

## RESPONSE TO NOTICE OF POSSIBLE REMEDIES

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

### 1 Introduction

- 1.1 The CMA's provisional findings report published on 18 March 2022 ('PFs') concludes that the Transaction may be expected to result in a substantial lessening of competition in the UK O&G Offshore Transportation Services market. This finding is based on the CMA's provisional conclusion that the Parties are important competitive constraints on each other and that a reduction in the number of helicopter operators from four to three would have a substantial competitive impact on the market. This conclusion has been reached despite clear findings of fact by the CMA that negative market dynamics (including excessive price pressure resulting in fierce competition for loss-making contracts) will continue to prevail and prices will continue to fall even if the merger is cleared.<sup>1</sup>
- 1.2 CHC is addressing in a separate response the errors of analysis, contradictions and incorrect assessment of the evidence which appear to have driven those conclusions. That response will demonstrate that no remedies are required and that the competitive dynamics will continue to benefit customers with three players operating on the market.
- 1.3 Nonetheless, and as requested by the CMA, CHC is using this opportunity to respond to the Notice of possible remedies ('NPR'). Given the interdependence of the CMA's concerns and its remedy proposals, it is also CHC's intention to submit its response to the PFs in advance of the response hearing, so that the issues can be considered together, and this paper and the proposals contained within it can be put in their proper context.

2 [X]

2.1 [X].

2.2 [X].

2.3 [X].

2.4 [X].<sup>2</sup> [X].

2.5 [X],<sup>3</sup> [X].<sup>4</sup>

2.6 [X].

### 3 Proposed remedy options

- 3.1 Should the CMA maintain that the Transaction is likely to lead to a substantial lessening of competition, it should not pursue the remedy option highlighted in paragraphs 18 and 19 of its NPR involving a divestiture which would "include [X] Offshore UK [X]".<sup>5</sup> Such a remedy would not only be disproportionate but would

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<sup>1</sup> The CMA accepts that the market in which CHC is operating is declining (Summary of the PFs, paragraph 24) and that its expectation is that "prices will fall over time" (PFs, paragraph 7.105) resulting in a lack of incentive for potential entrants to enter the market. In light of this, the CMA provisionally found that "entry and/or expansion (including as a result of sponsored entry or self-supply) will not be likely" and therefore would not mitigate the SLC (PFs, paragraph 7.109)

<sup>2</sup> [X].

<sup>3</sup> NPR, paragraph 27 (referring to the CMA's Merger Remedies Guidance, paragraph 3.8 and 3.9)

<sup>4</sup> NPR, paragraph 9 (quoting CMA's Merger Remedies Guidance, paragraph 3.4)

<sup>5</sup> NPR, paragraph 18

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also not resolve the CMA's competition concerns. Instead, and consistent with its own Merger Remedies Guidance, the CMA should select the least costly and intrusive remedy that would be effective and not disproportionate in relation to the SLC and its adverse effects.<sup>6</sup>

- 3.2 The CMA must not impose a remedy which is [X]. It should recognise that any remedy designed to re-introduce a fourth operator into the market must balance the objectives of [X].

## A Option 1: Eliminating the alleged barriers to entry

- 3.3 If the CMA ultimately requires a remedy, the least costly and intrusive remedy that would effectively address the concerns set out in the PFs is a structural remedy that would eliminate the barriers to entry identified by the CMA.

- 3.4 As noted in paragraph 10 of the NPR, the CMA must consider the extent to which different remedy options would be effective in remedying, mitigating or preventing the SLC or any resulting adverse effects that have been provisionally identified. Although CHC disagrees with the CMA's assessment that it could take 12-24 months to obtain an AOC and that "*new entrants are constrained in their ability to obtain relevant facility/base space*" at Aberdeen Airport,<sup>7</sup> a structural remedy designed to eliminate these specific barriers would facilitate immediate market entry and would reduce the investment associated with such entry. This would sufficiently and effectively address the CMA's concerns.

