

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

Final report

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 Some numbers have been replaced by a range.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

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Glossary

Summary

Overview of our final report

1. The Competition and Markets Authority (**CMA**) has found that the merger between CHC Group LLC (**CHC**) and certain operations (together referred to as the **Fisher Business**¹) previously owned by Babcock International Group plc (**Babcock**) would result in a substantial lessening of competition (**SLC**) in oil and gas (**O&G**) Offshore Transportation Services in the UK. As a result, customers (the operators of oil rigs and platforms in the North Sea) may experience higher prices or a deterioration in service.
2. We have decided that the only effective way to address the competition issues would be for CHC to sell the Offshore UK business to a suitable buyer.

Who are the businesses and what services do they provide?

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

What evidence have we looked at?

6. In assessing this Merger, we looked at a wide range of evidence that we considered in the round to reach our findings.
7. We received several submissions and responses to information requests from the Parties and held hearings with each of CHC, Babcock and the Fisher

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

Business. We gathered information about tenders which had been run for UK O&G Offshore Transportation Services since 2017, including who bid for these tenders, who won and how other participants were ranked. We also examined the Parties' own internal documents, which show how they run their businesses and how they view their rivals in the ordinary course of business. These internal documents were also helpful in understanding the Parties' plans for the future of their businesses.

8. We spoke to and gathered evidence from other companies to understand better the competitive landscape, and to get their views on the impact of the Merger. In particular, we received evidence from the following:
 - Oil and gas companies who were customers of the Parties.
 - The other suppliers of helicopter services in this market.
 - Lessors of helicopters.
 - Participants in related markets (such as Search and Rescue services and providing transportation services for offshore windfarms, or from overseas O&G transportation operations) who potentially might consider entering the O&G Offshore Transportation Services market.
9. We also considered evidence from the Parties and third parties received during the CMA's phase 1 investigation into the Merger.
10. In March we published the provisional findings from phase 2 together with our initial thoughts on what actions would be required to address the substantial loss of competition we had provisionally found. We invited and received comments from the Parties and other interested companies and organisations, and had further discussions with CHC and the Fisher Business about remedies options.

What did this evidence tell us...

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

11. In order to determine the impact that the Merger may have on competition, we have considered what would have happened had the Merger not taken place. This is known as the counterfactual.
12. The Parties told us there was no other likely buyer, and Babcock would have closed down the business.

13. We looked at the financial position of the Fisher Business and at Babcock's internal documents for evidence of Babcock's intention and incentives to close down the business. The evidence shows that closing down the business was only one of several options that Babcock had considered with regard to the Fisher Business.
14. While the Fisher Business was not performing well at the time of the Merger, this performance could have improved in the future; the costs of closure prior to the expiry of its current customer contracts were substantial and the Fisher Business was continuing to make contributions to Babcock's overhead costs. Babcock therefore had a strong incentive to continue operating the business, unless it was able to find an alternative buyer. We do not consider it likely that Babcock would have closed the Fisher Business prior to the expiry of its current customer contracts.
15. We conclude therefore that if the Merger had not happened, the most likely counterfactual is that the Fisher Business would have continued to operate in the relevant market in the short to medium-term, including tendering for new contracts. This could either have happened under Babcock's ownership, or with the Fisher Business having been sold to an alternative buyer.
16. After the March Provisional Findings, we considered CHC's submissions as to its role in the market absent the Merger. We conclude that CHC had various options available to it, and pursuing alternative options would most likely have resulted in CHC continuing to compete in broadly the same way it was doing before the Merger.

... about the effects of the Merger?

17. We have looked at whether the Merger would lead to a significant reduction in competition between CHC, the Fisher Business and their competitors by removing an important competitor and, in doing so, allow the Merged Entity to worsen or not improve its offering (such as price or service quality) compared to the situation if the Merger did not take place.
18. Babcock told us that it was following a 'manage for value' strategy for the Fisher Business until it could be sold, which reduced the effectiveness of the Fisher Business as a competitor in the market.
19. We consider that there are only four effective suppliers in the market (each of CHC, Offshore UK, Bristow and NHV) and that the alternatives outside these competitors are significantly weaker options. Our view is that CHC and Offshore UK impose an important competitive constraint on one another that would be lost as a result of the Merger.

20. This constraint has not been undermined by Babcock's manage for value strategy: the evidence shows that Offshore UK remains an effective competitor, and the loss of this competitor would significantly reduce the already very limited pool of alternatives available to customers, reducing their ability to play-off suppliers against each other and weakening their buyer power.
21. While Bristow and NHV are effective competitors, our view is that the aggregate constraint from these two suppliers would not be sufficient to offset the substantial loss of competition from the Merger.
22. We therefore conclude that the competitive impact of losing Offshore UK as a competitor in UK O&G Offshore Transportation is substantial.

... about any countervailing factors?

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

28. We therefore conclude that countervailing factors would not be likely to prevent an SLC from arising.

Conclusions on the SLC

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

What must be done to remedy the SLC we have found?

30. We considered different options for CHC to sell off all or part of the UK operations of the Fisher Business (Offshore UK), and whether they would be effective at replacing the competition lost by the Merger, requirements for a suitable purchaser for the business to be sold, and the process that should be followed to sell the business.
31. We have decided that only divestiture of Offshore UK to a suitable purchaser would be an effective remedy to address the SLC and the harm it would cause to competition, and that requiring this would not be disproportionate. A suitable purchaser therefore must be found which meets criteria we have described in our report.

What happens next?

32. The CMA will now take steps to implement the remedies described above, and will consult publicly on the approach to be taken.
33. In line with guidance, the CMA will implement its remedy decision within 12 weeks of publication of the final report. The CMA may extend this time period once by up to six weeks.

Findings

1. The reference

- 1.1 On 29 November 2021, the Competition and Markets Authority (**CMA**), in exercise of its duty under section 22(1) of the Enterprise Act 2002 (the **Act**) referred the completed acquisition (the **Merger**) by CHC Group LLC (**CHC**) of Offshore Helicopter Services UK Limited (**Offshore UK**), Offshore Services Australasia Pty Ltd (**Offshore Australia**) and Offshore Helicopter Services Denmark A/S (**Offshore Denmark**) for further investigation and report by a group of CMA panel members (the **Inquiry Group**). The acquired entities (together the **Fisher Business**) were subsidiaries of Babcock International Group plc (**Babcock**). In these findings, CHC, the Fisher Business and Babcock are referred to as the **Parties** and, for statements referring to the future, CHC and the Fisher Business together are referred to as the **Merged Entity**.
- 1.2 In exercise of its duty under section 35(1) of the Act, the CMA must decide:
- (a) whether a relevant merger situation (**RMS**) has been created; and
 - (b) if so, whether the creation of that situation has resulted, or may be expected to result, in a substantial lessening of competition (**SLC**) within any market or markets in the United Kingdom (**UK**) for goods or services.
- 1.3 Our terms of reference, along with information on the conduct of the inquiry, are set out in Appendix A.
- 1.4 We are required to prepare and publish a final report by 10 July 2022.²
- 1.5 This document, together with its appendices, constitutes the Inquiry Group's findings. Further information can be found on our inquiry webpage.³
- 1.6 We note that most submissions and evidence referred to in this report were submitted before the Russian invasion of Ukraine, and therefore did not reflect any impact this might have on the oil and gas (**O&G**) industry going forward. Following publication of our provisional findings report on 18 March 2022 (**Provisional Findings**), we asked third parties whether they would wish to

² The statutory deadline was extended by eight weeks pursuant to [section 39\(3\)](#) of the Act. For further information, see Appendix A on the conduct of the inquiry.

³ [CHC/Babcock merger inquiry](#).

amend their previously submitted evidence in light of events in Ukraine. We refer to their responses where appropriate.

2. Industry background

Introduction

- 2.1 In this chapter we provide a brief overview of the industry in the UK in which CHC and the Fisher Business are active.
- 2.2 CHC and the Fisher Business transport crews to and from offshore oil and gas rigs and platforms which are utilised to search, explore, drill and extract oil and gas (**O&G Offshore Transportation Services** or the **Industry**). The helicopter is the primary means of transporting workers to and from these installations.⁴

Location of UK O&G platforms

- 2.3 UK O&G Offshore Transportation Service providers transport crew to and from O&G platforms within the UK Continental Shelf (**UKCS**). The UKCS comprises those areas of the sea bed and subsoil beyond the territorial sea over which the UK exercises sovereign rights of exploration and exploitation of natural resources.⁵ This includes parts of the North Sea, the North Atlantic, the Irish Sea and the English Channel.

Key assets required

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

Helicopters

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

⁴ [INDG219 – How offshore helicopter travel is regulated \(hse.gov.uk\)](#).

⁵ Oil and Gas Authority, [UKCS Designations](#).

effectively in both the Northern and Southern Zones of the UK.⁶ They told us that there are some rigs in the UK that are accessed from Blackpool which are too small for super-medium and heavy helicopters to land on and can only be served with medium (or smaller) aircraft. Most UK operators in the O&G Offshore Transportation Service industry either own or lease medium, super-medium and heavy aircraft.⁷

- 2.7 Helicopters utilised within the O&G Offshore Transportation Service industry have an average useful life of approximately between 15 to 25 years.⁸ On average, they cost between £8 million and £21 million to purchase outright.⁹ In general, heavier helicopter models (such as heavy and super medium) are more expensive than the light aircraft.
- 2.8 We set out the helicopters utilised by the Parties and their competitors in paragraph 6.42 and Appendix C.

Pilots/crew

- 2.9 Helicopter operators require pilots and crew to manage the aircraft utilised to transfer crew to and from offshore platforms. The Parties submitted that the following qualifications are required:
- (a) **Pilots** are required to have a private pilots' licence which can then be converted into a commercial pilot licence (**CPL**). Once the CPL is obtained, a pilot will be 'type rated' to fly one particular type of aircraft. Pilots can switch their type rating if they need to fly a different aircraft type by completing a 'differences course', but typically a pilot will only hold one type rating at a time for safety reasons.¹⁰
- (b) **Engineers** are either recruited as apprentices and trained up, or are hired as qualified engineers. The work undertaken by an engineer will depend on the level of training held, for example some engineers will not have the relevant training to authorise an aircraft to fly.¹¹

⁶ The Northern North Sea covers installations north of latitude 56°N in the UK section of the North Sea (with bases including Aberdeen and Sumburgh). The Southern North Sea covers installations south of 56°N (including bases such as Norwich, Humberside and Blackpool).

⁷ Final Merger Notice (**FMN**), paragraph 21.7.

⁸ Response to the CMA's questionnaire from: [REDACTED], [REDACTED], [REDACTED], [REDACTED].

⁹ Response to the CMA's questionnaire from: [REDACTED], [REDACTED], [REDACTED], [REDACTED].

¹⁰ FMN, paragraph 21.10.1.

¹¹ FMN, paragraph 21.10.2.

Facilities/bases

2.10 Operators within the UK require access to facilities from which O&G Offshore Transportation services are provided. These include:

- (a) **Aircraft storage:** these are used for maintenance and storage of helicopters when they are not flying. They are purchased or leased by helicopter operators. Sometimes these facilities require renovations/adaptations to comply with the latest health and safety standards and to provide relevant technical support offices, workshops and, amongst other things, rest rooms.¹²
- (b) **Check-in facilities:** standard UK check-in facilities are required to check passengers in, including an ability to weigh passengers, baggage and freight.¹³
- (c) **Ramp and handling facilities:** required to manage the loading and unloading of the aircraft in preparation for departure or arrival. These are required to follow standard UK processes aligned to industry requirements.¹⁴
- (d) **Security:** baggage and passenger security screening is required in order to process commercial air transport flights. Facilities must search for prohibited items and/or dangerous goods that could cause a flight safety risk. Included within security is the need for trained personnel and x-ray baggage and body scanners.¹⁵
- (e) **Access to fuel supply:** aircraft fuel is primarily supplied under contract framework arrangements.¹⁶
- (f) **Parking facilities:** these are required for the crews being transported to the rigs. At all UK bases, parking is provided by the respective airport location and is charged directly to the user via parking ticket or according to a record of the duration of the car parking space. This is not controlled by the provider of offshore helicopter services and is subject to individual availability of spaces for passengers.¹⁷

¹² FMN, paragraph 21.12.1.

¹³ FMN, paragraph 21.12.2.

¹⁴ FMN, paragraph 21.12.3.

¹⁵ FMN, paragraph 21.12.4.

¹⁶ FMN, paragraph 21.12.5.

¹⁷ FMN, paragraph 21.12.6.

Regulatory approval

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

Regulation

2.12 Safety within the offshore helicopter travel industry (the **Industry**) is regulated by the Health and Safety Executive (**HSE**) and the Civil Aviation Authority (**CAA**). The HSE enforces health and safety law, while the CAA enforces aviation legislation and the general health and safety duty set out in the Civil Aviation (Working Time) Regulations (**CAWTR**) for the protection of crew members of UK operators on the aircraft.¹⁸ A memorandum of understanding is in place between the HSE and CAA to ensure they work together effectively.

2.13 The HSE notes that the law places the responsibility for the achievement of safety on helicopter operators, flight crews, installation operators and the offshore workforce. With regard to helicopter operators, they must satisfy the CAA that they continue to meet the requirements for safe public transport passenger operations, which is demonstrated through holding an Air Operator's Certificate (**AOC**).¹⁹ The AOC requires operators to publish detailed operational procedures in the company's operations manual. They are also responsible for the safety briefing of passengers and provision of safety equipment aboard the aircraft.²⁰ The Parties submitted that the CAA deals with safety standards where the licence is concerned, for example financial fitness and adequacy of insurance. They submitted that, following Brexit, there are no ownership requirements that apply in order to obtain a UK AOC. However, once a UK AOC has been obtained, an application for an Operating Route Licence (**ORL**) must be made and in order to do so, a UK national must hold 50.1% of the shares in the company that holds the AOC.²¹

2.14 Helicopter operators have a duty under the Air Navigation Order (**ANO**) to only permit flights to suitable landing areas. The Helideck Certification Agency (**HCA**) inspects all helidecks operating in the UKCS area.²²

2.15 O&G Offshore Transportation Services providers subscribe to the safety regulations of trade associations, such as the International Association of Oil & Gas Producers (**IOGP**) which describes itself as serving industry regulators

¹⁸ [The CAA, HSE and HSENI | Civil Aviation Authority](#)

¹⁹ See more at: [Air Operator Certificates | UK Civil Aviation Authority \(caa.co.uk\)](#).

²⁰ [INDG219 – How offshore helicopter travel is regulated \(hse.gov.uk\)](#).

²¹ FMN, paragraph 21.29. Response to putback [38].

²² [INDG219 – How offshore helicopter travel is regulated \(hse.gov.uk\)](#).

as a global partner for improving safety, environmental and social performance.²³ Similarly, IPIECA describes its purpose as being to develop, share and promote good practice and knowledge to help the oil and gas industry improve its environmental and social performance.²⁴

- 2.16 Recently IOGP produced aviation guidance on Offshore Helicopter Recommended Practices (**OHRP**), which provides ‘recommended practices that will assist in the safe, effective, and efficient management of offshore commercial helicopter transport operations’.²⁵

Tendering

- 2.17 In the Industry, each helicopter operator (be it CHC, the Fisher Business or their competitors) typically compete to win long-term customer contracts by taking part in tenders.²⁶ Customers may choose to renew or extend their contracts with their current supplier without running a competitive process. This may happen multiple times, meaning that customers may only hold a formal competitive tender process after many years.
- 2.18 More background on tender evaluation and direct negotiations can be found in Appendix D.

Parent Company Guarantees

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

²³ [About us | IOGP](#).

²⁴ [About us | IPIECA](#).

²⁵ [Offshore Helicopter Recommended Practices | IOGP Publications library](#).

²⁶ FMN, paragraph 15.6.

contract, or by making a financial reimbursement to the customer to compensate for the loss of service.

- (b) Lease contract PCGs: PCGs supporting contracts for leased assets. Where a UK O&G Offshore Transportation Services provider is unable to meet the financial repayments associated with a lease, the parent company guarantor will be required to make the relevant payment/support the financial obligation.

Industry trends

- 2.21 O&G Offshore Transportation Service providers are reliant on the performance of the broader O&G industry. Following the 'crash' in 2014, the price of oil remained consistently below its position pre-crash, until very recently.²⁷

²⁷ See paragraph 2.27 for discussion of recent events affecting the oil price. We note that the submissions from the Parties on the background to the industry were received before the conflict in Ukraine and consequent impact on the oil and gas industry. We consider it is too early to assess what the long term implications of the conflict in Ukraine may be for the sector, although note UK O&G Offshore Transportation Services market participants (customers and potential entrants in particular) told us that they would not modify their previous submissions to the CMA as a consequence of the conflict in Ukraine.

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



Source: Refinitiv Eikon.

Note: Russia's invasion of Ukraine (which commenced in February 2022: [Russia's assault on Ukraine: Foreign Secretary's statement, 24 February 2022 - GOV.UK \(www.gov.uk\)](#)) has had an immediate effect on oil and gas prices with the current price per barrel of Brent crude being \$121.67 (ICE Europe Brent Crude Electronic Energy Future as at market close on 30 May 2022). While it is not clear whether this dramatic increase will persist, current geopolitical instability is likely to mean that oil prices will remain higher than would have been expected before Russia's invasion.

- 2.22 The Parties submitted that the provision of the services that CHC and the Fisher Business provide in the UK have suffered from a long-term decline in demand (ie significantly fewer flight hours to O&G platforms) caused by the volatility of oil prices since their peak in 2014 and the reduction in O&G exploration and production activities. The Parties submitted that these are trends which are expected to continue, and which have resulted in structural over-capacity and a number of industry participants restructuring their operations.²⁸
- 2.23 The Parties submitted that the downward trajectory within the Industry can be observed in the total flight hours to oil and gas platforms/drilling rigs over the last six years.

²⁸ FMN, paragraph 2.

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



Source: The Parties (Final Merger Notice (FMN), Figure 2.1).

Note: .

- 2.24 The longevity and prospects of the industry are uncertain as a result of net zero targets and a potential move away from oil and gas towards more sustainable energy resources.²⁹
- 2.25 For example, the UK Government published its ‘Building Back Greener’ report in October 2021, which sets out a focus on significantly reducing emissions from traditional oil and gas fuel supplies.³⁰ However, the trajectory of the progression towards net zero in the O&G industry remains uncertain.
- 2.26 The most recent Government report into the UK O&G reserves and resources finds that official government forecasts suggest that oil and gas will remain an important and critical part of our energy mix for the foreseeable future, as we transition to net zero.³¹ The report notes that the UK’s petroleum reserves remain at a significant level and that, on the basis of current production projections, it could sustain production from the UKCS to 2030.³²
- 2.27 The Parties submitted historic and forecasted levels of production and decommissioning work at oil and gas platforms in the UK North Sea which indicate expected production through to 2050, longer than the timeframes currently set out by the UKCS (see Figure 2-3).

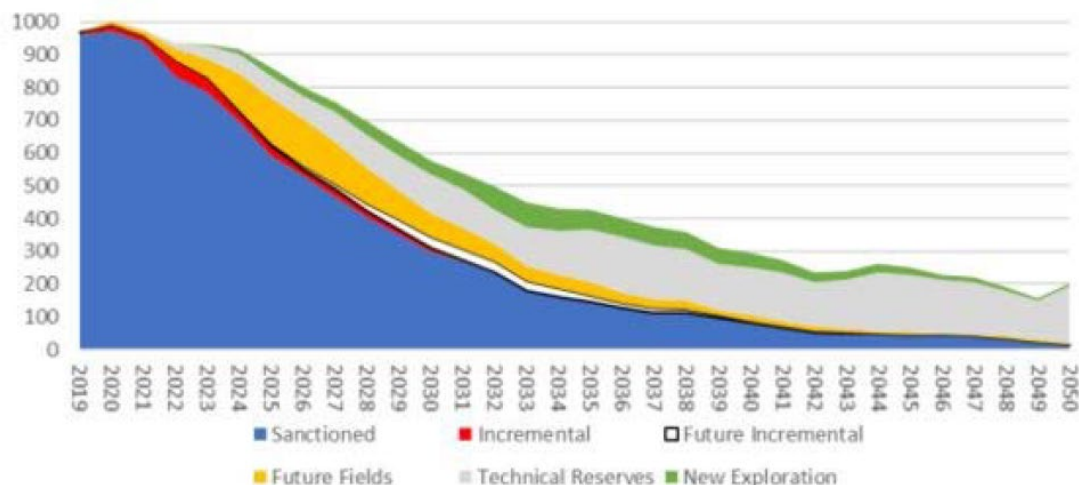
²⁹ Shortly before publication of this report, the UK Government announced what is effectively a “windfall tax” on profits of oil and gas companies, in the light of substantial increases in energy prices over the preceding 12 months. The precise impact of this on the UK O&G Offshore Transportation Services market is unclear, but we do not consider that these developments materially affect our substantive assessment and conclusions.

³⁰ HM Government, ‘[Net Zero Strategy: Build Back Greener](#)’, October 2021, page 20.

³¹ Oil and Gas Authority, ‘[UK Oil and Gas Reserves and Resources \(ogauthority.co.uk\)](#)’, page 3.

³² Oil and Gas Authority, ‘[UK Oil and Gas Reserves and Resources \(ogauthority.co.uk\)](#)’, page 4.

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



Source: The Parties (FMN, Figure 2.3). Graph reproduced by the Parties from: [Oil Slump to \\$50 Seen Triggering Rapid Decline in UK North Sea \(bloomberquint.com\)](https://www.bloomberquint.com).

2.28 A recent Offshore Energies UK report³³ states that based on current expectations, the long term annual rate of decline in O&G output could be about 7% to 10%. However, it also notes that depending on the levels of investment in developing projects, the rate of annual decline could be anywhere between half of these levels or up to 15%.³⁴ It also notes the demand for O&G consumption is expected to fall more slowly than this, and still be an important part of energy consumption through to 2050.³⁵

Related activities

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

Flare-tip replacement

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

³³ The report does consider the impact of the war in Ukraine on the O&G industry.

³⁴ Offshore Energies UK internal document.

³⁵ Offshore Energies UK internal document.

SAR

- 2.31 Some helicopter service providers provide SAR services. These are sometimes directly associated with the O&G industry, for example in the provision of services to lift casualties from O&G platforms, but can also cover a broader scope, such as the provision of emergency services through Government contracts.³⁶

Maritime services

- 2.32 Some helicopter service providers also provide maritime services, which involve hoist operations and deck landings at sea. Depending on the service required by a customer, this can include transport of ship pilots to and from large vessels or transport of crew and supplies for construction and maintenance of wind turbines.³⁷

Industry participants

- 2.33 Key businesses involved in the Industry include:
- (a) **O&G Offshore Transportation Service providers** (such as the CHC or the Fisher Business) which undertake business-to-business services, operating the helicopters.
 - (b) **Manufacturers**: businesses which manufacture helicopters utilised by the O&G Offshore Transportation Service providers.
 - (c) **Customers**: the customers of the O&G Offshore Transportation Service providers are oil and gas companies or specialist offshore operators.
 - (d) **Maintenance providers**: businesses which provide maintenance services to the O&G helicopter service providers to maintain helicopters. Typically helicopter operators employ the original equipment manufacturers (**OEMs**) to conduct maintenance on aircraft.
 - (e) **Lessors**: businesses which O&G helicopter service providers transact with to lease helicopters. While some helicopter operators may choose to

³⁶ Bristow operates Bristow Search and Rescue which provides the 999 helicopter SAR services to HM Coastguard. It began delivery of the UK Gap SAR contract for Northern Scotland on behalf of HM Coastguard in 2013, and began delivery of the Maritime and Coastguard Agency's helicopter search and rescue contract in behalf of HM Coastguard in 2015. More information can be found at: [UK Search and Rescue: Bristow Group Inc. \(VTOL\)](#).

³⁷ [Offshore – Services - NHV](#).

purchase helicopters, many have opted to lease rather than own their helicopter fleets.

Suppliers of O&G Offshore Transportation Services

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

(a) CHC and the Fisher Business provide UK O&G Offshore Transportation services. CHC's turnover in the financial year 2020 for its UK O&G Offshore transportation services business was £118 million and the Fisher Business's UK turnover (trading as Offshore UK) was £102 million.³⁸ Further details about the Parties can be found in Chapter 3.

(b) Bristow Helicopters Ltd (**Bristow**) is a UK O&G Offshore Transportation Services provider that has been operating in the UK for many years. Its business is split into two sections: O&G Offshore Transportation Services; and SAR.³⁹ Bristow's turnover in the financial year 2020 for its UK O&G Offshore Transportation Services business was approximately £[REDACTED] million.⁴⁰

(c) NHV Helicopters Ltd (**NHV**) is also a UK O&G Offshore Transportation Services provider, with an international presence. It is based in Belgium.⁴¹ It operates mainly in Europe and West Africa with its business split between O&G Offshore Transportation Services (at c.70%) and SAR (at c.30%). It obtained UK regulatory approval in October 2019, and now has bases in Norwich, Blackpool and Aberdeen. Its turnover for its UK O&G Offshore Transportation Services is c.£37 million.⁴²

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

2.36 Further information about shares of supply can be found in paragraphs 6.49 to 6.54.

³⁸ FMN, paragraph 15.6. CHC provided its revenue in USD (\$149.4 million) which has been converted at the average exchange rate for 2020 (£1:\$1.28).

³⁹ Response to the CMA's questionnaire from: [REDACTED].

⁴⁰ Response to the CMA's questionnaire from: [REDACTED].

⁴¹ NHV N.V.

⁴² Response to the CMA's questionnaire from: [REDACTED].

Manufacturers

2.37 Operators use a variety of manufacturers of helicopters, some of which are multinational businesses specialising across a variety of sectors (ie defence, security and energy). Most notable is Airbus Helicopters, the helicopter manufacturing division of Airbus. Airbus is a European multinational aerospace corporation that designs, manufactures and sells civil and military aerospace products worldwide.

Customers

2.38 The customers in this industry range from large multinational oil and gas entities, many of which are multinational or state-owned oil and gas companies with global operations including the likes of Royal Dutch Shell and TotalEnergies Group, to smaller companies with potentially more specialist operations (such as Fraser Well Management, Saipem, Capricorn Energy and AOC).⁴³

Maintenance providers

2.39 Many of the manufacturers of helicopters also provide maintenance services, including Airbus (as set out in paragraph 2.33(d) above). The Parties also use British International Helicopter Services Limited, a subsidiary of British International Helicopters, which is a helicopter operator specialising in military, offshore and commercial contracts in Europe and the South Atlantic Islands.

2.40 Further, CHC has brought some maintenance work in-house with its 'Heli-One' division and also offers its services to third parties (see Chapter 3 for more details). The Parties noted that CHC must still use OEMs to maintain aircraft for which it has not invested in the required facilities and/or for particularly complex maintenance work.⁴⁴

Lessors

2.41 Lessors of helicopters include:

- (a) Milestone Aviation Group (**Milestone**), a global aircraft operating lease business focused on the helicopter industry, headquartered in Ireland.
- (b) Macquarie Rotorcraft, a subsidiary of the Macquarie Group, which specialises in leasing new and used aircraft, and sale and leaseback.

⁴³ Based on tender information collected from customers from 2017 to 2021. For further details, see Chapter 6.

⁴⁴ FMN, paragraph 19.3.

Macquarie Group is an Australian multinational investment bank and financial services business.

- (c) LCI Helicopters (**LCI**), an aircraft lessor that provides services to airlines, freight carriers and helicopter operators.
- (d) Lobo Leasing, an aircraft lessor that provides services worldwide to operators in the energy and utility sectors.

2.42 The Parties submitted that aircraft were previously leased over long periods of time, but that this process has changed following the drop in the oil price in 2014 (as set out in more detail from paragraph 2.21). The Parties submitted that the recent decline in the market and increased availability of S92 aircraft in the market has given helicopter operators more leverage to negotiate coterminous lease agreements which terminate at the same time as customer and contract obligations.⁴⁵

⁴⁵ FMN, paragraph 21.6.

3. The Parties, the Transaction and rationale

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

- (a) the Parties and their principal operations;
- (b) key financials;
- (c) the Transaction;⁴⁶ and
- (d) the rationale for the Merger.

The Parties and their principal operations

CHC

3.2 CHC is a limited liability company incorporated in the Cayman Islands, headquartered in Texas (USA), and operates helicopter services in various countries, including O&G Offshore Transportation Services in the UK.⁴⁷ In addition to O&G Offshore Transportation Services, CHC also undertakes work in relation to renewables in the UK, as well as operating its Heli-One maintenance service. Each of these activities are considered in more detail below. CHC's UK arm is operated through CHC Scotia Limited, which is wholly owned by EEA Helicopter Operations B.V. (**EHOB**). EHOB is jointly owned by Mr Ivan Levy and CHC, and is the entity through which Babcock Offshore UK has been acquired.⁴⁸

3.3 CHC has a number of shareholders, referred to as 'common unit holders', including Bain Capital Credit LP (**Bain**) and Cross Ocean Partners Management LP (**Cross Ocean**).

3.4 CHC's worldwide turnover in 2020 was approximately £608 million, of which approximately £118 million was generated in the UK.⁴⁹

Ownership and control

3.5 The relationship between the members of CHC is governed by a Limited Liability Company Agreement [§], as re-stated and amended. 'Shares' in

⁴⁶ See paragraph 3.52.

⁴⁷ FMN, paragraph 2.1.

⁴⁸ FMN, paragraph 2.2 and Parties' submission to the CMA. Note for completeness that the CMA is treating EHOB as part of CHC.

⁴⁹ FMN, paragraph 6.1.

CHC are referred to in the Agreement as common units, and shareholder members as common unit holders. Common units can be [X]. Under the Agreement, the management, operation and control of the company is vested in the board, so that the members take no part in these matters other than as specifically delegated by the board.

- 3.6 On completion of the Merger, the board consisted of [X] managers – the CEO, [X], and the remaining managers ([X]) appointed by the members holding a majority of the common units. The quorum of the board is the majority of managers in office, and voting is by majority of managers in office.⁵⁰ [X].
- 3.7 Prior to the Merger, CHC entered into refinancing arrangements with various lenders and equity holders in order to refinance the business. As part of these refinancing arrangements, [X]. [X], the Parties have not notified the CMA that [X].
- 3.8 The effect of these arrangements is that from completion of the Merger: (i) Bain holds a [X]% ([X]%) share of CHC common units, and in addition has the right to appoint a voting board manager, [X]; and (ii) Cross Ocean has a [X]% ([X]%) share of CHC common units and has the right to appoint a voting board manager.
- 3.9 The combination of a party having a [X] shareholding in a company, plus a right to make board appointments and influence from having a role in the financing of that company, could in certain circumstances enable that party to exercise material influence over the company.
- 3.10 The right granted to Bain and to Cross Ocean to appoint a voting board member of CHC is contingent [X]. [X]. In this context, the CMA has not considered it necessary to reach a conclusion as to whether either Bain or Cross Ocean may have material influence over CHC.
- 3.11 We consider that there is no reason why these aspects of the re-financing arrangements put in place by CHC, as regards Bain and Cross Ocean, should affect the substantive assessment by the CMA of the effect of this Merger on competition in the relevant market.

