

Completed acquisition by CHC Group LLC of Offshore Helicopter Services UK Limited, Offshore Services Australasia Pty Ltd, and Offshore Helicopter Services Denmark A/S

Decision on relevant merger situation and substantial lessening of competition

ME/6932/21

The CMA's decision on reference under section 22(1) of the Enterprise Act 2002 given on 18 November 2021. Full text of the decision published on 23 December 2021.

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. On 31 August 2021, CHC Group LLC (**CHC**) purchased the entire issued share capital of Offshore Helicopter Services UK Limited¹ (**Babcock Offshore UK**), Offshore Services Australasia Pty Ltd² (**Babcock Offshore Australia**) and Offshore Helicopter Services Denmark A/S³ (**Babcock Offshore Denmark**), (together, the **Fisher Business**) from Babcock International Group plc (**Babcock**) (the **Merger**). CHC and the Fisher Business are referred to as the **Parties** and, for statements referring to the future, as the **Merged Entity**.
2. The Competition and Markets Authority (**CMA**) believes that it is or may be the case that each of CHC and the Fisher Business is an enterprise; that these enterprises have ceased to be distinct as a result of the Merger; and

¹ Company number 04278474; previously named Babcock Mission Critical Services Offshore Limited and renamed on 16 September 2021.

² Australian company number 141024606; previously named Babcock Offshore Services Australasia Pty and renamed on 22 September 2021.

³ CVR number 41526211; previously named Babcock Denmark A/S and renamed on 1 September 2021.

that the turnover test is met. The four-month period for a decision has not yet expired. The CMA therefore believes that it is or may be the case that a relevant merger situation has been created.

3. The Parties overlap in the supply of helicopter services to transport crews to and from offshore oil and gas (**O&G**) platforms (**O&G Offshore Transportation Services**) in the UK.
4. As part of its counterfactual assessment, the CMA investigated whether the Fisher Business would have exited the market absent the Merger. Whilst Babcock has given serious consideration to closing the Fisher Business since 2017, the available evidence indicates that exit was only one of several different options being considered by Babcock at the time when CHC approached it about a possible acquisition of the Fisher Business. As such, the CMA has not seen compelling evidence that the Fisher Business would have exited the market absent the Merger.
5. As part of its counterfactual assessment, the CMA also considered whether the Fisher Business is a diminished competitive force because of a 'manage for value' strategy that was implemented following a strategic review of the business by Babcock. However, the CMA found that the evidence on whether the manage for value strategy had a significant impact on competition between the Parties in the UK is mixed: while the Fisher Business sought to focus on contribution to cost rather than operating profit and limiting additional investment, the CMA has also seen evidence from a variety of sources indicating that the Fisher Business is continuing to compete in the market and is still an important constraint on CHC and other competitors. As such, given the counterfactual focuses only on significant changes (not related to the Merger) affecting competition between the merging firms, the CMA assessed the Merger against the pre-Merger conditions of competition and has taken account of the impact of the manage for value strategy in its competitive assessment.
6. The Parties overlap in the supply of O&G Offshore Transportation Services in the UK. The CMA found that suppliers capable of providing Search and Rescue (**SAR**) services should not form part of the frame of reference for the competitive assessment based on a lack of supply-side and demand-side substitutability. The CMA considered that the product scope should not be segmented by helicopter type, as the majority of customers told the CMA they could use more than one helicopter type for their requirements and all suppliers in the UK operate a range of helicopter types. The CMA also found that all current UK suppliers are able to bid and win contracts across the UK with their respective helicopter offerings. The CMA therefore assessed the

impact of the Merger in the supply of O&G Offshore Transportation Services in the UK.

7. In order to assess the likelihood of the Merger resulting in horizontal unilateral effects, the CMA considered evidence relating to the current market structure, tender data, the impact of Babcock's manage for value strategy, the competitive constraint provided by other UK suppliers and the prospect of potential entry. The CMA found the Merger raises significant competition concerns as a result of horizontal unilateral effects in the UK supply of O&G Offshore Transportation Services, in particular for the following reasons:
- (a) The supply of UK O&G Offshore Transportation Services is relatively undifferentiated and concentrated, with only four suppliers (the Parties, Bristow and NHV) (**the incumbents**). The Parties' combined share of supply post-Merger is high, indicating that the Parties are likely to pose an important competitive constraint on one another.
 - (b) Tender data shows significant competitive interaction between all four incumbents, including the Parties. Babcock Offshore UK and CHC frequently bid against each other; CHC has lost a number of contracts to Babcock Offshore UK; and where Babcock Offshore UK wins, CHC often comes second. The tender data, the Parties' internal documents and evidence from third parties show that the Parties pose an important competitive constraint on one another, and the majority of customers have expressed concerns in relation to the Merger.
 - (c) The evidence available to the CMA indicates that Babcock Offshore UK is continuing to bid for contracts, despite adopting a 'manage for value' strategy.ⁱ Although the evidence suggests that Babcock Offshore UK is cautious about investments and selective about what contracts it bids for, the other incumbents also do not bid for all contracts. The CMA considers that Babcock Offshore UK's internal strategic documents refer to increasing market share and growing the UK business, suggesting that it is an active competitor. The majority of third parties have not identified Babcock Offshore UK as a weak competitor because of its current strategy, nor have they generally identified a change in Babcock Offshore UK's strength as a competitor.
 - (d) Whilst both Bristow and NHV provide a constraint on the Parties, this is not sufficient to prevent a realistic prospect of a substantial lessening of competition given the level of concentration in the market. There are only four suppliers bidding for contracts and not every supplier bids for every opportunity. On average, there are only three bidders per tender as a result of all suppliers bidding somewhat selectively.

- (e) The evidence gathered to date indicates that the threat of entry does not act as a material competitive constraint on the current incumbent UK suppliers of O&G Offshore Transportation Services.
8. The CMA believes barriers to entry are high in the supply of O&G Offshore Transportation Services. The CMA has not seen evidence of entry that would be timely, likely and sufficient in response to the Merger. As such, the CMA believes that entry or expansion would not be sufficient to prevent a realistic prospect of a substantial lessening of competition (**SLC**) as a result of the Merger.
9. The CMA therefore believes that the Merger gives rise to a realistic prospect of a SLC as a result of horizontal unilateral effects in the supply of O&G Offshore Transportation Services in the UK.
10. The CMA is therefore considering whether to accept undertakings under section 73 of the Enterprise Act 2002 (the **Act**). CHC has until 25 November 2021 to offer an undertaking to the CMA that might be accepted by the CMA. If no such undertaking is offered, then the CMA will refer the Merger pursuant to sections 22(1) and 34ZA(2) of the Act.

ASSESSMENT

Parties

11. CHC is a limited liability company incorporated in the Cayman Islands, headquartered in Texas (USA), and operates helicopter services in various countries, including O&G Offshore Transportation Services in the UK.⁴ CHC has a number of shareholders, referred to as ‘common unit holders’. CHC’s worldwide turnover in 2020 was approximately £608 million, of which approximately £118 million was generated in the UK.⁵
12. The Fisher Business was owned by Babcock prior to completion of the Merger. The Fisher Business operates O&G Offshore Transportation Services internationally, with Babcock Offshore UK acting as its UK arm. Babcock is listed on the London Stock Exchange, and its principal activities relate to the supply of critical and complex engineering services in the defence, emergency services and civil nuclear sectors.⁶

⁴ Final Merger Notice submitted to the CMA on 22 September 2021 (**FMN**), paragraph 2.1.

⁵ FMN, paragraph 6.1.

⁶ FMN, paragraph 2.5.

13. The turnover of the Fisher Business in 2020 was approximately £147 million worldwide, of which approximately £102 million was generated by Babcock Offshore UK in the UK.⁷

Transaction

14. Pursuant to a share purchase agreement dated 27 February 2021, CHC has acquired Babcock's O&G Offshore Transportation Services business in the UK, Australia and Denmark, through the acquisition of the entire issued share capital of Babcock Offshore UK, Babcock Offshore Australia and Babcock Offshore Denmark.⁸ The transaction completed on 31 August 2021.
15. The Parties informed the CMA that the Merger was also notified to the Australian Competition and Consumer Commission.

Procedure

16. The Merger was considered at a Case Review Meeting.⁹

Jurisdiction

17. In relation to completed mergers, the Act requires the CMA to assess whether it is or may be the case that two or more enterprises have ceased to be distinct and either the UK turnover of the target exceeds £70 million (the turnover test) or the merger results in a combined share of supply or acquisition of goods or services of any description of 25% or more (the share of supply test).¹⁰

Enterprises Ceasing to be distinct

18. Each of CHC and the Fisher Business is an enterprise.
19. The Fisher Business comprises Babcock Offshore UK, Babcock Offshore Denmark and Babcock Offshore Australia. CHC acquired Babcock Offshore Australia via a wholly owned subsidiary (Lloyd Helicopter Services Pty Ltd). CHC acquired Babcock Offshore UK (and, indirectly, Babcock Offshore Denmark) via EEA Helicopter Operations B.V. (**EHOB**).¹¹ EHOB is jointly

⁷ FMN, paragraph 6.2.1, 6.2.2 and Babcock Offshore UK's Accounts for year ended 31 March 2020.

⁸ FMN, paragraph 2.2 and 2.8.

⁹ See [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2), December 2020, p. 46 and from paragraph 9.28.

¹⁰ Sections 22 and 23 of the Act.

¹¹ EHOB has directly acquired Babcock Offshore UK and has indirectly acquired Babcock Offshore Denmark via CHC Denmark ApS (a wholly owned subsidiary of EHOB).

owned by Mr Levy and CHC, with Mr Levy owning [REDACTED]% of EHOB's shares and CHC owning [REDACTED]%.¹² CHC explained that Mr Levy has a majority shareholding in EHOB for regulatory reasons.¹³

20. For the purposes of deciding whether CHC and the Fisher Business have been brought under common ownership or control and therefore ceased to be distinct under section 26 of the Act, the CMA believes it appropriate to treat CHC and Mr Levy as a single person.¹⁴ This is by virtue of them being associated with one another by acting together to exercise control of EHOB and to secure control of an enterprise and its assets by acquiring Babcock Offshore UK and Babcock Offshore Denmark via EHOB.¹⁵ The CMA therefore believes it is appropriate for the purposes of its assessment of the Merger, to treat CHC as including Mr Levy and EHOB. The CMA believes that the Merger may therefore have resulted in CHC (as a single person) and the Fisher Business ceasing to be distinct.
21. Two common unit holders of CHC, namely Bain Capital Credit, LP (**Bain**) and Cross Ocean Partners Management LP (**Cross Ocean**), have a right to appoint [REDACTED] voting member to CHC's board and have a current shareholding (or the prospect of obtaining a shareholding upon the exercise of warrants already held¹⁶) of over 15%.^{17, ii} They are also [REDACTED]. The CMA therefore considers that these two common unit holders have, at least on a 'may be the case' basis, the ability to exercise material influence over CHC and therefore have also acquired material influence over the Fisher Business as a result of

¹² The CMA believes Mr Levy has legal control over EHOB while CHC has at least material influence as a result of *inter alia* its significant minority shareholding, right to appoint [REDACTED] board member out of [REDACTED], involvement in the development of EHOB's business plan and budget ([REDACTED]), and the [REDACTED] arrangements between CHC and Mr Levy (namely [REDACTED] described in footnote 14 below).

¹³ Email from CHC to CMA, 9 September 2021, which confirms that Mr Levy's controlling interest in EHOB is for regulatory purposes, namely the European air safety regulatory framework which required any aviation licence holder to be majority owned and controlled by an EU national. This is further corroborated by [REDACTED], which provides that [REDACTED] (Annex 104 to the FMN, [REDACTED]). Mr Levy's role is [REDACTED] (Annex 105 to the FMN, [REDACTED]). This is part of a [REDACTED] (Annex 107 to the FMN, [REDACTED]).

¹⁴ Pursuant to section 127(1)(a) and 127(4)(d) of the Act.

¹⁵ The CMA notes that it is only treating CHC and Mr Levy as associated persons for the purposes of its assessment of the Merger, and the CMA does not dispute that Mr Levy has legal control over EHOB and, indirectly, each of Babcock Offshore UK and Babcock Offshore Denmark for any regulatory purposes. The CMA also understands that neither Ivan Levy nor [REDACTED] provide any other services to any suppliers of helicopter services in the UK (Schedule 2 paragraph 23 to the FMN), nor is [REDACTED].

¹⁶ In connection with the Merger and in light of its existing credit facility [REDACTED], CHC has entered into refinancing arrangements [REDACTED] (the **Refinancing Arrangements**). As part of these Refinancing Arrangements, [REDACTED].

¹⁷ As at completion of the Merger, Bain owned [REDACTED]% of CHC's common units and Cross Ocean owned [REDACTED]%, but this could increase to around [REDACTED]% and [REDACTED]% respectively if [REDACTED]. The CMA notes that it is possible that different shareholdings could result for Bain and Cross Ocean and for a number of other common unit holders depending on the extent to which [REDACTED]. As such, it is possible that other common unit holders could acquire different levels of influence over CHC and therefore the Fisher Business at different points. However, this is not possible to predict in advance.

the Merger.¹⁸ As such, the CMA believes that Bain and Cross Ocean have also ceased to be distinct with the Fisher Business.

22. However, the CMA notes that these common unit holders are not [redacted] if they hold any equity interest in a competitor of CHC,¹⁹ and CHC has confirmed that, to the best of its knowledge, Bain and Cross Ocean do not hold any such interests.²⁰ As the CMA does not believe the acquisition of material influence by these common unit holders over the Fisher Business impacts its competitive assessment of the Merger, this is not considered further in this decision.

The turnover test

23. The UK turnover of the Fisher Business exceeds £70 million, so the turnover test in section 23(1)(b) of the Act is satisfied.

Conclusion

24. For the reasons set out above, the CMA believes that it is or may be the case that a relevant merger situation has been created.
25. The Merger completed on 31 August 2021. The four-month deadline for a decision under section 24 of the Act is 31 December 2021.
26. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 24 September 2021 and the statutory 40 working day deadline for a decision is therefore 18 November 2021.

