

**Completed acquisition by
CHC Group LLP of
Offshore Helicopter Services
UK Limited, Offshore
Services Australasia PTY Ltd
and
Offshore Helicopter
Services Denmark A/S**

Provisional findings report

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 Some numbers have been replaced by a range.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

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Glossary

Summary

Overview of our provisional findings

1. The Competition and Markets Authority (**CMA**) has provisionally found that the merger between CHC Group LLC (**CHC**) and certain operations previously owned by Babcock International Group plc (**Babcock**) (together referred to as the **Fisher Business**¹) would result in a substantial lessening of competition (**SLC**) in Oil and Gas (**O&G**) Offshore Transportation Services in the UK. As a result, customers (the operators of oil rigs and platforms in the North Sea) may experience higher prices or a deterioration in service.
2. We welcome views on our provisional findings, which will be published shortly, by no later than **7 April 2022**.²
3. In our notice of possible remedies published alongside our provisional findings, we have set out our initial view that the only effective way to address the competition issues would be for CHC to sell the Fisher Business, either in part or in its entirety, to a suitable buyer. We also invite submissions on these initial views by **31 March 2022**.

Who are the businesses and what services do they provide?

4. CHC and the Fisher Business both provide UK O&G Offshore Transportation Services, operating helicopter services to transport crew to and from oil and gas platforms in the North Sea.
5. CHC operates helicopter services in various countries. Its worldwide turnover in 2020 was approximately £608 million, of which approximately £118 million was generated in the UK.
6. The Fisher Business, owned by Babcock before completion of the Merger, operates O&G Offshore Transportation Services internationally, with **Offshore UK** acting as its UK arm. The turnover of the Fisher Business in 2020 was approximately £147 million worldwide, of which approximately £102 million was generated by Offshore UK in the UK. CHC, Babcock and the Fisher Business together are referred to as the **Parties**, and CHC and the Fisher Business together are referred to as the **Merged Entity**.

¹ The Fisher Business consists of Offshore Helicopter Services UK Limited (**Offshore UK**), Offshore Services Australasia Pty Ltd (**Offshore Australia**) and Offshore Helicopter Services Denmark A/S (**Offshore Denmark**).

² See the Notice of provisional findings published on [our case page](#) for details.

What evidence have we looked at?

7. In assessing this Merger, we looked at a wide range of evidence that we considered in the round to reach our provisional findings.
8. We received several submissions and responses to information requests from the Parties and held hearings with each of CHC, Babcock and the Fisher Business. We gathered information about tenders which had been run for UK O&G Offshore Transportation Services since 2017, including who bid for these tenders, who won and how other participants were ranked. We also examined the Parties' own internal documents, which show how they run their businesses and how they view their rivals in the ordinary course of business. These internal documents were also helpful in understanding the Parties' plans for the future of their businesses.
9. We spoke to and gathered evidence from other companies to understand better the competitive landscape, and to get their views on the impact of the Merger. In particular, we received evidence from the following:
 - Oil and gas companies who were customers of the Parties.
 - The other suppliers of helicopter services in this market.
 - Lessors of helicopters.
 - Participants in related markets (such as Search and Rescue services and providing transportation services for offshore windfarms) who potentially might consider entering the O&G Offshore Transportation Services market.
10. We also considered evidence from the Parties and third parties received during the CMA's phase 1 investigation into the Merger.

What did this evidence tell us...

...about what would have happened had the Merger not taken place?

11. In order to determine the impact that the Merger may have on competition, we have considered what would have happened had the Merger not taken place. This is known as the counterfactual.
12. The Parties told us there was no other likely buyer, and Babcock would have closed down the business.
13. We looked at the financial position of the Fisher Business and at Babcock's internal documents for evidence of Babcock's intention and incentives to close

down the business. The evidence shows that closing down the business was only one of several options that Babcock had considered with regard to the Fisher Business.

14. While the Fisher Business was not performing well at the time of the Merger, this performance could have improved in the future, the costs of closure were substantial and the Fisher Business was continuing to make contributions to Babcock's overhead costs. Babcock therefore had a strong incentive to continue operating the business, unless it was able to find an alternative buyer, and we do not consider it likely that Babcock would have closed the Fisher Business prior to the expiry of its current customer contracts.
15. We provisionally conclude that if the Merger had not happened, the most likely counterfactual is that the Fisher Business would have continued to operate in the relevant market in the short to medium-term, including tendering for new contracts. This could either have happened under Babcock's ownership, or with the Fisher Business having been sold to an alternative buyer.

... about the effects of the Merger?

16. We have looked at whether the Merger would lead to a significant reduction in competition between the Parties by removing an important competitor and, in doing so, whether the Merged Entity would worsen its offering (such as price or service quality) compared to the situation if the Merger did not take place.
17. Babcock told us that it was following a 'manage for value' strategy for the Fisher Business until it could be sold, which reduced the effectiveness of the Fisher Business as a competitor in the market.
18. We consider that there are only four effective suppliers in the market and that the alternatives outside these competitors are significantly weaker options. Our provisional view is that the Parties impose an important competitive constraint on one another that would be lost as a result of the Merger.
19. This constraint has not been undermined by Babcock's manage for value strategy: the evidence shows that Offshore UK remains an effective competitor, and the loss of this competitor would significantly reduce the already very limited pool of alternatives available to customers, reducing their ability to play-off suppliers against each other and weakening their buyer power.
20. While Bristow and NHV, the other main suppliers, are effective competitors, our provisional view is that the aggregate constraint from these two suppliers

would not be sufficient to offset the substantial loss of competition from the Merger.

21. We therefore provisionally conclude that the competitive impact of losing Offshore UK as a competitor in UK O&G Offshore Transportation is substantial.

... about any countervailing factors?

22. We considered whether there are any actions which customers and/or potential entrants could take to mitigate this SLC.
23. We looked at the barriers to entering the market, including the requirements associated with leasing aircraft, costs of modifying helicopters used in other related markets, constraints and costs of obtaining facilities and bases, and regulatory requirements particularly since Brexit. We have provisionally concluded that the costs to set up a full new UK infrastructure are significant.
24. We looked at the likelihood of potential entry and expansion of suppliers in the market. Our provisional view is that the combination of a decline in the market to date, an unclear path to recovery of the O&G market, alongside low margins and significant barriers to entry, means that it is unlikely that new entrants will be looking to enter the market in response to the Merger or that there will be significant expansion of suppliers in the market.
25. Further, businesses which were suggested to us as potential entrants have made clear to us that they are not interested in entering the UK O&G Offshore Transportation Services market. This is the case based both on the current market conditions, and with consideration of other scenarios (eg increased prices/profitability) that may prompt entry.
26. We looked at whether customers could support new entry or self-supply, which may aid buyer power, and which could prevent an SLC. However, based on the evidence we have obtained from third parties, we are of the provisional view that entry, including customer sponsored entry or self-supply, is not a likely scenario.
27. We therefore provisionally conclude that countervailing factors would not be likely to prevent an SLC from arising.

Provisional conclusions

For the reasons above, we provisionally conclude that the Merger would result in an SLC in the supply of UK O&G Offshore Transportation Services.

Provisional findings

1. The reference

- 1.1 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 LLC (**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**). In these provisional findings, CHC, the Fisher Business and Babcock are referred to as the **Parties** and, for statements referring to the future, CHC and the Fisher Business together are referred to as the **Merged Entity**.
- 1.2 In exercise of its duty under section 35(1) of the Act, the CMA must decide:
- (a) whether a relevant merger situation (**RMS**) has been created; and
 - (b) if so, whether the creation of that situation has resulted, or may be expected to result, in a substantial lessening of competition (**SLC**) within any market or markets in the United Kingdom (**UK**) for goods or services.
- 1.3 We are required to prepare and publish a final report by 15 May 2022.
- 1.4 Our terms of reference are set out in Appendix A.
- 1.5 This document, together with its appendices, constitutes the Inquiry Group's provisional findings published and notified to CHC and Babcock in line with the CMA's rules of procedure.³ Further information can be found on our webpage.⁴
- 1.6 We note that submissions and evidence referred to in this report were submitted before the Russian invasion of Ukraine, and therefore the report does not reflect any impact this might have on the oil and gas (**O&G**) industry going forward.

³ CMA rules of procedure for merger, market and special reference groups (CMA17).

⁴ CHC/Babcock merger inquiry.

2. Industry background

Introduction

- 2.1 In this chapter we provide a brief overview of the O&G Transportation Services industry in the UK, in which the Parties are active.
- 2.2 O&G Offshore Transportation Services transport crews to and from offshore oil and gas rigs and platforms which are utilised to search, explore, drill and extract oil and gas. The helicopter is the primary means of transporting workers to and from these installations.⁵

Location of UK O&G platforms

- 2.3 UK O&G Offshore Transportation Services transport crew to and from O&G platforms within the UK Continental Shelf (**UKCS**). The UKCS comprises those areas of the sea bed and subsoil beyond the territorial sea over which the UK exercises sovereign rights of exploration and exploitation of natural resources.⁶ This includes parts of the North Sea, the North Atlantic, the Irish Sea and the English Channel.

Key assets required

- 2.4 The key assets required to operate within the O&G Offshore Transportation Service industry are helicopters, pilots, crew, facilities (or bases) and regulatory approval in the form of licences.

Helicopters

- 2.5 Providers of O&G Offshore Transportation Services host fleets of helicopters at their air bases, which are used to transport crew between locations. Helicopters are typically fitted with 12 to 24 seats (although sometimes fewer) and are split into four main categories: light, medium, super-medium and heavy. The differences in helicopter type include range, passenger capacity and ability to operate in severe weather.
- 2.6 The Parties submitted that the vast majority of routes that are flown from UK bases can be serviced by super-medium aircraft, which can be deployed

⁵ [INDG219 – How offshore helicopter travel is regulated \(hse.gov.uk\)](#).

⁶ Oil and Gas Authority, [UKCS Designations](#).

effectively in both the Northern and Southern Zones of the UK.⁷ They told us that there are some rigs in the UK that are accessed from Blackpool, which are too small for super-medium and heavy helicopters to land on and can only be served with medium (or smaller) aircraft. Most UK operators in the O&G Offshore Transportation Service industry either own or lease medium, super-medium and heavy aircraft.

- 2.7 Helicopters utilised within the O&G Offshore Transportation Service industry have an average useful life of approximately between 15 to 25 years. On average, they cost between £8 million and £21 million to purchase outright. In general, heavier helicopter models (such as heavy and super-medium) are more expensive than the light aircraft.
- 2.8 We set out the helicopters utilised by the Parties and their competitors in paragraph 6.38 and Appendix C.

Pilots/crew

- 2.9 Helicopter operators require pilots and crew to manage the aircraft utilised to transfer crew to and from offshore platforms. The Parties submitted that the following qualifications are required:
- (a) **Pilots** are required to have a private pilots' licence which can then be converted into a commercial pilot licence (**CPL**). Once the CPL is obtained, a pilot will be 'type rated' to fly one particular type of aircraft. Pilots can switch their type rating if they need to fly a different aircraft type by completing a 'differences course', but typically a pilot will only hold one type rating at a time for safety reasons.
 - (b) **Engineers** are either recruited as apprentices and trained up, or are hired as qualified engineers. The work undertaken by an engineer will depend on the level of training held, for example some engineers will not have the relevant training to authorise an aircraft to fly.

Facilities/bases

- 2.10 Operators within the UK require access to facilities from which O&G Offshore Transportation services are provided. These include:
- (a) **Aircraft storage**: these are used for maintenance and storage of helicopters when they are not flying. They are purchased or leased by

⁷ The Northern North Sea covers installations north of latitude 56°N in the UK section of the North Sea (with bases including Aberdeen and Sumburgh). The Southern North Sea covers installations south of 56°N (including bases such as Norwich, Humberside and Blackpool).

helicopter operators. Sometimes these facilities require renovations/adaptations to comply with the latest health and safety standards and to provide relevant technical support offices, workshops and, amongst other things, rest rooms.

- (b) **Check-in facilities:** standard UK check-in facilities are required to check passengers in, including an ability to weigh passengers, baggage and freight.
- (c) **Ramp and handling facilities:** required to manage the loading and unloading of the aircraft in preparation for departure or arrival. These are required to follow standard UK processes aligned to industry requirements.
- (d) **Security:** baggage and passenger security screening is required in order to process commercial air transport flights. Facilities must search for prohibited items and/or dangerous goods that could cause a flight safety risk. Included within security is the need for trained personnel and x-ray baggage and body scanners.
- (e) **Access to fuel supply:** aircraft fuel is primarily supplied under contract framework arrangements.
- (f) **Parking facilities:** these are required for the crews being transported to the rigs. At all UK bases, parking is provided by the respective airport location and is charged directly to the user via parking ticket or according to a record of the duration of the car parking space. This is not controlled by the provider of offshore helicopter services and is subject to individual availability of spaces for passengers.

Regulatory approval

2.11 Regulatory approval is required in order to be able to operate in the UK market. Further details on regulation are set out from paragraph 2.12 below.

Regulation

2.12 Safety within the offshore helicopter travel industry (the **Industry**) is regulated by the Health and Safety Executive (**HSE**) and the Civil Aviation Authority (**CAA**). The HSE enforces health and safety law, while the CAA enforces aviation legislation and the general health and safety duty set out in the Civil Aviation (Working Time) Regulations (**CAWTR**) for the protection of crew

members of UK operators on the aircraft.⁸ A memorandum of understanding is in place between the HSE and CAA to ensure they work together effectively.

- 2.13 The HSE notes that the law places the responsibility for the achievement of safety on helicopter operators, flight crews, installation operators and the offshore workforce. With regard to helicopter operators, they must satisfy the CAA that they continue to meet the requirements for safe public transport passenger operations, which is demonstrated through holding an Air Operator's Certificate (**AOC**).⁹ The AOC requires operators to publish detailed operational procedures in the company's operations manual. They are also responsible for the safety briefing of passengers and provision of safety equipment aboard the aircraft.¹⁰ The Parties submitted that the CAA deals with safety standards where the licence is concerned, for example financial fitness and adequacy of insurance. They submitted that, following Brexit, there are no ownership requirements that apply in order to obtain a UK AOC. However, once a UK AOC has been obtained, an application for an Operating Route Licence (**ORL**) must be made and in order to do so, a UK national must hold 50.1% of the shares in the company that holds the AOC.
- 2.14 Helicopter operators have a duty under the Air Navigation Order (**ANO**) to only permit flights to suitable landing areas. The Helideck Certification Agency (**HCA**) inspects all helidecks operating in the UKCS area.¹¹
- 2.15 O&G Offshore Transportation Services providers subscribe to the safety regulations of trade associations, such as the International Association of Oil & Gas Producers (**IOGP**), which describes itself as serving industry regulators as a global partner for improving safety, environmental and social performance.¹² Similarly, IPIECA describes its purpose as being to develop, share and promote good practice and knowledge to help the oil and gas industry improve its environmental and social performance.¹³
- 2.16 Recently IOGP produced aviation guidance on Offshore Helicopter Recommended Practices (**OHRP**), which provides 'recommended practices that will assist in the safe, effective, and efficient management of offshore commercial helicopter transport operations'.¹⁴

⁸ [The CAA, HSE and HSENI | Civil Aviation Authority](#).

⁹ See more at: [Air Operator Certificates | UK Civil Aviation Authority \(caa.co.uk\)](#).

¹⁰ [INDG219 – How offshore helicopter travel is regulated \(hse.gov.uk\)](#).

¹¹ [INDG219 – How offshore helicopter travel is regulated \(hse.gov.uk\)](#).

¹² [About us | IOGP](#).

¹³ [About us | IPIECA](#).

¹⁴ [Offshore Helicopter Recommended Practices | IOGP Publications library](#).

Tendering

- 2.17 In the Industry, each helicopter operator (be it the Parties or their competitors) typically compete to win long-term customer contracts by taking part in tenders. Customers may choose to renew or extend their contracts with their current supplier without running a competitive process. This may happen multiple times, meaning that customers may only hold a formal competitive tender process after many years.
- 2.18 More background on tender evaluation and direct negotiations can be found in Appendix D.

Parent Company Guarantees

- 2.19 Parent Company Guarantees (**PCGs**) are a feature of the UK O&G Offshore Transportation Services market. PCGs are guarantees used to provide assurance that the obligations due by a company will be fulfilled: a parent company secures that the guaranteed company will perform its obligations under the contract.
- 2.20 In the context of the UK O&G Offshore Transportation Market, these would most commonly be split into two categories:
- (a) Customer contract PCGs: PCGs put in place to support contracts with customers. Where a UK O&G Offshore Transportation Services provider was unable to meet the obligations associated with a customer contract (eg by running out of funds or ceasing operations), the parent company guarantor would provide financial support. This could take the form of financially supporting its subsidiary to allow the subsidiary to complete the contract, or by making a financial reimbursement to the customer to compensate for the loss of service.
 - (b) Lease contract PCGs: PCGs supporting contracts for leased assets. Where a UK O&G Offshore Transportation Services provider is unable to meet the financial repayments associated with a lease, the parent company guarantor will be required to make the relevant payment/support the financial obligation.

Industry trends

- 2.21 O&G Offshore Transportation Service providers are reliant on the performance of the broader O&G industry. Following the 'crash' in 2014, the

price of oil remained consistently below its position pre-crash, until very recently.¹⁵

Figure 2-1: Brent spot oil price from 1 December 2011 to 1 December 2021



Source: Refinitiv Eikon.

Note: Russia's invasion of the Ukraine (which commenced in February 2022: [Russia's assault on Ukraine: Foreign Secretary's statement, 24 February 2022 - GOV.UK \(www.gov.uk\)](#)) has had an immediate effect on oil and gas prices with the current price per barrel of Brent crude being \$98.64 (ICE Europe Brent Crude Electronic Energy Future as at market close on 15 March 2022). While it is not clear whether this dramatic increase will persist, current geopolitical instability is likely to mean that oil prices will remain higher than would have been expected before Russia's invasion.

- 2.22 The Parties submitted that the provision of the services that they provide in the UK have suffered from a long-term decline in demand (ie significantly fewer flight hours to O&G platforms) caused by the volatility of oil prices since their peak in 2014 and the reduction in O&G exploration and production activities. The Parties submitted that these are trends which are expected to continue, and which have resulted in structural over-capacity and a number of industry participants restructuring their operations.
- 2.23 The Parties submitted that the downward trajectory within the Industry can be observed in the total flight hours to oil and gas platforms/drilling rigs over the last six years.

¹⁵ See paragraph 2.25 for discussion of recent events affecting the oil price. We note that submissions from the Parties were received before the Russian invasion of the Ukraine and consequent impact on the oil and gas industry.

Figure 2-2: UK O&G demand (flight hours), July 2015 to July 2021



Source: The Parties.

Note: [broken image icon].

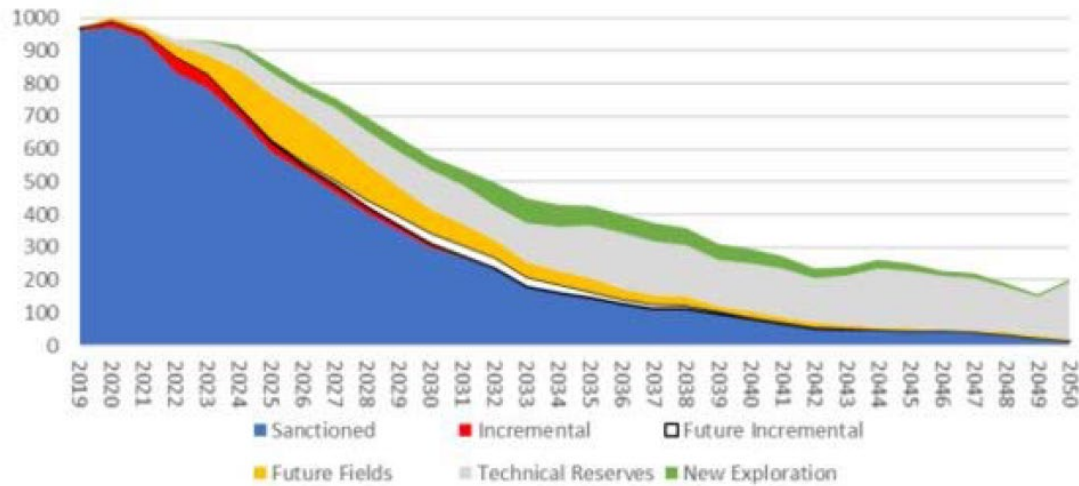
- 2.24 The longevity and prospects of the industry are uncertain as a result of net zero targets and a potential move away from oil and gas towards more sustainable energy resources.
- 2.25 For example, the UK Government published its 'Building Back Greener' report in October 2021, which sets out a focus on significantly reducing emissions from traditional oil and gas fuel supplies.¹⁶ However, the trajectory of the progression towards net zero in the O&G industry remains uncertain.
- 2.26 The most recent Government report into the UK O&G reserves and resources finds that official government forecasts suggest that oil and gas will remain an important and critical part of our energy mix for the foreseeable future, as we transition to net zero.¹⁷ The report notes that the UK's petroleum reserves remain at a significant level and that, on the basis of current production projections, it could sustain production from the UKCS to 2030.¹⁸
- 2.27 The Parties submitted historic and forecasted levels of production and decommissioning work at oil and gas platforms in the UK North Sea which indicate expected production through to 2050, longer than the timeframes currently set out by the UKCS (see Figure 2-3).

¹⁶ HM Government, '[Net Zero Strategy: Build Back Greener](#)', October 2021, page 20.

¹⁷ Oil and Gas Authority, '[UK Oil and Gas Reserves and Resources \(ogauthority.co.uk\)](#)', page 3.

¹⁸ Oil and Gas Authority, '[UK Oil and Gas Reserves and Resources \(ogauthority.co.uk\)](#)', page 4.

Figure 2-3: Forecasted decline in Oil and Gas production in the UK North Sea



Source: The Parties. Graph reproduced by the Parties from: [Oil Slump to \\$50 Seen Triggering Rapid Decline in UK North Sea \(bloomberqint.com\)](https://www.bloomberqint.com).

Related activities

2.28 Related activities undertaken by some O&G Offshore Transportation Service providers include flare-tip replacement, search and rescue (**SAR**) operations, or other maritime services.

Flare-tip replacement

2.29 Flare-tip replacement is directly related to the production of O&G. ‘Flares’ are produced by O&G plants for a variety of reasons and the ‘flare-tip’ from which this occurs can require replacement throughout the plant’s lifecycle. Businesses which operate as O&G Offshore Transportation Service providers can also provide services to assist with flare-tip replacement. In these scenarios, the helicopters can assist by acting as a crane and transporting experts to the relevant locations.

SAR

2.30 Some helicopter service providers provide SAR services. These are sometimes directly associated with the O&G industry, for example in the provision of services to lift casualties from O&G platforms, but can also cover

a broader scope, such as the provision of emergency services through Government contracts.¹⁹

Maritime services

2.31 Some helicopter service providers also provide maritime services, which involve hoist operations and deck landings at sea. Depending on the service required by a customer, this can include transport of ship pilots to and from large vessels or transport of crew and supplies for construction and maintenance of wind turbines.²⁰

Industry participants

2.32 Key businesses involved in the Industry include:

- (a) **O&G Offshore Transportation Service providers** (such as the Parties) which undertake business-to-business services, operating the helicopters.
- (b) **Manufacturers**: businesses which manufacture helicopters utilised by the O&G Offshore Transportation Service providers.
- (c) **Customers**: the customers of the O&G Offshore Transportation Service providers are oil and gas companies or specialist offshore operators.
- (d) **Maintenance providers**: businesses which provide maintenance services to the O&G helicopter service providers to maintain helicopters. Typically helicopter operators employ the original equipment manufacturers (**OEMs**) to conduct maintenance on aircraft.
- (e) **Lessors**: businesses which O&G helicopter service providers transact with to lease helicopters. While some helicopter operators may choose to purchase helicopters, many have opted to lease rather than own their helicopter fleets.

¹⁹ Bristow operates Bristow Search and Rescue which provides the 999 helicopter SAR services to HM Coastguard. It began delivery of the UK Gap SAR contract for Northern Scotland on behalf of HM Coastguard in 2013, and began delivery of the Maritime and Coastguard Agency's helicopter search and rescue contract in behalf of HM Coastguard in 2015. More information can be found at: [UK Search and Rescue: Bristow Group Inc. \(VTOL\)](#).

²⁰ [Offshore – Services - NHV](#).

Suppliers of O&G Offshore Transportation Services

2.33 There are four suppliers of O&G Offshore Transportation Services currently active in the UK (referred to from here as the **incumbents**). The four incumbents are:

- (a) The **Parties** both provide UK O&G Offshore Transportation services. CHC's turnover in the financial year 2020 for its UK O&G Offshore transportation services business was £118 million and the Fisher Business's UK turnover (trading as Offshore UK) was £102 million.²¹ Further details about the Parties can be found in Chapter 3.
- (b) Bristow Helicopters Ltd (**Bristow**) is a UK O&G Offshore Transportation Services provider that has been operating in the UK for many years. Its business is split into two sections: O&G Offshore Transportation Services; and SAR.²² Bristow's turnover in the financial year 2020 for its UK O&G Offshore Transportation Services business was approximately £[REDACTED] million.
- (c) NHV Helicopters Ltd (**NHV**) is also a UK O&G Offshore Transportation Services provider, with an international presence. It is based in Belgium.²³ It operates mainly in Europe and West Africa with its business split between O&G Offshore Transportation Services (at c.70%) and SAR (at c.30%). It obtained UK regulatory approval in October 2019, and now has bases in Norwich, Blackpool and Aberdeen. Its turnover for its UK O&G Offshore Transportation Services is c.£37 million.

2.34 On the basis of the turnover of the Parties and their competitors, the industry has an estimated total annual turnover of almost £400 million.

2.35 Further information about shares of supply can be found in paragraphs 6.44 to 6.49.

Manufacturers

2.36 Operators use variety of manufacturers of helicopters, some of which are multinational businesses specialising across a variety of sectors (ie defence, security and energy). Most notable is Airbus Helicopters, the helicopter manufacturing division of Airbus. Airbus is a European multinational

²¹ CHC provided its revenue in USD (\$149.4 million) which has been converted at the average exchange rate for 2020 (£1:\$1.28).

²² Passenger and freight transportation to offshore installations. Operations mainly in UK, Norway, Nigeria, US, Brazil, Guyana, State SAR services provided in the UK, Client SAR in Norway and US.

²³ NHV N.V.

aerospace corporation that designs, manufactures and sells civil and military aerospace products worldwide.

Customers

2.37 The customers in this industry range from large multinational oil and gas entities, many of which are multinational or state-owned oil and gas companies with global operations including the likes of Royal Dutch Shell and TotalEnergies Group, to smaller companies with potentially more specialist operations (such as Fraser Well Management, Saipem, Capricorn Energy and AOC).²⁴

Maintenance providers

2.38 Many of the manufacturers of helicopters also provide maintenance services, including Airbus (as set out in paragraph 2.31(d) above). The Parties also use British International Helicopter Services Limited, a subsidiary of British International Helicopters, which is a helicopter operator specialising in military, offshore and commercial contracts in Europe and the South Atlantic Islands.

2.39 Further, CHC has brought some maintenance work in-house with its 'Heli-One' division and also offers its services to third parties (see Chapter 3 for more details). The Parties noted that CHC must still use OEMs to maintain aircraft for which it has not invested in the required facilities and/or for particularly complex maintenance work.

Lessors

2.40 Lessors of helicopters include:

(a) Milestone Aviation Group, a global aircraft operating lease business focused on the helicopter industry, headquartered in Ireland.

(b) Macquarie Rotorcraft, a subsidiary of the Macquarie Group, which specialises in leasing new and used aircraft, and sale and leaseback. Macquarie Group is an Australian multinational investment bank and financial services business.

(c) LCI Helicopters, an aircraft lessor that provides services to airlines, freight carriers and helicopter operators.

²⁴ Based on tender information collected from customers from 2017 to 2021. For further details, see Chapter 6.

(d) Lobo Leasing, an aircraft lessor that provides services worldwide to operators in the energy and utility sectors.

2.41 The Parties submitted that aircraft were previously leased over long periods of time, but that this process has changed following the drop in the oil price in 2014 (as set out in more detail from paragraph 2.20). The Parties submitted that the recent decline in the market and increased availability of S92 aircraft in the market has given helicopter operators more leverage to negotiate coterminous lease agreements which terminate at the same time as customer and contract obligations.

3. The Parties, the Transaction and rationale

3.1 This chapter sets out the background to the completed acquisition by CHC of the Fisher Business. This chapter is set out as follows:

(a) the Parties and their principal operations;

(b) key financials;

(c) the Transaction;²⁵ and

(d) the rationale for the Merger.

The Parties and their principal operations

CHC

3.2 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. In addition to O&G Offshore Transportation Services, CHC also undertakes work in relation to renewables in the UK, as well as operating its Heli-One maintenance service. Each of these activities are considered in more detail below. CHC's UK arm is operated through CHC Scotia Limited, which is wholly owned by EEA Helicopter Operations B.V. (**EHOB**). EHOB is jointly owned by Mr Ivan Levy and CHC, and is the entity through which Babcock Offshore UK has been acquired.²⁶

²⁵ See paragraph 3.53.

²⁶ Note for completeness that the CMA is treating EHOB as part of CHC.

- 3.3 CHC has a number of shareholders, referred to as ‘common unit holders’, including Bain Capital Credit LP (**Bain**) and Cross Ocean Partners Management LP (**Cross Ocean**).
- 3.4 CHC’s worldwide turnover in 2020 was approximately £608 million, of which approximately £118 million was generated in the UK.

Ownership and control

- 3.5 The relationship between the members of CHC is governed by a Limited Liability Company Agreement [REDACTED], as re-stated and amended. ‘Shares’ in CHC are referred to in the Agreement as common units, and shareholder members as common unit holders. Common units can be [REDACTED]. Under the Agreement, the management, operation and control of the company is vested in the board, so that the members take no part in these matters other than as specifically delegated by the board.
- 3.6 On completion of the Merger, the board consisted of [REDACTED] managers – the CEO, [REDACTED], and the remaining managers ([REDACTED]) appointed by the members holding a majority of the common units. The quorum of the board is the majority of managers in office, and voting is by majority of managers in office. [REDACTED].
- 3.7 Prior to the Merger, CHC entered into refinancing arrangements [REDACTED]. As part of these refinancing arrangements, [REDACTED]. [REDACTED], the Parties have not notified the CMA that [REDACTED].
- 3.8 The effect of these arrangements is that from completion of the Merger: (i) Bain holds a [REDACTED]% ([REDACTED]%) share of CHC common units, and in addition has the right to appoint a voting board manager, [REDACTED]; and (ii) Cross Ocean has a [REDACTED]% ([REDACTED]%) share of CHC common units and has the right to appoint a voting board manager.
- 3.9 The combination of Bain having such a [REDACTED] share of CHC common units, plus its right to appoint a voting board manager [REDACTED], together with Bain’s [REDACTED] suggests that Bain may be able to exercise material influence over CHC. If Cross Ocean exercises its warrant and exchange rights to increase its share of CHC common units, this, together with its right to appoint a voting board manager, may also give Cross Ocean the ability to exercise material influence over CHC.
- 3.10 On the other hand, a shareholding of [REDACTED] of CHC’s common units appears to be [REDACTED], and neither Bain nor Cross Ocean currently owns a [REDACTED]% or more share of CHC common units.

- 3.11 Moreover, the right granted to Bain and to Cross Ocean to appoint a voting board member of CHC is contingent [✂]. [✂].
- 3.12 However, there appears to be no reason why these aspects of the re-financing arrangements, put in place by CHC, as regards Bain and Cross Ocean, should affect the substantive assessment by the CMA of the effect of this Merger on competition in the relevant market. It appears, therefore, that it may be unnecessary to consider further for the purposes of this investigation the possibility Bain or Cross Ocean has, or may in future acquire, the ability to exercise material influence over CHC.

Brief history

- 3.13 CHC has operated within the helicopter services industry for over 70 years, with its UK operations currently operating out of Aberdeen, Norwich and Humberside.
- 3.14 In 2016, CHC entered a court-supervised reorganisation process with the filing of Chapter 11 bankruptcy. The CHC Group announced a \$450 million (c. £367 million)²⁷ recapitalisation which allowed it to successfully emerge from Chapter 11 bankruptcy in 2017.²⁸

Principal business and operations

- 3.15 CHC provides helicopter services across Europe, Asia Pacific, Latin America, the Middle East and Africa. This includes:
- (a) services to the oil and gas industry (eg O&G Offshore Transportation services);
 - (b) SAR;
 - (c) helicopter emergency medical services (**EMS**);
 - (d) helicopter services for other energy and utility industries, in particular offshore wind farms (renewables); and
 - (e) general helicopter maintenance, repair and overhaul (**MRO**) services through its Heli-One division.

²⁷ CMA calculation based on average USD to GBP exchange rate for the year to 31 December 2016 of 1.224833 per: [Yearly average rates | OFX](#).

²⁸ CHC website [here](#), accessed by the CMA on 7 March 2022.

- 3.16 CHC's activities in the UK include O&G Offshore Transportation services, assistance in the renewables market, and MRO services.

O&G Offshore Transportation

- 3.17 A description of CHC's O&G Offshore Transportation activities is provided from paragraph 3.37 below, where we consider the Parties' overlapping activities.

Search and Rescue

- 3.18 CHC helicopters are used to carry out SAR operations. This involves the location and recovery of people who are missing or are in distress, and the provision of medical care en route to a medical facility. CHC provides these services to the Irish Coast Guard, the Norwegian Ministry of Justice and the Royal Australian Air Force.