⁵⁰ CHC internal document.

Brief history

- 3.12 CHC has operated within the helicopter services industry for over 70 years, with its UK operations currently operating out of Aberdeen, Norwich and Humberside.
- 3.13 In 2016, CHC entered a court-supervised reorganisation process with the filing of Chapter 11 bankruptcy. The CHC Group announced a \$450 million (c. £367 million)⁵¹ recapitalisation which allowed it to successfully emerge from Chapter 11 bankruptcy in 2017.⁵²

Principal business and operations

- 3.14 CHC provides helicopter services across Europe, Asia Pacific, Latin America, the Middle East and Africa. This includes:
- (a) services to the oil and gas industry (eg O&G Offshore Transportation services);
 - (b) SAR;
 - (c) helicopter emergency medical services (**EMS**);
 - (d) helicopter services for other energy and utility industries, in particular offshore wind farms (renewables); and
 - (e) general helicopter maintenance, repair and overhaul (**MRO**) services through its Heli-One division.⁵³
- 3.15 CHC's activities in the UK include O&G Offshore Transportation services, assistance in the renewables market, and MRO services.

O&G Offshore Transportation

- 3.16 A description of CHC's O&G Offshore Transportation activities is provided from paragraph 3.36 below, where we consider the Parties' overlapping activities.

⁵¹ CMA calculation based on average USD to GBP exchange rate for the year to 31 December 2016 of 1.224833 per: [Yearly average rates | OFX](#).

⁵² [CHC website](#), accessed by the CMA on 7 March 2022.

⁵³ FMN, paragraph 3.1.

Search and Rescue

- 3.17 CHC helicopters are used to carry out SAR operations. This involves the location and recovery of people who are missing or are in distress, and the provision of medical care en route to a medical facility. CHC provides these services to the Irish Coast Guard, the Norwegian Ministry of Justice and the Royal Australian Air Force.⁵⁴

Helicopter Emergency Medical Services

- 3.18 EMS helicopters – ‘air ambulances’ – are equipped with specialist medical supplies and are dispatched in response to critical emergencies, covering onshore and offshore areas that cannot speedily or safely be reached by vehicle ambulances or boats. CHC provides EMS helicopters to Western Australia’s Department of Fire and Emergency Services and to the ambulance services of Victoria and New South Wales.⁵⁵

Renewable energy – wind farms

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

Helicopter maintenance, repair and overhaul services

- 3.20 Heli-One is a subsidiary of CHC which provides general helicopter maintenance services, including for helicopters used in O&G Offshore Transportation.⁵⁶ While Heli-One provides maintenance for CHC, it also provides services for other third-party industry players.

⁵⁴ FMN, paragraph 3.3.

⁵⁵ FMN, paragraph 3.4.

⁵⁶ FMN, paragraph 12.12.

Babcock

- 3.21 Babcock is a British aerospace, defence and nuclear engineering services company, which specialises in managing complex assets and infrastructure. The business operates globally, with its main operations in the UK, France, Canada, Australasia and South Africa.
- 3.22 Babcock is listed on the London Stock exchange with a market capitalisation of £1.61 billion as at 31 December 2021.⁵⁷ In the year to 31 March 2021, Babcock generated group revenues of £4.18 billion, with a gross profit of £26.1 million.⁵⁸ The business undertook a review of its contract portfolio and the carrying value of assets and liabilities on the balance sheet, resulting in more than 140 accounting adjustments totalling £2.0 billion.⁵⁹ Thus, while the business suffered an operating loss of £1.64 billion, it noted that this was primarily due to charges taken as a result of this contract profitability and balance sheet review.⁶⁰ In the same year, it earned EBITDA⁶¹ of £318.6 million and underlying profits⁶² of £222.4 million.⁶³

Principal business and operations

- 3.23 Babcock's principal activities relate to the supply of critical and complex engineering services in the defence, emergency services and civil nuclear sectors.⁶⁴ Babcock's aviation operations, prior to the Merger, were divided into three segments:
- (a) Oil and gas (the Fisher Business);
 - (b) Emergency services; and
 - (c) Aviation – defence.

Oil and gas

- 3.24 Babcock's entry into the O&G market can be traced back to its acquisition of Avincis in 2014, which it purchased for £1.6 billion.⁶⁵ A description of the

⁵⁷ [London Stock Exchange, Babcock International Group plc](#). (accessed 2 January 2022).

⁵⁸ [Babcock International Group plc Annual Report and Financial Statements 2021](#), page 174.

⁵⁹ [Babcock International Group plc full year results for the year ended 31 March 2021](#), page 11.

⁶⁰ [Babcock International Group plc Annual Report and Financial Statements 2021](#), page 6.

⁶¹ Earnings before interest, tax, depreciation, and amortisation.

⁶² Underlying profit is a metric calculated internally by the business to present a more accurate picture of the business's financial performance on a consistent year-on-year basis.

⁶³ [Babcock International Group plc Annual Report and Financial Statements 2021](#), pages 43 and 38 respectively. Note that EBITDA excludes one off contract and profitability balance sheet adjustments posted by Babcock in its 2021 accounts. This is the reasoning behind the significant difference in value between gross profit and EBITDA.

⁶⁴ FMN, paragraph 2.5.

⁶⁵ FMN, paragraph 11.2.

Fisher Business's O&G Offshore Transportation activities is provided from paragraph 3.36 below, where we consider the Parties' overlapping activities.

Emergency services

- 3.25 Babcock's emergency services operations include aerial EMS, SAR and firefighting services in Europe and Australia.
- (a) Babcock's international EMS operations span Australia, Finland, France, Italy, Norway, Portugal, Spain and Sweden. In the UK, Babcock services nine air ambulance charities using 23 specially equipped EMS helicopters.
 - (b) Babcock provides SAR services to the Spanish Maritime Safety Agency and operates a combined EMS and SAR services to Australian governmental entities (including the South Australian State Rescue Helicopter Service).
 - (c) Babcock's aerial firefighting operations include water-dropping, ground firefighter transportation, mission coordination and image gathering to fire control centres. In addition to helicopters and fixed-wing aircraft, Babcock employs amphibious aircraft and unmanned aerial vehicles as part of its water-dropping and image gathering operations. In addition to aerial firefighting contracts with the Italian Ministry of Interior and the Spanish Portuguese governments, Babcock operates an aerial wildfire suppression contract for the government of Manitoba in Canada.⁶⁶

Aviation – defence

- 3.26 Babcock services the defence aviation sector by providing:
- (a) maintenance, management and operational support to defence aircraft;
 - (b) air station support and infrastructure management (including air traffic control, ground support, IT systems, and fuel management services); and
 - (c) military flight training (including the provision of aircraft, aeronautical apprenticeships, air traffic control instruction, military flight instruction and flight simulation integration).
- 3.27 Babcock has contracts with the Royal Air Force for the provision of technical support services; the UK's Ministry of Defence for the provision of flying training services to all three UK Armed Forces; the Irish Gardaí for the

⁶⁶ FMN, paragraph 3.7.

provision of MRO service; and the French General Directorate for Armament for the provision of flight training to jet fighters.⁶⁷

The Fisher Business

- 3.28 The Fisher Business was owned by Babcock prior to completion of the Merger. The Fisher Business operates O&G Offshore Transportation Services internationally, with Offshore UK acting as its UK arm.
- 3.29 The turnover of the Fisher Business in 2020 was approximately £147 million worldwide, of which approximately £102 million was generated by Offshore UK in the UK.⁶⁸
- 3.30 The Fisher Business comprises three entities operating within different regions, each of which we consider in turn:
- (a) Offshore UK;
 - (b) Offshore Australia; and
 - (c) Offshore Denmark.

Brief history and background

Offshore UK

- 3.31 Offshore UK was incorporated in August 2001 as Bond Offshore Helicopters Limited. Offshore UK operated as Babcock Mission Critical Services Offshore Limited from 2016 to 2021. As a result of the Transaction,⁶⁹ Offshore UK was renamed Offshore Helicopter Services UK Limited.⁷⁰

Offshore Australia

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

⁶⁷ FMN, paragraph 3.9.

⁶⁸ FMN, paragraphs 6.2.1 and 6.2.2, and [Babcock Offshore UK's Accounts for year ended 31 March 2020](#).

⁶⁹ See paragraph 3.52.

⁷⁰ Companies House, [company number 04278474](#).

Offshore Denmark

- 3.33 Offshore Denmark began operating in January 2021. The business operates solely to service a contract with Total. Total ran a single tender process for contracts in Denmark and the UK.⁷¹ Babcock submitted that this contract was bid for and won as part of its 'unsustainable manage for value strategy',^{72 73} and that its bid for this contract was [REDACTED].⁷⁴
- 3.34 Babcock submitted that the contract was entered into in order to '[REDACTED]'.⁷⁵ It submitted that its final price was expected to result in [REDACTED] before tax [REDACTED] across both the UK and Denmark for the Total contract, over the contract period of [REDACTED] years, with the UK segment [REDACTED] at [REDACTED], and with the Danish segment [REDACTED] at [REDACTED].⁷⁶

Principal business and operations

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

Overlapping activities

- 3.36 CHC and the Fisher Business overlap in the provision of O&G Offshore Transportation services. They provide helicopter transportation services to and from offshore O&G installations, typically using helicopters with 12 to 19 seats to transport crew members between the mainland and offshore rigs. The Parties submitted that other ancillary services include: (i) cargo and dangerous goods transport, (ii) long line services such as flare tip replacement and (iii) SAR and emergency evacuation services.⁷⁷
- 3.37 CHC and the Fisher Business both provide crew change services in the UK to O&G customers with sites in the North Sea, and both currently operate from Aberdeen. The Parties also host operations in:
- (a) CHC: Norwich and Humberside.⁷⁸

⁷¹ FMN, paragraph 15.28.

⁷² FMN, paragraph 16.3.5.

⁷³ Manage for value is considered in further detail at paragraphs 6.130 to 6.158.

⁷⁴ FMN, paragraph 16.16.2.

⁷⁵ FMN, paragraph 16.3.5.

⁷⁶ FMN, paragraph 16.16.2.

⁷⁷ FMN, paragraph 12.1.

⁷⁸ CHC, CMA Virtual Site Visit Slides.

(b) The Fisher Business: Sumburgh (Shetland Islands), [REDACTED].⁷⁹

3.38 The businesses also undertake operations outside the UK. CHC services contracts for sites in the North Sea from Ireland, Norway and the Netherlands, while the Fisher Business operates a North Sea contract for TotalEnergies from a base in Denmark. The Parties noted that these contracts do not relate to contracts with UK customers.⁸⁰ Both businesses also operate from bases in Australia. The Parties noted that whether a customer is treated as a UK customer or otherwise is dependent on whether the services are being provided to rigs/platforms in the UK territory, and whether it is the UK affiliate of the oil and gas company that is acquiring the services.

3.39 We set out more detail on the helicopters operated by each of the Parties and the bases from which they do so from paragraph 6.42 and in Appendix C.

Key financials

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

(a) Revenue, cost of sales and gross margin.

(b) EBITDA: being the earnings before interest, tax, depreciation, and amortisation.

(c) EBIT: being the earnings before interest and tax.

(d) Operating profit/(loss): being the profit or loss based on the operating costs of the business. Often this will align with EBIT, but there may be differences as a result of non-operating costs (eg foreign exchange gains or losses).

⁷⁹ Offshore Helicopter Services UK Limited internal document.

⁸⁰ FMN, paragraph 12.5.

CHC

CHC Group LLC

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

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

Source: CMA analysis of the Parties' data (Internal Documents).

Notes:

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

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

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

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

	<i>(£m)</i>			
	<i>2018</i>	<i>2019</i>	<i>2020</i>	<i>2021</i>
Cash and cash equivalents	[X]	[X]	[X]	[X]

Source: CMA analysis of the Parties' data (internal documents).

Notes:

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

CHC UK

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

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

3.44 Further, we note that CHC Scotia Limited's principal activities include the provision of helicopter services to the oil and gas industry (ie O&G Offshore Transportation services), SAR provision, and the provision of offshore

windfarm services. CHC noted that approximately [X]% of CHC Scotia Limited's revenue and [X]% of costs relate to O&G Offshore Transportation services.⁸¹

Table 3-3: Key financial metrics, CHC Scotia Limited

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

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

Notes:

* 2021 figures are unaudited.

3.45 We also present CHC UK's cash position over time.

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

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

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

⁸¹ CHC's response to RF13.

The Fisher Business

Offshore UK

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

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

Source: CMA analysis of Offshore UK, [REDACTED].

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

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

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

	2018	2019	2020	(£m) 2021
Cash and cash equivalents	1.0	16.7	1.7	–

Source: CMA analysis of the Parties' data (internal documents).

3.47 Table 3-6 sets out the statutory cash position for the Offshore UK business from 2018 to 2021, demonstrating that it has fluctuated from £1 million in 2018 to an increased position of £16.7 million in 2019 and then dropping again to £1.7 million in 2020. The statutory accounts show a cash balance of less than £1 million in 2021. As at 20 May 2022, Offshore UK had a [REDACTED] cash balance of £[REDACTED].⁸²

⁸² Forecast as provided by the Monitoring Trustee dated 20 May 2022. Cash balance provided in USD. Converted using the USD to GBP exchange rate as at 20 May 2022 as detailed on [Oanda.com](https://www.oanda.com) [accessed 25 May 2022].

Offshore Australia

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

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

Source: CMA analysis of the Parties' data (internal documents).

Note:

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

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

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

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

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

Source: CMA analysis of the Parties' data (internal documents).

Note:

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

3.49 As at 20 May 2022, Offshore Australia had a [X] cash balance of £[X].⁸³

Offshore Denmark

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

⁸³ Forecast as provided by the Monitoring Trustee dated 20 May 2022. Cash balance provided in USD. Converted using the USD to GBP exchange rate as at 20 May 2022 as detailed on [Oanda.com](https://anda.com) [accessed 25 May 2022].

and incurred 22.2 million DKK (£2.7 million) in cost of sales, resulting in a gross profit margin of 20.4 million DKK (£2.4 million).⁸⁴

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

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

Source: CMA analysis of the Parties' data (internal document).

Notes:

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

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

3.51 As at 3 December 2021, Offshore Denmark had a [REDACTED] cash balance of £[REDACTED].⁸⁵

The Transaction

3.52 Pursuant to a share purchase agreement dated 27 February 2021, CHC acquired Babcock's O&G Offshore Transportation Services business in the UK, Australia and Denmark (ie the Fisher Business), through the acquisition of the entire issued share capital of Offshore UK, Offshore Australia and Offshore Denmark (the **Transaction**).⁸⁶ The Transaction completed on 31 August 2021, for consideration of £10,000,000, £[REDACTED] of which is allocated in respect of the UK business.⁸⁷

3.53 Whilst the majority of the Fisher Business [REDACTED] being acquired by CHC, [REDACTED] necessary to operate the Fisher business also [REDACTED], or have been otherwise [REDACTED] following completion under the terms of [REDACTED]. The specific mechanism

⁸⁴ CMA analysis of [REDACTED]. Note that the statutory accounts for the same period demonstrate a gross profit of 16.8 million DKK. This is the result of including 3.6 million DKK 'other administrative expenses' in the gross profit margin. Generally, we do not include 'other administrative expenses' in calculating gross profit, rather focusing on the difference between revenue and cost of sales. We have therefore presented the figures in paragraph 3.50 exclusive of 'other administrative expenses'.

⁸⁵ Forecast as provided by the Monitoring Trustee dated 20 May 2022. Cash balance provided in USD. Converted using the USD to GBP exchange rate as at 20 May 2022 as detailed on [Oanda.com](https://www.oanda.com) (accessed 25 May 2022).

⁸⁶ FMN, paragraphs 2.2 and 2.8.

⁸⁷ FMN, paragraph 2.8.

used to achieve the [redacted] the Fisher Business post completion are principally recorded in the [redacted]⁸⁸ and the [redacted].⁸⁹

(a) [Details of post completion arrangements.].⁹⁰

(b) [Details of post completion arrangements.].⁹¹ [Details of post completion arrangements.]. [Details of post completion arrangements.]

3.54 The Parties told us that the purpose of these mechanisms was to ensure that CHC would acquire a business which has all the assets and access to all the necessary resources to be able to operate independently in the market.⁹²

Valuation

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

(a) CHC initially expressed an interest for the Fisher Business in November 2019.⁹³

(b) CHC submitted a non-binding offer to Babcock for the Fisher Business on 27 March 2020 in which it indicatively valued the Fisher Business, [redacted]. CHC made [redacted].

(c) In September 2020, following due diligence undertaken by its advisers, [redacted], CHC discovered that the Fisher Business had [redacted] which meant that the Fisher Business had [redacted] than CHC originally anticipated, following Babcock's management presentation. Accordingly, CHC [redacted].

(d) On 20 November 2020, CHC [redacted]. This was largely due to [redacted]. In agreeing to Babcock's demands, CHC [redacted].

(e) As discussions continued between the Parties, Babcock requested that CHC [redacted]. Accordingly, on 26 November 2020, CHC [redacted] valuation of the Fisher Business to £[redacted] million.

⁸⁸ Parties' internal document.

⁸⁹ Parties' internal document.

⁹⁰ FMN, paragraph 2.10.1.

⁹¹ [redacted]. Parties' internal document.

⁹² FMN, paragraphs 2.8 to 2.11.

⁹³ Babcock response to s109.

(f) Further discussions over the purchase price for the Fisher Business occurred during the negotiation of the SPA and the Parties ultimately agreed on a purchase price of £10 million on 24 February 2021.⁹⁴

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

(a) The UK business was allocated a value of approximately £[REDACTED] million.

(b) The Australian business was allocated a value of £[REDACTED] million.

(c) The Danish business was valued at [REDACTED].⁹⁵

3.57 CHC submitted that this valuation broadly represented a percentage split of total turnover for all three companies, taking into account that Denmark had yet to generate any turnover at that time.⁹⁶

Other interested parties

3.58 Babcock explained that since taking the decision to try to sell the Fisher Business (including Babcock Offshore UK), it has been approached by a number of other third parties in addition to CHC who have expressed an interest in acquiring parts or the whole of the business.⁹⁷ Babcock submitted that discussions took place with [REDACTED].⁹⁸

(a) [REDACTED].

(b) [REDACTED].

(c) [REDACTED].

(d) [REDACTED].

⁹⁴ CHC response to s109.

⁹⁵ CHC response to s109.

⁹⁶ CHC response to s109.

⁹⁷ FMN, paragraph 11.11.

⁹⁸ Babcock response s109.

The rationale for the Merger

Babcock's rationale for selling the Fisher Business

Babcock's stated rationale

- 3.59 Babcock explained that it has been seeking to exit the Fisher Business for a number of years, with the impetus for this strategy becoming stronger over time and affirmed by [REDACTED].⁹⁹ More detail on Babcock's strategy with regard to the Fisher Business is set out in Chapter 5.
- 3.60 Babcock submitted that it made the decision to sell its O&G Offshore Transportation business because it was an 'area of weakness' and is non-core to Babcock's wider business.¹⁰⁰ It submitted that the O&G Offshore Transportation industry is confronted with a long-term, prolonged and persistent structural decline in demand resulting from a volatile oil price, which has remained depressed since a peak in 2014 and from a reduction in oil and gas exploration and production in the Northern Hemisphere, particularly the North Sea.¹⁰¹ Babcock submitted that these exploration and production reductions were expected to continue in the Northern Hemisphere for the foreseeable future as mature oil and gas platforms were being decommissioned and not replaced.¹⁰²
- 3.61 The Parties noted environmental policies of governments in the Northern Hemisphere as having a negative impact on the industry, in particular with regard to decarbonisation and a push towards focusing on other renewable energy sources. Babcock referred to CHC and Bristow's need to enter Chapter 11 proceedings in order to restructure their business and emerge with 'a comparatively stronger balance sheet and a reduction in their operational costs'. Babcock told us that it 'was not afforded the same opportunity', which increased the challenges faced by its O&G Offshore Transportation business.¹⁰³
- 3.62 Babcock referred to the UK O&G Offshore Transportation [REDACTED]. Babcock submitted that it is against this background and the unfavourable market conditions that continue to prevail in the industry that it ultimately decided to

⁹⁹ Babcock internal document.

¹⁰⁰ FMN, paragraph 2.13.

¹⁰¹ FMN, paragraph 2.14.

¹⁰² FMN, paragraph 2.18.

¹⁰³ FMN, paragraphs 2.20 and 2.21.

stop supporting the Fisher Business and withdraw from the provision of O&G Offshore Transportation services.¹⁰⁴

- 3.63 Babcock told us that [REDACTED] and reconfirmed its plan to withdraw from the industry in February 2020.¹⁰⁵
- 3.64 Further, Babcock noted that it wrote down assets in its O&G Offshore Transportation business for a value of £22.2 million and recognised costs of £31.2 million in relation to the impairment of 'right of use' assets (ie leased assets) and onerous customer contracts.¹⁰⁶ Babcock told us that the fact that O&G Offshore Transportation services were no longer considered an attractive market for Babcock was reiterated during [REDACTED] under the direction of David Lockwood, the new CEO, and as a result Babcock continued to proceed with divestiture discussions in order to dispose of the Fisher Business as soon as possible.¹⁰⁷
- 3.65 Babcock exited activities in the O&G Offshore Transportation businesses in Ghana and Congo, incurring charges of £7.1 million.¹⁰⁸ Babcock retains limited O&G Offshore Transportation businesses in Italy.

CHC's rationale for acquiring the Fisher Business

CHC's stated rationale

- 3.66 CHC submitted that the overriding rationale for acquiring the Fisher Business is to make its existing business [REDACTED], efficient and therefore [REDACTED].¹⁰⁹
- 3.67 It told us that by combining its business with the Fisher Business, CHC expects to achieve synergies [REDACTED] across both businesses. It noted that these potential synergies will [REDACTED],¹¹⁰ rather will be derived from a combination of:
- (a) [REDACTED];
 - (b) direct reduction in [REDACTED] and [REDACTED];
 - (c) operational synergies; and

¹⁰⁴ FMN, paragraphs 2.25 and 2.26

¹⁰⁵ FMN, paragraph 2.27.

¹⁰⁶ FMN, paragraph 2.28.

¹⁰⁷ FMN, paragraph 2.30.

¹⁰⁸ FMN, paragraph 2.28.

¹⁰⁹ FMN, paragraph 2.31.

¹¹⁰ As stated in CHC's response to [REDACTED]. Note that [REDACTED].

(d) [REDACTED].¹¹¹

3.68 CHC submitted that the fact that the Fisher Business [REDACTED] does not impact these efficiencies as they involve [REDACTED], which could only be achieved through the Merger. It told us that the fact that the O&G Offshore Transportation industry is confronted with a long-term decline in demand makes realising these efficiencies more important. It submitted that CHC is [REDACTED] the Fisher Business, since it [REDACTED].¹¹²

3.69 CHC submitted that the latest estimate is that these synergies are likely to equate to approximately \$[REDACTED]million USD [REDACTED] savings across the UK and Australian businesses. It submitted that these synergies are [REDACTED] because they will enable CHC to [REDACTED]. It told us that it needs to [REDACTED] of the business going forward.¹¹³

3.70 CHC broke down its synergies into the following categories:

(a) **Fleet:** CHC submitted that savings can be obtained by [REDACTED]. It noted that this allows CHC to [REDACTED]. It noted that such optimisation is expected to improve utilisation and [REDACTED]. In addition, CHC noted that approximately \$[REDACTED]million is expected to be saved per annum from [REDACTED], [REDACTED] and [REDACTED] associated with [REDACTED]. \$[REDACTED]million per annum is expected to be saved from a reduction in [REDACTED].

(b) **Maintenance:** CHC submitted that maintenance synergies come from [REDACTED] from [REDACTED] (as referred to above), and from [REDACTED] of the [REDACTED], and hence the cost of [REDACTED]. CHC estimated that the cost saving from this optimisation would be \$[REDACTED] million per year across [REDACTED].

(c) **Operations:** CHC submitted that it estimates that it will achieve [REDACTED] synergies equating to an estimated \$[REDACTED] million per annum from combining the two businesses on the operations side. It noted that first this would arise from [REDACTED]. Second, by bringing the Fisher Business onto CHC's [REDACTED]. Third, [REDACTED]. Fourth, [REDACTED] yearly savings will be generated from the [REDACTED].

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

(i) [REDACTED];

¹¹¹ FMN, paragraph 2.32.

¹¹² FMN, paragraph 2.33.

¹¹³ We consider whether these synergies have any impact on our proposed remedies in our assessment of proportionality at paragraphs 9.129 to 9.161.

(ii) [REDACTED]; and

(iii) [REDACTED].¹¹⁴

¹¹⁴ CHC response to CMA RFI.

4. Relevant merger situation

Introduction

- 4.1 In accordance with the Act,¹¹⁵ and pursuant to our terms of reference (see Appendix A), we are required to decide whether the Merger has created a relevant merger situation (**RMS**).
- 4.2 An RMS has been created if: (i) two or more enterprises have ceased to be distinct enterprises at a time or in circumstances falling within section 24 of the Act; and (ii) the value of the turnover in the UK of the enterprise being taken over exceeds £70 million (the turnover test) or the share of supply test is satisfied.¹¹⁶
- 4.3 For the following reasons we have concluded that the Merger has resulted in the creation of an RMS.

‘Two or more enterprises’

- 4.4 The Act defines an ‘enterprise’ as including ‘a professional practice and the activities or part of the activities of a business’. The term ‘business’ includes any ‘undertaking which is carried on for gain or reward or which is an undertaking in the course of which goods or services are supplied otherwise than free of charge’.¹¹⁷
- 4.5 CHC is a limited liability company incorporated in the Cayman Islands and headquartered in Texas (USA). CHC operates helicopter services in various countries, including O&G Offshore Transportation Services in the UK. CHC’s worldwide turnover in 2020 was approximately £608 million, of which approximately £118 million was generated the UK.
- 4.6 Babcock is a publicly listed company incorporated in England and Wales, which has transferred to CHC its Fisher Business – ie its O&G transportation business in the UK, Denmark and Australia – together with additional resources and assets used in connection with the operation of the Fisher Business.
- 4.7 We consider that the activities of CHC and the Fisher Business are carried on for gain or reward, and that each of CHC and the Fisher Business is an undertaking, in the course of which goods or services are supplied otherwise

¹¹⁵ Section 35(1)(a) of the Act.

¹¹⁶ Section 23(1)(b) of the Act.

¹¹⁷ Section 129(1) of the Act.

than free of charge. We conclude that each of CHC and the Fisher Business is an enterprise.

‘Ceased to be distinct’

- 4.8 Enterprises have ‘ceased to be distinct’ once they are brought under common ownership or common control.¹¹⁸
- 4.9 CHC has acquired from Babcock the entire issued share capital of each of the companies comprising the Fisher Business, through a share purchase agreement dated 27 February 2021, which completed on 31 August 2021.
- 4.10 By this transaction: (i) a wholly owned subsidiary of CHC – Lloyd Helicopter Services Pty Ltd – acquired the entire issued share capital of Babcock Offshore Australia; (ii) EHOB acquired the entire issued share capital of Babcock Offshore UK; and (iii) CHC Denmark ApS (a wholly owned subsidiary of EHOB) acquired the entire issued share capital of Babcock Offshore Denmark.¹¹⁹
- 4.11 EHOB is jointly owned: (i) by CHC (holding [X] % of EHOB’s share capital); and (ii) by Mr Ivan Levy (holding [X] % of EHOB’s share capital.) CHC explained that Mr Levy has a majority shareholding in EHOB for regulatory reasons.
- 4.12 We consider that Mr Levy has a shareholding which gives him legal control over EHOB. We also consider that CHC has at least material influence over EHOB as a result of: (i) its significant minority shareholding; (ii) its right to appoint one board member out of four; (iii) its involvement in the development of EHOB’s business plan and budget (which is developed by the CEO of EHOB in consultation with CHC before being presented to the EHOB board for approval); and (iv) service and consultancy agreements between CHC and Mr Levy.
- 4.13 For the purposes of deciding whether any two enterprises have been brought under common ownership or common control, the Act provides that two or more persons acting together, to secure or exercise control of a body of persons corporate or unincorporate, or to secure control of any enterprise or assets, shall be regarded as associated with one another, and that associated

¹¹⁸ Section 26 of the Act.

¹¹⁹ EHOB has directly acquired Babcock Offshore UK and has indirectly acquired Babcock Offshore Denmark, via CHC Denmark ApS (a wholly owned subsidiary of EHOB).

persons, and any bodies corporate which they or any of them control, shall be treated as one person.¹²⁰

- 4.14 We consider that CHC and Mr Levy have acted together through EHOB to secure and exercise control of Babcock Offshore UK (and its subsidiary Babcock Offshore Denmark). We consider, therefore, that: (i) CHC and Mr Levy are to be treated as one person, for the purposes of deciding whether any two enterprises have been brought under common ownership or common control; (ii) the companies comprising the Fisher Business have come under the common control of CHC (which includes, for the purpose of the assessment of this Merger, Mr Levy and EHOB), and (iii) the enterprises CHC and the Fisher Business have ceased to be distinct.

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

- 4.15 Section 24 of the Act requires that the completed merger must have taken place not more than four months before the reference is made.¹²¹ The Transaction by which the Fisher Business was transferred to CHC was completed on 31 August 2021. The reference was made on 29 November 2021, which is within four months of the Merger being completed.

Turnover test

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

Conclusion

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

¹²⁰ Section 127(1) and 127(4)(d) of the Act.

¹²¹ Section 24 of the Act.

5. Counterfactual

Introduction

5.1 In this chapter we set out:

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

Framework for the assessment of the counterfactual

5.2 The counterfactual is an analytical tool used to help answer the question of whether a merger gives rise to an SLC.¹²² It does this by providing the basis for a comparison of the competitive situation with the merger against the likely future competitive situation absent the merger.¹²³ The latter is called the counterfactual.¹²⁴

5.3 The counterfactual is not, however, intended to be a detailed description of those conditions of competition that would have prevailed absent the merger.¹²⁵ The CMA's assessment of those conditions is considered in the competitive assessment.¹²⁶ The CMA also seeks to avoid predicting the precise details or circumstances that would have arisen absent the merger.¹²⁷

5.4 At phase 2, the CMA will select the most likely conditions of competition as its counterfactual against which to assess the merger.¹²⁸ In its assessment of the counterfactual, the CMA may need to consider multiple possible scenarios, before identifying the relevant counterfactual.¹²⁹ As part of this assessment, the CMA will take into account whether any of the possible scenarios make a significant difference to the conditions of competition,¹³⁰ and if they do, the CMA will ultimately select the most likely conditions of competition absent the merger as the relevant counterfactual.¹³¹ Counterfactual assessments will

¹²² [Merger Assessment Guidelines \(CMA129\) \(MAGs\)](#), paragraph 3.1.