Counterfactual

27. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual). The CMA will generally conclude on the counterfactual conditions of competition broadly – that is pre-merger conditions of competition (in the case of completed transactions), conditions of stronger competition or conditions of weaker competition.²¹
28. Babcock submitted that the relevant counterfactual is that it would have sought to find another buyer for the Fisher Business and, in the absence of

¹⁸ Applying the guidance in [Mergers: Guidance on the CMA's jurisdiction and procedure \(2020 - revised guidance\)](#). In particular, the CMA is placing weight on these common unit holders' ability to exercise [redacted] to obtain further shares, their board membership and their [redacted] arrangements with CHC through [redacted] which may confer additional influence on these common unit holders.

¹⁹ FMN, footnote 157.

²⁰ Parties internal document, Annex 97 to the FMN, 2021.07.30 CHC_Babcock RFI1 response, paragraph 12.1.

²¹ [Merger Assessment Guidelines](#), paragraph 3.9.

such a buyer, would have ultimately closed it.²² Babcock submitted that [redacted].²³

29. Babcock submitted that in the interim period, it would have sought to minimise losses by continuing to pursue a ‘manage for value’ strategy, which would have limited the Fisher Business’ participation in future tenders.²⁴

Exiting Firm

30. In light of Babcock’s submissions, the CMA has assessed whether, absent the Merger, the Fisher Business would have exited the market. Where a merger firm may exit for strategic rather than financial reasons (as has been submitted by Babcock here), the CMA must be satisfied that the business would have ultimately exited for strategic reasons unrelated to the transaction in question.²⁵ In forming a view on an exiting firm scenario, the CMA uses the following framework of cumulative conditions:

(a) the firm is likely to have exited (through failure or otherwise) (**Limb 1**); and, if so

(b) there would not have been an alternative, less anti-competitive purchaser for the firm or its assets to the acquirer in question (**Limb 2**).²⁶

31. For the CMA to accept an exiting firm argument at Phase 1, it must see compelling evidence that it was inevitable that these conditions would be met.²⁷

32. In relation to Limb 1, Babcock submitted that it has wished for some time to end its exposure to a sector that has been in serious decline for several years, with ‘no real prospect of improvement in the foreseeable future’.²⁸ The Parties submitted that there was ‘little doubt’ that Babcock was determined to exit the O&G Offshore Transportation Services market and noted that Babcock had publicly confirmed its intention to withdraw from the market on several occasions.²⁹ Although the Parties recognised that Babcock had considered various options for the Fisher Business alongside exit, the Parties submitted

²² FMN, paragraph 7, Introduction and executive summary.

²³ Parties’ response to the CMA Issues Letter, 28 October 2021, paragraph 1.6.1.

²⁴ FMN, paragraph 7, Introduction and executive summary. More details of the ‘manage for value’ strategy are set out at paragraph 11 and ff.

²⁵ [Merger Assessment Guidelines](#), paragraph 3.29.

²⁶ [Merger Assessment Guidelines](#), paragraph 3.21.

²⁷ [Merger Assessment Guidelines](#), paragraph 3.23.

²⁸ FMN, paragraph 7, Introduction and executive summary.

²⁹ Parties’ response to the CMA Issues Letter, 28 October 2021, paragraph 2.4.

that Babcock dismissed these other options and that a decision was made to pull out of the market (either through sale or closure).³⁰

33. The Parties submitted that at the time that CHC approached Babcock about a possible acquisition of the Fisher Business, [REDACTED].³¹ They referred to a number of Babcock's internal strategic documents to support their submissions, including a document that calculated that continuing to run the business 'as is' would [REDACTED] per year, whereas an orderly and complete exit would cost £[REDACTED] in total.³²
34. The CMA notes that several of the public statements and internal strategic documents referred to by the Parties in support of their exiting firm submissions were made or prepared after the Merger was already in contemplation, and therefore are of limited weight in considering whether the Fisher Business would have exited the market absent the Merger.³³ CHC initially expressed an interest in the Fisher Business in November 2019, and first submitted a non-binding offer for the Fisher Business in March 2020.³⁴ Examples relied on by Babcock in support of its submissions include, but are not limited to, public statements made by Babcock in May, August and September 2021.³⁵
35. Moreover, contrary to the Parties' submissions,³⁶ none of the internal strategic documents provided to the CMA demonstrate that a decision to exit had actually been taken by Babcock at the time when CHC approached Babcock about a potential acquisition, or that the Fisher Business was [REDACTED]. Although the CMA accepts that serious consideration had been given to exit, the internal strategic documents show that exit was only one of several different options being considered by Babcock at the time.³⁷ For example, in an internal strategic document dated [REDACTED], exiting the O&G Offshore Transportation Services market is explored alongside three other strategic options, [REDACTED].³⁸

³⁰ Parties' response to the CMA Issues Letter, 28 October 2021, paragraph 2.5.

³¹ Parties' response to the CMA Issues Letter, 28 October 2021, paragraph 2.5

³² Parties' response to the CMA Issues Letter, 28 October 2021, paragraph 1.6.1; Counterfactual Submission, paragraph 2.6. Babcock's internal document, Annex 071 to the FMN, [REDACTED] and Annex 62 to the FMN [REDACTED], slides 6-7.

³³ *Merger Assessment Guidelines*, paragraph 3.24.

³⁴ Babcock's response to the CMA section 109 Notice of 22 July 2021. Counterfactual Submission, paragraph 2.6.

³⁵ Babcock's Counterfactual Submission, paragraph 4.3.

³⁶ Parties' response to the CMA Issues Letter, 28 October 2021, paragraph 2.5 and Babcock's Counterfactual Submission, paragraph 2.6.

³⁷ See Babcock's internal documents, Annex 071 to the FMN, [REDACTED], page 2 and Annex 62 to the FMN [REDACTED], slide 7.

³⁸ Babcock's internal document, Annex 71 to the FMN, [REDACTED], page 2, dated 20 November 2019. See also Annex 62 to the FMN [REDACTED], slide 7 dated 18 December 2019 which refers to four 'options to consider' including [REDACTED].

36. The internal documents do not indicate that these other options had been dismissed. The only reference to a possible closure of the business in [REDACTED] in the internal documents received by the CMA is in a document from 2019 that lists exit as one of a number of options ‘to consider’, and which states that [REDACTED] would be the ‘optimum implementation’ date for that option.³⁹
37. Therefore, considering the evidence in the round, the CMA believes that Limb 1 of the exiting firm framework is not met. The CMA has not seen compelling evidence that the Fisher Business would have inevitably exited the market absent the Merger.
38. As discussed in paragraph 30 above, the conditions for satisfying an exiting firm counterfactual are cumulative. It is therefore not necessary for the CMA to conclude on Limb 2, as the requirements for Limb 1 are not met.

Manage for value strategy

39. Babcock told the CMA that it decided to ‘manage the Fisher Business for value’ (the **manage for value strategy**) in ‘anticipation of exit’. Babcock submitted that the Fisher Business is a diminished competitive force because Babcock had decided to no longer invest in it.⁴⁰
40. According to the Parties, Babcock did not prepare a ‘concise definition’ of what the manage for value strategy would mean in practice. Nevertheless, Babcock submitted that a number of internal documents and public statements shed light on this. It submitted that manage for value encompassed a right-sizing exercise to reduce the size of the fleet and/or repurpose aircraft, focusing on contribution to cost rather than operating profit, reducing costs and limiting additional investment, ensuring full utilisation of existing assets, and modifying bidding conduct to reflect these objectives.⁴¹ It submitted that, in the UK, the Fisher Business would not have participated in any new tenders requiring new leases of aircraft and would only have participated in tenders if winning those tenders would [REDACTED].⁴²
41. In light of these submissions, the CMA considered whether Babcock’s manage for value strategy should have an impact on the relevant counterfactual.

³⁹ Annex 62 to the FMN [REDACTED].

⁴⁰ FMN, paragraph 7.

⁴¹ See FMN, paragraphs 11.6 and 11.7.

⁴² Babcock’s submission of 16 September 2021 in relation to counterfactuals, Babcock’s Counterfactual submission, section 5.

42. The counterfactual is not intended to be a detailed description of the conditions of competition that would prevail absent the merger.⁴³ The counterfactual assessment will often focus on significant changes affecting competition between merger firms, such as entry into new markets in competition with each other, significant expansion by the merger firms in markets where they are both present, or exit by one of the merger firms.⁴⁴ Moreover, the CMA is likely to only focus on significant changes where there are reasons to believe that those changes would make a material difference to its competitive assessment.⁴⁵
43. As discussed in more detail below in the competitive assessment, the CMA considers that the available evidence provides no clear picture of what the 'manage for value' strategy meant for the Fisher Business in practice, including in particular its UK bidding strategy. The evidence on the impact of the manage for value strategy on competition between the Parties in the UK is also mixed.⁴⁶ Internal strategic documents refer to the Fisher Business' ambition to maintain its position as an excellent O&G Offshore Transportation Services provider, and to expanding Babcock's contractual base, increasing North Sea market share and growing the UK business, indicating that Babcock Offshore UK continued to be an active competitor, despite the manage for value strategy.⁴⁷
44. Considering this mixed evidence, and that the counterfactual generally focuses only on significant changes such as market entry or exit, the CMA does not consider it appropriate to adopt an alternative counterfactual to the pre-Merger conditions of competition on account of Babcock's manage for value strategy. Rather, the CMA has assessed the impact of Babcock's manage for value strategy in its competitive assessment (see paragraphs 68 to 156).

Conclusion

45. In this case, the CMA does not believe the evidence supports an alternative counterfactual to the pre-Merger conditions of competition. Therefore, the CMA believes the pre-Merger conditions of competition to be the relevant counterfactual. The CMA considers the impact of Babcock's 'manage for

⁴³ [Merger Assessment Guidelines](#), paragraphs 3.7.

⁴⁴ [Merger Assessment Guidelines](#), paragraphs 3.8.

⁴⁵ [Merger Assessment Guidelines](#), paragraphs 3.9.

⁴⁶ See paragraphs 105 and ff.

⁴⁷ Babcock's internal documents, Annex 83 to the FMN, [redacted], slide 17. See also Babcock's internal document, Annex 245 to the FMN, [redacted].

value' strategy when assessing the constraint exerted by the Fisher Business in the competitive assessment.

Frame of reference

46. 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.⁴⁸
47. The Parties overlap in the supply of O&G Offshore Transportation Services in the UK. O&G Offshore Transportation Services are purchased by oil and gas companies involved in the extraction of oil and gas from submarine locations. The Parties provide O&G Offshore Transportation Services to customers in the North Sea.⁴⁹
48. There are four categories of helicopters operated by UK O&G Offshore Transportation Services providers, namely: (i) light;⁵⁰ (ii) medium;⁵¹ (iii) super-medium;⁵² and (iv) heavy⁵³ helicopters. The main differences between these helicopter types include the distance they can travel (for example, heavy helicopters are used for longer flights in the Northern North Sea (**Northern Zone**) whereas medium helicopters are used for short flights in the Southern North Sea (**Southern Zone**)), the number of passengers they can carry (for example, light helicopters are configured for eight seats whereas heavy helicopters are configured for between 19 and 24 seats) and whether they can operate in certain weather conditions (only heavy helicopters have de-icing

⁴⁸ [Merger Assessment Guidelines](#), paragraph 9.4

⁴⁹ Babcock Offshore UK currently operates from bases Aberdeen and Sumburgh, and CHC currently operates from bases in Aberdeen, Humberside and Norwich.

⁵⁰ Small aircrafts configured for eight seats with limited range and carrying capacity. Models include AW169.

⁵¹ Medium aircrafts configured for twelve seats and generally used for short flights in the Southern North Sea. Models include AW139.

⁵² These have been recently introduced in the UK. According to the Parties, super-medium helicopters can be used in both the Northern North Sea and the Southern North Sea ie above 56N and below 56N. They have sufficient size and range to access the oil platforms in the Northern North Sea, whilst being sufficiently small to land on the gas field decks in the Southern North Sea (except Blackpool which is more restrictive on aircraft size due to the age of the rigs) which have restrictions on weight load and the D-value of the helicopters that can land. According to third parties, these aircrafts are configured for 16/17 seats and have limited icing capabilities. Models include H175, AW179 and AW189.

⁵³ These are used in the Northern North Sea due to their large seating capacity (19/24 seats) and ability to fly longer distances. A third party emphasised their ability to fly in challenging weather conditions. Models include S92.

properties that enable them to operate in the most extreme weather conditions encountered in the North Sea).

49. The Parties operate medium, super-medium and heavy helicopters, but neither operates light helicopters. The Parties supply a variety of these helicopter types (including 'heavy' (S92), 'super medium' (H175 and AW189) and 'medium' (AW139) model helicopters).⁵⁴

Product scope

50. The CMA has taken the Parties' core overlap in the supply of O&G Offshore Transportation Services as the starting point for its assessment of the product frame of reference and considered whether this should be widened to include search and rescue (**SAR**) operations, or segmented by helicopter type.
51. The Competition Commission (**CC**) considered the supply of O&G Offshore Transportation Services in *CHC Helicopter Corporation and Helicopter Services Group ASA: a report on the merger situation* (January 2000) (the **CHC/HSG decision**).⁵⁵ In this decision, the CC adopted the supply of helicopter services for transportation to offshore rigs as its product frame of reference.⁵⁶ The CC acknowledged that there are a variety of helicopters used by suppliers and that helicopter work may be classified according to customer requirements for heavier or medium sized aircraft.⁵⁷ However, the CC did not segment the market by helicopter type and did not consider including SAR operations in the product frame of reference.⁵⁸

⁵⁴ CHC has 15 aircraft in the UK:

- (a) [REDACTED] of these aircraft are based in Norwich, including [REDACTED] AW139 (medium) and [REDACTED] EC175 (super medium). [REDACTED] of these are used for Shell and [REDACTED] for Neptune.
- (b) [REDACTED] of these aircraft are based in Aberdeen, including [REDACTED] S92s (heavy), [REDACTED] AW189 (super medium), and [REDACTED] EC175s (also a super medium). These aircraft are used for Shell, Equinor, Total, Fairfield, and Chrysaor.

