

## **COMPLETED ACQUISITION OF OFFSHORE HELICOPTER SERVICES UK LIMITED, OFFSHORE SERVICES AUSTRALASIA PTY LTD, AND OFFSHORE HELICOPTER SERVICES DENMARK A/S BY CHC GROUP LLP**

### **Notice of possible remedies under Rule 12 of the CMA's rules of procedure for merger, market and special reference groups<sup>1</sup>**

#### **Introduction**

1. On 29 November 2021, the Competition and Markets Authority (**CMA**), in exercise of its duty under section 22(1) of the Enterprise Act 2002 (**the Act**), referred the completed acquisition (the **Merger**) by CHC Group LLP (**CHC**) of Offshore Helicopter Services UK Limited (**Offshore UK**), Offshore Services Australasia Pty Ltd (**Offshore Australia**), and Offshore Helicopter Services Denmark A/S (**Offshore Denmark**) for further investigation and report by a group of CMA panel members (the **Inquiry Group**). The acquired entities (together the **Fisher Business**) were subsidiaries of Babcock International Group plc (**Babcock**).
2. On 26 May 2021 the CMA had served an initial enforcement order (**IEO**) under section 72(2) of the Enterprise Act 2002 on the companies involved in the Merger to ensure that no action was taken, pending final determination of any reference under sections 22 or 33 of the Act, which might prejudice that reference or impede the taking of any action by the CMA under Part 3 of the Act, which might be justified by the CMA's decisions on the reference.
3. In its provisional findings on the reference notified to CHC, the Fisher Business and Babcock (the **Parties**) on 17 March 2022, the CMA, among other things, provisionally concluded that the Merger has resulted in the creation of a relevant merger situation, and that the creation of that situation has resulted, or may be expected to result, in a substantial lessening of competition (**SLC**) in the UK oil and gas (**O&G**) Offshore Transportation Services, in which the Parties are active.
4. The CMA's analysis provisionally indicates that this SLC has resulted, or may be expected to result, in adverse effects, for example in the form of lower

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<sup>1</sup> [CMA Rules of Procedure for Merger, Market and Special Reference Groups \(CMA17, 2014\)](#).

service quality or higher prices compared to what would otherwise have been the case absent the Merger.

5. This Notice sets out the actions which the CMA considers it might take for the purpose of remedying the SLC and/or any resulting adverse effects identified in the provisional findings report.<sup>2</sup>
6. The CMA invites comments on possible remedies by **17:00 GMT on 31 March 2022**.

### **Criteria**

7. In deciding on a remedy, the CMA shall, in particular, have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to remedy the SLC and any adverse effects resulting from it.<sup>3</sup>
8. To this end, the CMA will seek remedies that are effective in addressing the SLC and its resulting adverse effects and will select the least costly and intrusive remedy that it considers to be effective.
9. The CMA will seek to ensure that no remedy is disproportionate in relation to the SLC and its adverse effects.<sup>4</sup>

### **Possible remedies on which views are sought**

10. In determining an appropriate remedy, the CMA will consider the extent to which different remedy options would be effective in remedying, mitigating or preventing the SLC or any resulting adverse effects that have been provisionally identified.
11. As set out in published remedies guidance, the CMA prefers structural remedies, such as divestiture or prohibition, over behavioural remedies, because:
  - (a) structural remedies are more likely to deal with an SLC and its resulting adverse effects directly and comprehensively at source by restoring rivalry;
  - (b) behavioural remedies are less likely to have an effective impact on the SLC and its resulting adverse effects, and are more likely to create significant costly distortions in market outcomes; and

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<sup>2</sup> [CHC/Babcock merger inquiry](#).

<sup>3</sup> Sections 35(4) and 36(3) of the Act.

<sup>4</sup> [Merger Remedies: CMA87](#) (December 2018), paragraph 3.3 and 3.4.

(c) structural remedies rarely require monitoring and enforcement once implemented.<sup>5</sup>

12. At this stage, the CMA has identified divestiture as likely to be the only effective remedy to the SLC or any resulting adverse effects that have been provisionally identified.
13. The CMA's current view is that a behavioural remedy is very unlikely to be an effective remedy to the SLC or any resulting adverse effect that it has provisionally identified. However, the CMA will consider any behavioural remedies put forward as part of this consultation.
14. More generally the CMA will consider any other practicable remedies that the main parties, or any interested third parties, may propose that could be effective in addressing the SLC and/or any resulting adverse effects.
15. The CMA will also consider whether a combination of measures is required to achieve a comprehensive solution – for example whether any behavioural remedies would be required in a supporting role to safeguard the effectiveness of any structural remedies. The CMA will evaluate the impact of any such combination of measures on the SLC or any resulting adverse effects.

### ***Issues to be considered in relation to a divestiture remedy***

16. In evaluating possible divestitures as a remedy to the provisional SLC it has found, the CMA will consider the likelihood of achieving a successful divestiture and the associated risks. In reaching its view, the CMA will have regard to the following critical elements of the design of divestiture remedies:

#### *The scope of the divestiture package*

17. To be effective in remedying the provisional SLC, any divestiture package would need to be appropriately configured to be attractive to potential purchasers and to enable the purchaser to operate effectively as an independent competitor.
18. At this stage, the CMA considers that any divestment package would need to include [X] Offshore UK [X] to address the SLC we have provisionally identified.
19. The CMA invites views on:

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<sup>5</sup> [Merger Remedies: CMA87](#) (December 2018), paragraph 3.46.