¹²³ [MAGs](#), paragraph 3.1.

¹²⁴ [MAGs](#), paragraph 3.1.

¹²⁵ [MAGs](#), paragraph 3.7.

¹²⁶ [MAGs](#), paragraph 3.7.

¹²⁷ [MAGs](#), paragraph 3.11.

¹²⁸ [MAGs](#), paragraph 3.13.

¹²⁹ [MAGs](#), paragraph 3.13.

¹³⁰ [MAGs](#), paragraph 3.13.

¹³¹ [MAGs](#), paragraph 3.13.

often focus on significant changes affecting competition between merger firms, such as for example exit by one of the merger firms.¹³²

- 5.5 The CMA recognises that evidence relating to future developments absent the merger may be difficult to obtain.¹³³ Uncertainty about the future will not in itself lead the CMA to assume the pre-merger situation to be the appropriate counterfactual. As part of its assessment of the counterfactual, the CMA may consider the ability and incentive (including, but not limited to, evidence of intention) of the merging parties to pursue alternatives to the merger, which may include reviewing evidence of specific plans where available.¹³⁴
- 5.6 Further, the time horizon considered by the CMA in its assessment of the counterfactual will depend on the context and will be consistent with the time horizon used in the competitive assessment.¹³⁵
- 5.7 Owing to the inherent uncertainty of predicting future events, the CMA benefits from a margin of appreciation in relation to its conclusion. This assessment must meet the requirements of a rationality test – in other words, the CMA must have a sufficient basis in light of the totality of the evidence available to it for making the assessment and reaching its decision.¹³⁶

The Parties' submissions on the relevant counterfactual

The Parties' views

- 5.8 Babcock made two main points in their initial submissions:¹³⁷
- (a) Babcock would have exited from the provision of O&G Offshore Transportation Services in the UK; and
 - (b) there was no alternative less anti-competitive purchaser for the Fisher Business.
- 5.9 A consequence of these submissions is that, absent the Merger, the Parties are of the view that there would only have been three players in the provision of O&G Offshore Transportation Services in the UK, as the Fisher Business would either have been closed down or sold to an existing player.

¹³² MAGs, paragraph 3.8.

¹³³ MAGs, paragraph 3.14.

¹³⁴ MAGs, paragraph 3.14.

¹³⁵ MAGs, paragraph 3.15.

¹³⁶ See *BAA Ltd v Competition Commission* [2012] CAT 3 at paragraph 20, *Stagecoach Group Plc v Competition Commission* [2010] CAT 14 at paragraph 45.

¹³⁷ Babcock, Counterfactual Submission.

5.10 Following the publication of the Provisional Findings, CHC made a further argument on the relevant counterfactual, being that absent the Merger CHC would have [REDACTED]. CHC referenced [REDACTED] throughout the investigation and made reference to the importance of the Merger in this context.¹³⁸ However it was not until its response to the Provisional Findings was submitted to the CMA that it made the argument that in the counterfactual [REDACTED].

Babcock's exit from the provision of O&G Offshore Transportation Services in the UK

5.11 In this section we set out the submissions made to us that Babcock would have exited from the provision of O&G Offshore Transportation Services in the UK (see paragraphs 5.12 to 5.25) and that there was no alternative less anti-competitive purchaser for the Fisher Business (see paragraphs 5.26 to 5.28).

Babcock would have exited from the provision of O&G Offshore Transportation Services in the UK

5.12 Babcock submitted that its intention to exit from the provision of O&G Offshore Transportation Services in the UK began in 2017¹³⁹ as a result of its conclusion that there would be a continued decline in the market over time, together with the poor ongoing performance of the business. At this point, Babcock had not yet concluded the best means by which to do this, but it subsequently decided to either sell the Fisher Business or undertake a staged closure at contract renewal points.¹⁴⁰

5.13 The Parties told us that Babcock was approached in [REDACTED] by [REDACTED] in relation to the potential acquisition by [REDACTED] of the Fisher Business and that discussions between [REDACTED] and Babcock took place between [REDACTED]. Ultimately, Babcock rejected the [REDACTED] offered [REDACTED] for the purchase of the Fisher Business.

5.14 Babcock submitted that in the summer of 2018, following the failure of the [REDACTED] negotiation, it initiated a strategic review of the Fisher Business which resulted in a decision to 'manage the business for value'. Under this process, Babcock: (i) determined to operate the Fisher Business '[REDACTED]'; (ii) took an asset impairment charge of £38 million to reduce owned O&G Offshore Transportation Services assets to their market value; and (iii) made an

¹³⁸ [Parties' response to Issues Statement](#), 4 January 2022, paragraph 1.4.7, Parties' response to the Annotated Issues Statement and CMA Working Papers and CHC main party hearing transcript.

¹³⁹ This was approximately three years after Babcock's completion of its acquisition of the Avincis Group on 30 June 2014. This acquisition included Offshore UK.

¹⁴⁰ Babcock, Counterfactual Submission.

onerous lease provision of £42.1 million against leased assets, in order to reflect the cost of lease commitments versus market rates.¹⁴¹

- 5.15 In October 2019, Babcock commissioned ‘Project Opturo’, the purpose of which was to review the options for its O&G Offshore Transportation Services business in [REDACTED]. Babcock submitted that in the course of the project it found that running the O&G Offshore Transportation Services business ‘as is’ would [REDACTED]. Babcock submitted that a decision was [REDACTED]. Babcock submitted that, [REDACTED] and in the meantime the business would continue to be managed for value. Babcock noted that the Project Opturo initial report was prepared on [REDACTED].¹⁴²
- 5.16 In response to the Issues Statement, the Parties reiterated their argument that if it had not sold the Fisher Business to CHC, Babcock would have closed the business down and exited the market. They told us this was because the Fisher Business was loss making and Babcock had [REDACTED] obligations backed by PCGs. [REDACTED], the obligations relating to leases backed by PCGs amounted to £[REDACTED] and obligations relating to customers backed by PCGs amounted to £[REDACTED]. The Parties submitted that Babcock had decided to withdraw and end its exposure to the market in which the Fisher Business operated and focus instead on its core activities. They submitted that [REDACTED].¹⁴³
- 5.17 The Parties submitted that Babcock was determined to exit from the provision of O&G Offshore Transportation Services in the UK and that Babcock had publicly confirmed its intention to withdraw from the market on several previous occasions. The Parties submitted that there was little doubt that it would have done so absent the Merger, even if this meant winding down the business over a period of time. The Parties also submitted that:
- (a) The Fisher Business was situated outside Babcock’s core strategy and was ‘[REDACTED]’.
 - (b) The Fisher Business was [REDACTED], had been making substantial losses for several years, and had been [REDACTED].
 - (c) Babcock [REDACTED].¹⁴⁴
- 5.18 The Parties submitted that while Babcock was determining how best to exit from the provision of O&G Offshore Transportation Services in the UK, the Fisher Business would have been ‘managed for value’, which they described

¹⁴¹ Babcock, Babcock International Group plc full year results for the year ended 31 March 2019, page 14.

¹⁴² Babcock, Counterfactual Submission.

¹⁴³ Parties’ response to Issues Statement, 4 January 2022, paragraph 1.4.1.

¹⁴⁴ Parties’ response to Issues Statement, 4 January 2022, paragraphs 3.4 to 3.7.

as a '[redacted]'.¹⁴⁵ The Parties submitted that this strategy meant that Babcock severely limited its investments into the business, sought to downsize its fleet of aircraft and restricted its participation in tenders by generally only bidding on tenders which created an opportunity to make use of unutilised capacity in order to minimise losses.¹⁴⁶

- 5.19 The Parties submitted that Babcock's intention to exit from the market was heightened by the appointment of a new management team from 2019.¹⁴⁷ The Parties told us that the Fisher Business was a non-core part of the business and the new management team was willing to close businesses down quickly and at a cost.¹⁴⁸ The Parties submitted that getting out of the oil and gas offshore transportation market was a matter of strategic importance for which [redacted] and that it would have been consistent with a strategic decision to exit the market to close the Fisher Business even if this were to cost more than the short or medium-term costs associated with continuing to run the business.¹⁴⁹ The Parties submitted that the cost of closing the business was not a factor which would have played a key, let alone a determinant, role in Babcock's decision-making process in the counterfactual¹⁵⁰ and that Babcock would not have continued to run the business simply to avoid paying the costs associated with an immediate closure and preserving a 'relatively trivial' contribution to overheads.¹⁵¹
- 5.20 With regard to how Babcock's 2020 entry into new contracts with TotalEnergies and IAC formed part of Babcock's strategy to manage the Fisher Business for value and utilise existing capacity, Babcock told us that the direction received from the then CFO and then CEO was to [redacted] as far as was possible.¹⁵² It told us that it was directed to [redacted], rather than '[redacted]'.¹⁵³ Babcock told us that its preferred solution was to utilise the existing fleet and that the only reason that it took the TotalEnergies contract on was because it was able [redacted].¹⁵⁴
- 5.21 The Parties submitted that the evidence shows that Babcock had 'seriously considered' withdrawing from the market prior to being approached by CHC. They submitted that no final decision had been taken because Babcock was proceeding with the sale of the Fisher Business to CHC and it is only if that

¹⁴⁵ Parties' response to Issues Statement, 4 January 2022, paragraph 3.8.

¹⁴⁶ Parties' response to Issues Statement, 4 January 2022, paragraphs 3.9 and 3.10.

¹⁴⁷ Parties' response to the Annotated Issues Statement and CMA Working Papers.

¹⁴⁸ See Babcock main party hearing transcript '[redacted]' (Babcock main party hearing transcript).

¹⁴⁹ Parties' response to the Annotated Issues Statement and CMA Working Papers.

¹⁵⁰ Parties' response to the Annotated Issues Statement and CMA Working Papers.

¹⁵¹ Parties' response to the Annotated Issues Statement and CMA Working Papers.

¹⁵² Babcock main party hearing transcript.

¹⁵³ Babcock main party hearing transcript.

¹⁵⁴ Babcock main party hearing transcript.

sale had fallen through that Babcock would have needed to formalise its decision to close the business and immediately withdraw from the market. On this basis, the Parties submitted that the absence of a decision does not prove that Babcock would have remained in the market.¹⁵⁵

5.22 The Parties submitted that evidence points to a preferred option for the Fisher Business being to close the business.¹⁵⁶ It noted:

(a) A lack of long-term commitment to the oil and gas sector, including public statements made by Babcock's previous CEO that Babcock did not want to invest in the industry.¹⁵⁷ This includes:

(i) A June 2019 statement that O&G was not a 'strategic priority' for Babcock;¹⁵⁸

(ii) A 12 February 2020 announcement that Babcock did not intend to invest further or stay in the market and that it had been steadily decreasing the size of its O&G business;¹⁵⁹ and

(iii) A 11 June 2020 reconfirmation to investors that O&G was no longer an attractive long-term market for Babcock.¹⁶⁰

(b) The decision as part of the manage for value strategy not to invest in the Fisher Business and to refrain from bidding on significant tenders, particularly those that would require it to take on new aircraft;¹⁶¹

(c) That Babcock was repositioning its business to improve profitability by focusing on its core markets and actively withdrawing from non-core and non-profitable markets. The Parties referred to Babcock's [Board update, April 2020 document], which noted that once it had completed its restructuring and transformation programme it would no longer be in the oil and gas business.¹⁶²

(d) Babcock's commitment to its strategy and willingness under the new management of the company to accept significant write downs to the value of its assets in order to implement and deliver on that strategy. The Parties referred to the £2 billion write off from Babcock's balance sheet under the leadership of its new CEO (who joined Babcock in September

¹⁵⁵ Parties' response to the Provisional Findings, 4 April 2022, paragraphs 3.8 and 3.9.

¹⁵⁶ Parties' response to the Provisional Findings, 4 April 2022, paragraph 3.11.

¹⁵⁷ Parties' response to the Provisional Findings, 4 April 2022, paragraph 3.11.1.

¹⁵⁸ Parties' response to the Provisional Findings, 4 April 2022, paragraph 3.11.1.1.

¹⁵⁹ Parties' response to the Provisional Findings, 4 April 2022, paragraph 3.11.1.2.

¹⁶⁰ Parties' response to the Provisional Findings, 4 April 2022, paragraph 3.11.1.3.

¹⁶¹ Parties' response to the Provisional Findings, 4 April 2022, paragraph 3.11.2.

¹⁶² Parties' response to the Provisional Findings, 4 April 2022, paragraph 3.11.3.

2020) following a contract profitability and balance sheet review in January 2021, including an £817.4 million impairment attributed to the Aviation business;¹⁶³ and

- (e) The statements provided during the main party hearing including:
- (i) [redacted] statement that [redacted] strategy, recently also illustrated by press reports that Babcock was in advanced talks to sell the bulk of its emergency aviation services arm;¹⁶⁴
 - (ii) [redacted] statement that he was '[redacted]';¹⁶⁵
 - (iii) [redacted] statement that there was [redacted] and that this would be the [redacted];¹⁶⁶ and
 - (iv) the explanation provided by [redacted] that the [redacted].¹⁶⁷

5.23 The Parties submitted that there are no Babcock internal documents which demonstrate an incentive for Babcock to stay in the market for the short and medium term. They told us that there are no internal documents that demonstrate Babcock voicing concerns with or otherwise indicating that it wanted to avoid the cost that would likely be associated with a closure of the business if the sale of CHC were to fall through.¹⁶⁸ The Parties submitted that Babcock would have continued to pursue a manage for value strategy for the Fisher Business so that Offshore UK would have been unlikely to bid for contracts that required the leasing of new aircraft and instead would have sought to return aircraft and scale back its presence in the market. On this basis, the Parties submitted that the short term costs of continuing to operate the business would have included the cost of redundancies which would have been borne after existing contracts came to an end and which, the Parties submitted, were also included in cost estimates of immediate closure.¹⁶⁹

5.24 The Parties provided us with their assessment of the significance of the lack of profitability experienced by Offshore UK in recent years and its switch from a net asset to a net liability position. The Parties told us that the net operating loss incurred in 2020 (the most recent financial information as at the time of the sale of Offshore UK) was significant and any suggestion that Offshore UK could be returned to profitability on the back of improvements in market

¹⁶³ Parties' response to the Provisional Findings, 4 April 2022, paragraph 3.11.4.

¹⁶⁴ Parties' response to the Provisional Findings, 4 April 2022, paragraph 3.11.5.1.

¹⁶⁵ Parties' response to the Provisional Findings, 4 April 2022, paragraph 3.11.5.2.

¹⁶⁶ Parties' response to the Provisional Findings, 4 April 2022, paragraph 3.11.5.3.

¹⁶⁷ Parties' response to the Provisional Findings, 4 April 2022, paragraph 3.11.5.4.

¹⁶⁸ Parties' response to the Provisional Findings, 4 April 2022, paragraph 3.15.

¹⁶⁹ Parties' response to the Provisional Findings, 4 April 2022, paragraph 3.23.

conditions was speculative and differed from the view that had been set out in the CMA's assessment of countervailing factors.¹⁷⁰ The Parties highlighted Offshore UK's lack of profitability and noted that Offshore UK's performance was impaired by significant loss-making contracts and expensive aircraft leases. It noted that these would have remained in place in the counterfactual.¹⁷¹ The Parties submitted that the future profitability of the Fisher Business should not be extrapolated from its performance in previous years, when the business may have operated under different market conditions and/or earned its revenues from different contracts which have since terminated (or are close to terminating). They submitted that instead an assessment of costs should be forward-looking.¹⁷²

- 5.25 Further, the Parties submitted that liabilities arising on closure of the Fisher Business from PCGs had the potential to be mitigated, and would reduce over time.¹⁷³ They noted the management fees paid by Offshore UK to Babcock, and submitted that these covered costs incurred for the direct utilisation of services from Babcock and indirect Babcock UK aviation sector costs and did not relate to a profit distribution.¹⁷⁴

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

- 5.26 Babcock submitted that there were no realistic alternative purchasers for the business. The Parties submitted that [REDACTED] and that, apart from CHC, [REDACTED]. They submitted that [REDACTED]. The Parties told us that [REDACTED], but that [REDACTED]. The Parties submitted that [REDACTED] can be explained by the fact that [REDACTED].^{175,176}
- 5.27 Babcock submitted that the fact that Babcock did [REDACTED]. They noted that the [REDACTED]: the Fisher Business [REDACTED] and was underperforming, loss-making in the UK, and [REDACTED]. The Parties submitted that this would have become apparent through the due diligence process and the acquisition of a business, such as the Fisher Business, therefore only made sense for an existing market player such as [REDACTED] or CHC, which could exploit synergies, de-duplicate costs, and make its own business more cost efficient and sustainable.¹⁷⁷
- 5.28 The Parties submitted that the possibility of finding an alternative purchaser was not a clear incentive for Babcock to prolong its presence in the market for

¹⁷⁰ The Parties were referring to Chapter 7 of the Provisional Findings.

¹⁷¹ [Parties' response to the Provisional Findings](#), 4 April 2022, paragraph 3.19.

¹⁷² [Parties' response to the Provisional Findings](#), 4 April 2022, paragraph 3.22.

¹⁷³ [Parties' response to the Provisional Findings](#), 4 April 2022, paragraph 3.24.

¹⁷⁴ [Parties' response to the Provisional Findings](#), 4 April 2022, paragraph 3.25.

¹⁷⁵ [Parties' response to Issues Statement](#), 4 January 2022, paragraph 3.17.

¹⁷⁶ Note that the position expressed by Babcock that no parties other than CHC or Bristow would be able to take on the PCGs held by the Fisher Business is contradicted by what we have been told by CHC, the Fisher Business, and third parties, as set out at paragraph 9.114 and 9.117 to 9.118.

¹⁷⁷ [Parties' response to the Annotated Issues Statement and CMA Working Papers](#).

the short to medium term. They submitted that Babcock would have continued to lose money by staying in the market and was of the view that the possibility of finding another buyer for the Fisher Business was remote.¹⁷⁸

CHC's [consequences of the Merger]

5.29 Following the publication of the Provisional Findings, CHC submitted that the [REDACTED].¹⁷⁹ CHC noted that the [REDACTED].¹⁸⁰ On this basis, CHC submitted that [the consequences of the Merger].¹⁸¹

5.30 CHC's arguments relating to its [REDACTED] are twofold: (i) first, CHC submitted [REDACTED];¹⁸² and (ii) second, CHC submitted [REDACTED].¹⁸³

CHC's [role in the market absent the Merger]

5.31 First, CHC submitted that, at the time of the Merger, [REDACTED].¹⁸⁴

5.32 CHC referred to statements made to the CMA during its main party hearing, noting that [the financial consequences of the Merger].¹⁸⁵ [REDACTED].¹⁸⁶ [REDACTED].¹⁸⁷

5.33 CHC submitted that its [REDACTED].¹⁸⁸

CHC's [REDACTED]

5.34 Second, CHC submitted that it [REDACTED].¹⁸⁹ [REDACTED].¹⁹⁰

5.35 CHC told us that [REDACTED].¹⁹¹

5.36 CHC told us that the business plan prepared for its [REDACTED].¹⁹²

¹⁷⁸ [Parties' response to the Provisional Findings](#), 4 April 2022, paragraph 3.6.

¹⁷⁹ [Parties' response to the Provisional Findings](#), 4 April 2022, 'Section II' heading and paragraph 2.1.

¹⁸⁰ [Parties' response to the Provisional Findings](#), 4 April 2022, 'Section II' heading and paragraph 2.2.

¹⁸¹ [Parties' response to the Provisional Findings](#), 4 April 2022, paragraph 2.1.

¹⁸² [Parties' response to the Provisional Findings](#), 4 April 2022, paragraphs 2.1-2.15.

¹⁸³ [Parties' response to the Provisional Findings](#), 4 April 2022, paragraphs 2.1-2.15.

¹⁸⁴ [Parties' response to the Provisional Findings](#), 4 April 2022, paragraphs 2.4 and 2.7.

¹⁸⁵ CHC main party hearing transcript, and [Parties' response to the Provisional Findings](#), 4 April 2022, paragraph 2.2.

¹⁸⁶ [Parties' response to the Provisional Findings](#), 4 April 2022, paragraph 2.9.

¹⁸⁷ CHC response hearing transcript.

¹⁸⁸ CHC main party hearing transcript and [Parties' response to the Provisional Findings](#), 4 April 2022, paragraph 2.3.

¹⁸⁹ This point was also highlighted in CHC's response hearing on 5 April 2022: CHC response hearing transcript.

¹⁹⁰ [Parties' response to the Provisional Findings](#), 4 April 2022, paragraphs 2.7-2.12.

¹⁹¹ CHC response hearing transcript.

¹⁹² CHC response hearing transcript.

Overview of our assessment of possible counterfactual scenarios

- 5.37 As set out in paragraph 5.2 above, the counterfactual is an analytical tool that is used in answering the question of whether a merger gives rise to an SLC and compares the prospects for competition with the merger against the competitive conditions that would have prevailed absent the merger.
- 5.38 The CMA may consider whether, absent the merger, one of the merger firms is likely to have exited the market. In forming a view on an exiting firm scenario in a phase 2 investigation, the CMA uses the following framework:
- (a) **Limb 1 – likelihood of exit:** the firm is likely to have exited (through failure or otherwise); and, if so
 - (b) **Limb 2 – alternative purchasers:** there would not have been an alternative, less anti-competitive purchaser for the firm or its assets to the acquirer in question.¹⁹³
- 5.39 For the CMA to accept an exiting firm argument in a phase 2 investigation, it must see compelling evidence that the most likely scenario would be exit and that there would have been no less anti-competitive purchaser. These conditions are cumulative, in that both conditions must be met for an exiting firm counterfactual to be identified. Where it is found that a firm is unlikely to have exited absent the merger (ie Limb 1 is not met), then it is not necessary to consider the likelihood of acquisition by an alternative purchaser under Limb 2. In this situation, however, the possibility of sale to an alternative purchaser may nonetheless be relevant to the CMA's consideration of the incentives and/or timing of exit under Limb 1.
- 5.40 The Parties have put forward two positions on what would have happened absent the Merger:
- (a) First, that the competitive constraint represented by the Fisher Business would have been removed as the Fisher Business would have exited the market for strategic reasons, and that hence the Merger does not materially affect the extent of competition in the market.
 - (b) Second, that CHC would [✂].
- 5.41 We consider each of these positions in turn.

¹⁹³ MAGs, paragraph 3.21.

Our assessment of the argument that Babcock would have exited from the provision of O&G Offshore Transportation Services in the UK by closing the Fisher Business

5.42 In making our assessment of the possible counterfactual scenarios, our approach has been as follows. We started by considering the evidence we have received on the financial position of the Fisher Business and on Babcock's proposed strategy with regard to the Fisher Business. This evidence is set out from paragraphs 5.44 to 5.87. We then set out our review of this evidence as follows:

- (a) First, we set out our review of Babcock's internal documents in order to understand the evolution of Babcock's strategy with regard to the Fisher Business, including the alternative options that Babcock was considering for the Fisher Business (in paragraphs 5.94 to 5.105).
- (b) Second, we consider what Babcock's incentives were before (or may have been absent) the Merger for the Fisher Business. This includes a review of evidence on the financial position and liabilities associated with the Fisher Business. We have also considered the likelihood of sale of the Fisher Business in forming our assessment of incentives (in paragraphs 5.106 to 5.142).

5.43 We then set out our overall assessment of whether we consider that Babcock would have exited via closure of the Fisher Business absent the Merger (in paragraphs 5.143 to 5.155) and implications for the manage for value strategy (in paragraphs 5.156 to 5.159).

Evidence obtained on the Fisher Business

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

- (a) Evidence we have obtained on the financial position of the Fisher Business (in paragraphs 5.45 to 5.55), which informs our assessment of Babcock's commercial incentives and hence its strategy for operating the Fisher Business.
- (b) Evidence from internal documents and submissions relating to Babcock's proposed strategy with regard to the Fisher Business (in paragraphs 5.56 to 5.87).

Evidence regarding the financial position of the Fisher Business

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

Offshore UK

5.46 As set out in more detail in Appendix B, Offshore UK has a recent history of incurring net losses and operating in a net liability position. Table 1 of Appendix B details the most recent accounts to 31 March 2021, which show that Offshore UK incurred a net operating loss of £8.3 million and a net loss before tax of £12.7 million. These accounts were prepared following the sale of Offshore UK to CHC.

5.47 The Offshore UK 2020 financial statements (being the most relevant as at the time of the sale of Offshore UK to CHC) note that the net operating loss includes significant exceptional costs, of £10.2 million, comprising a provision charge of £5.2 million for loss-making contracts, and an impairment expense of £5.0 million to write down the value of right-of-use assets.¹⁹⁴ Excluding such one-off transactions, the underlying operating loss of Offshore UK was reduced to £6.0 million in 2020.¹⁹⁵

5.48 A significant proportion of overhead costs incurred by Offshore UK in 2020 (prior to the sale to CHC), and which contribute to the operating loss in 2020, relate to the management fees paid to the wider Babcock Group. Comparing the overheads incurred by Offshore UK and the management charges it paid to the wider Babcock Group (as set out in Table 2 of Appendix B), we found that the management fee paid to Babcock represented [X]% of Offshore UK's total overheads, increasing to [X]% in 2019, [X]% in 2020, and [X]% in 2021.

5.49 Babcock submitted that these management fees related both to directly attributable costs¹⁹⁶ and indirect Babcock UK aviation sector costs.¹⁹⁷

¹⁹⁴ Offshore UK, Annual Report for the year ended 31 March 2020, Strategic Report, page 3.

¹⁹⁵ See Offshore UK, Annual Report for the year ended 31 March 2020, Strategic Report: [OFFSHORE HELICOPTER SERVICES UK LIMITED filing history – Find and update company information - GOV.UK \(company-information.service.gov.uk\)](#).

¹⁹⁶ Examples of these directly attributable costs included costs associated with: the aviation executive board; safety and assurance (including fleet maintenance); human resources; information technology; finance; legal; communications; strategy support; facilities; supply chains; and trade controls. Babcock submitted that these costs can be broadly grouped into senior management costs, support costs, and aviation sector costs.

¹⁹⁷ Babcock response to RF17.

Babcock noted in its submission that the management fees for years prior to 2021 were generally higher in comparison, as a result of cost savings that took place in 2021.¹⁹⁸ We consider the impact of these fees on Offshore UK's financial position in more detail from paragraph 5.123 below.

- 5.50 The Parties told us that a fall in the oil price combined with high lease costs and onerous customer contracts contributed to poor market conditions which impacted Offshore UK's financial position and Babcock's rationale to exit the Fisher Business.¹⁹⁹ We note that there have been improvements in the leasing market since Offshore UK entered into its current leases.²⁰⁰ Further, as set out at paragraph 6.26 while there has been a decline in the market in recent years, we expect there to be continued demand for the services provided by UK O&G Offshore Transportation Service providers for the next 10 to 15 years.
- 5.51 On the basis of the information set out above and in Appendix B (paragraphs 3 to 17), we are of the view that while the Offshore UK business has seen a decline in profitability in recent years, it did have a history of earning profits and its switch from a net asset to net liability position was not indicative of a material deterioration in operating performance. We note that prior to the sale of Offshore UK to CHC, the business received continued support from the wider Babcock group and opportunities for forward looking improvement were noted in the 2020 Strategic and Directors' reports.

Offshore Australia

- 5.52 As set out in more detail in Appendix B, prior to 2020 Offshore Australia was in a loss-making position at the operating profit/(loss) level, earning losses of £3.7 million and £9.7 million in 2018 and 2019 respectively. In 2020, Offshore Australia increased its gross margins which in turn allowed for an operating profit of £5.7 million. However, by 2021 its gross margins had reduced again, resulting in a corresponding deterioration to an operating loss of £10.2 million. The Offshore Australia business is currently in a [redacted] cash position than Offshore UK, and is expected to continue to be so at least over the short-term forecasting period.²⁰¹
- 5.53 As at the time of the most recent 2021 accounts, the Offshore Australia business remained in an overall net liability position, worsening on the prior

¹⁹⁸ Babcock response to RFI 7.

¹⁹⁹ FMN, paragraphs 2.13 to 2.30.

²⁰⁰ Note that improvements in the leasing market relate to changes in the market prior to the conflict in Ukraine – this is detailed in paragraphs 6.46 to 6.48 and in the Parties' submissions on the ability of a new entrant to enter the UK O&G Offshore Transportation Services market, as detailed at paragraph 7.15.

²⁰¹ [redacted].

year. Similarly, the Offshore Australia business remained in a net current liability position, but with some improvement on the prior year.

Offshore Denmark

- 5.54 Offshore Denmark began operating in January 2021 to service the Fisher Business's contract with TotalEnergies, which began in July 2020. For this reason, the entity had no financial results as at the 'accounts date' of the SPA, therefore we do not place significant weight on the financial results of the Danish business in considering Babcock's incentive for the Fisher Business with regard to its financial position. However, we do note that since the Merger the Danish business has demonstrated a [REDACTED] position.²⁰²

The Fisher Business – summary of overall financial position

- 5.55 The evidence demonstrates that the overall financial position of the Fisher Business is somewhat volatile, with Offshore UK turning to a loss-making position in recent years, and Offshore Australia improving into a profit-making position in 2020 before making a loss in 2021. We consider the impact of the financial position of Offshore UK and the Fisher Business more broadly on Babcock's incentives with regard to the counterfactual from paragraph 5.120 below.

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

- 5.56 Babcock provided a number of internal documents, including some produced prior to the commencement of discussions with CHC, setting out its strategy with regard to the Fisher Business. In this section, we set out Babcock's strategy as described in these internal documents.
- 5.57 The Merger Assessment Guidelines (**MAGs**) note that when considering any exiting firm argument, the CMA will usually attach greater weight to evidence that has not been prepared in contemplation of the merger.²⁰³ As set out in the CMA's Phase 1 Decision,²⁰⁴ we noted that several of the public statements and internal strategic documents referred to by the Parties in support of their exiting firm submissions were made or prepared after the Merger was already in contemplation, and therefore are of limited evidential weight in considering whether the Fisher Business would have exited the

²⁰² [REDACTED].

²⁰³ **MAGs**, paragraph 3.24.

²⁰⁴ **Phase 1 Decision**, 18 November 2021.

market absent the Merger.²⁰⁵ In this context, we note that CHC initially expressed an interest in the Fisher Business in November 2019, and first submitted a non-binding offer for the Fisher Business in March 2020.²⁰⁶

- 5.58 In response to the Issues Statement, the Parties told us that the CMA was incorrect to reject evidence on the basis that it was derived from public statements and internal strategic documents which were prepared after the Merger was in contemplation.²⁰⁷
- 5.59 In deciding what weight to put on the Parties' evidence we note that some of the evidence set out below relates to the time period prior to CHC's initial approach, while other evidence relates to the time period following that. We have taken this into consideration when assessing the weight placed on the evidence and, other things being equal, will place greater weight on evidence prepared prior to CHC's initial approach, in line with our MAGs.²⁰⁸ We have, however, considered whether evidence relating to the time period following CHC's initial approach indicates a change in circumstances that should be factored in to our analysis of the counterfactual.
- 5.60 The rest of this section is split into the following subsections:
- (a) Early strategy – 2017 to September 2019.
 - (b) Project Opturo.
 - (c) Evidence from the period following CHC's approach.
 - (d) Babcock's consideration of potential purchasers.