Helicopter Emergency Medical Services

- 3.19 EMS helicopters – 'air ambulances' – are equipped with specialist medical supplies and are dispatched in response to critical emergencies, covering onshore and offshore areas that cannot speedily or safely be reached by vehicle ambulances or boats. CHC provides EMS helicopters to Western Australia's Department of Fire and Emergency Services and to the ambulance services of Victoria and New South Wales.

Renewable energy – wind farms

- 3.20 During the construction of offshore wind farms, helicopters may be used to transport construction crew and cargo to and from the site. Helicopters may also be used during the operation phase of a wind farm in order to transport maintenance technicians to the site and hoist them onto the turbines. The customers to whom services are provided may include wind turbine manufacturers, installation contractors or wind farm operators. CHC currently provides helicopter transportation services to wind farms in:
- (a) the North Sea, through a partnership with Uni-Fly;
 - (b) France, for the DEME group and Van Oord; and
 - (c) Germany, for TenneT and Wiking.

Helicopter maintenance, repair and overhaul services

- 3.21 Heli-One is a subsidiary of CHC which provides general helicopter maintenance services, including for helicopters used in O&G Offshore Transportation. While Heli-One provides maintenance for CHC, it also provides services for other third-party industry players.

Babcock

- 3.22 Babcock is a British aerospace, defence and nuclear engineering services company, which specialises in managing complex assets and infrastructure. The business operates globally, with its main operations in the UK, France, Canada, Australasia and South Africa.
- 3.23 Babcock is listed on the London Stock exchange with a market capitalisation of £1.61 billion as at 31 December 2021.²⁹ In the year to 31 March 2021, Babcock generated group revenues of £4.18 billion, with a gross profit of £26.1 million.³⁰ The business undertook a review of its contract portfolio and the carrying value of assets and liabilities on the balance sheet, resulting in more than 140 accounting adjustments totalling £2.0 billion.³¹ Thus, while the business suffered an operating loss of £1.64 billion, it noted that this was primarily due to charges taken as a result of this contract profitability and balance sheet review.³² In the same year, it earned EBITDA³³ of £318.6 million and underlying profits³⁴ of £222.4 million.³⁵

Principal business and operations

- 3.24 Babcock's principal activities relate to the supply of critical and complex engineering services in the defence, emergency services and civil nuclear sectors. Babcock's aviation operations are divided into three segments:
- (a) Oil and gas (the Fisher Business);
 - (b) Emergency services; and
 - (c) Aviation – defence.

²⁹ [London Stock Exchange, Babcock International Group plc](#). [accessed 2 January 2022]

³⁰ [Babcock International Group plc Annual Report and Financial Statements 2021](#), page 174.

³¹ [Babcock International Group plc full year results for the year ended 31 March 2021](#), page 11.

³² [Babcock International Group plc Annual Report and Financial Statements 2021](#), page 6.

³³ Earnings before interest, tax, depreciation, and amortisation.

³⁴ Underlying profit is a metric calculated internally by the business to present a more accurate picture of the business's financial performance on a consistent year-on-year basis.

³⁵ [Babcock International Group plc Annual Report and Financial Statements 2021](#), pages 43 and 38 respectively. Note that EBITDA excludes one off contract and profitability balance sheet adjustments posted by Babcock in its 2021 accounts. This is the reasoning behind the significant difference in value between gross profit and EBITDA.

Oil and gas

- 3.25 Babcock's entry into the O&G market can be traced back to its acquisition of Avincis in 2014, which it purchased for £1.6 billion. A description of the Fisher Business's O&G Offshore Transportation activities is provided from paragraph 3.37 below, where we consider the Parties' overlapping activities.

Emergency services

- 3.26 Babcock's emergency services operations include aerial EMS, SAR and firefighting services in Europe and Australia.
- (a) Babcock's international EMS operations span Australia, Finland, France, Italy, Norway, Portugal, Spain and Sweden. In the UK, Babcock services nine air ambulance charities using 23 specially equipped EMS helicopters.
 - (b) Babcock provides SAR services to the Spanish Maritime Safety Agency and operates a combined EMS and SAR services to Australian governmental entities (including the South Australian State Rescue Helicopter Service).
 - (c) Babcock's aerial firefighting operations include water-dropping, ground firefighter transportation, mission coordination and image gathering to fire control centres. In addition to helicopters and fixed-wing aircraft, Babcock employs amphibious aircraft and unmanned aerial vehicles as part of its water-dropping and image gathering operations. In addition to aerial firefighting contracts with the Italian Ministry of Interior and the Spanish Portuguese governments, Babcock operates an aerial wildfire suppression contract for the government of Manitoba in Canada.

Aviation – defence

- 3.27 Babcock services the defence aviation sector by providing:
- (a) maintenance, management and operational support to defence aircraft;
 - (b) air station support and infrastructure management (including air traffic control, ground support, IT systems, and fuel management services); and
 - (c) military flight training (including the provision of aircraft, aeronautical apprenticeships, air traffic control instruction, military flight instruction and flight simulation integration).

3.28 Babcock has contracts with the Royal Air Force for the provision of technical support services; the UK's Ministry of Defence for the provision of flying training services to all three UK Armed Forces; the Irish Garda for the provision of MRO service; and the French General Directorate for Armament for the provision of flight training to jet fighters.

The Fisher Business

3.29 The Fisher Business was owned by Babcock prior to completion of the Merger. The Fisher Business operates O&G Offshore Transportation Services internationally, with Offshore UK acting as its UK arm.

3.30 The turnover of the Fisher Business in 2020 was approximately £147 million worldwide, of which approximately £102 million was generated by Offshore UK in the UK.³⁶

3.31 The Fisher Business comprises three entities operating within different regions, each of which we consider in turn:

(a) Offshore UK;

(b) Offshore Australia; and

(c) Offshore Denmark.

Brief history and background

Offshore UK

3.32 Offshore UK was incorporated in August 2001 as Bond Offshore Helicopters Limited. Offshore UK operated as Babcock Mission Critical Services Offshore Limited from 2016 to 2021. As a result of the Transaction,³⁷ Offshore UK was renamed Offshore Helicopter Services UK Limited.³⁸

Offshore Australia

3.33 Offshore Australia was originally known as Bond Helicopters Australia, which was established in 2013. It was previously known as Babcock Offshore Services Australasia Pty Ltd.

³⁶ [Babcock Offshore UK's Accounts for year ended 31 March 2020](#).

³⁷ See paragraph 3.53.

³⁸ Companies House, [company number 04278474](#).

Offshore Denmark

- 3.34 Offshore Denmark began operating in January 2021. The business operates solely to service a contract with Total. Total ran a single tender process for contracts in Denmark and the UK. Babcock submitted that this contract was bid for and won as part of its 'unsustainable manage for value strategy', and that its bid for this contract was [REDACTED].
- 3.35 Babcock submitted that the contract was entered into in order to '[REDACTED]'. It submitted that its final price was expected to result in [REDACTED] before tax [REDACTED] across both the UK and Denmark, for the Total contract, over the contract period of [REDACTED] years, with the UK segment [REDACTED] at [REDACTED], with the Danish segment [REDACTED] at [REDACTED].

Principal business and operations

- 3.36 The principal business and operations of all three entities within the Fisher Business is the provision of O&G Offshore Transportation services. As this is the overlapping activity of the Parties, we describe this market in more detail from paragraph 3.37 below.

Overlapping activities

- 3.37 The Parties overlap in the provision of O&G Offshore Transportation services. The Parties provide helicopter transportation services to and from offshore oil and gas installations, typically using helicopters with 12 to 19 seats to transport crew members between the mainland and offshore rigs. The Parties submitted that other ancillary services include: (i) cargo and dangerous goods transport, (ii) long line services such as flare tip replacement and (iii) SAR and emergency evacuation services.
- 3.38 CHC and the Fisher Business both provide crew change services in the UK to O&G customers with sites in the North Sea, and both currently operate from Aberdeen. The Parties also host operations in:
- (a) CHC: Norwich and Humberside.
 - (b) The Fisher Business: Sumburgh (Shetland Islands), [REDACTED].
- 3.39 The businesses also undertake operations outside the UK. CHC services contracts for sites in the North Sea from Ireland, Norway and the Netherlands, while the Fisher Business operates a North Sea contract for Total from a base in Denmark. The Parties noted that these contracts do not relate to contracts with UK customers. Both businesses also operate from bases in Australia. The Parties noted that whether a customer is treated as a UK customer or

otherwise is dependent on whether the services are being provided to rigs/platforms in the UK territory, and whether it is the UK affiliate of the oil and gas company that is acquiring the services.

3.40 We set out more detail on the helicopters operated by each of the Parties and the bases from which they do so from paragraph 6.38 and in Appendix C.

Key financials

3.41 Below we set out the key financial metrics for CHC's global business (CHC Group LLC), CHC's UK business (operated by CHC Scotia Limited) and the Fisher Business. We focus on:

- (a) Revenue, cost of sales and gross margin.
- (b) EBITDA: being the earnings before interest, tax, depreciation, and amortisation.
- (c) EBIT: being the earnings before interest and tax.
- (d) Operating profit/(loss): being the profit or loss based on the operating costs of the business. Often this will align with EBIT, but there may be differences as a result of non-operating costs (eg foreign exchange gains or losses).

CHC

CHC Group LLC

Table 3-1: Key financial metrics: CHC Group LLC consolidated financial statements

	<i>Unit</i>	<i>2018</i>	<i>2019</i>	<i>2020</i>	<i>2021</i>
		<i>Actual</i>	<i>Actual</i>	<i>Actual</i>	<i>Actual</i>
Revenue	£m	[X]	[X]	[X]	[X]
Cost of sales	£m	[X]	[X]	[X]	[X]
Gross margin	%	[X]	[X]	[X]	[X]
EBITDA*	£m	[X]	[X]	[X]	[X]
EBITDA margin	%	[X]	[X]	[X]	[X]
EBIT*	£m	[X]	[X]	[X]	[X]
EBIT margin	%	[X]	[X]	[X]	[X]
Operating profit / (loss)	£m	[X]	[X]	[X]	[X]
Operating margin	%	[X]	[X]	[X]	[X]
Net profit / (loss) before tax	£m	[X]	[X]	[X]	[X]

Source: CMA analysis of the Parties' data.

Notes:

* These metrics are calculated per a 'bottom-up' exercise, from the net profit / (loss) from continuing operations. These figures include FX gains / (losses) for consistency with the other tables presented.

Statutory accounts provided in USD. Converted to GBP utilising the average USD – GBP exchange rate for the years to 30 April 2018 (0.72540), 2019 (0.77340), 2020 (0.80315) and 2021 (0.71679) as detailed on [Oanda.com](https://www.oanda.com) [accessed 2 January 2022].

3.42 We also present CHC Group LLC's cash position over time.

Table 3-2: CHC Group LLC’s statutory cash position over time

	(£m)			
	2018	2019	2020	2021
Cash and cash equivalents	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Source: CMA analysis of the Parties’ data.

Notes:

Statutory accounts provided in USD. Converted to GBP utilising the USD – GBP exchange rate for the 30 April 2018 (0.72540), 2019 (0.77340), 2020 (0.80315) and 2021 (0.71679) as detailed on [Oanda.com](https://www.oanda.com) [accessed 7 January 2022]

CHC UK

3.43 Management accounts provided by CHC in relation to its UK operations include limited financial information therefore in the table below we present the financial results for CHC Scotia Limited. As set out at paragraph 3.2, CHC Scotia Limited is a wholly owned subsidiary of EHOB.

3.44 Note that some revenue earned by CHC Scotia Limited relates to operations in [REDACTED]. While costs [REDACTED], we note that the majority of revenue is earned within the UK and we therefore expect the majority of costs/margins to be attributable to the UK operations.

3.45 Further, we note that CHC Scotia Limited’s principal activities include the provision of helicopter services to the oil and gas industry (ie O&G Offshore Transportation services), SAR provision, and the provision of offshore windfarm services. CHC noted that approximately [REDACTED]% of CHC Scotia Limited’s revenue and [REDACTED]% of costs relate to O&G Offshore Transportation services.

Table 3-3: Key financial metrics, CHC UK

	Unit	2018	2019	2020	2021*
UK	£m	112.2	118.8	114.5	[REDACTED]
Europe	£m	9.3	6.8	7.4	[REDACTED]
North America	£m	0.2	0.0	0.0	[REDACTED]
Asia	£m	0.0	0.0	0.0	[REDACTED]
Revenue	£m	121.7	125.6	122.0	[REDACTED]
Cost of sales	£m	(140.5)	(142.5)	(134.7)	[REDACTED]
Gross margin	%	(15.4)	(13.5)	(10.4)	[REDACTED]
EBITDA	£m	(21.7)	(19.1)	(18.3)	[REDACTED]
EBITDA margin	%	(17.9)	(15.2)	(15.0)	[REDACTED]
EBIT	£m	(21.9)	(19.4)	(18.6)	[REDACTED]
EBIT margin	%	(18.0)	(15.5)	(15.2)	[REDACTED]
Operating profit / (loss)	£m	(21.9)	(19.4)	(18.6)	[REDACTED]
Operating margin	%	(18.0)	(15.5)	(15.2)	[REDACTED]
Net profit / (loss) before tax	£m	(22.7)	(20.5)	(19.7)	[REDACTED]

Source: CMA analysis of published CHC Scotia Limited accounts for 2018, 2019 and 2020, and the unaudited CHC Scotia Limited accounts for 2021.

Notes:

* 2021 figures are unaudited.

3.46 We also present CHC UK’s cash position over time.

Table 3-4: CHC Scotia Limited's statutory cash position over time

	(£m)			
	2018	2019	2020	2021
Cash and cash equivalents	13.3	12.6	4.8	[X]

Source: CMA analysis of published CHC Scotia Limited accounts for 2018, 2019 and 2020, and the unaudited CHC Scotia Limited accounts for 2021.

The Fisher Business

Offshore UK

Table 3-5: Key financial metrics, Offshore UK – year to 31 March 2018 to 2021

	Unit	2018	2019	2020	2021
Revenue	£m	[X]	[X]	[X]	[X]
Cost of sales	£m	[X]	[X]	[X]	[X]
Gross margin	%	[X]	[X]	[X]	[X]
EBITDA	£m	[X]	[X]	[X]	[X]
EBITDA margin	%	[X]	[X]	[X]	[X]
EBIT	£m	[X]	[X]	[X]	[X]
EBIT margin	%	[X]	[X]	[X]	[X]
Operating profit / (loss)	£m	[X]	[X]	[X]	[X]
Operating margin	%	[X]	[X]	[X]	[X]
Net profit / (loss) before tax	£m	[X]	[X]	[X]	[X]

Source: CMA analysis of Offshore UK, 'FY18 to FY21 Management Accounts', submitted 14 January 2022.

Note: we set out similar financial information in Appendix B. The tables in this chapter are presented to allow for a comparison of the same metrics across each of the businesses that together form the Fisher Business. The data set out in Appendix B is based on the same source data but presents slightly differing metrics as the focus of Appendix B is to provide a more detailed look into the Offshore UK financials in particular.

3.47 Offshore UK's cash position has fluctuated over time (see Table 3-6 below).

Table 3-6: Offshore UK's statutory cash position over time

	(£m)		
	2018	2019	2020
Cash and cash equivalents	1.0	16.7	1.7

Source: CMA analysis of the Parties' data.

3.48 Table 3-6 sets out the statutory cash position for the Offshore UK business from 2018 to 2020, demonstrating that it has fluctuated from £1 million in 2018 to an increased position of £16.7 million in 2019 and then dropping again to £1.7 million in 2020. As at 3 December 2021, Offshore UK had a [X] cash balance of £[X].³⁹

³⁹ Cash balance provided in USD. Converted using the USD to GBP exchange rate as at 3 December 2021 as detailed on [Oanda.com](https://www.oanda.com) [accessed 7 January 2022].

Offshore Australia

Table 3-7: Key financial metrics, Offshore Australia – year to 31 March 2018 to 2021

	Unit	2018	2019	2020	2021
Revenue	£m	34.1	43.2	45.3	57.4
Cost of sales	£m	(30.6)	(38.4)	(31.8)	(51.9)
Gross profit	£m	3.5	4.9	13.5	5.4
Gross margin	%	10.4	11.2	29.8	9.5
EBITDA	£m	(1.6)	(5.1)	n/a	n/a
EBITDA margin	%	(4.6)	(11.8)	n/a	n/a
EBIT	£m	(3.7)	(9.7)	n/a	n/a
EBIT margin	%	(10.8)	(22.4)	n/a	n/a
Operating profit / (loss)	£m	(3.7)	(9.7)	5.7	(10.2)
Operating margin	%	(10.8)	(22.4)	12.5	(17.8)
Net profit / (loss) before tax	£m	(4.6)	(10.7)	1.9	(13.4)

Source: CMA analysis of the Parties' data.

Note:

Statutory accounts provided in Australian dollars. Converted to GBP utilising the average AUD – GBP exchange rate for the years to 31 March 2018 (0.583577), 2019 (0.555408), 2020 (0.536250) and 2021 (0.548963) as detailed on [Oanda.com](https://anda.com) [accessed 30 December 2021].

Data for 2020 and 2021 is not detailed enough to include interest, tax, depreciation, amortisation nor operating lease costs. As such, EBITDA and EBIT metrics cannot be provided for 2020 and 2021.

3.49 We also present Offshore Australia's cash position over time (see Table 3-8).

Table 3-8: Offshore Australia's statutory cash position over time

	(£m)			
	2018	2019	2020	2021
Statutory cash position	2.2	1.4	2.9	4.3

Source: CMA analysis of the Parties' data.

Note:

Statutory accounts provided in Australian dollars. Converted to GBP utilising the AUD – GBP exchange rate for the 31 March 2018 (0.54753), 2019 (0.54405), 2020 (0.49612) and 2021 (0.55414) as detailed on [Oanda.com](https://anda.com) [accessed 7 January 2022].

3.50 As at 3 December 2021, Offshore Australia had a [X] cash balance of £[X].⁴⁰

Offshore Denmark

3.51 Following registration in July 2020, Offshore Denmark began operating in January 2021, meaning that the available financial information is limited. Therefore, in Table 3-9 below we present the financial results for the month of November 2021 and the year to 30 November 2021, which differs from the annual approach taken in setting out the financial results for the other entities within the Fisher Business. For the nine months to 31 March 2021, the Offshore Denmark business earned revenue of 42.6 million DKK (£5.1 million)

⁴⁰ Cash balance provided in USD. Converted using the USD to GBP exchange rate as at 3 December 2021 as per [Oanda.com](https://anda.com) [accessed 7 January 2022].

and incurred 22.2 million DKK (£2.7 million) in cost of sales, resulting in a gross profit margin of 20.4 million DKK (£2.4 million).⁴¹

Table 3-9: Key financial metrics, Offshore Denmark – month and year to 30 November 2021

	Unit	Month to 30 Nov 2021	YTD – 30 Nov 2021
Revenue	£m	[REDACTED]	14.5
Cost of sales*	£m	[REDACTED]	n/a
Gross margin*	%	[REDACTED]	n/a
EBITDA	£m	[REDACTED]	1.9
EBITDA margin	%	[REDACTED]	12.8
EBIT	£m	[REDACTED]	1.8
EBIT margin	%	[REDACTED]	12.6
Operating profit / (loss)	£m	[REDACTED]	1.8
Operating margin	%	[REDACTED]	12.6
Net profit / (loss) before tax	£m	[REDACTED]	1.9

Source: CMA analysis of the Parties' data.

Notes:

* Cost of sales data not provided so gross margin analysis not available.

Underlying data provided in Danish Krone. Converted to GBP utilising the average DKK – GBP exchange rate to 30 November 2021 (0.115050) as detailed on [Oanda.com](https://www.oanda.com) [accessed 30 December 2021].

3.52 As at 3 December 2021, Offshore Denmark had a [REDACTED] cash balance of £[REDACTED].⁴²

The Transaction

3.53 Pursuant to a share purchase agreement dated 27 February 2021, CHC acquired Babcock's O&G Offshore Transportation Services business in the UK, Australia and Denmark (ie the Fisher Business), through the acquisition of the entire issued share capital of Offshore UK, Offshore Australia and Offshore Denmark (the **Transaction**). The Transaction completed on 31 August 2021, for consideration of £10,000,000, £[REDACTED] of which is allocated in respect of the UK business.

3.54 Whilst the majority of the Fisher Business [REDACTED] being acquired by CHC, [REDACTED] necessary to operate the Fisher business also [REDACTED], or have been otherwise [REDACTED] following completion under the terms of [REDACTED]. The specific mechanism used to achieve the [REDACTED] the Fisher Business post completion are principally recorded in the [REDACTED] and the [REDACTED].

(a) [Details of post completion arrangements.]

⁴¹ CMA analysis of [REDACTED]. Note that the statutory accounts for the same period demonstrate a gross profit of 16.8 million DKK. This is the result of including 3.6 million DKK 'other administrative expenses' in the gross profit margin. Generally, we do not include 'other administrative expenses' in calculating gross profit, rather focusing on the difference between revenue and cost of sales. We have therefore presented the figures in paragraph 3.51 exclusive of 'other administrative expenses'.

⁴² Cash balance provided in USD. Converted using the USD to GBP exchange rate as at 3 December 2021 as per [Oanda.com](https://www.oanda.com) [accessed 7 January 2022].

(b) [Details of post completion arrangements.]⁴³

3.55 The Parties told us that the purpose of these mechanisms was to ensure that CHC would acquire a business which has all the assets and access to all the necessary resources to be able to operate independently in the market.

Valuation

3.56 The final valuation of £10 million is [redacted] than CHC's initial valuation of the Fisher Business of £[redacted] million to £[redacted] million as per its non-binding offer in March 2020. CHC set out the development of the valuation as follows:

- (a) CHC initially expressed an interest for the Fisher Business in November 2019.
- (b) CHC submitted a non-binding offer to Babcock for the Fisher Business on 27 March 2020 in which it indicatively valued the Fisher Business, [redacted]. CHC made [redacted].
- (c) In September 2020, following due diligence undertaken by its advisers, [redacted], CHC discovered that the Fisher Business had [redacted] which mean that the Fisher Business had [redacted] than CHC originally anticipated, following Babcock's management presentation. Accordingly, CHC [redacted].
- (d) On 20 November 2020, CHC [redacted]. This was largely due to [redacted]. In agreeing to Babcock's demands, CHC [redacted].
- (e) As discussions continued between the Parties, Babcock requested that CHC [redacted]. Accordingly, on 26 November 2020, CHC [redacted] valuation of the Fisher Business to £v million.
- (f) Further discussions over the purchase price for the Fisher Business occurred during the negotiation of the SPA and the Parties ultimately agreed on a purchase price of £10 million on 24 February 2021.

3.57 CHC submitted that the total purchase price of £10 million was allocated between the three entities within the Fisher Business, given that this was an acquisition of three separate companies:

- (a) The UK business was allocated a value of approximately £[redacted] million.
- (b) The Australian business was allocated a value of £[redacted] million.

⁴³ [redacted].

(c) The Danish business was valued at [REDACTED].

3.58 CHC submitted that this valuation broadly represented a percentage split of total turnover for all three companies, taking into account that Denmark had yet to generate any turnover at that time.

Other interested parties

3.59 Babcock explained that since taking the decision to try to sell the Fisher Business (including Babcock Offshore UK), it has been approached by a number of other third parties in addition to CHC who have expressed an interest in acquiring parts or the whole of the business. Babcock submitted that discussions took place with [REDACTED].

(a) [REDACTED]

(b) [REDACTED]

(c) [REDACTED]

(d) [REDACTED]

The rationale for the Merger

Babcock's rationale for selling the Fisher Business

Babcock's stated rationale

3.60 Babcock explained that it has been seeking to exit the Fisher Business for a number of years, with the impetus for this strategy becoming stronger over time and affirmed by [REDACTED]. More detail on Babcock's strategy with regard to the Fisher Business is set out in Chapter 5.

3.61 Babcock submitted that it made the decision to sell its O&G Offshore Transportation business because it was an 'area of weakness' and is non-core to Babcock's wider business. It submitted that the O&G Offshore Transportation industry is confronted with a long-term, prolonged and persistent structural decline in demand resulting from a volatile oil price, which has remained depressed since a peak in 2014 and from a reduction in oil and gas exploration and production in the Northern Hemisphere, particularly the North Sea. Babcock submitted that these exploration and production reductions were expected to continue in the Northern Hemisphere for the foreseeable future as mature oil and gas platforms were being decommissioned and not replaced.

- 3.62 The Parties noted environmental policies of governments in the Northern Hemisphere as having a negative impact on the industry, in particular with regard to decarbonisation and a push towards focusing on other renewable energy sources. Babcock referred to CHC and Bristow's need to enter Chapter 11 proceedings in order to restructure their business and emerge with 'a comparatively stronger balance sheet and a reduction in their operational costs'. Babcock told us that it 'was not afforded the same opportunity', which increased the challenges faced by its O&G Offshore Transportation business.
- 3.63 Babcock referred to the UK O&G Offshore Transportation [REDACTED]. Babcock submitted that it is against this background and the unfavourable market conditions that continue to prevail in the industry that it ultimately decided to stop supporting the Fisher Business and withdraw from the provision of O&G Offshore Transportation services.
- 3.64 Babcock told us that [REDACTED] and reconfirmed its plan to withdraw from the industry in February 2020.
- 3.65 Further, Babcock noted that it wrote down assets in its O&G Offshore Transportation business for a value of £22.2 million and recognised costs of £31.2 million in relation to the impairment of 'right of use' assets (ie leased assets) and onerous customer contracts. Babcock told us that the fact that O&G Offshore Transportation services were no longer considered an attractive market for Babcock was reiterated during [REDACTED] under the direction of David Lockwood, the new CEO, and as a result Babcock continued to proceed with divestiture discussions in order to dispose of the Fisher Business as soon as possible.
- 3.66 Babcock exited activities in the O&G Offshore Transportation businesses in Ghana and Congo, incurring charges of £7.1 million. Babcock retains limited O&G Offshore Transportation businesses in Italy.

CHC's rationale for acquiring the Fisher Business

CHC's stated rationale

- 3.67 CHC submitted that the overriding rationale for acquiring the Fisher Business is to make its existing business [REDACTED], efficient and therefore [REDACTED].

3.68 It told us that by combining its business with the Fisher Business, CHC expects to achieve synergies [REDACTED] across both businesses. It noted that these potential synergies will [REDACTED],⁴⁴ rather will be derived from a combination of:

- (a) [REDACTED];
- (b) direct reduction in [REDACTED] and [REDACTED];
- (c) operational synergies; and
- (d) [REDACTED].

3.69 CHC submitted that the fact that the Fisher Business [REDACTED] does not impact these efficiencies as they involve [REDACTED], which could only be achieved through the Merger. It told us that the fact that the O&G Offshore Transportation industry is confronted with a long-term decline in demand makes realising these efficiencies more important. It submitted that CHC is [REDACTED] the Fisher Business, since it [REDACTED].

3.70 CHC submitted that the latest estimate is that these synergies are likely to equate to approximately \$[REDACTED] million USD [REDACTED] savings across the UK and Australian businesses. It submitted that these synergies are [REDACTED] because they will enable CHC to [REDACTED]. It told us that it needs to [REDACTED] of the business going forward.

3.71 CHC broke down its synergies into the following categories:

- (a) **Fleet:** CHC submitted that savings can be obtained by [REDACTED]. It noted that this allows CHC to [REDACTED]. It noted that such optimisation is expected to improve utilisation and [REDACTED]. In addition, CHC noted that approximately \$[REDACTED] million is expected to be saved per annum from [REDACTED], [REDACTED] and [REDACTED] associated with [REDACTED]. \$[REDACTED] million per annum is expected to be saved from a reduction in [REDACTED].
- (b) **Maintenance:** CHC submitted that maintenance synergies come from [REDACTED] from [REDACTED] (as referred to above), and from [REDACTED] of the [REDACTED], and hence the cost of [REDACTED]. CHC estimated that the cost saving from this optimisation would be \$[REDACTED] million per year across [REDACTED].
- (c) **Operations:** CHC submitted that it estimates that it will achieve [REDACTED] synergies equating to an estimated \$[REDACTED] million per annum from combining the two businesses on the operations side. It noted that first

⁴⁴ As stated in CHC's response to [REDACTED]. Note that [REDACTED].

this would arise from [REDACTED]. Second, by bringing the Fisher Business onto CHC's [REDACTED]. Fourth, [REDACTED] yearly savings will be generated from the [REDACTED].

(d) **Labour:** CHC submitted that the main labour savings will come from [REDACTED] the synergies set out at point (a) to (c) above. It broke this down as:

(i) [REDACTED];

(ii) [REDACTED]; and

(iii) [REDACTED].

4. Relevant merger situation

Introduction

- 4.1 In accordance with the Act,⁴⁵ and pursuant to our terms of reference (see Appendix A), we are required to decide whether the Merger has created a relevant merger situation (**RMS**).
- 4.2 An RMS has been created if: (i) two or more enterprises have ceased to be distinct enterprises at a time or in circumstances falling within section 24 of the Act; and (ii) the value of the turnover in the UK of the enterprise being taken over exceeds £70 million (the turnover test) or the share of supply test is satisfied.⁴⁶
- 4.3 For the following reasons we have provisionally concluded that the Merger has resulted in the creation of an RMS.

'Two or more enterprises'

- 4.4 The Act defines an 'enterprise' as including 'a professional practice and the activities or part of the activities of a business'. The term 'business' includes any 'undertaking which is carried on for gain or reward or which is an undertaking in the course of which goods or services are supplied otherwise than free of charge'.⁴⁷
- 4.5 CHC Group LLC is a limited liability company incorporated in the Cayman Islands and headquartered in Texas (USA). CHC operates helicopter services in various countries, including O&G Offshore Transportation Services in the

⁴⁵ Section 35(1)(a) of the Act.

⁴⁶ Section 23(1)(b) of the Act.

⁴⁷ Section 129(1) of the Act.

UK. CHC's worldwide turnover in 2020 was approximately £608 million, of which approximately £118 million was generated the UK.

- 4.6 Babcock is a publicly listed company incorporated in England and Wales, which has transferred to CHC its Fisher Business – ie its O&G transportation business in the UK, Denmark and Australia – together with additional resources and assets used in connection with the operation of the Fisher Business.
- 4.7 We consider that the activities of CHC and the Fisher Business are carried on for gain or reward, and that each of CHC and the Fisher Business is an undertaking, in the course of which goods or services are supplied otherwise than free of charge. We provisionally conclude that each of CHC and the Fisher Business is an enterprise.

'Ceased to be distinct'

- 4.8 Enterprises have 'ceased to be distinct' once they are brought under common ownership or common control.⁴⁸
- 4.9 CHC has acquired from Babcock the entire issued share capital of each of the companies comprising the Fisher Business, through a share purchase agreement dated 27 February 2021, which completed on 31 August 2021.
- 4.10 By this transaction: (i) a wholly owned subsidiary of CHC – Lloyd Helicopter Services Pty Ltd – acquired the entire issued share capital of Babcock Offshore Australia; (ii) EHOB acquired the entire issued share capital of Babcock Offshore UK; and (iii) CHC Denmark ApS (a wholly owned subsidiary of EHOB) acquired the entire issued share capital of Babcock Offshore Denmark.⁴⁹
- 4.11 EHOB is jointly owned: (i) by CHC (holding [X]%) of EHOB's share capital); and (ii) by Mr Ivan Levy (holding [X]%) of EHOB's share capital.) CHC explained that Mr Levy has a majority shareholding in EHOB for regulatory reasons.
- 4.12 We consider that Mr Levy has a shareholding which gives him legal control over EHOB. We also consider that CHC has at least material influence over EHOB as a result of: (i) its significant minority shareholding; (ii) its right to appoint one board member out of four; (iii) its involvement in the development of EHOB's business plan and budget (which is developed by the CEO of

⁴⁸ Section 26 of the Act.

⁴⁹ EHOB has directly acquired Babcock Offshore UK and has indirectly acquired Babcock Offshore Denmark, via CHC Denmark ApS (a wholly owned subsidiary of EHOB).

EHOB in consultation with CHC before being presented to the EHOB board for approval); and (iv) service and consultancy agreements between CHC and Mr Levy.

- 4.13 For the purposes of deciding whether any two enterprises have been brought under common ownership or common control, the Act provides that two or more persons acting together, to secure or exercise control of a body of persons corporate or unincorporate, or to secure control of any enterprise or assets, shall be regarded as associated with one another, and that associated persons, and any bodies corporate which they or any of them control, shall be treated as one person.⁵⁰
- 4.14 We consider that CHC and Mr Levy have acted together through EHOB to secure and exercise control of Babcock Offshore UK (and its subsidiary Babcock Offshore Denmark). We consider, therefore, that: (i) CHC and Mr Levy are to be treated as one person, for the purposes of deciding whether any two enterprises have been brought under common ownership or common control; (ii) the companies comprising the Fisher Business have come under the common control of CHC (which includes, for the purpose of the assessment of this Merger, Mr Levy and EHOB), and (iii) the enterprises CHC and the Fisher Business have ceased to be distinct.

‘At a time or in circumstances falling within section 24’

- 4.15 Section 24 of the Act requires that the completed merger must have taken place not more than four months before the reference is made.⁵¹ The Transaction by which the Fisher Business was transferred to CHC was completed on 31 August 2021. The reference was made on 29 November 2021, which is within four months of the Merger being completed.

