Anticipated merger between Noble Corporation and Maersk Drilling

CMA/7/2022

Decision on relevant merger situation and substantial lessening of competition

ME 6980/21

The CMA's decision on reference under section 33(1) of the Enterprise Act 2002 given on 22 April 2022. Full text of the decision published on 20 May 2022.

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

SUMMARY

1. On 10 November 2021, Noble Corporation (**Noble**) and The Drilling Company of 1972 A/S (**Maersk Drilling**) signed a business combination agreement pursuant to which they agreed to merge (**the Merger**). Noble and Maersk Drilling are together referred to as **the Parties**, and, for statements referring to the future, as the **Merged Entity.**

2. The Competition and Markets Authority (**CMA**) believes that it is or may be the case that each of Noble and Maersk Drilling is an enterprise; that these enterprises will cease to be distinct as a result of the Merger; and that the share of supply test is met. Accordingly, arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.

3. The Parties overlap in the supply of jack-up rigs for offshore drilling for oil and gas worldwide, including in the North Sea. The CMA found that other types of drilling rigs (such as semi-submersible rigs) are not generally substitutable with jack-up rigs because each type of drilling rig is better suited to different water depths and environmental conditions. The CMA also found that different types of jack-up rigs

vary in their technical specifications making them more or less suitable for particular projects, but can and do compete for certain projects in the North Sea. The CMA therefore assessed the impact of the Merger in the supply of all jack-up rigs for offshore drilling without any further segmentation, but took into account differences between types of jack-up rigs in its competitive assessment.

4. The CMA found that the geographic frame of reference encompasses Denmark, the Netherlands and the UK (**NW Europe**) as there are frequent movements of jack-up rigs between these three countries and the same suppliers bid for contracts across the region. The CMA found that it would not be appropriate to widen the frame of reference to include Norway (or beyond) given more limited movements of jack-up rigs between NW Europe and the rest of the world. In relation to Norway specifically, the CMA also found that technical and regulatory requirements in Norway are more stringent than in NW Europe, day rates for jack-up rigs are significantly higher and the suppliers bidding for contracts are not the same. The CMA has therefore assessed the impact of the Merger in the supply of jack-up rigs for offshore drilling in NW Europe, including the UK.

5. In assessing the competitive effects of the Merger, the CMA considered a range of evidence including shares of supply, tender data, internal documents and evidence from third parties. The CMA found that the Merger raises significant competition concerns as a result of horizontal unilateral effects in NW Europe, including the UK, in particular for the following reasons:

   (a) The supply of jack-up rigs for offshore drilling in NW Europe is concentrated, with four main suppliers: the Parties, Valaris and Borr Drilling. The Parties' combined shares of supply are high and have been relatively stable over time.

   (b) Tender data shows significant competitive interaction between the four main suppliers, including between the Parties. The tender data shows that both Parties regularly bid against each other and are successful winning contracts.

   (c) Other evidence, including the Parties' internal documents and evidence from third parties also shows that the Parties pose an important competitive constraint on one another. The majority of customers who responded to the CMA's investigation have expressed concerns about the impact of the Merger on competition.

   (d) The CMA found that Valaris exerts a strong constraint on the Parties, and that Borr Drilling also exerts an important constraint. Aside from Valaris and Borr Drilling, the CMA found that Swift Drilling and Well-Safe Solutions exert only a

limited constraint, with their ability to compete being restricted to a small sub-set of drilling projects in NW Europe, namely projects in the southern part of the North Sea (in the case of Swift Drilling) and 'plug and abandonment' projects, ie when customers prepare the offshore oil and gas reservoir to be closed permanently (in the case of Well-Safe Solutions). The CMA does not consider that any other supplier exerts a material competitive constraint on the Parties.

(e) Given the limited nature of the remaining constraints that the Merged Entity would face post-Merger, the CMA does not consider that these are sufficient to prevent a substantial lessening of competition (**SLC**), given the concentrated nature of the market and the loss of competition that would result from the Merger.

6. The CMA has not seen evidence of entry that would be timely, likely and sufficient in response to the Merger. As such, the CMA believes that entry or expansion would not be sufficient to prevent a realistic prospect of a SLC as a result of the Merger.

7. The CMA therefore believes that the Merger gives rise to a realistic prospect of a SLC as a result of horizontal unilateral effects in the supply of jack-up rigs for offshore drilling in NW Europe, including the UK.

8. The CMA is therefore considering whether to accept undertakings under section 73 of the Enterprise Act 2002 (the **Act**). The Parties have until 29 April 2022 to offer an undertaking to the CMA that might be accepted by the CMA. If no such undertaking is offered, then the CMA will refer the Merger pursuant to sections 33(1) and 34ZA(2) of the Act.

ASSESSMENT

PARTIES

9. Noble is a worldwide provider of offshore drilling services for the oil and gas industry. Noble owns and operates a fleet of 20 offshore drilling rigs, consisting of 11 drillships, one semi-submersible and eight jack-up rigs. Noble is headquartered in Sugar Land, Texas, United States of America and is listed on the New York Exchange.

10. Noble's global turnover in the financial year 2021 was £616 million, of which approximately £26 million was generated in the UK.

11. Maersk Drilling is also a worldwide provider of offshore drilling services for the oil and gas industry. Maersk Drilling owns and operates a fleet of 19 offshore drilling rigs, consisting of four drillships, one semi-submersible and 14 jack-up rigs. Maersk Drilling is headquartered in Copenhagen, Denmark and is listed on the Nasdaq Copenhagen Stock Exchange.

12. Maersk Drilling's global turnover in the financial year 2021 was £921 million, of which approximately £89 million was generated in the UK.

TRANSACTION

13. On 10 November 2021, Noble and Maersk Drilling signed a business combination agreement. Pursuant to this agreement, Maersk Drilling and Noble will each become a wholly owned subsidiary of a UK incorporated public limited company (**TopCo**).[1]

14. The Parties informed the CMA that the Merger is also conditional on approval from competition authorities in Angola, Brazil, Norway, and Trinidad & Tobago.

[1] TopCo, which has been created by Noble for the purposes of the Merger, will make a tender offer pursuant to the rules of the Danish stock exchange to Maersk Drilling's shareholders to acquire the shares in Maersk Drilling in exchange for TopCo shares. Noble will then merge with a subsidiary of TopCo and Noble's shareholders will receive shares in TopCo. Finally, TopCo will accept shares tendered pursuant to the tender offer and acquire control of Maersk Drilling. As a result, Maersk Drilling and Noble will each become wholly owned by TopCo, and the shareholders of TopCo will be made up of the former shareholders of Maersk Drilling and Noble. The CMA also considered whether certain current shareholders of Noble and Maersk Drilling may acquire material influence over the Merged Entity as a result of the Merger, but did not need to conclude on this point as it was not relevant to its substantive assessment of the Merger. This was because the Parties confirmed that these shareholders do not have any relevant interests in any entity that is active on the same market as the Merged Entity, nor on a market that is vertically related.

PROCEDURE

15. The Merger was considered at a Case Review Meeting.[2]

JURISDICTION

16. The CMA believes that the Merger (as described in paragraph 13) is sufficient to constitute arrangements in progress or contemplation for the purposes of the Act.[3] Each of Noble and Maersk Drilling is an enterprise. As a result of the Merger, these enterprises will cease to be distinct.

17. The Parties overlap in the provision of offshore drilling services. They provide drilling services using a range of different drilling rigs, including jack-up rigs. In 2021, the Parties had a combined share of supply of [30-40]% in the supply of jack-up rigs for offshore drilling in the UK with an increment of [10-20]% brought about by the Merger.[4] The CMA considers this to be a reasonable description of a set of services for the purposes of determining the share of supply test. The CMA therefore believes that the share of supply test in section 23 of the Act is met.

18. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 24 February 2022 and the statutory 40 working day deadline for a decision is therefore 22 April 2022.

COUNTERFACTUAL

19. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual).

20. The Parties submitted that the relevant counterfactual against which to assess the Merger is the prevailing conditions of competition.[5] In this case, the CMA has seen no evidence supporting a different counterfactual, and the Parties and third parties have not put forward arguments in this respect.

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[2] See Mergers: Guidance on the CMA's jurisdiction and procedure (CMA2revised), December 2020, from page 46.
[3] Section 33(1)(a) of the Act.
[4] FMN, Table 18. Based on IHS RigPoint data. The shares of supply have been calculated on the basis of the number of days that each rig has been contracted in each year. The shares of supply here are provided on a UK basis for the purpose of the share of supply test. The shares of supply set out later in Table 2 of the Decision are calculated across a wider geographic area.
[5] FMN, paragraph 48.