Early strategy – 2017 to September 2019

- 5.61 Babcock's [internal document] for 2017 makes the first key reference to Babcock's consideration of exiting from the provision of O&G Offshore Transportation Services in the UK. The document sets out Babcock's proposal to exit its O&G Offshore Transportation Services business [REDACTED]. At that time, Babcock stated that it was a small player in the market, with only [0-5]% of a market [REDACTED].²⁰⁹ It concluded [REDACTED], and therefore proposed to exit from

²⁰⁵ MAGs, paragraph 3.24.

²⁰⁶ Babcock, 'Counterfactual Submission'.

²⁰⁷ Parties' response to Issues Statement, 4 January 2022, paragraph 3.11.

²⁰⁸ MAGs, paragraph 3.24.

²⁰⁹ Note that this relates to Babcock's entire O&G presence and not the UK market only.

the provision of O&G Offshore Transportation Services in the UK. It noted [REDACTED].²¹⁰

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

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

[REDACTED]

Source: Babcock, internal document.

5.63 In the same document, Babcock noted that it proposed to exit the Oil & Gas market [REDACTED].²¹¹

5.64 Between its [REDACTED], Babcock considered selling the Fisher Business to [REDACTED]. This is set out in more detail from paragraph 5.84 below. The transaction ultimately fell through, and [REDACTED] was in the context of that failed transaction.

5.65 In [REDACTED]:

(a) [REDACTED];

(b) [REDACTED];

(c) [REDACTED];

(d) [REDACTED]; or

(e) [REDACTED].²¹²

5.66 In the document, Babcock reviewed the prospects of its participation in the O&G Offshore Transportation Services industry, noting that [REDACTED]. However, it also commented that [REDACTED]. It continued by noting that [REDACTED].²¹³ On this basis, we note that in August 2018 no decision was made to close the business and at that stage Babcock was considering maintaining the business.

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

(a) [REDACTED];

²¹⁰ Babcock internal document.

²¹¹ Babcock internal document.

²¹² Babcock internal document.

²¹³ Babcock internal document.

(b) [REDACTED];

(c) [REDACTED]; or

(d) [REDACTED].²¹⁴

5.68 By September 2018, [REDACTED], Babcock initiated a further strategic review of the Fisher Business. It was at this strategic review where Babcock decided to manage the Fisher Business for value (its 'manage for value' strategy). Whilst no clear definition of the manage for value strategy has been given to the CMA, it is clear at this point that Babcock intended to segregate its O&G Offshore Transportation Services business [REDACTED].²¹⁵

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

(a) [REDACTED];

(b) [REDACTED];

(c) [REDACTED];

(d) [REDACTED]; and

(e) [REDACTED].²¹⁶

5.70 In the same strategy document, Babcock noted that while it had adopted the manage for value strategy to its O&G Offshore Transportation Services business, [REDACTED].²¹⁷ It noted actions taken to: [REDACTED].²¹⁸

5.71 This is in line with statements made by Babcock in the June 2019 Capital Markets Day update in which it noted that although it was not a strategic priority, it would continue to operate its O&G business.²¹⁹

Project Opturo

5.72 In November 2019, at a similar time to the first discussions between CHC and Babcock about the Merger, Babcock initiated Project Opturo which assessed '[REDACTED]' of the Babcock O&G Offshore Transportation Services business [REDACTED].

²¹⁴ Babcock internal document.

²¹⁵ Babcock internal document.

²¹⁶ Babcock internal document.

²¹⁷ Babcock internal document.

²¹⁸ Babcock internal document.

²¹⁹ Babcock, [Babcock Capital Markets Day – presentation transcript](#), 5 June 2019, page 36.

These documents are key to the Parties' submission that Babcock would have closed the Fisher Business absent the Merger.

5.73 Within the November Project Opturo document, Babcock set out an assessment of closure of the Fisher Business. This was followed by a comparison of the potential closure to alternative options in December 2019. The four key options for the O&G Offshore Transportation Services [REDACTED] business were:

(a) [REDACTED].

(b) [REDACTED].

(c) [REDACTED].

(d) [REDACTED].²²⁰

Evidence from the period following the CHC approach

5.74 As set out at paragraph 5.57 above, we will usually attach greater weight to evidence that has not been prepared in contemplation of the merger. However, in recognition of the Parties' argument (see paragraph 5.19 above) that the new management team had a greater incentive to close down the business, we set out below our findings from our review of documents prepared by Babcock following the start of negotiations with CHC.

5.75 In January 2020, Babcock's '[REDACTED]' document set out the requirement for Babcock to deliver change within its broader Aviation portfolio.²²¹ The document set out the strategy for a number of projects falling under Babcock's aviation assessment (known as 'Project Foundation'). With regard to 'Project D: [REDACTED]', it noted that Babcock would continue to manage for value the Oil and Gas business and look at all options.²²² In considering the future of oil and gas ('Project J: Future of Oil and Gas'), it noted the four options available to the Fisher Business as being:

(a) [REDACTED].

(b) [REDACTED].

(c) [REDACTED].

²²⁰ Babcock internal document.

²²¹ Babcock internal document.

²²² Babcock internal document.

(d) [REDACTED].²²³

- 5.76 The document recommended a disposal of the business with the aim of the acquirer taking all lease liabilities for the [REDACTED] and other O&G helicopter leases.²²⁴
- 5.77 The Project J February 2020 update noted that ‘Opturo becomes the [REDACTED] in the event of Project Fisher [understood to be the sale of the Fisher Business to CHC] [REDACTED]’. It noted that Opturo options had been costed and presented to senior decision makers, and would be [REDACTED].²²⁵
- 5.78 In the aviation sector board update from [REDACTED] is referenced again, with the ‘manage for value or exit’ strategy remaining in place. It noted that once Babcock had completed the [REDACTED] programme it would no longer be in the Oil and Gas business.²²⁶
- 5.79 In August 2020, [REDACTED] summarised Babcock’s review of the Fisher Business against its core strategy. The document included [REDACTED]. The document stated [REDACTED].²²⁷ A version of the same document was presented to [REDACTED] as part of the aviation introduction.²²⁸
- 5.80 In September 2020, Babcock set out an update on Project Fisher. The document set out key factors in the CHC negotiations, including [REDACTED]:
- (a) [REDACTED].
- (b) [REDACTED]:
- (i) [REDACTED];
- (ii) [REDACTED]; and
- (iii) [REDACTED].²²⁹
- 5.81 The recommendation coming out of the assessment was to proceed with the sale of Fisher to CHC, [REDACTED].²³⁰

²²³ Babcock internal document. Note that we consider these options to be broadly in line with those set out at paragraph 5.73 above – the underlying analysis appears not to have changed.

²²⁴ Babcock internal document.

²²⁵ Babcock internal document.

²²⁶ Babcock internal document.

²²⁷ Babcock, [REDACTED]. Note that it is not clear from the document [REDACTED]. There is no specific reference to exiting UK O&G.

²²⁸ Babcock internal document.

²²⁹ Babcock internal document.

²³⁰ Babcock internal document. We note that [REDACTED].

- 5.82 In an internal email from October 2020, [REDACTED].²³¹
- 5.83 In addition to the documents set out above, throughout the post-CHC approach period, a number of documents were circulated which [REDACTED]. It noted that it had exited business in Congo and Ghana, [REDACTED].²³²

Babcock's consideration of potential buyers

- 5.84 During the period over which Babcock was considering its options for the Fisher Business (as set out at paragraphs 5.61 to 5.83 above), Babcock received a number of approaches from potential purchasers of the Fisher Business.
- 5.85 Babcock was in negotiations with [REDACTED] from [REDACTED]. Babcock told us that negotiations with [REDACTED] ultimately failed as a result of [REDACTED], which Babcock noted was [REDACTED]. Babcock submitted that there were [REDACTED].²³³
- 5.86 As mentioned in paragraph 3.58, in addition to [REDACTED] and CHC, Babcock noted three additional approaches with regard to the purchase of the Fisher Business:
- (a) [REDACTED].
 - (b) [REDACTED].
 - (c) [REDACTED].²³⁴
- 5.87 The Parties submitted that while there were a number of approaches for the Fisher Business in addition to that from CHC and [REDACTED] (as set out at paragraph 3.59 above), they [REDACTED], as set out at paragraph 5.26 above. We note that in [REDACTED] appeared to express a continued interest in potentially purchasing the [REDACTED], but by this stage Babcock was [REDACTED].²³⁵ Similarly, in [REDACTED] noted that it would be interested in continuing discussions [REDACTED] but Babcock was again limited in its ability to pursue discussions as a result of [REDACTED].²³⁶
- 5.88 We consider the potential impact of Babcock's consideration of potential buyers on its incentives with regard to the Fisher Business at paragraphs 5.136 to 5.141 below.

²³¹ Babcock internal document.

²³² Babcock internal document.

²³³ Babcock response to s109. [REDACTED].

²³⁴ Babcock response to s109.

²³⁵ Babcock internal document.

²³⁶ Babcock internal document.

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

- 5.89 In this section we set out our assessment of the evidence of Babcock's intention to close down the Fisher Business for strategic reasons, taking account of the evidence set out at paragraphs 5.44 to 5.87 above.
- 5.90 As noted above, the position put forward by the Parties is that, absent the Merger, the Fisher Business would have exited the market for strategic reasons, and hence the Merger does not materially affect the extent of competition in the market. Accordingly, our assessment in this chapter has focused on whether, in the most likely counterfactual, the Fisher Business would have exited the market for strategic rather than financial reasons. The MAGs note that in such a case we would need to be satisfied that the business would have exited for reasons unrelated to the merger, and that when considering any such exiting firm argument, the CMA will usually attach greater weight to evidence that has not been prepared in contemplation of the merger.²³⁷
- 5.91 As set out at paragraph 5.42 above, in assessing whether, in the most likely counterfactual scenario, the Fisher Business would have exited the market for strategic reasons unrelated to the Merger, we have focused on two key strands of evidence, which are assessed in this section.
- 5.92 First, we set out our review of Babcock's internal documents in order to understand the options considered by Babcock in relation to the Fisher Business, and the evolution of Babcock's strategy. This indicated that while Babcock regarded the Fisher Business as non-core (and that this might have contributed to a willingness to close the business), Babcock kept a number of options in play throughout the pre-merger period, [redacted], and a preferred option was not indicated.
- 5.93 Second, in view of the various options at play and the absence of a preference, we consider Babcock's incentives in pursuing these options. This assessment indicates that the Fisher Business has been profitable in the past and there were opportunities for improving its financial performance. Further, the costs of closing the Fisher Business (particularly the costs associated with the PCGs) were high, relative to either a sale or continuing to operate the business. This means that the possibility of finding an alternative purchaser would have provided an additional incentive to continue operating the business.

²³⁷ MAGs, paragraphs 3.29 and 3.24.

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

- 5.94 In considering the evidence regarding Babcock’s strategy for the Fisher Business (as set out at paragraphs 5.56 to 5.87 above), we are of the view that, contrary to the Parties’ submissions,²³⁸ none of the internal strategic documents provided to us demonstrates that a decision to exit had been taken by Babcock when CHC approached Babcock about a potential acquisition (or in the period after November 2019), or that the Fisher Business was [REDACTED].
- 5.95 Although we consider that serious consideration had been given to exit, the internal strategic documents consistently show that exit was only one of several different options being considered by Babcock at the time.²³⁹ For example, as set out at paragraph 5.63 above, in an internal strategic document [REDACTED].²⁴⁰
- 5.96 Furthermore, as noted in paragraph 5.69, the evidence indicates that Babcock continued to be open to expansion opportunities for the Fisher Business, despite implementing the manage for value strategy and considering various alternative options including closure. Such evidence shows Babcock was open to the prospect of retaining its O&G Offshore Transportation Services business and keeping it within the market at least in the short to medium-term.
- 5.97 The Parties told us that it was not credible to suggest that Babcock would have continued to run the business simply to avoid paying the costs associated with an immediate closure and preserving a ‘relatively trivial’ contribution to overheads, particularly given the new management’s approach to reducing overhead.²⁴¹ They submitted that Babcock was willing to make difficult decisions and take a significant financial hit (as it had done in relation to the £2 billion written off Babcock’s balance sheet following a contract profitability and balance sheet review in January 2021) and that it would not have hesitated to close down the Fisher Business, which it considered to be non-core and loss-making.²⁴² As set out at paragraph 5.19 above, the Parties also told us that change in management within Babcock, in particular the appointment of the new CEO, David Lockwood, contributed to a broader mandate for change within the Babcock business, including a willingness to close down non-core operations. The Parties submitted that an £817.4 million impairment charge was taken against the aviation business in 2021, under the

²³⁸ Parties’ response to the phase 1 Issues Letter, Babcock’s ‘Counterfactual Submission’.

²³⁹ Babcock internal documents.

²⁴⁰ Babcock internal document. See also Babcock internal document which refers to [REDACTED].

²⁴¹ Parties’ response to the Annotated Issues Statement and CMA Working Papers.

²⁴² Parties’ response to the Annotated Issues Statement and CMA Working Papers.

leadership of new management.²⁴³ The Parties also submitted that Babcock's commitment to exit O&G markets where it cannot find a buyer is demonstrated by the fact that Babcock exited, via closure, its businesses in Ghana and Congo.²⁴⁴

- 5.98 We recognise that Babcock had considered exiting from O&G Offshore Transportation Services prior to the approach by CHC. In the [REDACTED] document (as set out at paragraph 5.73) [REDACTED].²⁴⁵ The documents from October 2019 to February 2020 (as set out at paragraphs 5.72 to 5.83 above), following the start of negotiations with CHC, demonstrate that Babcock was keen to complete the sale with CHC.
- 5.99 While this demonstrates a desire from Babcock to complete its sale to CHC and to exit the O&G business, we do not consider that this demonstrates that absent the Merger Babcock would have closed down the Fisher Business in the near future. The February 2020 document noted that, in the case of the failure of the disposal, 'Opturo becomes [REDACTED]' – as noted in paragraph 5.73, while the [REDACTED], the [REDACTED] consideration of Opturo set out the strategy to [REDACTED]. This is further reflected in the [REDACTED] document which considered a number of options for the Fisher Business, [REDACTED]. In our view this demonstrates that if the sale to CHC had failed, Babcock would have reverted to a consideration of options which included [REDACTED], or continuing 'as is'.
- 5.100 We recognise that Babcock regarded the Fisher Business as non-core and that this might have contributed to a willingness to close the business. However, the main evidence relating to this perceived non-core status comes after CHC's approach and we are of the view that any consideration of closing a non-core business would reflect Babcock's broader incentives, discussed from paragraph 5.106 below.
- 5.101 The September 2020 document set out at paragraph 5.81 above (which was prepared after the introduction of the new management team and CEO into the business) shows that the costs associated with the decision to maintain, sell, or close the business are compared. The basis of the recommendation to proceed with the sale of the Fisher Business to CHC was that [REDACTED].²⁴⁶ This suggests that Babcock saw the alternative to the sale to CHC as being [REDACTED].
- 5.102 We note the submissions from Babcock with regard to public statements made by its previous CEO (see paragraph 5.22(a)) as well as the statements made during the main party hearing (see paragraph 5.22(e)). While this

²⁴³ Parties' response to the Annotated Issues Statement and CMA Working Papers.

²⁴⁴ Parties' response to the Annotated Issues Statement and CMA Working Papers.

²⁴⁵ Babcock internal document.

²⁴⁶ Babcock internal document.

represents commentary from senior management that Babcock did not want to invest in the Fisher Business and was operating the business under the manage for value strategy, there is evidence from within internal documents that goes contrary to the points raised at paragraph 5.22 and shows that closure was only one of the options under consideration among others. For example:

- (a) As set out at paragraphs 5.69 and 5.70, internal documents demonstrate that while managing the business for value, Babcock also considered [X];
- (b) As detailed at paragraph 5.71, Babcock publicly announced that its O&G business was not a strategic priority but that it intended to continue operating the business;
- (c) In more than one internal document in 2019 and 2020 (as set out at paragraphs 5.73 and 5.75), Babcock considered [X].

5.103 Further, as set out in more detail at paragraph 5.157 below, Babcock bid for and won the TotalEnergies and IAC contracts in 2020. Babcock submitted (as set out at paragraph 5.20) that they were following a strategy to [X] and [X] to the business when they bid for and won these contracts. However, it demonstrates that regardless of O&G not being ‘a strategic priority’ (paragraph 5.22(a)(i)), Babcock not having an intention to invest further or stay in the market (paragraph 5.22(a)(ii)), and confirming to investors that O&G was no longer an attractive long-term market (paragraph 5.22(a)(iii)), Babcock was willing to bid for and win new contracts that would increase the cost it would incur if it were to exit from the provision of O&G Offshore Transportation Services in the UK. As set out in more detail at paragraphs 5.108 to 5.119 below, the evidence demonstrates that Babcock could only exit these contracts prior to the agreed expiry date by incurring significant financial liabilities. Thus, the statements set out at paragraph 5.22 above are inconsistent with the actions taken by Babcock management.

5.104 It is common ground between the CMA and the Parties that the phase 2 counterfactual assessment considers the most likely scenario. In making our assessment, we place weight on the evidence put before us, in particular that prepared prior to contemplation of the Merger. As set out above, at the time of the Merger, no decision had been made about the Fisher Business as an alternative to the sale to CHC. The Parties submitted that we cannot rely on the absence of a decision to exit the business as evidence that it would not have done so.²⁴⁷

²⁴⁷ Parties’ response to the Annotated Issues Statement and CMA Working Papers.

5.105 Our review of the internal documents (including in the context of public statements made by Babcock's previous CEO and statements made by Babcock management during the main party hearing) indicates that the non-core nature of the Fisher Business might have contributed to Babcock's willingness to close the business. However, there were multiple options in play and the evidence does not reveal a preferred option. We note that the absence of a preferred decision to exit via closure does not in itself establish that the most likely scenario is that Babcock would have continued to operate the business for the short- to medium- term. However, we consider that it indicates that absent the Merger Babcock would have re-considered its other options for the Fisher Business and as such does not undermine our overall view on the counterfactual, which is based on the broader evidence base available discussed in this chapter, ie that exit via closure was not the most likely option. We note that the Parties argued (paragraphs 5.22(e)(iii) and 5.22(e)(iv)) that the new management team would have had a greater willingness to close the business down. However, even if the (old or new) management were seeking to exit and had shown willingness to close down businesses, their incentives to do so would have been largely driven by the costs and benefits of closing down the Fisher Business and, for the reasons set out below (see paragraphs 5.106 to 5.141), we do not consider that, on balance, the most likely scenario is one where the (old or new) management would have closed down the business. Therefore, to determine the most likely counterfactual, the next section turns to an assessment of Babcock's incentives with regard to the Fisher Business, and potential closure.

Babcock's incentives with regard to the Fisher business

5.106 As set out above, Babcock continued to consider a number of strategic options for the Fisher Business, as described in internal documents, throughout the period it was negotiation with CHC. These documents demonstrate that Babcock considered its options if it had been unable to sell the business to CHC, comparing the costs and benefits of each option ([REDACTED]). Given the absence of evidence of a preferred alternative within Babcock's internal documents, and for the purposes of determining the most likely counterfactual, we have considered the commercial and financial incentives that would have been relevant to that assessment.

5.107 In this context, we have considered whether:

- (a) Significant financial liabilities including PCGs or other early termination costs falling due on the sale of the Fisher Business could have incentivised Babcock to continue operating the business rather than closing it down.

- (b) The operating losses made by the Fisher Business may have incentivised Babcock to close the Fisher Business, or conversely whether the financial contributions made to the wider Babcock Group overheads by the Fisher Business may have provided an incentive to continue operating the business.
- (c) The possibility of selling the Fisher Business may have provided an additional incentive to continue operating the business while seeking an alternative buyer to CHC.

PCGs

5.108 As set out above, the Fisher Business was supported by around £[X] of PCGs at the time of the Merger. As noted at paragraph 5.16, PCGs are used to provide assurance that the obligations due by a company will be fulfilled. If Babcock were to have closed the Fisher Business prior to the completion of contracts with associated PCGs, then it would be liable to pay out financial compensation. We considered whether the value of the liability that may arise as a result of these PCGs on closure of the Fisher Business would have provided an incentive for Babcock to continue operating even at a loss, rather than closing, the Fisher Business. We considered that this may impact the timeframe over which Babcock would be able or willing to exit the Fisher Business.

5.109 We note that, as set out at paragraph 3.55(e) CHC's valuation of the Fisher Business [X] £[X]million [X]. We are of the view that the liability associated with PCGs is not expected to be a day-to-day constraint on the operation of either the business operating the guaranteed contracts, or the guarantor. We consider that this is reflected in the [X] value paid for the Fisher Business by CHC to reflect [X] in purchasing the Fisher Business with a transfer of the pre-existing PCGs (valued at approximately £[X]). We are of the view that this demonstrates that the financial risk associated with PCGs is limited where a purchaser plans to continue to operate the business. The crystallisation of the liability comes into effect only when the obligations of the relevant contracts are no longer met, as would be the case if Babcock were to have closed down the business prior to the contract expiry.

5.110 As set out in paragraph 5.73, Babcock estimated that the cost of closing the Fisher Business with immediate effect would be approximately £[X]million.²⁴⁸

²⁴⁸ This estimate is dated prior to winning the TotalEnergies and IAC contracts.

We asked Babcock how the PCGs were incorporated into these costs. Babcock submitted that the £[redacted]million [redacted]:

(a) [redacted]. Babcock submitted that [redacted].²⁴⁹ [redacted], Babcock submitted that [redacted]; and

(b) did not include exit costs associated with customer contracts (ie contracts with customers to service their demand to transport crew). Babcock submitted that at the time of the assessment, Babcock had not signed the IAC or TotalEnergies contracts, and the [redacted] contract was expected to expire prior to any proposed exit date. As such, the only customer contract liability that Babcock would have been responsible for would have been the [redacted] contract. [redacted].²⁵⁰

5.111 On this basis, at the time Babcock set out its initial cost estimates of imminent closure of the business, we consider £[redacted]million²⁵¹ to be an approximate estimate of the total cost of closing the business, taking account of the approximately £[redacted]million that would arise as a result of PCGs.

5.112 Following its initial cost assessment, Babcock went on to bid and win the IAC and TotalEnergies customer contracts. In taking on these contracts, Babcock agreed to new customer PCGs which resulted in an estimated liability of £[redacted] in addition to the liability it would incur if it closed the business immediately, payable until expiry of the contracts in [redacted].²⁵²

5.113 The cost of imminent closure of the Fisher Business can therefore be estimated to range between £[redacted]million and £[redacted]million. As set out at paragraphs 5.73(a) and 5.80(a) above, Babcock estimated that continuing the Fisher Business 'as is' would cost it between £[redacted]million and £[redacted]million per annum.

5.114 As set out at paragraph 5.25 above, the Parties submitted that there was the potential for the liabilities arising from PCGs to be mitigated in the case of closure of the Fisher Business. First, we note that we have not seen internal evidence to demonstrate that reduction in liabilities arising from these PCGs was a likely scenario. We note that Babcock considered the potential options for PCGs related to lease contracts.²⁵³ Babcock's consideration is in the

²⁴⁹ Additionally, we note that PCGs 'would naturally come to an end with the expiry of the relevant lease or customer contract' or 'if a lease was terminated by means of an early termination fee the PCG would fall away on termination of the contract'. Babcock response to RFI 5.

²⁵⁰ Babcock internal document.

²⁵¹ This is calculated as the £[redacted]million estimate calculated by Babcock plus the £[redacted]million estimate associated with the [redacted] contract.

²⁵² Being £[redacted] million relating to IAC, £[redacted] million relating to the TotalEnergies UK contract, and £[redacted] million relating to the TotalEnergies Denmark contract. Babcock internal document.

²⁵³ Babcock internal document.

context of the transfer of PCGs to CHC and considers lease contracts only, without consideration of PCGs related to customer contracts. The document demonstrates that Babcock was considering various different ways in which to manage lease PCGs (eg early termination options and likelihood of lessors accepting a transfer of PCGs). However, the document is set out in the context of the sale of the Fisher Business to CHC rather than closure of the business, and provides routes for exploration rather than any clear opinion on how the PCGs could be managed.

5.115 Second, to confirm our understanding of how PCGs work in the market, we asked six third parties to set out their views on the impact of PCGs in a scenario in which a contract was not completed (eg through an inability or unwillingness to complete the contract). In particular, we queried the likelihood of the PCG being enforced, the likelihood of the parent company being required to pay the financial liability associated with the PCG as at the date the contract was no longer serviced, the likelihood that a customer or lessor would negotiate or reduce the value of the financial liability falling due, and details of any other factors which could impact any negotiation or reduction in the value of the amount due to the customer or lessor. We received responses from five parties:

- (a) Four²⁵⁴ respondents told us that it is very likely that the PCG would be enforced. One²⁵⁵ respondent told us it would 'likely enforce if no other option' and prior to that a dispute resolution process would commence if it was in the contract;
- (b) Four²⁵⁶ respondents told us that it is likely that there would be a requirement to pay the financial liability associated with the PCG. For example:
 - (i) One third party²⁵⁷ noted that 'generally speaking various termination costs would be payable' (eg costs associated with procuring replacement services from an alternative supplier) and that 'these are likely to be significant'. It told us that O&G companies would be likely to seek recovery of any entitlement and that this is why the PCG would have been placed in the first place.

²⁵⁴ Response to the CMA's RFI from: [redacted], [redacted], [redacted], [redacted].

²⁵⁵ Response to the CMA's RFI from: [redacted], [redacted], [redacted], [redacted].

²⁵⁶ Response to the CMA's RFI from: [redacted], [redacted], [redacted], [redacted].

²⁵⁷ Response to the CMA's RFI from: [redacted].

- (ii) Another third party²⁵⁸ told us that it is highly likely that a demand for payment/performance would be made.
- (c) One respondent told us that the likelihood of the requirement to pay the financial liability associated with the PCG would depend on the strength and terms of the PCG.²⁵⁹
- (d) We asked third parties about the likelihood that a customer or lessor would negotiate or reduce the value of the financial liability falling due:
 - (i) Three²⁶⁰ respondents told us that it is very unlikely that a customer or lessor would be able to negotiate or reduce the value of the financial liability. In particular, one third party told us that it would be ‘very unlikely if there is a contract and a PCG which would therefore be enforceable in court’ and ‘there would be no incentive for the beneficiary to agree to this’.²⁶¹ Another third party submitted that ‘there is often a commercial discussion to be had around financial liability, but the underlying credit and the PCG in turn are fundamental to a transaction, and not one easily reduced or foregone by a lessor.’²⁶²
 - (ii) One third party told us that it is likely that the lessor would ‘typically seek to maximise its recovery of the amounts owed.’ It noted that there could be a negotiation which reduced the absolute amount of the financial liability that is due, but that this would take into account the ability of the party to pay and ‘other commercial factors’.²⁶³ Another third party noted that the parent company is usually required to pay the liability associated with the contract, but that this could depend on negotiation.²⁶⁴
- (e) With regard to factors that may impact a negotiation or reduction in value of the amount due:
 - (i) One third party told us that ‘negotiations would be very unlikely to be entered into by the beneficiary as there is no incentive to negotiate down its contractual entitlement from the contractual counterparty or the parent.’ It noted that depending on the language of the contract relating to recovery of termination costs, there may be some

²⁵⁸ Response to the CMA’s RFI from: [REDACTED].

²⁵⁹ Response to the CMA’s RFI from: [REDACTED].

²⁶⁰ Response to the CMA’s RFI from: [REDACTED], [REDACTED], [REDACTED].

²⁶¹ Response to the CMA’s RFI from: [REDACTED].

²⁶² Response to the CMA’s RFI from: [REDACTED].

²⁶³ Response to the CMA’s RFI from: [REDACTED].

²⁶⁴ Response to the CMA’s RFI from: [REDACTED].

negotiations over what particular costs fall into the defined categories of recoverable losses.²⁶⁵

- (ii) Another third party submitted that the factors that may impact on any negotiation or reduction in the amount due could include the value, duration and significance of the commercial relationship, the ability to provide 'equivalent value' in another area of the commercial relationship between the parties, and the potential consequences of not negotiating on the ability of the cancelling party/parent company to continue as a going concern.²⁶⁶
- (iii) One third party told us that improvement in the 'underlying credit of the transaction', market conditions, contract terms of cash security could be relevant factors that would reduce the value of a PCG, but noted that it does not see this as having a practical effect in the short term.²⁶⁷
- (iv) A third party submitted that the parent company's liability would be no greater than the liability assumed originally by the subsidiary under the main contract, (subject to a caveat in relation to the parent company's liability for costs), so it would consider that it had already assessed a reasonable limitation of liability and would not consider it relevant to negotiate or reduce this further.²⁶⁸

5.116 On the basis of the submissions received (as set out at paragraph 5.115 above), we are of the view that, in a scenario in which Babcock chose to close down the Fisher Business ahead of the completion of its contracts, it is likely that Babcock would be required to pay the full liability arising from PCGs. Most third parties told us that negotiation was in principle unlikely, and we have received no submission or evidence suggesting that it would be more likely in this particular case.²⁶⁹

5.117 We note the Parties' submission described at paragraph 5.23 regarding a supposed lack of internal documents in which Babcock voiced concerns with, or otherwise indicated that it wanted to avoid, the costs that were likely be associated with a closure of the business if the sale of CHC were to fall through. We note the September 2020 document²⁷⁰ as set out at paragraph 5.81 above in which Babcock explicitly stated that it recommended that it

²⁶⁵ Response to the CMA's RFI from: [redacted].

²⁶⁶ Response to the CMA's RFI from: [redacted].

²⁶⁷ Response to the CMA's RFI from: [redacted].

²⁶⁸ Response to the CMA's RFI from: [redacted].

²⁶⁹ Note that in Babcock's Annual Report and Accounts for the years ended 31 March 2021 and 2020 the Babcock Group had a cash and cash equivalents balance of £904.8 million and £1,351.4 million, respectively.

²⁷⁰ Babcock internal document.

proceed with the sale of Fisher to CHC on the basis that it was better value than running the business down over three years or exploring other buyers.²⁷¹ The same document stated that retaining the business would result in continued losses of approximately £[redacted] per year, while total closure costs as at that date would be in the range of £[redacted] to £[redacted].²⁷² Since Babcock told us that this estimate does not include the liabilities that would arise from PCG liabilities,²⁷³ we are of the view that this estimate is significantly lower than the amount that would have fallen due on closure at this date. The same document notes that continuing to run down the existing contracts over three to four years would cost approximately £[redacted] to £[redacted].²⁷⁴ Under this scenario, the liabilities arising from PCGs would not fall due. Our assessment of this is twofold – first, it demonstrates that the costs arising from potential closure relative to continuing to operate the business were relevant to Babcock’s strategic decisions, including in the period in which it was assessing what would happen in the case of the CHC scenario falling through. Second, Babcock intended to ‘reassess’ other exit options including selling or closure – ie Babcock was not tied to the idea of closing the business down.