- 3.5 On this basis, CHC would propose to offer to divest the existing UK AOC of the Fisher Business and, if required, a hangar in Aberdeen to a suitable purchaser. This would enable an experienced operator to quickly become a credible competitor able to bid for tenders in the market. Dealing with two other perceived barriers which the CMA identifies:

3.5.1 the AOC would necessarily be transferred together with its Postholders, including pilots and other individuals in charge of airworthiness, ground operations and safety, who must transfer in order to fulfil the regulatory requirements of the AOC; and

3.5.2 as the CMA is aware, there is current spare helicopter capacity in the leasing market, which means that aircraft would be immediately available at attractive rates.

- 3.6 In this context, the CMA may be aware that CHC has already been approached by third parties [X] all of whom appear to have a genuine interest in entering the UK O&G Offshore Transportation Services market. One of the operators, [X].

- 3.7 [X] affirmative steps to enter the market, as well as the other enquiries CHC has received [X], are inconsistent with the CMA's 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*".<sup>8</sup> It also means that the remedy required to get a new entrant, whether [X] or another operator, into a position where it can operate immediately following the divestment period is far less than the CMA is currently envisaging. Again, taking [X] as an example, it has the expertise, financial support [X] and experience to set up an operation in the UK in short order.

## B Option 2: Transferring a right sized and self-standing business

- 3.8 If removing the specific barriers to entry identified by the CMA were to be considered insufficiently attractive to a new entrant, CHC would be willing to consider the possibility of addressing the CMA's concerns by disposing of a self-standing business. This would require the identification of a "*viable, stand-alone business that can compete successfully*",<sup>9</sup> [X].

- 3.9 It is against this background that CHC has explored the possibility of creating a divestment package that could include one or two [X] contracts of the Fisher Business. This second remedy option would result in CHC transferring to a suitable purchaser a self-standing and revenue generating business that could initially, for a short period, be supported by any necessary transitional services [X], and that would be able to operate on an independent basis within a short time thereafter. The recent experience of other operators in this market demonstrates that having one contract is sufficient to enable a new operator to enter the

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<sup>6</sup> NPR, paragraphs 8 and 9 (quoting CMA's Merger Remedies Guidance, paragraph 3.4)

<sup>7</sup> PFs, paragraphs 7.85 and 7.89

<sup>8</sup> PFs, paragraph 7.108

<sup>9</sup> CMA's Merger Remedies Guidance, paragraph 5.7

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market and expand successfully: NHV entered in Aberdeen in 2016 with just one contract as did [REDACTED] as noted in paragraph 3.6 above, and there are no reasons to suggest that this strategy would not be successful again.