Turnover test

- 4.16 The turnover test is met where the value of the turnover in the UK of the ‘enterprise being taken over’ exceeds £70 million. The turnover of the Fisher Business in the UK exceeds £70 million, and so the turnover test in section 23(1)(b) of the Act is satisfied.

⁵⁰ Section 127(1) and 127(4)(d) of the Act.

⁵¹ Section 24 of the Act.

Provisional conclusion

4.17 For these reasons we provisionally conclude that the conditions of section 23 of the Act are met and that the Merger has resulted in the creation of an RMS.

5. Counterfactual

Introduction

5.1 In this chapter we set out:

- (a) the framework for the assessment of the counterfactual;
- (b) the Parties' submissions on the relevant counterfactual; and
- (c) our assessment and provisional conclusion on the counterfactual.

Framework for the assessment of the counterfactual

5.2 The counterfactual is an analytical tool used to help answer the question of whether a merger gives rise to an SLC.⁵² It does this by providing the basis for a comparison of the competitive situation with the merger against the likely future competitive situation absent the merger.⁵³ The latter is called the counterfactual.⁵⁴

5.3 The counterfactual is not, however, intended to be a detailed description of those conditions of competition that would have prevailed absent the merger.⁵⁵ The CMA's assessment of those conditions is considered in the competitive assessment.⁵⁶ The CMA also seeks to avoid predicting the precise details or circumstances that would have arisen absent the merger.⁵⁷

5.4 At phase 2, the CMA will select the most likely conditions of competition as its counterfactual against which to assess the merger.⁵⁸ In its assessment of the counterfactual, the CMA may need to consider multiple possible scenarios, before identifying the relevant counterfactual.⁵⁹ As part of this assessment, the CMA will take into account whether any of the possible scenarios make a significant difference to the conditions of competition,⁶⁰ and if they do, the

⁵² [Merger Assessment Guidelines \(CMA129\) \(MAGs\)](#), paragraph 3.1.

⁵³ [MAGs](#), paragraph 3.1.

⁵⁴ [MAGs](#), paragraph 3.1.

⁵⁵ [MAGs](#), paragraph 3.7.

⁵⁶ [MAGs](#), paragraph 3.7.

⁵⁷ [MAGs](#), paragraph 3.11.

⁵⁸ [MAGs](#), paragraph 3.13.

⁵⁹ [MAGs](#), paragraph 3.13.

⁶⁰ [MAGs](#), paragraph 3.13.

CMA will ultimately select the most likely conditions of competition absent the merger as the relevant counterfactual.⁶¹ Counterfactual assessments will often focus on significant changes affecting competition between merger firms, such as for example exit by one of the merger firms.⁶²

- 5.5 The CMA recognises that evidence relating to future developments absent the merger may be difficult to obtain.⁶³ Uncertainty about the future will not in itself lead the CMA to assume the pre-merger situation to be the appropriate counterfactual. As part of its assessment of the counterfactual, the CMA may consider the ability and incentive (including, but not limited to, evidence of intention) of the merging parties to pursue alternatives to the merger, which may include reviewing evidence of specific plans where available.⁶⁴
- 5.6 Further, the time horizon considered by the CMA in its assessment of the counterfactual will depend on the context and will be consistent with the time horizon used in the competitive assessment.⁶⁵
- 5.7 Owing to the inherent uncertainty of predicting future events, the CMA benefits from a margin of appreciation in relation to its conclusion. This assessment must meet the requirements of a rationality test – in other words, the CMA must have a sufficient basis in light of the totality of the evidence available to it for making the assessment and reaching its decision.⁶⁶

The Parties' submissions on the relevant counterfactual

The Parties' views

- 5.8 The Parties made two main points in their submissions:
- (a) Babcock would have exited the UK O&G Offshore Transportation Services market; and
 - (b) there was no alternative less anti-competitive purchaser for the Fisher Business.
- 5.9 A consequence of these submissions is that, absent the Merger, the Parties are of the view that there would only have been three players in the UK O&G

⁶¹ MAGs, paragraph 3.13.

⁶² MAGs, paragraph 3.8.

⁶³ MAGs, paragraph 3.14.

⁶⁴ MAGs, paragraph 3.14.

⁶⁵ MAGs, paragraph 3.15.

⁶⁶ See *BAA Ltd v Competition Commission* [2012] CAT 3 at paragraph 20, *Stagecoach Group Plc v Competition Commission* [2010] CAT 14 at paragraph 45.

Offshore Transportation Services market, as the Fisher Business would either have been closed down or sold to an existing player.

Babcock would have exited the UK O&G Offshore Transportation Services market

- 5.10 Babcock submitted that in 2017 it reviewed the forecasts for the O&G Offshore Transportation Services market,⁶⁷ which concluded there would be a continued decline in the market over time. Babcock also submitted that this conclusion, together with the poor ongoing performance of the business, caused Babcock in late 2017 to propose exiting the O&G Offshore Transportation Services market. At this point, Babcock had not yet concluded the best means by which to do this, but it subsequently decided to either sell the Fisher Business or undertake a staged closure at contract renewal points.
- 5.11 The Parties told us that Babcock was approached in [REDACTED] by [REDACTED] in relation to the acquisition by [REDACTED] of the Fisher Business and that discussions between [REDACTED] and Babcock took place between [REDACTED]. Ultimately, Babcock rejected the [REDACTED] offered [REDACTED] for the purchase of the Fisher Business.
- 5.12 Babcock submitted that in the summer of 2018, following the failure of the [REDACTED] negotiation, it initiated a strategic review of the Fisher Business which resulted in a decision to ‘manage the business for value’. Under this process, Babcock: (i) determined to operate the Fisher Business ‘[REDACTED]’; (ii) took an asset impairment charge of £38 million to reduce owned O&G Offshore Transportation Services assets to their market value; and (iii) made an onerous lease provision of £42.1 million against leased assets, in order to reflect the cost of lease commitments versus market rates.⁶⁸
- 5.13 In October 2018, Babcock commissioned ‘Project Opturo’, the purpose of which was to review the options for its O&G Offshore Transportation Services business in [REDACTED]. Babcock submitted that in the course of the project it found that running the O&G Offshore Transportation Services business ‘as is’ would [REDACTED]. Babcock submitted that a decision was [REDACTED]. Babcock submitted that, [REDACTED] and in the meantime, the business would continue to be managed for value. Babcock noted that the Project Opturo initial report was prepared on [REDACTED].
- 5.14 In response to the Issues Statement, the Parties reiterated their argument that if it had not sold the Fisher Business to CHC, Babcock would have closed the business down and exited the market. They told us this was because the

⁶⁷ This came approximately three years after Babcock’s completion of its acquisition of the Avincis Group on 30 June 2014. This acquisition included Offshore UK.

⁶⁸ Babcock International Group plc full year results for the year ended 31 March 2019, page 14.

Fisher Business was loss making and [REDACTED]. [REDACTED]. The Parties submitted that Babcock had decided to withdraw and end its exposure to the market in which the Fisher Business operates and focus instead on its core activities. They submitted that [REDACTED].⁶⁹

5.15 The Parties submitted that Babcock was determined to exit the O&G Offshore Transportation Services market and that Babcock had publicly confirmed its intention to withdraw from the market on several previous occasions. There was little doubt that it would have done so absent the Merger, even if this meant winding down the business over a period of time. The Parties also submitted that:

(a) The Fisher Business was situated outside Babcock's core strategy and was [REDACTED].

(b) The Fisher Business was [REDACTED], had been making substantial losses for several years, and had been [REDACTED].

(c) Babcock [REDACTED].⁷⁰

5.16 The Parties submitted that while Babcock was determining how best to exit the UK O&G Offshore Transportation Services market, the Fisher Business would have been 'managed for value', which they described as a [REDACTED].⁷¹ The Parties submitted that this strategy meant that Babcock severely limited its investments into the business, sought to downsize its fleet of aircraft and restricted its participation in tenders by generally only bidding on tenders which created an opportunity to make use of unutilised capacity in order to minimise losses.⁷²

5.17 The Parties submitted that Babcock's intention to exit from the market was heightened by the appointment of a new management team from 2019. The Parties told us that the Fisher Business was a non-core part of the business and the new management team was willing to close businesses down quickly and at a cost.⁷³ The Parties submitted that getting out of the oil and gas offshore transportation market was a matter of strategic importance for which [REDACTED] and that it would have been consistent with a strategic decision to exit the market to close the Fisher Business even if this were to cost more than the short or medium-term costs associated with continuing to run the business. The Parties submitted that the cost of closing the business was not a factor

⁶⁹ Parties' response to Issues Statement, 4 January 2022, paragraph 1.4.1.

⁷⁰ Parties' response to Issues Statement, 4 January 2022, paragraphs 3.4 to 3.7.

⁷¹ Parties' response to Issues Statement, 4 January 2022, paragraph 3.8.

⁷² Parties' response to Issues Statement, 4 January 2022, paragraphs 3.9 and 3.10.

⁷³ [REDACTED].

which would have played a key, let alone a determinant, role in Babcock's decision-making process in the counterfactual and that Babcock would not have continued to run the business simply to avoid paying the costs associated with an immediate closure and preserving a 'relatively trivial' contribution to overheads.

- 5.18 With regard to how Babcock's 2020 entry into new contracts with Total and IAC formed part of Babcock's strategy to manage the Fisher Business for value and utilise existing capacity, Babcock told us that the direction received from the then CFO and then CEO was to [redacted] as far as was possible. It told us that it was directed to [redacted] rather than look at the economic way of running a tender. Babcock told us that its preferred solution was to utilise the existing fleet and that the only reason that it took the Total contract on was because it was able [redacted].

There was no alternative less anti-competitive purchaser for the Fisher Business

- 5.19 The Parties submitted that there were no realistic alternative purchasers for the business. The Parties submitted that [redacted], and that apart from CHC, [redacted]. They submitted that [redacted]. The Parties told us that [redacted], but that [redacted]. The Parties submitted that [redacted] can be explained by the fact that [redacted].⁷⁴
- 5.20 The Parties submitted that the fact that Babcock did [redacted]. They noted that the [redacted]: the Fisher Business [redacted] and was underperforming, loss-making in the UK, and [redacted]. The Parties submitted that this would have become apparent through the due diligence process and the acquisition of a business, such as the Fisher Business, therefore only made sense for an existing market player such as [redacted] or CHC, which could exploit synergies, de-duplicate costs, and make its own business more cost efficient and sustainable.

Our assessment of possible counterfactual scenarios

- 5.21 As set out in paragraph 5.2 above, the counterfactual is an analytical tool that is used in answering the question of whether a merger gives rise to an SLC and compares the prospects for competition with the merger against the competitive conditions that would have prevailed absent the merger.
- 5.22 The CMA may consider whether, absent the merger, one of the merger firms is likely to have exited the market. In forming a view on an exiting firm scenario in a phase 2 investigation, the CMA uses the following framework:

⁷⁴ Parties' response to Issues Statement, 4 January 2022, paragraph 3.17.

- (a) **Limb 1 – likelihood of exit:** the firm is likely to have exited (through failure or otherwise); and, if so
- (b) **Limb 2 – alternative purchasers:** there would not have been an alternative, less anti-competitive purchaser for the firm or its assets to the acquirer in question.⁷⁵

- 5.23 For the CMA to accept an exiting firm argument in a phase 2 investigation, it must see compelling evidence that the most likely scenario would be exit and that there would have been no less anti-competitive purchaser. These conditions are cumulative, in that both conditions must be met for an exiting firm counterfactual to be identified. Where it is found that a firm is unlikely to have exited absent the merger (ie Limb 1 is not met), then it is not necessary to consider the likelihood of acquisition by an alternative purchaser under Limb 2. In this situation, however, the possibility of sale to an alternative purchaser may nonetheless be relevant to the CMA’s consideration of the incentives and/or timing of exit under Limb 1.
- 5.24 The position put forward by the Parties is that, absent the Merger, the competitive constraint represented by the Fisher Business would have been removed as the Fisher Business would have exited the market for strategic reasons, and that hence the Merger does not materially affect the extent of competition in the market. In this context, our counterfactual assessment is focused on whether Babcock would have ceased to operate the Fisher Business and closed it down.
- 5.25 In making our assessment of the possible counterfactual scenarios, our approach has been as follows. We start by considering the evidence we have received on the financial position of the Fisher Business and on Babcock’s proposed strategy with regard to the Fisher Business. This evidence is set out from paragraphs 5.27 to 5.70. We then set out our review of this evidence as follows:
- (a) First, we set out our review of Babcock’s internal documents in order to understand the evolution of Babcock’s strategy with regard to the Fisher Business, including the alternative options that Babcock was considering for the Fisher business (in paragraphs 5.77 to 5.86).
 - (b) Second, we consider what Babcock’s incentives were (or may have been) for the Fisher Business. This includes a review of evidence on the financial position and liabilities associated with the Fisher Business. We

⁷⁵ MAGs, paragraph 3.21.

have also considered the likelihood of sale of the Fisher Business in forming our assessment of incentives (in paragraphs 5.87 to 5.111).

- 5.26 We then set out our overall assessment of whether we consider that the Fisher Business would have exited absent the Merger (in paragraphs 5.112 to 5.130).

Evidence obtained on the Fisher Business

- 5.27 In this section we set out the evidence obtained on Babcock's strategy for the Fisher Business. This is split out into the following subsections:

- (a) Evidence we have obtained on the financial position of the Fisher Business (in paragraphs 5.28 to 5.38), which informs our assessment of Babcock's commercial incentives and hence its strategy for operating the Fisher Business.
- (b) Evidence from internal documents and submissions relating to Babcock's proposed strategy with regard to the Fisher Business (in paragraphs 5.39 to 5.70).

Evidence regarding the financial position of the Fisher Business

- 5.28 First, we consider the financial position of the three businesses that together form the Fisher Business, before looking at the financial position of the Fisher Business as a whole. This helps inform our assessment of Babcock's commercial incentives and hence its strategy for operating the Fisher Business, in particular whether it would have closed the Fisher Business, continued to operate it or sold it to another interested purchaser.

Offshore UK

- 5.29 As set out in more detail in Appendix B, Offshore UK has a recent history of incurring net losses and operating in a net liability position. Table 1 of Appendix B details the most recent accounts to 31 March 2020, which show that Offshore UK incurred a net operating loss of £16.2 million and a net loss before tax of £21.8 million.
- 5.30 Offshore UK's 2020 financial statements note that almost half of the net loss incurred by Offshore UK in 2020 relates to write downs, with the business taking a provision charge of £5.2 million for loss-making contracts, and an impairment expense of £4.9 million to write down the value of right-of-use

assets.⁷⁶ Excluding such one-off transactions, the underlying operating profits of Offshore UK are negative in 2020, with a loss of £6.0 million. However, prior to 2020, Offshore UK earned positive underlying operating profits for the previous four years of our five-year assessment.⁷⁷

- 5.31 Further, a significant proportion of overhead costs incurred by Offshore UK, and which contribute to the operating loss in 2020, relate to the management fees paid to the wider Babcock Group. Comparing the overheads incurred by Offshore UK and the management charges it paid to the wider Babcock Group (as set out in Table 2 of Appendix B), we found that the management fee paid to Babcock represented [X] % of Offshore UK's total overheads, increasing to [X] % in 2019, [X] % in 2020, and [X] % in 2021.
- 5.32 Babcock submitted that these management fees related both to directly attributable costs⁷⁸ and indirect Babcock UK aviation sector costs. Babcock noted in its submission that the management fees for years prior to 2021 were generally higher in comparison, as a result of cost savings that took place in 2021. We consider the impact of these fees on Offshore UK's financial position in more detail from paragraph 5.98 below.
- 5.33 The Parties have told us that a fall in the oil price combined with high lease costs and onerous customer contracts contributed to poor market conditions which impacted Offshore UK's financial position and Babcock's rationale to exit the Fisher Business. We note that there have been improvements in the leasing market since Offshore UK entered into its current leases. Further, as set out at paragraph 6.26, while there has been a decline in the market in recent years, we expect there to be continued demand for the services provided by UK O&G Offshore Transportation Service providers for the next 10 to 15 years.
- 5.34 On the basis of the information set out above and in Appendix B (paragraphs 3 to 16), we are of the view that while the Offshore UK business has seen a decline in profitability in recent years, it did have a history of earning profits and its switch from a net asset to net liability position was not indicative of a negative change in operating performance. We note that the business received continued support from the wider Babcock group and

⁷⁶ Offshore UK, [Annual Report for the year ended 31 March 2020, Strategic Report](#), page 2.

⁷⁷ See Offshore UK Annual Reports for 2016 to 2019: [OFFSHORE HELICOPTER SERVICES UK LIMITED filing history – Find and update company information - GOV.UK \(company-information.service.gov.uk\)](#).

⁷⁸ Examples of these directly attributable costs included costs associated with: the aviation executive board; safety and assurance (including fleet maintenance); human resources; information technology; finance; legal; communications; strategy support; facilities; supply chains; and trade controls. Babcock submitted that these costs can be broadly grouped into senior management costs, support costs, and aviation sector costs.

opportunities for forward looking improvement were noted in the 2020 Strategic and Directors' reports.

Offshore Australia

- 5.35 As set out in more detail in Appendix B, prior to 2020 Offshore Australia was in a loss-making position at the operating profit/(loss) level, earning losses of £3.7 million and £9.7 million in 2018 and 2019 respectively. In 2020, Offshore Australia increased its gross margins which in turn allowed for an operating profit of £5.7 million. However, by 2021 its gross margins had reduced again, resulting in a corresponding deterioration to an operating loss position of £10.2 million. The Offshore Australia business is currently in a [ⓧ] cash position than Offshore UK, and is expected to continue to be so at least over the short-term forecasting period.
- 5.36 As at the time of the most recent 2021 accounts, the business generated positive profits and while it remained in an overall net liability position, it was an improvement on the prior year. Similarly, the Offshore Australia business had transitioned into a net current asset position, demonstrating improved financial performance. Supported by the wider Babcock Group, Offshore Australia looked to be moving towards an improved financial performance as compared to previous loss-making years.

Offshore Denmark

- 5.37 Offshore Denmark began operating in January 2021 to service the contract with Total, which began in July 2020. For this reason, the entity had no financial results as at the 'accounts date' of the SPA, therefore we do not place significant weight on the financial results of the Danish business in considering Babcock's incentive for the Fisher Business with regard to its financial position. However, we do note that since the Merger the Danish business has demonstrated a [ⓧ] position.

The Fisher Business – summary of overall financial position

- 5.38 The evidence demonstrates that the overall financial position of the Fisher Business is somewhat volatile, with Offshore UK turning to a loss making position in recent years, and Offshore Australia improving into a profit making position in 2020 before making a loss in 2021. We consider the impact of the financial position of Offshore UK and the Fisher Business more broadly on Babcock's incentives with regard to the counterfactual from paragraph 5.95 below.

Evidence obtained from internal documents and submissions relating to Babcock's proposed strategy

- 5.39 Babcock provided a number of internal documents, including some produced prior to the commencement of discussions with CHC, setting out its strategy with regard to the Fisher Business. In this section, we set out Babcock's strategy as described in these internal documents.
- 5.40 The Merger Assessment Guidelines (**MAGs**) note that when considering any exiting firm argument, the CMA will usually attach greater weight to evidence that has not been prepared in contemplation of the merger.⁷⁹ As set out in our Phase 1 Decision,⁸⁰ we noted 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 evidential weight in considering whether the Fisher Business would have exited the market absent the Merger.⁸¹ In this context, we note that 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.
- 5.41 In response to the Issues Statement, the Parties told us that the CMA was incorrect to reject evidence on the basis that it was derived from public statements and internal strategic documents which were prepared after the Merger was in contemplation.⁸²
- 5.42 In deciding what weight to put on the Parties' evidence we note that some of the evidence set out below relates to the time period prior to CHC's initial approach, while other evidence relates to the time period following that. We have taken this into consideration when assessing the weight placed on the evidence and, other things being equal, will place greater weight on evidence prepared prior to CHC's initial approach, in line with our MAGs.⁸³
- 5.43 The rest of this section is split into the following subsections:
- (a) Early strategy – 2017 to September 2019.
 - (b) Project Opturo.
 - (c) Evidence from the period following CHC's approach.

⁷⁹ MAGs, paragraph 3.24.

⁸⁰ Phase 1 Decision, 18 November 2021.

⁸¹ MAGs, paragraph 3.24.

⁸² Parties' response to Issues Statement, 4 January 2022, paragraph 3.11.

⁸³ MAGs, paragraph 3.24.

(d) Babcock's consideration of potential purchasers.

Early strategy – 2017 to September 2019

5.44 Babcock's [REDACTED] [document] [REDACTED] 2017 makes the first key reference to Babcock's consideration of exiting the O&G Offshore Transportation Services market. The document sets out Babcock's proposal to exit its O&G Offshore Transportation Services business [REDACTED]. At that time, Babcock stated that it was a small player in the market, with only 4% of a market [REDACTED].⁸⁴ It concluded [REDACTED], and therefore proposed to exit the O&G Offshore Transportation Services market. It noted [REDACTED].

5.45 In a later version of the same document, Babcock set out [REDACTED] for the O&G Offshore Transportation Services business alongside [REDACTED] as set out in Figure 5-1:

Figure 5-1: Babcock's [REDACTED] 2017 – [REDACTED] alternative options for the O&G business

[REDACTED]

Source: Babcock.

5.46 In the same document, Babcock noted that it proposed to exit the Oil & Gas market [REDACTED].

5.47 Between its [REDACTED], Babcock considered selling the Fisher Business to [REDACTED]. This is set out in more detail from paragraph 5.67 below. The transaction ultimately fell through, and [REDACTED] is in the context of that failed transaction.

5.48 In [REDACTED]:

(a) [REDACTED];

(b) [REDACTED];

(c) [REDACTED];

(d) [REDACTED]; or

(e) [REDACTED].

5.49 In the document, Babcock reviewed the prospects of its participation in the O&G Offshore Transportation Services industry, noting that [REDACTED]. However, it also commented that [REDACTED]. It continued by noting that [REDACTED]. On this basis, we

⁸⁴ Note that this relates to Babcock's entire O&G presence and not the UK market only.

note that in August 2018 no decision was made to close the business and at that stage Babcock was considering maintaining the business.

5.50 This was reflected later in the same document in which Babcock set out its alternative options as:

(a) [REDACTED];

(b) [REDACTED];

(c) [REDACTED]; or

(d) [REDACTED].

5.51 By September 2018, [REDACTED], Babcock initiated a further strategic review of the Fisher Business. It was at this strategic review where Babcock decided to manage the Fisher Business for value (its 'manage for value' strategy). Whilst no clear definition of the manage for value strategy has been given to the CMA, it is clear at this point that Babcock intended to segregate its O&G Offshore Transportation Services business [REDACTED].

5.52 Following this, in September 2019, Babcock set out its O&G 2019 strategy as being to:

(a) [REDACTED];

(b) [REDACTED];

(c) [REDACTED];

(d) [REDACTED]; and

(e) [REDACTED].

5.53 In the same strategy document, Babcock noted that while it had adopted the manage for value strategy to its O&G Offshore Transportation Services business, [REDACTED]. It noted actions taken to: [REDACTED]. [REDACTED].

5.54 This is in line with statements made by Babcock in the June 2019 Capital Markets Day update in which it noted that although it was not a strategic priority, it would continue to operate its O&G business.⁸⁵

⁸⁵ Babcock, [Babcock Capital Markets Day – presentation transcript](#), 5 June 2019, page 36.

Project Opturo

- 5.55 In November 2019, at a similar time to the first discussions between CHC and Babcock about the Merger, Babcock initiated Project Opturo which assessed [REDACTED] of the Babcock O&G Offshore Transportation Services business [REDACTED]. These documents are key to the Parties' submission that Babcock would have closed the Fisher Business absent the Merger.
- 5.56 Within the November Project Opturo document, Babcock set out an assessment of closure of the Fisher Business. This was followed by a comparison of the potential closure to alternative options in December 2019. The four key options for the O&G Offshore Transportation Services [REDACTED] business were:
- (a) [REDACTED].
 - (b) [REDACTED].
 - (c) [REDACTED].
 - (d) [REDACTED].

Evidence from the period following the CHC approach

- 5.57 As set out at paragraph 5.40 above, we will usually attach greater weight to evidence that has not been prepared in contemplation of the merger. However, in recognition of the Parties' argument (see paragraph 5.17 above) that the new management team had a greater incentive to close down the business, we set out below our findings from our review of documents prepared by Babcock following the start of negotiations with CHC.
- 5.58 In January 2020, Babcock's [REDACTED] document set out the requirement for Babcock to deliver change within its broader Aviation portfolio. The document set out the strategy for a number of projects falling under Babcock's aviation assessment (known as 'Project Foundation'). With regard to 'Project D: [REDACTED]', it noted that it would continue to manage for value the Oil and Gas business and look at all options. In considering the future of oil and gas ('Project J: Future of Oil and Gas'), it noted the four options available to the Fisher Business as being:
- (a) [REDACTED].
 - (b) [REDACTED].
 - (c) [REDACTED].

(d) [REDACTED].

- 5.59 The document recommended a disposal of the business with the aim of the acquirer taking all lease liabilities for the [REDACTED] and other O&G helicopter leases.
- 5.60 The Project J February 2020 update noted that ‘Opturo becomes the [REDACTED] in the event of Project Fisher [understood to be the sale of the Fisher Business to CHC] [REDACTED]’. It noted that Opturo options had been costed and presented to senior decision makers, and would be [REDACTED].
- 5.61 In the aviation sector board update from [REDACTED], [REDACTED] is referenced again, with the ‘manage for value or exit’ strategy remaining in place. It noted that once Babcock had completed the [REDACTED] programme it would no longer be in the Oil and Gas business.
- 5.62 In August 2020, [REDACTED] summarised Babcock’s review of the Fisher Business against its core strategy. The document included [REDACTED]. The document stated [REDACTED], they should [REDACTED].⁸⁶A version of the same document was presented to [REDACTED] as part of the aviation introduction.
- 5.63 In September 2020, Babcock set out an update on Project Fisher. The document set out key factors in the CHC negotiations, including [REDACTED]:

(a) [REDACTED]

(b) [REDACTED]:

(i) [REDACTED];

(ii) [REDACTED]; and

(iii) [REDACTED].

- 5.64 The recommendation coming out of the assessment was to proceed with the sale of Fisher to CHC, [REDACTED].⁸⁷
- 5.65 In an internal email from October 2020, [REDACTED].
- 5.66 In addition to the documents set out above, throughout the post-CHC approach period, a number of documents were circulated which [REDACTED]. It noted that it had exited business in Congo and Ghana, [REDACTED].

⁸⁶

[REDACTED]. Note that it is not clear from the document [REDACTED]. [REDACTED]. There is no specific reference to exiting UK O&G.

⁸⁷ We note that [REDACTED].

Babcock's consideration of potential buyers

- 5.67 During the period over which Babcock was considering its options for the Fisher Business (as set out at paragraphs 5.44 to 5.66 above), Babcock received a number of approaches from potential purchasers of the Fisher Business.
- 5.68 Babcock was in negotiations with [REDACTED] from [REDACTED]. Babcock told us that negotiations with [REDACTED] ultimately failed as a result of [REDACTED], which Babcock noted was [REDACTED]. Babcock submitted that there were [REDACTED].
- 5.69 As mentioned in paragraph 3.59, in addition to [REDACTED] and CHC, Babcock noted three additional approaches with regard to the purchase of the Fisher Business:
- (a) [REDACTED].
 - (b) [REDACTED].
 - (c) [REDACTED].
- 5.70 The Parties submitted that while there were a number of approaches for the Fisher Business in addition to that from CHC and [REDACTED] (as set out at paragraph 3.59 above), they [REDACTED], as set out at paragraph 5.19 above. We note that in [REDACTED] appeared to express a continued interest in potentially purchasing the [REDACTED], but by this stage Babcock was [REDACTED]. Similarly, in [REDACTED], [REDACTED] noted that it would be interested in continuing discussions [REDACTED] but Babcock was again limited in its ability to pursue discussions as a result of [REDACTED].
- 5.71 We consider the potential impact of Babcock's consideration of potential buyers on its incentives with regard to the Fisher Business at paragraphs 5.106 to 5.111 below.

Our assessment of the evidence of Babcock's intention to close down the business

- 5.72 In this section we set out our assessment of the evidence of Babcock's intention to close down the Fisher Business for strategic reasons, taking account of the evidence set out at paragraphs 5.28 to 5.71 above.
- 5.73 As noted above, the position put forward by the Parties is that, absent the merger, the Fisher Business would have exited the market for strategic reasons, and that hence the Merger does not materially affect the extent of competition in the market. Accordingly, our assessment in this chapter has focused on whether, in the most likely counterfactual, the Fisher Business

would have exited the market for strategic rather than financial reasons. The MAGs note that in such a case we would need to be satisfied that the business would have exited for reasons unrelated to the merger, and that when considering any such exiting firm argument, the CMA will usually attach greater weight to evidence that has not been prepared in contemplation of the merger.⁸⁸

- 5.74 As set out at paragraph 5.25 above, in assessing whether, in the most likely counterfactual scenario, the Fisher Business would have exited the market for strategic reasons unrelated to the Merger, we have focused on two key strands of evidence, which are assessed in this section.
- 5.75 First, we set out our review of Babcock's internal documents in order to understand the options considered by Babcock in relation to the Fisher Business, and the evolution of Babcock's strategy. This indicated that, while Babcock regarded the Fisher Business as non-core (and that this might have contributed to a willingness to close the business), Babcock kept a number of options in play throughout the pre-merger period, [REDACTED], and a preferred option was not indicated.
- 5.76 Second, in view of the various options at play and the absence of a preference, we consider Babcock's incentives in pursuing these options. This assessment indicates that the Fisher Business has been profitable in the past and there were opportunities for improving its financial performance. Further, the costs of closing the Fisher Business (particularly the costs associated with [REDACTED]) were high, relative to either a sale or continuing to operate the business. This means that the possibility of finding an alternative purchaser would have provided an additional incentive to continue operating the business.

Options considered by Babcock in relation to the Fisher Business – review of internal documents

- 5.77 In considering the evidence regarding Babcock's strategy for the Fisher Business (as set out at paragraphs 5.39 to 5.70 above), we are of the provisional view that, contrary to the Parties' submissions, none of the internal strategic documents provided to us demonstrates that a decision to exit had actually been taken by Babcock when CHC approached Babcock about a potential acquisition (or in the period after November 2019), or that the Fisher Business was [REDACTED].

⁸⁸ MAGs, paragraphs 3.29 and 3.24.

- 5.78 Although we accept that serious consideration had been given to exit, the internal strategic documents consistently show that exit was only one of several different options being considered by Babcock at the time. For example, as set out at paragraph 5.46 above, in an internal strategic document [REDACTED].⁸⁹
- 5.79 Furthermore, as noted in paragraph 5.52, the evidence indicates that Babcock continued to be open to expansion opportunities for the Fisher Business, despite implementing the manage for value strategy and considering various alternative options including closure. Such evidence shows Babcock was open to the prospect of retaining its O&G Offshore Transportation Services business and keeping it within the market at least in the short to medium-term.
- 5.80 The Parties told us that it was not credible to suggest that Babcock would have continued to run the business simply to avoid paying the costs associated with an immediate closure and preserving a ‘relatively trivial’ contribution to overheads, particularly given the new management’s approach to reducing overhead. They submitted that Babcock was willing to make difficult decisions and take a significant financial hit (as it had done in relation to the £2 billion written off Babcock’s balance sheet following a contract profitability and balance sheet review in January 2021) and that it would not have hesitated to close down the Fisher Business, which it considered to be non-core and loss-making. As set out at paragraph 5.17 above, the Parties also told us that change in management within Babcock, in particular the appointment of the new CEO, David Lockwood, contributed to a broader mandate for change within the Babcock business, including a willingness to close down non-core operations. The Parties submitted that an £817.4 million impairment charge was taken against the aviation business in 2021, under the leadership of new management. The Parties also submitted that Babcock’s commitment to exit O&G markets where it cannot find a buyer is demonstrated by the fact that Babcock exited, via closure, its businesses in Ghana and Congo.
- 5.81 We recognise that Babcock had considered exiting from O&G Offshore Transportation Services prior to the approach by CHC. In the [REDACTED] document (as set out at paragraph 5.56) [REDACTED]. The documents from October to February 2020 (as set out at paragraphs 5.58 to 5.66 above), following the start of negotiations with CHC, demonstrate that Babcock was keen to complete the sale with CHC.

⁸⁹ See also [REDACTED] which refers to [REDACTED].

