would face competition from four material competitors, two of which had shares comparable to those of the Parties pre-Merger.

Shares of supply (further breakdown by Activity)

215. The Parties also submitted share of supply data for each of the specific Activities within Civil Nuclear Decommissioning. These estimates suggested that:
- (a) In PPM and R&D/Lab, the Parties do not overlap.⁷⁵
 - (b) In EST services, the Parties' combined share of supply was [20-30]% with an increment of [5-10]% from Jacobs;

⁷⁵ Only one Party generates turnover in each of these Activities.

(c) In On-Site Activities, the Parties submitted that they have a combined share of supply of [5-10]% with an increment of [0-5]% from Wood Nuclear.

216. With respect to the CMA's own share estimates, the data the CMA received were not sufficiently granular to calculate shares of supply for each Activity per Segment, and therefore the CMA's estimates are only available at the Segment level.

217. The Parties' estimates suggest that they have a moderate share of supply in EST services within Civil Nuclear Decommissioning, with a material increment. Within On-site Activities, their combined share is small with a limited increment. However, the CMA recognises that these shares may be underestimated and has therefore put more weight on evidence relating to closeness of competition and alternative competitive constraints.

Closeness of competition and alternative competitive constraints

218. The Parties submitted that their Activities are complementary within this frame of reference. More specifically, the Parties submitted that Wood Nuclear is strong in relation to EST services (where Jacobs is not strong), whereas Jacobs' strengths lie in On-Site services (where Wood Nuclear is not strong). The Parties do not overlap at all in relation to PPM and R&D/Labs Activities.

219. The Parties also submitted that, post-Merger, a number of independent competing suppliers will remain in the market, such as Babcock, Nuvia, Shepley, Atkins, Costain, AECOM and many others. The Parties also submitted that all five of the Site Licence Companies, and in particular Sellafield, will hold a strong buying position.⁷⁶

220. The CMA has examined the closeness of competition between the Parties and the alternative competitive constraints by evaluating the following evidence and data:

(a) the Parties' bidding data;

⁷⁶ FMN, paragraph 236.

- (b) the Parties' internal documents; and
- (c) third party views.

Bidding data

221. The CMA obtained tender data from the NDA on Civil Nuclear Decommissioning tenders for which either of the Parties submitted a bid in the three years up to 4 November 2019.

222. As described at paragraph 32 above, it is common practice for UK customers in the nuclear sector to organise tenders for their projects. The tender data provided by the NDA included several different types of tender:

- (a) tenders for multi-supplier frameworks;
- (b) tenders within multi-supplier frameworks; and
- (c) tenders for single-supplier frameworks and tenders for stand-alone contracts.

- *Tenders for multi-supplier frameworks*

223. As regards tenders for multi-supplier frameworks, the CMA identified [REDACTED] framework contracts in which either Party bid. Of these [REDACTED] contracts, the Parties both submitted an offer for [REDACTED] frameworks.

- (a) In [REDACTED] cases, either Jacobs or Wood Nuclear did not qualify to be considered in the final stage.⁷⁷
- (b) [REDACTED]. [REDACTED] of these tenders resulted in five suppliers being selected, including both Parties.⁷⁸ For the other [REDACTED] tenders, six suppliers were selected, including both Parties.

224. Overall, the data for multi-supplier frameworks shows that the Parties compete only moderately with each other. Where the Parties have competed directly in the past, the data shows that they have either both

⁷⁷ For one of the contracts (Sellafield Ltd Operation Site Works framework), each merging party bid together with another supplier: Jacobs bid with Shepley and Wood Nuclear (Amec at the time of the bid) bid with Interserve (together called One Aim).

⁷⁸ [REDACTED].

been unsuccessful or have been two of a range of suppliers ultimately selected.

- *Tenders within multi-supplier frameworks*

225. The NDA also submitted data on 85 contracts within multi-supplier frameworks for which the NDA could identify Jacobs or Wood Nuclear or both Parties as being on an associated multi-supplier framework. Within the context of existing multi-supplier frameworks that both Jacobs and Wood Nuclear were on, [X] contracts related to specific task orders were competed. Of these contracts, the Parties both submitted offers for the same task order in [X] instances. Wood Nuclear won eight of these task orders, with Jacobs [X] to Wood Nuclear [X] times. Jacobs won one of these task orders and Wood Nuclear came second in that tender.

226. The CMA considers that the bidding data for tenders within multi-supplier frameworks shows that Wood Nuclear and Jacobs were close competitors for the contracts that both of them competed for. The CMA also notes, however, that such competition is taking place between a set of pre-selected suppliers and follows earlier competitive processes to be selected for the framework in the first place. The available evidence indicates (as explained in paragraph 219 above) that several suppliers will continue to compete against the Parties to be admitted on to framework contracts post-Merger. Moreover, the CMA notes that the frameworks in relation to pre-existing contracts on which both Parties are present are due to expire relatively soon or have already expired.

- *Tenders for stand-alone contracts and single supplier frameworks*

227. The NDA provided data on [X] stand-alone contracts (including bids for single supplier frameworks) for which at least one of the Parties bid. The CMA identified only [X] instances where both Parties submitted offers and later both qualified to be considered in the final stage.