- (a) the package of assets to be divested;
- (b) whether there are risks that the scope of the divestiture package may be too constrained or not appropriately configured to attract a suitable purchaser or may not allow a purchaser to operate as an effective competitor in the market. For example, the CMA invites views on whether the package of assets would be more or less likely to attract a suitable purchaser or would be a more sustainable business:
  - (i) with or without the inclusion of Offshore Denmark and/or Offshore Australia; and
  - (ii) with or without other related business lines, such as Emergency Medical Services (**EMS**) or Search and Rescue (**SAR**).
- (c) whether there are risks that a suitable purchaser is not available or that the merger parties will divest to a weak or otherwise inappropriate purchaser;
- (d) whether there are risks that the competitive capability of the divestiture package will deteriorate before completion of divestiture; and
- (e) any other elements that may be required, such as the need for transitional service agreements (**TSA**) for example covering maintenance services or any other procedures to assist in a divestiture process.

*Identification of a suitable purchaser*

- 20. The CMA will wish to be satisfied that a prospective purchaser:
  - (a) is independent of the main parties;
  - (b) has the necessary capability to compete;
  - (c) is committed to competing in the relevant market; and
  - (d) will not create further competition concerns.<sup>6</sup>
- 21. The CMA invites views on whether there are any specific factors to which the CMA should pay particular regard in assessing purchaser suitability, eg:
  - (a) regulatory requirements of the industry/bodies.

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<sup>6</sup> [Merger Remedies: CMA87](#) (December 2018), paragraph 5.20 and 5.21.

- (b) the financial strength of a potential purchaser and its ability to provide parent company guarantees (**PCGs**) in future bids. We understand that PCGs are currently an important element in securing lease and customer contracts in the UK O&G Offshore Transportation Services market.

### *Effective divestiture process*

- 22. The CMA invites views on the appropriate timescale for achieving a divestiture.
- 23. The CMA will consider what, if any, procedural safeguards may be required to minimise the risks associated with this divestiture.
- 24. A monitoring trustee is already in place, and the CMA would expect this to continue throughout any divestiture process. The CMA invites views on whether any additional risks may arise during the divestiture period and whether the functions of the monitoring trustee should be amended to oversee the divestiture and to ensure that the business to be divested is maintained during the course of the process.
- 25. The CMA will have the power to mandate an independent divestiture trustee to dispose of the divestiture package if:
  - (a) CHC fails to procure divestiture to a suitable purchaser within the initial divestiture period; or
  - (b) the CMA has reason to expect that CHC will not procure divestiture to a suitable purchaser within the initial divestiture period.
- 26. In unusual cases, the CMA may require that a divestiture trustee is appointed at the outset of the divestiture process. The CMA invites views on whether the circumstances of this Merger necessitate such an approach.

### **Cost of remedies and proportionality**

- 27. In order to be reasonable and proportionate, the CMA will seek to select the least costly remedy, or package of remedies, that it considers will be effective. The CMA will also seek to ensure that no remedy is disproportionate in relation to the SLC and its adverse effects. Between two remedies that the CMA considers equally effective, it will choose that which imposes the least cost or restriction. In relation to completed mergers, the CMA will not normally

take account of costs or losses that will be incurred by the merger parties as a result of a divestiture remedy.<sup>7</sup>

28. The CMA invites views on what costs are likely to arise in implementing each remedy option.

### Relevant customer benefits

29. In deciding the question of remedies, the CMA may have regard to the effects of any remedial action on any relevant customer benefits in relation to the creation of the relevant merger situation.<sup>8</sup>
30. Relevant customer benefits are limited by the Act to benefits to customers in the form of:
- (a) 'lower prices, higher quality or greater choice of goods or services in any market in the United Kingdom ... or
  - (b) greater innovation in relation to such goods or services.'<sup>9</sup>
31. The Act provides that a benefit is only a relevant customer benefit if:
- (a) it accrues or may be expected to accrue to relevant customers within the UK within a reasonable period as a result of the creation of that situation; and
  - (b) it was, or is, unlikely to accrue without the creation of that situation or a similar lessening of competition.<sup>10</sup>
32. The CMA welcomes views on the nature of any relevant customer benefits and on the scale and likelihood of such benefits and the extent (if any) to which these are affected by the different remedy options we are considering.

### Next steps

33. Interested parties are requested to provide any views in writing, including any practical alternative remedies they wish the CMA to consider, by **17:00 GMT on 31 March 2022** (see Note (i)).

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<sup>7</sup> [Merger Remedies: CMA87](#) (December 2018), paragraph 3.8 and 3.9.

<sup>8</sup> Section 36(4) of the Act, see also [Merger Remedies: CMA87](#) (December 2018), paragraph 3.15 and 3.16.

<sup>9</sup> Section 30(1)(a) of the Act, see also [Merger Remedies: CMA87](#) (December 2018), paragraph 3.17.

<sup>10</sup> Section 30(3) of the Act, see also [Merger Remedies: CMA87](#) (December 2018), paragraph 3.19.

34. A copy of this notice will be posted on the CMA [case page](#).

[Signed]

Kip Meek

*Inquiry Group Chair*

17 March 2022

*Note*

- (i) This notice of possible actions to remedy, mitigate or prevent the SLC or any resulting adverse effects is made having regard to the provisional findings announced on 17 March 2022. Interested parties have until 7 April 2022 to respond to the provisional findings. The CMA's findings may alter in response to comments it receives on its provisional findings, in which case the CMA may consider other possible remedies, if appropriate.