5.118 We note Babcock’s submission at paragraph 5.23 that it would have continued to pursue a manage for value strategy and that the costs of continuing to operate the business would have included redundancies which would have been borne after existing contracts came to an end. We note that the costs of running down the contracts in a manage for value scenario would be in the range of £[redacted] to £[redacted] (as set out at paragraph 5.117 above). First, we note that this amount remains lower than the estimates of closing the business immediately (£[redacted] to £[redacted]), and significantly lower when PCGs (amounting to approximately £[redacted] as at the time of the estimates) are taken into consideration. Annual losses from continuing to operate the business as normal (of £[redacted]) remain significantly lower than even running the contracts down over a three to four year period. Taking these values into consideration, even where a manage for value strategy was pursued, the cost to the Babcock business would be significantly lower than immediate closure. We consider the impact of the manage for value strategy on the competitive position of the Fisher Business at paragraphs 6.130 to 6.158.

5.119 We consider therefore the financial burden of closing the business (largely as a result of [redacted]), which has been estimated to be significantly greater than the

²⁷¹ Babcock internal document.

²⁷² Babcock internal document.

²⁷³ Babcock internal document.

²⁷⁴ Babcock internal document.

cost of continuing to operate the business, to be a key factor that would have incentivised Babcock to continue operating the Fisher Business.

Operating losses and overhead contribution

5.120 As set out in paragraphs 5.45 to 5.55 above, the Fisher Business had a recent history of incurring losses and operating in a net liability position. The prospect of incurring further operating losses was referred to in Babcock's internal documents and represented an incentive for Babcock to exit the market, whether by sale or closing down the Fisher Business.

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

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

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

5.123 As set out at paragraphs 5.48 and 5.49, a significant proportion of Offshore UK's overhead costs related to management fees paid by Offshore UK to the wider Babcock Group. The value of this fee was partly made up of costs incurred by Offshore UK for direct utilisation of services from Babcock. However Babcock noted that an element of the charge related to indirect Babcock UK aviation sector costs. As set out at paragraph 5.25, Babcock submitted that the management fee does not relate to a profit distribution, but rather comprises costs incurred for direct utilisation of services from Babcock and indirect Babcock UK aviation sector costs. However, Babcock told us that the Babcock UK aviation sector costs included in Offshore UK's management fee would have ranged between approximately [X]% and [X]% 'reflecting the proportion of revenue achieved by Babcock's UK aviation sector businesses that was accounted for by the Offshore business'.²⁷⁵ In our view, allocating Babcock UK aviation sector costs on the basis of revenue contribution is not consistent with the costs being allocated on the basis of Babcock UK aviation

²⁷⁵ Babcock response to RF17.

sector services, and therefore we consider that the management fee includes an overall contribution to the Babcock business.

- 5.124 Further, we note that the Fisher Business has been in a position to continue operating without the support of Babcock UK aviation sector costs since the sale of the business to CHC, during which time it has operated under hold separate rules. On this basis, excluding indirect aviation costs from the total cost of operating the Offshore UK business and with consideration of the reduction in the charge following cost saving measures in 2021,²⁷⁶ we are of the view that the actual costs associated with running the Offshore UK business could be lower than those set out in the financial results in Tables 1 and 2 of Appendix B. In this context, the underlying financial performance of the Fisher Business may be better than that portrayed in the financial results.
- 5.125 Further, we are of the view that the key drivers of poor financial performance that have impacted the UK O&G Offshore Transportation Services have affected the market more broadly and are not necessarily indicative of inherent unprofitability in the Offshore UK business. We note that in the two most recent financial years, Coronavirus (**COVID-19**) had an impact on all suppliers, in particular, resulting in reduced flight hours and therefore reduced revenue.
- 5.126 Moreover, we note that the challenging commercial environment in the industry more broadly was driven by the reduction in the oil price in 2014 – this resulted in a collapse in demand which led to overcapacity in the provision of O&G Offshore Transportation Services in the UK and subsequent pressure on contract prices. Given the long-term nature of helicopter and customer contracts, these negative features take time to work themselves out of the market. However, moves have been made in the industry to bring demand and capacity into balance (see paragraphs 6.42 to 6.48) and there is therefore no systemic reason to suppose that returns could not be improved as new contracts are put out to tender. Further, we have seen signs of an increase in the oil price.^{277,278}

²⁷⁶ We note that these cost savings may in turn have also reduced the estimated cost of continuing to operate the Fisher Business, as set out at paragraph 5.113 above.

²⁷⁷ Note that the signs of an increase in the oil price can be noted prior to the most recent Ukraine situation related increases.

²⁷⁸ We note that [redacted] has put to us a different view in its submission dated 21 April 2022 in which it told us that there is 'currently limited availability of core helicopter types in the market and lease rates are increasing in line with tight supply' ([redacted]). However, we consider that this submission (dated 21 April 2022) contradicts with [redacted] initial submission (dated 17 December 2021) in which it told us that 'the number of non-revenue generating helicopters has increased steadily [since 2015] and lease rates have weakened materially' and 'negotiated lease extensions in the current market normally lead to a reduction in rates, given the excess global capacity' (Response to the CMA's RFI from: [redacted]) We note that the position put forward by [redacted] in its most recent submission (21 April 2022) is also out of line with the position put to us by other third parties (see paragraph 6.46)

- 5.127 We note the Parties' submission described at paragraph 5.24 that the net loss of the business in 2020 (of £16.2 million at an operating level and £21.8 million at a net profit before tax level) are significant and that Offshore UK's profitability is impaired by significant loss-making contracts and expensive leases which would have remained in place in the counterfactual. The Parties also noted that future profitability considerations should be made on an assessment of forward-looking costs. We recognise the significant losses incurred by the business in the last two years. However, as set out at paragraph 5.47, Offshore UK had a history of earning positive underlying operating profits. This history of past profitability, combined with our assessment of improvements in market conditions²⁷⁹ (as set out at paragraphs 5.125 and 5.126 above) that have the potential to improve the profitability of contracts,²⁸⁰ point to the possibility of improved profitability within the Fisher Business on the basis of both historic information and a forward-looking assessment.
- 5.128 Considering the Fisher Business more broadly, we note that the Babcock Group intended to continue to provide a letter of financial support to ensure that the business could meet any liabilities falling due, as noted in the most recent accounts of both Offshore UK and Offshore Australia.
- 5.129 Therefore, while the Fisher Business had a recent history of poor financial performance and is currently in a net liability position, it received support from Babcock as confirmed via PCGs. There was no evidence to suggest that financial failure was on the horizon, for example Babcock had not considered liquidation proceedings, nor the need to recruit a third-party adviser to consider the financial position of the entities within the Fisher Business.
- 5.130 On the basis of our consideration of the financial position of the Fisher Business, and Offshore UK in particular, we are of the view that there are no systemic features in the provision of O&G Offshore Transportation Services in the UK that would suggest that the Fisher Business would continue to be inevitably unprofitable.
- 5.131 We have considered the impact of PCGs, overhead contributions and overall financial performance in turn. As set out at paragraphs 5.108 to 5.119 above,

and the Parties themselves. For example, CHC told us that 'there is aircraft on the open market today' and that 'the lease rates that [a potential purchaser of a divestiture package] would manage to secure would be highly competitive' and likely on 'far more favourable terms' (CHC response hearing transcript). See also the Parties' views set out at paragraphs 6.30(b) and 6.46.

²⁷⁹ Note that the references to improvements in market conditions relate to improvements in lease rates and an uptick in the oil price prior to the conflict in Ukraine. We consider that these changes in the market are relevant as at the time of the counterfactual, and not dependent on more recent potential changes in the market as a result of the Ukraine conflict and corresponding significant increase in the oil price.

²⁸⁰ See footnote 278 above in which we demonstrate the view that there have been improvements in lease terms in recent years. This has the potential to allow for improved lease rates once current lease rates expire.

the PCGs held by the Fisher Business represent a significant financial liability that would fall due on the closure of Offshore UK. We note that Offshore UK made some contributions to Babcock via its payment of management fees (as set out at paragraphs 5.48 and 5.49) and note that while an element of these fees relates to direct utilisation of costs, there is an overall contribution to the Babcock business. We recognise that Offshore UK has been loss making in recent years but, as set out at paragraphs 5.46 and 5.47, consider that it has the potential to improve its profitability based on improved rates²⁸¹ in the market.

5.132 In view of the above, we consider that the significance of the liability that would arise as a result of PCGs (of approximately £[REDACTED])²⁸² is such that even if all management fees (of between £[REDACTED] and £[REDACTED])²⁸³ were related to a direct utilisation of services by the Offshore UK, and Offshore UK continued to earn losses in the range of £16.2 million.^{284,285} We are of the view that this is another key factor that would have incentivised Babcock to continue operating the business to avoid the liability falling due on closure.

- *Babcock's internal documents*

5.133 Babcock's internal documents also demonstrate that it recognised the positive contributions that the Fisher Business made to its wider business overheads (see paragraph 5.66 above). As set out in Appendix B, the Fisher Business was contributing approximately £[REDACTED]million annually to the wider Babcock group. In 2018, this was regarded as a [REDACTED]. The value remained [REDACTED]. Given this, and taking into account earlier views set out by Babcock with regard to the [REDACTED], combined with the fact that the [REDACTED], we are of the view that Babcock would have continued to consider the contribution made by the Fisher Business at the time of the Merger to be material relative to the scale of their ongoing losses and of the cost of closure. On this basis, our view is that this steady financial contribution to the wider Babcock Group contributed to Babcock's incentives to continue operating the Fisher Business.

5.134 In addition, we note that Babcock had other options available to it to improve its financial performance, beyond continuing the Fisher Business 'as is' or

²⁸¹ Note that our reference to improved rates is in relation to improvements in the leasing market rates (as set out at footnote 278 above) and is not dependent on the higher oil prices seen in the market in recent months.

²⁸² See paragraph 5.112.

²⁸³ See 'group management IT charges' and 'central management recharges' in Table 2 of Appendix B.

²⁸⁴ Note that £16.2 million was the operating loss in the original Offshore UK financial statements to 31 March 2020. The 2020 comparisons were restated in the Offshore UK financial statements to 31 March 2021, with the revised operating loss being £18.8 million. We compare to the 2020 figures as these are the most relevant at the time of the counterfactual assessment. We note that the comparable loss in 2021 was reduced to £8.3 million. We consider that the argument set out at paragraph 5.132 remains consistent with consideration of the restated operating loss figure for 2020 and with the operating loss incurred in 2021.

²⁸⁵ See FY2020 operating loss as per Table 1 of Appendix B.

exiting via sale or closure, which it appeared to still be actively considering. For example, as set out at paragraph 5.73, Babcock was [REDACTED].

5.135 Therefore, we conclude that there were opportunities for the Fisher Business to positively improve its financial position or increase its overall contribution that could arise from continuing to operate the business. This presented a further incentive to continue operating the business rather than closing it down.

Prospect of selling the Fisher Business

5.136 With regard to the option of selling the Fisher Business, we note that Babcock had received approaches from a number of interested parties, as set out at paragraphs 5.84 to 5.87. While Babcock is of the view that [REDACTED] (as set out at paragraph 5.16), we have not received evidence that would enable us to place significant weight on this assertion.

5.137 At the main party hearing, Babcock told us that the pool of buyers [REDACTED].²⁸⁶ It told us that 'it was pretty clear that, with a loss-making business with this sort of profile, [REDACTED]'.²⁸⁷ It noted that ideally it would look [REDACTED],²⁸⁸ but that '[REDACTED]'²⁸⁹ and that in this case Babcock was 'losing money and it was not clear that it was worth shelling out that amount of money when there was no clear and obvious exit, given particularly around the PCGs'.²⁹⁰

5.138 However, we note that following the unsuccessful [REDACTED] (as set out at paragraph 5.67(b) above), Babcock had considered preparing for a more [REDACTED]. It appears that Babcock did not follow this process before it received the approach from CHC. Then, in considering [REDACTED] (as set out at paragraph 5.80(b) above), Babcock again noted [REDACTED].²⁹¹ Based on the evidence available, it is our view that, at the time of the CHC transaction, Babcock considered there could be some merit in running a formal process to find a buyer for the Fisher Business if the deal with CHC were to collapse.

5.139 The Parties told us that [REDACTED], and that [REDACTED] (see paragraph 5.26). However, they did not provide any evidence to support this view. We consider that, in a scenario where the Fisher Business was sold with the requirement to service the PCGs, a potential purchaser would require the financial resources to support an increase in its liabilities of approximately £[REDACTED] million. While this

²⁸⁶ Babcock main party hearing transcript

²⁸⁷ Babcock main party hearing transcript.

²⁸⁸ Babcock main party hearing transcript.

²⁸⁹ Babcock main party hearing transcript.

²⁹⁰ Babcock main party hearing transcript.

²⁹¹ Babcock internal document.

has the potential to limit the pool of potential purchasers, it does not mean that no other purchaser could be found. We note our point at paragraph 5.109 that the presence of the PCGs [redacted] CHC's valuation of the Fisher Business by £[redacted]million, but it remained an interested party. In this context, we note that while Private Equity (PE) firms may be unwilling to take PCG liabilities on to their own or one of their other funds' balance sheets, there are nevertheless a number of PE backed operators currently competing in the industry and Babcock had considered [redacted]. On this basis, we consider that there may be structural solutions available which PE firms could use to enable them to acquire and own such a business.

5.140 We note that Babcock had not conducted an open sales process, but had instead [redacted]. We have no reason to believe, given the intrinsic value in the business and interest from other parties (as noted at paragraph 5.86), that they would have been unable to find a less anti-competitive purchaser for the business and in those circumstances we consider any alternative purchaser would have been likely to continue operating the business. Further, we note that Babcock had expressly contemplated [redacted] in the event that the sale to CHC did not proceed (see paragraph 5.80(b)(ii)). The Parties submitted that [redacted] cannot on any basis amount to evidence from which it is reasonable to infer [redacted].²⁹² However, the evidence set out at paragraphs 5.84 to 5.87 demonstrates that there was some interest in the Fisher Business and, as set out at paragraphs 5.139 and 5.140 above, we have seen no evidence that CHC was the only possible purchaser.

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

Considering Babcock's incentives in the round

5.142 On the basis of the assessment set out at paragraphs 5.108 to 5.141 above, we have identified three key factors that we consider contributed to Babcock's incentives to continue operating the business (rather than closing it down had the Merger not gone through): the significant PCGs associated with closure; opportunities for the Fisher Business to positively improve its financial position or increase its overall contribution; and the prospect of selling the Fisher Business to an alternative purchaser.

²⁹² Parties' response to the Annotated Issues Statement and CMA Working Papers.

Would the Fisher Business have exited the market?

- 5.143 In determining our overall assessment of whether we should adopt an exiting firm scenario as our counterfactual in this case, we have focused our assessment, in line with the framework set out in the MAGs (see also paragraphs 5.38 and 5.39 above) on significant changes affecting competition between the merger firms.
- 5.144 As such, we considered whether in the most likely counterfactual the Fisher Business would have exited the market, either for financial or strategic reasons unrelated to the sale of the Fisher Business to CHC. In doing so, we have considered the financial position of the Fisher Business and evidence obtained from internal documents and submissions regarding Babcock's intentions and incentives.
- 5.145 The Parties have not argued that the Fisher Business would have exited the market as a result of financial failure, nor is such a scenario supported by the evidence. While the Fisher Business had a recent history of poor financial performance and is currently in a net liability position, it received support from Babcock and there was no evidence to suggest that financial failure was on the horizon. Further, as set out at paragraphs 5.125 to 5.130 above, we have seen no reason to indicate that the business is inherently unprofitable, and we consider that there is the potential for increased profitability, for example as a result of improved market conditions and cost-cutting measures. Given this, our assessment has focused on whether exit would have occurred for strategic reasons unrelated to the Merger. For the purposes of this assessment, we have focused on two key points of evidence. First, we have undertaken a review of internal documents to understand the options considered by Babcock with regard to the Fisher Business. Second, we have considered Babcock's incentives in pursuing these options (specifically in the context of (i) PCGs, (ii) operating losses and overhead contribution and (iii) the prospect of selling the Fisher Business.
- 5.146 Based on this analysis, as set out from paragraphs 5.94 to 5.105, our view is that while Babcock had considered closing the Fisher Business, this remained only one of a number of options in play at the time of the Merger. Babcock continued throughout the pre-Merger period to consider a number of strategic options for the Fisher Business in the event that it did not sell the business to CHC. The evidence does not point to Babcock having an intention to close down the business in the imminent future, absent the Merger. This is reflected in Babcock's consideration of the costs of closure versus maintaining (or running down) the business, and its recommendation to proceed with a sale based on its cost assessment.

- 5.147 We consider that the relative financial costs and benefits of various options available (taking account of the financial position of the Fisher Business) would have been the key drivers in Babcock's assessment of the different options, and as such inform our analysis of the most likely counterfactual scenario.
- 5.148 While we recognise that Babcock's new management did not want to retain or invest further in a non-core business, we do not consider that Babcock had an incentive to close down the business for strategic reasons, particularly in view of the significant costs that were associated with such closure. We note that Babcock has exited some other markets via closure;²⁹³ however we do not consider that this means that it would have necessarily followed the same path in relation to O&G Offshore Transportation Services. In this context we note that Babcock closed its Ghana and Congo O&G operations at a cost of £7.1 million.²⁹⁴ However we do not consider this to be comparable to the various estimates put forward by Babcock for closing its UK O&G Offshore Transportation Services operations, which range from between £[redacted] million to £[redacted] million, and which we consider could be greater still.
- 5.149 While Babcock had taken an impairment write down against its aviation business (not limited to the Fisher Business), we are of the view that – given the balance of incentives facing it – it would still have sought to run the business cost-effectively to generate as much contribution as possible, as opposed to crystallising substantial actual cash losses (ie early termination charges and PCG liabilities) that would arise via closure.
- 5.150 On the basis of the evidence set out at paragraphs 5.107 to 5.134 above, we are of the view that Babcock was not incentivised to close the business for strategic reasons. This is because:
- (a) Costs associated with early termination of contracts/PCGs meant that the cost of imminent closure would have been very significant, and likely to have been in excess of £[redacted] million at the time of the Merger.
 - (b) Babcock took on new TotalEnergies and IAC contracts in 2020, which resulted in an increase in the liability that would fall due on closure of the business by approximately £[redacted] million, increasing the incentive to continue operating in the absence of another purchaser.²⁹⁵

²⁹³ Babcock noted that it had exited 15 businesses in the period from 2017 to present. Babcock response to RF16.

²⁹⁴ Babcock, 'Full year results for the year ended 31 March 2020', 11 June 2020, page 48.

²⁹⁵ We also recognise Babcock's submission that [redacted]. Babcock response to RFI 5.

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

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

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

5.153 In this context, we are of the view that the conditions for Limb 1 of the exiting firm counterfactual (as set out at paragraph 5.38(a) above) were not met – ie Babcock would not have closed the Fisher Business and would have continued to operate the business for the foreseeable future.

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

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

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

Implications of manage for value strategy

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

5.157 The manage for value strategy as articulated by the Parties is that the Fisher Business would continue to bid for contracts where this would make use of unutilised capacity and generate a revenue stream which would contribute to unavoidable costs, but would not do so if this would require capital investment in new helicopters. The evidence as set out in Chapter 6 is insufficient to demonstrate that Fisher has, in fact, followed this strategy (at least prior to being approached by CHC). As set out in more detail in Chapter 6, Offshore UK bid for (and won) both the TotalEnergies and IAC contracts. As a result of the TotalEnergies contract, Offshore UK was required to invest in new capacity and did so, demonstrating that the business was willing to invest in new capacity. This is in line with Babcock's submission that [REDACTED] (although we note that Fisher took on [REDACTED]). This suggests that, absent the Merger, Fisher would have continued to bid for contracts even where new helicopters were required.²⁹⁶

²⁹⁶ We consider the bidding undertaken by the Fisher Business prior to and following Merger discussions in Appendix D.

5.158 Additionally, we note evidence on the impact of the manage for value strategy on competition between the Parties in the UK is mixed, with, for example, internal strategy documents referring [REDACTED].²⁹⁷ As such (and on the basis of our view that the Fisher Business would not have exited the market absent the Merger) our view is that under the most likely conditions of competition absent the Merger the Fisher Business would have continued operating in the relevant market and tendered for new contracts, as it had been doing under the manage for value strategy prior to the Merger. This could have possibly been with the intention to wait and see if an alternative purchaser for the Fisher Business transpired.

5.159 For the purposes of the counterfactual, we do not intend to provide a detailed description of what strategy the Fisher Business would have adopted absent the Merger. Instead, and in line with the MAGs²⁹⁸ (see paragraph 5.3), we will consider the impact of Babcock’s manage for value strategy on competition between the Parties in the UK in our competitive assessment, when assessing the constraint exerted by the Fisher Business.

Our assessment of the argument that [CHC’s submission as to its role in the market absent the Merger]

5.160 CHC’s submissions as set out at paragraphs 5.29 and 5.30 argue that absent the Merger [REDACTED].

5.161 Specifically, as set out at paragraph 5.31, CHC submitted that absent the Merger [REDACTED].

5.162 [REDACTED].²⁹⁹ [REDACTED].³⁰⁰

5.163 Further, as noted in our guidance, we generally place more weight on evidence obtained prior to contemplation of the Merger.³⁰¹ A counterfactual assessment seeks to identify what would have occurred absent the Merger. The MAGs note that ‘only events that would have happened in the absence of the merger under review—and are not a consequence of it—can be incorporated into the counterfactual’.³⁰² We note in this context that the assessment of the counterfactual does not seek to ossify the market at a

²⁹⁷ Babcock internal documents.

²⁹⁸ MAGs, paragraphs 3.8 and 3.9.

²⁹⁹ [REDACTED].

³⁰⁰ [REDACTED].

³⁰¹ MAGs, paragraph 3.24.

³⁰² MAGs, paragraph 3.4

particular point in time and reflects event that would have happened in the absence of the merger under review.³⁰³

5.164 Accordingly, for the purposes of this assessment, we first consider CHC's financial position over the last few years (see paragraphs 5.165 to 5.168). We then review evidence from CHC's internal documents (from paragraphs 5.169 to 5.177) relating to the period up to the completion of the Merger, that is excluding events that occurred as a result of the Merger. We also consider CHC's most recent [business plan]. Next, we consider CHC's arguments supporting its submission that absent the Merger [] (at paragraphs 5.178 to 5.183).

Consideration of CHC's financial information

5.165 We set out CHC's key profit and loss and cash position for both CHC and its UK business at paragraphs 3.40 to 3.45. Table 3-1 demonstrates that CHC Group LLC earned [] EBITDA in the years 2018 to 2020 (in the range of £[] to £[]), however this turned to a £[] in 2021. At both an operating and net level, the business has [] in all four years under our review, with [] ranging from £[] (in 2020) to £[] (in 2021). At a [], the business [] of £[] in 2021.

5.166 While CHC Group LLC []. However, we also note that its auditors have confirmed in each year that they consider the business [].³⁰⁴

5.167 Similarly, we note that CHC UK earned losses at an EBITDA, EBIT, operating and net (prior to tax) level in all years from 2018 to 2020. [], CHC UK operated with a positive cash position across the period of review and in a net liability position. Again, [].³⁰⁵

5.168 We recognise that CHC's financial results show that it has been operating under challenging financial circumstances. However, we note that poor financial performance has been a condition of CHC's operations since prior to entering Chapter 11 in 2016. Despite its poor financial performance, CHC has not made submissions suggesting that it has been in either an insolvency or administration scenario since it emerged from Chapter 11. CHC has submitted (see paragraphs 5.32 and 5.34) that its lenders have supported it

³⁰³ MAGs, paragraphs 3.2 to 3.5.

³⁰⁴ CMA analysis of the Parties' data (internal documents).

³⁰⁵ CMA analysis of published CHC Scotia Limited accounts for 2018, 2019 and 2020, and the unaudited CHC Scotia Limited accounts for 2021 (internal document).

through a refinancing and restructuring scenarios in recent years.³⁰⁶ Given CHC's experience of managing a history of poor financial performance through restructuring and capital raising initiatives, we have reviewed CHC's internal documents [REDACTED].

Review of CHC internal documents

- 5.169 To inform our assessment [REDACTED], we reviewed CHC internal documents including board discussion materials and management presentations.
- 5.170 Prior to approaching Babcock in November 2019, CHC set out its three-year plan in June 2019. Within this, it noted that [REDACTED].³⁰⁷ The June 2019 plan included [REDACTED].
- 5.171 In March 2020, following its approach to Babcock, CHC stated that it would be [REDACTED].³⁰⁸
- 5.172 In February 2021, an internal email from [REDACTED] notes [the merits of the proposed acquisition].³⁰⁹
- 5.173 In March 2021, CHC references the Babcock acquisition and notes [REDACTED] including [REDACTED] profitability/growth drivers including:
- (a) [REDACTED];
 - (b) [REDACTED];
 - (c) [REDACTED];
 - (d) [REDACTED];
 - (e) [the financial consequences of the merger];³¹⁰
- 5.174 In July 2021, an internal management presentation noted that [REDACTED]'³¹¹ Within the document, CHC updates its profitability/growth drivers for the business to:
- (a) [REDACTED].
 - (b) [REDACTED].

³⁰⁶ We note that [REDACTED].

³⁰⁷ CHC internal document.

³⁰⁸ CHC internal document.

³⁰⁹ CHC internal document.

³¹⁰ CHC internal document.

³¹¹ CHC internal document.

(c) [REDACTED].

(d) [REDACTED].³¹²

5.175 The document notes that the Offshore UK and Offshore Australia (from the acquisition) [REDACTED].³¹³ [REDACTED].³¹⁴

5.176 We also reviewed CHC's most recent [business plan] from March 2022. The document, which is a presentation to [REDACTED], notes that it is a presentation that [REDACTED].³¹⁵ The presentation sets out four required future actions [REDACTED]:

(a) [REDACTED].³¹⁶ [REDACTED].^{317,318}

(b) [REDACTED].³¹⁹

(c) CMA implementation: CHC notes the various points at which it intended to engage with the CMA throughout the phase 2 process.³²⁰

(d) [REDACTED].³²¹

5.177 The [business plan] notes that 'CHC's business plan returns the Company, excluding Babcock, to revenue commensurate with FY19 and Adjusted EBITDA well in excess of prior performance by FY25.'³²²

[CHC's submission as to its role in the market absent the Merger]

5.178 In assessing the likelihood of [REDACTED], we have considered the submissions made by CHC, as set out at paragraphs 5.29 to 5.36 above, alongside our review of CHC's internal documents, as set out at paragraphs 5.169 to 5.175. We recognise the submissions put forward by CHC that [REDACTED].

5.179 However, we are of the view that CHC has not provided compelling evidence indicating that absent the Merger [REDACTED].

5.180 [REDACTED]:

³¹² CHC internal document.

³¹³ CHC internal document.

³¹⁴ CHC internal document.

³¹⁵ CHC internal document.

³¹⁶ CHC internal document.

³¹⁷ CHC internal document.

³¹⁸ As noted above, [REDACTED].

³¹⁹ CHC internal document..

³²⁰ CHC internal document.

³²¹ CHC internal document.

³²² CHC internal document.

(a) [REDACTED].

(b) [REDACTED].

5.181 [REDACTED]:

(a) [REDACTED].³²³ [REDACTED]³²⁴ ([REDACTED])³²⁵ [REDACTED].³²⁶ [REDACTED].

(b) [REDACTED].

(c) [REDACTED].

(d) [REDACTED].

5.182 [REDACTED].

5.183 [REDACTED].

[Consideration of CHC's submission as to its role in the market absent the Merger]

5.184 On the basis of our assessment set out at paragraphs 5.178 to 5.183 above, we are of the view that [REDACTED],

(a) [REDACTED].

(b) [REDACTED].

(c) [REDACTED].

5.185 [REDACTED].³²⁷

5.186 On that basis, we have reached the view that [REDACTED], absent the acquisition of the Fisher Business.

5.187 We considered CHC's submissions as to its role in the market absent the Merger and, for the reasons set out above and in Chapter 6, we consider that CHC had various options available to it and pursuing alternative options would most likely have resulted in CHC continuing to contribute to the competitive process in broadly the same way it was doing before the Merger.

³²³ CHC response hearing transcript.

³²⁴ CHC response hearing transcript.

³²⁵ CHC response hearing transcript.

³²⁶ [REDACTED].

³²⁷ We consider the [REDACTED] CHC in our competitive assessment (see paragraph 6.161(b)) and in determining the proportionality of any potential remedy (see paragraphs 9.129 to 9.161).

Conclusion on the relevant counterfactual

5.188 On the basis of the evidence set out above, we conclude that under the most likely counterfactual that would have prevailed absent the Merger [✂] the Fisher Business would have continued to operate in the relevant market in the short to medium-term, including tendering for new contracts. We conclude CHC would continue to compete in broadly the same way it was doing before the Merger. This counterfactual would have prevailed regardless of the Fisher Business's ownership, ie whether under Babcock's ownership, which may have continued with its manage for value strategy, or if it had been sold to an alternative purchaser.

6. Competitive assessment

- 6.1 In this chapter, we assess whether the Merger has led to a significant reduction in horizontal competition between CHC and Offshore UK by removing a competitor which previously provided a significant competitive constraint and, in doing so, whether the Merged Entity has the ability and/or incentive to worsen or not improve its offering when assessed against the position absent the Merger. This is a horizontal unilateral effects theory of harm.
- 6.2 We first set out in this chapter the background on how competition works in the supply of UK O&G Offshore Transportation Services before setting out the evidence we have gathered regarding the existing and potential competitive constraints on the Parties, and our assessment of the effects of the Merger on competition.
- 6.3 This chapter should be read in conjunction with the associated appendices: Appendix C – Capacity and early termination of contracts; Appendix D – Analysis of tender data; Appendix E – Third party views; and Appendix F – Evidence from internal documents and CHC bid pricing.

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

- 6.4 The assessment of whether a merger gives rise to an SLC must be in terms of an SLC ‘within any market or markets in the UK for goods or services’.³²⁸ An SLC can affect the whole or part of a market or markets. CHC and Offshore UK overlap in the supply of O&G Offshore Transportation Services in the UK (referred to as UK O&G Offshore Transportation Services) and we consider that it is appropriate to assess the competitive effects of the Merger with reference to this overlap.³²⁹

³²⁸ The Act, [section 35\(1\)\(b\)](#) in relation to a completed merger; see also [MAGs](#), paragraph 9.1.