21. The CMA therefore believes the prevailing conditions of competition to be the relevant counterfactual.

BACKGROUND

22. The customers of the Parties are exploration and production companies that use offshore drilling services at all stages of the oil and gas lifecycle, ie (1) initial exploration and appraisal; (2) development; (3) production; and (4) plug and abandonment.

23. Offshore drilling services are provided by drilling contractors using various types of mobile offshore drilling units, which can be subdivided based on their technical specification and the water depth at which they are capable of operating:

    (a) **Jack-up rigs** – bottom supported drilling units capable of operating in shallow water at depths of up to 500 feet. They vary in terms of their technical specifications (such as maximum water depth, maximum drilling depth, cantilever reach and configuration), making different jack-up rigs (also referred to as jack-ups) more or less suitable for different projects. Based on their size and water depth capabilities, jack-ups can be subdivided into the following categories:

        (i) **Benign (standard)** – smaller rigs not designed for harsh environments, with hulls of around 140 feet[6] and a typical maximum depth of 220 feet.

        (ii) Harsh environment (HE) – larger rigs with hulls between 156 and 164 feet and a typical maximum depth of 300 feet.

        (iii) **Ultra-harsh environment (UHE)** – rigs with extra-large hulls (exceeding 200 feet) and able to operate in water depths of 400-500 feet.

    (b) **Floaters**, unlike jack-ups, do not rest on the seafloor but float on the water:

        (i) **Semi-submersible rigs** sit on giant pontoons and hollow columns and maintain their position during drilling using multiple mooring lines secured to the seabed by anchors or, alternatively, dynamic positioning systems. Semi-submersible rigs typically operate in waters deeper than 492 feet but can in certain circumstances compete for work in shallower waters.

[6] The hull size is measured as the distance between the jack-up's legs.

(ii) **Drillships** are seagoing vessels which have drilling equipment installed on the deck. Drillships operate in water depths of up to 10,000-12,000 feet. They are not stable in rough water which makes them unsuitable for harsh environments.

24. In the North Sea, the CMA understands that benign jack-up rigs are only able to operate in southern regions (ie Denmark, the Netherlands and the southern part of the UK); HE rigs are able to operate in central and southern regions (ie Denmark, the Netherlands and most of the UK); and UHE rigs are able to operate in almost all of the North Sea (ie also Norway).[7] Semi-submersibles typically operate in the most northerly regions of the north UK continental shelf (UKCS). Drillships are not capable of operating safely in the North Sea.

25. The majority of offshore drilling activity in 2021 conducted using jack-up rigs in NW Europe (ie Denmark, the Netherlands and the UK) was conducted using HE rigs. Within NW Europe, HE jack-ups accounted for approximately 72% of the days in which jack-up rigs were used, compared to 16% for benign rigs and 12% for UHE rigs.[8]

26. Most offshore drilling contracts are awarded following a tender process.[9] Some customers also have framework agreements in place with drilling contractors which establish a set of standard terms and conditions for future work. The CMA understands that framework agreements do not usually include any exclusivity provisions and certain contractual terms such as the day rate will be negotiated following a tender process. In some circumstances, customers award contracts through direct negotiations.[10]

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[7] The Parties submitted that as the north UK continental shelf moves further north, water depth continues to increase and the drilling environment becomes more inhospitable. Oil and gas fields in the most northerly UK parts of the North Sea (for example, around Orkney and Shetland) are mostly too deep for jack-ups at all. These regions are instead predominantly served by ultra-harsh environment semi-submersibles.
[8] CMA analysis of Tables 1-3 of response to RFI 4. The total number of days jack-up rigs were used in 2021 was 5,448. HE rigs were used for 3,934 days, benign rigs for 874 days and UHEs for 640. The HE figure may rise slightly (and hence the others fall) with the arrival of a HE rig from Norway in 2022 (the Maersk Reacher). Maersk Reacher is the only HE rig currently operating in Norway, based on IHS RigPoint data extracted on 11 January 2022.
[9] The large majority of customers told the CMA that jack-up rigs are usually contracted through a tender process – Responses to CMA Customer Questionnaire, Q11; some of the largest drilling contractors generate more than 80% of their turnover in NW Europe from contracts awarded by way of a tender process – Responses to CMA Competitor Questionnaire, Q13.
[10] Such as where customers set technical requirements that can only be fulfilled by a particular rig; or where direct negotiation would ensure the customer is able to meet the planned operations start date. See Responses to CMA Customer Questionnaire, Q11.

27. In terms of the most important parameters of competition when awarding contracts, customers told the CMA that it is essential that suppliers meet technical specifications. Beyond that, price[11] is a key factor considered by customers alongside a range of other qualitative factors such as relevant experience and project management.[12]

COMPETITIVE ASSESSMENT

Frame of reference

Product scope

28. The Parties overlap in the supply of jack-up rigs and floaters (ie semi-submersibles and drillships) for offshore drilling on a global basis.[13]

- *Jack-up rigs vs floaters*

29. The CMA considered whether floaters and jack-up rigs should be included in the same frame of reference.

30. The vast majority of third parties told the CMA that drillships are not suitable for drilling work in the North Sea.[14] The CMA did not identify any instances of drillships

[11] Rig demand and dayrates paid are influenced by, among other things, oil prices, ie there is evidence to suggest that the demand for rigs normally increases when oil prices are high and vice versa (see note of call with a customer, 2 February 2022; note of a call with a competitor, 10 February 2022; note of a call with a customer, 4 February 2022).
[12] Responses to CMA Customer Questionnaire, Q13.
[13] The Parties also overlap in the supply of accommodation services, as they compete to supply accommodation services with their drilling rigs. Accommodation services involve supplying a rig to accommodate workers (drilling equipment is not required). The Parties submitted that they generally only compete to supply accommodation services with their drilling rigs if there is insufficient demand for drilling work, because day rates for accommodation work are significantly lower than those for drilling work. They therefore only compete to provide accommodation when they have spare capacity. The Parties submitted the main operators active in the provision of accommodation services are, amongst others, Flotel International and Prosafe (Parties' response to RFI 4, Q3), which offer specialised accommodation rigs. Third parties confirmed that Flotel International and Prosafe supply accommodation rigs. Third parties also confirmed that there are differences between drilling and accommodation rigs and that drilling rigs are an imperfect substitute for accommodation services because drilling rigs can accommodate fewer people. They also confirmed that accommodation rigs cannot be used for drilling services as they lack drilling equipment - see Responses to CMA Customer Questionnaire, Q6 and 7; Responses to CMA Competitor Questionnaire, Q8. No third-party has raised concerns in relation to the supply of accommodation services. On the basis of this evidence, the CMA considered at an early stage in its investigation that there are no plausible competition concerns in respect of the provision of accommodation services as a result of the Merger and this is therefore not discussed further in this Decision.
[14] Responses to CMA Customer Questionnaire, Q5.

bidding against jack-up rigs in tender data received from third parties.[15] The CMA therefore focused its assessment on whether jack-up rigs and semi-submersibles should be included in the same frame of reference.

31. In previous cases the CMA concluded that while jack-up rigs may face some constraint from semi-submersible rigs for offshore drilling contracts in NW Europe,[16] the constraint is limited. The CMA also found that, on the supply side, the market structure differs significantly. The CMA therefore assessed the impact of previous mergers in the provision of offshore drilling services using jack-up rigs only.[17]

32. In line with the CMA's previous decisional practice, the Parties submitted that jack-up rigs and semi-submersibles constitute separate markets.

33. Third parties that responded to the CMA's investigation generally did not consider semi-submersibles and jack-up rigs to be substitutable, principally because each type of drilling rig is better suited to different water depths. Third parties noted, however, that there are a limited number of areas in the North Sea where the water depth is such that either a semi-submersible or a jack-up rig could be used.[18] Some customers also told the CMA that jack-up rigs and semi-submersibles are not substitutable due to differences in price.[19]

34. The CMA's analysis of third-party tender data indicates that when organising procurement processes, customers specify in the large majority of instances (based on the drilling conditions/water depth) whether they need jack-up rigs or semi-submersibles.[20] The CMA's analysis of third-party tender data also indicates that it is very rare for semi-submersibles and jack-up rigs to bid against each other for the same project.[21] Internal documents submitted by the Parties identifying potential

[15] The CMA has collected tender data from customers for the period 2017-2021. See further paragraphs 73 to 79.
[16] For the purposes of this Decision, NW Europe only includes the UK, Denmark and The Netherlands.
[17] M/9798/18, Ensco/Rowan (15 February 2019), paragraphs 26-29; ME/3310/07, Transocean/GlobalSantaFe Corporation (26 November 2007), paragraphs 9-15.
[18] Responses to CMA Customer Questionnaire, Q9.
[19] Responses to CMA Customer Questionnaire, Q9.
[20] In the tender data provided by customers, the large majority (around 80%) specify whether they require a jack-up rig or a semi-submersible.
[21] The tender data shows that a small number of customers either did not specify a jack-up rig or specified that either jack-up rigs or semi-submersibles could be bid. Given that a number of suppliers that bid on those tenders are not known to operate jack-up rigs, it may be inferred that they bid with semi-submersibles.

competitors for upcoming tenders also only exceptionally mention the possibility of semi-submersibles bidding against jack-up rigs.[22]

35. For the reasons set out above, the CMA assessed the impact of the Merger in the supply of jack-up rigs for offshore drilling.[23]

- *Segmentation by type of jack-up rig*

36. The CMA considered whether jack-up rigs should be further segmented by the type of jack-up rig (ie benign, HE and UHE). As set out below, the Parties only overlap in HE rigs in NW Europe. Maersk Drilling also provides offshore drilling services using UHE rigs in NW Europe whereas Noble currently has no UHE rigs in operation in NW Europe (both Parties have UHEs in operation in Norway). Neither of the Parties' fleets include benign rigs in NW Europe.