- (a) Both Parties submitted offers for Sellafield's Project and Programme Partners Lot 2 (**Sellafield PPP Lot 2**), which was ultimately won by Wood Nuclear. The contract relates to the provision of the following nuclear services: capital project delivery, EST services and PPM. This contract was significantly larger and longer than any other previous

decommissioning contract in the UK in terms of value (£[redacted]m) and duration (20 years). Jacobs was a close competitor to Wood Nuclear and only a very limited number of other competitors made it to the final stage [redacted]. [redacted].

- (b) Both Parties submitted offers for Sellafield Ltd Operation Site Works framework, which was ultimately won by Wood Nuclear. The contract value was far smaller than Sellafield PPP Lot 2 at c. £[redacted]m. The Parties competed with [redacted] other suppliers in the final stage ([redacted]), with each of the Parties bidding together with another supplier at that stage.
- (c) Both Parties submitted offers for Dounreay's Deplanting, Decommissioning and Demolition of the DMTR Facility, which was ultimately won by Cavendish (Babcock). The contract value was far smaller than the other two opportunities for which both Parties bid, at c. £[redacted]. [redacted] was ranked second, followed by [redacted], [redacted] and [redacted].

228. Overall, the CMA considers that the bidding data show that the Parties do not compete particularly closely in this frame of reference. Where the Parties have tended to compete for Civil Nuclear Decommissioning contracts in the past, they have typically competed against several other suppliers.

229. The Parties did compete closely in the final stages of the tender for Sellafield PPP Lot 2, which was a particularly high-value and longer-term contract. The CMA therefore particularly focussed on the competitive constraints that the Parties would face for that kind of contract, noting that such large contracts are, according to customers (as described at paragraph 87 below), unlikely to be frequently tendered in future.

Internal documents

230. While the Parties' internal documents show that the Parties frequently mention each other as competitors, the documents also mention several other competitors in the market for the supply of nuclear services for Civil Nuclear Decommissioning in the UK, including, most commonly, Cavendish, Atkins and AECOM.

231. For example:

- (a) A Jacobs internal document titled [REDACTED] mentions Atkins, Turner & Townsend, AMEC (Wood), Bechtel, AECOM, Costain and Mott Macdonald as competitors to Jacobs for this project.
 - (b) Another Jacobs internal document titled [REDACTED] mentions Atkins, AECOM, Wood Nuclear, Babcock, Mott MacDonald, Bechtel, KBR and Fluor as competitors to Jacobs for this project.
 - (c) A Wood Nuclear document titled [REDACTED] identifies AECOM, Ansaldo, Cavendish, Jacobs, James Fisher Nuclear and Nuvia as competitors to Wood Nuclear for the [REDACTED].
232. As regards the Sellafield PPP Lot 2 tender, evidence from the Parties' internal documents was mixed. For example:
- (a) One Jacobs document titled [REDACTED], provides estimated weightings of the main competitors across the requirements of the tender. [REDACTED].⁷⁹ This document shows that Jacobs viewed Wood Nuclear as a close competitor for the tender but [REDACTED] Atkins, Cavendish, Mott Macdonald, AECOM and Fluor, indicating that there were a number of strong alternative suppliers to the Parties for the project.
 - (b) On the other hand, one Wood Nuclear internal document mentions a 'small number of big players' in PPP and 'significant barriers to entry' based on 'technical capability, security, track record'.⁸⁰ Another Wood Nuclear document mentions only two competitors for the PPP project: Jacobs, which is described as a 'highly competent technical bidder' and Cavendish.⁸¹
233. Overall, while the Parties mention each other frequently in their internal documents (and there are limited indications of a particularly close competitive interaction), these documents broadly support the position that there are several other competitors in the overall market for the supply of nuclear services for Civil Nuclear Decommissioning in the UK.

⁷⁹ Jacobs Internal Document, [REDACTED], Jacobs response to s109 Notice dated 18 October 2019.

⁸⁰ Wood Nuclear Internal Document, [REDACTED], Wood Nuclear response to s109 Notice dated 15 November 2019.

⁸¹ Annex to Wood Nuclear's response to the CMA s109 Notice dated 18 October 2019, page 3.

Third party views

234. Some third parties indicated that the Parties are close competitors for the supply of nuclear services for Civil Nuclear Decommissioning in the UK and had competed particularly closely for the recent Sellafield PPP Lot 2 contract.
235. One third party submitted that both Parties are close competitors in Civil Decommissioning based on the type of nuclear services they offer. This third party further submitted that the Parties are considered to have strong supply chains, which enables them to fulfil larger and more elaborate contracts and differentiates them from other suppliers.⁸² The same third party also noted, on the other hand, that even though the number of suppliers in Civil Nuclear Decommissioning in the UK is declining, the supply chain is generally broad and relatively mature and that the Parties currently have two different skillsets in any case.⁸³
236. Competitors of the Parties were asked by the CMA to rate suppliers for the provision of nuclear services for Civil Nuclear Decommissioning. The views are summarised in **Table 2** below.