- 5.82 While this demonstrates an enthusiasm from Babcock to complete its sale to CHC and to exit the O&G business, we do not consider that this demonstrates that absent the Merger, Babcock would have closed down the Fisher Business in the near future. The February 2020 document noted that, in the case of the failure of the disposal, 'Opturo becomes [REDACTED]' – as noted in paragraph 5.56, while the [REDACTED], the [REDACTED] consideration of Opturo set out the strategy to [REDACTED]. This is further reflected in the [REDACTED] document which considered a number of options for the Fisher Business, [REDACTED]. In our view this demonstrates that if the sale to CHC had failed, Babcock would have reverted to a consideration of options, which included [REDACTED], or continuing 'as is'.
- 5.83 We recognise that Babcock regarded the Fisher Business as non-core and that this might have contributed to a willingness to close the business. However, the main evidence relating to this non-core status comes after CHC's approach and we are of the view that any consideration of closing a non-core business would reflect Babcock's broader incentives, discussed from paragraph 5.87 below.
- 5.84 The September 2020 document set out at paragraph 5.64 above (which was prepared after the introduction of the new management team and CEO into the business) shows that the costs associated with the decision to maintain, sell, or close the business are compared. The basis of the recommendation to proceed with the sale of Fisher to CHC was that [REDACTED]. This suggests that Babcock saw the alternative to the sale to CHC as being [REDACTED].
- 5.85 It is common ground between the CMA and the Parties that the phase 2 counterfactual assessment considers the most likely scenario. In making our assessment, we place weight on the evidence put before us, in particular that prepared prior to contemplation of the Merger. As set out above, at the time of the Merger, no decision had been made about the Fisher Business as an alternative to the sale to CHC. The Parties submitted that we cannot rely on the absence of a decision to exit the business as evidence that it would not have done so. However speculation after the event on what the new management team may or may not have done does not constitute strong evidence of the likelihood of closure.
- 5.86 Our review of the internal documents demonstrates that that the non-core nature of the Fisher Business might have contributed to Babcock's willingness to close the business. However, there were multiple options in play and the evidence does not reveal a preferred option. Therefore, to determine the most likely counterfactual, we turn to an assessment of Babcock's incentives with regard to the Fisher Business, and potential closure.

Babcock's incentives with regard to the Fisher business

- 5.87 As set out above, Babcock continued to consider a number of strategic options for the Fisher Business, as described in internal documents, throughout the period it was negotiation with CHC. These documents demonstrate that Babcock considered its options if it had been unable to sell the business to CHC, comparing the costs and benefits of each option ([REDACTED]). Given the absence of evidence of a preferred alternative within Babcock's internal documents, and for the purposes of determining the most likely counterfactual, we have considered the commercial and financial incentives that would have been relevant to that assessment.
- 5.88 In this context, we have considered whether:
- (a) Significant financial liabilities including PCGs or other early termination costs falling due on the sale of the Fisher Business could have incentivised Babcock to continue operating the business rather than closing it down.
 - (b) The operating losses made by the Fisher Business may have incentivised Babcock to close the Fisher Business, or conversely whether the financial contributions made to the wider Babcock Group overheads by the Fisher Business may have provided an incentive to continue operating the business.
 - (c) The possibility of selling the Fisher Business may have provided an additional incentive to continue operating the business while seeking an alternative buyer to CHC.

[Financial liabilities]

- 5.89 As set out above, [REDACTED]. As noted at paragraph 5.14, [REDACTED]. We considered that this may impact the timeframe over which Babcock would be able or willing to exit the Fisher Business.
- 5.90 We note that, as set out at paragraph 3.56(e), CHC's valuation of the Fisher Business [REDACTED] £[REDACTED] million [REDACTED]. We are of the view that the liability associated with [REDACTED] is not expected to be a day-to-day constraint on the operation of either the business operating the guaranteed contracts, or the guarantor. We consider that this is reflected in the [REDACTED] value paid for the Fisher Business by CHC to reflect [REDACTED] in purchasing the Fisher Business [REDACTED]. We are of the view that this demonstrates that the [REDACTED] is limited where a purchaser plans to continue to operate the business. The crystallisation of the liability comes into effect only when the obligations of the relevant contracts are no longer met,

as would be the case if Babcock were to have closed down the business prior to the contract expiry.

5.91 As set out in paragraph 5.56, Babcock estimated that the cost of closing the Fisher Business with immediate effect would be approximately £[redacted] million.⁹⁰ We asked Babcock [redacted] were incorporated into these costs. Babcock submitted that the £[redacted] million [redacted]:

(a) [redacted]. Babcock submitted that [redacted].⁹¹ [redacted], Babcock submitted that [redacted]; and

(b) did not include exit costs associated with customer contracts (ie contracts with customers to service their demand to transport crew). Babcock submitted that at the time of the assessment, Babcock had not signed the IAC or Total contracts, and the [redacted] contract was expected to expire prior to any proposed exit date. As such, the only customer contract liability that Babcock would have been responsible for would have been the [redacted] contract. [redacted].

5.92 On this basis, at the time Babcock set out its initial cost estimates of imminent closure of the business, we consider £[redacted] million⁹² to be an approximate estimate of the total cost of closing the business, taking account of the approximately £[redacted] million that would arise as a result of [redacted].

5.93 Following its initial cost assessment, Babcock went on to bid and win the IAC and Total customer contracts. In taking on these contracts, Babcock agreed to new [redacted] which resulted in an estimated liability of £[redacted] million in addition to the liability it would incur if it closed the business immediately, payable until expiry of the contracts in [redacted].⁹³

5.94 The cost of imminent closure of the Fisher Business can therefore be estimated to range between £[redacted] million and £[redacted] million. As set out at paragraphs 5.56(a) and 5.63(a) above, Babcock estimated that continuing the Fisher Business 'as is' would cost it between £[redacted] million and £[redacted] million per annum. On this basis, we consider it reasonable to assume that Babcock would have been incentivised to continue operating the Fisher Business rather than closing the business down ahead of the expiry of its customer contracts, as the financial burden of closing the business (largely as a result

⁹⁰ This estimate is dated prior to winning the Total and IAC contracts.

⁹¹ Additionally, we note that [redacted].

⁹² This is calculated as the £[redacted] million estimate calculated by Babcock plus the £[redacted] million estimate associated with the [redacted] contract.

⁹³ Being £[redacted] million relating to IAC, £[redacted] million relating to the Total UK contract, and £[redacted] million relating to the Total Denmark contract..

of [X]) was estimated to be significantly greater than that of continuing to operate the business.

Operating losses and overhead contribution

5.95 As set out in paragraphs 5.28 to 5.38 above, the Fisher Business had a recent history of incurring losses and operating in a net liability position. The prospect of incurring further operating losses was referred to in Babcock's internal documents and represented an incentive for Babcock to exit the market, whether by sale or closing down the Fisher Business.

- *Our assessment of the financial performance of the Fisher Business*

5.96 In view of the financial information set out above, we considered the financial position of the Fisher Business in the context of the counterfactual.

5.97 We consider that despite the fact that Offshore UK has a recent history of incurring losses and was in a net liability position at the time of the Merger as per its statutory accounts, this is not necessarily indicative of Offshore UK being in such poor financial health as to warrant closure by Babcock. Babcock's own assessment (as set out in paragraph 16 of Appendix B) notes the potential for improved financial performance going forward as a result of increased certainty following the completion of the Brexit transition, and recent contract wins.

5.98 As set out at paragraphs 5.31 and 5.32, a significant proportion of Offshore UK's overhead costs related to management fees paid by Offshore UK to the wider Babcock Group. The value of this fee was partly made up of costs incurred by Offshore UK for direct utilisation of services from Babcock. However Babcock noted that an element of the charge related to indirect Babcock UK aviation sector costs. Excluding indirect aviation costs from the total cost of operating the Offshore UK business, and with consideration of the reduction in the charge following cost saving measures in 2021,⁹⁴ we are of the view that the actual costs associated with running the Offshore UK business could be lower than those set out in the financial results in Tables 1 and 2 of Appendix B. In this context, the underlying financial performance of the Fisher Business may be better than that portrayed in the financial results.

5.99 Further, we are of the view that the key drivers of poor financial performance that have impacted the UK O&G Offshore Transportation Services have affected the market more broadly and are not necessarily indicative of

⁹⁴ We note that these cost savings may in turn have also reduced the estimated cost of continuing to operate the Fisher Business, as set out at paragraph 5.94 above.

inherent unprofitability in the Offshore UK business. We note that in the two most recent financial years, Coronavirus (COVID-19) had an impact on all suppliers, in particular, as a result of reduced flight hours and therefore reduced revenue.

5.100 Moreover, we note that the challenging commercial environment in the industry more broadly was driven by the reduction in the oil price in 2014 – this resulted in a collapse in demand which led to overcapacity in the UK O&G Offshore Transportation Services market and subsequent pressure on contract prices. Given the long-term nature of helicopter and customer contracts, these negative features take time to work themselves out of the market. However, going forward, we are of the view that there is now an improved balance between demand and capacity (see paragraphs 6.39 to 6.43), and we have seen signs of an increase in the oil price.⁹⁵

5.101 Considering the Fisher Business more broadly, we note that the Babcock Group intended to continue to provide a letter of financial support to ensure that the business could meet any liabilities falling due, as noted in the most recent accounts of both Offshore UK and Offshore Australia.

5.102 Therefore, while the Fisher Business had a recent history of poor financial performance and is currently in a net liability position, it received support from Babcock as confirmed [REDACTED]. There was no evidence to suggest that financial failure was on the horizon, for example Babcock had not considered liquidation proceedings, nor the need to recruit a third-party adviser to consider the financial position of the entities within the Fisher Business.

5.103 On the basis of our consideration of the financial position of the Fisher Business, and Offshore UK in particular, we are of the view that there are no systemic features of the UK O&G Offshore Transportation Services market that would suggest that the Fisher Business would continue to be inevitably unprofitable.

- *Babcock's internal documents*

5.104 Babcock's internal documents also demonstrate that it recognised the positive contributions that the Fisher Business made to its wider business overheads (see paragraph 5.49 above). As set out in Appendix B, the Fisher Business was contributing approximately £[REDACTED] million annually to the wider Babcock group. In 2018, this was regarded as a [REDACTED]. The value remained [REDACTED]. Given this, and taking into account earlier views set out by Babcock with regard to

⁹⁵ Even before the most recent Ukraine situation related increases.

the [REDACTED], combined with the fact that the [REDACTED], we are of the provisional view that Babcock would have continued to consider the contribution made by the Fisher Business at the time of the Merger to be material relative to the scale of their ongoing losses and of the cost of closure. On this basis, our provisional view is that this steady financial contribution to the wider Babcock Group contributed to Babcock's incentives to continue operating the Fisher Business.

5.105 In addition, we note that Babcock had other options available to it to improve its financial performance, beyond continuing the Fisher Business 'as is' or exiting via sale or closure, which it appeared to still be actively considering. For example, as set out at paragraph 5.56, Babcock was [REDACTED]. Therefore, we provisionally conclude that there were opportunities for the Fisher Business to positively improve its financial position or increase its overall contribution that could arise from continuing to operate the business. This presented a further incentive to continue operating the business rather than closing it down.

Prospect of selling the Fisher Business

5.106 With regard to the option of selling the Fisher Business, we note that Babcock had received approaches from a number of interested parties, as set out at paragraphs 5.67 to 5.70. While Babcock is of the view that [REDACTED] (as set out at paragraph 5.14), we have not received evidence that would enable us to place significant weight on this assertion.

5.107 At the hearing, Babcock told us that the pool of buyers [REDACTED]. It told us that 'it was pretty clear that, with a loss-making business with this sort of profile, [REDACTED]'. It noted that ideally it would look [REDACTED], but that '[REDACTED]' and that in this case Babcock was 'losing money and it was not clear that it was worth shelling out that amount of money when there was [REDACTED]'.

5.108 However, we note that following the unsuccessful [REDACTED] (as set out at paragraph 5.50(b) above), Babcock had considered preparing for a more [REDACTED]. It appears that Babcock did not follow this process before it received the approach from CHC. Then, in considering [REDACTED] (as set out at paragraph 5.63(b) above), Babcock again noted [REDACTED]. Based on the evidence available, it is our provisional view that, at the time of the CHC transaction, Babcock considered there could be some merit in running a formal process to find a buyer for the Fisher Business if the deal with CHC were to collapse.

5.109 The Parties told us that [REDACTED], and that [REDACTED] (see paragraph 5.19). However, they did not provide any evidence to support this view. We consider that, in a scenario where the Fisher Business was sold with the requirement to service [REDACTED], a potential purchaser would require the financial resources to support an

increase in its liabilities of approximately £[redacted] million. While this has the potential to limit the pool of potential purchasers, it does not mean that no other purchaser could be found. We note our point at paragraph 5.90 that the presence of the [redacted] CHC's valuation of the Fisher Business by £[redacted] million, but it remained an interested party. In this context, we note that while Private Equity (PE) firms may be unwilling [redacted], there are nevertheless a number of PE backed operators currently competing in the industry and Babcock had considered [redacted]. [redacted], we consider that there may be structural solutions available which PE firms could use to enable them to acquire and own such a business.

5.110 We note that Babcock had not conducted an open sales process, but had instead [redacted]. We have no reason to believe, given the intrinsic value in the business and interest from other parties (as noted at paragraph 5.69), that they would have been unable to find a less anti-competitive purchaser for the business and in those circumstances we consider any alternative purchaser would have been likely to continue operating the business. Further, we note that Babcock had expressly contemplated [redacted] in the event that the sale to CHC did not proceed (see paragraph 5.63(b)(ii)). The Parties submitted that [redacted] cannot on any basis amount to evidence from which it is reasonable to infer [redacted]. However, the evidence set out at paragraphs 5.67 to 5.70 demonstrates that there was some interest in the Fisher Business and, as set out at paragraphs 5.109 and 5.110 above, we have seen no evidence that CHC was the only possible purchaser.

5.111 Our provisional view is that, based on the information available to us, there may have been alternative purchasers interested in acquiring the Fisher Business had the CHC offer not been successful. The ability to explore this possibility represented an additional incentive for Babcock to continue to operate the business rather than closing it down, absent the Merger.

Overall assessment of exiting firm scenario

5.112 This section sets out our overall assessment of the appropriate counterfactual. First, we consider whether the Fisher Business would have exited the market in the counterfactual. We then consider the implications of the 'manage for value' strategy for our counterfactual and for our competitive assessment.

Would the Fisher Business have exited the market?

5.113 In determining our overall assessment of whether we should adopt an exiting firm scenario as our counterfactual in this case, we have focused our

assessment, in line with the framework set out in the MAGs (see also paragraphs 5.22 and 5.23 above) on significant changes affecting competition between the merger firms. The counterfactual is not intended as a detailed description of the conditions of competition that would prevail absent the Merger (including, in particular, the impact of the manage for value strategy on Babcock's competitive strategy which will be considered in the competitive assessment).

- 5.114 As such, we considered whether in the most likely counterfactual the Fisher Business would have exited the market, either for financial or strategic reasons unrelated to the sale of the Fisher Business to CHC. In doing so, we have considered the financial position of the Fisher Business and evidence obtained from internal documents and submissions regarding Babcock's intentions and incentives.
- 5.115 The Parties have not argued that the Fisher Business would have exited the market as a result of financial failure, nor is such a scenario supported by the evidence. While the Fisher Business had a recent history of poor financial performance and is currently in a net liability position, it received support from Babcock and there was no evidence to suggest that financial failure was on the horizon. Further, as set out at paragraphs 5.99 to 5.103 above, we have seen no reason to indicate that the business is inherently unprofitable, and we consider that there is the potential for increased profitability, for example as a result of improved market conditions and cost-cutting measures.
- 5.116 Given this, our assessment has focused on whether exit would have occurred for strategic reasons unrelated to the Merger. For the purposes of this assessment, we have focused on two key points of evidence. First, we have undertaken a review of internal documents to understand the options considered by Babcock with regard to the Fisher Business. Second, we have considered Babcock's incentives in pursuing these options (specifically in the context of (i) [REDACTED], (ii) operating losses and overhead contribution and (iii) the prospect of selling the Fisher Business.
- 5.117 Based on this analysis, as set out from paragraphs 5.77 to 5.86, our provisional view is that while Babcock had considered closing the Fisher Business, this remained only one of a number of options in play at the time of the Merger. Babcock continued throughout the pre-Merger period to consider a number of strategic options for the Fisher Business in the event that it did not sell the business to CHC. The evidence does not point to Babcock having an intention to close down the business in the imminent future, absent the Merger. This is reflected in Babcock's consideration of the costs of closure versus maintaining (or running down) the business, and its recommendation to proceed with a sale based on its cost assessment.

- 5.118 We consider that the relative financial costs and benefits of various options available (taking account of the financial position of the Fisher Business) would have been the key drivers in Babcock's assessment of the different options, and as such inform our analysis of the most likely counterfactual scenario.
- 5.119 While we recognise that Babcock's new management did not want to retain or invest further in a non-core business, we do not consider that Babcock had an incentive to close down the business for strategic reasons, particularly in view of the significant costs that were associated with such closure. We note that Babcock has exited some other markets via closure,⁹⁶ however we do not consider that this means that it would have necessarily followed the same path in relation to O&G Offshore Transportation Services. In this context we note that Babcock closed its Ghana and Congo O&G operations at a cost of £7.1 million.⁹⁷ However we do not consider this to be comparable to the various estimates put forward by Babcock for closing its UK O&G Offshore Transportation Services operations, which range from between £[redacted] million to £[redacted] million, and which we consider could be greater still.
- 5.120 While Babcock had taken an impairment write down against its aviation business (not limited to the Fisher Business), we are of the view that – given the balance of incentives facing it – it would still have sought to run the business cost-effectively to generate as much contribution as possible, as opposed to crystallising substantial actual cash losses (ie early termination charges and [redacted] liabilities) that would arise via closure.
- 5.121 On the basis of the evidence set out at paragraphs 5.88 to 5.105 above, we are of the provisional view that Babcock was not incentivised to close the business for strategic reasons. This is because:
- (a) Costs associated with early termination of contracts/[redacted] meant that the cost of imminent closure would have been very significant, and likely to have been in excess of £[redacted] million at the time of the Merger.
 - (b) Babcock took on new Total and IAC contracts in 2020, which resulted in an increase in the liability that would fall due on closure of the business by approximately £[redacted] million, increasing the incentive to continue operating in the absence of another purchaser.⁹⁸

⁹⁶ Babcock noted that it had exited 15 businesses in the period from 2017 to present.

⁹⁷ Babcock, 'Full year results for the year ended 31 March 2020', 11 June 2020, page 48.

⁹⁸ We also recognise Babcock's submission that [redacted].

- (c) The Fisher Business made some contributions to Babcock's overhead costs which would have been lost in the case of closure.
- (d) While the business was in a loss making position of £6.7 million in 2020 and £3.0 million in 2021, it had made profits in the previous two years (£5.8 million in aggregate) and the value of these losses is significantly lower than the estimated liabilities that would fall due on closure of the Fisher Business.
- (e) Risks associated with closure were identified by the Babcock business. For example, in its Project Opturo assessment, Babcock noted that there was [REDACTED].
- (f) The possibility of finding another buyer for the Fisher Business (thereby not incurring early termination costs, or other costs of closure) added to Babcock incentives not to close the business immediately at the time of the Merger.

5.122 Overall, the evidence suggests to us that Babcock was incentivised to continue operating the business in the short to medium-term. In particular, we do not consider it likely that Babcock would have closed the Fisher Business prior to the expiry of its current customer contracts. We recognise that Babcock's continued operation of the Fisher Business would have occurred in the context of Babcock managing the Fisher Business for value, absent a sale. However, we also note that this manage for value strategy included bidding for new contracts where these would generate a revenue stream which would contribute to unavoidable costs, in order to maximise utilisation of existing assets.

5.123 We are therefore of the view that unless it was able to find an alternative buyer for the business, Babcock would have continued to operate the business for the length of its existing contracts and possibly longer if it was able to win other financially attractive contracts in order to avoid the liabilities arising from [REDACTED] associated with the contracts.

5.124 In this context, we are of the view that the conditions for Limb 1 of the exiting firm counterfactual (as set out at paragraph 5.22(a) above) were not met – ie Babcock would not have closed the Fisher Business and would have continued to operate the business for the foreseeable future.

5.125 As our assessment is cumulative, we are not required to consider whether or not an alternative purchaser would have been found absent the Merger (ie whether or not the conditions for Limb 2 had been met). However, we recognise the arguments made by the Parties that Babcock had made a number of public statements alluding to an intention to exit via a sale of the

business. As noted above, the possibility of selling the business would have acted as an additional incentive for Babcock to decide not to close the business immediately. This would hold true regardless of whether an alternative buyer had been identified at that particular time.

5.126 In any event, we do not consider that the conditions of competition in the counterfactual would be significantly different whether the Fisher Business were under Babcock or third-party ownership (assuming that a merger with such third party did not raise similar competition concerns), ie under both scenarios, in the short to medium-term, the Fisher Business would have remained an independent competitor. A third party would be likely to have had similar underlying incentives in operating the Fisher Business as Babcock, albeit potentially with a stronger willingness to develop the business in the longer term. However, in our competitive assessment, we have focused on the short to medium-term, and therefore have not considered the impact that third-party ownership would have had on the longer term strategy of the Fisher Business relative to Babcock's ownership.

Implications of manage for value strategy

5.127 In the context of Babcock continuing to operate the Fisher Business, we turn to Babcock's submission that it had decided to adopt the manage for value strategy in anticipation of exit. Babcock submitted that the Fisher Business had diminished as a competitive force, because Babcock had decided to no longer invest in it.

5.128 The manage for value strategy as articulated by the Parties is that the Fisher Business would continue to bid for contracts where this would make use of unutilised capacity and generate a revenue stream which would contribute to unavoidable costs, but would not do so if this would require capital investment in new helicopters. The evidence as set out in Chapter 6 is insufficient to demonstrate that Fisher has, in fact, followed this strategy (at least prior to being approached by CHC). As set out in more detail in Chapter 6, Offshore UK bid for (and won) both the Total and IAC contracts. As a result of the Total contract, Offshore UK was required to invest in new capacity and did so, demonstrating that the business was willing to invest in new capacity. This is in line with Babcock's submission that [redacted]. This suggests that, absent the Merger, Fisher would have continued to bid for contracts even where new helicopters were required.⁹⁹

⁹⁹ We consider the bidding undertaken by the Fisher Business prior to and following Merger discussions in Appendix D.

- 5.129 Additionally, we note evidence on the impact of the manage for value strategy on competition between the Parties in the UK is mixed, with, for example, internal strategy documents referring [redacted]. As such (and on the basis of our provisional view that the Fisher Business would not have exited the market absent the Merger) our provisional view is that under the most likely conditions of competition absent the Merger the Fisher Business would have continued operating in the relevant market and tendered for new contracts, as it had been doing under the manage for value strategy prior to the Merger. This could have possibly been with the intention to wait and see if an alternative purchaser for the Fisher Business transpired.
- 5.130 For the purposes of the counterfactual, we do not intend to provide a detailed description of what strategy the Fisher Business would have adopted absent the Merger. Instead, and in line with the MAGs¹⁰⁰ (see paragraph 5.3), we will consider the impact of Babcock's manage for value strategy on competition between the Parties in the UK in our competitive assessment, when assessing the constraint exerted by the Fisher Business.

Provisional conclusion on the relevant counterfactual

- 5.131 On the basis of the evidence set out above, our provisional conclusion is that under the most likely counterfactual that would have prevailed absent the Merger, the Fisher Business would have continued to operate in the relevant market in the short to medium-term, including tendering for new contracts. This counterfactual would have prevailed regardless of the Fisher Business's ownership, ie whether under Babcock's ownership, which may have continued with its manage for value strategy, or if it had been sold to an alternative purchaser.

6. Competitive assessment

- 6.1 In this chapter, we assess whether the Merger has led to a significant reduction in horizontal competition between the Parties by removing a competitor which previously provided a significant competitive constraint and, in doing so, whether the Merged Entity has the ability and/or incentive to worsen or not improve its offering when assessed against the position absent the Merger. This is a horizontal unilateral effects theory of harm.
- 6.2 We first set out in this chapter the background on how competition works in the supply of UK O&G Offshore Transportation Services before setting out the evidence we have gathered regarding the existing and potential competitive

¹⁰⁰ MAGs, paragraphs 3.8 and 3.9.

constraints on the Parties, and our assessment of the effects of the Merger on competition.

- 6.3 This chapter should be read in conjunction with the associated appendices: Appendix C – Capacity and early termination of contracts; Appendix D – Analysis of tender data; Appendix E – Third party views; and Appendix F – Evidence from internal documents and CHC bid pricing.

Nature of competition for the supply of UK O&G Offshore Transportation Services

- 6.4 The assessment of whether a merger gives rise to an SLC must be in terms of an SLC ‘within any market or markets in the UK for goods or services’.¹⁰¹ An SLC can affect the whole or part of a market or markets. The Parties overlap in the supply of O&G Offshore Transportation Services in the UK (referred to as UK O&G Offshore Transportation Services) and we consider that it is appropriate to assess the competitive effects of the Merger with reference to this overlap.¹⁰²
- 6.5 We discuss in this section how competition works in the supply of UK O&G Offshore Transportation Services, including evidence relating to the nature of the relationship between suppliers and customers, and how demand for UK O&G Offshore Transportation Services might evolve in the foreseeable future.

Customers and tender processes

- 6.6 As set out in Chapter 2, many customers of UK O&G Offshore Transportation Services are large multinational or state-owned oil and gas producers with global operations. However, there are also some smaller O&G companies present which may run smaller tenders, and some third parties have indicated contracts may get smaller in future.¹⁰³ In addition, CHC has told us that there

¹⁰¹ The Act, [section 35\(1\)\(b\)](#) in relation to a completed merger; see also [MAGs](#), paragraph 9.1.

¹⁰² In technical terms, this overlap is our provisional market definition. The assessment of the relevant market(s) is an analytical tool that forms part of the analysis of the competitive effects of the merger and should not be viewed as a separate exercise ([MAGs](#), paragraph 9.1). In our provisional view, taking account of the nature of the competitive assessment in this chapter, it is appropriate to take a simple approach to market definition in this case and, rather than carrying out a separate market definition exercise, to focus on assessing the strength of the current and likely future constraints from different competitors or categories of competitors as part of the competitive assessment ([MAGs](#), paragraph 9.5). This is because, as set out in detail in our competitive assessment below, the evidence is consistent in indicating that the most important competitive constraints on the Parties come from those providers supplying UK O&G Offshore Transportation Services rather than those active in other jurisdictions or providing other forms of transportation service (such as SAR or transportation to offshore windfarms). Where relevant, we take into account constraints outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important than others.

¹⁰³ For example, [REDACTED] (a former market participant) told us that the market is in decline, and there are very few helicopter contracts for more than one helicopter now. [REDACTED] was the only one asking for [REDACTED], and the rest of the contracts are for one to [REDACTED]. We note that [REDACTED] indicated he has not been involved in the supply of UK O&G

are three types of O&G opportunities, requiring: long-term scheduled crew changes (eg [REDACTED]), short-term scheduled crew changes (eg [REDACTED]), and sporadic interventions (eg [REDACTED]). As a result, customers have contracts of varying sizes. Within our analysis of tenders (explained further at paragraphs 6.54 to 6.74), a small number of large contracts increase the average value of contracts to £42 million, with a median value of £26 million.

- 6.7 UK O&G Offshore Transportation Services are generally procured through tender processes. While there are some direct contract negotiations, these appear to be relatively infrequent (although contracts often have provisions which allow them to be extended for a set amount of time, occasionally with multiple options for extension).^{104, 105} Customers who had undertaken direct awards in recent years gave a number of reasons for this, including market conditions and availability of suitable supply,¹⁰⁶ satisfaction with existing services¹⁰⁷ and to amend some aspects of their existing service.¹⁰⁸ Such customers generally did not rule out the possibility of tendering in future. In the absence of tendering, different customers stated they had different approaches to comparing prices to ensure they received a good deal: one undertook ongoing price monitoring, while other customers preferred cost modelling for benchmarking or comparing between existing suppliers. This shows that even where customers do not undertake formal tender processes, the availability of alternatives and the terms which would be available play a role in the contracting process.
- 6.8 Given that direct contract negotiations appear to be relatively infrequent, customers use tenders to secure the best offers from the available suppliers as each O&G transportation supplier typically competes to win customer

Offshore Transportation Services for eight years. However, this is consistent with information in our tender dataset where most contracts require only one or two aircraft (16 out of 21). The Fisher Business also indicated that it was not aware of any large contracts which would be coming up in the next two to three years, although noted it would not be aware of whether customers of other suppliers had agreed contract extensions or intended to exercise termination for convenience clauses and so had only imperfect knowledge of likely upcoming tenders.. [REDACTED] also told us it plans to reduce the contractual period [of contracts]. However, we note [REDACTED] said it expected to have longer term contracts as they aim to lock in partners at commercially viable rates.

¹⁰⁴ CHC told us that direct awards (ie where the customer decides not to go through a tender process with a new contract) are relatively rare. [REDACTED].

¹⁰⁵ The Fisher Business also told us that, in its experience, it would be unusual to expect a customer to look to renegotiate contract terms in order to avoid going out to tender towards the natural end of an existing contract (not least because some customers are required to run tenders to meet their internal governance requirements). It noted one example where [REDACTED] approached it in 2018 to discuss the potential of extending its contract. However, this opportunity did not go further than the 'discussion' phase..

¹⁰⁶ [REDACTED] undertook a single source negotiation with [REDACTED] in [REDACTED] due to the market's conditions. More specifically, there were only [REDACTED]. In addition, [REDACTED].

¹⁰⁷ [REDACTED] told us that it extended its contract as it achieved good performance, added value was achieved in various ways through the contract cycle and management and the companies were aligned in their strategies..

¹⁰⁸ [REDACTED] told us that it undertook a single sourced renegotiation to extend its existing contract with Offshore UK in 2017 and amend aircraft type to increase safety for passengers and drive down logistics costs.

contracts by taking part in tenders.¹⁰⁹ The average term length of contracts in our tender analysis is 3.5 years. Tender processes can last between six and 12 months, although they can take significantly longer in the case of complex tenders. Suppliers are informed of an upcoming tender via an expression of interest, to obtain information about the company structure, financial robustness, and relevant experience. This information is used to produce a long list of players who are formally invited to tender.

- 6.9 Suppliers are invited to tender, either through a procurement platform or via email. This invitation to tender often gives some contract specifications, eg on desired base, helicopter type etc. Suppliers put together bids taking these into account and producing the required documentation. While suppliers are not informed of who received these invitations, competitors have submitted to us that they expect the four incumbent suppliers to bid.^{110,111}
- 6.10 The customer assesses the offers, and then shortlists suppliers.¹¹² Suppliers may have only imperfect knowledge as to the criteria they will be assessed against, or who else is bidding on contracts, [REDACTED]. There are often multiple rounds of discussions, during which the supplier has the opportunity to amend or improve on their offer. However, [REDACTED]. Therefore, [REDACTED].¹¹³
- 6.11 As noted above, suppliers may have only imperfect knowledge of the criteria they will be assessed against. We have gathered information as to what assessment criteria may be used.
- (a) As part of their tender submissions, customers provided their reasons for ranking suppliers as they did in their tender bid evaluations.¹¹⁴ When looking at the bidders who came low in the rankings (ie third or fourth), technical reasons are often stated as the reason for ranking lower in the tender process, indicating that suppliers who do not meet technical thresholds are often discounted early on. The differentiating reason between the winning bidder and the second placed supplier is often listed

¹⁰⁹ We note that customers can choose to extend their contracts with their current supplier without running a competitive process, with some customer contracts allowing for multiple extensions. This means that some customers may only hold a formal competitive tender process sporadically, and may not have done so in the past five years.

¹¹⁰ We note that NHV told us big aircraft contracts for three to five aircraft may also involve global players from America, the Gulf and Germany, due to economies of scale.

¹¹¹ This is also consistent with information received from the Parties. CHC stated that '[REDACTED]'. Fisher Business indicated it would assume all three of its competitors would be invited to bid and could submit a bid, although at any given time it may not make sense for some competitors to bid (eg depending on company life cycles).

¹¹² We note that not all customers will shortlist bids.

¹¹³ We note that in some instances, customers may choose to only have a 'best and final offer' round..

¹¹⁴ In the 21 competitive tenders analysed by the CMA the customers have provided reasons for rankings for at least the winning bidder and the second placed bidder.

as a commercial reason (as the winning bidder has already met the safety and technical thresholds for the contract).

(b) We also received the tender evaluation criteria used by some customers when evaluating bids.¹¹⁵ The examples provided demonstrate that customers tend to use similar criteria (such as technical capabilities, cost and quality management) when evaluating a tender bid, though often with slight variations. We also note that customers may place different weightings on the same criteria (and such weightings may not be revealed to bidders). As such, a supplier who wins a tender due to a high evaluation score in a particular criterion may not necessarily score highly in that same criterion in an evaluation undertaken by another customer.

6.12 Previous incumbency does not appear to be a key deciding factor for customers when evaluating O&G Offshore Transportation Service suppliers, as switching appears to be commonplace: within our tender dataset discussed at paragraphs 6.54 and 6.55, in [REDACTED]% of competitive tenders involving a previous incumbent, the incumbent did not win the contract and retain their position.¹¹⁶

6.13 In summary, customers of UK O&G Offshore Transportation Services are often large oil and gas producers, although customers and contracts vary in size. Customers predominantly use tenders to secure the best offers from the available suppliers, which involve a significant degree of opacity which helps to drive competitive outcomes. As a result, suppliers may not be aware of who is bidding, how exactly their bids will be evaluated and how they compare to others, except in some instances.

6.14 The submissions put forward by the Parties articulate their view that buyer power is a feature of this market primarily as a result of customers being 'larger and commercially stronger' than helicopter operators, their active switching patterns, and ability to impose onerous terms into contracts. Further, the Parties noted customers' recent push to reduce costs, thereby putting pressure on the prices that O&G Offshore Transportation Service providers can charge.¹¹⁷

6.15 As set out in the MAGs, buyer power based on a customer's size, sophistication, or ability to switch easily is unlikely to prevent an SLC that would otherwise arise from the elimination of competition between the merger

¹¹⁵ We received details of tender evaluation criteria for EnQuest, TAQA and Total. Details of these criteria are set out in Appendix D.