³²⁹ In technical terms, this overlap is our market definition. The assessment of the relevant market(s) is an analytical tool that forms part of the analysis of the competitive effects of the merger and should not be viewed as a separate exercise ([MAGs](#), paragraph 9.1). In our view, taking account of the nature of the competitive assessment in this chapter, it is appropriate to take a simple approach to market definition in this case and, rather than carrying out a separate market definition exercise, to focus on assessing the strength of the current and likely future constraints from different competitors or categories of competitors as part of the competitive assessment ([MAGs](#), paragraph 9.5). This is because, as set out in detail in our competitive assessment below, the evidence is consistent in indicating that the most important competitive constraints on the Parties come from those providers supplying UK O&G Offshore Transportation Services rather than those active in other jurisdictions or providing other forms of transportation service (such as SAR or transportation to offshore windfarms). Where relevant, we take into account constraints outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important than others.

6.5 We discuss in this section how competition works in the supply of UK O&G Offshore Transportation Services, including evidence relating to the nature of the relationship between suppliers and customers, and how demand for UK O&G Offshore Transportation Services might evolve in the foreseeable future.

Customers and tender processes

6.6 As set out in Chapter 2, many customers of UK O&G Offshore Transportation Services are large multinational or state-owned oil and gas producers with global operations. However, there are also some smaller O&G companies present which may run smaller tenders, and some third parties have indicated contracts may get smaller in future.³³⁰ In addition, CHC has told us that there are three types of O&G opportunities, requiring: long-term scheduled crew changes (eg [REDACTED]), short-term scheduled crew changes (eg [REDACTED]), and sporadic interventions (eg [REDACTED]).³³¹ As a result, customers have contracts of varying sizes. Within our analysis of tenders (explained further at paragraphs 6.61 to 6.82), a small number of large contracts increase the average value of contracts to £42 million, with a median value of £26 million.

6.7 UK O&G Offshore Transportation Services are generally procured through tender processes. While there are some direct contract negotiations, these appear to be relatively infrequent (although contracts often have provisions which allow them to be extended for a set amount of time, occasionally with multiple options for extension).^{332, 333} Customers who had undertaken direct awards in recent years gave a number of reasons for this, including market conditions and availability of suitable supply,³³⁴ satisfaction with existing

³³⁰ For example, [REDACTED] (a former market participant) told us that the market is in decline, and there are very few helicopter contracts for more than one helicopter now. [REDACTED] was the only one asking for [REDACTED], and the rest of the contracts are for one to [REDACTED]. Note of call with [REDACTED]. We note that [REDACTED] indicated he has not been involved in the supply of UK O&G Offshore Transportation Services for eight years. However, this is consistent with information in our tender dataset where most contracts require only one or two aircraft (16 out of 21). The Fisher Business also indicated that it was not aware of any large contracts which would be coming up in the next two to three years, although noted it would not be aware of whether customers of other suppliers had agreed contract extensions or intended to exercise termination for convenience clauses and so had only imperfect knowledge of likely upcoming tenders. Fisher Business main party hearing transcript. [REDACTED] also told us it plans to reduce the contractual period [of contracts]. Response to the CMA's questionnaire from: [REDACTED]. However, we note [REDACTED] said it expected to have longer term contracts as they aim to lock in partners at commercially viable rates. Response to the CMA's questionnaire from: [REDACTED].

³³¹ CHC, virtual site visit presentation, CMA virtual site visit.

³³² CHC told us that direct awards (ie where the customer decides not to go through a tender process with a new contract) are relatively rare. CHC response to RF11. It referred to a [REDACTED].

³³³ The Fisher Business also told us that, in its experience, it would be unusual to expect a customer to look to renegotiate contract terms in order to avoid going out to tender towards the natural end of an existing contract (not least because some customers are required to run tenders to meet their internal governance requirements). It noted one example where [REDACTED] approached it in 2018 to discuss the potential of extending its contract. However, this opportunity did not go further than the 'discussion' phase. Fisher Business response to RF11 [REDACTED].

³³⁴ [REDACTED] undertook a single source negotiation with [REDACTED] in [REDACTED] due to the market's conditions. More specifically, there were only [REDACTED]. Response to the CMA's RFI from: [REDACTED]. In addition, [REDACTED]. Response to the CMA's RFI from: [REDACTED].

services³³⁵ and to amend some aspects of their existing service.³³⁶ Such customers generally did not rule out the possibility of tendering in future. In the absence of tendering, different customers stated they had different approaches to comparing prices to ensure they received a good deal: one undertook ongoing price monitoring,³³⁷ while other customers preferred cost modelling for benchmarking³³⁸ or comparing between existing suppliers.³³⁹ This shows that even where customers do not undertake formal tender processes, the availability of alternatives and the terms which would be available play a role in the contracting process.

- 6.8 Given that direct contract negotiations appear to be relatively infrequent, customers use tenders to secure the best offers from the available suppliers as each O&G transportation supplier typically competes to win customer contracts by taking part in tenders.³⁴⁰ The average term length of contracts in our tender analysis is 3.5 years. Tender processes can last between six and 12 months, although they can take significantly longer in the case of complex tenders.³⁴¹ Suppliers are informed of an upcoming tender via an expression of interest, to obtain information about the company structure, financial robustness, and relevant experience. This information is used to produce a long list of players who are formally invited to tender.³⁴²
- 6.9 Suppliers are invited to tender, either through a procurement platform or via email.³⁴³ This invitation to tender often gives some contract specifications, eg on desired base, helicopter type etc.³⁴⁴ Suppliers put together bids taking these into account and producing the required documentation.³⁴⁵ While

³³⁵ [REDACTED] told us that it extended its contract as it achieved good performance, added value was achieved in various ways through the contract cycle and management and the companies were aligned in their strategies. Response to the CMA's questionnaire from: [REDACTED].

³³⁶ [REDACTED] told us that it undertook a single sourced renegotiation to extend its existing contract with Offshore UK in 2017 and amend aircraft type to increase safety for passengers and drive down logistics costs. Response to the CMA's questionnaire from: [REDACTED].

³³⁷ Response to the CMA's questionnaire from: [REDACTED].

³³⁸ Response to the CMA's questionnaire from: [REDACTED].

³³⁹ Response to the CMA's questionnaire from: [REDACTED].

³⁴⁰ We note that customers can choose to extend their contracts with their current supplier without running a competitive process, with some customer contracts allowing for multiple extensions. This means that some customers may only hold a formal competitive tender process sporadically, and may not have done so in the past five years.

³⁴¹ FMN, paragraph 15.12; Note of call with [REDACTED].

³⁴² FMN, paragraph 15.14.

³⁴³ Fisher Business RFI response.

³⁴⁴ FMN, paragraph 15.19.

³⁴⁵ Note of call with [REDACTED].

suppliers are not informed of who received these invitations, competitors have submitted to us that they expect the four incumbent suppliers to bid.^{346, 347}

6.10 The customer assesses the offers, and then shortlists suppliers.³⁴⁸ Suppliers may have only imperfect knowledge as to the criteria they will be assessed against,³⁴⁹ or who else is bidding on contracts, [REDACTED].³⁵⁰ There are often multiple rounds of discussions, during which the supplier has the opportunity to amend or improve on their offer. However, [REDACTED].³⁵¹ Therefore, [REDACTED].^{352, 353}

6.11 As noted above, suppliers may have only imperfect knowledge of the criteria they will be assessed against. We have gathered information as to what assessment criteria may be used.

(a) As part of their tender submissions, customers provided their reasons for ranking suppliers as they did in their tender bid evaluations.³⁵⁴ When looking at the bidders who came low in the rankings (ie third or fourth), technical reasons are often stated as the reason for ranking lower in the tender process, indicating that suppliers who do not meet technical thresholds are often discounted early on. The differentiating reason between the winning bidder and the second placed supplier is often listed as a commercial reason (as the winning bidder has already met the safety and technical thresholds for the contract).

(b) We also received the tender evaluation criteria used by some customers when evaluating bids.³⁵⁵ The examples provided demonstrate that customers tend to use similar criteria (such as technical capabilities, cost and quality management) when evaluating a tender bid, though often with slight variations. We also note that customers may place different weightings on the same criteria (and such weightings may not be revealed to bidders). As such, a supplier who wins a tender due to a high

³⁴⁶ Note of call with [REDACTED] and [REDACTED]. We note that NHV told us big aircraft contracts for three to five aircraft may also involve global players from America, the Gulf and Germany, due to economies of scale (NHV, NHV call note).

³⁴⁷ This is also consistent with information received from the Parties. CHC stated that '[REDACTED]' (CHC main party hearing transcript). Fisher Business indicated it would assume all three of its competitors would be invited to bid and could submit a bid, although at any given time it may not make sense for some competitors to bid (eg depending on company life cycles) (Fisher Business main party hearing transcript).

³⁴⁸ FMN, 15.30. We note that not all customers will shortlist bids.

³⁴⁹ FMN 15.30. Note of call with [REDACTED].

³⁵⁰ Note of call with [REDACTED] and [REDACTED].

³⁵¹ FMN, 15.30 to 15.32. Note of call with [REDACTED] and [REDACTED].

³⁵² Note of call with [REDACTED] and [REDACTED].

³⁵³ We note that in some instances, customers may choose to only have a 'best and final offer' round. Fisher Business RF11 response.

³⁵⁴ In the 21 competitive tenders analysed by the CMA the customers have provided reasons for rankings for at least the winning bidder and the second placed bidder.

³⁵⁵ We received details of tender evaluation criteria for EnQuest, TAQA and TotalEnergies. Details of these criteria are set out in Appendix D.

evaluation score in a particular criterion may not necessarily score highly in that same criterion in an evaluation undertaken by another customer.

- 6.12 Previous incumbency does not appear to be a key deciding factor for customers when evaluating O&G Offshore Transportation Service suppliers, as switching appears to be commonplace: within our tender dataset discussed at paragraphs 6.61 and 6.62, in [redacted]% of competitive tenders involving a previous incumbent, the incumbent did not win the contract and retain their position.³⁵⁶
- 6.13 In summary, customers of UK O&G Offshore Transportation Services are often large oil and gas producers, although customers and contracts vary in size. Customers predominantly use tenders to secure the best offers from the available suppliers, which involve a significant degree of opacity which helps to drive competitive outcomes. As a result, suppliers may not be aware of who is bidding, how exactly their bids will be evaluated and how they compare to others, except in some instances.
- 6.14 The submissions put forward by the Parties articulate their view that buyer power is a feature of this market primarily as a result of customers being 'larger and commercially stronger' than helicopter operators, their active switching patterns, and ability to impose onerous terms into contracts. Further, the Parties noted customers' recent push to reduce costs, thereby putting pressure on the prices that O&G Offshore Transportation Service providers can charge.³⁵⁷
- 6.15 As set out in the MAGs, buyer power based on a customer's size, sophistication, or ability to switch easily is unlikely to prevent an SLC that would otherwise arise from the elimination of competition between the merger firms.³⁵⁸ This is because a customer's buyer power depends on the availability of good alternatives they can switch to, which in the context of an SLC will have been reduced. In that sense, market power and buyer power are two sides of the same coin, and an SLC can be interpreted as a substantial lessening of customers' buyer power. Therefore in assessing below whether there is an SLC by examining the strength of the competitive constraints between CHC and Offshore UK that would be lost as a result of the Merger, and the strength of the competitive constraints on CHC and Offshore UK from the other suppliers that would remain after the Merger, we are effectively taking account of customers' buyer power.

³⁵⁶ Based on the 21 competitive tenders in our analysis, there were [redacted] with a previous incumbent. In [redacted] of these [redacted] tenders the incumbent was unable to retain the contract.

³⁵⁷ FMN, paragraphs 23.1 to 23.11 and [Parties' response to Issues Statement](#), 4 January 2022, paragraph 1.4.5.

³⁵⁸ [MAGs](#), paragraph 4.20.

Early termination clauses and penalties

- 6.16 One area which is a focus for negotiations in tender processes is the terms under which contracts can be ended before the planned contract end date. We set out the evidence we have received on this in Appendix C. Evidence from suppliers and customers shows that early termination clauses are common in the market, and have been present for over a decade. The evidence suggests that these early termination periods differ from contract to contract, for example based on the notice period and any potential penalty clauses involved. Penalties for early termination also appear to be common, and these typically vary based on how far into the contract the customer terminates, and may cover some or all of the suppliers' remaining lease costs (and other costs related to insurance and redundancy).
- 6.17 These (and other) terms reflect the relative bargaining position of different parties for each contract (given that the right to terminate and the penalty for doing so vary contract to contract).³⁵⁹ We have received evidence which shows suppliers are able to drive more favourable terms in areas where they face more limited competition.³⁶⁰
- 6.18 Therefore, contracts often allow for early termination and may also include penalties for such termination. Such terms vary from contract to contract, reflecting the relative bargaining position of customers and suppliers. As noted in paragraph 6.15, the bargaining power of customers (and suppliers) depends on the availability of good alternatives they can switch to.³⁶¹

Future demand for UK O&G Offshore Transportation Services

- 6.19 As set out in paragraph 6.30(a), the Parties submitted that the industry is in long-term decline. We set out in paragraphs 2.21 to 2.28 trends in the broader O&G industry, which affect the demand for UK O&G Offshore Transportation Services. We also sought views from market participants as to the likely trends in future demand for UK O&G Offshore Transportation Services. As noted in paragraph 1.6, most of the submissions referred to in this report were submitted before the conflict in Ukraine, and therefore do not reflect any impact this might have on the O&G industry going forward. However, since receiving these submissions we have obtained confirmation from these market participants (customers and potential entrants in particular) that they

³⁵⁹ CHC told us that [REDACTED], instead trying to protect itself against the exercise of an early termination clause by [REDACTED]. CHC response to RFI.

³⁶⁰ NHV explained that [REDACTED]. NHV response to RFI.

³⁶¹ MAGs, paragraph 4.20.

would not modify their previous submissions to the CMA as a consequence of the conflict in Ukraine.

- 6.20 Many of the third parties that we spoke to noted that there has been a decline in the market to date. In terms of forward-looking prospects, some expected a continued decline while others suggested that demand may remain unchanged. However, overall there was not an expectation of a significant or long-term uptick in the market going forwards.
- 6.21 Ten of the customers we engaged with submitted that UK O&G activities and related transportation services would remain broadly unchanged within the next ten years, while eight were of the view that activities would gradually decrease. Four customers noted that they expected to see consolidation in the market, while three noted that an increase in the renewables market would offset any changes in O&G.³⁶²
- 6.22 One potential entrant submitted that the overall decline in the Offshore O&G market may not immediately translate into a steep decline in the demand for UK O&G Offshore Transportation Services, since the decommissioning activities will require some staff transfers offshore. However, it noted that once the decommissioning phase of each platform has been completed, the need for helicopter transfers will be removed. In this context, it told us that a continued decline in the market will probably take place over the medium to long-term. Lastly, the potential entrant noted that this should not impact all regions equally, with the Northern North Sea (off Scotland) not seeing as significant or immediate a decline as the Central North Sea.
- 6.23 The competitors that we spoke to also noted an expected decline in the demand for UK O&G Offshore Transportation Services in the long term. NHV told us that it is a 'shrinking market'. It noted that it is seeing a temporary increase in the short term and that oil companies 'are trying to get more out of the ground in a shorter space of time than normal.' It told us that offshore wind activities could supplement the downturn in revenue, but that it would not supplement the fall in flying hours.
- 6.24 Bristow told us that the market changes dramatically over a short period of time, but that it does not see any significant changes in market requirements in the next two to three years. It did note, however, that O&G Offshore Transportation Services is a declining market space, and that energy transition will affect this. Bristow told us that [redacted].³⁶³

³⁶² Three customers mentioned that renewables would be serviced by ship rather than helicopter.

³⁶³ Bristow call note.

- 6.25 There were mixed views from lessors on how the market has changed in the past five years. One lessor³⁶⁴ submitted that there has been no substantive change in the market over the past five years. Another lessor³⁶⁵ told us that demand for O&G Offshore Transportation Services reduced rapidly in 2015 to 2016 and since this reduction has remained generally steady but with high competition for orders. It told us that COVID-19 caused only a modest decline in demand, and recently demand has slightly strengthened due to high demand for oil and gas and some helicopters leaving the marketplace. A third lessor³⁶⁶ submitted that there has been reduced demand for helicopters thereby leading to excess capacity. In terms of the expectation of the market going forwards, two lessors³⁶⁷ told us that they expect there to be a slow decline (with one noting³⁶⁸ this would be over a very extended timeframe), one lessor³⁶⁹ told us they expected no change in the short- to medium-term but that they would not rule out a change over a longer time horizon, while another lessor³⁷⁰ considered that they expected there to be modest growth in the market.
- 6.26 Competition in the supply of UK O&G Offshore Transportation Services therefore takes place in the context of a market which is in long-term decline. However, it does not appear that there will be a rapid decline in demand in the short-term, with many market participants anticipating demand being broadly stable over the medium-term.

Parties' views

- 6.27 The Parties submitted that the CMA should not object to the acquisition on the ground that it is a 'four to three' merger without considering the market dynamics and extent of the competitive constraint exercised by Offshore UK at present.³⁷¹ The Parties submitted that it is almost impossible to envisage any four to three merger that would not give rise to a substantial lessening of competition based on the approach adopted in the Provisional Findings. They submitted that, even though the CMA insists that it has not based its assessment only on the fact that the Transaction will reduce the number of competitors in the market from four to three, it has, in reality, expanded the substantial lessening of competition test beyond its proper boundaries.³⁷²

³⁶⁴ Response to the CMA's questionnaire from: [REDACTED].

³⁶⁵ Response to the CMA's questionnaire from: [REDACTED].

³⁶⁶ Response to the CMA's questionnaire from: [REDACTED].

³⁶⁷ Response to the CMA's questionnaire from: [REDACTED] and [REDACTED].

³⁶⁸ Response to the CMA's questionnaire from: [REDACTED].

³⁶⁹ Response to the CMA's questionnaire from: [REDACTED].

³⁷⁰ Response to the CMA's questionnaire from: [REDACTED].

³⁷¹ [Parties' response to Issues Statement](#), 4 January 2022, paragraphs 2.1 to 2.10.

³⁷² [Parties' response to the Provisional Findings](#), 4 April 2022, paragraph 4.5.

- 6.28 The Parties submitted that Offshore UK exercised a weak constraint on CHC, whose fiercest competitors were and will remain NHV (which is in a strong position given its fleet) and Bristow.³⁷³ In particular:
- (a) The Parties submitted that the Fisher Business was a weak competitor as a result of Babcock's manage for value strategy. Manage for value was not an ordinary course of business cost-cutting exercise. It involved cost-cutting of a completely different magnitude. It was a strategy imposed by a parent group company to reduce cash outflow from the business at any cost and to stop material new investments.³⁷⁴ Further information on the Parties' views with regard to the effect of the manage for value strategy are set out in paragraphs 6.133 to 6.140.
 - (b) CHC and Babcock both stated that Offshore UK was a weakened competitor which was not aggressive in the marketplace.³⁷⁵ Babcock further explained that it had [REDACTED].³⁷⁶ The Parties submitted that CHC [REDACTED].³⁷⁷ The Parties argued that Offshore UK was the weakest competitor, [REDACTED]. The Parties' economic adviser (Charles River Associates (**CRA**)) had shown using the Parties' tender data (which the Parties said according to the CMA closely matches the CMA's own data) that [REDACTED].³⁷⁸
- 6.29 The Parties stated that the main constraint on CHC was provided by Bristow and NHV.³⁷⁹ CHC told us that NHV had been the strongest competitor in recent years and had provided the lowest pricing benchmark in the market, driving down the prices of other operators including CHC.³⁸⁰
- 6.30 The Parties submitted that the CMA is not simply required to compare competition after the merger with the level of competition absent the merger, but to determine whether there is a lessening of competition which is substantial; it cannot ignore the fact that for many years the market consisted of three or fewer operators and was highly competitive, and stated this would not change after the Merger.³⁸¹ In particular:

³⁷³ Parties' response to Issues Statement, 4 January 2022, paragraph 4.7 and 4.12 to 4.14.

³⁷⁴ Parties' response to the Annotated Issues Statement and CMA Working Papers.

³⁷⁵ CHC main party hearing transcript.

³⁷⁶ Babcock main party hearing transcript.

³⁷⁷ 'CHC's perception [REDACTED] is also illustrated by the fact that CHC [REDACTED], as shown by the analysis previously undertaken by CRA which [REDACTED]. Parties' response to Issues Statement, 4 January 2022, paragraph 4.12.

³⁷⁸ Response to the Annotated Issues Statement and CMA Working Papers.

³⁷⁹ 'Whereas [Offshore UK] did not exercise a close competitive constraint on CHC, the evidence shows, by contrast, that Bristow and NHV are significant constraints on CHC'. CHC, Parties' response to Issues Statement, 4 January 2022, paragraph 4.13.

³⁸⁰ Parties' response to the Annotated Issues Statement and CMA Working Papers. See also Parties' response to Issues Statement, 4 January 2022, paragraphs 4.14 to 4.16.

³⁸¹ Parties' response to Issues Statement, 4 January 2022, paragraphs 4.2 and 4.3.

- (a) The Parties submitted that, post-Merger, there will remain a highly competitive pricing environment with contracting levels of demand, persistent oversupply of helicopters and termination for convenience clauses resulting in easy switching, and an overall decline in demand reinforcing an incentive to compete. Customers are powerful and intent on squeezing costs out of the supply chain, and transport providers are facing severe financial difficulties and lack necessary resources to invest in new assets. They submitted that market dynamics reinforced by declining demand and corresponding increase in spare capacity are maintaining downward pricing pressure.³⁸² The Parties argued that competitive rivalry for tenders will also remain particularly strong because with the long-term decline in demand, large tenders are likely to become even less frequent than today, thus creating a stronger incentive to compete for each tender.³⁸³
- (b) The Parties submitted that the CMA's analysis had ignored the significant constraint imposed by overcapacity. The fact that there may be limited spare capacity available within the operators' current fleets does not change the fact that there is abundant spare capacity amongst lessors that drives down lease rates. There will still be downward pressure on price for as long as lessors have overcapacity. Lessors are in effect acting as an additional competitive force in the market.³⁸⁴ The Parties submitted that overcapacity does not become irrelevant to the competitive dynamics simply because it sits with the lessors and not the operators, as lessors have every incentive to lease their idle aircraft and thus will continue to exert significant downward pricing pressure in the market. This, combined with the decline in demand for helicopter services, contributes to the incentive for competitors to bid aggressively for the smaller number of tenders that will remain in the market. This overcapacity will amplify the significant competitive constraints which CHC would still face in the future and prevent any ability or incentive to increase prices post-merger.³⁸⁵
- (c) The Parties submitted that a loss of competition cannot be considered substantial in circumstances where: the existence of a SLC is derived not from evidence that the merging parties are each other's closest competitors but simply from evidence that the Parties are competitors in the same way that they are competitors with other remaining players; price competition is likely to remain so fierce after a merger that there will be no incentive for a new operator to enter the market; the market is one

³⁸² [Parties' response to Issues Statement](#), 4 January 2022, paragraphs 4.17 to 4.19.

³⁸³ Parties' response to the Annotated Issues Statement and CMA Working Papers.

³⁸⁴ Parties' response to the Annotated Issues Statement and CMA Working Papers.

³⁸⁵ [Parties' response to the Provisional Findings](#), 4 April 2022, paragraphs 4.54 to 4.57.

in which demand has and is expected to continue to decline and which has historically and for long periods of time not been able to sustain more than three major operators; the prevailing market economics are such that the operators which are currently in the market are loss-making and/or otherwise experiencing severe financial difficulties; and the CMA has not even attempted at any point to undertake an assessment of whether the market is likely to be able to sustain four major operators in its present configuration.³⁸⁶

- 6.31 Some third parties also questioned whether competition in its current form is sustainable.³⁸⁷ One third party submitted the UK and global offshore helicopter operating markets are already highly competitive, noting that since 2015, three of the four major global operators (two of which have been active in the UK) filed for bankruptcy and that large multi-national oil and gas companies have exercised considerable buying power, to reduce the price of offshore transport contracts, to loss-making or unsustainable levels in many cases. It submitted the CMA should consider the potential financial impact of divestiture on both CHC and the acquiring company as failure to approve the acquisition of Offshore UK could potentially create two weak businesses, each with a considerable risk of failure, resulting in even fewer helicopter operators in the UK market.³⁸⁸ Another third party submitted that consolidation is a reasonable step where all of the suppliers are struggling financially in a ‘race to the bottom’ to offer the lowest possible price which could impact service and safety.³⁸⁹ It submitted that the Fisher Business ‘marketing contracts for value... means desperate to sell with no long-term plans to stay in the market. Consolidation is inevitable and necessary for all companies involved.’³⁹⁰
- 6.32 The Parties further submitted that our Provisional Findings were based on a flawed analysis of the evidence, and failed to consider relevant market conditions and competitive dynamics.³⁹¹ We discuss the Parties’ challenges to our interpretation and weighting of certain evidence in more detail in the relevant evidence sections.
- 6.33 We have carefully considered these submissions. We set out above our views on the nature of competition for the supply of UK O&G Offshore Transportation Services, including on future demand for such services, and discuss the impact of overcapacity within the incumbents’ current fleets in

³⁸⁶ [Parties’ response to the Provisional Findings](#), 4 April 2022, paragraph 4.8.

³⁸⁷ [Andrew Langman’s response to the Provisional Findings](#), 21 March 2022, page 2 to 3; Response to the CMA’s RFI from: [redacted]. [redacted] response to the Provisional Findings.

³⁸⁸ Response to the CMA’s RFI from: [redacted].

³⁸⁹ [Andrew Langman’s response to the Provisional Findings](#), 21 March 2022, page 3.

³⁹⁰ [Andrew Langman’s response to the Provisional Findings](#), 21 March 2022, page 2.

³⁹¹ [Parties’ response to the Provisional Findings](#), 4 April 2022, paragraph 4.

paragraphs 6.42 to 6.48 and the financial position of UK O&G Offshore Transportation Services providers in paragraphs 6.159 to 6.161 below. We have also highlighted the Parties' specific submissions on our assessment of the evidence in the relevant sections. Below we set out our approach to the competitive assessment.

Our approach to the competitive assessment

- 6.34 Unilateral effects can arise in a horizontal merger when one firm merges with a competitor that previously provided a competitive constraint, which reduces the alternatives available to customers, thereby weakening any buyer power they have, and allowing a merged entity to worsen or not improve its offering. This involves a comparison of the prospects for competition with the merger against the counterfactual.³⁹²
- 6.35 Within this context, the CMA's main consideration in assessing the effects of the merger is whether there are sufficient remaining good alternatives to constrain the merged entity post-merger. Where there are few existing suppliers, the merger firms enjoy a strong position or exert a strong constraint on each other, or the remaining constraints on the merger firms are weak, competition concerns are likely. Furthermore, in markets with a limited likelihood of entry or expansion, any given lessening of competition will give rise to greater competition concerns.³⁹³
- 6.36 However, the CMA does not apply any thresholds to market share, number of remaining competitors or on any other measure to determine whether a loss of competition is substantial.³⁹⁴ Contrary to the Parties' submission at paragraph 6.27 above, we have not assessed the Merger based only on the fact it represents a reduction in the number of competitors from four to three. Instead, in order to determine whether the Merger may be expected to give rise to a loss of competition that is substantial, we have assessed the loss of competition arising from the Merger (and the remaining constraints that the Merged Entity would face) relative to the counterfactual. Specifically, we have assessed in this chapter (and addressing in that context the submissions made by the Parties outlined above):
- (a) The competition between the Parties that would be lost as a result of the Merger relative to the counterfactual (considering in that context the impact of the manage for value strategy);

³⁹² MAGs, sections 3 and 4.

³⁹³ MAGs, paragraph 4.3.

³⁹⁴ MAGs, paragraph 2.8.

(b) The constraints that will remain following the Merger, ie the constraints from:

(i) other incumbent suppliers, ie Bristow and NHV;

(ii) potential entrants; and

(iii) countervailing factors, which are covered in Chapter 7.

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

(a) We analysed tender data, which showed which suppliers bid for which contracts;

(b) We assessed what CHC's approach to bid pricing told us about competition;

(c) We reviewed the Parties' internal documents to assess what these told us about competition between the Parties and with other existing and potential suppliers; and

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

6.38 As set out in paragraph 6.30(a), the Parties have submitted that the CMA failed to consider whether a lessening of competition arising from the Merger would be substantial in view of the fact that there will remain a highly competitive pricing environment as a result of contracting levels of demand, persistent overcapacity of helicopters and the strong position of customers. We have set out our views on the role of capacity in the market at paragraph 6.48. As set out in paragraph 6.26, the evidence indicates that, while demand for UK O&G Offshore Transportation Services is in long-term decline, in the short- to medium-term demand is likely to remain broadly stable. We have considered the strength of the remaining constraints that would exist following the Merger (taking account of our views on the nature of competition for the supply of UK O&G Offshore Transportation Services), including the role of buyer power, which depends on the availability of good alternatives customers can switch to.

6.39 As set out in paragraph 6.30(c), the Parties further submitted that the CMA had failed to consider whether a lessening of competition arising from the Merger would be substantial in view of the fact CHC and Offshore UK are not each other's closest competitors, prices will continue to disincentivise entry,

the market is currently under significant financial pressure, and the market has historically only supported three players and the CMA has not considered whether the market is likely to be able to continue to sustain four players in its current configuration.

6.40 We do not consider these arguments are well founded: it is clear that the merger firms need not be each other's closest competitors for unilateral effects to arise³⁹⁵ and our assessment involves a comparison of the prospects for competition with the merger against the counterfactual.³⁹⁶ The structure of the market outside the counterfactual, such as that which prevailed several years before the Merger or which may occur beyond the time horizon considered for the competitive assessment, is not relevant for our assessment. The counterfactual indicates what would have happened to competition absent the Merger, and it is against this that the substantiality of a lessening of competition is determined (which in principle could take the form of prices either rising more quickly or falling more slowly than absent the Merger). We consider the implications of the financial situation of the market in paragraphs 6.159 to 6.161.

Assessment of evidence regarding the existing and potential constraints on CHC and Offshore UK

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

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

³⁹⁵ MAGs, paragraph 4.8.

³⁹⁶ MAGs, paragraph 3.1.

considering what Offshore UK and CHC documents say about potential entrants.

- (e) Third party views from customers, competitors and potential entrants.
- (f) Given the significance of the manage for value strategy for the Parties' arguments, we separately assess the effect of the manage for value strategy on Offshore UK and draw together whether the evidence indicates Offshore UK is an effective competitive constraint in the market.
- (g) We also consider the implications of the financial position of the industry, and the Parties in particular, for our competitive assessment.