[22] See response to the CMA section 109 notice of 21 January 2022 served on Maersk Drilling and response to the CMA section 109 notice of 21 January 2022 served on Noble. One rare instance of semi-submersibles being discussed is an upcoming tender for [✂], where Maersk Drilling lists a large number of potential competitors including suppliers of semi-submersibles and notes [✂] (see Annex 11). The only other internal document seen by the CMA relating to an upcoming tender opportunity in NW Europe where semi-submersibles are mentioned is in a Noble internal document relating to a tender for accommodation, where Noble states that [✂] (see Annex 11).

[23] The Parties submitted that their semi-submersible rigs and drillships are not capable of working in the North Sea (see the Parties' response to CMA Request for Information dated 28 February 2022 (**RFI 4**), Q1). Third parties confirmed that the Parties' semi-submersible rigs and drillships do not operate in the North Sea (note of call with a customer, 2 February 2022; note of a call with a competitor, 10 February 2022; note of a call with a customer, 4 February 2022). Most third parties explained that only semi-submersibles, and not drillships, are able to provide offshore drilling services in the North Sea [Responses to CMA Customer Questionnaire, Q5]. Given that drillships cannot be used in the North Sea, and the limited overlap between the Parties in relation to semi-submersibles (Noble has only one semi-submersible, which is located in Indonesia), the CMA considered at an early stage in its investigation that there are no plausible competition concerns in the supply of floaters as a result of the Merger and these are therefore not discussed further in this Decision.

Table 1: The Parties' current jack-up rig fleet (including stacked rigs)[24]

Rig type	Number in North West Europe	Number in Norway	Number outside of North West Europe and Norway	Comment
Benign jack-up	Noble – 0 Maersk Drilling – 0	Noble – 0 Maersk Drilling- 0	Noble – 0 Maersk Drilling – 1	Maersk Drilling has 1 benign rig located in Brunei Darussalam.
HE jack-up	Noble – 4 (2 of which are warm stacked)[25, 26] Maersk Drilling – 4 (3 of which are warm stacked. 2 of these warm stacked rigs will commence contracts in April 2022) [27]	Noble – 0 Maersk Drilling – 1	Noble – 3 Maersk Drilling – 0	Noble has 2 warm stacked rigs in NW Europe. It is due to move one of those to Qatar to commence operations there in August 2022. Noble has 3 HE rigs outside NW Europe and Norway (in Qatar, Trinidad & Tobago and Australia respectively). Maersk Drilling is due to move its HE rig in Norway to NW Europe to fulfil a contract in 2022.
UHE jack-up	Noble – 0 Maersk Drilling – 2 (1 of which is warm stacked. The warm stacked rig will commence a contract in April 2022.)[28]	Noble – 1 Maersk Drilling - 3	Noble – 0 Maersk Drilling – 0	

Source: the Parties' response to CMA Request for Information dated 14 March 2022 (**RFI 5**).
Note: the table includes information as to whether a jack-up rig is warm stacked or not only in relation to those situated in NW Europe.

[24] Source: https://s25.q4cdn.com/270220413/files/doc_financials/2021/q4/Noble-Fleet-Status-Report-Feb-16-2022-vF.pdf and fleet-status-report-february-2022.pdf (maerskdrilling.com)
[25] The Parties submitted that one of these HE rigs, the Noble Houston Colbert rig (**NHC**), should not be treated as part of the Parties' current NW Europe jack-up rig fleet because in March 2022 Noble signed a binding letter of award with Qatar Gas and the NHC will move to the Middle East to commence operations in August 2022. While the CMA acknowledges that the NHC is due to move to Qatar in the near term, it is currently located in NW Europe (and has been throughout the CMA's assessment of the Merger), and therefore the CMA considers it appropriate to treat the NHC as one of Noble's NW Europe rigs for the purposes of its assessment of the Merger. The CMA further notes that NHC has been frequently put forward for contracts for NW Europe, namely [✂] times between 2017-2021. Finally, the CMA understands that the NHC moved from the Middle East to NW Europe in 2019/2020 to fulfil a contract (and therefore the CMA cannot exclude that this rig could be moved to NW Europe from the Middle East again). Accordingly, the CMA has treated NHC as part of Noble's fleet of jack-up rigs NW Europe for the purposes of its assessment, but has taken account of its imminent move to Qatar where relevant.
[26] Three of these rigs, including the NHC, are located in the UK. See FMN, Table 29.
[27] One of these rigs is located in the UK. See FMN, Table 30.
[28] One of these rigs is located in the UK. See FMN, Table 30.

37. The CMA has previously found that different types of jack-up rigs only rarely compete for the same contract, as a result of their different technical specifications and water depth capabilities. However, the CMA found that there is some constraint exerted by UHE jack-up rigs on HE jack-up rigs in NW Europe (where either UHE or HE jack-up rigs can technically operate). The CMA however did not previously find it necessary to reach a conclusion on the precise product frame of reference.[29]

38. In this case, consistent with the CMA's findings in previous cases, the Parties submitted that different types of jack-up rigs tend to operate in different geographic areas within the North Sea, as HE and benign jack-up rigs are mostly located in the UK, the Netherlands, and Denmark, while the majority of UHE jack-up rigs are located in Norway.[30] However, the Parties submitted that when there is overcapacity in the 'intended' drilling region, rigs may 'trade down' and operate in areas for which they are over-specified (ie UHE rigs may be used in locations where a HE rig would be sufficient).[31]

39. The Parties submitted that the relevant frame of reference should include North Sea Capable (**NSC**) jack-up rigs without further segmentation based on category.[32] The Parties further submitted that in any event the exact product market definition could be left open because the Merger does not lead to a realistic prospect of a SLC on any plausible basis.

40. The CMA notes that while customers typically specify that they require a jack-up rig, most customers do not specify the type of jack-up rig they require when organising a call for tenders.[33]

41. Furthermore, based on the Parties' submissions and third-party evidence, the CMA understands that both HE and UHE jack-up rigs are technically suitable for drilling operations in most of the North Sea other than Norway (where only UHEs are

[29] M/9798/18, Ensco/Rowan (15 February 2019), paragraphs 30-38.
[30] The Parties told the CMA neither Noble nor Maersk Drilling has bid for the same tender with [✂] jack-up rig within NW Europe – see Parties' response to RFI 4, Q8.
[31] Parties' response to RFI 4, Q5 and Q6.
[32] In line with the CMA's approach in M/9798/18, Ensco/Rowan (15 February 2019), paragraphs 37-38.
[33] Only around a third of tenders in the customer data set specified the type of jack-up rig required.

suitable).[34, 35] Moreover, Maersk Drilling's internal documents show that, when selecting rigs for upcoming tenders in NW Europe, Maersk Drilling considers putting forward both HE and UHE jack-up rigs for the same offshore drilling contracts.[36] The Parties' internal documents also show that the Parties monitor the availability of competitors' HEs and UHEs when looking at potential competition for upcoming tenders in NW Europe.[37]

42. However, the Parties and third parties also indicated that drilling contractors will generally only bid for work with a UHE in areas of the North Sea where HEs are capable of carrying out the work when there is insufficient demand for UHEs in Norway, where UHEs command higher day rates (see further discussion in the geographic frame of reference).[38, 39]

43. With regard to benign rigs, some third parties told the CMA that there is substitutability between benign and HE rigs because both types of rig can operate in shallow water depending on the leg length.[40] However, the CMA understands that benign rigs can only be used in the southern parts of the North Sea (ie Denmark, the Netherlands and the southern part of the UK).[41] Benign rigs are not therefore technically substitutable with other jack-up rigs in other parts of the North Sea.