Babcock Offshore UK currently has 18 aircraft in the UK:

- (a) [REDACTED] of these aircraft are S92s (heavy) based in Sumburgh. [REDACTED] of these serve the IAC consortium and [REDACTED] serves EnQuest.
- (b) [REDACTED] of these aircraft are based in Aberdeen, including [REDACTED] S92s (heavy), [REDACTED] EC175s (super medium), and [REDACTED] AW139s (medium) ([REDACTED] of which are used for O&G SAR). [REDACTED] of the S92s [REDACTED] used for Total and [REDACTED] split between Ineos and Serica. For the EC175s, [REDACTED] are used for Total, [REDACTED] for CNOOC, and [REDACTED] split between Ineos and Serica. The remaining [REDACTED] aircraft are either unallocated, undergoing repair or maintenance, or are back-up capacity.

⁵⁵ Competition Commission, *CHC Helicopter Corporation and Helicopter Services Group ASA: a report on the merger situation*. 19 January 2020.

⁵⁶ Competition Commission, *CHC Helicopter Corporation and Helicopter Services Group ASA: a report on the merger situation*. 19 January 2020, paragraph 2.18.

⁵⁷ Competition Commission, *CHC Helicopter Corporation and Helicopter Services Group ASA: a report on the merger situation*. 19 January 2020, paragraph 4.10 and Table 4.1.

⁵⁸ Competition Commission, *CHC Helicopter Corporation and Helicopter Services Group ASA: a report on the merger situation*. 19 January 2020, paragraph 4.2.

SAR

52. The Parties submitted that the narrowest frame of reference where they overlap is the supply of O&G Offshore Transportation Services, although they submitted that suppliers capable of providing SAR services should be treated as competing in the same market on the basis they are capable of providing O&G Offshore Transportation Services.
53. From a demand-side perspective, a number of customers told the CMA that SAR aircrafts have specific features designed for search and rescue operations and cannot be used for O&G crew changes because, for example, they are generally not configured to transport O&G crews (as they do not have seats).⁵⁹
54. From a supply-side perspective, one third party stated that SAR aircraft would require 'significant modifications' to be used to supply O&G Offshore Transportation Services. The CMA has not seen any evidence of SAR helicopters being offered to fulfil O&G contracts, or more generally of SAR operators that are not already active in the supply of O&G Offshore Transportation Services in the UK bidding for such contracts, indicating a lack of supply-side substitutability.
55. Therefore, the CMA believes the product frame of reference should not be widened to include SAR operations. The CMA considers that any constraint from SAR providers not already active in O&G Offshore Transportation Services can be considered in its assessment of potential entry.⁶⁰

Possible segmentation by helicopter type

56. The Parties submitted that it would not be appropriate to segment the market by helicopter type.^{61, 62}
57. The majority of customers told the CMA they could use more than one helicopter type for their requirements, with one customer noting, for example, that AW189 (super-medium), H175 (super-medium) or S92 (heavy) aircrafts are 'all capable of the range and service required'.⁶³ There is also evidence of the same routes being served by different types of helicopter in practice,

⁵⁹ Note of call [§], Note of call [§].

⁶⁰ The CMA understands that the only SAR provider currently active in the UK is Bristow. Any entry into UK O&G Offshore Transportation Services by SAR providers would therefore come from SAR providers based outside the UK.

⁶¹ FMN, paragraph 13.1.

⁶² Given the lack of overlap between the Parties in light helicopters, the CMA has not considered those in any detail. Therefore, this assessment of the possible segmentation by helicopter type only focuses on heavy, super-medium and medium models.

⁶³ Customer responses to the CMA's questionnaire.

suggesting some degree of demand side substitutability.⁶⁴ However, the CMA has seen evidence that in certain circumstances different types of helicopter are not demand-side substitutes, given differences in the distances they can travel, crew capacity and their ability to operate in more extreme weather conditions.⁶⁵ In particular, a small number of customers told the CMA they require ‘heavy’ helicopters for their operations.⁶⁶

58. As regards supply side substitutability, all suppliers active in the UK operate a range of helicopter types. One third party stated that all four incumbents could bid for all tenders, noting that contracts move around and the same aircraft types are (generally) used by all competitors. Another third party stated that a supplier that does not currently operate a particular type of helicopter can acquire or lease this type and add it to its UK Air Operators Certificates (AOC).⁶⁷ However, some third parties suggested that it is not necessarily straightforward to begin to operate a new type of aircraft, nor are suppliers always willing to add an entirely new type of aircraft to their fleet.⁶⁸ The CMA also received some evidence that not all competitors can currently offer services for all routes given that they may not operate suitable aircraft. For example, NHV does not offer heavy helicopters and [redacted].
59. Considering the evidence in the round, the CMA believes the product frame of reference should not be segmented by helicopter type, as there appears to be a degree of demand-side and supply-side substitutability, with all suppliers active in the UK operating a range of helicopter types.⁶⁹ However, to the extent that certain suppliers have strengths in bidding for certain contracts relative to other suppliers (for example, because a heavy helicopter is required), the CMA considers such differences in the competitive assessment.

Geographic scope

60. The CC, in its CHC/HSG decision, considered that the UK market should be divided into a Southern Zone and Northern Zone as, generally, there was an economic division between these regions, given that Southern Zone gas fields

⁶⁴ Customer responses to the CMA’s questionnaire. Some customers stated that they preferred to have more than one type of helicopter available to improve resilience if there is a maintenance issue with one airframe.

⁶⁵ Customer responses to the CMA’s questionnaire.

⁶⁶ These customers tended to have longer flight distances than customers that stated they did not require a heavy helicopter.

⁶⁷ Note of call [redacted].

⁶⁸ Responses to the CMA’s questionnaire.

⁶⁹ Suppliers propose and lease different airframes depending on the suitability for the customer tender. The majority of customers told the CMA that they could use more than one helicopter type for their requirements.

were nearer to the shore, with fewer personnel, and therefore cost less to provide transportation services to and from.⁷⁰

61. The Parties submitted that the geographic frame of reference should be national (UK) for the following reasons: (a) aircraft operators can serve customers from different bases within the UK; (b) there is a large degree of supply-side substitution and assets can easily be relocated; and (c) the division of the UK market into the Southern Zone and Northern Zone has lost its relevance since the CHC/HSG decision, particularly given the introduction of super-medium aircraft types which can be deployed as effectively in the Northern Zone as in the Southern Zone.⁷¹
62. The CMA considers there is strong evidence of supply-side substitutability across the UK, and the tender data supplied by the Parties and third parties (as discussed further below) shows that all current UK suppliers are active in bidding and winning contracts across the whole of the UK (regardless of whether they have a current base at the relevant location).⁷² For example, there have been instances in the tender data received by the CMA where all four incumbents have bid for contracts, despite not all of them operating bases at the relevant locations at the time of the tender.⁷³ There is also evidence that UK suppliers move aircraft, lease new aircraft and set-up new bases to fulfil contractual obligations. For example, Bristow 're-entered' Sumburgh after winning the BP contract that commenced in September 2019 and NHV set up a new base in Blackpool in November 2020, to fulfil a new contract.⁷⁴
63. The evidence available to the CMA also indicates that the geographic frame of reference should not be widened beyond the UK. Customers have indicated that the distance from bases outside the UK to O&G rigs in UK waters likely renders it uneconomic to supply services originating from a base outside the UK.⁷⁵ Furthermore, customers have also indicated that the crews being transported are based in the UK, meaning it would be impractical to fly to and from a base outside the UK.⁷⁶ From a supply-side perspective, transporting crews to and from O&G rigs in UK waters requires a UK AOC and UK licensed pilots.⁷⁷ Suppliers based outside the UK are not typically invited to bid for UK contracts, and no suppliers based outside the UK bid for

⁷⁰ Competition Commission, *CHC Helicopter Corporation and Helicopter Services Group ASA: a report on the merger situation*. 19 January 2020, paragraph 4.3.

⁷¹ FMN, paragraph 13.6 and ff.

⁷² This is true of the Parties despite only overlapping in Aberdeen.

⁷³ Including tender run by [REDACTED] and tender run by [REDACTED].

⁷⁴ FMN, paragraph 13.11.4 and ff.

⁷⁵ Customer responses to the CMA's questionnaire.

⁷⁶ Customer responses to the CMA's questionnaire.

⁷⁷ Note of call [REDACTED]. FMN, paragraph 13.11.4.1.

any contracts in the tender data received by the CMA. Customers have indicated that it is difficult for suppliers from non-UK bases to start servicing UK based contracts.⁷⁸

64. The CMA therefore considers that the appropriate geographic frame of reference is the UK. However, to the extent that certain suppliers have particular strengths in bidding for contracts from particular bases within the UK relative to other suppliers, the CMA considers such differences in the competitive assessment. The CMA also considers potential entry from suppliers based outside the UK in its competitive assessment.

Conclusion on frame of reference

65. For the reasons set out above, the CMA has considered the impact of the Merger in the following frame of reference: O&G Offshore Transportation Services in the UK.

Competitive assessment

Horizontal unilateral effects

66. Horizontal unilateral effects may arise when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged firm profitably to raise prices or to degrade quality on its own and without needing to coordinate with its rivals.^{79, 80}
67. The CMA's main consideration is whether there are sufficient remaining good alternatives to constrain the merged entity post-merger. Where there are few existing suppliers, the merger firms enjoy a strong position or exert a strong constraint on each other, or the remaining constraints on the merger firms are weak, competition concerns are likely. Furthermore, in markets with a limited likelihood of entry or expansion, any given lessening of competition will give rise to greater competition concerns.⁸¹
68. The CMA assessed whether it is or may be the case that the Merger has resulted, or may be expected to result, in an SLC in relation to horizontal unilateral effects in the UK supply of O&G Offshore Transportation Services.

⁷⁸ Customer responses to the CMA's questionnaire.

⁷⁹ For instance, a competitor may reduce the back-up provision, stock of spares, or servicing levels to save costs rather than increasing price. However, such changes could still impact customers through a reduction in reliability and thus increased costs to their business.

⁸⁰ [Merger Assessment Guidelines](#), paragraph 4.1.

⁸¹ [Merger Assessment Guidelines](#), paragraph 4.3.

This includes the importance of the constraint pre-Merger that each of the Parties was providing on the other.⁸²

69. In order to assess the likelihood of the Merger resulting in unilateral effects, the CMA considered evidence relating to:
- (a) the current market structure and shares of supply;
 - (b) tender data and competition between the Parties;
 - (c) the impact of Babcock's manage for value strategy on its competitiveness;
 - (d) the competitive constraint provided by other UK suppliers; and
 - (e) potential entry.

Current market structure and shares of supply

70. The CMA considered evidence relating to the market structure and shares of supply. To the extent that the supply of UK O&G Offshore Transportation Services is relatively concentrated, post-Merger price rises may be more likely.⁸³ Furthermore, to the extent that the services supplied are undifferentiated, a firm with a high share of supply is more likely to be a close competitor to its rivals. A merger removing such a competitive constraint would be more likely to raise competition concerns.⁸⁴
71. The Parties stated that the supply of O&G Offshore Transportation services is 'largely commoditized, with limited scope for product innovation',⁸⁵ and identified each other, as well as Bristow and NHV, as the current suppliers active in the supply of O&G Offshore Transportation Services in the UK.
72. The CMA agrees that there are four suppliers of O&G Offshore Transportation Services currently active in the UK, as identified by the Parties (ie the incumbents). These are:
- (a) The Parties: both CHC and Babcock Offshore UK supply UK O&G Offshore Transportation Services. CHC's turnover in the financial year

⁸² The CMA also notes that Heli-One, a subsidiary of CHC, provides general helicopter maintenance, repair and overhaul services (**MRO**) to the Fisher Business and there is no horizontal overlap with the Fisher Business in these services. The CMA considered whether the Merger could lead to vertical effects. As Heli-One does not provide any MRO services to the Parties' competitors in the UK O&G Offshore Transportation Services market and the Parties estimate that Heli-One's share of MRO is around [5-10]% in the UK, the CMA believes there is no realistic prospect of an SLC as a result of vertical effects.

⁸³ [Merger Assessment Guidelines](#), paragraph 4.38.

⁸⁴ [Merger Assessment Guidelines](#), paragraph 4.14.

⁸⁵ FMN, paragraph 15.6.

2020 for its UK O&G Offshore Transportation Services business was £[REDACTED] and Babcock Offshore UK's turnover was £102m.⁸⁶

(b) Bristow: has been operating in the UK for many years and supplies O&G Offshore Transportation Services and SAR.⁸⁷ Bristow's turnover in the financial year 2020 for its UK O&G Offshore Transportation Services business was approximately £[REDACTED];⁸⁸ and

(c) NHV: is based in Belgium. It operates mainly in Europe and West Africa with its business split between O&G Offshore Transportation Services (at [REDACTED]%) and SAR ([REDACTED]%). It obtained UK regulatory approval in October 2019,⁸⁹ and now has bases in Norwich, Blackpool and Aberdeen.⁹⁰ Its expected 2021 turnover for its UK O&G Offshore Transportation Services is approximately £[REDACTED].⁹¹

73. The evidence from customers and the other incumbents supports the Parties' submissions that the supply of O&G Offshore Transportation Services is relatively commoditized, with the majority of third parties noting that all four incumbents have similar capabilities and can bid for all opportunities. Internal documents also support this, with one document stating that 'technical content is binary, and input driven with no differentiation'.⁹²

74. The Parties provided estimated shares of supply based on flight hours in the UK for the period July 2015-July 2021.⁹³ This is set out in Figure 1.

Figure 1: Share of UK flight hours across all bases, July 2015 to July 2021

[REDACTED]

Source: FMN, Figure 14.4. (Note these graphs are smooth because shares are averaged over 6 months)

75. The CMA also calculated shares of supply on a revenue basis for 2020. These are included in Table 1 below.

⁸⁶ FMN, paragraph 15.6. CHC provided its revenue in USD [REDACTED] which has been converted at the average exchange rate for 2020 (£1:\$1.28). For further information on the Parties' helicopter fleet please see footnote 54 above.

⁸⁷ [REDACTED].

⁸⁸ [REDACTED].