Table 2: The competitors' ratings of the Parties and other competitors

| | | Average score for each competitor (from 1 to 5)* |
|---|--|--|
| The Parties | Jacobs | [X] |
| | Wood Nuclear | [X] |
| Competitors that were noted as strong⁸⁴ | Babcock (including subsidiaries) | [X] |
| | SNC Lavalin Atkins | [X] |
| | AECOM | [X] |
| | Doosan | [X] |
| | Westinghouse | [X] |
| | Nuvia (Vinci Group) | [X] |
| | James Fisher Nuclear | [X] |
| | 10 other companies were mentioned once as strong | N/A |

Source: The Parties' competitors' response to the CMA's Questionnaire

* 5 being a very strong competitor and 1 not being a strong competitor

⁸² [X].

⁸³ [X].

⁸⁴ These include those cases where the competitor was given the score of 4 or 5 in the scale of 1 to 5 by at least one third party (with 1 being not a strong competitor and 5 being a very strong competitor).

237. Based on Table 2 above, Wood Nuclear is viewed by competitors as a strong competitor in Civil Decommissioning generally and Jacobs is also viewed as strong, albeit to a lesser degree. Other competitors, such as Babcock, Atkins, AECOM, Doosan and Nuvia, received similar scores to the Parties, indicating that there are a number of strong alternatives to the Parties.
238. However, the CMA also received a number of third-party concerns regarding the impact of the Merger in relation to the Sellafield PPP Lot 2 tender post-Merger and other contracts at Sellafield.
239. One third party submitted that the Parties were close competitors for the Sellafield PPP Lot 2 contract awarded in May 2019, as they are two of the most experienced suppliers in Civil Nuclear Decommissioning in the UK. Several third parties told the CMA that the Parties will become the largest supplier to Sellafield on various frameworks which would make it harder for other competitors to compete and may lead to the Parties significantly reducing the supply chain diversity at Sellafield due to the combined multi-supplier framework. One of these third parties stated that customers in the nuclear services sector in the UK are generally conservative and that, in such an environment, it can be difficult to convince customers to move away from the status quo.
240. On the other hand, third parties told the CMA that the PPP tender in Sellafield (including Sellafield PPP Lot 2) was a very specific tender. Those third parties explained that the Sellafield site is a particularly complex and hazardous site that must overcome complex engineering challenges in a constrained environment, unlike other expected Decommissioning projects in the UK.
241. Those third parties submitted that the Sellafield's PPP tender is a 20-year framework with a total value of £7 billion. It is a partnership of four winners of four Lots, one of which (PPP Lot 2) is a Design and Engineering Lot worth £1.5 billion.⁸⁵

⁸⁵ [X].

242. While the Parties competed particularly closely at the final stage of the Sellafield PPP Lot 2 tender (when [REDACTED]) the available evidence indicates that the Parties competed with a number of other suppliers at an earlier stage in the process (such as [REDACTED]) [REDACTED].
243. Third parties told the CMA that there are sufficient other capable competitors in the market, such as Cavendish, Atkins, AECOM and Nuvia, which would all have been capable of winning the Sellafield PPP Lot 2 tender.⁸⁶ In addition to those providers, third parties told the CMA that there is a number of other capable suppliers in the market, such as Mott Macdonald and Assystem. Third parties also generally submitted that, while experience is important, the Parties' Sellafield experience would not make it more difficult for other competitors to win future tenders.
244. Overall, the CMA believes that the third-party evidence indicates that the Parties are not particularly close competitors for Civil Nuclear Decommissioning in the UK and that there are numerous other suppliers with similar decommissioning capabilities to the Parties. While some third parties indicated that the Parties were close competitors for the Sellafield PPP Lot 2 tender (and the Parties did compete closely at the final stage of that tender) the available evidence indicates that a number of other suppliers ([REDACTED]) also had the capability to compete effectively for that tender.
245. Accordingly, while it appears to be unlikely that future tenders will be as large and complex as the Sellafield PPP Lot 2 tender, the CMA believes that the Merged Entity would continue to face sufficient competition for even this kind of contract post-Merger.

Conclusion on horizontal unilateral effects in Civil Nuclear Decommissioning in the UK

246. While the Parties' shares of supply are high (based on the CMA's estimates) with a significant increment the CMA believes that these shares of supply may overstate the Parties' position and may not be representative of the conditions of competition in this frame of reference in any case. The

⁸⁶ [REDACTED].

CMA has therefore accorded more weight to evidence of closeness of competition and alternative competitive constraints.

247. On the basis of the Parties' bidding data, internal documents and evidence from third parties, the CMA believes that the Parties are generally not close competitors for most Civil Nuclear Decommissioning contracts in the UK and that the Parties will be constrained by a significant number of credible competitors post-Merger.
248. While the Parties previously competed closely at the final stage of one particularly large and complex tender (Sellafield PPP Lot 2), the available evidence indicates that a number of other suppliers ([REDACTED]) also had the capability to compete effectively for that tender (and, in any case, that such large and complex tenders are unlikely to take place in future).
249. Accordingly, the CMA found that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the supply of nuclear services for Civil Nuclear Decommissioning in the UK.

The supply of nuclear services Other Civil Nuclear Projects in the UK

250. The supply of nuclear services to Other Civil Nuclear Projects relates to services provided by the Parties to Urenco, Springfields, universities, medical facilities and other civil projects. The supply of Other Civil Nuclear Projects also includes the provision of services related to Nuclear Fusion technology, as described in paragraph 30(d) above. These nuclear services include On-Site Activities, as well as EST services. Other Civil Nuclear services include, for instance, projects undertaken for Urenco's nuclear enrichment operations in Capenhurst and the Springfields nuclear fuel production plan managed by Westinghouse on behalf of the NDA.⁸⁷
251. The CMA assessed whether it is or may be the case that the Merger may be expected to result in an SLC in relation to horizontal unilateral effects in the supply of nuclear services for Other Civil Nuclear Projects in the UK.
252. In order to assess the likelihood of the Merger resulting in horizontal unilateral effects, the CMA considered:

⁸⁷ FMN, paragraph 101.