44. Based on the available evidence, the CMA therefore understands that jack-up rigs vary in terms of their technical specifications, making different jack-up rigs more or less suitable for different projects. The available evidence shows that certain types of rigs can be interchangeable for some projects but not others. The constraint is

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[34] FMN, paragraphs 213 and following. Some of the HE rigs owned by Maersk Drilling are not suitable to operate in the North region of the UKCS (FMN, paragraphs 227 and the following). One competitor explained that HE and UHE rigs are substitutable. According to the competitor, if there is a tender in the UK for a HE jack-up rig, a drilling contractor could submit a proposal that is based on drilling operations performed by an UHE rig - Note of a call with a competitor, 10 February 2022. One customer submitted that only HE and UHE jack-up rigs can meet its technical requirements in the North Sea (and that benign rigs are not an option) (Note of a call with a customer, 4 February 2022). A number of customers that responded to the CMA's investigation suggested that UHEs and HEs are technically substitutable in NW Europe - Responses to CMA Customer Questionnaire, Q10.

[35] The Parties submitted that UHE rigs will occasionally bid for work in NW Europe, for instance, because there is low demand in Norway.

[36] See eg Annex 17 submitted in response to the CMA section 109 notice of 21 January 2022 served on Maersk Drilling.

[37] See, for example, Annex 20, Annex 23 and Annex 24 submitted in response to the CMA section 109 notice of 21 January 2022 served on Maersk Drilling and Annex 16, Annex 17, Annex 20 and Annex 23 submitted in response to the CMA section 109 notice of 21 January 2022 served on Noble.

[38] Note of a call with a competitor, 10 February 2022.

[39] A number of customers also noted that day rates for UHEs can be higher than for HEs (Responses to CMA Customer Questionnaire, Q10).

[40] Responses to CMA Customer Questionnaire, Q10.

[41] FMN, paragraph 46; customer response to CMA questionnaire, Q3.

also asymmetric in so far as jack-up rigs can 'trade down' to compete for work for which they are over-specified, but cannot compete for work for which they are under-specified.

45. For these reasons, and taking the evidence in the round, the CMA has considered the impact of the Merger in the supply of all jack-up rigs. However, the CMA has considered the differences between the three types of jack-up rigs as part of its competitive assessment, where relevant.

Geographic scope

46. The CMA previously considered in *Ensco/Rowan* that the appropriate geographic frame of reference for the supply of jack-up rigs for drilling services was no wider than the North Sea and should exclude Norway, as the competitive constraint on rigs in Norway by rigs located outside of Norway appeared to be limited.[42] This was because rig movements between Norway and the other areas of the North Sea were less frequent than rig movements between the rest of the North Sea (ie UK, Denmark and the Netherlands) and offshore drilling contractors charged higher day rates in Norway than in the other areas of the North Sea.

47. The Parties submitted that, based on frequent rig movements between Denmark, Netherlands and the UK, the frame of reference for the supply of jack-up rigs drilling services should include all of NW Europe. The Parties also submitted that the frame of reference should not be broader than NW Europe and in particular should exclude Norway. This is based on similar evidence to that considered by the CMA in *Ensco/Rowan*, ie that rig movements between NW Europe and Norway are infrequent, that there are significant differences in the day rates for jack-up rigs in Norway and NW Europe and that the majority of jack-up rigs with AoC status (an 'acknowledgment of compliance', required to operate in Norway) are located in Norway.

- *NW Europe*

48. The CMA considered whether the relevant frame of reference for the supply of jack-up rigs for offshore drilling should encompass at a minimum the whole of NW Europe, ie the UK, Denmark and the Netherlands.

[42] M/9798/18, Ensco/Rowan (15 February 2019), paragraphs 43-52.

49. According to IHS RigPoint data submitted by the Parties, between 2012 and 2021, excluding movements for stacking purposes,[43] there were [✂] jack-up rig movements between the three countries comprising NW Europe, suggesting that the same rigs compete for work across the region.

50. From a technical perspective HE rigs (which account for 72% of drilling activity in NW Europe) and UHE rigs (which account for 12% of drilling activity in NW Europe) are capable of operating across the region.[44,45]

51. Furthermore, the tender data showed that the same drilling contractors are active across all NW Europe, ie mainly the Parties, Valaris and Borr Drilling.

52. The CMA therefore considers that the relevant frame of reference should include all of NW Europe.

- *Norway and rest of world*

53. The CMA also considered whether the relevant frame of reference should be wider than NW Europe and, in particular, whether Norway should be included in the relevant frame of reference.

54. Almost all customers that responded to the CMA's investigation said that they had only invited suppliers that are currently active in NW Europe to bid for contracts to supply jack-up rigs in NW Europe in the last five years.[46] The only exception was a customer that said that it had multiple prospects to be drilled in parallel several years ago.[47]

55. Around half of customers explained that if they could not find a drilling contractor in NW Europe at an acceptable price, they would consider a drilling contractor from another geography. However, several customers highlighted the risks and costs of doing so given regulatory requirements and the costs of transporting rigs, which could render it commercially unviable.[48] A number of customers said they would employ other strategies rather than go to a drilling contractor outside their

[43] Where jack-up rigs are being stored upon completion of a job when the rig is to be withdrawn from operation for a period of time.
[44] Parties' response to the CMA Issues Letter dated 24 March 2022. See paragraphs 86 to 87.
[45] Oil and gas fields in the most northerly UK sections of the non-Norway North Sea are mostly too deep for jack-ups at all.
[46] Responses to CMA Customer Questionnaire, Q16.
[47] [✂].
[48] Responses to CMA Customer Questionnaire, Q15.

geography, such as postponing the project, or exploring the possibility of sharing an active rig with another operator.[49]

56. In relation to Norway specifically, the CMA notes that technical and regulatory requirements in Norway are more stringent in comparison with those in NW Europe.[50] In particular, only UHEs can be used in Norway and a supplier must obtain an AoC to operate in Norway.

57. In addition, data provided by the Parties on the day rates they offered in NW Europe and Norway suggests that day rates in Norway can be at least [✂] the day rates earned in NW Europe, depending on demand in each market at the time, and the specification of the rig in question (although the CMA notes that this is based on a small number of data points in recent years).[51] The Parties also submitted data on the distribution of day rates for jack-up rigs contracted in NW Europe and Norway between 2008-2021 based on IHS RigPoint data which further indicates that day rates have on average been higher in Norway than NW Europe since at least 2009.[52]

58. One customer told the CMA that jack-up rigs do not usually move from Norway because there is a significant difference between day rates.[53] Rig movements between NW Europe and Norway (and the rest of the world) are less frequent than movements within NW Europe (see above), but do still occur. According to IHS RigPoint data there were [✂] non-stacking movements between Norway and NW Europe between 2012 and 2021[54] (there were [✂] between the entire rest of world (ie excluding Norway) and NW Europe).[55]

59. Although some suppliers (namely the Parties and Valaris) are active across both regions, some suppliers are only active in one region, suggesting that conditions of competition are not the same: for instance, Seadrill is only active in Norway whereas Borr Drilling is only active in NW Europe.

60. Furthermore, some of the Parties' internal documents also indicate that Norway is regarded as a separate market within NW Europe by the Parties. For instance, a Maersk Drilling internal document that discusses global jack-up demand history and

[49] [✂].
[50] Note of a call with a competitor, 10 February 2022
[51] Parties' response to the CMA request for information dated 14 January 2022 (**RFI 1)**, Q7.
[52] Parties' response to RFI 1, Annex 006.
[53] Note of call with a customer, 2 February 2022.
[54] FMN, paragraph 66
[55] FMN, Tables 5 and 6.

forecasts provides a distinct overview for Norway and for the North Sea excluding Norway.[56] Noble also submitted an internal document that shows an overview of the supply and demand for jack-up rigs which looks at Norway and the rest of NW Europe separately.[57]

61. However, the CMA gathered some evidence which indicates that drilling contractors active across NW Europe and Norway (such as Maersk Drilling and Valaris) may use their fleet across these regions flexibly and have bid for contracts in NW Europe using AoC compliant rigs (which are therefore capable of operating in Norway).[58] As set out above, these jack-up rigs 'trade down' when there is insufficient demand for UHEs in Norway. According to IHS RigPoint data, three out of 14 UHE AoC compliant rigs are currently located in NW Europe (these are two Maersk Drilling UHEs located in Denmark and one Valaris UHE located in the UK). Maersk Drilling is also due to relocate a rig from Norway to NW Europe to commence a contract in July 2022.[59]

62. Taking the evidence in the round, the CMA believes that it is appropriate to treat NW Europe as a distinct frame of reference and not to widen the frame of reference to include Norway (or beyond). The CMA has taken account of the ability of suppliers that are active in both regions to use their HE and UHE fleet flexibly and put forward their jack-up rigs situated in Norway for contracts in NW Europe in its competitive assessment.