⁸⁹ See: [NHV granted UK Air Operator Certificate - News - About - NHV](#).

⁹⁰ See: [Presence - NHV](#).

⁹¹ [REDACTED].

⁹² Babcock's internal document, Annex 281 to the FMN, [REDACTED].

⁹³ Parties' internal document, Annex 51 to the FMN, [REDACTED]. The data captures all UK O&G flying hours. The CMA notes that these share of supply figures are broadly in line with evidence supplied to the CMA by third parties.

Table 1: Shares of UK O&G Offshore transportation revenue, 2020⁹⁴

Supplier	Revenue share
Babcock Offshore UK	[20-30]%
CHC	[20-30]%
<i>Parties Combined</i>	[50-60]%
Bristow	[30-40]%
NHV	[10-20]%

76. The CMA notes, based on the share of supply data, that:

- (a) Post-Merger, the Merged Entity would be the largest supplier with a share of supply by flight hours of [40-50]% (increment [20-30]%) based on monthly data for July 2021. In the same time period, Bristow's share of supply was [30-40]%, and NHV's share of supply was [10-20]%. On a revenue basis, the Parties had a slightly higher combined share of supply of [50-60]% in 2020 (increment [20-30]%).⁹⁵
- (b) Since 2015, NHV has grown its share of supply by flight hours. Babcock Offshore UK's share has remained broadly stable over this period, but after a decline starting in 2018 it has grown since 2020 (despite the adoption of its manage for value strategy around this time).⁹⁶
- (c) Although NHV has grown, it remains smaller in revenue terms than the other three incumbents.⁹⁷

77. The CMA considers that the nature of demand (large contracts are tendered infrequently) may mean that shares of supply at any particular point in time are not particularly probative of a supplier's competitive strength (given that the loss of a single contract could have a material impact on shares of supply). The shares of supply also reflect the outcome of historic competition, with some customers having not held a competitive tender for many years.⁹⁸ Nevertheless, the CMA considers that the supply of UK O&G Offshore Transportation Services is relatively undifferentiated and concentrated, with only four suppliers. The Parties' shares of supply are both significant, indicating that the Parties are likely to pose an important competitive

⁹⁴ [REDACTED].

⁹⁵ Bristow had a share of supply of [30-40]% and NHV a share of supply of [10-20]%.

⁹⁶ Babcock Offshore UK bid for two large contracts in 2019 that it started to supply in July and October 2020.

⁹⁷ [REDACTED].

⁹⁸ Each large customer may tender one contract every five years or so. The CMA is aware of several customers (including some of the Parties' largest customers) that have not run a competitive tender comparing detailed proposals from more than one bidder since 2017.

constraint on one another. The CMA considers that the Parties' shares of supply are at a level (on both a flight hour and revenue basis) that raise *prima facie* competition concerns.⁹⁹

Tender data and competition between the Parties

78. Each helicopter operator typically competes to win customer contracts by taking part in tenders.¹⁰⁰
79. The CMA therefore considers that a key source of evidence on the competitive interaction between suppliers is tender data. Tender data is important in establishing the strength of competition between the Parties and whether sufficient competitive constraints will remain in the market post-Merger.
80. The Parties supplied bidding data covering 2017 to April 2021, and the CMA also collected tender data from customers for the same period.

Parties' tender data

81. The Parties supplied bidding data for the period January 2017 to April 2021. The data includes details of [REDACTED] bids from CHC and details of [REDACTED] bids from Babcock Offshore UK.¹⁰¹ The Parties matched up the two data sets to give [REDACTED] tenders in total.
82. According to the Parties, this bidding data shows that:
 - (a) Babcock Offshore UK has been a weaker competitor in recent years, having only bid for one contract in 2020 and one contract in 2021;¹⁰²
 - (b) the Parties compete with Bristow and NHV in tender processes and suppliers from outside the UK are also invited to bid for UK tenders;¹⁰³

⁹⁹ The CMA has not assessed in detail the Parties' submission that the transaction will deliver synergies which will improve CHC's competitiveness. However, the evidence available to the CMA (discussed in paragraphs 81 - 131131) indicates CHC is already a strong competitor.

¹⁰⁰ FMN, paragraph 15.6. The CMA notes that customers often choose to renew or extend their contracts with their current supplier without running a competitive process. This may happen multiple times. This means that customers may only hold a formal competitive tender process after many years.

¹⁰¹ There were also [REDACTED] tenders listed where Babcock Offshore UK had not bid.

¹⁰² FMN, paragraph 16.3.1.

¹⁰³ FMN, paragraph 16.3.3.

- (c) the Parties were no closer competitors to each other than they were to Bristow or NHV;¹⁰⁴ and
- (d) there were [] occasions where one of the Parties lost an existing contract (out of [] of their existing contracts that were retendered). The Parties submitted that this shows that switching costs for customers are low.¹⁰⁵

83. The CMA considers that the Parties' bidding data and analysis has some limitations. In particular:

- (a) The Parties are not necessarily aware of who bid for each contract, their relative ranking, or who won. This means that there are significant gaps in the tender data provided. The Parties' data also misidentifies the identity of other bidders in some cases (for example, rivals are identified as bidders for certain contracts when in fact they did not bid).¹⁰⁶
- (b) A large proportion of the [] tenders identified by the Parties do not appear to be competitive processes in which the Parties faced a rival (for example, contract renewals or extensions bilaterally negotiated between one of the Parties and a customer).¹⁰⁷ By including non-competitive opportunities (such as renewals or extensions in which other bidders are not invited to bid) the Parties' data will overstate the number of opportunities and therefore understate the proportion of competitive tenders where the Parties bid against each other. Furthermore, the Parties' data contains a number of relatively low value opportunities where competitive conditions may not be representative of those for higher value contracts.¹⁰⁸

84. Notwithstanding the limitations described above, the CMA considers that the Parties' tender data indicates that the Parties pose an important competitive constraint on one another:

¹⁰⁴ FMN, paragraph 16.3.4. The Parties submitted that CHC and Babcock have been unsuccessful in tenders, losing to Bristow and NHV as well as each other. By value, the overlap between the Parties is greater: Babcock bid on []% of the tenders for new business on which CHC bid (by value) and CHC bid on []% of the tenders for new business on which Babcock bid (by value) (FMN, figure 16.2). By number the overlap was []% and []% respectively.

¹⁰⁵ FMN, paragraph 16.3.2. FMN, paragraph 16.3.5. On [] occasions the Parties lost the contract to the other Party (on [] occasions CHC lost to Babcock Offshore UK). The Parties state that in all the significant bids where they competed against each other, both Bristow and NHV were also present (FMN, figure 16.3).

¹⁰⁶ For example, [].

¹⁰⁷ Of the [] tender entries provided by CHC, there are only [] tenders where CHC provided information on who else (if anyone) bid. Of the [] tender bids provided by Babcock Offshore UK, there are only [] tenders where Babcock Offshore UK bid and there is information on who else (if anyone) bid.

¹⁰⁸ Of the [] tenders in which CHC identified a rival bidder, only [] of these were valued at more than £2m. Of the [] tenders in which Babcock Offshore UK identified a rival bidder, only [] of these were valued at more than £2m.

- (a) The data indicates that Babcock Offshore UK was the winner in around half ([REDACTED]%) (by value) of the tenders in which CHC participated but lost, and that CHC was the winner in around a fifth ([REDACTED]%) (by value) of the tenders in which Babcock Offshore UK participated but lost.¹⁰⁹
- (b) When focussing on tenders for contracts with a value of more than £2 million:¹¹⁰
- (i) Babcock Offshore UK's data indicates that CHC bid on a large majority ([REDACTED]) of the opportunities in which Babcock Offshore UK participated;
 - (ii) CHC's data indicates that Babcock Offshore UK bid on a large majority ([REDACTED]) of the opportunities in which CHC participated;
 - (iii) CHC's data indicates that it lost a number of tenders ([REDACTED]) when it was the incumbent supplier.¹¹¹ Half ([REDACTED]) of these tenders were lost to Babcock Offshore UK.

Customer tender data

85. Given the limitations of the Parties' data described above, the CMA gathered additional bidding data directly from customers. The CMA identified potential bidding opportunities during the period 2017-2021 by contacting all the customers in the Parties' bidding data, as well as attempting to identify any opportunities in which the Parties did not participate.
86. In total, the CMA was provided with details of 52 recent tenders by customers. However:
- (a) fourteen of these opportunities were duplicates or were not otherwise relevant;¹¹²

¹⁰⁹ FMN, figure 16.4. The Parties state the [REDACTED]% value of CHC's lost bids is mainly due to the loss of two large contacts in 2019. FMN, figure 16.4 and paragraph 16.12.

¹¹⁰ Looking at the Parties' tender data, the CMA identified for each Party the tenders where the Party considered that they bid against other firms for that tender and each tender opportunity was valued at more than £2m. This is consistent with the criteria used by the CMA in analysing the customer tender data (described at paragraph 121).

¹¹¹ Babcock Offshore UK's data indicates that it lost [REDACTED] tenders when it was the incumbent. None of these tenders were lost to CHC.¹¹² For instance, they were for *ad-hoc* or framework contracts where no winner was determined, and the customer entered into a contract with all bidders. This left 38 contracts.

¹¹² For instance, they were for *ad-hoc* or framework contracts where no winner was determined, and the customer entered into a contract with all bidders. This left 38 contracts.

- (b) nine of the remaining opportunities were non-competitive contracts that involved bilateral negotiation with a preferred supplier and no information was provided that indicated that other bidders had been considered;¹¹³
- (c) ten of the remaining contracts were very small, (for instance short term exploration opportunities), or were awarded before 2017.¹¹⁴

87. As such, the CMA focused its assessment on 19 competitive tender processes over the period 2017-2021 for higher value/longer term opportunities. At least one of the Parties participated in all of these tenders. The CMA considers that the relatively small number of tenders for which data has been gathered is most probably due to the infrequent nature of tender processes in the industry.¹¹⁵ Despite the relatively small number of tenders, CMA believes that this data is representative of competitive interaction in the supply of O&G Offshore Transportation Services in the UK. In particular, these 19 tenders account for 99% of UK contracts (by value) awarded through a competitive tender process over the relevant period that the CMA is aware of.¹¹⁶
88. The CMA's analysis of customer tender data also allowed for more granular analysis given the more complete nature of the data (addressing the limitations described in paragraph 83).
89. The CMA notes that the analysis of customer tender data (in paragraphs 85 to 94) provides broadly similar results to the Parties' data set. For example, the CMA's analysis of customer tender data finds a win rate for CHC and Babcock Offshore UK of [X]% and [X]% respectively, whilst the Parties' tender data indicates win rates of [X]% and [X]%.¹¹⁷

¹¹³ This left 29 contracts.

¹¹⁴ These included tenders for contracts with a total value of less than £2m. This left 19 contracts. The 19 tenders are for contracts with an average value of over £40m. Removing tenders for contracts valued at less than £2m removes less than 1% of the tenders by value from the total sample.

¹¹⁵ Each large customer may tender one contract every five years or so. The CMA is aware of several customers (including some of the Parties' largest) that have not run a competitive tender comparing detailed proposals from more than one bidder since 2017 (and so are not captured in the tender data).

¹¹⁶ When focusing on the opportunities in which CHC and Babcock Offshore UK stated that they faced rivals, and which were worth more than £2 million, the number of tenders in the CMA's sample is similar ([X] for CHC and [X] Babcock Offshore UK). The [X] opportunities analyzed by the CMA do not overlap fully with the [X] opportunities identified by CHC, but do include the [X] opportunities identified by Babcock Offshore UK. The CMA's analysis also includes some tenders that the Parties had not identified as competitive but that some customers considered were competitive. One tender that was a contract extension where there was only one bidder has also been excluded from the [X] despite the customer inviting other suppliers to bid for that tender.

¹¹⁷ Based on the [X] opportunities in which CHC identified rivals and were worth more than £2 million (and [X] opportunities over £2m that Babcock Offshore UK identified rivals and bid in). CHC won [X] out of [X] of these opportunities and Babcock Offshore UK won [X] out of [X] of these opportunities.

- *Results of customer tender data analysis*

90. The CMA considers that this tender data provides evidence on closeness of competition between the Parties and other UK incumbents, in particular:

- (a) how often the Parties and other incumbents bid against each other; and
- (b) how often the Parties and other incumbents win contracts from one another, or come first and second in tenders.

91. The CMA considers that this assessment provides evidence on the strength of rivalry between the Parties that may be lost due to the Merger and the strength of the constraints that will remain on the Merged Entity post-Merger.

92. Table 2 below sets out overall participation and win rates for the four incumbents across the 19 tenders.

Table 2: Participation and win rates for four incumbents

	CHC, %	Babcock Offshore UK, %	Bristow, %	NHV, %
Participation rate	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Win rate (number of wins/number of times participated)	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

93. Table 2 shows that:

- (a) None of the four UK incumbents bid on all of the 19 tenders.¹¹⁸ CHC and Bristow have the highest participation rates, with CHC participating in [REDACTED]% of opportunities and Bristow participating in over [REDACTED]% of opportunities. Babcock Offshore UK participated [REDACTED] of all opportunities, and NHV in roughly two-thirds of opportunities.
- (b) Although Babcock Offshore UK and NHV bid on fewer tenders than the other UK incumbents, they won a higher proportion of the tenders in which

¹¹⁸ CHC bid on the vast majority of tenders [REDACTED], whereas Bristow and NHV bid on the majority of tenders. Seven tenders involved all four incumbents, six tenders involved three, and six tenders involved just two. On average there were three participants per tender.

they participated ([REDACTED]% and [REDACTED]% of the tenders that they participated in, respectively).