- (a) Shares of supply; and
- (b) Closeness of competition between the Parties and competitive constraints from alternative suppliers.

Shares of supply

253. As set out in paragraphs 86 and 87, because nuclear services are highly differentiated and demand is characterised by large and infrequent contracts, the CMA has considered shares of supply only as a broad potential indicator of the Parties' overall performance and has placed particular weight on evidence around closeness of competition and the strength of constraints from remaining competitors.
254. The CMA has considered shares of supply at the overall Segment level, as well as shares of supply further broken down by Activities within the Segment.

Shares of supply (overall Segment)

255. The Parties submitted that their combined share in the supply of nuclear services for Other Civil Nuclear Projects in the UK in 2018 was [20-30]% , with an increment of [0-5]% from Wood Nuclear.
256. The CMA has noted the limitations of the Parties' share estimates in paragraph 90. As described in paragraph 91, the CMA also compiled share of supply estimates for the Parties. In its assessment of shares of supply, the CMA relied on its own share estimates to a greater extent than those of the Parties but took into account that these estimates likely overstate the Parties' position.
257. According to the CMA's estimates, the Parties' combined share of supply in the supply of nuclear services for Other Civil Nuclear Projects Segment in the UK in 2018 was [30-40]%, with an increment of [0-5]% from Jacobs. The CMA also estimates that Babcock is a significant competitor to the Parties in Other Civil Nuclear projects, with a share of supply of [30-40]%.
258. Taking the CMA's estimates as the basis for assessment, the Parties' combined shares of supply in this frame of reference at the overall Segment level (ie taking all Activities together) is high but with only a limited increment being brought about by the Merger. The CMA also notes that its own estimate

of the Parties' combined share of supply might be overestimated. As is noted below, the Parties' shares tend not to be in the same Activities, suggesting that the Parties may have different focuses within the Segment. For the reasons explained above, the CMA considers these shares to be only a broad indicator of overall performance in the Segment and has attached greater weight to evidence on closeness of competition.

Shares of supply (further breakdown by Activity)

259. The Parties also submitted share of supply data for each of the specific Activities within this Segment. Based on these estimates:
- (a) the Parties overlap in EST with a combined share of supply of [10-20]%, with an increment of [0-5]% from Jacobs; and
 - (b) there are no overlaps in any other Activities.⁸⁸
260. With respect to the CMA's own share estimates, the data the CMA received were not sufficiently granular to calculate shares of supply for each Activity per Segment, and therefore the CMA's estimates are only available at the Segment level.
261. The Parties' estimates suggest that the Parties each have a small share of supply (and also a small overall presence) within specific Activities and limited increment (and therefore little change in market structure) being brought about by the Merger. However, the CMA recognises that these shares may be underestimated and has therefore put more weight on evidence relating to closeness of competition and alternative competitive constraints.

Closeness of competition and competitive constraints

The Parties' submissions

262. The Parties submitted that they are not particularly close competitors and compete with a range of suppliers for contracts in this market, including Bechtel, AECOM, KBR, Atkins, Mott MacDonald, Babcock, Fluor, Costain and

⁸⁸ Neither Party is active in Project Management; only Jacobs is active in On-Site Activities (with [30-40]%), and only Wood Nuclear is active in R&D/Lab with a share of supply of [0-5]%. See FMN, Annex 14(a), Table A.3.

Balfour Beatty.⁸⁹ The Parties also submitted that there are significant complementarities between them in relation to the Activities within this Segment.

Third party views

263. Third parties confirmed that the Parties are not close competitors in this Segment. One third party submitted that the Parties are not close competitors specifically in PPM and R&D/Lab Activities. Another third party submitted that the Parties compete to some extent only in EST, alongside other suppliers.⁹⁰
264. One customer submitted that it expects Jacobs and/or Wood Nuclear to have a full competency for Nuclear Fusion services in the future. The third party noted that the Parties' competencies in Nuclear Fusion contracts cover EST, On-Site Activities and R&D/Lab.
265. Third parties submitted that they expect numerous suppliers to compete with the Merged Entity in this market, such as Assystem, Bechtel, Atkins, Orano, Technicatome, Kepco, Framatome, TCS, Mott MacDonald, Babcock, AECOM, Arup, Mitie, Engie, Balfour Beatty, EDF Cyclife and BAE System.

The CMA's assessment

266. The CMA considers that the Parties are not close competitors in the supply of nuclear services for Other Civil Nuclear Projects in the UK. Wood Nuclear is not active in On-Site Activities, while Jacobs is not active in R&D/Labs and neither Party is active in PPM. The Parties only overlap with regard to EST services, in which the Parties' shares of supply are small based on the Parties' estimates. The CMA further considers that there are several other credible suppliers in this frame of reference, including for projects related to Nuclear Fusion, which will constrain the Merged Entity post-Merger.