- 3.10 If the CMA is to require some sort of business divestiture, CHC urges it to recognise [REDACTED].
- 3.11 For this reason, it is essential that the divestment business [REDACTED] to provide an attractive opportunity for a new entrant which would enable it to obtain investment and compete effectively against the existing operators for the upcoming tenders that presently exist within the market.
- 3.12 A remedy in which CHC divests [REDACTED] contracts together with the existing UK AOC of the Fisher Business (which as explained will be transferred together with the relevant Postholders who are necessary to ensure that the regulatory requirements continue to be met), and a hangar or other facilities at Aberdeen airport, would provide a potential purchaser with what the CMA appears to be seeking: a *“viable, stand-alone business that can compete successfully”*<sup>10</sup> [REDACTED]. The scope of this proposed remedy would also be consistent with the CMA’s assessment that tenders are smaller than they previously were, with very few tenders now requiring more than one helicopter.<sup>11</sup>
- 3.13 This divestment package would include everything which is necessary to operate any contract(s) being divested, including the required helicopters, pilots, appropriately qualified engineers, and any relevant maintenance capabilities. The purchaser would therefore have everything required to be a credible bidder for future tenders and would readily be able to lease any additional helicopters for such tenders given the spare capacity in the lessor market. The CMA has acknowledged such spare capacity in the PFs, noting that it *“gives suppliers the opportunity to take on assets at lower prices or reduces the cost to a new supplier to enter”*.<sup>12</sup> In the same way that it would be able to compete for new tenders, the purchaser could also make unsolicited bids to win existing work from other market players.
- 3.14 [REDACTED].<sup>13</sup> [REDACTED].
- 3.14.1 [REDACTED].
- 3.14.2 [REDACTED].
- 3.15 In CHC’s view [REDACTED], selecting the contract(s) referred to above, [REDACTED] that is attractive to prospective purchasers who would be credible bidding in future tenders. This divestment package would result in a business with [REDACTED] and experienced postholders (including pilots) [REDACTED]<sup>14</sup> and would provide a platform from which to grow in both the O&G Offshore Transportation Services market and the SAR and EMS markets, if so desired.
- 3.16 [REDACTED].
- 3.17 In CHC’s view, a divestment within the parameters outlined above would be sufficient to enable the divestment business to compete in all of the tenders that CHC understands will be taking place over the next five years (a list of which is provided at Annex 1 to this response). As the tenders in this market are getting smaller and customers require fewer helicopters than before, a more streamlined fourth player is therefore more likely to provide a sustainable ongoing competitive constraint on the market.
- 4 Finding a suitable purchaser**
- 4.1 In sub-paragraph 19(c) of the NPR, the CMA invites views on the risks that a suitable purchaser is not available for the divestment business. This is not a risk that CHC recognises for the divestment options that it has outlined above since [REDACTED] potential purchasers have expressed an interest in acquiring assets and/or a business that CHC may have to sell and [REDACTED] have indicated that a carve out of certain assets may be sufficiently attractive to them. In addition and as noted above, [REDACTED].
- 4.2 In each of these cases, the potential purchasers would be independent of CHC once the divestment process has completed, would have the necessary expertise and capability to compete, and would have

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<sup>10</sup> CMA’s Merger Remedies Guidance, paragraph 5.7

<sup>11</sup> PFs, paragraph 6.6 and footnote 221

<sup>12</sup> PFs, paragraphs 6.39, 6.42 and 6.43

<sup>13</sup> A similar approach has been taken by the CMA in other cases, for example, *Rentokil Initial/Cannon Hygiene*

<sup>14</sup> PFs, paragraph 6.42

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incentives to operate the divestment business as an effective competitor to CHC. None of the proposed purchasers outlined above would create any further competition concerns, although the position may be different if assets outside the UK O&G Offshore Transportation Services market are added to the divestment package (discussed further in section 5 below). As such, CHC does not foresee a risk that a suitable purchaser will not be available for the right-sized package that it proposes to divest. [REDACTED].

- 4.3 The CMA has also invited views on factors that should be considered when assessing purchaser suitability including regulatory requirements and the financial strength of a potential purchaser.<sup>15</sup> Should the CMA accept the divestiture options suggested above, the divestment would include Offshore UK's AOC and the required postholders to operate under that AOC, so there would not be a regulatory hurdle in relation to obtaining the relevant UK licence to fly. Should the CMA and/or a potential purchaser prefer that one or two of the Fisher Business' [REDACTED] contract(s) are added to the divestment package, that would assist the purchaser to operate a [REDACTED] stand-alone business from day one.<sup>16</sup> In those circumstances, the financial position of the purchaser is not particularly important provided that the purchaser has sufficient funds to purchase the divestment business. Should external funding be required, the purchaser should be in a position to obtain it.

## 5 Other considerations

### A Parent Company Guarantees ('PCGs')

- 5.1 As explained by [REDACTED] during CHC's main party hearing, PCGs are "[REDACTED]".<sup>17</sup> PCGs do not require a financial test or threshold and do not require an operator to provide capital or any other form of security. A PCG is merely a contractual provision stating that the operator will stand behind its performance of the contract. It is in no way a barrier to entry or a barrier to selling a business in this market. As the CMA may be aware, when the PCGs were transferred from Babcock to CHC, customers agreed to transfer the guarantee from Babcock to CHC - a company with a lesser financial standing than Babcock. [REDACTED].
- 5.2 If required, CHC anticipates that customers will consent to transfer the PCGs from CHC to the purchaser of the divestment package assuming that the customers have an interest in maintaining a fourth player on the market.<sup>18</sup>

### B Transitional services

- 5.3 In sub-paragraph 19(e) of the NPR, the CMA invites views on the requirement for transitional services. CHC is open to discussions with any potential purchaser as to what the divestiture package needs to include by way of transitional services in order to operate effectively. CHC would of course ensure that any support required to maintain the Fisher Business' AOC would be made available to any potential purchaser as part of the divestment package. [REDACTED]. CHC anticipates providing any such required services [REDACTED] for a period of time to be agreed with the potential purchaser and the CMA.