94. The customer tender data showed that, apart from the four UK incumbents, no other (potential) suppliers [REDACTED] won any contracts.¹¹⁹

95. The 19 customer tenders provide the following information in relation to closeness of competition between the Parties and other UK incumbents:

(a) *Tenders in which at least one Party participated:*

- (i) Of the [REDACTED] tenders in which Babcock Offshore UK participated, CHC and Bristow participated in the vast majority [REDACTED], and NHV participated in most [REDACTED].
- (ii) Of the [REDACTED] tenders in which CHC participated, Bristow participated in nearly all [REDACTED], NHV participated in around two-thirds [REDACTED] and Babcock Offshore UK participated in over half [REDACTED].
- (iii) Of the [REDACTED] tenders where both Parties participated, Bristow was the only other bidder in around a third [REDACTED].¹²⁰

(b) *Tenders won by one of the Parties:*

- (i) In the majority of tenders won by Babcock Offshore UK ([REDACTED]), CHC was the second placed bidder. [REDACTED].¹²¹
- (ii) NHV was the second placed bidder in [REDACTED] tenders won by CHC, and Bristow was the second placed bidder in [REDACTED]. Babcock Offshore UK bid on one of these tenders.

(c) *Tenders lost by one of the Parties (ie where the Party was the incumbent before the contract was retendered):*

- (i) Babcock Offshore UK won the majority of contracts lost by CHC ([REDACTED]). [REDACTED].
- (ii) CHC won ([REDACTED]) of the contracts lost by Babcock Offshore UK. [REDACTED].

96. The CMA considers that both the customer and the Parties' tender data indicate that the market is concentrated (with only four suppliers) and that there is significant competitive interaction between the four UK incumbents.

¹¹⁹ There was no [REDACTED].

¹²⁰ In the other tenders all four incumbents bid.

¹²¹ Babcock Offshore UK did not come second in any of the tenders won by CHC. Bristow and NHV were each second in half of these tenders.

Babcock Offshore UK is an important constraint on CHC and vice versa. A number of customers running these tenders also told the CMA that they were concerned about the Merger and expected that it would lead to higher prices.

97. The Parties stated that the bidding data shows that:
- (a) all operators in the market are winning tenders,
 - (b) there is volatility in win rates over time; and
 - (c) the Parties have a high customer/contract churn rate and are not relatively close competitors to each other.¹²²
98. The Parties' comments that there is high volatility and churn in the industry with all four UK incumbents able to win contracts does not demonstrate that the Parties have not constrained one another's bidding activity. The CMA believes that the market is sufficiently concentrated and there is significant interaction between the Parties (and the other two UK incumbents) such that this loss in constraint caused by the Merger is substantial.

Recent bidding by Babcock Offshore UK

99. The Parties submitted that the absence of Babcock Offshore UK from significant tenders from mid-2020 to early 2021 provides a natural experiment to consider whether the loss of Babcock as a competitor will have an impact on competition, given that CHC considers it was 'common knowledge' in the industry that Babcock was looking to exit and therefore was not expected to bid on contracts requiring new capacity.¹²³ The Parties submitted a pricing analysis by CRA which they submitted showed that there is no evidence that CHC has [redacted].¹²⁴
100. The CMA does not consider that this period can be used as a 'natural experiment' to assess the effects of the Merger. In particular, CHC's submission that 'it was common knowledge' that Babcock Offshore UK was not planning to bid for those tenders is not supported by the evidence as set out in paragraph 124 below, which indicates that CHC actually assumed that Babcock Offshore UK was bidding for these tenders.

¹²² Parties' response to the CMA Issues Letter, 28 October 2021, Annex, page 2.

¹²³ Parties' response to the CMA Issues Letter, 28 October 2021, paragraph 4.9.1 and Annex section 2.4.

¹²⁴ Parties' response to the CMA Issues Letter, 28 October 2021, Annex section 2.4.

Other evidence on competitive interaction

101. The CMA considers that the other evidence available to the CMA is consistent with the findings from the tender data.
102. The Parties' internal documents indicate that they regularly monitor each other both as part of 'business as usual' activity and in relation to specific upcoming tenders. These documents focus on the other incumbents (including the other Party) and any references to any other (potential) bidders (for example potential bidders based outside the UK) suggest these bidders are unlikely to be competitive.¹²⁵ The Parties' internal documents relating to upcoming tenders often discuss how aggressively the Party expects other UK incumbents to bid for that tender having regard to factors such as their current spare capacity and recent contract losses or wins.¹²⁶
103. Evidence from third parties also indicates the Parties compete with each other as well as Bristow and NHV.
- (a) A majority of customers and competitors indicated that all four incumbents have similar capabilities. For example, one customer stated: '[i]n the UK, the 4 main players provide the same helicopters, maybe different types or a different mix, but they all provide the size that the industry is looking for.'¹²⁷ In addition, [REDACTED] stated that all four incumbents could bid for all tenders, noting that contracts move around; the same aircraft types are (generally) used by all competitors; and the operational features and real estates are similar for all four competitors.¹²⁸ [REDACTED] noted that [REDACTED].¹²⁹
- (b) Customers rated CHC and Babcock the second and third strongest suppliers with average scores of 3.9 and 3.6 respectively (Bristow scored 4, and NHV scored 3.5). The majority of the customers expressed concerns regarding the Merger, with many raising concerns that the Merger could lead to price increases.
104. The CMA considers that the Parties' internal documents and the views of third parties reflect that the market is concentrated, and indicate that the Parties each represent an important competitive constraint on one another.

¹²⁵ Babcock's internal document, Annex 77 to the FMN, [REDACTED]. CHC's internal document, Annex 45 to the FMN, [REDACTED], slide 47.

¹²⁶ CHC's internal document Annex 39 to the FMN, [REDACTED]. Babcock's internal document, Annex 76 to the FMN, [REDACTED].

¹²⁷ Note of call [REDACTED].

¹²⁸ Note of call [REDACTED].

¹²⁹ [REDACTED] response to the CMA's questionnaire.

Impact of the manage for value strategy

105. The CMA has considered the evidence relating to the impact that Babcock Offshore UK's manage for value strategy may have had on the constraint it exerts on CHC and the other incumbents. The CMA considered a range of evidence including internal documents, recent tender processes, and third party views.

The Parties' submissions

106. Babcock submitted that the manage for value strategy was introduced in 2019 in 'anticipation of exit', and that the Fisher Business is a 'diminished competitive force' because Babcock has decided to no longer invest in it.¹³⁰
107. Overall, Babcock submitted that, while it did not prepare a 'concise definition' of what manage for value would mean in practice, it is clear that the strategy had a material impact on the Fisher Business' operations and strategy, with significant reductions in the size of the fleet and changes to its tendering strategy.¹³¹ As explained above, Babcock submitted that the manage for value strategy encompassed a right-sizing exercise to reduce the size of the fleet and/or repurpose aircraft, focusing on contribution to cost rather than operating profit, reducing costs and limiting additional investment, and ensuring full utilisation of existing assets.¹³²
108. Babcock submitted that, while it bid aggressively for, and won, the [REDACTED] and [REDACTED] tenders in 2019, this was part of Babcock's manage for value strategy and Babcock bid aggressively to fill capacity 'to achieve some contributions to its unavoidable costs'.¹³³ Babcock submitted that at the time that Babcock bid for the [REDACTED] contract it was incurring monthly lease rates for aircraft of more than \$[REDACTED] which was placing a significant strain on the Fisher Business' cash outflows and meant that the Fisher Business needed to take steps to minimise unutilised capacity. Babcock submitted that this 'resulted in Babcock adopting an approach to bidding that it would not have adopted absent the manage for value strategy' and meant that 'Babcock was prepared to bid at very low and sometimes negative margins'.¹³⁴
109. Babcock submitted that the manage for value strategy means that the Fisher Business would not have competed for new tenders in the UK requiring new

¹³⁰ Babcock's Counterfactual submission, paragraph 5.1. FMN, paragraph 7, Introduction and executive summary.

¹³¹ Babcock's Counterfactual submission, paragraph 5.1.

¹³² Paragraphs 39 and ff.

¹³³ Parties' response to the CMA Issues Letter, 28 October 2021, section 3.3 and Annex, section 2.1.

¹³⁴ Parties' response to the CMA Issues Letter, 28 October 2021, section 3, in particular paragraph 3.3.

capacity absent the Merger, and would only bid on tenders if and when it had appropriate spare capacity ([REDACTED]).¹³⁵ Babcock explained that the [REDACTED] and [REDACTED] tenders had achieved the goal of improving utilization and provided examples of a number of subsequent tenders where it suggested Babcock Offshore UK has not participated in an opportunity due to the manage for value strategy.¹³⁶ These are the [REDACTED] tender for [REDACTED] in 2019, the [REDACTED] tender for [REDACTED] in 2020 and the [REDACTED] tender for [REDACTED] in 2021.

Internal documents

110. As a preliminary point, and as referenced in paragraph 43 above, Babcock Offshore UK had no clear definition of what the manage for value strategy would mean in practice.¹³⁷
111. The CMA does not consider that Babcock's internal documents show that Babcock Offshore UK has diminished as a competitor, in advance of a potential exit or sale as a result of the 'manage for value' strategy.
112. Although internal strategy documents note that '[REDACTED]', they also¹³⁸ refer to [REDACTED], increasing [REDACTED] market share and growing the UK business indicating that Babcock Offshore UK continued to be an active competitor, despite adopting its manage for value strategy. For example,
 - (a) [REDACTED], states that Babcock has '[REDACTED]' and [REDACTED].¹³⁹ It also states that the business will '[REDACTED]'.¹⁴⁰
 - (b) The [REDACTED] from May 2020, states that a top '[REDACTED]' is to '[REDACTED]' and that Babcock's '[REDACTED]' and '[REDACTED]'.¹⁴¹
 - (c) [REDACTED] notes under the heading '[REDACTED]' that '[REDACTED]' and that '[REDACTED]'.¹⁴² It lists as a [REDACTED] under the heading '[REDACTED]'.¹⁴³
113. Although the CMA recognises that a component of the manage for value strategy has been to limit investment, the CMA considers that internal documents also indicate that additional investment (including in new aircraft)

¹³⁵ FMN, paragraph 11.10 and 7. Parties' response to the CMA Issues Letter, 28 October 2021 section 3.11.

¹³⁶ Babcock's Counterfactual submission, paragraph 5.18 and Parties' response to the CMA Issues Letter, 28 October 2021, paragraph 3.8.

¹³⁷ Babcock's Counterfactual submission, section 5.

¹³⁸ Babcock's internal document, Annex 83 to the FMN, [REDACTED], slide 17.

¹³⁹ Babcock's internal document, Annex 290 to the FMN, [REDACTED], page 8 and 13.

¹⁴⁰ Babcock's internal document, Annex 290 to the FMN, [REDACTED], page 13.

¹⁴¹ Babcock's internal document, Annex 281 to the FMN, [REDACTED], slide 3 and slide 10.

¹⁴² Babcock's internal document, Annex 68 to the FMN, [REDACTED], slide 8.

¹⁴³ Ibid, slide 16.

could be considered when costs were taken into consideration. For example, [REDACTED] states that '[REDACTED]'.¹⁴⁴ The [REDACTED] also states under the heading '[REDACTED]' '[REDACTED]'.¹⁴⁵

114. Babcock Offshore UK has also recently taken on new aircraft leases to fulfil contracts despite its manage for value strategy, demonstrating that it is willing to make investments and expand its fleet for the right opportunities. Babcock explained that winning the [REDACTED] and [REDACTED] tenders in 2019 led it to lease additional helicopters (ie [REDACTED] new H175 helicopters for the [REDACTED] contract in Aberdeen and move helicopters between countries.ⁱⁱⁱ Babcock explained that it had not anticipated that it would win both tenders. However, Babcock submitted that it decided to go ahead with both contracts as they provided a positive financial contribution to the existing business costs despite the procurement of additional obligations.¹⁴⁶
115. Even after Babcock Offshore UK was awarded the [REDACTED] and [REDACTED] 2019 tenders and, according to the Parties, had therefore largely achieved its objective of utilising spare capacity,¹⁴⁷ Babcock Offshore UK continued to carry out a detailed assessment of opportunities even where it would be clear from the outset that these tenders would require additional fleet to fulfil the contract.¹⁴⁸ This includes the three tenders ([REDACTED], [REDACTED] and [REDACTED] in 2020 and 2021) that Babcock submitted were not pursued due to the manage for value strategy.¹⁴⁹ Although the internal documents suggest that the need to take on new aircraft was a factor in the decision not to bid for some of these contracts, they do not suggest that this was always determinative, but rather that the overall 'financials' of the contract meant that it was not worth submitting a bid.¹⁵⁰
116. The CMA therefore considers that these internal documents indicate that Babcock Offshore UK continued to decide whether to bid on a tender on a case by case basis in a similar way as the other three incumbents, even where those tenders would require new investment in capacity.¹⁵¹

¹⁴⁴ Babcock's internal document, Annex 67 to the FMN, [REDACTED], page 10.

¹⁴⁵ Babcock's internal document, Annex 68 to the FMN, [REDACTED].

¹⁴⁶ Annex 098 to the FMN, paragraph 17.1, RF12 Response. Parties' response to the CMA Issues Letter, 28 October 2021 section 3.7.

¹⁴⁷ Parties' response to the CMA Issues Letter, 28 October 2021 section 3.8.

¹⁴⁸ The CMA considers that Babcock's submission made during the Issues Meeting that senior management would [REDACTED], is not supported by evidence available to the CMA and is at odds with the detailed analysis of several tender opportunities.

¹⁴⁹ These are the [REDACTED] tender for [REDACTED] 2019, the [REDACTED] 2020 tender and the [REDACTED] tender in 2021 from Babcock's counterfactual submission. Annex 076 to the FMN, [REDACTED], Annex 080 to the FMN, [REDACTED].

¹⁵⁰ See for example Annex 303 to the FMN, [REDACTED] relating to the [REDACTED] tender: '[REDACTED]'. In relation to the [REDACTED] tender, earlier discussions noted that [REDACTED]' [see Annex 305 to the FMN, [REDACTED]]; however, in Annex 306 to the FMN, [REDACTED], the final view referenced the difficulty getting approval to take on new aircraft following the [REDACTED] tender: '[REDACTED]'. In relation to [REDACTED] See Annex 307 to the FMN, [REDACTED], where [REDACTED] ([REDACTED]) confirmed that Babcock [REDACTED].

¹⁵¹ The CMA notes that the other three incumbents also do not bid on all tenders and third party competitors told the CMA that they could be selective in deciding which tenders to submit a bid for.