¹¹⁶ Based on the 21 competitive tenders in our analysis, there were [REDACTED] with a previous incumbent. In [REDACTED] of these [REDACTED] tenders the incumbent was unable to retain the contract.

¹¹⁷ Parties' response to Issues Statement, 4 January 2022, paragraph 1.4.5.

firms.¹¹⁸ 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. In that sense, market power and buyer power are two sides of the same coin, and an SLC can be interpreted as a substantial lessening of customers' buyer power. Therefore in assessing below whether there is an SLC by examining the strength of the competitive constraints between the Parties that would be lost as a result of the Merger, and the strength of the competitive constraints on the Parties from the other suppliers that would remain after the Merger, we are effectively taking account of customers' buyer power.

Early termination clauses and penalties

- 6.16 One area which is a focus for negotiations in tender processes is the terms under which contracts can be ended before the planned contract end date. We set out the evidence we have received on this in Appendix C. Evidence from suppliers and customers shows that early termination clauses are common in the market, and have been present for over a decade. The evidence suggests that these early termination periods differ from contract to contract, for example based on the notice period and any potential penalty clauses involved. Penalties for early termination also appear to be common, and these typically vary based on how far into the contract the customer terminates, and may cover some or all of the suppliers' remaining lease costs (and other costs related to insurance and redundancy).
- 6.17 These (and other) terms reflect the relative bargaining position of different parties for each contract (given that the right to terminate and the penalty for doing so vary contract to contract).¹¹⁹ We have received evidence which shows suppliers are able to drive more favourable terms in areas where they face more limited competition.¹²⁰
- 6.18 Therefore, contracts often allow for early termination and may also include penalties for such termination. Such terms vary from contract to contract, reflecting the relative bargaining position of customers and suppliers. As noted in paragraph 6.15, the bargaining power of customers (and suppliers) depends on the availability of good alternatives they can switch to.¹²¹

¹¹⁸ MAGs, paragraph 4.20.

¹¹⁹ CHC told us that [REDACTED], instead trying to protect itself against the exercise of an early termination clause by [REDACTED].

¹²⁰ NHV explained that [REDACTED].

¹²¹ MAGs, paragraph 4.20.

Future demand for UK O&G Offshore Transportation Services

- 6.19 As set out in paragraph 6.30(a), the Parties submitted that the industry is in long-term decline. We set out in Chapter 2 trends in the broader O&G industry, which affect the demand for UK O&G Offshore Transportation Services. We also sought views from market participants as to the likely trends in future demand for UK O&G Offshore Transportation Services. As noted in Chapter 1, the submissions referred to were submitted before the Russian invasion of Ukraine, and therefore do not reflect any impact this might have on the O&G industry going forward.
- 6.20 Many of the third parties that we spoke to noted that there has been a decline in the market to date. In terms of forward-looking prospects, some expected a continued decline while others suggested that demand may remain unchanged. However, overall there was not an expectation of a significant or long-term uptick in the market going forwards.
- 6.21 Ten of the customers we engaged with submitted that UK O&G activities and related transportation services would remain broadly unchanged within the next ten years, while eight were of the view that activities would gradually decrease. Four customers noted that they expected to see consolidation in the market, while three noted that an increase in the renewables market would offset any changes in O&G.¹²²
- 6.22 One potential entrant submitted that the overall decline in the Offshore O&G market may not immediately translate into a steep decline in the demand for UK O&G Offshore Transportation Services, since the decommissioning activities will require some staff transfers offshore. However, it noted that once the decommissioning phase of each platform has been completed, the need for helicopter transfers will be removed. In this context, it told us that a continued decline in the market will probably take place over the medium to long-term. Lastly, the potential entrant noted that this should not impact all regions equally, with the Northern North Sea (off Scotland) not seeing as significant or immediate a decline as the Central North Sea.
- 6.23 The competitors that we spoke to also noted an expected decline in the demand for UK O&G Offshore Transportation Services in the long term. NHV told us that it is a 'shrinking market'. It noted that it is seeing a temporary increase in the short term and that oil companies 'are trying to get more out of the ground in a shorter space of time than normal.' It told us that offshore wind

¹²² Three customers mentioned that renewables would be serviced by ship rather than helicopter.

activities could supplement the downturn in revenue, but that it would not supplement the fall in flying hours.

- 6.24 Bristow told us that the market changes dramatically over a short period of time, but that it does not see any significant changes in market requirements in the next two to three years. It did note, however, that O&G Offshore Transportation Services is a declining market space, and that energy transition will affect this. Bristow told us that [✂].
- 6.25 There were mixed views from lessors on how the market has changed in the past five years. One lessor submitted that there has been no substantive change in the market over the past five years. Another lessor told us that demand for O&G Offshore Transportation Services reduced rapidly in 2015 to 2016 and since this reduction has remained generally steady but with high competition for orders. It told us that COVID-19 caused only a modest decline in demand, and recently demand has slightly strengthened due to high demand for oil and gas and some helicopters leaving the marketplace. A third lessor submitted that there has been reduced demand for helicopters thereby leading to excess capacity. In terms of the expectation of the market going forwards, two lessors told us that they expect there to be a slow decline (with one noting this would be over a very extended timeframe), one lessor told us they expected no change in the short- to medium-term but that they would not rule out a change over a longer time horizon, while another lessor considered that they expected there to be modest growth in the market.
- 6.26 Competition in the supply of UK O&G Offshore Transportation Services therefore takes place in the context of a market which is in long-term decline. However, it does not appear that there will be a rapid decline in demand in the short-term, with many market participants anticipating demand being broadly stable over the medium-term.

Parties' views

- 6.27 The Parties submitted that the CMA should not object to the acquisition on the ground that it is a 'four to three' merger without considering the market dynamics and extent of the competitive constraint exercised by Offshore UK at present.¹²³

¹²³ [Parties' response to Issues Statement](#), 4 January 2022, paragraphs 2.1 to 2.10.

6.28 The Parties submitted that Offshore UK exercised a weak constraint on CHC, whose fiercest competitors were and will remain NHV (which is in a strong position given its fleet) and Bristow.¹²⁴ In particular:

(a) The Parties submitted that the Fisher Business was a weak competitor as a result of Babcock's manage for value strategy. Manage for value was not an ordinary course of business cost-cutting exercise. It involved cost-cutting of a completely different magnitude. It was a strategy imposed by a parent group company to reduce cash outflow from the business at any cost and to stop material new investments. Further information on the Parties' views with regard to the effect of the manage for value strategy are set out in paragraphs 6.121 to 6.128.

(b) The Parties both stated that Offshore UK was a weakened competitor which was not aggressive in the marketplace. Babcock further explained that it had [REDACTED]. The Parties submitted that CHC [REDACTED].¹²⁵ The Parties argued that Offshore UK was the weakest competitor, [REDACTED]. The Parties' economic adviser (**CRA**) had shown using the Parties' tender data (which the Parties said according to the CMA closely matches the CMA's own data) that [REDACTED].

6.29 The Parties stated that the main constraint on CHC was provided by Bristow and NHV.¹²⁶ CHC told us that NHV had been the strongest competitor in recent years and had provided the lowest pricing benchmark in the market, driving down the prices of other operators including CHC.

6.30 The Parties submitted that the CMA is not simply required to compare competition after the merger with the level of competition absent the merger, but to determine whether there is a lessening of competition which is substantial; it cannot ignore the fact that for many years the market consisted of three or fewer operators and was highly competitive, and stated this would not change after the Merger.¹²⁷ In particular:

(a) The Parties submitted that, post-Merger, there will remain a highly competitive pricing environment with contracting levels of demand, persistent oversupply of helicopters and termination for convenience clauses resulting in easy switching, and an overall decline in demand reinforcing an incentive to compete. Customers are powerful and intent on

¹²⁴ [Parties' response to Issues Statement](#), 4 January 2022, paragraph 4.7 and 4.12 to 4.14.

¹²⁵ 'CHC's perception [REDACTED] is also illustrated by the fact that CHC [REDACTED], as shown by the analysis previously undertaken by CRA which [REDACTED]. [Parties' response to Issues Statement](#), 4 January 2022, paragraph 4.12.

¹²⁶ 'Whereas [Offshore UK] did not exercise a close competitive constraint on CHC, the evidence shows, by contrast, that Bristow and NHV are significant constraints on CHC'. CHC, [Parties' response to Issues Statement](#), 4 January 2022, paragraph 4.13.

¹²⁷ [Parties' response to Issues Statement](#), 4 January 2022, paragraphs 4.2 and 4.3.

squeezing costs out of the supply chain, and transport providers are facing severe financial difficulties and lack necessary resources to invest in new assets. They submitted that market dynamics reinforced by declining demand and corresponding increase in spare capacity are maintaining downward pricing pressure.¹²⁸ The Parties argued that competitive rivalry for tenders will also remain particularly strong because with the long-term decline in demand, large tenders are likely to become even less frequent than today, thus creating a stronger incentive to compete for each tender.

(b) The Parties submitted that the CMA's analysis had ignored the significant constraint imposed by overcapacity. The fact that there may be limited spare capacity available within the operators' current fleets does not change the fact that there is abundant spare capacity amongst lessors that drives down lease rates. There will still be downward pressure on price for as long as lessors have overcapacity. Lessors are in effect acting as an additional competitive force in the market.

6.31 We have carefully considered these submissions. We set out above our views on the nature of competition for the supply of UK O&G Offshore Transportation Services, including on future demand for such services, and discuss the impact of overcapacity within the incumbents' current fleets in paragraphs 6.39 to 6.43 below. Below we set out our approach to the competitive assessment.

Our approach to the competitive assessment

6.32 Unilateral effects can arise in a horizontal merger when one firm merges with a competitor that previously provided a competitive constraint, which reduces the alternatives available to customers, thereby weakening any buyer power they have, and allowing the merged entity to worsen or not improve its offering. This involves a comparison of the prospects for competition with the merger against the counterfactual.¹²⁹

6.33 Within this context, the CMA's main consideration in assessing the effects of the merger 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

¹²⁸ [Parties' response to Issues Statement](#), 4 January 2022, paragraphs 4.17 to 4.19.

¹²⁹ [MAGs](#), sections 3 and 4.

likelihood of entry or expansion, any given lessening of competition will give rise to greater competition concerns.¹³⁰

6.34 However, the CMA does not apply any thresholds to market share, number of remaining competitors or on any other measure to determine whether a loss of competition is substantial.¹³¹ Contrary to the Parties' submission at paragraph 6.27 above, we have not assessed the Merger based only on the fact it represents a reduction in the number of competitors from four to three. Instead, in order to determine whether the Merger may be expected to give rise to a loss of competition that is substantial, we have assessed the loss of competition arising from the Merger (and the remaining constraints that the Merged Entity would face) relative to the counterfactual. Specifically, we have assessed in this chapter (and addressing in that context the submissions made by the Parties outlined above):

- (a) The competition between the Parties that would be lost as a result of the Merger relative to the counterfactual (considering in that context the impact of the manage for value strategy);
- (b) The constraints that will remain following the Merger, ie the constraints from:
 - (i) other incumbent suppliers, ie Bristow and NHV;
 - (ii) potential entrants; and
 - (iii) countervailing factors, which are covered in Chapter 7.

6.35 In undertaking our assessment, we took account of a wide range of evidence collected from the Parties and third parties. In particular:

- (a) We analysed tender data, which showed which suppliers bid for which contracts;
- (b) We assessed what CHC's approach to bid pricing told us about competition;
- (c) We reviewed the Parties' internal documents to assess what these told us about competition between the Parties and with other existing and potential suppliers; and

¹³⁰ MAGs, paragraph 4.3.

¹³¹ MAGs, paragraph 2.8.

(d) We considered views of customers, competitors and other third parties on the strength of competition between the Parties and other existing and potential suppliers.

6.36 As set out in paragraph 6.30(a), the Parties have submitted that the CMA failed to consider whether a lessening of competition arising from the Merger would be substantial in view of the fact that there will remain a highly competitive pricing environment as a result of contracting levels of demand, persistent overcapacity of helicopters and the strong position of customers. We have set out our provisional views on the role of capacity in the market at paragraph 6.43. As set out in paragraph 6.26, the evidence indicates that, while demand for UK O&G Offshore Transportation Services is in long-term decline, in the short- to medium-term demand is likely to remain broadly stable. We have considered the strength of the remaining constraints that would exist following the Merger (taking account of our views on the nature of competition for the supply of UK O&G Offshore Transportation Services), including the role of buyer power, which depends on the availability of good alternatives customers can switch to.

Assessment of evidence regarding the existing and potential constraints on the Parties

6.37 We set out below the evidence we have gathered on competition in UK O&G Offshore Transportation Services that informs our assessment of the effects of the Merger on competition. Our assessment of the evidence is structured as follows:

- (a) Background on the competitive offering of UK O&G Offshore Transportation Service providers, including the aircraft and capacity of different suppliers and the shares of supply.
- (b) Analysis of tenders undertaken by customers in the market, including which suppliers participated and won tenders.
- (c) Analysis of CHC's bid pricing in a selection of recent tenders, including considering CRA's analysis.
- (d) Analysis of internal documents, in particular what CHC documents indicate about the constraint imposed by Offshore UK as well as considering what Offshore UK and CHC documents say about potential entrants.
- (e) Third party views from customers, competitors and potential entrants.

- (f) Given the significance of the manage for value strategy for the Parties' arguments, we separately assess the effect of the manage for value strategy on Offshore UK and draw together whether the evidence indicates Offshore UK is an effective competitive constraint in the market.

Competitive offering of UK O&G Offshore Transportation Services by existing providers

Fleet and capacity

6.38 The four suppliers offering UK O&G Offshore Transportation Services are present in bases across the UK and,¹³² with the exception of NHV, offer a similar range of aircraft.¹³³ In particular:

- (a) CHC currently has 15 O&G aircraft in the UK, which are present in Aberdeen, Norwich and Humberside.¹³⁴
- (b) The Fisher Business currently has 20 O&G aircraft in the UK, which are present in Aberdeen and Sumburgh.¹³⁵
- (c) Bristow currently has around 20 O&G aircraft in the UK, which are present in the East and Western Shetland islands (including Sumburgh),¹³⁶ the Central North Sea (out of Aberdeen) and the Southern North Sea (primarily from Norwich).¹³⁷ [REDACTED].
- (d) NHV currently has around 14 O&G aircraft in the UK, which are present in Norwich, Blackpool and Aberdeen.^{138, 139} [REDACTED].

6.39 We asked the incumbent suppliers to provide details of their capacity. Details of this evidence are set out in Appendix C. Based on this evidence, it appears typical for suppliers to keep some aircraft available to accommodate operational challenges, such as instances of routine maintenance or

¹³² We note that Offshore UK is currently only present in Scotland, while CHC, Bristow and NHV are present in Scotland and England.

¹³³ We set out some further information on the four suppliers (including sectors they are present in and turnover information) in the Industry Background chapter.

¹³⁴ CHC has a mix of S92s, H175s and AW139s. [REDACTED] UK O&G aircraft [REDACTED] owned, and [REDACTED] leased.

¹³⁵ Fisher Business has a mix of S92s, H175s and AW139s. [REDACTED] O&G aircraft [REDACTED] owned, and the others are leased. The Fisher Business clarified that [REDACTED] of the aircraft in its fleet are not used for O&G Offshore Transportation Services.

¹³⁶ Bristow has a base in Sumburgh according to its website. Source:

<https://www.bristowgroup.com/locations/bristow-locations/country/united-kingdom>.

¹³⁷ Bristow has a mix of S92s and AW139s. Bristow uses a hybrid model of owning and leasing aircraft, and the majority of the aircraft operated in the UK are owned.

¹³⁸ See: [Presence - NHV](#).

¹³⁹ NHV focuses on super medium aircraft, particularly the H175. NHV prefers to own a large part of its fleet rather than leasing aircraft, though it also leases some helicopters to allow for flexibility, often aligning the end of the lease with the end of relevant contracts.

unexpected faults requiring back-up aircraft to be utilised instead. Beyond this, there appears to be high utilisation of capacity held by suppliers in the market,¹⁴⁰ due to the costs involved with idle assets.¹⁴¹ To this extent, the Parties' capacity appears to be consistent with the other suppliers, and there is no substantial spare capacity among suppliers which would distort the competitive position.

- 6.40 However, given that some contracts may end prior to the lease end dates and some customers may terminate contracts early, suppliers may have some spare capacity at certain times.
- 6.41 We note that suppliers have bid for contracts when operating at (or close to) full capacity as shown in our analysis of tender data. In these circumstances, suppliers take on new aircraft leases in order to fulfil contracts.
- 6.42 We understand there is some spare capacity at the lessor level. We received mixed responses as to how the demand for helicopters to provide UK O&G Offshore Transportation Services has changed over the last five years, with two lessors telling us there had been no significant change in their demand, while one lessor told us there had been a reduced demand for lessor helicopters, leading to excess capacity. The Parties told us there are approximately 20 S92 helicopters available for lease which can be deployed in the UK. We do not have estimates of the number of spare aircraft available from lessors themselves, although we note lessors have submitted there has been downward pressure on lease terms over the past five years, and some submitted there is overcapacity in the market.
- 6.43 In summary, suppliers do not currently have significant levels of spare capacity, although this can vary as contracts change hands, lease terms end, new aircraft are brought on board and if customers end contracts early. There appears to be a greater amount of spare capacity at lessor level. We consider this gives suppliers the opportunity to take on assets at lower prices or reduces the cost to a new supplier to enter (which we have reflected in our assessment) but does not provide an additional competitive constraint in itself.

Shares of supply

- 6.44 We have also estimated shares of supply of UK O&G Offshore Transportation Services suppliers, namely CHC, Offshore UK, Bristow and NHV. We have

¹⁴⁰ As set out in Appendix C, NHV told us it operates at 100% capacity and Bristow told us from H1 2017 to H2 2020 its fleet was on average utilised [%] for S92s, [%] for AW139s and [%] for AW189s. We note that [%], currently has [%] idle aircraft in the UK. [%].

¹⁴¹ Such as any ongoing lease payment obligations, and any other financing costs.

presented two different ways of measuring share of supply: (i) by flight hours and (ii) by revenue.

6.45 The Parties provided estimated shares of supply based on flight hours in the UK for the period July 2015 to November 2021, shown in Figure 6-1 below. We consider flight hours to be a suitable measure of share as it captures how much of the available work each supplier undertook over time.¹⁴²

Figure 6-1: Parties' estimated share of UK flight hours across all bases, July 2015 to November 2021

[X]

Source: Parties' internal document.

6.46 The CMA calculated shares of supply on a revenue basis for 2021. These are included in Table 6-1 below.

Table 6-1: Shares of UK O&G Offshore Transportation Services revenue, 2021

<i>Supplier</i>	<i>Revenue (£m)</i>	<i>Revenue share (%)</i>
CHC	[X]	[20-30]
Offshore UK	[X]	[20-30]
<i>Parties combined</i>	[X]	<i>[40-50]</i>
Bristow	[X]	[40-50]
NHV	[X]	[10-20]

Source: Responses from the Parties, Bristow and NHV. NHV's revenues are for the financial year 1 January 2021 to 31 December 2021. NHV's revenues were converted from EUR to GBP using the FX rate of 0.859735. Bristow's revenues are for the financial year 1 April 2020 to 31 March 2021. CHC's revenues are for the financial year 1 May 2020 to 30 April 2021. Offshore UK's revenues are for the financial year 1 April 2020 to 31 March 2021.

6.47 We note that based on the share of supply data:

- (a) Post-Merger, the Merged entity would be the largest supplier with a share of supply by flight hours of [40–50%] (increment of [20–30%]) based on data for January to November 2021.¹⁴³ In the same period, Bristow's share of supply by flight hours was [30–40%], and NHV's share of supply was [10–20%]. On a revenue basis, the Parties had a combined share of supply of [40–50%] in 2021 (increment of [20–30%]).
- (b) Since 2015, NHV has grown its share of supply by flight hours. Offshore UK's share has remained broadly stable over this period, but after a

¹⁴² The Parties were unable to provide revenue shares over time and so we sought revenue information from the four incumbents for 2021 in order to see whether these were significantly different to the shares based on flight hours. Revenue shares (see Table 6-1) show broadly the same outcome as volume shares.

¹⁴³ We note that the Merger was completed 31 August 2021.

decline starting in 2018 it has grown since 2020 (despite the adoption of its manage for value strategy around this time).¹⁴⁴

(c) Although NHV has grown in terms of flight hours (and therefore revenue), it remains smaller in revenue terms than each of the other three incumbents.¹⁴⁵

6.48 While there are relatively infrequent tenders for large contracts (as described in Appendix D)¹⁴⁶ such that shares of supply at any particular point in time may be influenced by the award of individual contracts, we also recognise that the shares of supply reflect the outcome of historic competition in a relatively undifferentiated and concentrated market, with only four suppliers. As such, this provides relevant evidence for our assessment. The Parties' shares of supply are both significant, indicating that the Parties are likely to pose an important competitive constraint on one another. Bristow's and NHV's shares of supply are also significant and they each pose an important competitive constraint on the Parties.

6.49 We note that while there are currently four incumbent UK O&G Offshore Transportation Services suppliers, there are others providing offshore transportation to wind farms and providing SAR services.¹⁴⁷ We consider the constraint from these other suppliers in the evidence below.

Tender analysis

Parties' views

6.50 The Parties provided the CMA with bidding data for the period January 2017 to April 2021,¹⁴⁸ which has since been extended to December 2021.¹⁴⁹ The data includes details of [REDACTED] bids from CHC and details of [REDACTED] bids from Offshore UK. The Parties matched up the two data sets to give [REDACTED] opportunities in total.¹⁵⁰

¹⁴⁴ Offshore UK bid for two large contracts in 2019 that it started to supply in July and October 2020 (IAC and TotalEnergies).

¹⁴⁵ [REDACTED].

¹⁴⁶ Each large customer may tender one contract every five years or so.

¹⁴⁷ The suppliers who provide transportation services to UK wind farms are Bel Air, Bristow, NHV, Uni-Fly and Wiking. The Parties told us that CHC, Babcock, Bristow, Airbus, Draken, Serco and BIH all provide SAR services.

¹⁴⁸ The period specified is based on the bid submission date. The original numbers during the phase 1 investigation were [REDACTED] bids from CHC, [REDACTED] bids from Offshore UK, giving a total of [REDACTED] tenders once the two datasets were matched up. We undertook our own matching of the updated tender information provided by the Parties at phase 2, matching these up to achieve [REDACTED] tenders in total.

¹⁴⁹ The latest bid submission date is 2 December 2021.

¹⁵⁰ While the datasets contained [REDACTED] opportunities in total, this included [REDACTED] contracts which the Parties identified as non-competitive processes, leaving [REDACTED] competitive tenders. [REDACTED] of these [REDACTED] competitive tenders are valued at less than £2 million by at least one of the Parties, leaving [REDACTED] higher value competitive tenders.

6.51 The Parties submitted that this bidding data shows that:

- (a) Offshore UK has been a weaker competitor in recent years, having only bid for [REDACTED] in 2020 and [REDACTED] in 2021;
- (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;
- (c) the Parties were no closer competitors to each other than they were to Bristow or NHV;¹⁵¹ and
- (d) there were [REDACTED] occasions where one of the Parties lost an existing contract (out of [REDACTED] of their existing contracts that were retendered). The Parties submitted that this shows that switching costs for customers are low.¹⁵²

6.52 The Parties argued that the tender analysis undertaken by CRA demonstrated that Offshore UK has been a diminished competitive presence for a number of years while NHV and Bristow have been CHC's real competitors in the UK. They highlighted that Offshore UK had lost a number of important contracts between 2017 and 2019, including BP, Spirit, Perenco, and Premier Oil and limited its participation in bidding such that it had not bid for a number of recent contracts, such as [REDACTED]. This is reflected in Offshore UK's participation in UK tenders which fell from over [REDACTED]% in 2017 to [REDACTED]% in 2020 and to [REDACTED]% in 2021.¹⁵³ They told us Offshore UK has been participating in far fewer tenders compared to other operators, and that Offshore UK has the [REDACTED].¹⁵⁴

6.53 The Parties argued that by contrast, the tender data demonstrates that Bristow and NHV are significant constraints on CHC. The Parties stated that an analysis of the tender data shows, for example, that CHC lost over \$[REDACTED] million in potential business to Bristow between January 2017 and April 2021, representing around [REDACTED]% of the tenders (in value) lost by CHC during this time period. They told us that the same tender data also illustrates the success of NHV since its entry into the market in 2016. Overall, around [REDACTED]% of the tenders (in value) lost by CHC between January 2017 and April 2021

¹⁵¹ The Parties submitted that CHC and Offshore UK have been unsuccessful in tenders, losing to Bristow and NHV as well as each other. By value, the overlap between the Parties is greater: Offshore UK bid on [REDACTED]% of the tenders for new business on which CHC bid (by value) and CHC bid on [REDACTED]% of the tenders for new business on which Offshore UK bid (by value). By number the overlap was [REDACTED]% and [REDACTED]% respectively.

¹⁵² On [REDACTED] occasions the Parties lost the contract to the other Party (on both occasions CHC lost to Offshore UK). The Parties state that in all the significant bids where they competed against each other, both Bristow and NHV were also present.

¹⁵³ [Parties' response to Issues Statement](#), 4 January 2022, paragraphs 4.7 to 4.10. We note these are participation rates for tenders in a given year.

¹⁵⁴ We note this is participation in tenders throughout the period 2017 to 2021.

were lost to NHV.¹⁵⁵ The Parties noted that while [X]% of the tenders (in value) lost by CHC during the same period were lost to Offshore UK, these losses are made up almost entirely ([X]%) by the TotalEnergies and the IAC tenders in 2019, [X] of which were bid at margins which would not have been bid at but for Babcock's manage for value strategy.^{156,157}

Our assessment

- 6.54 Given the limitations of the Parties' data described in Appendix D, the CMA gathered additional bidding data directly from customers. The CMA identified potential bidding opportunities during the period 2017 to 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.¹⁵⁸ For full detail on the information on tenders we have gathered and the results of our analysis, see Appendix D.
- 6.55 Based on the information received from customers, we focused our assessment on 21 competitive tenders over the period 2017 to 2021¹⁵⁹ for higher value opportunities (which are typically also longer term).¹⁶⁰ We note that we have also considered the smaller tenders we have gathered information on and the insight these offer into competitive conditions for smaller value tenders, the results of which are set out in Appendix D. However, we note that as the small tender dataset only accounts for approximately 1% of the total competitive tenders by value, we have placed limited weight on this analysis compared to the main tender analysis explained below.
- 6.56 At least one of the Parties participated in all of the 21 tenders in our analysis. We consider that the relatively small number of tenders for which data has

¹⁵⁵ This is based on the sample of 19 opportunities bid between January 2017 and April 2021 that represent CRA's attempt to replicate the CMA's sample. [X]

¹⁵⁶ [Parties' response to Issues Statement](#), 4 January 2022, paragraphs 4.13 and 4.14.

¹⁵⁷ We note that since the Issues Letter in phase 1, the Parties have attempted to replicate the CMA's tender analysis dataset. This updated analysis of 19 tenders attempting to replicate the CMA's tender analysis broadly aligns with our dataset, though there are some tenders which have been identified incorrectly. The Parties have correctly identified [X] tenders, ie [X]% of the CMA tender data, as described below. While the Parties' updated dataset contains most of the relevant dataset, our dataset contains a more consistent identification of the correct bidders and relative rankings, as explained in Appendix D.

¹⁵⁸ Further gaps were filled in at phase 2 where we included recently concluded tenders, or for which we had not received information at phase 1.

¹⁵⁹ We note that customers provided tender data based on start date, rather than bid date. While the dates presented may indicate the bidding for these contracts occurred later, all contract bidding took place before August 2021. However, we note that bidding for some of these tenders occurred after the Merger was in contemplation, as discussed in paragraph 6.57 below.

¹⁶⁰ For further detail on the information we got on tenders and how we reached these 21 tenders, see Appendix D.

been gathered is predominantly due to the infrequent nature of tender processes in the industry.¹⁶¹

6.57 We note that the small number of tenders in each year makes comparisons of trends or year to year changes challenging. In addition, we note that CHC first expressed an interest in the Fisher Business in November 2019, and first submitted a non-binding offer for the Fisher Business in March 2020. This may raise the concern that the Parties' bidding strategy may have been affected by the Merger, particularly following the completion of the Merger in 2021. However, in practice, we have not identified any specific change in the Parties' bidding strategy from their internal documents since the Merger was in contemplation. Therefore, while we have taken this risk into account in our assessment, we do not consider we should discount evidence from tenders which occurred after the Merger was underway.

6.58 Despite the relatively small number of tenders, we believe that this data is representative of competitive interaction in the supply of UK O&G Offshore Transportation Services. In particular, these 21 tenders account for 99% of UK contracts (by value) of which we are aware, awarded through a competitive tender process over the relevant period where at least one of the Parties bid.¹⁶²

6.59 We consider that this tender data provides evidence on closeness of competition between the Parties and other UK suppliers, in particular:

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

6.60 We consider 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.

Results

6.61 The CMA tender data shows that, apart from the four UK incumbents, no other potential competitors won any contracts, and there have been very few instances of potential entrants bidding.¹⁶³ A small number of customers

¹⁶¹ Each large customer may tender one contract every five years or so. The CMA is aware of some 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).

¹⁶² Out of the total competitive tenders we identified from the CMA tender dataset.

¹⁶³ There was no [REDACTED]. The only evidence of potential competitors bidding in a UK based contract was in the [REDACTED] tender where [REDACTED] bid, in addition to the four incumbents. [REDACTED] bid for the [REDACTED] contract [REDACTED], but was unsuccessful.

submitted they had tried to seek bids from (usually one or two) additional participants, but these were not successful.¹⁶⁴

6.62 We note that other than these very limited instances, there is no evidence of potential entrants bidding on any tenders for O&G contracts in the UK since 2017. Therefore, we have focused our assessment below on the four incumbent suppliers (Bristow, CHC, NHV and Offshore UK). Table 6-2 summarises the participation and win rates of the four incumbent suppliers.

Table 6-2: Participation and win rates for the four suppliers from 2017-2021

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

Source: CMA tender analysis.

6.63 Table 6-2 shows that:

- (a) None of the four UK incumbents bid on all of the 21 tenders.¹⁶⁵ In fact, of the 21 tenders included in our analysis, only 8 (ie 38%) involved all four suppliers bidding. [REDACTED] tenders involved three participants, and [REDACTED] tenders involved just two. On average there were three participants ([REDACTED]) per tender.
- (b) CHC and Bristow have the highest participation rates, with CHC participating in [REDACTED]% of opportunities and Bristow participating in over [REDACTED]% of opportunities. Offshore UK participated in under [REDACTED] of all opportunities, and NHV in over [REDACTED] of opportunities.¹⁶⁶
- (c) Although Offshore UK and NHV bid on fewer tenders than the other UK incumbents, they won a somewhat higher proportion of the tenders in which they participated ([REDACTED]% and [REDACTED]% of the tenders that they participated in, respectively).

6.64 The tender analysis shows that most suppliers do not participate in every tender, though CHC appears to bid [REDACTED]. Overall, Offshore UK's participation rates appear to fluctuate significantly in the period ([REDACTED]).¹⁶⁷ Suppliers have different propensities to bid according to different company strategies.

¹⁶⁴ Other customers such as [REDACTED] indicated they had invited a wider pool of suppliers for specific tenders.

¹⁶⁵ CHC bid on [REDACTED], whereas Bristow and NHV bid on [REDACTED].

¹⁶⁶ [REDACTED].

¹⁶⁷ It is not the case, as the Parties stated, that 'The only reason given by the CMA for ignoring [that [REDACTED]] and claiming instead that Babcock's [REDACTED]. As set out in Appendix D, given the limited number of tenders in our dataset it is difficult to infer trends, and Offshore UK's participation varies year to year.

However, while all are somewhat selective in bidding (with no company bidding on all tenders), all have been actively bidding throughout the period.

- 6.65 The Parties competed for contracts against each other [redacted] times out of the 21 tenders, ie over half of the tenders. Of the [redacted] tenders Offshore UK participated in, CHC participated in [redacted].¹⁶⁸ Of the [redacted] tenders CHC bid in, Offshore UK participated in [redacted].¹⁶⁹ Of the [redacted] tenders where both Parties participated, Bristow bid in [redacted] tenders and NHV bid in over [redacted] ([redacted]). As a result, in [redacted] tenders, the Parties were two of only three participants. Therefore, the Parties regularly meet each other and the other two incumbents across tenders.
- 6.66 Out of the [redacted] times the Parties faced each other, Offshore UK has outranked CHC [redacted] times,¹⁷⁰ and CHC has outranked Offshore UK [redacted] times.¹⁷¹ In addition, Offshore UK has won [redacted] CHC participated in,¹⁷² while CHC has won [redacted] Offshore UK participated in.¹⁷³ Of the [redacted] Offshore UK won and CHC participated in, CHC came second place in [redacted].¹⁷⁴
- 6.67 We note that Bristow and NHV also regularly win (and lose) tenders that the Parties have participated in. For example, Bristow won [redacted] and [redacted] tenders that Offshore UK and CHC participated in respectively. NHV won [redacted] and [redacted] tenders that Offshore UK and CHC participated in respectively.
- 6.68 In the 13 tenders where not all four incumbents participated, only [redacted] of these involved only Offshore UK not bidding, and the other [redacted] involved other competitors also bidding selectively.
- 6.69 The tender analysis shows that win rates fluctuate for all four incumbents in the period. In particular, Offshore UK was [redacted] in bids for contracts starting in 2018 and 2020 (in the latter having the same win rate as [redacted]).¹⁷⁵ Those in 2020 were the IAC and TotalEnergies tenders. The Parties argued that we should not put weight on these as Offshore UK bid at unsustainable prices as a result of its manage for value strategy.¹⁷⁶ However, we consider that these are still informative in indicating Offshore UK remained an important

¹⁶⁸ We note that Bristow participated in [redacted] ([redacted]%) and NHV participated in [redacted] ([redacted]%).