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

Fleet and capacity

6.42 The four suppliers offering UK O&G Offshore Transportation Services are present in bases across the UK and,³⁹⁷ with the exception of NHV, offer a similar range of aircraft.³⁹⁸ In particular, as of December 2021:

- (a) CHC has 15 O&G aircraft in the UK, which are present in Aberdeen, Norwich and Humberside.^{399,400}
- (b) The Fisher Business has 20 O&G aircraft in the UK, which are present in Aberdeen and Sumburgh.⁴⁰¹
- (c) Bristow has around 20 O&G aircraft in the UK, which are present in the East and Western Shetland islands (including Sumburgh),⁴⁰² the Central North Sea (out of Aberdeen) and the Southern North Sea (primarily from Norwich).^{403,404} [REDACTED].⁴⁰⁵

³⁹⁷ We note that Offshore UK is currently only present in Scotland, while CHC, Bristow and NHV are present in Scotland and England.

³⁹⁸ We set out some further information on the four suppliers (including sectors they are present in and turnover information) in the Industry Background chapter.

³⁹⁹ CHC internal document.

⁴⁰⁰ CHC has a mix of S92s, H175s and AW139s. [REDACTED] UK O&G aircraft [REDACTED] owned, and [REDACTED] leased. CHC response to s109(2).

⁴⁰¹ The Fisher Business has a mix of S92s, H175s and AW139s. [REDACTED] O&G aircraft [REDACTED] owned, and the others are leased. Fisher Business response to s109. Fisher Business internal document. Fisher Business clarified that [REDACTED] of the aircraft in its fleet are not used for O&G Offshore Transportation Services.

⁴⁰² Bristow has a base in Sumburgh according to its website. Source: <https://www.bristowgroup.com/locations/bristow-locations/country/united-kingdom>.

⁴⁰³ Bristow has a mix of S92s and AW139s. Bristow uses a hybrid model of owning and leasing aircraft, and the majority of the aircraft operated in the UK are owned. Bristow, Bristow call note.

⁴⁰⁴ Bristow, Bristow call note.

⁴⁰⁵ Note of call with [REDACTED].

(d) NHV has around 14 O&G aircraft in the UK, which are present in Norwich, Blackpool and Aberdeen.^{406,407} [REDACTED].⁴⁰⁸

- 6.43 We asked the incumbent suppliers to provide details of their capacity. Details of this evidence are set out in Appendix C. Based on this evidence, it appears typical for suppliers to keep some aircraft available to accommodate operational challenges, such as instances of routine maintenance or unexpected faults requiring back-up aircraft to be utilised instead. Beyond this, there appears to be high utilisation of capacity held by suppliers in the market,⁴⁰⁹ due to the costs involved with idle assets.⁴¹⁰ To this extent, the Parties' capacity appears to be consistent with the other suppliers, and there is no substantial spare capacity among suppliers which would distort the competitive position.
- 6.44 However, given that some contracts may end prior to the lease end dates and some customers may terminate contracts early, suppliers may have some spare capacity at certain times.
- 6.45 We note that suppliers have bid for contracts when operating at (or close to) full capacity as shown in our analysis of tender data. In these circumstances, suppliers take on new aircraft leases in order to fulfil contracts.
- 6.46 We understand there is some spare capacity at the lessor level. We received mixed responses as to how the demand for helicopters to provide UK O&G Offshore Transportation Services has changed over the last five years, with two lessors telling us there had been no significant change in their demand,⁴¹¹ while one lessor told us there had been a reduced demand for lessor helicopters, leading to excess capacity.⁴¹² The Parties told us there are approximately 20 S92 helicopters available for lease which can be deployed in the UK.⁴¹³ We do not have estimates of the number of spare aircraft available from lessors themselves, although we note lessors have submitted there has been downward pressure on lease terms over the past five years,⁴¹⁴ and some submitted there is overcapacity in the market⁴¹⁵ (although one

⁴⁰⁶ See: [Presence - NHV](#).

⁴⁰⁷ NHV focuses on super medium aircraft, particularly the H175. NHV, NHV call note. NHV prefers to own a large part of its fleet rather than leasing aircraft, though it also leases some helicopters to allow for flexibility, often aligning the end of the lease with the end of relevant contracts. NHV, NHV call note.

⁴⁰⁸ NHV, NHV call note.

⁴⁰⁹ As set out in Appendix C, NHV told us it operates at 100% capacity and Bristow told us from H1 2017 to H2 2020 its fleet was on average utilised [REDACTED]% for S92s, [REDACTED]% for AW139s and [REDACTED]% for AW189s. We note that [REDACTED], currently has [REDACTED] idle aircraft in the UK. [REDACTED].

⁴¹⁰ Such as any ongoing lease payment obligations, and any other financing costs.

⁴¹¹ Response to the CMA's questionnaire from: [REDACTED].

⁴¹² Response to the CMA's questionnaire from: [REDACTED].

⁴¹³ Parties' response to the Annotated Issues Statement and CMA Working Papers.

⁴¹⁴ Response to the CMA's questionnaire from: [REDACTED].

⁴¹⁵ Response to the CMA's questionnaire from: [REDACTED].

lessor later indicated there is currently limited availability of core helicopter types in the market and lease rates are increasing in line with tight supply).⁴¹⁶

- 6.47 We disagree with the Parties' argument that we have treated spare capacity as 'irrelevant to the competitive dynamics simply because it sits with the lessors and not the operators' (Parties' response to the Provisional Findings, 4 April 2022, paragraph 4.56). Having considered the impact of spare capacity to our assessment, we reached the view that spare capacity at the lessor's level does not provide an independent competitive constraint as it requires an O&G Offshore Transportation Services supplier to make use of it (as we have not seen evidence of self supply, as discussed in Chapter 7). As noted above, it provides existing or new entrants the opportunity to take on assets at lower cost. We have assessed the constraint from these firms in our competitive assessment – see discussion of constraint from Bristow and NHV at paragraphs 6.164 to 6.165 and from potential entrants at paragraph 6.166.
- 6.48 In summary, suppliers do not currently have significant levels of spare capacity, although this can vary as contracts change hands, lease terms end, new aircraft are brought on board and if customers end contracts early. There appears to be a greater amount of spare capacity at lessor level. We consider this gives suppliers the opportunity to take on assets at lower prices or reduces the cost to a new supplier to enter (which we have reflected in our assessment) but does not provide an additional competitive constraint in itself.

Shares of supply

- 6.49 We have also estimated shares of supply of UK O&G Offshore Transportation Services suppliers, namely CHC, Offshore UK, Bristow and NHV. We have presented two different ways of measuring share of supply: (i) by flight hours and (ii) by revenue.
- 6.50 The Parties provided estimated shares of supply based on flight hours in the UK for the period July 2015 to November 2021, shown in Figure 6-1 below.⁴¹⁷ We consider flight hours to be a suitable measure of share as it captures how much of the available work each supplier undertook over time.⁴¹⁸

⁴¹⁶ Response to the CMA's questionnaire from: [REDACTED].

⁴¹⁷ CHC internal document.

⁴¹⁸ The Parties were unable to provide revenue shares over time and so we sought revenue information from the four incumbents for 2021 in order to see whether these were significantly different to the shares based on flight hours. Revenue shares (see Table 6-1) show broadly the same outcome as volume shares.

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

[REDACTED]

Source: Parties’ internal document, [REDACTED].
Data based on Vantage POB data.

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

Table 6-1: Shares of UK O&G Offshore Transportation Services revenue, 2021⁴¹⁹

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

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

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

- (a) Post-Merger, the Merged Entity would be the largest supplier with a share of supply by flight hours of [40–50%] (increment of [20–30%]) based on data for January to November 2021.⁴²⁰ In the same period, Bristow’s share of supply by flight hours was [30–40%], and NHV’s share of supply was [10–20%]. On a revenue basis, the Parties had a combined share of supply of [40–50%] in 2021 (increment of [20–30%]).
- (b) Since 2015, NHV has grown its share of supply by flight hours. Offshore UK’s share has remained broadly stable over this period, but after a decline starting in 2018 it has grown since 2020 (despite the adoption of its manage for value strategy around this time).⁴²¹
- (c) Although NHV has grown in terms of flight hours (and therefore revenue), it remains smaller in revenue terms than each of the other three incumbents.⁴²²

6.53 While there are relatively infrequent tenders for large contracts (as described in Appendix D) such that shares of supply at any particular point in time may

⁴¹⁹ CHC, response to RF16. Fisher Business response to RF14. Response to the CMA’s questionnaire from: [REDACTED] and [REDACTED].

⁴²⁰ We note that the Merger was completed 31 August 2021.

⁴²¹ Offshore UK bid for two large contracts in 2019 that it started to supply in July and October 2020 ([REDACTED]).

⁴²² [REDACTED].

be influenced by the award of individual contracts, we also recognise that the shares of supply reflect the outcome of historic competition in a relatively undifferentiated and concentrated market, with only four suppliers. As such, this provides relevant evidence for our assessment. CHC and Offshore UK's shares of supply are significant, indicating that they are likely to pose an important competitive constraint on one another. Bristow's and NHV's shares of supply are also significant and they each pose an important competitive constraint on CHC and Offshore UK.

- 6.54 We note that while there are currently four incumbent UK O&G Offshore Transportation Services suppliers, there are others providing offshore transportation to wind farms and providing SAR services.⁴²³ We consider the constraint from these other suppliers in the evidence below.

Tender analysis

Parties' views

- 6.55 The Parties provided the CMA with bidding data for the period January 2017 to April 2021,⁴²⁴ which has since been extended to December 2021.⁴²⁵ The data includes details of [REDACTED] bids from CHC and details of [REDACTED] bids from Offshore UK. The Parties matched up the two data sets to give [REDACTED] opportunities in total.⁴²⁶
- 6.56 The Parties submitted that this bidding data shows that:
- (a) Offshore UK has been a weaker competitor in recent years, having only bid for [REDACTED] in 2020 and [REDACTED] in 2021;⁴²⁷
 - (b) CHC and Offshore UK compete with Bristow and NHV in tender processes and suppliers from outside the UK are also invited to bid for UK tenders;⁴²⁸

⁴²³ The suppliers who provide transportation services to UK wind farms are Bel Air, Bristow, NHV, Uni-Fly and Wiking. The Parties told us that CHC, Babcock, Bristow, Airbus, Draken, Serco and BIH all provide SAR services.

⁴²⁴ The period specified is based on the bid submission date. The original numbers during the phase 1 investigation were [REDACTED] bids from CHC, [REDACTED] bids from Offshore UK, giving a total of [REDACTED] tenders once the two datasets were matched up. We undertook our own matching of the updated tender information provided by the Parties at phase 2, matching these up to achieve [REDACTED] tenders in total.

⁴²⁵ The latest bid submission date is 2 December 2021.

⁴²⁶ While the datasets contained [REDACTED] opportunities in total, this included [REDACTED] contracts which the Parties identified as non-competitive processes, leaving [REDACTED] competitive tenders. [REDACTED] of these [REDACTED] competitive tenders are valued at less than £2 million by at least one of the Parties, leaving [REDACTED] higher value competitive tenders.

⁴²⁷ FMN, paragraph 16.3.1.

⁴²⁸ FMN, paragraph 16.3.3.

- (c) CHC and Offshore UK were no closer competitors to each other than they were to Bristow or NHV;⁴²⁹ and
- (d) there were [REDACTED] occasions where CHC and Offshore UK lost an existing contract (out of [REDACTED] of their existing contracts that were retendered). The Parties submitted that this shows that switching costs for customers are low.⁴³⁰

6.57 The Parties argued that the tender analysis undertaken by CRA demonstrated that Offshore UK has been a diminished competitive presence for a number of years while NHV and Bristow have been CHC's real competitors in the UK. They highlighted that Offshore UK had lost a number of important contracts between 2017 and 2019, including BP, Spirit, Perenco, and Premier Oil and limited its participation in bidding such that it had not bid for a number of recent contracts, such as [REDACTED]. This is reflected in Offshore UK's participation in UK tenders which fell from over [REDACTED]% in 2017 to [REDACTED]% in 2020 and to [REDACTED]% in 2021.⁴³¹ They told us Offshore UK has been participating in far fewer tenders compared to other operators, and that Offshore UK has the [REDACTED].⁴³²

6.58 The Parties argued that by contrast, the tender data demonstrates that Bristow and NHV are significant constraints on CHC. The Parties stated that an analysis of the tender data shows, for example, that CHC lost over \$[REDACTED] million in potential business to Bristow between January 2017 and April 2021, representing around [REDACTED]% of the tenders (in value) lost by CHC during this time period. They told us that the same tender data also illustrates the success of NHV since its entry into the market in 2016. Overall, around [REDACTED]% of the tenders (in value) lost by CHC between January 2017 and April 2021 were lost to NHV.⁴³³ The Parties noted that while [REDACTED]% of the tenders (in value) lost by CHC during the same period were lost to Offshore UK, these losses are made up almost entirely ([REDACTED]%) by the TotalEnergies and the IAC

⁴²⁹ FMN, paragraph 16.3.4. The Parties submitted that CHC and Offshore UK have been unsuccessful in tenders, losing to Bristow and NHV as well as each other. By value, the overlap between the Parties is greater: Offshore UK bid on [REDACTED]% of the tenders for new business on which CHC bid (by value) and CHC bid on [REDACTED]% of the tenders for new business on which Offshore UK bid (by value) (FMN, Figure 16.2). By number the overlap was [REDACTED]% and [REDACTED]% respectively.

⁴³⁰ FMN, paragraph 16.3.2. FMN, paragraph 16.3.5. On [REDACTED] occasions the Parties lost the contract to the other Party (on [REDACTED] occasions CHC lost to Offshore UK). The Parties state that in all the significant bids where they competed against each other, both Bristow and NHV were also present (FMN, Figure 16.3).

⁴³¹ Parties' response to Issues Statement, 4 January 2022, paragraphs 4.7 to 4.10. We note these are participation rates for tenders in a given year.

⁴³² Parties' response to the Annotated Issues Statement and CMA Working Papers. We note this is participation in tenders throughout the period 2017 to 2021.

⁴³³ This is based on the sample of 19 opportunities bid between January 2017 and April 2021 that represent CRA's attempt to replicate the CMA's sample. [REDACTED] (see Offshore UK's [REDACTED] response to s109(1)). See CHC internal document.

tenders in 2019, [REDACTED] of which were bid at margins which would not have been bid at but for Babcock's manage for value strategy.^{434,435}

- 6.59 Following our provisional findings, the Parties argued⁴³⁶ that the information relied upon in the tender data analysis is not consistent with evidence held by the Parties. Specifically, the Parties stated that [REDACTED]; [REDACTED]; and that some of the tender value figures do not match the Parties' internal records. The Parties also reiterated that in their view, the evidence demonstrates that Offshore UK is a limited and diminishing threat, and that it has been a weak competitor in recent years and has not competed frequently against CHC in recent tenders. It also shows that NHV and Bristow are important constraints and will remain so post-Transaction.
- 6.60 We subsequently requested further information from [REDACTED], and following this have adjusted the data in our analysis relating to these tenders to [REDACTED].⁴³⁷ We note that this adjustment has not materially altered our findings as presented in the Provisional Findings Report. As [REDACTED],⁴³⁸ we have not modified the tender [REDACTED]. We note that even if we were to accept the Parties' revised [REDACTED],⁴³⁹ this would not materially affect our findings, as our findings are based on an assessment of the tender data in the round, rather than specific tenders or tender values in isolation.⁴⁴⁰

Our assessment

- 6.61 Given the limitations of the Parties' data described in Appendix D, the CMA gathered additional bidding data directly from customers. The CMA identified potential bidding opportunities during the period 2017 to 2021 by contacting all the customers in the Parties' bidding data, as well as attempting to identify any opportunities in which CHC and Offshore UK did not participate.⁴⁴¹ For

⁴³⁴ [Parties' response to Issues Statement](#), 4 January 2022, paragraphs 4.13 and 4.14.

⁴³⁵ We note that since the Issues Letter in phase 1 and prior to the 2 Provisional Findings in phase 2, the Parties attempted to replicate the CMA's tender analysis dataset. This updated analysis of 19 tenders attempting to replicate the CMA's tender analysis broadly aligns with our dataset, though there are some tenders which have been identified incorrectly. The Parties have correctly identified [REDACTED] tenders, ie [REDACTED]% of the CMA tender data, as described below. While the Parties' updated dataset contains most of the relevant dataset, our dataset contains a more consistent identification of the correct bidders and relative rankings, as explained in Appendix D.

⁴³⁶ [Parties' response to the Provisional Findings](#), 4 April 2022, paragraph 4.13-4.14.

⁴³⁷ [REDACTED].

⁴³⁸ For example, the Fisher Business valued the [REDACTED] tender at £[REDACTED] while CHC valued this at £[REDACTED].

⁴³⁹ We note that for tender, [REDACTED]. [Parties' response to the Provisional Findings](#), 4 April 2022, paragraph 4.13.3.

[Parties' response to the Provisional Findings](#), 4 April 2022, paragraph 4.13.3.

⁴⁴⁰ We note that in addition to these discrepancies, the Parties state that [REDACTED] was active in competing for an opportunity held by [REDACTED], however [REDACTED] did not corroborate this. The Parties' did not mention this discrepancy in their response to the provisional findings. As above, we have not made any change to our analysis based on this discrepancy but note that this would not materially affect our conclusions, either individually or in combination with the other changes the Parties suggested.

⁴⁴¹ Further gaps were filled in at phase 2 where we included recently concluded tenders, or for which we had not received information at phase 1.

full detail on the information on tenders we have gathered and the results of our analysis, see Appendix D.

- 6.62 Based on the information received from customers, we focused our assessment on 21 competitive tenders over the period 2017 to 2021⁴⁴² for higher value opportunities (which are typically also longer term).⁴⁴³ We have also considered the smaller tenders we have gathered information on and the insight these offer into competitive conditions for smaller value tenders, the results of which are set out in Appendix D. However, we note that as the small tender dataset only accounts for approximately 1% of the total competitive tenders by value, we have placed limited weight on this analysis compared to the main tender analysis explained below.
- 6.63 At least either of CHC or Offshore UK participated in all of the 21 tenders in our analysis. We consider that the relatively small number of tenders for which data has been gathered is predominantly due to the infrequent nature of tender processes in the industry.⁴⁴⁴
- 6.64 We note that the small number of tenders in each year makes comparisons of trends or year to year changes challenging. In addition, we note that CHC first expressed an interest in the Fisher Business in November 2019, and first submitted a non-binding offer for the Fisher Business in March 2020.⁴⁴⁵ This may raise the concern that the Parties' bidding strategy may have been affected by the Merger, particularly following the completion of the Merger in 2021. However, in practice, we have not identified any specific change in the Parties' bidding strategy from their internal documents since the Merger was in contemplation. Therefore, while we have taken this risk into account in our assessment, we do not consider we should discount evidence from tenders which occurred after the Merger was underway.
- 6.65 Despite the relatively small number of tenders, we believe that this data is representative of competitive interaction in the supply of UK O&G Offshore Transportation Services. In particular, these 21 tenders account for 99% of UK contracts (by value) of which we are aware, awarded through a

⁴⁴² We note that customers provided tender data based on start date, rather than bid date. While the dates presented may indicate the bidding for these contracts occurred later, all contract bidding took place before August 2021. However, we note that bidding for some of these tenders occurred after the Merger was in contemplation, as discussed in paragraph 6.64.

⁴⁴³ For further detail on the information we got on tenders and how we reached these 21 tenders, see Appendix D.

⁴⁴⁴ Each large customer may tender one contract every five years or so. The CMA is aware of some customers (including some of the Parties' largest) that have not run a competitive tender comparing detailed proposals from more than one bidder since 2017 (and so are not captured in the tender data).

⁴⁴⁵ Babcock's response to s109. Babcock, Counterfactual Submission.

competitive tender process over the relevant period where at least one of the Parties bid.⁴⁴⁶

6.66 We consider that this tender data provides evidence on closeness of competition between CHC, Offshore UK and other UK suppliers, in particular:

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

6.67 We consider that this assessment provides evidence on the strength of rivalry between CHC and Offshore UK that may be lost due to the Merger and the strength of the constraints that will remain on the Merged Entity post-Merger.

Results

6.68 The CMA tender data shows that, apart from the four UK incumbents, no other potential competitors won any contracts, and there have been very few instances of potential entrants bidding.⁴⁴⁷ A small number of customers submitted they had tried to seek bids from (usually one or two) additional participants, but these were not successful.⁴⁴⁸

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

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

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

Source: CMA tender analysis.

⁴⁴⁶ Out of the total competitive tenders we identified from the CMA tender dataset.

⁴⁴⁷ There was no [REDACTED]. The only evidence of potential competitors bidding in a UK based contract was in the [REDACTED] tender where [REDACTED] bid, in addition to the four incumbents. [REDACTED]. [REDACTED] bid for the [REDACTED] contract [REDACTED], but was unsuccessful.

⁴⁴⁸ Other customers such as [REDACTED] indicated they had invited a wider pool of suppliers for specific tenders.

6.70 Table 6-2 shows that:

- (a) It is commonplace for suppliers to not bid on every tender.⁴⁴⁹ In fact, of the 21 tenders included in our analysis, only 8 (ie 38%) involved all four suppliers bidding. [redacted] tenders involved three participants, and [redacted] tenders involved just two. On average there were three participants ([redacted]) per tender.
- (b) CHC and Bristow have the highest participation rates, with CHC participating in [redacted]% of opportunities and Bristow participating in over [redacted]% of opportunities. Offshore UK participated in under [redacted] of all opportunities, and NHV in over [redacted] of opportunities.⁴⁵⁰
- (c) Although Offshore UK and NHV bid on fewer tenders than the other UK incumbents, they won a somewhat higher proportion of the tenders in which they participated ([redacted]% and [redacted]% of the tenders that they participated in, respectively).⁴⁵¹

6.71 The tender analysis shows that most suppliers do not participate in every tender, though [redacted]. Overall, Offshore UK's participation rates appear to fluctuate significantly in the period ([redacted]).^{452,453} Suppliers have different propensities to bid according to different company strategies. However, while most suppliers have bid selectively ([redacted]), all have been actively bidding throughout the period.

6.72 CHC and Offshore UK competed for contracts against each other [redacted] times out of the 21 tenders, ie over half of the tenders. Of the [redacted] tenders Offshore UK participated in, CHC participated in [redacted].⁴⁵⁴ Of the [redacted] tenders CHC bid in, Offshore UK participated in [redacted].⁴⁵⁵ Of the [redacted] tenders where both Parties participated, Bristow bid in [redacted] tenders and NHV bid in [redacted] ([redacted]). As a result,

⁴⁴⁹ CHC bid on [redacted] tenders [redacted], whereas Bristow, NHV and Offshore UK bid on [redacted] tenders.

⁴⁵⁰ [redacted]. Bristow, Bristow call note. [redacted]. NHV, NHV call note.

⁴⁵¹ We note that the Parties stated that 'the CMA's observation that Offshore UK won a higher proportion of the tenders in which it participated is simply driven by the fact that, on the basis of its "manage for value" strategy, it has been bidding much more selectively on tenders.' [Parties' response to the Provisional Findings](#), 4 April 2022, paragraph 4.18. We note that this ignores the fact that NHV has also been participating in fewer tenders and winning a higher portion of them, despite not undertaking a 'manage for value' strategy. We also note the Parties have described NHV as one of CHC's 'fiercest competitors'. [Parties' response to Issues Statement](#), 4 January 2022, paragraph 1.4.3. [Parties' response to Issues Statement](#), 4 January 2022, paragraph 1.4.3. Offshore UK's participation and win rate have fluctuated over the period and so its more selective participation is not just the result of the manage for value strategy.

⁴⁵² It is not the case, as the Parties stated, that 'The only reason given by the CMA for ignoring [that [redacted]] and claiming instead that Babcock's [redacted]. Parties' response to the Annotated Issues Statement and CMA Working Papers. As set out in Appendix D, given the limited number of tenders in our dataset it is difficult to infer trends, and Offshore UK's participation varies year to year.

⁴⁵³ We note that we are not stating that 'Offshore UK has been bidding with the same frequency throughout the period', contrary to the Parties' claims. [Parties' response to the Provisional Findings](#), 4 April 2022, paragraph 4.19. [Parties' response to the Provisional Findings](#), 4 April 2022, paragraph 4.19.

⁴⁵⁴ We note that Bristow participated in [redacted] ([redacted]%) and NHV participated in [redacted] ([redacted]%). [redacted].

⁴⁵⁵ We note that Bristow participated in [redacted] ([redacted]%) and NHV participated in [redacted] ([redacted]%).

in [REDACTED] tenders, CHC and Offshore UK were two of only three participants. Therefore, CHC and Offshore UK regularly meet each other and the other two incumbents across tenders.

- 6.73 Out of the [REDACTED] times CHC and Offshore UK faced each other, Offshore UK has outranked CHC [REDACTED] times,⁴⁵⁶ and CHC has outranked Offshore UK [REDACTED] times.⁴⁵⁷ In addition, Offshore UK has won [REDACTED] CHC participated in,⁴⁵⁸ while CHC has won [REDACTED] Offshore UK participated in.⁴⁵⁹ Of the [REDACTED] Offshore UK won and CHC participated in, CHC came second place in [REDACTED].⁴⁶⁰
- 6.74 We note that Bristow and NHV also regularly win (and lose) tenders that the Parties have participated in. For example, Bristow won [REDACTED] and [REDACTED] tenders that Offshore UK and CHC participated in respectively. NHV won [REDACTED] and [REDACTED] tenders that Offshore UK and CHC participated in respectively.
- 6.75 In the 13 tenders where not all four incumbents participated, only [REDACTED] of these involved only Offshore UK not bidding, and the other [REDACTED] involved other competitors also bidding selectively.⁴⁶¹
- 6.76 The tender analysis shows that win rates fluctuate for all four incumbents in the period. In particular, Offshore UK was [REDACTED] in bids for contracts starting in 2018 and 2020 (in [REDACTED] having the same win rate as [REDACTED]).⁴⁶² Those in 2020 were the IAC and TotalEnergies tenders. The Parties argued that we should not put weight on these as Offshore UK bid at unsustainable prices as a result of its manage for value strategy.⁴⁶³ However, we consider that these are still informative in indicating Offshore UK remained an important competitive force in this period, despite a strategy the Parties claimed meant it was ‘not a particularly serious competitive threat’.⁴⁶⁴

⁴⁵⁶ Based on customer rankings of bidders. Each customer has different evaluation criteria, so this does not necessarily mean each Party offered a lower price than the other in each of these circumstances. [REDACTED].

⁴⁵⁷ [REDACTED].

⁴⁵⁸ [REDACTED].

⁴⁵⁹ [REDACTED].

⁴⁶⁰ [REDACTED].

⁴⁶¹ We note that this is contrary to the Parties’ response to our provisional findings, which stated that ‘[REDACTED] and this is the main factor driving the low average number of participants per tender’. [Parties’ response to the Provisional Findings](#), 4 April 2022, paragraph 4.16-4.17. The Parties also stated that ‘the average number of participants across the [REDACTED] tenders for which Babcock did not bid is significantly lower at [REDACTED]. As a result, it is predominantly Babcock’s lower participation rate which drives the CMA’s conclusion that there are on average only 3 bidders per tender’. While these values were calculated prior to our adjustments to the [REDACTED] tender data, we note that if the average number of bidders is [REDACTED] when Offshore UK did not bid, this shows that other suppliers (in particular NHV) also sometimes bid selectively, or else this number would be three. This implies that it is not only Offshore UK’s lower participation rate which is driving the low average number of participants for tender, as other suppliers have bid selectively in the period.

⁴⁶² We note that these win rates are calculated based on the tenders won that the supplier participated in that year.

⁴⁶³ [Parties’ response to Issues Statement](#), 4 January 2022, footnote 23. [Parties’ response to the Provisional Findings](#), 4 April 2022, paragraphs 4.22 and 4.24.

⁴⁶⁴ [Parties’ response to Issues Statement](#), 4 January 2022, paragraph 4.12.

6.77 We have considered Offshore UK's bidding strategy after it knew it had won the IAC and TotalEnergies tenders in [REDACTED], given the Parties' submissions around Offshore UK not bidding aggressively as it had [REDACTED]. According to the Fisher Business's submissions, it was aware of [REDACTED] tenders for which the bidding took place from [REDACTED].^{465,466} [details of these tenders]

(a) [REDACTED]⁴⁶⁷

(b) [REDACTED]^{468,469}

(c) [REDACTED]⁴⁷⁰

6.78 Based on this, we consider that Offshore UK continued to bid, as it had done previously, for contracts on a selective basis. In particular, Offshore UK bid on [REDACTED] tenders it was aware of, and in the largest tender which it did not bid on, [REDACTED]. As discussed in paragraph 6.70(a) above, it is commonplace for suppliers to not bid on every tender. We further discuss Babcock's reasons for not bidding on tenders in paragraph 6.149 to 6.151.

6.79 We note that based on the information received from customers [REDACTED], there were [REDACTED] other competitive tenders it is not clear whether Offshore UK was aware of. The largest of these was a [REDACTED] tender in [REDACTED] worth £[REDACTED] million, the other tenders were a [REDACTED] in [REDACTED] worth £[REDACTED] million, and a [REDACTED] in [REDACTED] worth £[REDACTED] million. We note the Parties stated on the [REDACTED] tender that '[REDACTED]'. We note that it is unclear whether Offshore UK was aware of the [REDACTED] and [REDACTED] tenders as they do not appear in the Fisher Business's tender submissions. Regardless of whether Offshore UK was aware of these tenders, [REDACTED]. For example, [REDACTED] told us on this tender that 'Babcock do not have any presence in [REDACTED] – what we were looking for @40hrs per month flying which would not make it viable for Babcock to set up an operation to support a single airframe operation.'^{471,472}

6.80 We also note that according to CHC's data on the small competitive tenders it was aware of, it believed Offshore UK was competing in [REDACTED] tenders, when in fact Offshore UK [REDACTED]. We consider that this shows that CHC believed they were competing with Offshore UK in these instances, and this may have affected their bidding behaviour. Offshore UK therefore continued to act as an

⁴⁶⁵ Fisher Business response to s109.

⁴⁶⁶ We note that we also referred to the information submitted by CHC to greater understand bidding times.

⁴⁶⁷ Babcock main party hearing transcript.

⁴⁶⁸ Fisher main party hearing transcript.

⁴⁶⁹ [Parties' response to the Provisional Findings](#), 4 April 2022, paragraph 4.28.1.

⁴⁷⁰ Babcock main party hearing transcript.

⁴⁷¹ Response to the CMA's questionnaire from: [REDACTED].

⁴⁷² With regard to the [REDACTED] tender, we note that this tender has a low value (under £2 million). As set out in Appendix D, Offshore UK appears [REDACTED] for such low value opportunities.

active presence in the market, imposing a competitive constraint on the other suppliers.