117. More generally, the Parties' internal documents show that competition for tenders can have a cyclical element where suppliers that have recently lost large contracts (particularly those where they were the incumbent) are expected to bid more aggressively in the next tender than those suppliers that have won recent tenders.^{152, 153} For example, one bid review document noted that Bristow was expected to be '[REDACTED]' noting '[REDACTED]', while Babcock was '[REDACTED]'.¹⁵⁴
118. Therefore, while the manage for value strategy might represent a change in Babcock's internal strategy with regard to its increased caution around making investments and ensuring that contracts contribute to costs or deliver appropriate returns, it is not clear from the evidence available to the CMA that this strategy – either Babcock Offshore UK's aggressive bidding in 2019 or its more limited participation in tenders in 2020-2021 in absolute terms – is a significant departure from Babcock Offshore UK's competitive behaviour before it introduced the strategy, or the behaviour observed in the market more generally. In particular, the CMA does not consider that the internal documents support the Parties' submissions that following the award of the [REDACTED] and [REDACTED] contracts Babcock Offshore UK would only have bid for contracts that did not require new capacity.

Tender data

119. Babcock Offshore UK bid for more than half ([REDACTED]%) of the 19 competitive opportunities customers identified with a value of more than £2 million between 2017 and 2021, and won more than a third ([REDACTED]%) of the opportunities in which it bid.¹⁵⁵ Furthermore, Babcock Offshore UK participated in over half the opportunities in which CHC bid and, of the bids that CHC lost (as an incumbent), CHC lost the majority ([REDACTED]) of these tenders to Babcock Offshore UK.
120. The CMA considers that this evidence indicates that Babcock Offshore UK is an important constraint on CHC notwithstanding its manage for value strategy. Whilst the CMA notes the Parties' submissions that Babcock Offshore UK has bid for, and won, fewer contracts since 2019,¹⁵⁶ the CMA

¹⁵² CHC internal documents Annex 037 to the FMN, [REDACTED], Annex 039 to the FMN, [REDACTED], Annex 040 to the FMN, [REDACTED].

¹⁵³ The Parties also submitted that termination for convenience clauses are standard in the industry and allow customers to terminate a contract with a helicopter operator for any reason. Parties' response to the CMA Issues Letter, 28 October 2021, paragraph 5.7. The CMA notes that this may mean further of Babcock's assets could become available for future tenders.

¹⁵⁴ Annex 039 to the FMN, [REDACTED].

¹⁵⁵ Notable contracts for which Babcock Offshore UK bid included [REDACTED] starting [REDACTED], [REDACTED] starting [REDACTED], and [REDACTED] starting [REDACTED].

¹⁵⁶ FMN, figure 16.1

notes that the same analysis indicates that CHC has also bid for, and won, fewer contracts since 2019, even though CHC is not adopting a manage for value strategy. There have been fewer tenders overall between 2020 and April 2021 and Babcock Offshore UK has not participated in a significantly lower proportion of these than it did in other years.¹⁵⁷

121. Although Babcock Offshore UK may have been selective in which opportunities to bid for, the CMA considers that it is often the case that the UK incumbents are selective and do not participate in all bidding processes. As stated above, none of the four UK incumbents bid on all 19 of the bids in the customer tender data¹⁵⁸ and third party competitors told the CMA that they could be selective in deciding which tenders to submit a bid for.
122. The CMA also notes that the Parties have indicated that Babcock Offshore UK has identified [redacted] upcoming opportunities, [redacted] of which it is likely to bid for and [redacted] which it may bid for.¹⁵⁹ While these opportunities relate to existing contracts held by Babcock Offshore UK, and Babcock has submitted this is therefore consistent with its manage for value strategy,¹⁶⁰ the CMA nevertheless considers this indicates that Babcock will continue to participate in the market despite the manage for value strategy. In addition, although Babcock submitted that Babcock Offshore UK's fleet is now [redacted],¹⁶¹ the CMA notes that capacity could have freed up following the termination of existing contracts (including following any early termination for convenience).¹⁶²

Perception of Babcock Offshore UK in the market

123. The Parties submitted that it was common knowledge in the industry that Babcock was looking to exit and therefore was not expected to bid on contracts requiring new capacity.¹⁶³
124. The tender data supplied by CHC records Babcock Offshore UK as bidding on four tenders between 2019 to 2021 that Babcock Offshore UK did not bid on, indicating that CHC believed that Babcock Offshore UK was continuing to bid

¹⁵⁷ For example, Babcock Offshore UK only participated in [redacted] of the [redacted] tenders for contracts starting in 2018, while Babcock Offshore UK also participated in [redacted] of the [redacted] tenders for contracts that commenced in 2021. It is therefore not clear from the customer tender data that Babcock Offshore UK had reduced its tender participation over the period 2017 to 2021.

¹⁵⁸ As noted at paragraph 92, seven tenders involved all four incumbents, six tenders involved three, and six tenders involved just two.

¹⁵⁹ FMN, paragraph 16.23. The [redacted] opportunities are contracts in which Babcock Offshore UK is the incumbent ([redacted]).

¹⁶⁰ Parties' response to the CMA Issues Letter, 28 October 2021, paragraph 3.10.

¹⁶¹ Parties' response to the CMA Issues Letter, 28 October 2021, Annex, page 2.

¹⁶² See footnote 153. The CMA also notes that Babcock Offshore UK currently has [redacted] helicopters that are either unallocated, undergoing repair or maintenance, or are back-up capacity. See footnote 54. It is unclear to what extent these could be used to service contracts in the future.

¹⁶³ Parties' response to the CMA Issues Letter, 28 October 2021, paragraph 4.9.1.

for opportunities.¹⁶⁴ In addition, CHC's internal documents discussing these tenders describe Babcock Offshore UK as a '[REDACTED]' bidder because it had [REDACTED] won some large tenders.¹⁶⁵ They do not suggest that CHC expected Babcock Offshore UK not to bid for those tenders. For the [REDACTED] tender CHC stated that the bid position of Babcock Offshore UK was '[REDACTED]'. More generally the CMA has seen no evidence that CHC expected that Babcock Offshore would not bid on any future tenders requiring new capacity.

125. The CMA therefore considers that the evidence shows that CHC continued to regard Babcock Offshore UK as an active competitor even following the Total and IAC tenders.
126. The CMA has also considered submissions from competitors and customers in relation to Babcock Offshore UK's competitiveness since 2017 in order to assess the impact of Babcock Offshore UK adopting a 'manage for value' strategy:
 - (a) As noted above, customers typically rate Babcock Offshore UK as marginally weaker than CHC or Bristow but stronger than NHV (see paragraph 103(b)). When explaining this relative weaker score, customers did not tend to reference Babcock Offshore UK's future strategy. Only one customer scored Babcock Offshore UK lower due to Babcock not participating in recent tender processes. Reasons given for a lower score by other customers included a [REDACTED].
 - (b) Customers provided their views as to how the competitive strength of Babcock Offshore UK had changed over the last five years. A small number of customers identified a weakening of Babcock Offshore UK's competitiveness over time. A similar number of customers perceived a decline in other competitors' competitiveness such as Bristow or NHV over this period.
 - (c) Competitors felt that Babcock Offshore UK was not competing less currently than it had been over the previous five years.
127. The CMA considers that CHC and third parties continued to treat and view Babcock Offshore UK as an important competitor/supplier up to the Merger, despite the manage for value strategy.

¹⁶⁴ These tenders include [REDACTED] in Blackpool as well as [REDACTED] and [REDACTED] in Aberdeen, and an [REDACTED] contract commencing in January 2021. All would have required Babcock Offshore UK to take on new capacity.

¹⁶⁵ CHC's tender documents with regards to the three bids: [REDACTED] (Annex 052 to the FMN, [REDACTED]), [REDACTED] (slide 9 of Annex 039 to the FMN, [REDACTED]), and [REDACTED] (slide 6 of Annex 040 to the FMN, [REDACTED]).

Levels of investment

128. The Parties submitted that Babcock Offshore UK had sought to limit investment in the Fisher Business. This included minimising its costs by reducing fleet size and cancelling orders for further aircraft.¹⁶⁶
129. However, the CMA considers that demand and the overall size of the market has also fallen.¹⁶⁷ The reduction in Babcock Offshore UK's fleet size has not led to Babcock Offshore UK being a significantly smaller operator in the UK than Bristow or CHC, as shown by the share of supply data. The CMA notes that Babcock Offshore UK's total fleet size (at 18 helicopters) is larger than CHC's (at 15) and NHV's (at 14) and is only slightly smaller than Bristow's (19). The CMA considers that fleet adjustments to keep in line with market developments do not necessarily imply a change in the nature and extent of competition.¹⁶⁸
130. The CMA also notes there is an economic incentive to return any aircraft that are not being used where this is possible to save unnecessary lease costs. Babcock Offshore UK is leasing several aircraft at [REDACTED] so any returned aircraft can be replaced more efficiently if required.¹⁶⁹ Returning aircraft in these circumstances could still be consistent with bidding for new contracts, even if these contracts require additional fleet. The CMA notes in this respect that a number of Babcock Offshore UK's internal strategy documents refer to refocusing the cost base and challenging lease rates to position the business to win contracts.¹⁷⁰

Conclusion on manage for value

131. Despite the manage for value strategy, the CMA has seen evidence that Babcock Offshore UK is still an important constraint on CHC and the other incumbents. This is reflected in a range of evidence including internal documents, recent tender processes, and third party views. The small number of bids that Babcock Offshore UK has not pursued since reducing its spare capacity in 2020 is insufficient for the CMA to identify a fundamental shift in its bidding strategy or to consider that Babcock Offshore UK no longer constitutes an important constraint on CHC.

¹⁶⁶ Parties' Issues meeting presentation, slide 4.

¹⁶⁷ FMN, Figure 2.1 shows the total UK flight hours falling from 20,000 in 2015 to 15,000 in 2021.

¹⁶⁸ See paragraph 105.

¹⁶⁹ The Parties submitted that at the time Babcock bid for the [REDACTED] contract, Babcock was incurring monthly lease rates for S92 aircraft that [REDACTED] \$[REDACTED] (compared to an average market lease rate for the S92s of around \$[REDACTED]) (Parties' response to the CMA Issues Letter, 28 October 2021, paragraph 3.3). Further, the Parties submitted that the purchase and lease prices for aircraft currently available in the market are [REDACTED] than in previous years (Parties' response to the CMA Issues Letter, 28 October 2021, paragraph 5.11).

¹⁷⁰ See paragraph 108.

Competitive constraint provided by other UK suppliers

132. As set out in paragraph 58, there are currently two other suppliers in the UK market aside from the Parties: Bristow and NHV.
133. The Parties submitted that there will be sufficient competition following the Merger as there will remain three competitors and the threat of entry. They submitted that reducing the number of helicopter operators in the market from four to three would simply restore the industry to the market conditions which have historically prevailed in the UK for a considerable period of time and during which customers demonstrably benefitted from effective competition.¹⁷¹
134. The Parties submitted that NHV is a much more powerful constraint than Babcock Offshore UK (and even Bristow) as it has a large fleet of helicopters specially developed for the O&G Offshore Transportation Services market, and any perceived gaps in its range of aircraft (due to its lack of a heavy S92 aircraft) is misconceived and can easily be remedied, given that S92 helicopters are readily available for leasing or purchase on extremely competitive terms.¹⁷² The Parties submitted that NHV has taken particular advantage of advancements over the last 20 years which makes it a strong competitor, such as: purpose-built and cost efficient facilities; latest technological solutions on helicopters and for maintenance; digitisation; lean organisational structure and limited history with employee unions; and increased fuel efficiency and lower carbon emission.¹⁷³
135. The Parties submitted that NHV and Bristow have no competitive disadvantage when it comes to access to helicopters and are able to compete on an equal footing.¹⁷⁴
136. As a preliminary point, the CMA's assessment of the effect of the Merger is not made by reference to whether the presence of a certain number of competitors means the market is 'competitive enough'. Instead, the CMA's assessment involves a comparison of the prospects for competition with the Merger against the competitive situation without the Merger.¹⁷⁵ When levels of rivalry are reduced, firms' competitive incentives may be dulled, to the detriment of customers.¹⁷⁶ The CMA does not apply any thresholds relating to

¹⁷¹ Parties' response to the CMA Issues Letter, 28 October 2021, paragraphs 4.1 to 4.6.

¹⁷² Parties' response to the CMA Issues Letter, 28 October 2021, paragraph 1.6.3.

¹⁷³ Parties' Issues meeting presentation, slide 9.

¹⁷⁴ Parties' response to the CMA Issues Letter, paragraph 5.3.2.

¹⁷⁵ [Merger Assessment Guidelines](#), paragraph 3.1.

¹⁷⁶ [Merger Assessment Guidelines](#), paragraph 2.6.

market share, number of remaining competitors or any other measure to determine whether a loss of competition is substantial.¹⁷⁷

137. This section describes the evidence gathered in relation to the competitive constraint provided by Bristow and NHV, including information on their current UK presence and offering, tender data, the Parties' internal documents and third party views.

Bristow

138. The CMA understands that Bristow currently has 19 helicopters serving O&G customers in the UK, with a mixture of S92s (heavy), AW139s (medium) and AW189s (super medium).¹⁷⁸ Bristow uses different helicopters for different operations, namely the S92 in the Northern Zone and the AW139 for the Southern Zone. It also operates the AW189.
139. Bristow currently operates out of Sumburgh, Norwich, and Aberdeen. The CMA understands that Bristow may have certain limitations which dissuaded it from bidding for one particular contract: [REDACTED].¹⁷⁹
140. Based on the evidence available, the CMA considers that Bristow provides a competitive constraint on the Parties:
- (a) Of the four incumbents, Bristow has the [REDACTED] participation rate, but the [REDACTED] win rate.¹⁸⁰ Overall, the tender data demonstrates that the Parties regularly bid against Bristow (as discussed further at paragraph 95).
 - (b) The Parties' internal documents demonstrate that Babcock Offshore UK and CHC regularly monitor Bristow as one of the current UK incumbents, in relation to both 'business as usual' monitoring of the competitive landscape¹⁸¹ and Bristow's competitiveness and the likelihood that it will bid for specific tenders.¹⁸²
 - (c) As noted in paragraph 103(a) above, a majority of customers stated that all four incumbents (including Bristow) had similar capabilities, and were able to meet their needs/fulfil their requirements. Customers rated each of the four incumbents out of five. On average, Bristow was scored the

¹⁷⁷ [Merger Assessment Guidelines](#), paragraph 2.8.