Conclusion on Other Civil Nuclear Projects in the UK

267. For the reasons set out above, the CMA believes that although post-Merger the Parties' market position will be significant. However, there will be little change in market structure being brought about by the Merger. Moreover, the

⁸⁹ FMN, paragraph 242.

⁹⁰ [REDACTED].

Parties do not compete closely with each other and several large and capable competitors will remain within this frame of reference.

268. Accordingly, the CMA found that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the supply of nuclear services for Other Civil Nuclear Projects in the UK.

The supply of nuclear services for Nuclear Defence Weapon Infrastructures in the UK

269. The supply of nuclear services for Nuclear Defence Weapon Infrastructures includes, for instance, the design and build of new facilities, engineering design and radioactive material transport studies related to the AWE infrastructure.⁹¹
270. The CMA assessed whether it is or may be the case that the Merger may be expected to result in an SLC in relation to horizontal unilateral effects in the supply of nuclear services for Nuclear Defence Weapon Infrastructures in the UK.
271. In order to assess the likelihood of the Merger resulting in horizontal unilateral effects, the CMA considered:
- (a) Shares of supply; and
 - (b) Closeness of competition between the Parties and competitive constraints from alternative suppliers.

Shares of supply

272. As set out in paragraphs 86 and 87, because nuclear services are highly differentiated and demand is characterised by large and infrequent contracts, the CMA has considered shares of supply only as a broad potential indicator of the Parties' overall performance, and have placed particular weight on evidence around closeness of competition and the strength of constraints from remaining competitors.

⁹¹ FMN, paragraphs 105 and 106.

273. The CMA has considered shares of supply at the overall segment level, as well as shares of supply further broken down by Activities within the Segment.

Shares of supply (overall Segment)

274. The Parties submitted that in Nuclear Defence Weapon Infrastructures in the UK, their combined share of supply in 2018 was [0-5]%, with an increment of [0-5]% from Wood Nuclear. The CMA has noted the limitations of the Parties' share estimates in paragraph 90. As discussed in paragraph 91, the CMA also produced share of supply estimates for the Parties. In its assessment of shares of supply, the CMA relied on its own share estimates to a greater extent than those of the Parties but took into account that the CMA's estimates likely overestimate the Parties' shares.
275. According to the CMA's estimates, the Parties' combined share of supply at the overall Segment level (ie taking all Activities together) in Nuclear Defence Weapon Infrastructures in 2018 was [10-20]%, with an increment of [0-5]% from Wood Nuclear. The CMA also estimates that Babcock, SNC Lavalin Atkins and Costain, with shares of supply of [20-30]%, [20-30]% and [20-30]% respectively, had higher shares of supply in Nuclear Weapon Infrastructures in 2018 than the Parties' combined shares of supply.
276. Therefore, the CMA considers that the Parties' shares of supply in Nuclear Weapon Infrastructures services are small with a limited increment (and therefore little change in market structure) being brought about by the Merger. However, the CMA considers this only to be a broad indicator of overall performance in the Segment and has attached greater weight to evidence on closeness of competition.

Shares of supply (further breakdown by Activity)

277. The Parties also submitted share of supply data for each of the specific Activities within this Segment. These estimates indicated that the Parties do not overlap in any of the Activities in this Segment.⁹²

⁹² Only Wood Nuclear is active in EST, with a share of supply of [0-5]%. Neither Party is active in R&D/Lab. Only Jacobs is active and generated revenue in Project Management, with a share of supply of [10-20]%. Similarly, only Jacobs is active in On-Site Activities with a share of supply of [0-5]%. FMN, Annex 14(a), Table B.1b).

278. The CMA considers that the lack of overlap between the Parties may suggest that they are not close competitors to each other within the wider Segment. The CMA has considered further evidence on closeness of competition below.

Closeness of competition and competitive constraints

The Parties' submissions

279. The Parties submitted that they are not particularly close competitors and compete with a range of suppliers for contracts in this market, including NIS, Balfour Beatty, AECOM, Costain and Babcock, among others.⁹³ The Parties emphasised the existence of significant complementarities between them in relation to the Activities they cover in this market.⁹⁴

Third party views

280. Third parties confirmed that the Parties are not close competitors in this Segment overall. Customers indicated that the Parties are close competitors in the EST and in PPM Activities, but not in On-Site Activities and in R&D/Lab.⁹⁵ One third party submitted that the Merger would remove a supplier that could deliver 'multimillion' Design and Engineering contracts from the market. The CMA found, however, that the available evidence from third parties supports the position that there are several other players of comparable strength to the Parties in the market, including (at least) Babcock, Atkins, Mott MacDonald, AECOM, Costain, Laing O'Rourke, Morgan Sindall, Bilfinger, Baker Hicks, Fluor, Bechtel and Balfour Beatty.
281. The CMA therefore considers that there are several other credible suppliers in Nuclear Defence Weapon Infrastructures in the UK which will constrain the Merged Entity post-Merger.

Conclusion on Nuclear Defence Weapon Infrastructures in the UK

282. For the reasons set out above, the CMA believes that post-Merger the Parties' market position would not be significant, with limited change in market

⁹³ FMN, paragraph 267.

⁹⁴ FMN, paragraphs 261-267

⁹⁵ [36]. The CMA notes that, based on the Parties' turnover data, there was no overlap between them in respect of any Activities.

structure being brought about by the Merger. The Parties do not compete closely with each other and several capable competitors will remain within this frame of reference.