¹⁶⁹ We note that Bristow participated in [redacted] ([redacted]%) and NHV participated in [redacted] ([redacted]%).

¹⁷⁰ Based on customer rankings of bidders. Each customer has different evaluation criteria, so this does not necessarily mean each Party offered a lower price than the other in each of these circumstances. [redacted].

¹⁷¹ [redacted].

¹⁷² [redacted].

¹⁷³ [redacted].

¹⁷⁴ [redacted].

¹⁷⁵ We note that these win rates are calculated based on the tenders won that the supplier participated in that year.

¹⁷⁶ [Parties' response to Issues Statement](#), 4 January 2022, footnote 23.

competitive force in this period, despite a strategy the Parties claimed meant it was ‘not a particularly serious competitive threat’.¹⁷⁷

6.70 We have considered Offshore UK’s bidding strategy after it knew it had won the IAC and TotalEnergies tenders in [REDACTED], given the Parties’ submissions around Offshore UK not bidding aggressively as it had [REDACTED]. According to the Fisher Business’s submissions, it was aware of [REDACTED] tenders for which the bidding took place from [REDACTED]:¹⁷⁸ [details of these tenders]

(a) [REDACTED].

(b) [REDACTED].

(c) [REDACTED].

6.71 Based on this, we consider that Offshore UK continued to bid, as it had done previously, for contracts on a selective basis. In particular, Offshore UK bid on [REDACTED] tenders it was aware of, and in the largest tender which it did not bid on, [REDACTED]. As discussed in paragraph 6.63(a) above, it is commonplace for suppliers to not bid on every tender. We further discuss Babcock’s reasons for not bidding on tenders in paragraph 6.137 to 6.139.

6.72 We also note that there were no other large tenders that occurred in this period of which Offshore UK was unaware.¹⁷⁹ We also note that according to CHC’s data on the small competitive tenders it was aware of, it believed Offshore UK was competing in [REDACTED] tenders, when in fact Offshore UK [REDACTED]. We consider that this shows that CHC believed they were competing with Offshore UK in these instances, and this may have affected their bidding behaviour. Offshore UK therefore continued to act as an active presence in the market, imposing a competitive constraint on the other suppliers.

6.73 In summary, our tender analysis shows that Offshore UK was an important constraint on CHC and vice versa in tenders from 2017 onwards. Offshore UK often competed against CHC in tenders, and won a number of tenders from it (as well as vice versa). It continued to participate in tenders and remained an active presence in the market even while undertaking its manage for value strategy, imposing a competitive constraint on the other suppliers.

6.74 The tender analysis shows that Bristow and NHV are also important constraints on both Parties, often winning tenders the Parties bid in. By

¹⁷⁷ Parties’ response to Issues Statement, 4 January 2022, paragraph 4.12.

¹⁷⁸ We note that we also referred to the information submitted by CHC to greater understand bidding times.

¹⁷⁹ We note that based on the information received from customers [REDACTED], there were [REDACTED] smaller competitive tenders Offshore UK was not aware of. The largest of these was a [REDACTED] tender in [REDACTED] worth £[REDACTED] million, the other tenders were a [REDACTED] in [REDACTED] worth £[REDACTED] million, and a [REDACTED] in [REDACTED] worth £[REDACTED] million.

contrast, suppliers outside the four incumbents have negligible presence in the tender data and so do not impose a competitive constraint on the suppliers when bidding for tenders: only [REDACTED] other suppliers bid for any contract and were not shortlisted due to being very expensive and not operating in the UK.

Qualitative analysis of bid pricing

Parties' views

6.75 The Parties' economic adviser (CRA) produced an analysis of CHC's pricing across different tenders. It stated that this shows that CHC's prices were no higher after Offshore UK had stopped participating in tenders than when Offshore UK was active in tenders. CRA described the analysis as a natural experiment on the role of Offshore UK in influencing the prices bid by CHC.¹⁸⁰

Our assessment of CRA analysis

6.76 We disagree with the underlying assumptions for CRA's analysis. In particular:¹⁸¹

- (a) There is no evidence that CHC realised Offshore UK had stopped bidding in tenders. CHC's internal documents show CHC [REDACTED].¹⁸²
- (b) The sample is too small to produce any robust quantitative analysis to explore differences in prices. This is particularly the case given there were other factors (apart from competition) that affected CHC's tender bidding during this period. We note that there is significant variation in the bid price levels before the period CRA states Offshore UK was not bidding, showing that prices clearly vary for other reasons.

¹⁸⁰ 'Irrespective of the counterfactual, the tender data shows that [Offshore UK] has not been bidding for contracts over the last 18 months. The absence of [Offshore UK] as an active bidder on significant contracts over this period provides a natural experiment to consider whether the loss of [Offshore UK] as a competitor will have an impact on competition. As CHC's tender pricing data shows below, there is no evidence that CHC increased its price on contracts given [Offshore UK]'s participation. This is consistent with CHC's continuing to be constrained by NHV and Bristow absent [Offshore UK].'

¹⁸¹ For further detail on the Parties' bid pricing submission, our concerns with this analysis and our analysis of CHC bid prices see Appendix F.

¹⁸² The three main tenders that were included by CRA to show the impact of Offshore UK not bidding were [REDACTED]. [REDACTED], Offshore UK was not modelled on this occasion, but it was a direct negotiation for a contract extension rather than a formal tender. [REDACTED]. The transparency of tenders and whether bidders are aware of the other bidders involved is discussed in paragraphs 6.8 to 6.10.

- (c) CHC told us that [REDACTED].¹⁸³ Therefore, it is not clear that the figures can be used to accurately compare prices, competitiveness or profitability of different bids.

Our analysis of bid pricing

- 6.77 Although it was not possible to quantify the impact of events (such as the Merger) on the pricing decisions of CHC, we considered whether it was possible to qualitatively assess the pricing decisions made by CHC to consider the role of competition in those pricing decisions.
- 6.78 CHC stated that it does not have internal documents that discuss the reasons for the choice of each price point. CHC instead gave an explanation of how CHC chose the prices submitted to the customer. CHC only provided some rationale for pricing decisions dated between January 2019 and April 2021 where CHC had knowledge of the price formation process (a total of 10 pricing decisions).
- 6.79 Given that we have information only about a limited number of pricing decisions and are largely reliant on information provided by CHC's [REDACTED] rather than contemporaneous documents, we consider there are significant limitations to the conclusions which can be drawn from the analysis of the rationale for these pricing decisions. Nevertheless, we set out below our observations from this information.
- (a) The analysis of CHC's approach to tenders demonstrates that CHC often [REDACTED] by other UK O&G Offshore Transportation Services suppliers and CHC [REDACTED], to try to win contracts from these suppliers.
- (b) CHC reacted when customers told CHC there [REDACTED]. However, CHC did not always respond to general statements by customers and [REDACTED].¹⁸⁴ CHC was [REDACTED].¹⁸⁵
- (c) CHC's descriptions of its rationale often indicate that [REDACTED].
- (d) Since the start of 2020 CHC appears to have been [REDACTED], at least in part due to its [REDACTED].¹⁸⁶ This strategy was [REDACTED]. CHC has [REDACTED]. These customers included [REDACTED]. CHC thus posed a strong competitive constraint on Offshore UK.

¹⁸³ CRA used [REDACTED].

¹⁸⁴ For example, the [REDACTED] tender in [REDACTED] and the [REDACTED] tender in [REDACTED].

¹⁸⁵ For example, [REDACTED].

¹⁸⁶ '[REDACTED]'. This is discussed in Appendix F, paragraphs 2.25 to 2.34.

- 6.80 The Parties stated that NHV has been the strongest competitor in recent years and has effectively provided the lowest pricing benchmark in the market, and provided several examples to support this statement¹⁸⁷. For some of the examples quoted by the Parties, although NHV had been expected to be the lowest priced bid, the bid of Offshore UK was important for the price set by CHC because (unlike NHV) both Offshore UK and CHC were expected to bid using a S92 helicopter.^{188, 189}
- 6.81 In summary, while we place limited weight on information from CHC's approach to bidding, this indicates CHC reacted when customers told CHC there [REDACTED]. The analysis of CHC's approach to tenders demonstrates that CHC often [REDACTED] by other UK O&G Offshore Transportation Services suppliers, including Offshore UK, and CHC [REDACTED], to try to win contracts from these suppliers. CHC has [REDACTED].

Internal documents

Approach to internal document assessment

- 6.82 We have assessed internal documents from each Party to ascertain how closely they consider that they compete with each other and how they compete in the market relative to other competitors. Given the importance of tenders, we assessed, in particular, evidence from the Parties' internal documents on whether and to what extent competition between the Parties is a driver of their participation and bidding in tenders.
- 6.83 Internal documents produced by the Parties before the Merger was in contemplation are a relevant source of evidence to the extent they provide insight into competitive conditions. Where internal documents were produced contemporaneous to the Merger, we have taken this into account in our assessment. We have put less weight on documents produced for the Parties by third party consultants and advisers.
- 6.84 We identified around 170 CHC documents as relevant to how CHC viewed and responded to competition.¹⁹⁰ Babcock and Offshore UK struggled to

¹⁸⁷ 'NHV effectively established the competitive price point in the market'.

¹⁸⁸ [REDACTED] may be considered a competitor at one stage of the tender process but CHC may consider [REDACTED] is a more prominent bidder at other stages of the tender. CHC [REDACTED] in the [REDACTED]. CHC also expected [REDACTED].

¹⁸⁹ We note that later in the submission the Parties mention that NHV's single-airframe offering could give the impression of lack of resilience, although also noted the advantages of its aircraft: 'While the risk in a single-fleet strategy may be reliability, the H175 has proven to be a highly reliable aircraft, is widely accepted amongst customers, and is quickly becoming the industry standard'.

¹⁹⁰ We requested documents from the Parties to explain their internal decision making and their view of the market. CHC provided around 700 relevant documents from a pool of 2875 that named a competitor while discussing tender pricing or bidding. CHC also provided the relevant documents from a pool of 765 documents

provide all internal documents related to the closeness of competition and tendering. Including related documents and attachments over 800 documents were provided; however we considered less than 100 to be relevant to how Offshore UK viewed and responded to competition.

- 6.85 In reviewing CHC's documents, we have focused on documents discussing Offshore UK in particular, given the importance in understanding the position of Offshore UK. We have analysed whether there was any noticeable change in how CHC viewed Offshore UK over this period.
- 6.86 The documents reviewed included board packs (for both the EMEA and global CHC board), emails and tender documents. In particular, we reviewed communications to and from senior executives about tender responses for UK O&G Offshore Transportation Services.¹⁹¹ We focused on the period from the middle of 2019 (before the Total Energies E&P and IAC tenders) to 2021.
- 6.87 In reviewing Offshore UK's documents, we have analysed how Offshore UK viewed and responded to CHC and other competitors. For both of the Parties we have analysed the role of potential suppliers outside the four incumbents, in particular whether these firms are considered likely to bid or whether the Parties take any actions because of one of these firms.

Analysis of CHC documents regarding Offshore UK

- 6.88 The internal documents show that CHC was monitoring Offshore UK (alongside Bristow and NHV) and that CHC was competing with Offshore UK and took Offshore UK into account when submitting bids.¹⁹²
- 6.89 In late 2019, CHC considered it was [REDACTED]. CHC's internal documents indicate that it considered that [REDACTED].¹⁹³ The documents also indicate that [REDACTED].¹⁹⁴
- 6.90 There were tenders where Offshore UK was not considered a strong constraint by CHC. Some of these were tenders where the main activity was outside the UK (such as [REDACTED] or the [REDACTED]). CHC referred to potential entrants (in particular [REDACTED]) as being likely to bid on these non-UK scopes of work but these firms were not considered in relation to UK O&G contracts.¹⁹⁵

produced during [REDACTED] 2019 to 2021. Once related documents (including attachments) were provided there were over 1,400 CHC documents.

¹⁹¹ This includes [REDACTED].

¹⁹² For further detail on these documents see Appendix F.

¹⁹³ [REDACTED].

¹⁹⁴ [REDACTED].

¹⁹⁵ Some of this entry was at an early stage, with these players [REDACTED].

- 6.91 In response to our working papers, the Parties stated that CHC had been uncertain [REDACTED].¹⁹⁶ [REDACTED], or that CHC did not need to take into account Offshore UK's possible participation. The internal documents overall show that CHC had not moved to considering Offshore UK to no longer be a relevant competitor.
- 6.92 One CHC internal document we reviewed from October 2019 considered the possibility of Offshore UK exiting the market. This set out Offshore UK exit as one scenario, with [REDACTED] being another. The Offshore UK exit scenario does not seem to have been considered in detail at the time or later.
- 6.93 Our view is that internal documents show that CHC monitored and responded to Offshore UK as a relevant competitor up to the time of the Merger.
- 6.94 With regard to the constraint of CHC on Offshore UK, internal documents from CHC show that it has been active in trying to win contracts from [REDACTED].¹⁹⁷ This implies CHC poses a constraint on [REDACTED].

Analysis of CHC documents regarding the position of other competitors

- 6.95 The internal documents show that CHC takes account of the bidding by Offshore UK in a similar way to CHC's consideration of NHV and Bristow.¹⁹⁸ The prominence of competitors can depend on the base the tender is for. NHV has been more successful in the Southern North Sea while the issue CHC raised of NHV's resilience is relevant in Aberdeen.¹⁹⁹
- 6.96 We have considered CHC's views expressed in these internal documents concerning the threat of new entry.
- (a) CHC did not [REDACTED].²⁰⁰
- (b) While CHC had [REDACTED] of entry in 2020, by the time of the Merger completing in 2021 CHC had come to the view there was [REDACTED].

¹⁹⁶ 'CHC was uncertain whether [REDACTED].'

¹⁹⁷ For instance in relation to CNOOC and Enquest.

¹⁹⁸ For further detail on these documents see Appendix F.

¹⁹⁹ See for example: CHC's [REDACTED] contract in respect of operations from [REDACTED]. CHC's internal documents in relation to this tender indicate it considered [REDACTED]. The Parties mention that NHV's single-airframe offering could give the impression of lack of resilience, although also noted the advantages of its aircraft: 'While the risk in a single-fleet strategy may be reliability, the H175 has proven to be a highly reliable aircraft, is widely accepted amongst customers, and is quickly becoming the industry standard.' CHC discussed that [REDACTED]. (NHV does not have a base in Sumburgh or the Northern North Sea.)

²⁰⁰ CHC highlighted a number of specific documents which referred to the threat from entrants. We have taken these into account where relevant in this assessment.

6.97 CHC does not appear to have considered entry likely at the time of the Merger.²⁰¹

Assessment of Offshore UK documents regarding the position of competitors

6.98 The internal documents show that Offshore UK considered the expected bidding by CHC alongside the expected bidding of NHV and Bristow.²⁰²

6.99 We have considered Offshore UK's views expressed in these internal documents concerning the threat of new entry.

(a) Offshore UK focused on discussing the incumbent suppliers and discussion of entrants was mainly around their weaknesses.

(b) Offshore UK stated in 2020 that market conditions were a barrier to entry.

6.100 Our view is that internal documents from Offshore UK show its competitive monitoring, though ad hoc, mainly focuses on the three other UK incumbent suppliers, including CHC, and rarely considers other potential suppliers.

Third party views

6.101 We sought views through questionnaires and calls from 44 customers,²⁰³ ten potential entrants,²⁰⁴ four aircraft lessors²⁰⁵ and two incumbent suppliers.²⁰⁶ We received questionnaire responses from 28 customers,²⁰⁷ six potential entrants,²⁰⁸ four lessors and two incumbent suppliers. We also had calls with one customer ([REDACTED]),²⁰⁹ two incumbent suppliers (Bristow and NHV), the Civil Aviation Authority and two potential entrants ([REDACTED] and [REDACTED]).²¹⁰

6.102 Details of the evidence received from third parties can be found in Appendix E. Below we summarise the views of third parties on aspects of competition.

²⁰¹ 'It is not surprising that there is limited incentive for anyone to enter a market in which competition is so fierce and in which most players face serious financial difficulties and are making losses.'

²⁰² For further detail on these documents see Appendix F.

²⁰³ Based on the Parties' customers, and their knowledge of other customers present. Includes customers who have run tenders of various sizes from £[REDACTED] million to £[REDACTED] million (based on tender value since 2017 as supplied by customers).

²⁰⁴ Identified by the Parties as either being their current competitors or potential entrants, or mentioned by customers or suppliers in calls and written responses. Includes suppliers providing O&G Offshore transportation services in other jurisdictions, or providing transportation services for SAR and to offshore wind farms in the UK.

²⁰⁵ Identified by the Parties as their lessors.

²⁰⁶ Bristow and NHV.

²⁰⁷ A response rate of 63%.

²⁰⁸ A response rate of 75%.

²⁰⁹ We note that we also had a call with [REDACTED] to verbally go through the questionnaire, which we have here counted as a response to the questionnaire.

²¹⁰ During the course of the phase 1 investigation, the CMA contacted a similar number of customers, and had calls with the two competitors, as well as three customers: [REDACTED].

Competitive constraints

- 6.103 We asked customers who have (or had) UK O&G Transportation Services contracts with CHC and Offshore UK to what extent they view various suppliers as a close alternative to CHC and Offshore UK respectively for this service.²¹¹ We asked customers which suppliers they would consider inviting to bid on their tenders (and the likelihood of these suppliers being picked). We also asked customers and the two incumbent suppliers how they would rank the strength of the suppliers of UK O&G Offshore Transportation Services.
- 6.104 Customer responses were consistent with CHC and Offshore UK being close alternatives to each other, with many customers giving them a score of 4 or 5 out of 5 for closeness. The responses showed that Bristow and NHV were also considered close alternatives to both Parties, consistent with all four incumbents being close alternatives.
- 6.105 The majority of respondents²¹² submitted that they would invite all four suppliers to bid on upcoming tenders, who would all have some likelihood of winning. Of these, eight customers submitted they may invite a wider set alongside the four incumbents,²¹³ although six of these customers submitted these other suppliers would have a lower likelihood of being selected.
- 6.106 The CMA also asked customers about the strength of suppliers more generally. A majority of customers submitted that all four incumbents have similar capabilities,²¹⁴ and customers rated CHC and Offshore UK the second and third strongest suppliers with average scores of 3.9 and 3.6 out of 5 respectively, while Bristow scored 4 and NHV scored 3.5.
- 6.107 The majority of customers did not identify an overall lessening of Offshore UK's performance or a change in its strategy, contrary to the Parties' statements. However, we note the following:
- (a) [REDACTED] told us Offshore UK's lower price ([REDACTED]) in its recent tender accounts for a service with less resilience. Offshore UK could provide the S92 required, but did not apply the same ratio of operational to backup aircraft, so there may be no spare S92 in the hangar;

²¹¹ The suppliers listed were the four incumbent suppliers, as well as the eight potential entrants or SAR suppliers identified by the Parties.

²¹² 24 out of 27 customers.

²¹³ This includes two small customers ([REDACTED]) and six large customers ([REDACTED]).

²¹⁴ 11 out of 14 customers gave the four incumbents scores within 2 points of each other. We note that where customers gave the suppliers differing scores, this was mainly due to NHV being seen as a less strong supplier ([REDACTED]). Other reasons given included Offshore UK not being present or bidding in the SNS ([REDACTED]), Bristow being a less strong supplier or CHC historically having poor performance ([REDACTED]).

(b) [REDACTED] told us that since 2017 Offshore UK appear to have ‘gone through a process of making their business model more ‘lean’, but on reflection may have taken this too far’; and

(c) [REDACTED] told us it would have given Offshore UK a stronger score for overall strength in 2017 as it ‘had no requirement for an AW169 in 2017’.

6.108 A similar number of customers also made comments about other suppliers, such as Bristow and NHV, becoming less strong in the same period.²¹⁵

6.109 The incumbent suppliers also thought that Offshore UK and CHC were both highly ranked rivals, as they are both experienced operators with multiple aircraft types supporting operations, and they both have a strong presence at all major O&G hubs and fly all major O&G aircraft types.²¹⁶ The incumbent suppliers both agreed that Bristow was also a highly ranked supplier (similar to Offshore UK and CHC), and both agreed that NHV was a slightly weaker (but still a strong) supplier overall due to not operating heavy aircraft.²¹⁷

6.110 We note that the majority of customers who responded to our questionnaires expressed concerns regarding the Merger,²¹⁸ with many raising concerns that the Merger could lead to reduced competition and price increases.²¹⁹

6.111 In summary, contrary to Babcock and CHC’s statements that Offshore UK was a weakened competitor, third parties perceived the Parties as close competitors to each other, giving them similarly high scores on closeness and overall strength. Almost all customers who responded submitted they would invite them to bid in their tenders, and the Parties would have a high likelihood of being successful.

6.112 Evidence from third parties shows that Bristow and NHV are also close competitors to both Parties and pose a competitive constraint. NHV and Bristow also scored highly on closeness to the Parties and strength of offering, despite limitations in NHV’s fleet.

Potential entrants

6.113 In contrast to their view of the incumbent suppliers, third parties generally viewed potential entrants as significantly weaker suppliers. Only a minority of

²¹⁵ For example, [REDACTED] indicated Bristow had become a weaker competitor since 2017, and [REDACTED] thought NHV had become weaker due to lower reliability and availability of aircraft.

²¹⁶ We note that no supplier is present in all hubs. In particular, Offshore UK are currently only present in Scotland, while CHC, Bristow and NHV are present in Scotland and England.

²¹⁷ For further information on the views from incumbent suppliers, see Appendix E.

²¹⁸ 14 customers out of 26.

²¹⁹ We note that eight customers were agnostic or unsure about the effects of the Merger. Of the 26 customers that did express a view, only four thought the Merger did not lead to competition concerns.

customers thought other suppliers like Bel Air, Uni-Fly and Wiking were close alternatives to CHC and Offshore UK,²²⁰ consistent with customers overall not viewing these suppliers as alternatives to the Parties. Most customers told us they gave other suppliers lower scores due to them not currently operating in UK O&G Offshore Transportation Services.

- 6.114 Similarly, only a minority of customers submitted that they would invite any suppliers other than the four incumbents to bid on their tenders; there were a limited number of alternatives named by customers, and they were generally identified as having a lower chance of being successful given their lack of experience or current UK presence.
- 6.115 The incumbent suppliers similarly did not think potential entrants like Uni-Fly and Wiking were strong rivals in UK O&G Offshore Transportation Services at present.
- 6.116 One potential entrant told us it had previously bid on the [REDACTED] tender, but had not been shortlisted. No other potential entrants²²¹ told us they had had discussions with customers to supply O&G Transportation Services in the UK.²²² We further discuss the likelihood of potential entry, including views from potential entrants, in Chapter 7.
- 6.117 In summary, evidence from third parties shows that the constraint from potential entrants is significantly weaker, with customers and incumbent suppliers giving low scores on closeness to the Parties and overall strength. While some customers submitted they would consider inviting a wider pool of participants, there were a limited number of alternatives named and these potential participants were often identified as having a lower chance of being successful given their lack of experience or current UK presence.

Impact of Babcock's manage for value strategy

- 6.118 As set out in Chapter 5, Babcock implemented a manage for value strategy in 2019 in 'anticipation of exit' which it stated resulted in Offshore UK being a 'diminished competitive force'. As set out in Chapter 5, our provisional conclusion is that under the most likely counterfactual that would have prevailed absent the Merger, the Fisher Business would have continued to operate in the relevant market in the short to medium-term, including tendering for new contracts. This counterfactual would have prevailed regardless of the Fisher Business's ownership, ie whether under Babcock's

²²⁰ See Appendix E.

²²¹ We note the exception of [REDACTED], and [REDACTED].

²²² [REDACTED].

ownership, which may have continued with its manage for value strategy, or if it had been sold to an alternative purchaser. As a result, we have assessed whether the manage for value strategy changed the dynamic of competition such that Offshore UK would have been a weaker competitor in future.

6.119 In principle, it is possible that Offshore UK could have become such a weakened competitor as a result of Babcock refusing to invest in assets or bid for customer contracts that it was effectively viewed by customers and competitors to no longer be an active market participant, even if it continued to service its existing contracts to minimise the cost of withdrawal. In this situation, the Merger could have little effect on competition as Offshore UK would have effectively already withdrawn from the market. Such an outcome would require both that Offshore UK had actually withdrawn from investing in its business and participating in tenders and that this change was perceived by customers and competitors.

6.120 We set out below a summary of the Parties' views on the implementation and effect of manage for value, then our assessment of the effect of the strategy.

Parties' views

6.121 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.

6.122 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 operations and strategy of the Fisher Business, with significant reductions in the size of the fleet and changes to its tendering strategy. 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. 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 [REDACTED].

6.123 Babcock submitted that while it [REDACTED] won, the TotalEnergies and IAC tenders in 2019, this was part of Babcock's manage for value strategy and Babcock bid [REDACTED] to fill capacity 'to achieve some contributions to its unavoidable costs'. Babcock submitted that at the time that Babcock bid for the TotalEnergies contract it was incurring monthly lease rates for aircraft of more than \$[REDACTED] which was placing a significant strain on the Fisher Business's 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’.

- 6.124 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 capacity absent the Merger, and would only have bid on tenders if and when it had appropriate spare capacity ([REDACTED]). Babcock explained that the TotalEnergies and IAC tenders had achieved the goal of improving utilization and provided examples of a number of subsequent tenders where it suggested Offshore UK had not participated in an opportunity due to the manage for value strategy. These are the [REDACTED].
- 6.125 The Parties further submitted that in assessing whether the Merger is likely to result in a ‘substantial’ lessening of competition, the CMA must take into account that the Fisher Business has suffered from a prolonged lack of investment and has been a diminished competitive presence for a number of years while NHV and Bristow have been CHC’s real competitors in the UK, as shown by the tender analysis undertaken by CRA which has previously been provided to the CMA.²²³ CHC considered that [REDACTED]. Moreover, CHC regarded Babcock [REDACTED] contracts (essentially the [REDACTED] secured by Babcock since 2017, accounting for [REDACTED]% of the value of all tenders won by Babcock during this period) by going into those tenders with unsustainable prices.²²⁴
- 6.126 The Parties submitted that the manage for value strategy had a clear impact on the competitiveness of the Fisher Business and the way in which that business bid, or did not bid, for tenders. [REDACTED] to limit cash outflows from an operational perspective and limit losses by securing contracts to fill under-utilised capacity. This resulted in Babcock limiting its investments into the business, downsizing its fleet ([REDACTED]) by returning [REDACTED], and while exploring its different options for exit, [REDACTED] that made a positive contribution to cost recovery even if those tenders were not profitable.²²⁵ The CMA’s observation that the manage for value strategy was not reflected in bid proposals or other internal documents prepared by the Fisher Business is due to the fact that the manage for value strategy was not communicated to the Fisher Business in order ultimately to ensure employees did not leave. However, when proposals reached the approval stage, the MD of UK Aviation had to take a view if these aligned with Babcock’s manage for value strategy and anything inconsistent

²²³ [Parties’ response to Issues Statement](#), 4 January 2022, paragraph 4.7. We consider the tender data in the Appendix D.

²²⁴ [Parties’ response to Issues Statement](#), 4 January 2022, paragraph 4.11.

²²⁵ See [Parties’ response to Issues Statement](#), 4 January 2022, paragraph 3.9.

with that strategy, including tender proposals, was rejected. This resulted in Babcock not investing in the Fisher Business and not bidding on significant tenders, in particular those which required it to take on additional aircraft. These decisions were then communicated to the Fisher Business in a variety of ways.

- 6.127 The Parties stated that there is ‘no possible comparison between manage for value and [REDACTED] or indeed other ordinary course of business cost cutting initiatives’. They stated that manage for value was not a cost cutting exercise to improve competitiveness and/or gain market shares, but instead was cost cutting ‘on a completely different scale’, involving for example [REDACTED], the Fisher Business not bidding on several significant tenders, including [REDACTED], and the Fisher Business [REDACTED]. They noted that since then the Fisher Business has [REDACTED].
- 6.128 The Parties stated that ‘the CMA errs in its assessment that the manage for value strategy did not affect third parties’ perceptions of the Fisher Business’, [REDACTED] and observations from [REDACTED] and CHC [REDACTED]. CHC noted that ‘[REDACTED] noting that Babcock appeared to have been bidding aggressively but that ‘[REDACTED]’. It stated that it expected Babcock to [REDACTED] and ‘[REDACTED]’. CHC stated this is consistent with its internal documents that Babcock was considered by CHC [REDACTED] and that CHC was [REDACTED].

Our assessment

- 6.129 In order to assess whether the manage for value strategy changed the dynamic of competition such that Offshore UK would have been a weaker competitor in future, we have considered:
- (a) Evidence from Babcock’s internal documents as to what the strategy involved in practice;
 - (b) Evidence on Offshore UK’s actual approach to bidding and investment under the manage for value strategy; and
 - (c) Evidence on whether customers and competitors had perceived any change in Offshore UK’s competitive intensity.

Evidence from Babcock’s internal documents

- 6.130 We consider below whether Babcock’s internal documents show that Offshore UK has diminished as a competitor, as a result of the manage for value strategy. We have not received material new submissions or internal

documents concerning manage for value from Babcock since phase 1,²²⁶ and so this largely reflects our understanding set out in the Phase 1 Decision.

6.131 Although internal strategy documents note that '[REDACTED]', they also refer to [REDACTED] indicating that Babcock continued to be an active competitor, despite adopting its manage for value strategy. For example:

- (a) [REDACTED], states that Babcock has '[REDACTED]' and '[REDACTED]'. It also states that the business will '[REDACTED]'.
- (b) The [REDACTED] states that a top '[REDACTED]' is to '[REDACTED]' and that Babcock's '[REDACTED]' and '[REDACTED]'.
- (c) [REDACTED] notes under the heading '[REDACTED]' that '[REDACTED]' and that '[REDACTED]' It lists as a [REDACTED]' under the heading '[REDACTED]'.

6.132 Although we recognise that a component of the manage for value strategy has been to invest more selectively, we consider that internal documents also indicate that [REDACTED] states that '[REDACTED]'. The [REDACTED] also states under the heading '[REDACTED]'. Babcock's public statements suggested the rationalisation of the fleet was to improve competitiveness in a situation where Babcock continued to look for opportunities.²²⁷ We note that Babcock did in fact take on additional investment to service [REDACTED].

Evidence on Offshore UK's actual approach to bidding and investment

6.133 The Parties have submitted that manage for value had two effects on Offshore UK's bidding: that it bid [REDACTED] for the TotalEnergies and IAC contracts than it otherwise would have in order to utilise expensive spare capacity; and that it would not bid for contracts which would require new capacity. Although the [REDACTED] contract required it to take on additional aircraft, Babcock put in place [REDACTED].

²²⁶ We asked Babcock to provide any further internal documents which corroborate the description provided in its final merger notice including, but not limited to: (a) Internal documents in which the 'manage for value' strategy (and the 'market exit strategy' if included in the manage for value strategy) was discussed for the first time and internal documents which set out what the 'manage for value' strategy entails; (b) Internal documents which evidence how the manage for value strategy influenced decision making in the UK, for example as regards factors set out in [REDACTED]; (c). Internal documents which evidence the decision to exit the market and the reasons for it.

²²⁷ 'We manage these markets for value. This means improving the operating efficiency to deliver for customers and sustain margins. We continue to pursue attractive opportunities where they exist.' 'This rationalisation programme has enabled us to significantly improve our fleet utilisation across all bases. In March 2020 we won a five year contract in the North Sea with three operators starting in July, albeit at pricing reflective of the tough environment and current lease rates.'

- 6.134 We have not explored in detail the financials of the TotalEnergies and IAC contracts; however, evidence from [REDACTED] and public statements²²⁸ from other suppliers indicate that Offshore UK's bid price on [REDACTED] was unusually low.²²⁹ In addition, we understand that Offshore UK's lower price reflected a different approach to operational resilience, building in less resilience for unexpected disruption to service.
- 6.135 The Parties argued that Offshore UK's decision to take on the TotalEnergies and IAC contracts were spurred by specific circumstances: that it had spare capacity available ([REDACTED]) and [REDACTED] provided [REDACTED].
- 6.136 Offshore UK's willingness to bid and take on these contracts show it is still a competitive constraint. Further, even if this decision reflected particular circumstances, these circumstances could arise again:
- (a) As noted in Appendix C, the Parties' (including Offshore UK's) capacity appears to be consistent with the other suppliers. While Offshore UK may be more willing to bid aggressively when it has more significant spare capacity available, such a situation could arise again given contracts generally have termination for convenience clauses which allow customers to cancel contracts at short notice. This could leave Offshore UK with available aircraft unexpectedly.
 - (b) While not all contracts contain provision for customers to pay penalties for terminating contracts early, some do. Other suppliers submitted that [REDACTED] contained such penalties, [REDACTED].²³⁰ We also note that [REDACTED] (see Appendix C). Therefore, other customers may be willing to provide similar assurances to those given to Offshore UK in order to take on additional aircraft.
- 6.137 The Parties also highlighted [REDACTED] tenders which Offshore UK had not participated in due to the manage for value strategy: [REDACTED]. We note that [REDACTED] of these tenders were carefully considered internally before deciding not to bid, with Offshore UK working up detailed bid proposals for all of these opportunities.²³¹ While Babcock submitted that this reflected the disjoint in information between the Fisher Business and Babcock as to the manage for value strategy, the following information (see paragraphs 6.138 and 6.139) shows that this does not appear to be consistent with a blanket decision to refrain from competing where additional investment would be required.