Conclusion on frame of reference

63. For the reasons set out above, the CMA has considered the impact of the Merger in the supply of jack-up rigs for offshore drilling in NW Europe (including the UK), but has taken account of differences between the three types of jack-up rigs as well as the constraint UHE rigs in Norway may place on jack-up rigs in NW Europe in its competitive assessment where relevant.

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[56] Annex 009.47 to the FMN, slide 164.
[57] Annex 009.15 to the Draft Merger Notice submitted on 17 December 2021 (**DMN**), slides 17-18; see also Annex 010.59 to the DMN, slide 3.
[58] Submissions in response to the CMA section 109 notice of 3 March 2022 served on Maersk Drilling. For example, Annex 5 where Maersk Drilling plans to bid with its Gallant Rig (usually based in Norway) for a contract in the UKCS or Annex 17 where Maersk Drilling plans to bid with Maersk Intrepid (usually based in Norway) for a contract in the UK.
[59] The Maersk Reacher which is due to begin a contract with Total Energies in Denmark in July 2022. The Maersk Reacher is a HE, but has an AoC.

Horizontal unilateral effects in the supply of jack-up rigs for offshore drilling

64. Horizontal unilateral effects may arise when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged firm profitably to raise prices or to degrade quality on its own and without needing to coordinate with its rivals.[60] Horizontal unilateral effects are more likely when the merging parties are close competitors or face few rivals.[61,]

65. The CMA assessed whether it is or may be the case that the Merger has resulted, or may be expected to result, in an SLC in relation to horizontal unilateral effects in the supply of jack-up rigs for offshore drilling in NW Europe.

66. In order to assess the likelihood of the Merger resulting in unilateral effects, the CMA considered: (1) shares of supply; (2) tender data; (3) other evidence on the competitive interaction between the Parties; and (4) competitive constraints from alternative suppliers.

Shares of supply

67. The CMA considered evidence relating to shares of supply.

68. Table 2 sets out the Parties' and their competitors' estimated shares of supply in relation to the supply of all jack-up rigs for drilling services in NW Europe.[62] The shares have been calculated on the basis of the number of days that each rig has been contracted in each year.

[60] Merger Assessment Guidelines (CMA129), March 2021, paragraph 4.1.
[61] Merger Assessment Guidelines, paragraph 4.3.
[62] The share of supply estimates exclude the provision of accommodation services.

Table 2 – Jack-up rigs – NW Europe

Supplier	2018		2019		2020		2021	
	# con. Days	Share (%)	# con. Days	Share (%)	# con. Days	Share (%)	# con. Days	Share (%)
Noble	[✂]	[10-20]%	[✂]	[10-20]%	[✂]	[10-20]%	[✂]	[10-20]%
Maersk Drilling	[✂]	[20-30]%	[✂]	[20-30]%	[✂]	[20-30]%	[✂]	[20-30]%
Combined	[✂]	**[30-40]%**	[✂]	**[40-50]%**	[✂]	**[30-40]%**	[✂]	**[30-40]%**
Valaris	[✂]	[50-60]%	[✂]	[40-50]%	[✂]	[50-60]%	[✂]	[40-50]%
Borr Drilling	[✂]	[10-20]%	[✂]	[10-20]%	[✂]	[5-10]%	[✂]	[10-20]%
Swift Drilling	[✂]	[0-5]%	[✂]	[0-5]%	[✂]	[0-5]%	[✂]	[0-5]%
Total	[✂]	100%	[✂]	100%	[✂]	100%	[✂]	100%

Source: Parties' response to RFI 4, Q4 and CMA internal calculations.

69. Table 2 shows that the Merged Entity would become the second largest provider of offshore drilling services using jack-up rigs in NW Europe. The Parties' combined share of supply in 2021 was [30-40]%, with a [10-20]% increment. Post-Merger, there would be only three other remaining players with any kind of presence in the market: Valaris, Borr Drilling and Swift Drilling. Valaris' share of supply was [40-50]% in 2021, while Borr Drilling had a share of supply of [10-20]% in 2021. Swift Drilling had a far lower share of supply, of [0-5]%, in 2021.

70. The CMA considers that the supply of jack-up rigs for offshore drilling is concentrated, with only four suppliers with material shares. The Parties' combined shares of supply are both significant and relatively stable over time.[63]

[63] The Parties submitted that demand for jack-up rigs is declining and that overcapacity means that there is intense competition between suppliers because the cost of idle capacity is substantial (FMN, paragraph 209). The CMA found that the level of demand for jack-up rigs in the future is uncertain. In particular, both Parties listed a relatively large number of upcoming opportunities for jack-up rigs in NW Europe (Annex 11 to RFI 1). Furthermore, a competitor told the CMA that there is more interest from customers to drill in 2022 and that it is likely that activity will pick up in 2023 (note of a call with a competitor, 10 February 2022). An internal document from the Parties also shows that demand for the supply of jack-up rigs for offshore drilling in NW Europe is expected to grow slightly in the future (Annex 4 to RFI1, slide 10). The CMA also found that capacity across suppliers fluctuates as contracts are regularly put out to tender and vary in duration, and that the four main suppliers do not all always have available rigs with which they can bid for contracts. More generally, the CMA considers that to the extent that the Parties compete intensely (with each other and with Valaris and Borr Drilling) to avoid the costs of idle capacity, the loss of competition between the Parties resulting from the Merger can be expected to be significant.

Tender data and competition between the Parties

71. As explained above, the large majority of contracts for offshore drilling services are awarded by way of tender.

72. The CMA therefore considers that a key source of evidence on the competitive interaction between suppliers is tender data. Tender data is important in establishing the strength of competition between the Parties and whether sufficient competitive constraints will remain post-Merger. The CMA has considered tender data from a number of sources:

    (a) The CMA collected tender data from customers for the period 2017-2021.

    (b) In addition, the Parties supplied tender data covering the following periods: 2016-2021 (Maersk Drilling) and 2017-2021 (Noble).[64]

- *Customer tender data*

73. In total, the CMA was provided with details of 37 tenders[65] by customers for the period 2017-2021.[66]

74. The CMA considers that this tender data provides evidence on the closeness of competition between the Parties (and others) including in particular:

    (a) how often the Parties bid against each other (and others); and

    (b) how often the Parties come first and second in tenders.

75. The CMA considers that this assessment provides evidence on the strength of rivalry between the Parties that may be lost due to the Merger, and also the strength of the constraints that will remain on the Merged Entity post-Merger. Table 3 below

[64] The CMA has considered the relative weight it can place on each of the sources of tender data. Given that the CMA's conclusions on each source of tender data are broadly similar (see paragraph 84), the CMA has not considered it necessary to conclude on the relative strengths and weaknesses of each tender data source. The CMA notes that each data source is likely to overlap (in terms of the tenders described) to some extent but has been unable to completely match all of the opportunities across data sets.
[65] The CMA contacted [✂] customers. These included all customers (including prospective customers) of the Parties since 2017 and received responses from [✂] customers. This provides a total response rate of around 50%.
[66] The CMA excluded tenders that (1) took place outside the relevant geographic frame of reference (ie NW Europe), (2) did not relate to jack-up rigs, or (3) where the result of the tender has yet to be announced.

sets out the overall participation and win rates for the four main suppliers across the 37 tenders.[67]

Table 3: Participation and win rates for the Parties, Valaris and Borr Drilling

	Noble	Maersk Drilling	Valaris	Borr Drilling
Participation rate (%)	[✂]	[✂]	[✂]	[✂]
Win rate (number of wins/number of times participated) (%)	[✂]	[✂]	[✂]	[✂]

Source: Data from customers and CMA internal analysis

76. Table 3 shows that:

(a) No supplier bid on all of the 37 tenders. Maersk Drilling and Borr Drilling have the highest participation rates, with Maersk Drilling participating in [✂] of opportunities and Borr Drilling participating in well over three quarters ([✂]%) of opportunities. Valaris also participated in over three quarters ([✂]%) of all opportunities, and Noble in just over [✂] of opportunities.

(b) Although Valaris bid on fewer tenders than Borr Drilling or Maersk Drilling, it won the highest proportion of those that it bid for. Maersk Drilling bid on the [✂] of tenders and was the second most successful supplier in terms of winning opportunities that it bid for. Noble succeeded in [✂]% of its bids and Borr Drilling was marginally less successful (with an [✂]% success rate).

77. Around three quarters of tenders involved at most the Parties, Valaris, and Borr Drilling (although not necessarily all four of them). The customer tender data showed that, apart from these four suppliers, the only other successful bidder was Swift Drilling which won one contract.