283. Accordingly, the CMA found that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the supply of nuclear services for Nuclear Defence Weapon Infrastructures in the UK.

The supply of nuclear services for Nuclear Defence Submarine Platforms in the UK

284. Nuclear services for Nuclear Defence Submarine Platform projects in the UK are provided to customers such as the SDO, the MOD, BAE Systems, Davenport Royal Dockyard Ltd (part of the Babcock Group) and Rolls Royce. Services for Nuclear Defence Submarine Platforms include, for instance, providing support to the operational classes of nuclear-powered submarines (Trafalgar, Astute and Vanguard) and the design and build of the next generation nuclear power plants for the Dreadnought Class of submarines that will replace older submarines.⁹⁶
285. The CMA assessed whether it is or may be the case that the Merger may be expected to result in an SLC in relation to horizontal unilateral effects in the supply of nuclear services for Nuclear Defence Submarine Platforms in the UK.
286. In order to assess the likelihood of the Merger resulting in horizontal unilateral effects, the CMA considered:
- (a) Shares of supply; and
 - (b) Closeness of competition between the Parties and competitive constraints from alternative suppliers.

Shares of supply

287. As set out in paragraphs 86 and 87 because nuclear services are highly differentiated and demand is characterised by large and infrequent contracts,

⁹⁶ FMN, paragraph 112.

the CMA has considered shares of supply only as a broad potential indicator of the Parties' overall performance, and has placed particular weight on evidence around closeness of competition and the strength of constraints from remaining competitors.

288. The CMA has considered shares of supply at the overall segment level, as well as shares of supply further broken down by Activities within the Segment.

Shares of supply (overall Segment)

289. The Parties submitted that in the supply of nuclear services for Nuclear Defence Submarine Platforms in the UK their combined share of supply in 2018 was [0-5]%, with an increment of [0-5]% from Jacobs.
290. The CMA has noted the limitations of the Parties' share estimates in paragraph 90. As discussed in paragraph 91, the CMA also produced share of supply estimates for the Parties. In its assessment of shares of supply, the CMA relied on its own share estimates to a greater extent than those of the Parties but took into account that the CMA's estimates likely overestimate the Parties' shares.
291. According to the CMA's estimates, the Parties' combined share of supply in the supply of nuclear services for Nuclear Defence Submarine Platforms in 2018 was [40-50]%, with an increment of [0-5]% from Jacobs. The CMA estimates also suggest that the two closest largest competitors in Nuclear Defence Submarine Platforms in 2018 are the Babcock Group and Atkins, with shares of [10-20]%, and [10-20]%, respectively.
292. Taking the CMA's estimates as the basis for assessment, the Parties' combined share of supply in Nuclear Submarine Platforms services (taking all Activities together) is at a level that would typically give rise to prima facie concerns. However, the Merger gives rise to a limited increment, and in any event (for the reasons explained above), the CMA's shares are likely to be overestimated. These estimates show that there are some substantial competitors that are significantly larger than Jacobs. Of particular relevance, as is set out below, the Parties do not currently overlap in respect the Activities in which they are active, which suggests that the potential scope for the Merger to have an impact on competition is even smaller than the already limited increment might suggest.

Shares of supply (further breakdown by Activity)

293. The Parties also submitted share of supply data for each of the specific Activities within this Segment. These estimates indicated that the Parties do not overlap in any of the Activities in this Segment.⁹⁷
294. The CMA considers that the lack of overlap between the Parties may suggest that they are not close competitors to each other within the wider Segment. The CMA has considered further evidence on closeness of competition below.

Closeness of competition and competitive constraints

The Parties' submissions

295. The Parties submitted that they do not frequently compete in this market and that Babcock, SNC Lavalin Atkins, Mott MacDonald, Assystem and others would remain effective competitive constraints post-Merger.⁹⁸ The Parties also submitted that the main customer in this market is the MOD, which will remain in a strong position to source nuclear services from competitive tenders (as will BAE Systems, Rolls Royce and Babcock Marine).⁹⁹

Third party views

296. A number of third parties told the CMA that Wood Nuclear was not a close competitor to Jacobs in this market.¹⁰⁰
297. Two third parties expressed concerns about the impact of the Merger in this market saying it would lead to fewer choices.¹⁰¹ The CMA found, however, that the available evidence from third parties supports the position that there are several other players of comparable strength to the Parties in the market, including (at least) such as Atkins, Babcock, AECOM, Bechtel, Mace, Rolls Royce, Assystem, James Fisher Nuclear, BAE Systems and BMT. The third parties that expressed concerns about the Merger also mentioned four other

⁹⁷ Only Wood Nuclear is active in EST, with a share of supply of [5-10]%. Only Jacobs is active and generated revenues in Project Management, with a share of supply of [0-5]%. Neither Party is active in On-Site Activities. Only Wood Nuclear is active and generated revenues in R&D/Lab, with a share of supply of [5-10]%. FMN, Annex 14(a), Table B.2a.

⁹⁸ FMN, paragraph 276.

⁹⁹ FMN, paragraph 277.

¹⁰⁰ [REDACTED].

¹⁰¹ [REDACTED].

suppliers in addition to the Parties that would be able to provide the same nuclear services as the Parties.