¹⁷⁸ [REDACTED] of these are S92s (heavy), [REDACTED] are AW139s (medium) and [REDACTED] AW189 (super medium).

¹⁷⁹ [REDACTED].

¹⁸⁰ Bristow participated in over [REDACTED]% of opportunities and won [REDACTED]% of the times it participated.

¹⁸¹ For example, a recruitment document produced by CHC (July 2019) states that it '[REDACTED]'. CHC's internal document, Annex 50 to the FMN, [REDACTED].

¹⁸² Babcock's internal document, Annex 79 to the FMN, [REDACTED]. Babcock's internal document, Annex 77 to the FMN, [REDACTED]. Babcock's internal document, Annex 76 to the FMN, [REDACTED]. CHC's internal document, Annex 45 to the FMN, [REDACTED], slide 47.

strongest, with 4 (marginally more than CHC which scored 3.9, and Babcock Offshore UK which scored 3.6).

(d) [REDACTED].¹⁸³

NHV

141. The CMA understands that NHV currently has 14 helicopters serving O&G customers in the UK, with a mixture of AW139s, AW169s (both medium) and H175s (super medium).¹⁸⁴ NHV operates from three bases in the UK (Norwich, Aberdeen, and Blackpool with a satellite hangar in Wick).¹⁸⁵
142. The CMA understands that NHV does not currently operate any S92 (heavy) helicopters. In addition, the CMA has not seen any evidence [REDACTED]. [REDACTED].¹⁸⁶
143. Evidence from customers indicates that super medium helicopters are not necessarily always an alternative to heavy helicopters.¹⁸⁷ Furthermore, the CMA notes some customers have indicated a preference to use a range of different helicopter types for resilience reasons (for example, should a maintenance issue be identified with a specific type of helicopter).
144. However, [REDACTED].¹⁸⁸
145. Based on the evidence available, the CMA considers that NHV provides a competitive constraint on the Parties, albeit that this is stronger where a heavy helicopter is not required/preferred:
 - (a) The tender data demonstrates that, of the four incumbents, NHV has the [REDACTED] participation rate, participating in roughly two thirds of bids, [REDACTED] win rate.¹⁸⁹ It has bid [REDACTED] in relation to contracts from Sumburgh in the Shetland islands, where a heavy helicopter is more likely to be required (as the installations are further from land and icing capabilities are required due to weather conditions).^{190, 191} However, the CMA considers that these account for a relatively small number of the tenders in its dataset ([REDACTED] bids out of the 19 included services from Sumburgh).

¹⁸³ [REDACTED].

¹⁸⁴ [REDACTED] of these are either AW139s or AW169s (both medium) and [REDACTED] are H175s (super medium).

¹⁸⁵ See: [Presence - NHV](#).

¹⁸⁶ [REDACTED].

¹⁸⁷ One customer noted that whilst two smaller helicopters could be used instead of one heavy one, this increases the number of flights required and increases the safety risk. Note of the call with [REDACTED].

¹⁸⁸ [REDACTED].

¹⁸⁹ NHV participated in [REDACTED] of opportunities and won [REDACTED] of the opportunities in which it participated.

¹⁹⁰ NHV participated in [REDACTED] out of [REDACTED] bids which included services from Sumburgh.

¹⁹¹ Although NHV won a long-term contract with Dana Petroleum to provide helicopter services to their central and north North Sea assets, the CMA understands this service is being run from Aberdeen rather than Sumburgh. See [NHV awarded offshore contract by Dana Petroleum - News - About - NHV](#).

Overall, the tender data indicates that NHV is an active competitor against the Parties (as discussed further at paragraph 95).

- (b) Compared with Bristow and each other, the Parties appear to monitor NHV less frequently, but do still monitor NHV as a competitor. For example, during the [REDACTED] tender (January 2020), Babcock Offshore UK considered each of NHV, Bristow and CHC. Babcock Offshore UK stated ‘[a]ll 4 would be capable and competent of delivering this work.’ In relation to NHV, Babcock Offshore UK noted that NHV would ‘likely offer competitive pricing on H175’.¹⁹² Some of the Parties’ internal documents make reference to the fact that NHV may be a weaker competitor for opportunities requiring a S92 heavy helicopter.¹⁹³
- (c) As noted in paragraph 95(b) above, the majority of customers stated that all four incumbent suppliers (including NHV) had similar capabilities, and were able to meet their needs/fulfil their requirements. However, a small number of customers noted that NHV could not meet their requirements due to not offering heavy helicopters.¹⁹⁴ As noted above, customers were asked by the CMA to rate each of the four incumbent suppliers out of five. NHV scored the lowest, with an average score of 3.5 (Bristow scored 4, CHC scored 3.9, and Babcock Offshore UK scored 3.6). The majority of customers who rated NHV as a weaker competitor than its rivals explained that this was because it could not offer a heavy helicopter.
- (d) [REDACTED]. [REDACTED].¹⁹⁵

Conclusion on competitive constraint provided by other UK suppliers

146. The CMA considers that both Bristow and NHV provide a constraint on the Parties. While NHV in particular may have some limitations in the type of helicopters that it operates which may limit its competitiveness for certain types of contract (in particular, contracts operating out of Sumburgh and Aberdeen where a heavy aircraft may be required or preferred), this does not appear to significantly affect its ability to compete against the Parties.
147. However, the CMA considers that the constraint that will remain from Bristow and NHV is not sufficient to conclude that there is no potential for a substantial lessening of competition. The CMA set out in paragraphs 101 - 131 that there is significant competitive interaction between the Parties,

¹⁹² Babcock’s internal document, Annex 76 to the FMN, [REDACTED].

¹⁹³ Babcock’s internal document, Annex 86 to the FMN, [REDACTED]. Babcock’s internal document, Annex 79 to the FMN, [REDACTED]. [REDACTED]. Babcock’s internal document, Annex 77 to the FMN, [REDACTED].

¹⁹⁴ These customers tended to have longer flight distances than customers that stated they did not require a S92.

¹⁹⁵ [REDACTED] responses to the CMA’s questionnaire.

notwithstanding Babcock's 'manage for value' strategy. The loss of competition between the Parties is likely to be significant given the existing concentration in the market. The CMA has found that on average, there are only three bidders per tender as a result of all suppliers bidding somewhat selectively. Contrary to the Parties' submissions this average is not solely explained by lower participation by Babcock Offshore UK.¹⁹⁶ If the CMA assumes that Babcock Offshore UK bid on all contracts, the average would be 3.5.

Competitive constraint provided by potential entrants

148. In its competitive assessment, the CMA may take into account entry plans of rivals who will enter or expand irrespective of whether a merger proceeds.¹⁹⁷ Firms that currently do not supply significant volumes, but could rapidly and profitably begin doing so if prices were to rise, may act as a constraint on prices.¹⁹⁸ Where new entry or expansion by rivals is unlikely, for example because barriers to entry are high, or because the chance of successful and profitable entry is low, any given lessening of competition is likely to be longer lasting, and is more likely to result in an SLC, given the lower likelihood that it will be diminished by the emergence of new entry or expansion in the long run.¹⁹⁹
149. The Parties submitted that they will be significantly constrained by the risk of entry.²⁰⁰ They submitted that customers can readily sponsor new entry and expansion, and submitted that the only reason why customers have not done so since NHV started operating in the UK is because the market has remained highly competitive.²⁰¹ The Parties submitted that this entry threat should be viewed against a background of the negotiating strength of customers.²⁰² The Parties referenced the use of termination for convenience clauses in customers' favour, joint tendering and increasingly short-term contracts as examples of the leveraging power of customers.
150. The Parties also submitted that customers can start or use their own internal helicopter service.²⁰³

¹⁹⁶ Parties' response to the CMA Issues Letter, 28 October 2021 Annex section 2.2.

¹⁹⁷ This is by contrast to entry which may be triggered by the merger, which would be considered as a countervailing constraint. [Merger Assessment Guidelines](#), paragraph 4.16.

¹⁹⁸ [Merger Assessment Guidelines](#), paragraph 4.38.

¹⁹⁹ [Merger Assessment Guidelines](#), paragraph 4.17.

²⁰⁰ FMN, paragraph 21.1.

²⁰¹ Parties' response to the CMA Issues Letter, 28 October 2021, paragraph 5.9

²⁰² Parties' response to the CMA Issues Letter, 28 October 2021, paragraph 1.6.4. Parties' Issues meeting presentation, slide 12.

²⁰³ Parties' response to the CMA Issues Letter, 28 October 2021, footnote 30. Parties' Issues meeting presentation, slide 12.

151. The Parties submitted, in terms of potential entrants, that there are several competitors from other geographic markets that are capable of meeting the UK regulatory requirements and the financial costs to enter.²⁰⁴

CMA assessment

152. The CMA has considered the extent to which potential entrants such as those identified by the Parties may act as a competitive constraint in the UK supply of O&G Offshore Transportation Services. The CMA considers the evidence on barriers to entry at paragraphs 157-169. The CMA considers that most forms of buyer power that do not result in new entry – for example, buyer power based on a customer’s size, sophistication, or ability to switch easily – are unlikely to prevent an SLC that would otherwise arise from the elimination of competition between the merger firms. This is because a customer’s buyer power depends on the availability of good alternatives they can switch to, which in the context of an SLC will have been reduced.²⁰⁵
153. As set out in more detail in paragraph 162, the O&G Offshore Transportation Services industry is in decline and appears to attract low margins, which is likely to affect the incentive to invest in the market. Consistent with this position, the evidence available to the CMA does not suggest potential entrants pose a competitive constraint or that self-supply is a credible option:
- (a) The CMA has not seen any evidence of any potential entrants having won any contracts in the UK. The CMA has also seen no evidence that [REDACTED].
 - (b) The majority of customers that responded to the CMA’s Merger investigation stated that they would not invite potential entrants to compete for contracts in the UK North Sea. Customers also did not mention the potential for self-supply or sponsoring new entry.
 - (c) Although potential entrants were approached by a small number of customers and encouraged to bid for contracts,²⁰⁶ no customer told the CMA that it had been successful in getting entrants to bid, with some suggesting this was due the investment required to enter.
 - (d) A majority of the potential entrants identified by the Parties and contacted by the CMA had no interest in entry, for example with one referring to it as ‘not a viable proposition’. Another potential entrant identified by the Parties told the CMA that it has no plans at all to enter

²⁰⁴ FMN, paragraph 21.38. These include Bel Air, Heliconia, Unifly and Weststar.

²⁰⁵ [Merger Assessment Guidelines](#), paragraph 4.20.

²⁰⁶ [REDACTED].

the UK O&G Offshore Transportation Services industry or to bid for UK contracts in the next two to three years. Only one potential entrant indicated it would have an interest in bidding for a contract in the UK in future. The CMA understands this potential entrant [REDACTED].

- (e) [REDACTED] stated that they do not consider potential entrants provide a competitive constraint, with one noting this was because they do not hold a UK AOC and cannot operate in the UK without one.
- (f) The Parties' internal documents discussing potential competitors for upcoming tenders do not generally refer to potential entrants and, when they do, they highlight their weaknesses. For example, a Babcock internal document relating to the tender run by [REDACTED] in 2019²⁰⁷ notes that Bel Air was likely to bid for the Danish lot of the tender, but did not have a UK AOC and had 'AW189 on Danish AOC'. Similarly, a Babcock internal document relating to a tender run by [REDACTED] in 2017 notes that (i) BIH has a 'weak track record and does not have access to cheap a/c [aircrafts] deals', (ii) Westar does 'not operate in the UK', does 'not have a current UK AOC', 'no UK operational experience' and 'no existing UK facilities' and (iii) Bel Air 'does not have PLC type purchasing power for competitive A/C [aircrafts] rates'.²⁰⁸ In relation to the same tender CHC observed that²⁰⁹ Belair 'does not meet Perenco's requirements'.

Conclusion on constraint from potential entry

154. On the basis of the above evidence, the CMA believes that the threat of entry does not act as a material competitive constraint on the incumbent UK suppliers of O&G Offshore Transportation Services, including the Parties. This is consistent with the evidence of high barriers to entry, which are considered further at paragraphs 157-169.

Conclusion on competitive assessment

155. Based on the evidence set out above, the CMA believes that the Merger raises significant competition concerns as a result of horizontal unilateral effects in the UK supply of O&G Offshore Transportation Services:
- (a) The supply of UK O&G Offshore Transportation Services is relatively undifferentiated and concentrated, with only four suppliers. The Parties'

²⁰⁷ Babcock's internal document, Annex 65 to the FMN, [REDACTED].

²⁰⁸ Babcock's internal document, Annex 48 to the FMN, [REDACTED].

²⁰⁹ CHC's internal document, Annex 47 to the FMN, [REDACTED].

combined share of supply post-Merger is high, indicating that the Parties are likely to pose an important competitive constraint on one another.

- (b) Tender data shows significant competitive interaction between all four incumbents, including the Parties. Babcock Offshore UK and CHC frequently bid against each other; CHC has lost a number of contracts to Babcock Offshore UK; and where Babcock Offshore UK wins CHC often comes second. The tender data, the Parties' internal documents and evidence from third parties show that the Parties pose an important competitive constraint on one another, and the majority of customers have expressed concerns in relation to the Merger.
- (c) The evidence gathered by the CMA indicates that Babcock Offshore UK is continuing to bid for contracts, despite adopting a 'manage for value' strategy. Although the internal documents suggest that Babcock is cautious about investments and selective about what contracts it bids for, the other incumbents also do not bid for all contracts. Babcock Offshore UK's internal strategic documents refer to expanding its contractual base, increasing market share in the North Sea, and growing the UK business, suggesting that it is an active competitor. CHC's internal documents and the majority of third parties have not identified Babcock Offshore UK as a weak competitor due to its current strategy, nor have they generally identified a change in Babcock Offshore UK's strength as a competitor. Whilst both Bristow and NHV provide a constraint on the Parties, this is not sufficient to prevent a realistic prospect of a substantial lessening of competition given the level of concentration in the market and the significance of the constraint that would be eliminated by the Merger. There are only four suppliers bidding for contracts and not every supplier bids for every opportunity. On average, there are only three bidders per tender as a result of all suppliers bidding somewhat selectively.
- (d) The evidence received by the CMA indicates that the threat of entry does not act as a material competitive constraint on the incumbent UK suppliers of O&G Offshore Transportation Services.