²²⁸ [Energy Voice, Babcock begins Total helicopter contract after rivals criticised 'unsustainable pricing', 14 October 2020.](#)

²²⁹ We do not have similar evidence as to the approach to pricing of the [REDACTED] contract.

²³⁰ [REDACTED]. NHV stated it has penalties for customer termination for convenience in [REDACTED].

²³¹ [REDACTED]:

Babcock confirmed that decisions to bid were taken on a case by case basis, although reducing unutilised assets was its primary concern.

- 6.138 It is clear that the need for additional aircraft was not the sole reason for declining to bid in the [REDACTED] tender: earlier discussions noted that [REDACTED]', although the final no-bid decision referred to [REDACTED]. Fisher Business indicated that the [REDACTED]. The need for additional aircraft does not appear to be a reason not to bid in the [REDACTED] tenders – in fact, [REDACTED]. Internal documents refer to the broader financial considerations of the deals rather than purely the need to invest in additional capacity (although this was part of the consideration in some instances).
- 6.139 Babcock indicated that, [REDACTED]. However, as these decisions [REDACTED], there is no contemporaneous evidence that there would have been a blanket refusal to take on such bids. In addition, we note that the Fisher Business indicated that the reasons given for not bidding on these tenders were based on plausible tender-specific factors, and Babcock confirmed that decisions whether to bid were made on a case by case basis. [REDACTED]. This is not consistent with the Fisher Business wishing to withdraw from the market and no longer provide services to these customers.
- 6.140 Further, Offshore UK had continued to bid on opportunities after having won Total and IAC: as described at paragraph 6.70 it bid on [REDACTED] tenders which it was aware of after finding out it had been successful in Total and IAC. In addition, the Parties indicated that Offshore UK has identified [REDACTED] upcoming opportunities, [REDACTED] which [REDACTED].²³² We note that these were [REDACTED]. Nevertheless, this shows Offshore UK continued to actively participate in the market.
- 6.141 With regard to non-aircraft investment, Fisher Business stated that [REDACTED] investment was made during the manage for value strategy. Insofar as expenditure was incurred, this was generally [REDACTED]. Examples of investment which were undertaken include: [REDACTED].

Evidence on customer and competitor perception of Offshore UK

- 6.142 Finally, we consider whether customers or competitors had perceived any change in the competitive constraint imposed by Offshore UK. If third parties were not aware that Offshore UK was no longer bidding as extensively or aggressively, they would be expected to continue to act as though Offshore

²³² The [REDACTED] opportunities are contracts in which [REDACTED]. [REDACTED]. Neither Party has indicated [REDACTED] has yet retendered its contract, and Babcock noted [REDACTED]. [REDACTED].

UK were still the same force of constraint it had been before the manage for value strategy was implemented.

- 6.143 As set out in paragraph 6.107, the majority of customers did not identify an overall lessening of Offshore UK's performance or a change in its strategy. While a small number did indicate they considered Offshore UK to have become a weaker competitor, a similar number made similar statements about other competitors such as NHV and Bristow. In addition, neither Bristow nor NHV indicated that their scores for the strength of competitors assigned to different parties would have changed substantially since 2017.
- 6.144 Further, and contrary to the Parties' arguments, CHC's internal documents do not indicate that it considered Offshore UK had 'been a diminished competitive presence for a number of years'. As set out in paragraphs 6.88 to 6.93, CHC had observed fluctuations in the strength of threat from Offshore UK; however CHC's internal documents do not indicate it had started to consider Offshore UK to no longer be a relevant competitor.

Provisional view on impact of Babcock's manage for value strategy

- 6.145 Our provisional view is that the manage for value strategy has not materially undermined Offshore UK's competitive position in UK O&G Offshore Transportation Services. While the strategy has led to a more careful and potentially selective approach to capacity and investment required for new contracts, Babcock's internal documents do not support that this has led it to rule out any further such investment in future. While the manage for value strategy indicated a much clearer focus on contribution, rather than profitability, by Offshore UK, it has not materially affected its competitive position in UK O&G Transportation Services.
- 6.146 Further, customers and competitors do not appear to have perceived any change in the strength of Offshore UK as a supplier. This indicates that rivals are likely to still take it into account when submitting bids and customers are likely to continue viewing it as a credible option. Therefore, our provisional view is that Offshore UK remained an effective competitive constraint on CHC and other UK O&G Offshore Transportation Services providers at the time of the Merger, and would have continued to be so for at least the short- to medium-term.

Our assessment of the loss of competition arising from the Merger

Our assessment of competition between the Parties

6.147 The evidence set out above indicates that the Parties impose an important competitive constraint on one another that would be lost as a result of the Merger:

- (a) Our tender analysis set out at paragraphs 6.54 to 6.74 shows that Offshore UK is an important constraint on CHC and vice versa in tenders from 2017 onwards. Offshore UK often competed against CHC in tenders, including instances where the Parties were two of only three bidders, and won a number of tenders from it (as well as vice versa). It continued to participate in tenders and remained an active presence in the market even when it was undertaking its manage for value strategy, imposing a competitive constraint on the other suppliers.
- (b) While we place limited weight on information from CHC's approach to bidding (discussed in paragraphs 6.77 to 6.81), this indicates CHC reacted when customers told CHC there [REDACTED]. The analysis of CHC's approach to tenders demonstrates that CHC often [REDACTED] by other UK O&G Offshore Transportation Services suppliers, including Offshore UK, and CHC [REDACTED], to try to win contracts from these suppliers. CHC has [REDACTED].
- (c) Our analysis of internal documents set out at paragraphs 6.88 to 6.100 shows CHC monitored and responded to Offshore UK as a relevant competitor up to the time of the Merger. Similarly, internal documents from the Fisher Business also indicate its competitive monitoring, though ad hoc, mainly focuses on the three other UK incumbent suppliers, including CHC.
- (d) Contrary to Babcock and CHC's statements that Offshore UK was a weakened competitor, evidence from third parties (discussed in paragraphs 6.103 to 6.117) shows that the Parties are perceived by customers as close competitors to each other, with customers and incumbent suppliers giving them similarly high scores on closeness and overall strength. Almost all customers who responded submitted they would invite them to bid in their tenders, and the Parties would have a high likelihood of being successful.
- (e) Post-Merger, the Merged entity would be the largest supplier with a share of supply by flight hours of [40–50%] (increment of [20–30%]) based on

data for January to November 2021.²³³ On a revenue basis, the Parties had a combined share of supply of [40–50%] in 2021 (increment of [20–30%]). The Parties' shares of supply are both significant, indicating that the Parties are likely to pose an important competitive constraint on one another (see paragraphs 6.44 to 6.49).

6.148 This constraint has not been undermined by Babcock's manage for value strategy: while the strategy has led to a more careful and potentially selective approach to capacity and investment required for new contracts, Babcock's internal documents do not support that this has led it to rule out any further such investment in future and it continued to evaluate whether to bid on a case by case basis. Further, customers and competitors do not appear to have perceived any change in the strength of Offshore UK as a supplier. This indicates that rivals are likely to still take it into account when submitting bids and customers are likely to continue viewing it as a credible option, and would be likely to continue to do so in the short- to medium-term, as set out in paragraphs 6.129 to 6.146 above.

Our assessment of other constraints

Bristow and NHV

6.149 Our analysis consistently shows that Bristow and NHV impose an important competitive constraint on the Parties:

- (a) The tender analysis shows that Bristow and NHV are important constraints on both Parties, often winning tenders the Parties bid in.
- (b) As noted above, CHC reacted when customers told CHC there [REDACTED]. The analysis of CHC's approach to tenders demonstrates that CHC often [REDACTED] by other UK O&G Offshore Transportation Services suppliers. CHC's descriptions of its rationale often indicate that [REDACTED], and CHC has [REDACTED].
- (c) CHC's internal documents show that CHC takes account of the bidding by NHV and Bristow in similar way to its consideration of Offshore UK. Similarly as noted above, internal documents from the Fisher Business also indicate its competitive monitoring, [REDACTED], mainly focuses on the three other UK incumbent suppliers.
- (d) Evidence from third parties shows that Bristow and NHV are also close competitors to both Parties and pose a competitive constraint. NHV and

²³³ We note that the Merger was completed 31 August 2021.

Bristow also scored highly on closeness to the Parties and strength of offering, despite limitations in NHV's fleet.

- (e) Bristow's and NHV's shares of supply are significant and they each pose an important competitive constraint on the Parties. Bristow's share of supply by flight hours was [30-40%], and NHV's share of supply was [10-20%]. Although NHV has grown in terms of flight hours (and therefore revenue), it remains smaller in revenue terms than each of the other three incumbents at [10-20%].

6.150 Our provisional view is that Bristow and NHV are effective competitors to the Parties (albeit NHV may be stronger where only supermedium aircraft are required, and weaker where either a range of aircraft types or a heavy aircraft specifically is required). However, neither is significantly stronger or closer competitors than the other incumbent suppliers.

Current constraint from potential entrants

6.151 Our analysis consistently shows that potential competitors outside the four incumbent suppliers do not impose an effective competitive constraint on the Parties, either individually or collectively.

- (a) Competitors outside the four incumbents have negligible presence in the tender data and so do not impose a competitive constraint on the suppliers when bidding for tenders: only [X] other suppliers bid for any contract and were not shortlisted due to being very expensive and not operating in the UK.
- (b) CHC's internal documents show that CHC did not [X]. While CHC had [X] of entry in 2020, by the time of the Merger completing in 2021 CHC had come to the view there was [X]. Similarly in its internal documents, Fisher Business focused on discussing the incumbent suppliers and discussion of entrants was mainly around their weaknesses.
- (c) Evidence from third parties shows that the constraint from potential entrants is significantly weaker, with customers and incumbent suppliers giving low scores on closeness to the Parties and overall strength. While some customers submitted they would consider inviting a wider pool of participants, there were a limited number of alternatives named and these potential participants were often identified as having a lower chance of being successful given their lack of experience or current UK presence.

Overall assessment of other constraints

- 6.152 We have set out above that there are only four effective suppliers in the market and that the alternatives outside these competitors do not impose an effective competitive constraint on the Parties, either individually or collectively. The loss of Offshore UK as a competitor would significantly reduce the already very limited pool of alternatives available to customers. While Bristow and NHV are effective competitors,²³⁴ the aggregate constraint from these two suppliers would not be sufficient to offset the substantial loss of competition from the Merger.
- 6.153 As part of our assessment, we have taken into account the existing significant level of buyer power held by at least some customers in this market. This buyer power is at least partly derived from the availability of alternative suppliers to whom they could switch which buyers can use in bargaining. These alternatives will be reduced by the Merger. The Parties argued that the fact there are three suppliers on average bidding in tenders indicates that customers consider three bidders as sufficient to achieve a competitive outcome, since they would work harder at getting a fourth participant if they were not getting the pricing they want. However, this ignores that at present suppliers bid based on the assumption that all four incumbents will bid, as described at paragraph 6.9. The lack of transparency in the tender process as to how many competitors are actually bidding, [REDACTED] is a factor that drives the competitive outcomes achieved by the tender. It is therefore reasonable to expect that if suppliers know they will face at most two other effective competitors rather than three, they will face less pressure to keep prices low. On the other side, customers will be left with at most three alternatives (and in some instances only two or less), which represents the loss of a significant part of customers' available options, and which will make it less credible for them to threaten not to deal with any given supplier. This in turn is likely to lead to a significant loss of competitive constraints on the remaining suppliers.

Provisional conclusion

- 6.154 We have set out above that there are only four effective suppliers in the market and that the alternatives outside these competitors do not impose an effective competitive constraint on the Parties, either individually or collectively. We have further set out that the evidence shows that Offshore UK remains an important competitive constraint on CHC. The loss of this competitor would significantly reduce the already very limited pool of

²³⁴ Albeit NHV may be stronger where only supermedium aircraft are required, and weaker where either a range of aircraft types or a heavy aircraft specifically is required.

alternatives available to customers. While Bristow and NHV are effective competitors,²³⁵ the aggregate constraint from these two suppliers would not be sufficient to offset the substantial loss of competition from the Merger, which would lead to worsening (or failure to improve) prices and/or other non-price terms to customers.

6.155 Before provisionally concluding on whether the Merger has resulted or may be expected to result in an SLC in the market for the supply of UK O&G Offshore Transportation Services on the basis of that substantial loss of competition, we have considered in Chapter 7 whether there are any countervailing factors (specifically entry and/or expansion, including as a result of sponsored entry or self-supply, in reaction to the effects of the Merger) that could prevent an SLC arising from the Merger.

7. Countervailing factors

Introduction

7.1 As part of the assessment of the effect of a merger on competition we examine whether, in the event of worsening (or failure to improve) prices and/or other non-price terms to customers, entry by third parties would be timely, likely and sufficient to mitigate or prevent an SLC from arising. We also consider the potential for expansion by parties already operating within the market. Within this context, we examine the impact of buyer power, noting that new entry is the most likely way for buyer power 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.²³⁶ Accordingly, in this chapter we consider whether, if third party rivals do not enter or expand solely on the (price or non-price) market signals post-Merger, customers themselves may enter (self-supply) or encourage and support a third party to enter or expand (sponsored entry).

7.2 As set out in the MAGs, the CMA considers that entry and/or expansion preventing an SLC from arising would be rare,²³⁷ and will seek to ensure that the evidence is robust when confronted with claims of entry or expansion being timely, likely and sufficient to prevent an SLC from arising. It is likely to place greater weight on detailed consideration of entry or expansion and

²³⁵ Albeit NHV may be stronger where only supermedium aircraft are required, and weaker where either a range of aircraft types or a heavy aircraft specifically is required.

²³⁶ MAGs, paragraph 4.20.

²³⁷ MAGs, paragraph 8.29.

previous experience of entry and expansion (including how frequent and recent it has been).²³⁸

- 7.3 This chapter sets out the Parties' submissions on barriers to entry and expansion, potential entrants and buyer power. Next, it sets out third party views. Last, it sets out our provisional assessment on whether (the effects of) entry and/or expansion (including as a result of sponsored entry or self-supply) will be timely, likely and sufficient to prevent an SLC.
- 7.4 We note that CHC has submitted that it expects to achieve approximately \$[X] million USD of synergies as a result of the Merger, as set out in paragraph 3.70. The CMA is of the view that in some instances, mergers can give rise to rivalry-enhancing efficiencies which may prevent an SLC by offsetting any anti-competitive effects.²³⁹ The Parties have not provided evidence on whether and how these synergies would lead to any rivalry enhancing efficiencies. Further, we have limited evidence regarding the value of these savings nor whether they are merger specific. On this basis, we do not consider an assessment of synergies to be relevant to our assessment of countervailing factors.

Parties' submissions

- 7.5 The Parties' submissions fall into three key categories:
- (a) submissions on barriers to entry;
 - (b) submissions on the likelihood of entry; and
 - (c) submissions on buyer power.

- 7.6 We set each of these out in turn.

Parties' submissions on barriers to entry

- 7.7 The Parties submitted that the O&G Offshore Transportation market is 'a relatively small market with no significant barriers to entry or expansion'. They told us that additional players can enter the market or existing players can easily expand and compete if prices increase or if there is a reduction in the quality of services offered.
- 7.8 The Parties submitted that there is no incumbency advantage in this market. The Parties told us that incumbent and new entrants alike are required to

²³⁸ MAGs, paragraph 8.30.

²³⁹ MAGs, paragraphs 8.3 and 8.4.

meet the same safety standards, operate the same helicopters, use pilots and engineers with the same qualifications, and use the same third parties to provide passenger handling and on-the-ground services. Therefore, the Parties submitted, the key factor used to differentiate operators is price.

- 7.9 The Parties submitted that this focus on price gives new entrants a potential competitive edge over incumbent operators. They noted that NHV's competitive advantage comes from its single fleet operations, unlike legacy operators which use 'costly multi-fleet strategies which require them to have duplicate costs when it comes to maintenance and engineering'. The Parties submitted that NHV has therefore been able to set the competitive price point and that far from an incumbency advantage, the dynamics of the market can favour a lean and nimble entrant.

Key requirements to operate in the market

- 7.10 The Parties' submissions on barriers to entry can be categorised into the key requirements to operate in the O&G Offshore Transportation services market, being:
- (a) Helicopters;
 - (b) Pilots and crews;
 - (c) Bases; and
 - (d) Regulatory approval.

Helicopters

- 7.11 The Parties submitted that helicopters can be readily leased. They noted that while it remains possible for helicopters and potential entrants to purchase helicopters, the ability to lease helicopters means that accessing aircraft required for a particular contract can be done in short timeframes and without the sunk costs of acquiring aircraft. The Parties submitted that aircraft can be leased on a contract-by-contract basis and that it is not necessary to secure leases until after the contract has been awarded. Therefore, the Parties told us, the capital expenditure and risk associated with aircraft is greatly reduced.
- 7.12 The Parties told us that the degree to which operators have been able to negotiate coterminous lease arrangements has changed over time. The purpose of coterminous lease arrangements is to align the lease with customer and contractual obligations (including contract extensions), which may allow for the return of aircraft early.

- 7.13 The Parties told us that helicopter operators will lease additional aircraft where additional capacity is required to operate a particular contract. They told us that, accordingly, the position with regard to accessing aircraft is not necessarily any different for a potential entrant than for helicopter operators already in the UK. The Parties submitted that where a potential entrant is active in a different geographical market and has an idle aircraft (owned or leased), that aircraft can be readily redeployed between different regions.
- 7.14 The Parties submitted that the main costs associated with moving helicopters are in respect of transportation, the cost of which is dependent on the method of transportation and market rates, which they told us can vary significantly depending on the demand for container ships or large freight planes at the time of procurement.
- 7.15 They submitted that the expense related to leasing new aircraft would not operate as a barrier to entry. The Parties told us that any potential entrant who is or has been operating in other jurisdictions and/or adjacent markets will be accustomed to PCGs and it is difficult to understand why those potential entrants could not therefore accept PCGs as part of the lease where necessary to lease one or more aircraft to enter the UK O&G Offshore Transportation market.
- 7.16 The Parties submitted that there is an oversupply of assets in the market place, and that as a result the leasing market is currently highly competitive, with lessors forced to offer low rates and innovative and flexible leasing models, including leases coterminous with customer contracts. They submitted that these leasing models result in a significant reduction in risk for any new operator. The Parties also submitted that the development of new technology may give new entrants the opportunity to secure assets at favourable rates and facilitate entry into the market (ie to bring new aircraft to market) – the Parties noted the entry of NHV with the H175 and submitted that it ‘cannot be excluded that this mode of entry may occur again’.
- 7.17 The Parties told us that the vast majority of routes that are flown from UK bases can be serviced by super medium aircraft which can be deployed effectively across all of the North Sea zones. They noted the only exceptions are certain rigs in the UK that are accessed from Blackpool which are too small for super medium and heavy helicopters to land. However, the Parties told us that all UK helicopter operators in the O&G Offshore Transportation industry either own or regularly lease medium, super medium and heavy aircraft and as such availability of specific aircraft is not a barrier to entry.

Pilots and crews

- 7.18 The Parties told us that helicopter operators need pilots and crew that are suitably qualified and with requisite experience to fly in the conditions expected when flying from each base. CHC told us that it has been able to hire from the available pool of trained International Association of Oil & Gas Producers (IOGP) compliant pilots or engineers when required. The Parties told us that a new entrant could do the same and readily engage sufficiently experienced pilots and engineers.
- 7.19 The Parties submitted that often pilots continue to fly the same routes for a different helicopter operator when contracts move between operators. They told us that pilots are required to engage in ongoing training which can be provided by third party providers if the helicopter operator does not have in-house experience to do so.
- 7.20 Further, the Parties noted that where one operator wins a contract, another loses it. On this basis, the pilots and engineers required to service the contract by the incumbent operator could TUPE across to the new operator, or return to the employment market and be hired that way. The Parties noted that the market is supported by extensive third party support for services such as ground operations, passenger handling, survival equipment and fuelling, and that 'it is just as easy for an incumbent operator to avail themselves of this support as it is for a legacy operator.' The Parties submitted that all potential entrants have experience with these issues in other regions and/or adjacent markets and that the steps required in relation to staff would not operate as barriers to any experienced and motivated aviation services provider.

Facilities from which to operate

- 7.21 The Parties submitted that there are no significant barriers to enter individual bases in the UK, noting that an operator does not need to have a physical presence in a particular region in order to compete for tenders to provide helicopter transportation services in that region. They told us that O&G Offshore Transportation companies regularly transfer aircraft from one country or region to another to meet customer demands, noting a number of examples where this has occurred previously, including:
- (a) An S92 helicopter used by Bristow in Aberdeen that was used by Bristow US between 2009 and 2010, moved to Brazil in 2013, transferred to Canadian Cougar Helicopters between 2014 and 2015, moved back to the US between 2015 and 2016, then moved to Bristow Australia between 2017 and 2019 before transferring to Aberdeen.

- (b) An AW139 currently used by CHC in Humberside that was previously used by CHC in the Northern Sea (Aberdeen and Sumburgh) from October 2013 to January 2014. Prior to this, the Parties submitted that it was used in Italy and Malta from March to June 2014 and the Southern North Sea (Humberside and Norwich) from August 2017.
- (c) An H175 currently used in Aberdeen which was built in 2018 and since then has been frequently moving between Norwich and Aberdeen.

7.22 In terms of obtaining base space, the Parties told us that:

- (a) Sometimes facilities are owned by the airport or airlines operating at the relevant base, in which case a new helicopter operator would typically lease or access the facilities they require.
- (b) Alternatively, the relevant facilities may be owned by the incumbent helicopter operator or a third party, in which case a potential entrant would need to either lease the relevant facilities from the incumbent or third party or build their own facilities.

7.23 The Parties submitted that the sunk costs of acquiring facilities do not represent a barrier to entry or expansion, particularly when the acquisition costs can be spread over the lifetime of a contract or multiple contracts and, in the case of large contracts, when compared to the potential value of such contracts. They told us that the costs associated with the provision of certain facilities (eg check-in and security services) are typically passed through from the suppliers directly to the customer.

7.24 The Parties submitted that helicopter operators do not need to make significant upfront capital investments in a base prior to participating in a tender, and that customers require only an effective operational plan.

7.25 With regard to Aberdeen airport in particular, the Parties submitted that a dynamic consideration of the market demonstrates that should the Merger be cleared, it would not be necessary or efficient for both CHC and Offshore UK to operate their own terminals in the airport. Therefore, they submitted, the amount of available hangarage and terminal space will increase. Further, they submitted that Aberdeen Airport has confirmed that there are already two available hangars and that a new passenger terminal could either be built within the airport's existing footprint or constructed using modular structures.

Regulatory approval

7.26 The Parties submitted that while there are different regulatory regimes in different regions, these differences do not create any material barriers to

entry. They submitted that O&G Offshore Transportation companies are capable of meeting the relevant regulatory requirements, especially since many operators already provide services on multiple continents. They told us that while prior to Brexit operators could rely on the single market certification to operate in the UK, a UK AOC is now required to transport passengers within the UK. However, they submitted that a UK AOC can be obtained by a new entrant in a relatively short period of time (anywhere between six to 12 months) and that, in their experience, customers are prepared to delay the start of a new contract to enable a successful bidder time to set up its operations in the relevant location.

- 7.27 The Parties submitted that the CAA's own estimates of the processes are within the range of six to nine months (with potentially an even shorter timeframe when the post Brexit workload decreases). The Parties referred to the MAGs,²⁴⁰ noting that typically entry or expansion being effective within two years of an SLC arising would be considered timely by the CMA.
- 7.28 The Parties noted that all potential entrants will be companies who provide aviation services in other regions and/or adjacent markets and will therefore have high level of technical skill and experience allowing them to pull together the relevant information/requirements for the CAA to award an AOC. They told us that all potential entrants (such as Bel Air, Heli Holland, Uni-Fly, Westar and Wiking) are already in possession of a European AOC, which would allow them to start UK operations while they go through the process of seeking and awaiting the award of domestic certification. The Parties submitted their understanding that Uni-Fly is in the process of applying for its own UK AOC which it could use to enter the UK O&G Offshore Transportation Services market.
- 7.29 The Parties submitted that O&G companies can adjust the start date of a contract, for example by asking the incumbent to continue to provide its services for a few more months to give a new operator, who has been successful in the tender process, enough lead time to set up (including obtaining regulatory approvals) in order to service the contract. The Parties submitted that this explains why helicopter operators can, and do, bid for and win opportunities where they do not have a presence. Further, the Parties told us that while customers typically organise tenders by country, there are also examples of customers consolidating tenders over multiple geographic regions.

²⁴⁰ MAGs, paragraph 8.33.

7.30 The Parties noted that since Brexit there have been ownership requirements that apply in order to obtain a UK AOC but that these are very similar to the equivalent transactions under the EU rules so they do not consider them to present any substantial issues for a new entrant.

The preference of O&G companies

7.31 The Parties submitted that customer preference for an O&G Offshore Transportation services provider is not a barrier to entry. They told us that:

- (a) Price is the key parameter against which customers assess bids and award contracts, therefore the preferences of oil and gas companies do not present a material obstacle to entry.
- (b) Whilst a potential entrant may not have an existing contractual relationship with a customer in the UK, the Parties understand that customers are likely to have had interactions with those helicopter operators in other geographic markets.
- (c) To the extent that customer preference could be argued to be a barrier, it is one in the customers' control. They told us that what is of greater importance is the ability of customers to take action to reduce or remove many of the potential barriers. In particular, the Parties noted that customers could ask for bids sufficiently far in advance for a new entrant to enter the market. They submitted that a key feature of the tender process is that helicopter operators are able to bid without being active or present in a particular location.

7.32 With regard to barriers to entry more broadly, the Parties submitted that the cost of entry has 'come down substantially due to the large pool of helicopters, including distressed assets, which are available for purchase or leasing on competitive terms due to the contraction in demand for O&G Offshore Transportation Services'. The Parties submitted that 'cost of entry, the regulatory issues and the time it takes to come onto the market are not matters which create insurmountable barriers to entry' and that customers can 'if necessary, underwrite some of the required investment'.²⁴¹

²⁴¹ [Parties' response to Issues Statement](#), 4 January 2022, paragraph 5.7.

Parties' submissions on potential entrants

7.33 In their various responses, the Parties have submitted that they are of the view that entry or expansion may occur in a number of forms. In particular, they highlighted:

- (a) Potential entry by competitors from neighbouring product markets and competitors in other geographic markets.
- (b) Customer sponsored/supported entry.
- (c) Expansion by incumbents.
- (d) Evidence of recent entry.

7.34 We set out their views on each in turn.

Potential entry by competitors from neighbouring product markets and competitors in other geographic markets

7.35 The Parties told us that it is possible for players in neighbouring product markets and competitors in other geographic markets to enter and compete in the O&G Offshore Transportation market. They submitted that any operator that provides SAR services would also be able to provide O&G Offshore Transportation services and could easily lease the required assets to do so. They referred to British International Helicopters (**BIH**), a company on the list for SAR contract tenders in the UK but which is currently operating a crew change contract in the Falkland Islands. The Parties told us that BIH could compete for UK crew change contracts should it wish to do so. Further, the Parties submitted that Babcock is retaining its SAR operations so, in theory, 'particularly if market conditions were to change', it could re-enter the O&G Offshore Transportation market in due course.

7.36 The Parties suggested that Uni-Fly, a Danish helicopter operator that primarily works in the wind farm space and recently obtained the relevant regulatory approvals to operate in the EU within six months, may be willing to enter.

7.37 The Parties also told us that other global helicopter operators such as Weststar, Bel Air and Heliconia could tender for oil and gas crew contracts in the UK market should they wish to. CHC told us that it considered [REDACTED] to be a competitor on the [REDACTED] tender²⁴² that was awarded in [REDACTED].

²⁴² [REDACTED].

7.38 As set out further at paragraph 7.26 above, the Parties consider that despite changes in the rules for operation in the UK following Brexit, it remains the case that UK regulatory requirements are likely to be easier for companies operating in Europe to satisfy as the UK standards are similar to those required by the European Union Aviation Safety Agency (**EASA**). CHC referred to HeliService and Wiking, two German companies with contracts in the UK (for wind farm operations and EMS services respectively).

Customer sponsored/supported entry

7.39 The Parties also told us that the customers of UK helicopter operations are in a position to sponsor entry in the event that they become dissatisfied with the offering of the current market players. They noted that this has occurred in the past.

7.40 The Parties submitted that customers have the ability to facilitate new entry by awarding a contract to sponsor an operator seeking to enter the market, noting their view that Chevron was involved in the underwriting of NHV's initial expansion in 2016 in Aberdeen. The Parties told us that if customers truly believe the market needs another operator, they can support or sponsor entry and in order not to give customers an incentive to do so, 'CHC will have no choice but to continue to price competitively'.²⁴³

7.41 The Parties told us that if customers are not content with the incumbents and/or the levels of competition in the market then they are able to sponsor entry. They noted that this has happened previously in the UK, referring to BP's sponsorship of the re-entry of Bond in Aberdeen in 2004. The Parties also noted similar sponsorship outside of the UK, referring to Shell's sponsorship of Caverton Offshore Support Group plc into the Nigerian market.

7.42 Further, the Parties submitted that customers could ensure that there is 'sufficient time between the award of a tender and the start date of a contract to allow a new entrant to address any relevant regulatory issues'. The Parties submitted that the risk of sponsored entry 'remains a real feature of this market and the absence of such entry into the market since NHV started its operations in Aberdeen is simply a reflection of the highly competitive nature of the provision of O&G Offshore Transportation Services in the UK'.²⁴⁴

7.43 The Parties submitted that sponsorship could cover a broad range of circumstances in which a customer helps to bring a new competitor into the market. They told us that this could take the form of a customer offering an

²⁴³ Parties' response to Issues Statement, 4 January 2022, paragraph 1.4.10.

²⁴⁴ Parties' response to Issues Statement, 4 January 2022, paragraphs 5.7 and 5.8.

entrant financial support and investment, or it could take the form of a customer simply awarding a contract to an operator that is yet to establish itself in the market. The Parties submitted that this broader definition of sponsorship was in line with NHV's entry in the market.²⁴⁵

Customer self-supply

7.44 The Parties noted that there is evidence from other parts of the world in which customers have self-supplied O&G Offshore Transportation Services. CHC submitted that it understands that Exxon self-supplies in Australia and Shell self-supplies in Brunei.

Expansion by incumbents

7.45 The Parties submitted that there are no barriers to expansion by current helicopter operators active in the UK. They told us that any of the current players can win a contract when it is put out for tender. They told us that there is no substantial benefit to being the incumbent when a contract is put out to tender and contracts regularly change hands between the helicopter operators.

7.46 Further, the Parties submitted that customers can and do switch between helicopter operators within the contract term as customers typically have very flexible termination provisions and the costs for the customers of early termination of a contract are limited. The Parties submitted that CHC has [redacted] replaced [redacted] on a UK contract for [redacted] during the term of that contract, with [redacted] exercising a termination for convenience clause in its existing contract.

Recent entry

7.47 The Parties submitted that this is a market in which successful new entry has occurred in the past, noting that since NHV entered the UK market as a start-up operation in Aberdeen it 'has grown rapidly by winning a number of important contracts from major customers (eg Dana, Spirit, Premier Oil, Shell) and gaining significant market share'.²⁴⁶ The Parties noted NHV's investment in its fleet and its bases in both Aberdeen and Blackpool. The Parties submitted that the ease of entry is also reflected in the fact that NHV was able to start operating in the UK and service customer contracts with its own

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The Parties referred to an NHV press release of 19 December 2015 which stated: 'The opening of our Aberdeen base and the first Aberdeen based contract with Chevron North Sea Limited will start on the 1 January with two H175s. These are strategically very important achievements which were only possible thanks to the commitment from all our stakeholders, our employees, our customers, our partners and our majority shareholder, Ardian'.

²⁴⁶ Parties' response to Issues Statement, 4 January 2022, paragraph 1.4.9.

domestic regulatory approval (ie from outside of the UK) before subsequently obtaining full UK regulatory approval. They submitted that the ‘threat of a new operator successfully entering and rapidly expanding in the market is therefore demonstrably real and not theoretical’.²⁴⁷

- 7.48 More broadly, the Parties submitted that entry into the UK O&G Offshore Transportation Services market in its current state would not be appealing. They submitted that the market is fully saturated, and competition has driven most incumbent operators to a position where they are loss-making. The Parties noted that unless prices were likely to increase, no rational operator would enter this ‘highly competitive’ market, and that customers who are getting the prices they want may have no real interest in sponsoring entry in the present conditions.
- 7.49 The Parties submitted that an assessment of potential entry should however be based on a forward looking scenario in which prices may rise as a result of the Merger. They submitted that if, post-Merger, CHC were to attempt to raise prices then market conditions would be much more favourable to a potential entrant. The Parties told us that the most likely outcome in such a scenario is that any attempt at raising prices would simply cause a reduction in CHC’s volume of business (jeopardising its synergies) as NHV and Bristow would expand to fulfil those volumes. However, to the extent that NHV and Bristow did not directly constrain CHC, the Parties submitted that higher market prices would increase an entrant’s profit making potential and would create genuine opportunities and therefore incentives to enter the market.
- 7.50 The Parties submitted that the fact that entrants consider the market attractive when a profitable entry opportunity exists is borne out by a history of entry into the market, which has only ever occurred as a result of changing market dynamics. The Parties referred to the 2004 entry by Bond Helicopters, and the 2016 entry by NHV.