78. For those tenders that specified that a jack-up rig was required and where there were more than four bidders (just over [✂] of the tenders), the other bidders present (on occasion) in those tenders were Northern Offshore, Transocean, Shelf Drilling,

[67] As set out in paragraphs 78 and 99-111, given its very small share of supply of [0-5]% in 2021, Swift Drilling has not been included in Table 3.

COSL, Swift Drilling, GMS and Well-Safe Solutions. Further details on these bidders are provided at paragraphs 99 to 111.

79. The 37 customer tenders provide the following information in relation to closeness of competition between the Parties:

(a) Tenders in which at least one party participated:

(i) Of the tenders in which Noble participated, Maersk Drilling participated in [✂] ([✂]).

(ii) Of the tenders in which Maersk Drilling participated, Noble participated in over [✂] ([✂]).

(b) Tenders won by one of the Parties:

(i) Of the [✂] tenders won by Maersk Drilling, Noble was the second placed bidder in [✂] of those.

(ii) Of the [✂] tenders won by Noble, Maersk Drilling was the second placed bidder in [✂] tender.

- *Parties' tender data*

80. The CMA has also undertaken an analysis of tender data supplied by the Parties. The CMA assessed [✂] tenders from Noble and [✂] from Maersk Drilling. Tables 4 and 5 below set out the participation and win rates for the Parties (and the two other main suppliers) based on the tender data supplied by Maersk Drilling and Noble

Table 4: Participation and win rates for the four major incumbents (Maersk Drilling data)

	Noble	Maersk Drilling	Valaris	Borr Drilling
Participation rate (%)	[✂]	[✂]	[✂]	[✂]
Win rate (number of wins/number of times participated) (%)	[✂]	[✂]	[✂]	[✂]

Source: Maersk Drilling data provided in response to RFI 1, Q15 and CMA internal analysis.

Table 5: Participation and win rates for four major incumbents (Noble data)

	Noble	Maersk Drilling	Valaris	Borr Drilling
Participation rate (%)	[✂]	[✂]	[✂]	[✂]
Win rate (number of wins/number of times participated) (%)	[✂]	[✂]	[✂]	[✂]

Source: Noble data provided in response to RFI 1, Q15 and CMA internal analysis.

81. The CMA considers that the results of this analysis are broadly consistent with the customer tender data analysis described above:

    (a) No suppliers bid on all of the tenders. Participation rates vary somewhat from the customer data analysed by the CMA; however, in all data sets Maersk Drilling bids in the vast majority of tenders and Noble in the majority of tenders. This indicates that the Parties often face one another.

    (b) Although Borr Drilling has a high participation rate across data sets, it has a lower win rate than Valaris across all data sets

82. The data provided by Noble suggests there are, on average, around four and a half bidders for each tender, although in [✂] of these tenders there were four or fewer bidders.[68] Likewise, the data set provided by Maersk Drilling suggests there are typically (in [✂] of cases) fewer than four bidders for each tender.[69] Where there are more than four bidders, those alternative suppliers identified in paragraph 78 from the customer data set feature. A small number of other suppliers are also mentioned. However, it does not appear that any of these currently provide drilling services using jack-up rigs (with the possible exception of GMS).[70, 71]

[68] Source: Noble data provided in response to RFI 1, Q15 and CMA internal analysis.

[69] Source: Maersk Drilling data provided in response to RFI 1, Q15 and CMA internal analysis.

[70] GMS appears to operate jack-up rigs in the North Sea. See GMS | Gulf Marine Services | GMS Abudhabi | UAE (gmsplc.com). Macro Offshore uses one jack-up rig for accommodation – see Home - Macro Offshore (macro-offshore.com), and Hercules Offshore had one HE jack-up rig but this no longer appears operational – see eg Hercules Offshore to file for bankruptcy a second time | Reuters.

[71] A small number of alternative contractors won tenders according to the Parties' tender data (GMS, Stena or COSL, Transocean, Well-Safe Solutions, Seafox, Swift Drilling, Profsafe, and Macro Offshore). Some of these relate to accommodation services, not offshore drilling. For the reasons set out in footnote 13, the CMA considers that the supply of rigs for accommodation services is distinct from the supply of rigs for offshore drilling services and has found that the Merger does not give rise to competition concerns in the supply of accommodation services. Other tenders relate to plug and abandonment work. It is unclear what types of activity the other tenders relate to.

83. The CMA considers that the Parties' tender data also indicates that the Parties pose an important competitive constraint on one another. In particular, the CMA considers that the data indicates that:

(a) the Parties face a limited number of rivals in the supply of jack-up rigs;

(b) the Parties' participation rates are high and they are therefore likely to frequently face one another when bidding;

(c) Borr Drilling has a fairly low win rate; and

(d) in the majority of tenders there are four or fewer bidders.[72]

Conclusions on tender data

84. Taken together, the CMA considers that both tender data sets (ie the customer tender data and the Parties' tender data) demonstrate that the Parties are close competitors and, post-Merger, will face limited competitive constraints. In particular:

(a) The customer data set shows that:

(i) Of the tenders in which Noble participated, Maersk Drilling participated in [✂]. Of the tenders in which Maersk Drilling participated, Noble participated in [✂].

(ii) Of the [✂] tenders won by Maersk Drilling, Noble was the second placed bidder in [✂] of those and of the [✂] tenders won by Noble, Maersk Drilling was the second placed bidder in [✂].

(b) All data sets show that:

(i) Maersk Drilling bids in the vast majority of tenders and Noble in the majority of tenders. This indicates that the Parties often face one another.

(ii) Although Borr Drilling has a high participation rate across data sets, it has a relatively low win rate across all data sets, in particular when compared to Maersk Drilling and Valaris.

[72] There are four or fewer bidders in [✂]% of tenders in the Noble data set, and in [✂]% of tenders in the Maersk Drilling data set (having made the adjustments listed under Tables 5 and 4 respectively).

(iii) The majority of tenders have four or fewer bidders present. The Parties' main rivals are Valaris and Borr Drilling, with other suppliers typically bidding infrequently and very rarely winning.

Other evidence on competitive interaction

85. For the reasons set out above, the CMA considers that the supply of jack-up rigs for offshore drilling in NW Europe is concentrated, with the market being populated by only four main players (two of which being the Parties). However, in addition to the share of supply data and tender data discussed above, the CMA also considered other evidence on the competitive interaction between the Parties, namely (1) technical differences between the Parties' fleets; (2) evidence from third parties; and (3) the Parties' internal documents.

86. The Parties submitted that there is an area within NW Europe (North UKCS[73]) where three of Maersk Drilling's HE rigs are not suitable to operate. The Parties further submitted that, as the jack-up rigs of Noble, Valaris and Borr Drilling do not have this limitation, the Parties are not close competitors in this area.[74]

87. The CMA considers that Maersk Drilling is nevertheless able to compete in the North UKCS region. In particular:

(a) Two of Maersk Drilling's HE rigs (the Maersk Highlander, currently located in NW Europe, and the Maersk Reacher, currently located in Norway and due to be relocated to NW Europe to fulfil a contract in 2022) are capable of operating in this region.[75]

(b) Maersk Drilling's UHEs are also capable of operating in this region. Although the CMA acknowledges that Maersk Drilling may only have the incentive to bid with UHEs in NW Europe if there is no demand for them in Norway,[76] the CMA notes that Maersk Drilling currently has two UHEs in NW Europe. This shows that under current market conditions Maersk Drilling is deploying UHEs in NW

[73] Ie the North UK Continental Shelf, a region of the non-Norway North Sea where the seabed tends to be deeper (typically 100m / 330 feet or deeper).
[74] Parties' response to CMA request for information dated 1 February 2022 (**RFI 2**), Q13. The Parties further submitted 41.5% contracts were for drilling work occurring in the North UKCS.
[75] Parties' response to RFI 2, Q13.
[76] Parties' response to RFI 2, Q13. The Parties submitted that, given the significant price premium these rigs can attract in Norway, Maersk Drilling would only be likely to deploy these rigs outside Norway when there is insufficient demand in Norway. Third-party evidence supports the Parties' submissions that Maersk Drilling is only likely to have the incentive to bid its UHE rigs in NW Europe if there is no demand for them in Norway (Responses to CMA Competitor Questionnaire, Q9; Note of a call with a competitor, 10 February 2022.).

Europe. The CMA did not receive any evidence to suggest that demand in Norway is likely to change substantially in the foreseeable future.