### C There is no need to include any non-UK or non-O&G activities in the divestment package

- 5.4 Any remedy package that would include Offshore Denmark and/or Offshore Australia or indeed includes any other businesses outside UK Oil and Gas alongside Offshore UK would [REDACTED]. This would also have the consequence of [REDACTED] and result in significant costs to customers in those jurisdictions [REDACTED].<sup>19</sup>
- 5.5 According to the CMA's own guidance, "[i]n defining the scope of a divestiture package that will satisfactorily address the SLC, the CMA will normally seek to identify the smallest viable, stand-alone business that can compete successfully on an ongoing basis and that includes all the relevant operations pertinent to the area of competitive overlap. This may comprise a subsidiary or a division or the whole of the business acquired" (emphasis added).<sup>20</sup>
- 5.6 The market in this case is a national one and any divestiture outside the UK would not address the competition concerns that have been identified. The operations of the Fisher Business in other jurisdictions

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<sup>15</sup> NPR, paragraph 21

<sup>16</sup> [REDACTED].

<sup>17</sup> CHC's Main Party Hearing Transcript, page 22, lines 18-19

<sup>18</sup> It is also available for potential purchasers to provide customers with a bank guarantee

<sup>19</sup> For example, if [REDACTED] were to acquire the Fisher Business [REDACTED].

<sup>20</sup> CMA Merger Remedies Guidance, paragraph 5.7

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are independent and entirely separate from the operations of Offshore UK. For example, in relation to Australia:

- 5.6.1 the customers of the Fisher Business in the UK and Australia are different, and negotiations and communications with customers are kept separate;
  - 5.6.2 contracts are typically awarded at a national level only – there are no contracts for supply of services that span both Australia and the UK;
  - 5.6.3 the businesses operate under a different AOC and are governed by different regulators (the Civil Aviation Authority in the UK and the Civil Aviation Safety Authority in Australia);
  - 5.6.4 there is no overlap in the sales and operations personnel working for the UK and Australian businesses; and
  - 5.6.5 the IT infrastructure is all on site with separate hardware, network providers and application instances for each of the UK and Australia. Similarly, flight operations applications are housed in separate environments (with different functionalities in use in the UK vs Australia) and each region uses separate financial reporting systems.
- 5.7 This is distinguishable from prior decisions where a global divestment was necessary to address the SLC.<sup>21</sup> In such prior decisions, products and services offered by the target were developed and maintained centrally, with high levels of global integration within the business. For example, in the FNZ / GBST case, the target's (GBST's) underlying core products, sold by both operating segments, were developed, maintained and sold to clients on a global basis and could not be divested via a sub-licence in the UK without FNZ retaining control over the underlying product.<sup>22</sup> GBST itself recognised that partial divestment was not feasible and put on its own submissions that, globally, there were significant shared assets and services, which prevented partial divestment.<sup>23</sup>
- 5.8 Insofar as concerns may have been expressed to the CMA that divesting the whole of Offshore UK may not attract sufficient interest from a suitable purchaser, the answer to any such concerns does not lie in expanding the divestiture to include businesses or assets that are not part of Offshore UK. Any purchaser that is only prepared to acquire the Offshore UK business on the basis that it is handed other businesses that are in different markets, is very unlikely to be committed to the UK Oil and Gas market and to provide an effective competitive force in the UK.
- 5.9 Instead, the solution to any concern that divesting the whole of Offshore UK may not attract interest from a suitable purchaser is to reduce the scope of the divestment package [REDACTED]. This is why CHC is proposing to explore a smaller divestment package along the parameters described in this response. Such a divestment package would not require the inclusion of businesses outside Offshore UK in order to attract a suitable purchaser for the UK business. As set out above, this is also why CHC is considering including [REDACTED] of the [REDACTED] contracts in the divestment business [REDACTED]. Since it would acquire Offshore UK's AOC, the potential purchaser should also be able to compete for EMS and SAR contracts.