298. The CMA therefore considers that there are several other credible suppliers in Nuclear Defence Submarine Platforms in the UK which will constrain the Merged Entity post-Merger.

Conclusion on Nuclear Defence Submarine Platforms in the UK

299. For the reasons set out above, the CMA believes that post-Merger, although the Parties' shares of supply would be high, but relatively little change in market structure would be brought about by the Merger. The Parties do not overlap in the same Activities and therefore are unlikely to compete closely with each other, and several capable competitors will remain within this frame of reference.
300. Accordingly, the CMA found that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the supply of nuclear services for Nuclear Defence Submarine Platforms in the UK.

The supply of nuclear services for Nuclear Defence Submarine Infrastructures in the UK

301. The Parties provide nuclear services for Nuclear Defence Submarine Infrastructures projects in the UK for customers such as the MOD, BAE Systems and Rolls Royce including providing support to facilities of BAE Systems in Barrow-in-Furness and Rolls Royce in Derby.
302. The CMA assessed whether it is or may be the case that the Merger may be expected to result in an SLC in relation to horizontal unilateral effects in the supply of nuclear services for Nuclear Defence Submarine Infrastructures in the UK.
303. In order to assess the likelihood of the Merger resulting in horizontal unilateral effects, the CMA considered:
- (a) Shares of supply; and

- (b) Closeness of competition between the Parties and competitive constraints from alternative suppliers.

Shares of supply

304. As set out in paragraphs 86 and 87 because nuclear services are highly differentiated and demand is characterised by large and infrequent contracts, the CMA has considered shares of supply only as a broad potential indicator of the Parties' overall performance, and has placed particular weight on evidence around closeness of competition and the strength of constraints from remaining competitors.
305. The CMA has considered shares of supply at the overall segment level, as well as shares of supply further broken down by Activities within the Segment.

Shares of supply (overall Segment)

306. The Parties submitted that their combined shares of supply in Nuclear Defence Submarine Infrastructures in the UK in 2018 was [30-40]%, with an increment of [0-5]% from Wood Nuclear.
307. The CMA has noted the limitations of the Parties' share estimates in paragraph 90. As discussed in paragraph 91, the CMA also produced share of supply estimates for the Parties. In its assessment of shares of supply, the CMA relied on its own share estimates to a greater extent than those of the Parties but took into account that the CMA's estimates likely overestimate the Parties' shares.
308. The CMA estimates that the Parties' combined share of supply in the supply of nuclear services for Nuclear Defence Submarine Infrastructures in 2018 was [60-70]%, with an increment of [0-5]% from Wood Nuclear. The CMA also estimates that two other competitors in Nuclear Submarine Infrastructures in 2018 are Mott Macdonald and Nuvia, with shares of supply of [10-20%], and [10-20%] respectively.
309. Taking the CMA's estimates as the basis for assessment, the Parties' combined shares of supply at the overall Segment level (ie taking all Activities together) are at a level that would typically give rise to prima facie concerns, albeit with a limited increment. The share estimates also show other competitors with moderate shares of greater significance than Wood Nuclear.

For the reasons explained above, the CMA considers shares of supply to be only a broad indicator of overall performance in the Segment and has attached greater weight to evidence on closeness of competition.

Shares of supply (further breakdown by Activity)

310. The Parties also submitted share of supply data for each of the specific Activities within this Segment. These estimates suggested that:
- (a) the Parties' overlap in EST, where they have a combined share of supply is [30-40]%, with an increment of [0-5]% from Jacobs; and
 - (b) there are no overlaps in other Activities.¹⁰²
311. With respect to the CMA's own share estimates, the data the CMA received were not sufficiently granular to calculate shares of supply for each Activity per Segment, and therefore the CMA's estimates are only available at the Segment level.
312. The Parties' estimates suggest that the Parties have a high share of supply (and therefore a significant overall presence) within the EST Activity in this Segment, but that there is a limited increment (and therefore little change in market structure) brought about by the Merger. However, the CMA recognises that these shares may be underestimated and has therefore put more weight on evidence relating to closeness of competition and alternative competitive constraints.

Closeness of competition and competitive constraints

The Parties' submissions

313. The Parties submitted that in the wider market for the supply of nuclear services for Nuclear Defence Submarines they do not frequently compete and that the Parties consider Atkins, Babcock, Assystem, Strathclyde and Mott Macdonald to be competitive constraints in EST.¹⁰³ The Parties submitted

¹⁰² Only Jacobs is active and generated revenues in Project Management, with a share of supply of [50-60]%. Similarly, only Jacobs is active and generated revenues in On-Site Activities, with a share of supply of [10-20]%. Only Wood Nuclear is active and generated revenues in R&D/Lab, with a share of supply of [0-5]%. FMN, Annex 14(a), Table B.2a).