(c) Maersk Drilling submitted that, regardless of the limitations of its fleet, it has not to its knowledge [✂] in the relevant region. Maersk Drilling explained that it will generally [✂].[77]

88. In terms of third-party evidence and the Parties' internal documents, the CMA considered the following:

(a) Customers who responded to the CMA's market investigation generally told the CMA that the Parties and Valaris are the strongest suppliers of offshore drilling services using jack-up rigs (ranking Maersk Drilling first, Valaris second, Noble third and Borr Drilling fourth). Customers were asked to score the relative strength of alternative suppliers of jack-up rigs for offshore drilling services and generally rated both Parties as relatively strong competitors.[78] One customer explained that there are only three suppliers that are able to meet its tender specifications: the Parties and Valaris.[79] Another customer told the CMA that the Parties, Valaris and Borr Drilling compete closely.[80]

(b) Competitors who responded to the CMA's market investigation told the CMA that the Parties are both among their top three competitors.[81]

(c) The Parties identify each other (and Borr Drilling and Valaris) as their core competitors in ordinary course business documents.[82] Internal documents discussing potential competitors for upcoming tenders for the supply of jack-up rigs for offshore drilling in NW Europe also show that the Parties regularly monitor each other and generally expect each other to bid for upcoming tenders.[83]

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[77] Parties' response to the CMA request for Information dated 11 February 2022, Q4. Maersk Drilling noted that it only has records that enabled it to answer this question [✂]. However, it believes that, if there were any such instances [✂].
[78] Responses to CMA Customer Questionnaire, Q14.
[79] Note of call with a customer, 2 February 2022.
[80] Note of a call with a customer, 4 February 2022.
[81] Responses to CMA Competitor Responses, Q19. [✂].
[82] See for example Annex 4 to RFI 1, at slide 30, Annex 10.5 to the DMN, slide 11, Annex 10.7 to the DMN, slide 14.
[83] The CMA asked the Parties to provide internal documents where they discuss potential competitors for upcoming tenders for the supply of jack-up rigs for offshore drilling in NW Europe over the last two years. The Parties submitted a total of [✂] bid documents exploring potential competitors referred to internally as [✂] ([✂] by Maersk Drilling, [✂] by Noble). Submissions in response to the CMA section 109 notices of 3 March 2022 served on Maersk Drilling and Noble.

89. Based on the evidence set out above, the CMA considers that the Parties' internal documents and the views of third parties reflect that the market is concentrated, and indicate that the Parties each represent an important competitive constraint on one another. The CMA considers that any technical differences between the Parties' fleets are relevant only in relation to a small region within NW Europe and that the evidence in relation to the Parties' bidding strategies show that they exert a competitive constraint on one another even within this region.

Alternative suppliers

90. As set out above, the CMA considers that the provision of offshore drilling services using jack-up rigs in NW Europe is concentrated, with four main suppliers: the Parties, Valaris and Borr Drilling. The tender data shows that other suppliers such as Northern Offshore, Shelf Drilling and Well-Safe Solutions have, to some extent, also bid for contracts in NW Europe. The CMA has therefore assessed the competitive constraint that would be exerted by each of Valaris, Borr Drilling and these other suppliers on the Merged Entity, post-Merger.

- *Valaris*

91. The CMA notes that:

(a) Valaris owns and operates nine jack-up rigs in NW Europe;[84]

(b) Table 2 shows that Valaris had a share of supply of [40-50]% in 2021 in the provision of jack-up rigs for offshore drilling in NW Europe (and its share of supply has been fairly stable over the last four years); and

(c) The tender data shows that Valaris is the most successful of the four main suppliers in tenders (see paragraphs 71 to 84).

92. Third-party feedback received by the CMA indicates that Valaris exerts a strong competitive constraint on the Parties. One customer explained that only the Parties and Valaris are able to meet its tender specifications.[85] As set out in paragraph 88, overall customers considered that the Parties and Valaris are their strongest potential suppliers, and rated Valaris as a strong competitor. Competitors submitted

[84] The jack-up rigs are benign, HE and UHE. FMN, Table 31.
[85] Note of call with a customer, 2 February 2022.

that the Parties and Valaris are their top three competitors.[86] This suggests Valaris is a close competitor to, and a constraint on, both Parties.

93. The Parties' internal documents also show that they compete closely with Valaris. Internal documents submitted by the Parties (see footnote 83 above) show that the Parties regularly monitor Valaris and generally expect Valaris to bid for upcoming tenders.

- *Borr Drilling*

94. The CMA notes that:

    - Borr Drilling owns and operates three jack-up rigs[87] in NW Europe;
    - Table 2 shows that Borr Drilling has a share of supply of [10-20]% in the provision of jack-up rigs for offshore drilling in NW Europe in 2021 (and its share of supply has been fairly stable over time); and
    - The tender data shows Borr Drilling is less successful than Valaris in winning tenders (see paragraphs 71 to 84).

95. The CMA's investigation showed that Borr Drilling exerts a weaker competitive constraint on the Parties than Valaris. One customer indicated that Borr Drilling's jack-up rigs do not have the required specifications.[88] Another customer told the CMA that, although the Parties, Valaris and Borr Drilling compete closely, Borr Drilling is a smaller company.[89] A number of customers also noted that the service provided by Borr Drilling is significantly weaker than the one provided by the Parties and Valaris.[90] One customer submitted that Borr Drilling was not a strong enough competitor at the moment, and explained how the Merged Entity together with Valaris would effectively form a duopoly, as their products are the closest in specification, and their service is closest in quality.[91]

96. As explained above, the CMA asked customers to score their main suppliers of offshore drilling services using jack-up rigs. Some of the customers that responded

[86] Responses to CMA Competitor Responses, Q19. [✂].
[87] The jack-up rigs are HE based on bids made to contracts that specified HE rigs in Customers' tender data. FMN, Table 32.
[88] Note of call with a customer, 2 February 2022.
[89] Note of a call with a customer, 4 February 2022.
[90] Responses to CMA Customer Questionnaire, Q18.
[91] Responses to CMA Customer Questionnaire, Q18. A customer stated that with little other competition the Merged entity could incrementally increase prices.

to the CMA's market investigation did not mention Borr Drilling at all as a viable offshore drilling supplier. Of those that did, customers generally rated Borr Drilling as an average supplier.

97. The Parties' internal documents show that they regularly monitor Borr Drilling and generally expect Borr Drilling to bid for upcoming tenders.[92]

98. Taking the available evidence in the round, the CMA considers that Borr Drilling is a somewhat weaker competitor to, and constraint on, both Parties than Valaris, but is nevertheless an important constraint.[93]

- *Other drilling contractors*

99. The CMA also considered whether there are other suppliers that would exert competitive pressure on the Merged Entity.

100. The Parties submitted that, apart from Valaris and Borr Drilling, they also compete with Swift Drilling and Well-Safe Solutions in the supply of jack-up rigs for offshore drilling in NW Europe. Furthermore, as set out in paragraph 88(c), the tender data shows that other suppliers bid for contracts from time to time. A small number of other potential suppliers were also mentioned by customers.

101. The CMA considered (1) shares of supply (2) tender data (3) third-party evidence and (4) internal documents in order to assess whether these suppliers would exert a competitive constraint on the Merged Entity post-Merger.

102. The share of supply data (as set out in Table 2) shows that Swift Drilling is the only supplier besides the Parties, Valaris and Borr Drilling that is currently active in the supply of jack-up rigs for offshore drilling at all in NW Europe and that it has a small share of supply, of [0-5]%. No other suppliers have been active supplying jack-up rigs for offshore drilling in the region between 2018 and 2021.

103. The customer tender data also suggests that Swift Drilling is the only supplier besides the Parties, Valaris and Borr Drilling to have won a contract between 2017 and 2021. The CMA notes that Swift Drilling operates only one benign rig (and has no HE or UHE rigs) in NW Europe and its ability to compete with the Parties is

[92] See footnote 83.
[93] Similarly, one of the competitors considered it does not compete with Borr Drilling (see Responses to CMA Competitor Questionnaire, Q19).

therefore likely to be limited given that benign rigs can only be used in the southern part of the North Sea.[94]

104. The CMA's analysis of customer tender data indicates that a number of other suppliers bid for contracts between 2017 and 2021. Table 6 (below) sets out who those bidders were, the number of opportunities in which they bid, and their performance in tenders.