## D Divestiture process

- 5.10 In paragraph 22 of the NPR, the CMA invites views on the appropriate timescale for achieving a divestiture. CHC considers that a six-month period should be sufficient for it to be able to divest the relevant assets and/or contracts.
- 5.11 The CMA also invites views on any procedural safeguards that are required (in paragraphs 23 and 24 of the NPR). CHC considers that the current hold separate arrangements under the initial enforcement order issued on 26 May 2021, with the supervision of the existing monitoring trustee, are working well. CHC does

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<sup>21</sup> For example, the completed acquisition of GBST Holdings Limited by FNZ (Australia) Bidco Pty Ltd (<https://www.gov.uk/cma-cases/fnz-gbst-merger-inquiry>) and the completed acquisition by Facebook, Inc (now Meta Platforms, Inc) of Giphy, Inc (<https://www.gov.uk/cma-cases/facebook-inc-giphy-inc-merger-inquiry>).

<sup>22</sup> GBST's response to the CMA's notice on possible remedies (14 August 2020), paragraph 4.10.3 ([https://assets.publishing.service.gov.uk/media/5f463be58fa8f51f7eb8678d/GBST\\_Response\\_to\\_the\\_NPR\\_Draft\\_14\\_August\\_2020\\_GBST\\_redactions.pdf](https://assets.publishing.service.gov.uk/media/5f463be58fa8f51f7eb8678d/GBST_Response_to_the_NPR_Draft_14_August_2020_GBST_redactions.pdf))

<sup>23</sup> GBST's response to the CMA's notice on possible remedies (14 August 2020), paragraphs 4.10.2 – 4.10.4 ([https://assets.publishing.service.gov.uk/media/5f463be58fa8f51f7eb8678d/GBST\\_Response\\_to\\_the\\_NPR\\_Draft\\_14\\_August\\_2020\\_GBST\\_redactions.pdf](https://assets.publishing.service.gov.uk/media/5f463be58fa8f51f7eb8678d/GBST_Response_to_the_NPR_Draft_14_August_2020_GBST_redactions.pdf))

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not currently foresee any additional risks that may arise during the divestiture period in respect of which the interim measures need to be amended.

- 5.12 As regards a divestiture trustee (referred to in paragraphs 25 and 26 of the NPR), CHC accepts that one will be appointed if it fails to find a suitable purchaser within the initial divestiture period. This is not an unusual case which may require the appointment of a divestiture trustee at the outset, given in particular that CHC is already aware of interest in the divestment business and is not aware of any evidence to suggest that it will not be able to sell the business identified in section 3 above within a six-month period.

## **E Relevant Customer Benefits**

- 5.13 The CMA invites views on the scale and likelihood of any relevant customer benefits.<sup>24</sup> [REDACTED]. It would, in turn, also result [REDACTED] in the responses they provided to the CMA's questionnaire (which pre-date the Russian invasion of Ukraine).<sup>25</sup>
- 5.14 Nonetheless, should the CMA maintain its current view that a four-player market structure is preferable in order to maintain competition,<sup>26</sup> the CMA should also agree that there are relevant customer benefits [REDACTED].

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<sup>24</sup> NPR, paragraph 32

<sup>25</sup> CMA's Phase 1 Decision, paragraph 171 in which the CMA notes: "*Some customers and suppliers [...] welcomed the Merger. More specifically, a third party supplier submitted that consolidation is required to tackle financial pressure on service providers. A customer also stated its preference for having fewer but financially stronger providers that can focus on safety*"

<sup>26</sup> See for example, the feedback the CMA has received from customers (paragraph 19 of Appendix E to PFs)

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## **Annex 1 to Response to NPR**