Conclusion on horizontal unilateral effects

156. For the reasons set out above, the CMA believes that the market is concentrated, and the Parties represent an important competitive constraint on one another. Accordingly, the CMA found that the Merger raises significant competition concerns as a result of horizontal unilateral effects in relation to O&G Offshore Transportation Services.

Barriers to entry and expansion

157. 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.²¹⁰ In this respect, the CMA will consider whether entry triggered by the merger might replace the constraint eliminated by the merger.²¹¹ In assessing whether entry or expansion might prevent an SLC, the CMA considers whether such entry or expansion would be timely, likely and sufficient.²¹²

Parties' submissions

158. The Parties submitted that there are no material barriers to entry. They submitted that CHC and the Fisher Business will be significantly constrained by the risk of entry into the O&G Offshore Transportation Services market.²¹³

159. The Parties submitted that barriers to entry are not significant given that:

(a) There are many aircraft available for purchase or lease in the open market on highly competitive terms. The purchase and lease prices for aircraft are significantly lower than in previous years, since several helicopters are bank distressed assets following the restructuring of a number of helicopter operators.²¹⁴ Helicopters can also be moved between bases and countries in order to set up operations where needed.²¹⁵

(b) New entrants can hire from the available pool of trained pilots and engineers. On many occasions pilots continue to fly the same routes for a different helicopter operator when contracts move between operators.²¹⁶

(c) Facilities at bases (including hangars for maintenance and storage of helicopters) can be leased or built. The sunk costs of acquiring such facilities do not represent a barrier to entry, particularly when the costs can be spread over the life of a contract or multiple contracts.²¹⁷ In relation to Aberdeen specifically, the Parties submitted that although space constraints have been a feature of Aberdeen airport for at least 30 years, the Competition Commission's conclusion in its CHC/HSG decision that the availability of facilities at Aberdeen Airport is not a

²¹⁰ [Merger Assessment Guidelines](#), from paragraph 8.40.

²¹¹ [Merger Assessment Guidelines](#), paragraph 4.16.

²¹² [Merger Assessment Guidelines](#), from paragraph 8.40.

²¹³ The Parties also mentioned the threat of expansion from incumbents (ie NHV and Bristow), however the constraint from these incumbents has been considered above already.

²¹⁴ Parties' response to the CMA Issues Letter, 28 October 2021, paragraph 5.11.

²¹⁵ Parties' response to the CMA Issues Letter, 28 October 2021, paragraph 5.14

²¹⁶ FMN, paragraph 21.11.

²¹⁷ FMN, paragraphs 21.12.

major barrier remains relevant today, and noted that NHV was able to enter the UK market and set-up operations in Aberdeen in c.2016.²¹⁸

(d) Overseas providers of O&G Offshore Transportation Services are able to meet the relevant UK regulatory requirements by leveraging expertise acquired in other jurisdictions.²¹⁹ In particular, a UK AOC is not a pre-requisite for a helicopter operator to be able to bid for and win a contract in the UK. The Parties gave the example of NHV operating on a Belgian AOC for several years following its entry in the UK and Wiking which currently flies renewable energy contracts under a German AOC while working with the UK CAA to obtain a UK AOC. In addition, any helicopter operator can partner with another provider on its AOC to facilitate rapid entry into the market.²²⁰ Further, the Parties stated it takes approximately a maximum of six to 12 months to obtain a UK AOC and the lead time for setting up flight operations following the award of a tender is approximately six to eight months so these processes can be run concurrently.²²¹

160. The Parties submitted that customers can readily sponsor entry or expansion and adapt their tender requirements accordingly, including the lead time to get to market after the award of a tender.²²² The Parties submitted that, should customers not be content with the level of competition in the market, they have the option to sponsor entry, citing Airbus' sponsoring of NHV in 2016,²²³ and BP's sponsoring of Bond's re-entry in 2004 in support.²²⁴

161. The Parties also highlighted that customers regularly threaten to bring services in-house if helicopter operators are not able to provide them with the services they want at the right price.²²⁵ They submitted that this threat is credible as most customers have their own aviation departments, understand the regulatory requirements and, in many cases, are ex-helicopter operators themselves in some global markets.²²⁶

CMA assessment

162. As acknowledged by the Parties and in third party reports, the O&G Offshore Transportation Services industry is in decline, precipitated by a 'dramatic

²¹⁸ FMN, paragraphs 21.15 – 21.17.

²¹⁹ FMN, paragraphs 21.28 – 21.29.

²²⁰ Parties' response to the CMA Issues Letter, 28 October 2021, paragraph 5.15.

²²¹ Parties' response to the CMA Issues Letter, 28 October 2021, paragraph 5.16.

²²² Parties' response to the CMA Issues Letter, 28 October 2021, paragraph 5.9.

²²³ Parties' response to the CMA Issues Letter, 28 October 2021, paragraph 4.8.

²²⁴ FMN, paragraph 21.34, 21.35 to 21.36.

²²⁵ Parties' response to the CMA Issues Letter, 28 October 2021, footnote 30.

²²⁶ Parties' response to the CMA Issues Letter, 28 October 2021, paragraph 5.9.

decline in oil prices since 2014 and general uncertainty in the energy market'.²²⁷ The CMA considers other available evidence is consistent with this. For example, Babcock's internal documents suggest that the O&G Offshore Transportation Services market is expected to be in 'severe cost control mode' despite oil price recovery in recent years, with the market's future being described as 'uncertain'.²²⁸ Third party suppliers have also told the CMA that margins are low in this sector, and this is also reflected in the Parties' internal documents.²²⁹ The CMA considers that these factors are likely to increase the risk that any investments required to enter into the UK would not be recouped by a new entrant and therefore reduce the incentives to enter.

163. Contrary to the Parties' submissions, the CMA considers that the costs to set-up a full new UK infrastructure, including acquiring, leasing or transporting helicopters to the UK from overseas, hiring pilots and engineers and leasing facilities are significant. For example, an internal document considering Babcock Offshore UK's strength relative to its competitors refers to passenger terminals and hangars in Aberdeen and leased fleet as 'key infrastructure and asset ownership' and to North Sea crew change management, operation, and technical personnel as 'key skills/people'.²³⁰ As explained above, the Parties' internal documents discussing the possibility of potential entrants bidding for particular contracts sometimes refer to their lack of UK assets as weaknesses.²³¹ A third party supplier noted that to start operating in the UK a new entrant would need to lease or purchase aircrafts, hire pilots and crews and have a UK structure in place.²³² Finally, third party customers told the CMA that the O&G Offshore Transportation Services market has high or significant barriers to entry.²³³
164. In terms of regulatory requirements, suppliers are required to obtain a UK AOC in order to charge to fly passengers to and from O&G platforms. In particular, it is no longer possible for a supplier to fly in the UK on a European AOC, as was the case when NHV entered the UK market. One customer confirmed that one of the main barriers for EU operators to enter the UK market is the acquisition of a UK AOC licence.²³⁴ The customer suggested that obtaining a UK AOC takes significantly longer than suggested by the

²²⁷ FMN, paragraph 2.23. Annex 213 to the FMN, [REDACTED], slide 6.

²²⁸ Babcock's internal documents, Annexes 264 to the FMN, [REDACTED] and Annex 273 to the FMN, [REDACTED].

²²⁹ See for example Babcock's internal documents Annex 073 to the FMN, [REDACTED], which notes that '[REDACTED] and CHC/Babcock 51028 - Annex 064 to the FMN, [REDACTED] stating that '[REDACTED]'. See also Babcock's internal document, Annex 201 to the FMN, [REDACTED], page 1) which notes that: '[REDACTED]'

²³⁰ See Babcock's internal document, Annex 281 to the FMN, [REDACTED], slide 6.

²³¹ See paragraph 153(f).

²³² See note of the call [REDACTED].

²³³ Customer responses to the CMA's questionnaire.

²³⁴ See note of the call [REDACTED].

parties (12-24 months), which it felt could eliminate prospective operators and noted that the European Aviation Safety Agency's AOC is not sufficient.

165. Furthermore, some third parties confirmed that sponsoring a new entrant was challenging, with one customer noting that 'entry barriers are high for these services' (see further paragraph 153(c) above – among those customers that have sought to encourage potential entrants to bid for contracts none have been successful). The majority²³⁵ of customers contacted by the CMA stated they would not invite new entrants to compete for contracts in the UK North Sea.
166. Moreover, the CMA considers that NHV's entry arose from a fairly unique set of circumstances as the Parties themselves acknowledge.²³⁶ NHV's entry was not sponsored by a customer but by a manufacturer following a series of incidents involving a particular aircraft type, which ultimately resulted in the aircraft being grounded. Airbus was therefore keen to rebuild its reputation. It seems unlikely that these circumstances will be replicated.
167. The CMA also considers that the sponsored re-entry of Bond by BP in Aberdeen 2004 is also unlikely to be indicative of the likelihood of sponsored entry in response to the Merger given the decline in demand for O&G over the last decade.
168. The CMA also has received no evidence that customers would be willing to bring O&G Offshore Transportation Services in-house in response to the Merger.
169. Therefore, when considering all the assets and regulatory requirements required to enter the UK, the CMA believes that barriers to entry are high in the O&G Offshore Transportation Services market. The CMA has not seen sufficient evidence of entry that would be timely, likely and sufficient in response to the Merger. As such, the CMA believes that entry or expansion would not be sufficient to prevent a realistic prospect of an SLC as a result of the Merger.

Third party views

170. The CMA contacted customers, competitors (ie the other incumbent suppliers and potential entrants) of the Parties. A majority²³⁷ of customers raised

²³⁵ [redacted] responses to the CMA's questionnaire.

²³⁶ Parties' response to the CMA Issues Letter, 28 October 2021, paragraphs 4.7 and 4.8.

²³⁷ [redacted] responses to the CMA questionnaire.

concerns regarding the Merger. A few customers specifically raised the potential for price increases post-Merger.

171. Other third parties have not raised concerns. Some customers and suppliers were either agnostic²³⁸ or welcomed the Merger. More specifically, a third party supplier submitted that consolidation is required to tackle financial pressure on service providers. A customer also stated its preference for having fewer but financially stronger providers that can focus on safety,²³⁹ whereas another customer²⁴⁰ submitted that it was indifferent about a Merger that will make the remaining competitors financially healthier.
172. Some customers raised non-merger specific concerns, mentioning the lack of resilience of existing operators during maintenance, technical faults or adverse weather conditions²⁴¹ and an increase in Brexit related technical restrictions.²⁴²
173. Third party comments have been taken into account where appropriate in the competitive assessment above.

Conclusion on substantial lessening of competition

174. Based on the evidence set out above, the CMA believes that it is or may be the case that the Merger has resulted, or may be expected to result, in an SLC as a result of horizontal unilateral effects in relation to O&G Offshore Transportation Services market in the UK.

Decision

175. Consequently, the CMA believes that it is or may be the case that (i) a relevant merger situation has been created; and (ii) the creation of that situation has resulted, or may be expected to result, in an SLC within a market or markets in the United Kingdom.
176. The CMA therefore believes that it is under a duty to refer under section 22(1) of the Act. However, the duty to refer is not exercised whilst the CMA is considering whether to accept undertakings under section 73 of the Act instead of making such a reference.²⁴³ CHC has until 25 November 2021²⁴⁴ to

²³⁸ [REDACTED] response to the CMA questionnaire.

²³⁹ [REDACTED] response to the CMA questionnaire.

²⁴⁰ [REDACTED] response to the CMA questionnaire and note of the call.

²⁴¹ [REDACTED] response to the CMA questionnaire.

²⁴² [REDACTED] response to the CMA questionnaire.

²⁴³ Section 22(3)(b) of the Act.

²⁴⁴ Section 73A(1) of the Act.

offer an undertaking to the CMA.²⁴⁵ The CMA will refer the Merger for a phase 2 investigation²⁴⁶ if CHC does not offer an undertaking by this date; if CHC indicates before this date that it does not wish to offer an undertaking; or if the CMA decides²⁴⁷ by 2 December 2021 that there are no reasonable grounds for believing that it might accept the undertaking offered by CHC, or a modified version of it.

177. The statutory four-month period mentioned in section 24 of the Act in which the CMA must reach a decision on reference in this case expires on 31 December 2021. For the avoidance of doubt, the CMA hereby gives CHC notice pursuant to section 25(4) of the Act that it is extending the four-month period mentioned in section 24 of the Act. This extension comes into force on the date of receipt of this notice by CHC and will end with the earliest of the following events: the giving of the undertakings concerned; the expiry of the period of 10 working days beginning with the first day after the receipt by the CMA of a notice from CHC stating that it does not intend to give the undertakings; or the cancellation by the CMA of the extension.

Colin Raftery
Senior Director, Mergers
Competition and Markets Authority
18 November 2021

ⁱ This sentence should read: ‘the evidence available to the CMA indicates that Babcock Offshore UK was continuing to bid for contracts, despite adopting a ‘manage for value’ strategy [...]’.

ⁱⁱ This sentence should read: ‘[t]wo common unit holders of CHC, namely Bain Capital Credit, LP (Bain) and funds and accounts advised by or affiliated with Cross Ocean Partners Management LP or Cross Ocean Adviser LLP (Cross Ocean), [...]’.

ⁱⁱⁱ This sentence should read: ‘[...] (ie five new H175 helicopters for the Total contract in Aberdeen and Denmark) [...]’.

²⁴⁵ Section 73(2) of the Act.

²⁴⁶ Sections 22(1) and 34ZA(2) of the Act.

²⁴⁷ Section 73A(2) of the Act.