Table 6: Other bidders' participation and performance

Bidder	***Number of bids (out of 37 opportunities)***	***Highest position recorded***
Northern Offshore	4	Not in top 3 [✂]
Transocean	3	Not in top 3 [✂]
Seadrill	3	n/a
Swift Drilling	2	Top 3 [First]
Shelf Drilling	1	n/a
Awilco Drilling	1	n/a
COSL	2	n/a
Stena	1	Not in top 3 [✂]
Odjfell Drilling	1	Not in top 3 [✂]
Dolphin Drilling	1	n/a
Saipem	1	n/a
GMS	1	n/a
Well-Safe Solutions	1	Top 3 [✂]

Source: CMA internal analysis of customer tender data

105. Table 6 shows that only Swift Drilling won an opportunity in the customer tender data analysed by the CMA, with another bidder (Well-Safe Solutions) coming in the top three [✂] in one other tender. Some other bidders achieved a lower ranking, while the majority of bidders were not recorded as having achieved any ranking from

[94] See https://www.jackupbarge.com/swift-drilling/. See footnote 71.

customers. These bidders also only participated infrequently in tenders (with most only having bid for a single opportunity).

106. The CMA also notes that a number of these bidders do not operate jack-up rigs. These suppliers are Transocean[95], COSL[96], Stena[97], Dolphin Drilling[98], and Saipem.[99] Third-party feedback suggests that there are only very limited circumstances where a project suitable for a jack-up rig can be fulfilled by another type of rig.[100]

107. Other bidders typically operate in other geographies. For example, Seadrill and Odjfell operate in Norway and the CMA understands that Northern Offshore focusses its operations in the Middle East.[101, 102] Third-party feedback shows that many customers are reluctant to use suppliers that are not currently active with rigs in NW Europe because they consider doing so could be commercially unviable.[103]

108. Finally, the CMA notes that the remaining bidders appear to be limited to particular types of projects. The CMA understands that Shelf Drilling only operates in shallow waters and does not operate in NW Europe; Swift Drilling only operates one benign rig in NW Europe and Well-Safe Solutions only undertakes plug and abandon work (and recently bid a stacked rig for a plug and abandon contract).[104]

109. Third-party feedback is consistent with the customer tender data. Suppliers other than the Parties, Valaris and Borr Drilling were mentioned much less frequently as potential alternatives by customers and were generally given much lower scores for their competitive strength than the Parties.[105]

110. Finally, the Parties' internal documents, as described in paragraph 88(c), rarely refer to suppliers other than the Parties, Valaris and Borr Drilling as potential bidders for upcoming tenders. Maersk Drilling identifies Well-Safe Solutions as a potential competitor only [✂] in bid documents discussing potential competitors for upcoming

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[95] https://www.deepwater.com/
[96] https://www.cosl.no/about-us
[97] https://www.stena-drilling.com/our-fleet/
[98] https://www.dolphindrilling.com/our-fleet
[99] https://www.saipem.com/en/solutions/offshore
[100] See further paragraphs 33 to 34 above.
[101] As set out above, the provision of offshore drilling services is more profitable in Norway.
[102] Information on types of operation based on materials in the respective contractors' publicly available fleet status reports (or equivalents).
[103] See further paragraphs 54 to 55. See Responses to CMA Customer Questionnaire, Q15.
[104] Our Fleet — Shelf Drilling; Our Fleet - Well-Safe Solutions (wellsafesolutions.com); Swift Drilling - Jack-Up Barge, The Netherlands, UAE, Offshore at Your side (jackupbarge.com).
[105] Response to CMA Customer Questionnaire, Q14.

tenders analysed by the CMA. Well-Safe Solutions is mentioned as a potential competitor in around [✂] of Noble's bid documents, and Swift Drilling is mentioned in only [✂]. The Parties mention each other and Valaris and Borr Drilling significantly more often. For example, Maersk Drilling mentions Noble in around [✂]% of the documents submitted, and Noble mentions Maersk Drilling in more than [✂]% of the documents submitted. The only competitor mentioned at a similar rate is Valaris who appears in around [✂]% documents submitted.[106]

- *Conclusion on alternative suppliers*

111. Based on the evidence set out above, the CMA considers that Valaris is a strong supplier that would likely exert significant competitive pressure on the Merged Entity post-Merger. The CMA considers that Borr Drilling is a weaker constraint than Valaris but is nevertheless likely to remain an important constraint on the Parties and Valaris. The CMA considers that Swift Drilling and Well-Safe Solutions may exert some limited constraint for a small sub-set of projects only (namely projects where a benign rig can be used and plug and abandonment projects). The CMA does not consider there are any other suppliers that would exert a material competitive constraint on the Merged Entity.

Conclusion on horizontal unilateral effects in relation to the supply of jack-up rigs for offshore drilling

112. For the reasons set out above, the CMA believes that the supply of jack-up rigs for offshore drilling is concentrated, and the Parties represent an important competitive constraint on one another. Accordingly, the CMA found that the Merger raises significant competition concerns as a result of horizontal unilateral effects in relation to the supply of jack-up rigs for offshore drilling in NW Europe, including the UK.

BARRIERS TO ENTRY AND EXPANSION

113. Entry or expansion of existing firms can mitigate the initial effect of the acquisition on competition, and in some cases may mean that there is no SLC. In assessing whether entry or expansion might prevent an SLC, the CMA considers whether such entry or expansion would be timely, likely and sufficient.[107]

114. The Parties made no submissions in relation to barriers to entry and expansion.

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[106] See footnote 83.
[107] Merger Assessment Guidelines, paragraphs 8.28-8.46.

115. The evidence received by the CMA from third parties does not indicate that entry or expansion will be timely, likely, or sufficient to mitigate any SLC arising.

116. In terms of entry, a competitor explained that to start supplying jack-up rigs for offshore drilling in the North Sea a drilling contractor would need access to a rig that would qualify to provide drilling services in the North Sea. According to the competitor, the new entrant would also need to have the processes and management in place to ensure it complies with regulatory requirements.[108] The competitor further submitted that, although the costs of transporting jack-up rigs are high, there could be new entrants if the project was long term.[109] Finally, the third party suggested that there is a supplier of jack-up rigs that could enter NW Europe, but clarified that its jack-up rigs are benign and would require an upgrade.[110]

117. The CMA has not received any other evidence of potential entry into NW Europe. As explained above, third-party feedback also suggests that many customers would be reluctant to rely on a drilling contractor that does not have active rigs in NW Europe.[111]

118. Additionally, customers told the CMA that they have not considered sponsoring entry or taking action to engender more competition in NW Europe.[112]

119. For the reasons set out above, the CMA believes that entry or expansion would not be timely, likely or sufficient to prevent a realistic prospect of an SLC as a result of the Merger.

THIRD-PARTY VIEWS

120. The CMA contacted customers and competitors of the Parties. Two thirds of customers raised concerns about the impact of increased concentration as a result of the Merger. These customers submitted that the Merger would result in a reduction of competition from four to three suppliers, or from three players to two suppliers, and could lead to price increases.[113]

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[108] Note of a call with a competitor, 10 February 2022.
[109] Note of a call with a competitor, 10 February 2022. Two customers made similar submissions to the CMA (note of a call with a customer, 4 February 2022; and note of call with a customer, 2 February 2022).
[110] Responses to CMA Competitor Questionnaire, Q21.
[111] Responses to CMA Customer Questionnaire, Q16.
[112] Note of a call with a customer, 4 February 2022; and note of call with a customer, 2 February 2022; responses to CMA Customer Questionnaire, Q17.
[113] Responses to CMA Customer Questionnaire, Q18. Some customers also submitted that further concentration in the market may result in lower service quality among drilling operators

121. The competitors that responded to the CMA's investigation did not raise concerns in relation to the Merger. Third-party comments have been taken into account where appropriate in the competitive assessment above.

CONCLUSION ON SUBSTANTIAL LESSENING OF COMPETITION

122. Based on the evidence set out above, the CMA believes that it is or may be the case that the Merger may be expected to result in an SLC as a result of horizontal unilateral effects in relation to the supply of jack-up rigs for offshore drilling in NW Europe, including in the UK.

DECISION

123. Consequently, the CMA believes that it is or may be the case that (1) arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation; and (2) the creation of that situation may be expected to result in an SLC within a market or markets in the United Kingdom.

124. The CMA therefore believes that it is under a duty to refer under section 33(1) of the Act. However, the duty to refer is not exercised whilst the CMA is considering whether to accept undertakings under section 73 of the Act instead of making such a reference.[114] The Parties have until 29 April 2022[115] to offer an undertaking to the CMA.[116] The CMA will refer the Merger for a phase 2 investigation[117] if the Parties do not offer an undertaking by this date; if the Parties indicate before this date that they do not wish to offer an undertaking; or if the CMA decides[118] by 9 May 2022 that there are no reasonable grounds for believing that it might accept the undertaking offered by the Parties, or a modified version of it.

Colin Raftery
Senior Director, Mergers
Competition and Markets Authority
22 April 2022

[114] Section 33(3)(b) of the Act.
[115] Section 73A(1) of the Act.
[116] Section 73(2) of the Act.
[117] Sections 33(1) and 34ZA(2) of the Act.
[118] Section 73A(2) of the Act.