¹⁰³ FMN, Table 15(j)(i) and paragraph 274.

that the main customer in this market is the MOD, which will remain in a strong position to source nuclear services from competitive tenders (as will BAE Systems, Rolls Royce and Babcock Marine).¹⁰⁴

Third party views

314. A number of third parties submitted that Wood Nuclear was not a close competitor to Jacobs, and another said that the Parties competed only moderately.¹⁰⁵ Two third parties submitted that Jacobs and Wood Nuclear are close competitors for the EST Activity, as they both offer similar services with relevant domain experience, but one of these third parties also mentioned Atkins, Assystem and AECOM as alternative suppliers for EST.¹⁰⁶
315. Two third parties expressed concerns about the impact of the Merger in this market, stating that it would lead to less choice for customers. The CMA found, however, that the available evidence from third parties supports the position that there are several other players of comparable strength to the Parties in the market, including (at least) Atkins, Babcock, AECOM, Bechtel, Costain, Veolia, Assystem, Arup, Mott MacDonald, Laing O'Rourke, Morgan Sindall, Balfour Beatty and Lockheed Martin. Even the third parties that expressed concerns about the Merger also named four other suppliers in addition to the Parties that would be able to provide the same nuclear services.¹⁰⁷
316. The CMA therefore considers that there are several other credible suppliers in Nuclear Defence Submarine Infrastructures in the UK which will constrain the Merged Entity post-Merger.

Conclusion on Nuclear Defence Submarine Infrastructures in the UK

317. For the reasons set out above, the CMA believes that post-Merger although the Parties' shares of supply would be high, the increment would be small, with relatively little change in market structure being brought about by the Merger. The Parties do not compete closely with each other and several capable competitors will remain within this frame of reference.

¹⁰⁴ FMN, paragraph 277.

¹⁰⁵ [REDACTED].

¹⁰⁶ [REDACTED].

¹⁰⁷ [REDACTED].

318. Accordingly, the CMA found that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the supply of nuclear services for Nuclear Defence Submarine Infrastructures in the UK.

Conclusion on horizontal unilateral effects

319. For the reasons set out above, the CMA found that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to:

- (a) Supply of nuclear services for Civil Nuclear New Build in the UK;
- (b) Supply of nuclear services for Civil Nuclear Maintenance in the UK;
- (c) Supply of nuclear services for Civil Nuclear Decommissioning in the UK;
- (d) Supply of nuclear services for Other Civil Nuclear Projects in the UK;
- (e) Supply of nuclear services for Nuclear Defence Weapon Infrastructures in the UK;
- (f) Supply of nuclear services for Nuclear Defence Submarine Platforms in the UK; and
- (g) Supply of nuclear services for Nuclear Defence Submarine Infrastructures in the UK.

Barriers to entry and expansion

320. Entry, or expansion of existing firms, can mitigate the initial effect of a merger on competition, and in some cases may mean that there is no SLC. In assessing whether entry or expansion might prevent an SLC, the CMA considers whether such entry or expansion would be timely, likely and sufficient.¹⁰⁸
321. The Parties submitted that there are no particular barriers to entry in the UK market for operators that are active in the same nuclear services product

¹⁰⁸ [Merger Assessment Guidelines](#), from paragraph 5.8.1.

market outside the UK. The Parties provided examples of nuclear service providers that have successfully entered the UK market.¹⁰⁹ The Parties also submitted that there are no significant barriers for existing competitors in the UK in a Segment to enter, at any time, into competition in any of the Segments in which they are not yet present.¹¹⁰

322. The CMA has received evidence from third parties with regard to barriers to entry and expansion. A number of third parties indicated that there are barriers to entry in the nuclear sector in the UK including customer requirements for previous experience in the nuclear sector, UK SQEP requirements and security requirements, as well the need to have a local presence. Some third parties told the CMA that it is comparatively easier to enter the Civil Nuclear sector than the Nuclear Defence sector. A number of third parties also indicated that there are barriers to entry between Segments, including customer requirements for Segment-specific experience and the existence of Segment-specific security requirements.
323. While the CMA considers that this evidence is consistent with the existence of barriers to entry and expansion in the Civil Nuclear and Nuclear Defence sectors generally and between Segments within those sectors, the CMA also considers, for the reasons set out above, that the Merger does not give rise to competition concerns on any basis.

Countervailing buyer power

324. The Parties submitted that customers in the nuclear sector have substantial buyer power due to their size and experience of managing suppliers. However, the CMA has not had to conclude on countervailing buyer power as the Merger does not give rise to competition concerns on any basis.

Third party views

325. The CMA contacted customers and competitors of the Parties. A limited number of customers raised concerns regarding the removal of one player in the UK nuclear services market in relation to the Civil Nuclear Maintenance and consolidation of the market in relation to Civil Nuclear New Build. Some

¹⁰⁹ FMN, paragraph 288 and 305.

¹¹⁰ FMN, paragraph 288.

competitors raised concerns that the Merged Entity would have a very strong position in certain frames of reference or in the nuclear sector more generally.

326. Third party comments have been taken into account where appropriate in the competitive assessment above.

Decision

327. Consequently, the CMA does not believe that it is or may be the case that the Merger may be expected to result in an SLC within a market or markets in the United Kingdom.

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

Colin Raftery
Senior Director, Mergers
Competition and Markets Authority
4 March 2020

END NOTES

ⁱ The CMA notes that HPC GenCo should refer to NNB Generation Company (HPC) Limited.

ⁱⁱ The CMA notes that SZC GenCo should refer to NNB Generation Company (SZC) Limited.

ⁱⁱⁱ The CMA notes that GNS is the 'requesting party' for the Generic Design Assessment process; the company developing the nuclear power station at Bradwell B is Bradwell Power Generation Company Limited.