New entry and the counterfactual

- 7.51 The Parties submitted that it is not possible to maintain both that there would have been a more competitive purchaser for the Fisher Business and that the market would be unattractive to new entrants if there was a significant reduction in competition. They submitted that if being the fourth market operator is attractive enough to warrant the purchase of the Fisher Business, it would be even more attractive should there be a reduction in competition post-Merger. The Parties submitted that a potential fourth entrant would not

²⁴⁷ [Parties’ response to Issues Statement](#), 4 January 2022, paragraph 1.4.9.

choose to enter by purchasing a distressed, loss-making legacy operator burdened with onerous and uncompetitive leases. Rather, they would most likely start with a small and highly efficient operation and scale-up as required to service customers.

Parties' submissions on buyer power

7.52 In addition to setting out views on barriers to entry and likelihood of entry, the Parties submitted that their customers are powerful O&G companies which enjoy substantial buyer power. They told us that these companies are much larger and commercially stronger than helicopter operators, and that the evidence shows that customers actively switch between helicopter operators, resulting in 'dynamic shifts in contracted capacity in the market'. The Parties submitted that the exercise of buyer power is reflected in some of the onerous contractual terms 'which the Parties are forced to accept'. The Parties submitted that this transfers all of the risk and none of the reward onto the helicopter operators. They submitted that 'customers in practice rely on these terms to threaten helicopter operators to force through price reductions during the term of the agreement'. The Parties told us that customers can further push for price reductions through joint tendering (thereby reducing the number of aircraft required to service the same number of customers) and as a result of the recent decline in oil prices.²⁴⁸

7.53 In response to the Issues Statement, the Parties told us that CHC will continue to face 'powerful customers intent on squeezing costs out of the supply chain and which exert significant pressure on their transport providers, many of which, [redacted]'.²⁴⁹

Third party views

7.54 We have sought views from a number of third parties, and thus far have engaged with:

(a) 28 customers of O&G Offshore Transportation Service providers;²⁵⁰

(b) eight potential entrants (including SAR and renewables operators);²⁵¹

²⁴⁸ Note that submissions relating to the declining oil price were provided in December 2021 and January 2022, prior to significant increases in the oil price in early 2022.

²⁴⁹ [Parties' response to Issues Statement](#), 4 January 2022, paragraph 1.4.5.

²⁵⁰ We received responses to detailed questionnaires from 26 of these customers and held follow up calls with two.

²⁵¹ We received responses to detailed questionnaires from five of these potential entrants and held follow up calls with two.

(c) four aircraft lessors;²⁵² and

(d) two competitors.²⁵³

7.55 We also discussed the Merger and potential barriers to entry with the **CAA**.

Background

7.56 As set out in more detail from 6.20 to 6.25, many of the third parties that we spoke to noted that there has been a decline in the market to date. In terms of forward-looking prospects, some expected a continued decline while others suggested that demand may remain unchanged. Overall, there was not an expectation of a significant or long-term uptick in the market going forwards.

Third party views on key barriers to entry

Helicopters

7.57 We asked third parties whether it would be possible to convert aircraft currently utilised for operations such as windfarm support or SAR to support UK O&G Offshore Transportation Services.

(a) Windfarm operations

- (i) Lessors had mixed views with regard to the ability to convert aircraft currently used for windfarms to support O&G Offshore Transportation Services. One lessor was positive about the similarities, stating that 'switching between wind and O&G offshore configurations is typically simple and inexpensive'. Another lessor, however, submitted that 'it is not really feasible to convert a helicopter operating on windfarms to O&G Offshore Transportation helicopter as windfarm helicopters are generally too small for long-range passenger transportation'. They told us that an exception to this is AW139 aircraft, 'which can be used for windfarm construction and O&G Offshore Transportation' services. This view was reflected by NHV, which told us that aircraft for O&G and wind operations are 'fairly incompatible'.

(b) SAR

- (i) In contrast to aircraft used for wind operations, lessors were of the view that SAR aircraft could not easily be converted to service O&G

²⁵² We received responses to detailed questionnaires from all four of these aircraft lessors.

²⁵³ We held calls with both of these competitors and received responses to detailed questionnaires.

Offshore Transportation Service providers. They told us that SAR helicopters have additional performance and regulatory requirements, and higher equipment specifications. They told us that it is possible but not economically viable to retrofit SAR helicopters for O&G use, and some lessors told us that that, as far as they are aware, it has never been done in practice. One lessor told us that the cost of retrofitting an O&G aircraft for SAR use 'can be millions of pounds' and that the cost is less to convert SAR to O&G, but there is still some associated cost. One lessor told us that 'the cost of switching configurations for any aircraft is typically borne by the owner/lessor', while another noted that they would normally be incurred by the operator of the aircraft (ie the lessee).

- (ii) Bristow told us that for SAR aircraft 'few modifications are needed to convert it into an O&G offshore transportation aircraft'. However, the costs of making these modifications are significant, with Bristow noting that modifying a heavy SAR aircraft for O&G Offshore Transportation Services purposes 'would probably cost a seven-figure sum'. Further, Bristow noted that [REDACTED].

7.58 Incumbent suppliers and aircraft lessors indicated there are significant difficulties in adapting SAR aircraft for use for O&G Offshore Transportation services, with any such switching of aircraft not easy or low-cost to achieve. There are fewer difficulties in adapting aircraft used for transportation to wind farms, but such aircraft have limitations in their capacity and/or range. As such, some helicopters currently used for transportation to wind farms, such as the AW139, are potentially usable for specific UK O&G contracts which do not require long-range travel, significant crew transfers, or de-icing capability.

7.59 As set out in Appendix C, Bristow told us that the leasing market is buoyant and there is spare capacity, allowing operators to lease at a short notice.

Facilities/bases

7.60 With regard to access to facilities/bases, third parties that we have spoken to or received submissions from noted that the ease with which a new entrant could obtain facilities would depend on the capacity available and the base in question. For example, NHV currently runs its UK operations out of Aberdeen and it told us that in order to undertake its Aberdeen operations it was required to engage in discussions with Aberdeen airport to extend the airport perimeter in order to generate enough space for it to build its hangar. It told us that 'it can often be difficult to obtain a hanger and facilities, requiring a big capital investment compared to the operators who are already established there' although it noted the possibility of this being supported through

obtaining a contract with a customer that would 'support the growth' and potentially provide advance payments from the contract in order to support its access to facilities.

- 7.61 In terms of the potential for a new entrant to secure space in Aberdeen, NHV told us that unless new hangarage becomes available, which historically has not happened, it is 'virtually impossible' for potential entrants to set up in Aberdeen. NHV told us that it was only able to secure space by coming up with a 'creative solution, four to five years following continuous efforts to acquire real estate and approvals'. It noted that the airport fence had to be moved to secure space for NHV.

Regulatory requirements

- 7.62 With regard to regulatory requirements, NHV told us that Brexit has resulted in regulatory requirements being a key barrier to entry, noting that competitors from other geographic regions will now find it more difficult to secure UK AOCs. NHV told us that Uni-Fly services offshore windfarms on the back of CHC's UK AOC and is unlikely to enter the O&G space. [REDACTED].
- 7.63 This position was reflected in our discussion with the CAA, which noted the increase in timescales of obtaining regulatory approval for those looking to operate an AOC in the UK. The CAA noted that this could limit the scope of potential new entrants. The CAA told us that six months is the fastest realistic expectation of entry, with nine months being a reasonable average.²⁵⁴
- 7.64 The CAA also submitted that a potential entrant could temporarily undertake operations in the UK with a European AOC while their UK application is being processed. The CAA submitted that this would be the case if the potential entrant was identified as being in the period between forming a UK business and achieving an AOC. The CAA noted that while this is most likely for a European provider, it could apply to any third party provider.

Third party views on potential entry

Potential entry from neighbouring markets or other geographic markets

- 7.65 We received mixed views from third parties with regard to the potential to enter the UK O&G Offshore Transportation Services market from a

²⁵⁴ The CAA noted that this is an educated estimate, and that the grant of an Operating Licence works in parallel with the AOC to similar timelines.

neighbouring market (eg wind/SAR) or another geographic market (eg O&G Offshore Transportation Services in another country).

Competitors' views

- 7.66 NHV told us that HeliService, a German operator, had just entered the UK EMS market. It told us that HeliService is not actively operating in any of the UK O&G bases but noted that it has established offshore helicopter operations in Germany. Therefore, NHV was of the view that once HeliService receives UK approvals, it would be a potential competitive threat in the UK. Similarly, NHV noted Wiking, a German offshore operator, supporting offshore windfarms in Wick and towards Lowestoft for offshore windfarm services as a potential player in the UK market. NHV told us that these companies operate 139s in Germany, and it believed that if the right opportunity arose, involving a 139 and the right contract, these companies 'would seize it'. NHV told us that it was not aware of whether these companies are currently bidding for any contracts in Aberdeen but confirmed that they bid for a large O&G contract in Norwich about two years ago.
- 7.67 NHV told us that it does not think any other operators would enter the O&G market. It told us that unless the right contract presented itself, involving economies of scale, multiple aircraft and more lucrative rates, the current net margins would make it difficult for more established operators from other markets to enter. NHV told us that inflation is at an 'all-time high', there are increases in supply chain costs and pressure on labour costs. Customers have put pressure on operators to 'freeze' rates. This results in a 'squeeze' in the bottom line, and current market conditions have stopped potential expansion. However, [✂].
- 7.68 Bristow highlighted three potential entrants that have the potential to enter the UK O&G Offshore Transportation Services market. It told us that Gama has publicly shown an interest in moving into the O&G Offshore Transportation Services market. Bristow also told us that, as supporters of offshore windfarm operations, Uni-Fly and Wiking 'will have the capability to provide offshore O&G support alongside wind' and that it would just involve a 'different technique in terms of landing on turbines vs O&G platforms'. Bristow continued by telling us that 'it is not beyond their capability to enter this market if they chose to do so'. However, Bristow told us that it does not think that they are currently likely to do so, noting decline in the market.

Views of third parties identified as potential entrants by the Parties

- 7.69 We asked potential entrants whether they would consider entering the UK O&G Offshore Transportation Services market, or whether they have

considered it in the past. Further, we asked the potential entrants under what conditions they would (or have) considered entering the market. As set out in more detail from paragraph 31 of Appendix E, of the eight potential entrants who responded to our information requests, most submitted that they are not interested in entering the UK O&G Offshore Transportation Services market. The third parties cited the market not being a 'viable proposition', an inability to achieve sufficient scale, the market not being a primary area of focus, and low profitability as reasons for their lack of interest.

- 7.70 One third party submitted that it would consider entering the UK O&G Offshore Transportation market 'if customers focused more on high service, reliability and safety than price'. Another told us that it has considered entering the market and has bid on opportunities to enter it, but has lost these bids as a result of lack of experience. The potential entrant told us that it was unable to compete effectively due to the high bar being set for new entrants coming into the market, including set-up costs, asset and facility costs, TUPE exposure, years of offshore experience etc. It submitted that 'simply, larger organisations with economies of scale are able to use price to defend contracts such that it is unattractive for a mid-tier player to take the commercial risk'. The potential entrant told us that it 'would not at this time consider entering this market'.
- 7.71 One third party identified as a potential entrant submitted hypothetical estimates of timeframes to entry being two to three years. One of these parties noted that obtaining an AOC and hangar facilities (which it flagged as particularly difficult in Aberdeen) would contribute to this timeline. Another third party identified as a potential entrant told us that it would be possible to reduce the timeframe of entry to one to two years, but that this would only be possible if the supplier already had a fleet that could support O&G Offshore Transportation Services and knowledge of the UK market (including the CAA's regulatory regime). It noted that, even then, it would not be easy to enter.

Customer sponsored entry

7.72 [REDACTED] told us that there has been evidence of customer-sponsored entry:

(a) [REDACTED].

(b) [REDACTED].

7.73 We note that NHV does not support the notion that its entry into the UK O&G Offshore Transportation Services market was supported by

customers/lessors. NHV submitted that Chevron was its first Aberdeen customer, [REDACTED]. It submitted that [REDACTED].

7.74 We asked customers whether they would consider supporting a new supplier to enter the UK O&G Offshore Transportation Services market, under what conditions they would do so, and what the challenges would be. Of the customers from whom we obtained responses none noted an appetite to support a new entrant in the market via sponsorship. Rather, the majority (sixteen) of the customers from whom we received responses submitted that they would be willing to 'support' a new entrant by considering their bid. Five customers submitted that they would not consider supporting a new entrant. Some customers submitted that they would consider bids from a new potential entrant only if they had a proven safety and service track record, or were able to offer competitive rates. Customers also indicated that they would be less likely to award contracts to new entrants/bidders over the incumbents, due to them having no UK O&G presence or track record. Two customers submitted that they might be willing to support a new entrant by providing specific support (eg providing specific contract terms or guaranteeing leases) if:

(a) 'the current level of supply was poor, or there was a monopoly in the market driving up prices, as has been the case in past'²⁵⁵ or

(b) 'there is clear demand in the long term'.

7.75 The customers identified a number of challenges in supporting a new entrant, including: (i) the high cost of entry; (ii) the time that it would take for a new entrant to 'fully enter' the market, 'so tendering would need to be done years in advance', which may not always be feasible;' (iii) the view that it is hard for an entrant to build up enough scale to undertake a contract; and (iv) that falling activity levels in the region are leading to reduced demand.

Customer self-supply

7.76 We asked customers whether they would consider self-supplying O&G Offshore Transportation Services and if they have considered this in the past. We asked them under what conditions they would self-supply, and what they consider the key challenges to self-supplying to be. Almost all said that they would not consider self-supplying O&G Offshore Transportation Services. Their reasoning included that: (i) it is not their core business; (ii) it would involve significant set-up costs and investment in infrastructure; (iii) it is a

²⁵⁵ The customer confirmed that this would only apply if the helicopter support was down to two suppliers, but that this is not expected to be the scenario with three suppliers. It told us that it has successfully operated with three suppliers for many years, 'and feels that this is the right level given the size of the market, certainly in Aberdeen'.

specialist area that requires expertise; (iv) it would not add value to their business; and (v) it is a highly regulated area.

7.77 Both [X] and [X] submitted that they had considered but eventually rejected the idea of self-supplying UK O&G Offshore Transportation Services:

(a) [X] told us that it had considered self-supplying, but that this was due to its [X] exploring every avenue to find lower cost options. However, [X] told us that it does not consider that this would have actually occurred in practice.

(b) [X].

7.78 Bristow reiterated the views of the customers. Bristow told us that ‘historically, it was not unusual for oil companies to buy or lease aircraft, although this has not been done in the last few years’. It told us that, in its experience, ‘oil companies are now focusing on their core business – taking oil out of the ground and relying on third parties to provide them with ancillary services’. Bristow told us that the opportunity for either sponsored entry or self-service exists and that from its perspective ‘this does not seem infeasible’.

Recent entry

7.79 NHV was identified by the Parties as an example of recent successful entry in the market. NHV told us that its growth and success was partly due to the failure of the Airbus Helicopters 225 aircraft (previously Eurocopter EC225 Super Puma). It noted that it entered the market with a significant 175 aircraft fleet, and when the 225 aircraft was grounded (following the crash of CHC Helikopter Service Flight 241²⁵⁶), NHV was in a strong position in the market. NHV told us that this strong position enabled it to obtain relevant facilities. It told us that despite Aberdeen Airport’s capacity constraints, the airport was open to negotiations with NHV as a result of its available fleet. NHV told us that it would be difficult for another operator to replicate this approach to entry in Aberdeen (as set out at paragraph 7.60 above), unless one of the other operators gave up hanger space.

7.80 With regard to new entry, the CAA referenced NHV’s recent entry, noting that it indicated that there may not be significant barriers to entry in the market. However, it told us that there were questions over the long-term future of the market, which could limit the incentives for and likelihood of entry. The CAA told us that, while it is not an impossible market to enter ‘if competition were to

²⁵⁶ See further details here: [CHC Helikopter Service flight HKS241 – Aviation Accidents Database \(aviation-accidents.net\)](https://aviation-accidents.net).

reduce and there were to be significant profits available', it would not be 'quick or immediate'. Further, it told us that 'there doesn't seem to be anybody waiting in the wings to enter at short notice'.

Our provisional assessment of entry and/or expansion

Barriers to entry

- 7.81 Contrary to the Parties' submissions, there is evidence 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 Offshore UK's strength relative to its competitors refers to passenger terminals and hangars in Aberdeen and leased fleet as '[REDACTED]' and to North Sea crew change management, operation, and technical personnel as [REDACTED].
- 7.82 As noted in our discussion with Uni-Fly, while it is possible to lease key assets such as helicopters, significant financial commitments are required in order to secure such leases. Uni-Fly noted that lessors require security capital to secure the lease, which in turn restricts the ease with which a new entrant could obtain access to relevant assets. This is evidenced by the c.£ [REDACTED] million of PCGs guaranteed by CHC (previously Babcock) to support the Fisher Business and secure its access to leased aircraft. We note the Parties' submission (as set out at paragraphs 7.14 to 7.16 above) that financial commitments for leases, such as PCGs, are not a barrier to entry, particularly for operators who operate within the aviation industry (either in associated services or other jurisdictions) and which are used to such agreements. However, we are of the view that it does not follow that having experience of PCGs will lead to a potential entrant being willing to agree to any level of PCG in order to secure a lease. The financial liability associated with such a PCG would be an additional consideration for potential entrants in leasing helicopters and entering the market. Further, we note that while lessors may have an increased willingness to offer better terms to UK O&G Offshore Transportation Service providers in a market where there is increased helicopter capacity, this does not lead to a direct reduction in the financial security that they will require to protect themselves against the risk of default by a lessee. On this basis, the financial obligations associated with leasing aircraft remains a barrier to entry to lessees.
- 7.83 Where potential entrants already own or lease helicopters, eg in neighbouring product markets, we received mixed views as to the ease with which the helicopters could be converted to supply O&G Offshore Transportation Services. In either scenario, modifications would be required to adjust the

helicopter and potentially significant costs would be incurred as a result, thereby increasing the barriers to entry.

- 7.84 Further, we note that even where entrants may have access to helicopter assets, they require hangar facilities in order to store, maintain and operate said helicopters from. The evidence put forward by the Parties with regard to facilities suggests that hangar space is easy to obtain; however, this is not consistent with the views put forward by third parties. We are of the provisional view that while it may be reasonably straightforward to obtain hangar space in locations where there is additional capacity, or where a party is taking over operations from another exiting party, this is not always the case.
- 7.85 We recognise the points raised by the Parties with regard to capacity at Aberdeen Airport, but note that the evidence indicates in general terms that new entrants are constrained in their ability to obtain relevant facility/base space. With regard to the point made by the Parties at paragraph 7.22(b) above regarding the ability for facilities to essentially be exchanged between incumbents and new entrants on the win or loss of new contracts, we note that it does not follow that there will necessarily be sufficient facility/base capacity. The argument made by the Parties only holds in scenarios where contracts and bases can be exchanged directly between Parties, which may not be the case, for example if an incumbent held two contracts which it lost, which were then obtained by two separate new entrants or the incumbent had other contracts which required to be serviced from that base.
- 7.86 As such, we are of the view that capacity constraints may still limit a new entrant in obtaining the relevant facilities or bases. Further, we note that significant costs may be incurred to ensure that facilities/bases are fit for purpose, and where these facilities are leased, significant financial guarantees may be required to support lessors' confidence. We also note that the timeframe over which it can take to obtain the relevant facilities may not be sufficient, for example we understand that it took NHV four to five years to obtain the relevant facilities at Aberdeen Airport.
- 7.87 The Parties' internal documents discussing the possibility of potential entrants bidding for particular contracts sometimes refer to their lack of UK assets as weaknesses, and some third party customers submitted that the O&G Offshore Transportation Services market has high or significant barriers to entry.
- 7.88 The changes in regulatory requirements following Brexit have increased the requirements on companies looking to enter the market in the UK, thereby increasing barriers to entry. Suppliers are required to obtain a UK AOC in

order to charge to fly passengers to and from O&G platforms. The ability for a supplier to fly in the UK on a European AOC (as was the case when NHV entered the UK market) has been limited following Brexit. As noted by the CAA at paragraph 7.64 above, this would be possible only in the scenario when an operator from outside the UK was in the period towards obtaining a UK AOC. 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. The customer estimated that obtaining a UK AOC takes approximately 12 to 24 months (which is significantly longer than suggested by the Parties), which it felt could eliminate prospective operators and noted that the European Aviation Safety Agency's AOC is not sufficient.²⁵⁷ Discussions with the CAA demonstrated that there are significant complexities associated with obtaining an AOC, including the need to demonstrate detailed compliance and experience to support the licence.

- 7.89 We note that the Parties dispute a timeframe of 12 to 24 months to obtain an AOC, pointing to a shorter timeframe of six to nine months, which they note could be shortened following a reduction in Brexit related work undertaken by the CAA. We are of the view that the time to entry would vary across different potential entrants depending on their experience and technical capabilities. We note that the timeframe of getting through the AOC process may, for some potential entrants, be as short as six months. However, we note that to engage in the process of obtaining the AOC, the entrant must already be in a position to demonstrate its ability to meet all of the relevant regulatory requirements, which is likely to increase the overall timeframe to entry.
- 7.90 With regard to the Parties' view that customer preference is not a barrier to entry, we recognise that contracts are won through a tendering process which means that price is likely to be a significant factor in how parties within the UK O&G Offshore Transportation Services market obtain customers. However, we note that customers have identified track record and experience as a factor in their decision making (as set out at paragraph 7.74), therefore potentially customer preference may negatively impact the ability for new entrants to win contracts, thereby increasing the barriers to entry. The criteria customers use to evaluate tender bids is set out in more detail in Appendix D.
- 7.91 On this basis, we are of the provisional view that while barriers to entry are not insurmountable in the context of the key assets required to operate in the UK O&G Offshore Transportation Services market, they are sufficiently

²⁵⁷ The customer noted that this was an estimation and could change based on a number of factors.

material to constrain the timeliness, likelihood or sufficiency of any potential entry.

Likelihood of potential entry and/or expansion (including as a result of sponsored entry or self-supply)

Overall market decline and low margins

- 7.92 In addition to considering the ability to enter (or expand) in the UK O&G Offshore Transportation Services market, we also consider whether potential rivals (or current competitors) have the incentive to enter (or expand within) the UK O&G Offshore Transportation Services market.²⁵⁸ In doing so, here we set out our view on the likelihood of entry in the O&G Offshore Transportation Services market.
- 7.93 The Parties and third parties²⁵⁹ submitted that there has been a decline in the O&G Offshore Transportation Services to date, with uncertain forward-looking prospects but no expectation of a significant or long-term uptick. This downturn was precipitated by a ‘dramatic decline in oil prices since 2014 and general uncertainty in the energy market’. 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’. 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.²⁶⁰ We are aware that two of the four current participants in the market have recent been through Chapter 11 bankruptcy proceedings, and that poor financial performance and price squeezing is being experienced across the market. Our analysis of the Parties’ financial situation is set out in Chapter 3.
- 7.94 In our view, the perspective of a new entrant is different from that of an incumbent player in the market. As noted at paragraph 6.26, we are of the view that while demand for O&G Offshore Transportation Services is in long-term decline, in the short- to medium-term demand is likely to remain broadly stable. While long-term decline is not anticipated to impact current competitive conditions in the market, we consider that a new entrant will be less incentivised to enter the market as a result of a reduced prospect of long-term growth. We are therefore of the provisional view that the combination of a decline in the market to date, an unclear path to recovery of the O&G market,

²⁵⁸ MAGs, paragraph 8.35.

²⁵⁹ See paragraphs 6.20 to 6.25.

²⁶⁰ See for example [REDACTED] which notes that [REDACTED]. [REDACTED] stating that [REDACTED]. See also [REDACTED] which notes that [REDACTED].

alongside low margins and barriers to entry means that it is unlikely that new entrants will be looking to enter the market. Similarly, we do not expect to see significant expansion in the market, with capacity constraints and significant financial backing required to obtain helicopters, even where leased, which is less likely in a market with low margins and low growth prospects. As noted at paragraph 7.80, the CAA pointed out that there could be entry if significant profits became available, but the likelihood of an improvement in financial returns to support such entry seems low based on the evidence we have received.

- 7.95 However, we note that this differs from the investment required by incumbents to continue operating in the market or the likelihood of an existing operator in the market being acquired by a new owner. Where these players already have the relevant assets/licences etc, we consider that they will be able to continue operating and bidding for contracts – we set this out further at paragraph 7.112 below.

Lack of evidence of customer sponsorship/self-supply

- 7.96 As set out from paragraphs 7.72 to 7.78 above, there is a lack of evidence that customer sponsorship or self-supply would be likely.
- 7.97 While Bond Brothers were sponsored to enter in 2004, we note that this was a significant time ago and we have not seen evidence to suggest that similar sponsorship would be expected to occur in the near future. Further, there are mixed views on the recent assertions of customer sponsorship in the market – for example, the Parties [redacted] are of the view that NHV was sponsored into the market in 2016, but this claim is disputed by NHV itself.
- 7.98 Almost all of the customers that we received submissions from said that they had no intention to self-supply (including in a forward looking assessment), and even those which had considered it had only done so as a last resort or to exhaust all potential options. We received no evidence that customers would be willing to bring O&G Offshore Transportation Services in-house and ‘self-supply’ UK O&G Offshore Transportation Services. As noted at paragraph 7.74 above, two customers referenced an increase in price as potentially leading to customer sponsorship, but they noted that this would be in the context of a reduction in quality or a monopoly market, or of clear long-term demand.

Lack of evidence of interest from potential entrants

- 7.99 Regardless of any barriers that potential entrants may face in obtaining the relevant assets to operate in the UK O&G Offshore Transportation Services

market, we note that the majority of potential entrants that we engaged with told us that they do not have an interest in entering the market. We note that this includes a forward looking/dynamic assessment of the market, in the context that we asked potential entrants under what conditions they would consider entering. Almost all indicated that there were no conditions (ie including higher prices) under which they would consider entering – we note that in making this assessment, potential entrants would also consider the effect of their entry, eg their ability to push prices back to the level in the counterfactual, which may not be sufficient to combat any price rises resulting from the Merger. Only one potential entrant indicated it would have any such interest in entering, and its limited efforts so far had been unsuccessful.

7.100 This was consistent with the CAA's lack of knowledge of any current potential plans for new entry. Further, as set out in more detail in Appendix D, we have found no instances of new suppliers winning contracts since 2017. Further, we have found only one instance of a new supplier bidding for a contract since 2017.²⁶¹ As such, we are of the view that potential entrants operating either within neighbouring markets (such as supporting the renewables industry or operating SAR aircraft) or other geographic regions (ie operating O&G Offshore Transportation Services in jurisdictions outside the UK) are not likely to enter the market in a timely manner.

Recent entry not indicative of future trends

7.101 NHV's entry arose from a fairly unique set of circumstances as the Parties themselves acknowledge. The success of NHV's entry was linked to its introduction of a new helicopter type, the super medium H175, during a time when there was a gap in heavy aircraft due to the grounding of the EC225. It seems unlikely that such specific circumstances will be replicated.

7.102 The sponsored re-entry of Bond Brothers 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.

Forward looking consideration

7.103 We note the Parties' position (as set out at paragraphs 7.49 and 7.50 above) that if prices were to increase in the market as a result of the Merger, then entry may be more likely as a result of increased profitability. We recognise

²⁶¹ See more detail on our tender analysis in Appendix D.

that there has been previous entry into the market in the past, but do not consider that this points to future entry, particularly in the context of:

- (a) Bond Brothers' entry occurring in a significantly different market environment, prior to both the 2008 financial crisis and the significant drop in the oil price since 2014; and
- (b) the particular circumstances under which NHV entered the market.

7.104 We are of the view that these examples are not necessarily replicable and are not likely in the context of the submissions that we have received from third parties.

7.105 As set out above, third parties have not expressed an interest in entering the market under any conditions, ie even if prices were to rise and profits were to increase. It is not clear that any entry would be sufficient to combat an increase in prices resulting from the Merger. Further, as noted at paragraph 6.26, while we do not expect a rapid decline in demand in the short-term, this is a market which is in long-term decline. In this context, the expectation is that prices will fall over time and an SLC would therefore not require prices to rise, but only to fall more slowly. We have noted that there is an absence of entry at current price levels, and are of the view that this would continue even if the SLC resulted in prices falling less quickly rather than rising.

7.106 Our analysis in Chapter 6 demonstrates that NHV had a number of years with negligible presence and its share only topped 10% in 2020, following at least four years of operating in the market. We are of the view that entry needs to be timely to have the effect of remedying an SLC. We consider that the timeframe over which NHV entered the market is not sufficient to demonstrate that a new entrant could replace the significant lost constraint of the Fisher Business within a timely period. More broadly, we note the position set out in the MAGs that it is not just a case of entry or expansion occurring in a timely manner but the effectiveness of that entry or expansion on market outcomes being timely that we consider,²⁶² and that small scale entry that is not comparable to the constraint eliminated by the Merger is unlikely to prevent an SLC.²⁶³ In this context, and with consideration of the position presented to us by third parties, we are of the view that even if new entry were to occur, it is not likely that it would be sufficient to replace the constraint that Offshore UK exerts in the market.

²⁶² MAGs, paragraph 8.33.

²⁶³ MAGs, paragraph 8.39.

Overall provisional view on likelihood of entry and/or expansion (including as a result of sponsored entry or self-supply)

- 7.107 Our guidelines note that entry and/or expansion preventing an SLC from arising would be rare.²⁶⁴
- 7.108 Taking account of the barriers to entry identified above, and based on the evidence we have received and our assessment set out at paragraphs 7.92 to 7.106 above, we are of the provisional view that there is a lack of evidence to demonstrate an incentive for operators in other geographic regions or neighbouring markets to enter the UK O&G Offshore Transportation Services market. There is a lack of evidence of customers considering sponsoring entry or self-supply. Further, parties identified as potential entrants have made clear to us that they are not interested in entering the UK O&G Offshore Transportation Services market. This is the case based both on the current market conditions, and with consideration of other scenarios (eg increased prices/profitability) that may prompt entry. This is reflected by our discussions with the CAA, which noted that it is not aware of any current potential entrants actively trying to enter the market.
- 7.109 Having provisionally found that entry and/or expansion (including as a result of sponsored entry or self-supply) will not be likely, there is no need for us to consider whether it would be timely and sufficient. However, to the extent that any entry were to occur, in view of the evidence set out above we do not consider that it would be timely nor sufficient to replace any constraint lost by the Fisher Business no longer operating in the market.

Provisional assessment of buyer power

- 7.110 The key method by which buyer power could prevent an SLC from arising in this market is via entry including customer sponsored entry/self-supply. However, as set out at paragraphs 7.96 to 7.98, we are of the provisional view that entry and/or expansion (including as a result of sponsored entry or self-supply) will not be likely.
- 7.111 On this basis, and for the reasons set out in Chapter 6, we are of the provisional view that the buyer power identified by the Parties would be unlikely to effectively resolve any lessening of competition that would occur as a result of the Merger. In this context, the choice available to customers would reduce, which in turn would reduce their ability to exert buyer power on the competitors within the market.

²⁶⁴ MAGs, paragraph 8.29.

Perceived tension with the counterfactual position

7.112 As set out at paragraph 7.51 above, the Parties submitted that there is a tension between our position on new entry and the views set out in Chapter 5 regarding the counterfactual position.

7.113 First, we note that (as set out at paragraph 7.105 above), a company considering organic new entry will want to see a prospect of long-term profitability before entering the market. In this market, for the reasons set out above, we do not expect any new entry to be likely and, to the extent that any such entry occurs, it is likely to be insufficient to replace the constraint provided by the Fisher Business so as to prevent an SLC from arising.

7.114 Further, in assessing entry and expansion as countervailing factors, we are not only assessing whether there will be some entry or expansion, but whether it will prevent or mitigate the SLC that we have found. As set out in our provisional views above, we are of the view that entry or expansion to mitigate the SLC would not be timely, likely and sufficient. The assessment within the countervailing factors assessment is different to the question of whether a potential purchaser would buy the Fisher Business. As set out in Chapter 6, we are of the view that the Fisher Business is an effective competitor which has a value based on its position as an established business with a pre-existing reputation, track record, asset base and customer contracts.

Provisional conclusion on countervailing factors

7.115 In view of our provisional assessment of barriers to entry and of the likelihood of entry and/or expansion (taking into account of, among other things, the circumstances of the relevant market, evidence of customer sponsored entry or self-supply, evidence of interest from potential entrants to enter the relevant market based obtained from customers and third parties identified by the Parties as potential entrants), we have provisionally concluded that entry or expansion (including as a result of sponsored entry or self-supply) would not be likely to prevent an SLC from arising.

7.116 As set out above, we have not seen evidence of rivalry-enhancing efficiencies.

8. Provisional conclusions

8.1 As a result of our assessment, we provisionally conclude that the completed acquisition by CHC of the Fisher Business has resulted in the creation of a relevant merger situation (RMS).

8.2 We also provisionally conclude that the creation of that situation has resulted, or may be expected to result in an SLC in the UK O&G Offshore Transportation Services.