- 6.81 In summary, our tender analysis shows that Offshore UK was an important constraint on CHC and vice versa in tenders from 2017 onwards. Offshore UK often competed against CHC in tenders, and won a number of tenders from it (as well as vice versa). We disagree with the Parties that the tender data demonstrates that Offshore UK only exercised a limited and increasingly diminishing constraint on CHC.⁴⁷³ Offshore UK continued to participate in tenders and remained an active presence in the market even while undertaking its manage for value strategy, imposing a competitive constraint on the other suppliers.
- 6.82 The tender analysis shows that Bristow and NHV are also important constraints on CHC and Offshore UK, often winning tenders the Parties bid in. By contrast, suppliers outside the four incumbents have negligible presence in the tender data and so do not impose a competitive constraint on the suppliers when bidding for tenders: only [X] other suppliers bid for any contract and were not shortlisted due to being very expensive and not operating in the UK.

Qualitative analysis of bid pricing

Parties' views

- 6.83 The Parties' economic adviser (CRA) produced an analysis of CHC's pricing across different tenders. It stated that this shows that CHC's prices were no higher after Offshore UK had stopped participating in tenders than when Offshore UK was active in tenders. CRA described the analysis as a natural experiment on the role of Offshore UK in influencing the prices bid by CHC.⁴⁷⁴

Our assessment of CRA analysis

- 6.84 We disagree with the underlying assumptions for CRA's analysis. In particular:⁴⁷⁵

⁴⁷³ Parties' response to the Provisional Findings, 4 April 2022, paragraph 1.22.1.

⁴⁷⁴ "Irrespective of the counterfactual, the tender data shows that [Offshore UK] has not been bidding for contracts over the last 18 months. The absence of [Offshore UK] as an active bidder on significant contracts over this period provides a natural experiment to consider whether the loss of [Offshore UK] as a competitor will have an impact on competition. As CHC's tender pricing data shows below, there is no evidence that CHC increased its price on contracts given [Offshore UK]'s participation. This is consistent with CHC's continuing to be constrained by NHV and Bristow absent [Offshore UK]." Response to the Issues Letter: a review of the tender analysis by CRA.

⁴⁷⁵ For further detail on the Parties' bid pricing submission, our concerns with this analysis and our analysis of CHC bid prices see Appendix F.

- (a) There is no evidence that CHC realised Offshore UK had stopped bidding in tenders. CHC's internal documents show CHC [REDACTED].⁴⁷⁶
- (b) The sample is too small to produce any robust quantitative analysis to explore differences in prices. This is particularly the case given there were other factors (apart from competition) that affected CHC's tender bidding during this period. We note that there is significant variation in the bid price levels before the period CRA states Offshore UK was not bidding, showing that prices clearly vary for other reasons.
- (c) CHC told us that [REDACTED].⁴⁷⁷ Therefore, it is not clear that the figures can be used to accurately compare prices, competitiveness or profitability of different bids.

Our analysis of bid pricing

- 6.85 Although it was not possible to quantify the impact of events (such as the Merger) on the pricing decisions of CHC, we considered whether it was possible to qualitatively assess the pricing decisions made by CHC to consider the role of competition in those pricing decisions.
- 6.86 CHC stated that it does not have internal documents that discuss the reasons for the choice of each price point. CHC instead gave an explanation of how CHC chose the prices submitted to the customer. CHC only provided some rationale for pricing decisions dated between January 2019 and April 2021 where CHC had knowledge of the price formation process (a total of 10 pricing decisions).
- 6.87 Given that we have information only about a limited number of pricing decisions and are largely reliant on information provided by CHC's [REDACTED] rather than contemporaneous documents, we consider there are significant limitations to the conclusions which can be drawn from the analysis of the rationale for these pricing decisions. Nevertheless, we set out below our observations from this information.
- (a) The analysis of CHC's approach to tenders demonstrates that CHC often [REDACTED] by other UK O&G Offshore Transportation Services suppliers and CHC [REDACTED], to try to win contracts from these suppliers.

⁴⁷⁶ The three main tenders that were included by CRA to show the impact of Offshore UK not bidding were [REDACTED], (see CHC internal document). [REDACTED], Offshore UK was not modelled on this occasion but it was a direct negotiation for a contract extension rather than a formal tender, (see CHC internal document). [REDACTED] (see CHC internal document). The transparency of tenders and whether bidders are aware of the other bidders involved is discussed in paragraphs 6.8 to 6.10.

⁴⁷⁷ CRA used [REDACTED]. CHC response to s109(2).

- (b) CHC reacted when customers told CHC there [REDACTED]. However, CHC did not always respond to general statements by customers and [REDACTED].⁴⁷⁸ CHC was [REDACTED].⁴⁷⁹
- (c) CHC's descriptions of its rationale often indicate that [REDACTED].
- (d) Since the start of 2020 CHC appears to have been [REDACTED], at least in part due to its [REDACTED].⁴⁸⁰ This strategy was [REDACTED]. [REDACTED]. These customers included [REDACTED]. CHC thus posed a strong competitive constraint on Offshore UK.

6.88 The Parties stated that NHV has been the strongest competitor in recent years and has effectively provided the lowest pricing benchmark in the market, and provided several examples to support this statement⁴⁸¹. For some of the examples quoted by the Parties, although NHV had been expected to be the lowest priced bid, the bid of Offshore UK was important for the price set by CHC because (unlike NHV) both Offshore UK and CHC were expected to bid using a S92 helicopter.^{482,483} Given there is some uncertainty as to how suppliers may bid in practice, and particularly how customers may evaluate different bids (eg in terms of preferences over airframes, resilience etc), suppliers who are not expected to bid the lowest in a particular tender may still influence CHC's bids.

6.89 In summary, while we place limited weight on information from CHC's approach to bidding, this indicates CHC reacted when customers told CHC there [REDACTED]. The analysis of CHC's approach to tenders demonstrates that CHC often [REDACTED] by other UK O&G Offshore Transportation Services suppliers, including Offshore UK, and CHC [REDACTED], to try to win contracts from these suppliers. CHC has [REDACTED].

⁴⁷⁸ For example, the [REDACTED] tender in [REDACTED] and the [REDACTED] tender in [REDACTED].

⁴⁷⁹ For example, [REDACTED].

⁴⁸⁰ '[REDACTED]'. CHC response to RFI5. This is discussed in Appendix F, paragraphs 2.25 to 2.34.

⁴⁸¹ 'NHV effectively established the competitive price point in the market'. Parties' response to the Annotated Issues Statement and CMA Working Papers.

⁴⁸² For instance Parties' response to the Annotated Issues Statement and CMA Working Papers. [REDACTED] may be considered a competitor at one stage of the tender process, but CHC may consider [REDACTED] is a more prominent bidder at other stages of the tender. CHC [REDACTED] in the [REDACTED] (CHC internal document). CHC also expected [REDACTED], CHC internal document.

⁴⁸³ We note that later in the submission the Parties mention that NHV's single-airframe offering could give the impression of lack of resilience, although also noted the advantages of its aircraft: 'While the risk in a single-fleet strategy may be reliability, the H175 has proven to be a highly reliable aircraft, is widely accepted amongst customers, and is quickly becoming the industry standard.' Parties' response to the Annotated Issues Statement and CMA Working Papers.

Internal documents

Approach to internal document assessment

- 6.90 We have assessed internal documents from each Party to ascertain how closely they consider that they compete with each other and how they compete in the market relative to other competitors. Given the importance of tenders, we assessed, in particular, evidence from the Parties' internal documents on whether and to what extent competition between the Parties is a driver of their participation and bidding in tenders.
- 6.91 Internal documents produced by the Parties before the Merger was in contemplation are a relevant source of evidence to the extent they provide insight into competitive conditions. Where internal documents were produced contemporaneous to the Merger, we have taken this into account in our assessment. We have put less weight on documents produced for the Parties by third party consultants and advisers.
- 6.92 We identified around 170 CHC documents as relevant to how CHC viewed and responded to competition.⁴⁸⁴ Babcock and Offshore UK struggled to provide all internal documents related to the closeness of competition and tendering. Including related documents and attachments, over 800 documents were provided; however we considered fewer than 100 to be relevant to how Offshore UK viewed and responded to competition.
- 6.93 In reviewing CHC's documents, we have focused on documents discussing Offshore UK in particular, given the importance in understanding the position of Offshore UK. We have analysed whether there was any noticeable change in how CHC viewed Offshore UK over this period.
- 6.94 The documents reviewed included board packs (for both the EMEA and global CHC board), emails and tender documents. In particular, we reviewed communications to and from senior executives about tender responses for UK O&G Offshore Transportation Services.⁴⁸⁵ We focused on the period from the middle of 2019 (before the TotalEnergies E&P and IAC tenders) to 2021.
- 6.95 In reviewing Offshore UK's documents, we have analysed how Offshore UK viewed and responded to CHC and other competitors. For both CHC and Offshore UK we have analysed the role of potential suppliers outside the four

⁴⁸⁴ We requested documents from the Parties to explain their internal decision making and their view of the market. CHC provided around 700 relevant documents from a pool of 2875 that named a competitor while discussing tender pricing or bidding. CHC also provided the relevant documents from a pool of 765 documents produced during [REDACTED] 2019 to 2021. Once related documents (including attachments) were provided there were over 1,400 CHC documents.

⁴⁸⁵ This includes [REDACTED]. CHC response to s109(1).

incumbents, in particular whether these firms are considered likely to bid or whether they take any actions because of one of these firms.

- 6.96 The Parties submitted that our provisional findings reached the wrong conclusion from the assessment of CHC's internal documents which they said was largely selective, one sided, and erred in finding Offshore UK to be a significant competitor of equal importance to CHC as Bristow and NHV.⁴⁸⁶ The Parties highlighted a number of specific instances where they considered the provisional findings had misread the documents (our analysis of these documents is set out in paragraphs 6.97 to 6.103 below). We have reviewed these instances and, aside from a small number of cases where we have repositioned our understanding of the relevant internal document (which we have reflected in the text in Appendix F in particular), we consider we had fairly reflected the points raised by the Parties. Having reconsidered this evidence in the round (including in the light of the small number of instances where we have repositioned our understanding of the relevant internal document), we do not believe that these submissions affect our overall conclusions drawn from the internal document evidence.

Analysis of CHC documents regarding Offshore UK

- 6.97 The internal documents show that CHC was monitoring Offshore UK (alongside Bristow and NHV) and that CHC was competing with Offshore UK and took Offshore UK into account when submitting bids.⁴⁸⁷
- 6.98 In late 2019, CHC considered it was [REDACTED]. CHC's internal documents indicate that it considered that [REDACTED].⁴⁸⁸ The documents also indicate that [REDACTED].⁴⁸⁹
- 6.99 There were tenders where Offshore UK was not considered a strong constraint by CHC. Some of these were tenders where significant activity was outside the UK (such as [REDACTED] or the [REDACTED]). CHC referred to potential entrants (in particular [REDACTED]) as being likely to bid on these non-UK scopes of work but these firms were not considered in relation to UK O&G contracts.⁴⁹⁰
- 6.100 In response to our working papers, the Parties stated that CHC had been uncertain [REDACTED].⁴⁹¹ [REDACTED], or that CHC did not need to take into account Offshore

⁴⁸⁶ [Parties' response to the Provisional Findings](#), 4 April 2022, paragraph 4.2.2. See Parties' response to the Provisional Findings, 4 April 2022, paragraph 4.40 to 4.52 for the specific points raised by the Parties on internal documents.

⁴⁸⁷ For further detail on these documents see Appendix F.

⁴⁸⁸ CHC internal document. [REDACTED]

⁴⁸⁹ CHC internal document. [REDACTED]

⁴⁹⁰ Some of this entry was at an early stage, with these players [REDACTED]. CHC internal document.

⁴⁹¹ 'CHC was uncertain whether [REDACTED].' Parties' response to the Annotated Issues Statement and CMA Working Papers.

UK's possible participation. The internal documents overall show that CHC had not moved to considering Offshore UK to no longer be a relevant competitor for bases where Offshore UK was present.

- 6.101 One CHC internal document we reviewed from October 2019 considered the possibility of Offshore UK exiting the market. This set out Offshore UK exit as one scenario, with [REDACTED] being another. The Offshore UK exit scenario does not seem to have been considered in detail at the time or later.⁴⁹²
- 6.102 Our view is that internal documents show that CHC monitored and responded to Offshore UK as a relevant competitor up to the time of the Merger.
- 6.103 With regard to the constraint of CHC on Offshore UK, internal documents from CHC show that it has been active in trying to win contracts from [REDACTED].^{493,494} This implies CHC poses a constraint on [REDACTED].

Analysis of CHC documents regarding the position of other competitors

- 6.104 The internal documents show that CHC takes account of the bidding by Offshore UK in a similar way to CHC's consideration of NHV and Bristow.⁴⁹⁵ The prominence of competitors can depend on the base the tender is for. NHV has been more successful in the Southern North Sea while the issue CHC raised of NHV's resilience is relevant in Aberdeen.⁴⁹⁶
- 6.105 We have considered CHC's views expressed in these internal documents concerning the threat of new entry.
- (a) CHC did not [REDACTED].⁴⁹⁷

⁴⁹² CHC internal document.

⁴⁹³ For instance in relation to CNOOC, CHC internal document. Also Enquest, CHC internal document.

⁴⁹⁴ The Parties submitted that this conduct is not a reflection of strong competitive rivalry between CHC and Offshore UK. On the contrary, they said that CHC engaged in such opportunistic conduct because it regarded Offshore UK as being in a weakened competitive position, hence why there was a chance that customers may switch ([Parties' response to the Provisional Findings](#), 4 April 2022, paragraph 4.52). Nevertheless, we consider it does indicate CHC poses a constraint on Offshore UK, and customers would still benefit from this competition (and would not after the Merger).

⁴⁹⁵ For further detail on these documents see Appendix F.

⁴⁹⁶ See for example: Parties' response to Annotated Issues Statement and CMA Working Papers, which considers the [REDACTED] contract in respect of operations from [REDACTED]. CHC's internal documents in relation to this tender indicate it considered [REDACTED] (CHC internal document). The Parties mention that NHV's single-airframe offering could give the impression of lack of resilience, although also noted the advantages of its aircraft: 'While the risk in a single-fleet strategy may be reliability, the H175 has proven to be a highly reliable aircraft, is widely accepted amongst customers, and is quickly becoming the industry standard.' Parties' response to the Annotated Issues Statement and CMA Working Papers. CHC discussed that [REDACTED]. (CHC internal document) (NHV does not have a base in Sumburgh or the Northern North Sea).

⁴⁹⁷ CHC highlighted a number of specific documents which referred to the threat from entrants. CHC response to RF17. We have taken these into account where relevant in this assessment.

(b) While CHC had [REDACTED] of entry in 2020, by the time of the Merger completing in 2021 CHC had come to the view there was [REDACTED].⁴⁹⁸

6.106 CHC does not appear to have considered entry likely at the time of the Merger.⁴⁹⁹

Assessment of Offshore UK documents regarding the position of competitors

6.107 The internal documents show that Offshore UK considered the expected bidding by CHC alongside the expected bidding of NHV and Bristow.⁵⁰⁰

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

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

(b) Offshore UK stated in 2020 that market conditions were a barrier to entry.⁵⁰¹

6.109 Our view is that internal documents from Offshore UK show its competitive monitoring, [REDACTED], mainly focuses on the three other UK incumbent suppliers, including CHC, and rarely considers other potential suppliers.

Third party views

6.110 We sought views through questionnaires and calls from 44 customers,⁵⁰² ten potential entrants,⁵⁰³ four aircraft lessors⁵⁰⁴ and two incumbent suppliers.⁵⁰⁵ We received questionnaire responses from 28 customers,⁵⁰⁶ six potential entrants,⁵⁰⁷ four lessors and two incumbent suppliers. We also had calls with

⁴⁹⁸ CHC internal document.

⁴⁹⁹ 'It is not surprising that there is limited incentive for anyone to enter a market in which competition is so fierce and in which most players face serious financial difficulties and are making losses.' Parties' response to the Annotated Issues Statement and CMA Working Papers.

⁵⁰⁰ For further detail on these documents see Appendix F.

⁵⁰¹ Babcock

⁵⁰² Based on the Parties' customers, and their knowledge of other customers present. Includes customers who have run tenders of various sizes from £[REDACTED] million to £[REDACTED] million (based on tender value since 2017 as supplied by customers).

⁵⁰³ Identified by the Parties as either being their current competitors or potential entrants, or mentioned by customers or suppliers in calls and written responses. Includes suppliers providing O&G Offshore transportation services in other jurisdictions, or providing transportation services for search-and-rescue (SAR) and to offshore wind farms in the UK.

⁵⁰⁴ Identified by the Parties as their lessors.

⁵⁰⁵ Bristow and NHV.

⁵⁰⁶ A response rate of 63%.

⁵⁰⁷ A response rate of 75%.

one customer ([redacted]),⁵⁰⁸ two incumbent suppliers (Bristow and NHV), the Civil Aviation Authority and two potential entrants ([redacted] and [redacted]).^{509,510}

6.111 Details of the evidence received from third parties can be found in Appendix E. Below we summarise the views of third parties on aspects of competition. We note that questionnaire responses were provided prior to the conflict in Ukraine and subsequent changes in oil and gas prices. We contacted customers and potential entrants to understand what effect they expected the conflict in Ukraine to have on their operations and plans and whether any of their previous responses needed to be modified as a result of the conflict. While some third parties noted the conflict in Ukraine would likely lead to 'in the medium term an increase in the need for offshore project support because of the increase in oil & gas production required to offset the loss of Russian oil & gas',⁵¹¹ increased fuel costs for helicopters leading to internal review of fuel options⁵¹² or helicopter strategy,⁵¹³ none indicated their responses to our previous questions were no longer accurate nor needed to be modified to reflect changes in the market.

Parties' views

6.112 On the third party responses, the Parties argued that the CMA:⁵¹⁴

- (a) attached significant weight to the customer responses to its market enquiries.
- (b) preferred the evidence of customers who raised concerns about the Merger over that provided by customers who did not.
- (c) did not ask customers whether the present market structure may be unsustainable or if other operators could choose to leave the market.

6.113 We consider these submissions as part of our assessment below.

⁵⁰⁸ We note that we also had a call with [redacted] to verbally go through the questionnaire, which we have here counted as a response to the questionnaire. We also note we have had further calls with customers following publication of the Provisional Findings to ask questions on remedies.

⁵⁰⁹ During the course of the phase 1 investigation, the CMA contacted a similar number of customers, and had calls with the two competitors, as well as three customers: [redacted], [redacted] and [redacted].

⁵¹⁰ We note the Parties submitted that 'the fact that the CMA appears to have spoken to only two of the customers who responded to its questionnaires reinforces the concern that the CMA has not sought to grapple with the inconsistencies and tensions which characterise the evidence from customers.' [Parties' response to the Provisional Findings](#), 4 April 2022, paragraph 4.34. We note that evidence gathered through calls rather than questionnaires is not (and should not) be given more weight as both are useful approaches which provide valuable evidence. Questionnaires allow us to gather evidence from a wider set of customers than relying on the calls conducted at phase 1 and phase 2.

⁵¹¹ Response to the CMA's questionnaire from: [redacted].

⁵¹² Response to the CMA's questionnaire from: [redacted].

⁵¹³ Response to the CMA's questionnaire from: [redacted].

⁵¹⁴ [Parties' response to the Provisional Findings](#), 4 April 2022, paragraph 4.30-4.35.

Competitive constraints from incumbent suppliers

- 6.114 We asked customers who have (or had) UK O&G Transportation Services contracts with CHC and Offshore UK to what extent they view various suppliers as a close alternative to CHC and Offshore UK respectively for this service.⁵¹⁵ We asked customers which suppliers they would consider inviting to bid on their tenders (and the likelihood of these suppliers being picked). We also asked customers and the two incumbent suppliers how they would rank the strength of the suppliers of UK O&G Offshore Transportation Services.⁵¹⁶
- 6.115 Customer responses were consistent with CHC and Offshore UK being close alternatives to each other, with many customers giving them a score of 4 or 5 out of 5 for closeness. The responses showed that Bristow and NHV were also considered close alternatives to CHC and Offshore UK, consistent with all four incumbents being close alternatives.
- 6.116 The majority of respondents⁵¹⁷ submitted that they would invite all four suppliers to bid on upcoming tenders, who would all have some likelihood of winning. Of these, eight customers submitted they may invite a wider set alongside the four incumbents,⁵¹⁸ although six of these customers submitted these other suppliers would have a lower likelihood of being selected.
- 6.117 The CMA also asked customers about the strength of suppliers more generally. A majority of customers submitted that all four incumbents have similar capabilities,⁵¹⁹ and customers rated CHC and Offshore UK the second and third strongest suppliers with average scores of 3.9 and 3.6 out of 5 respectively, while Bristow scored 4 and NHV scored 3.5.

⁵¹⁵ The suppliers listed were the four incumbent suppliers, as well as the eight potential entrants or SAR suppliers identified by the Parties.

⁵¹⁶ We note that the Parties submitted this evidence is 'at best inconclusive since the inquiries which the CMA addressed to customers appear to have largely consisted of a request to rank all actual and potential competitors, without those customers having been asked by the CMA to consider whether the market was sustainable in its present configuration. Nor were those customers asked to consider the possibility that absent the Transaction the number of competitors presently active in the UK could go from four to three.' [Parties' response to the Provisional Findings](#), 4 April 2022, paragraph 1.22.2. We note that asking customers to consider that the number of suppliers could go down to three would have been a highly speculative question which is not supported by the counterfactual as described in Chapter 5. To the extent that customers had views on market sustainability, this would have been (and in some cases was) incorporated into their responses, which we have taken into account when assessing their views on the Merger.

⁵¹⁷ 24 out of 27 customers.

⁵¹⁸ This includes two small customers ([REDACTED]) and six large customers ([REDACTED]).

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

6.118 The majority of customers did not identify an overall lessening of Offshore UK's performance or a change in its strategy, contrary to the Parties' statements. However, we note the following:

- (a) [REDACTED] told us Offshore UK's lower price ([REDACTED]) in its recent tender accounts for a service with less resilience. Offshore UK could provide the S92 required, but did not apply the same ratio of operational to backup aircraft, so there may be no spare S92 in the hangar;⁵²⁰
- (b) [REDACTED] told us that since 2017 Offshore UK appear to have 'gone through a process of making their business model more 'lean', but on reflection may have taken this too far';⁵²¹ and
- (c) [REDACTED] told us it would have given Offshore UK a stronger score for overall strength in 2017 as it 'had no requirement for an AW169 in 2017'.⁵²²

6.119 A similar number of customers also made comments about other suppliers such as Bristow and NHV becoming less strong in the same period.⁵²³

6.120 The incumbent suppliers also thought that Offshore UK and CHC were both highly ranked rivals, as they are both experienced operators with multiple aircraft types supporting operations,⁵²⁴ and they both have a strong presence at all major O&G hubs and fly all major O&G aircraft types.^{525, 526} The incumbent suppliers both agreed that Bristow was also a highly ranked supplier (similar to Offshore UK and CHC), and both agreed that NHV was a slightly weaker (but still a strong) supplier overall due to not operating heavy aircraft.⁵²⁷

6.121 We note that the majority of customers who responded to our questionnaires expressed concerns regarding the Merger,⁵²⁸ with many raising concerns that the Merger could lead to reduced competition and price increases.⁵²⁹ We set out further evidence on customer views in Appendix E.

⁵²⁰ Note of call with [REDACTED].

⁵²¹ Response to the CMA's questionnaire from: [REDACTED].

⁵²² Response to the CMA's questionnaire from: [REDACTED].

⁵²³ For example, [REDACTED] indicated Bristow had become a weaker competitor since 2017, and [REDACTED] thought NHV had become weaker due to lower reliability and availability of aircraft.

⁵²⁴ Response to the CMA's questionnaire from: [REDACTED].

⁵²⁵ Response to the CMA's questionnaire from: [REDACTED].

⁵²⁶ We note that no supplier is present in all hubs. Source: FMN, Figure 14.3. In particular, Offshore UK are currently only present in Scotland, while CHC, Bristow and NHV are present in Scotland and England.

⁵²⁷ For further information on the views from incumbent suppliers, see Appendix E.

⁵²⁸ 14 customers out of 26.

⁵²⁹ We note that eight customers were agnostic or unsure about the effects of the Merger. Of the 26 customers that did express a view, only four thought the Merger did not lead to competition concerns. We do not agree with the Parties that as '18 [customers] did not respond and so presumably have no serious concerns about the merger'. Parties' response to the Provisional Findings, 4 April 2022, paragraph 4.33. There are many reasons why a company may not respond to our inquiries, including resource constraints and prioritisation.

- 6.122 Contrary to the Parties' submissions, we do not consider we have placed 'undue weight' on this evidence⁵³⁰ or 'preferred the evidence of customers who raised concerns over that provided by customers who did not.'⁵³¹ We have considered and presented the views of both those with and without concerns, and treated this as one source of evidence among others, forming our findings after considering all evidence in the round.
- 6.123 In summary, contrary to Babcock and CHC's statements that Offshore UK was a weakened competitor, third parties perceived the Parties as close competitors to each other, giving them similarly high scores on closeness and overall strength. Almost all customers who responded submitted they would invite them to bid in their tenders, and the Parties would have a high likelihood of being successful.
- 6.124 Evidence from third parties shows that Bristow and NHV are also close competitors to CHC and Offshore UK and pose a competitive constraint. NHV and Bristow also scored highly on closeness to the Parties and strength of offering, despite limitations in NHV's fleet.

Potential entrants

- 6.125 In contrast to their view of the incumbent suppliers, third parties generally viewed potential entrants as significantly weaker suppliers. Only a minority of customers thought other suppliers like Bel Air, Uni-Fly and Wiking were close alternatives to CHC and Offshore UK,⁵³² consistent with customers overall not viewing these suppliers as alternatives to the Parties. Most customers told us they gave other suppliers lower scores due to them not currently operating in UK O&G Offshore Transportation Services.
- 6.126 Similarly, only a minority of customers submitted that they would invite any suppliers other than the four incumbents to bid on their tenders; there were a limited number of alternatives named by customers, and they were generally identified as having a lower chance of being successful given their lack of experience or current UK presence.
- 6.127 The incumbent suppliers similarly did not think potential entrants like Uni-Fly and Wiking were strong rivals in UK O&G Offshore Transportation Services at present.

⁵³⁰ Parties' response to the Provisional Findings, 4 April 2022, paragraph 1.22.2.

⁵³¹ Parties' response to the Provisional Findings, 4 April 2022, paragraph 4.33.

⁵³² See Appendix E.

6.128 One potential entrant told us it had previously bid on the [redacted] tender, but had not been shortlisted.⁵³³ No other potential entrants⁵³⁴ told us they had had discussions with customers to supply O&G Transportation Services in the UK.⁵³⁵ We further discuss the likelihood of potential entry, including views from potential entrants, in Chapter 7.

6.129 In summary, evidence from third parties shows that the constraint from potential entrants is significantly weaker, with customers and incumbent suppliers giving low scores on closeness to CHC and Offshore UK and overall strength. While some customers submitted they would consider inviting a wider pool of participants, there were a limited number of alternatives named and these potential participants were often identified as having a lower chance of being successful given their lack of experience or current UK presence.

Impact of Babcock's manage for value strategy

6.130 As set out in Chapter 5, Babcock implemented a manage for value strategy in 2019 in 'anticipation of exit' which it stated resulted in Offshore UK being a 'diminished competitive force'. As set out in Chapter 5, our conclusion is that under the most likely counterfactual that would have prevailed absent the Merger, the Fisher Business would have continued to operate in the relevant market in the short to medium-term, including tendering for new contracts. This counterfactual would have prevailed regardless of the Fisher Business's ownership, ie whether under Babcock's ownership, which may have continued with its manage for value strategy, or if it had been sold to an alternative purchaser. As a result, we have assessed whether the manage for value strategy changed the dynamic of competition such that Offshore UK would have been a weaker competitor in future.

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

⁵³³ Response to the CMA's questionnaire from: [redacted].

⁵³⁴ We note the exception of [redacted], and [redacted].

⁵³⁵ [redacted]. Note of call with [redacted].

its business and participating in tenders and that this change was perceived by customers and competitors.

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

Parties' views

6.133 Babcock submitted that the manage for value strategy was introduced in 2019 in 'anticipation of exit', and that the Fisher Business is a 'diminished competitive force' because Babcock has decided to no longer invest in it.⁵³⁶

6.134 Overall, Babcock submitted that, while it did not prepare a 'concise definition' of what manage for value would mean in practice, it is clear that the strategy had a material impact on the operations and strategy of the Fisher Business, with significant reductions in the size of the fleet and changes to its tendering strategy.⁵³⁷ Babcock submitted that the manage for value strategy encompassed a right-sizing exercise to reduce the size of the fleet and/or repurpose aircraft, focusing on contribution to cost rather than operating profit, reducing costs and limiting additional investment, and ensuring full utilisation of existing assets.⁵³⁸ It submitted that, in the UK, the Fisher Business would not have participated in any new tenders requiring new leases of aircraft and would only have participated in tenders if winning those tenders [REDACTED].⁵³⁹

6.135 Babcock submitted that while it [REDACTED] won, the TotalEnergies and IAC tenders in 2019, this was part of Babcock's manage for value strategy and Babcock bid [REDACTED] to fill capacity 'to achieve some contributions to its unavoidable costs'.⁵⁴⁰ Babcock submitted that at the time that Babcock bid for the TotalEnergies contract it was incurring monthly lease rates for aircraft of more than \$[REDACTED] which was placing a significant strain on the Fisher Business's cash outflows and meant that the Fisher Business needed to take steps to minimise unutilised capacity. Babcock submitted that this 'resulted in Babcock adopting an approach to bidding that it would not have adopted absent the manage for value strategy' and meant that 'Babcock was prepared to bid at very low and sometimes negative margins'.⁵⁴¹

6.136 Babcock submitted that the manage for value strategy meant that the Fisher Business would not have competed for new tenders in the UK requiring new

⁵³⁶ Babcock, Counterfactual Submission.

⁵³⁷ Babcock, Counterfactual Submission.

⁵³⁸ See FMN, paragraphs 11.6 and 11.7.

⁵³⁹ Babcock, Counterfactual Submission.

⁵⁴⁰ Parties' response to the CMA Issues Letter.

⁵⁴¹ Parties' response to the CMA Issues Letter.

capacity absent the Merger, and would only have bid on tenders if and when it had appropriate spare capacity ([REDACTED]).⁵⁴² Babcock explained that the TotalEnergies and IAC tenders had achieved the goal of improving utilization and provided examples of a number of subsequent tenders where it suggested Offshore UK had not participated in an opportunity due to the manage for value strategy.⁵⁴³ These are the [REDACTED].

6.137 The Parties further submitted that in assessing whether the Merger is likely to result in a ‘substantial’ lessening of competition, the CMA must take into account that the Fisher Business has suffered from a prolonged lack of investment and has been a diminished competitive presence for a number of years while NHV and Bristow have been CHC’s real competitors in the UK, as shown by the tender analysis undertaken by CRA which had previously been provided to the CMA.⁵⁴⁴ CHC considered that [REDACTED]. Moreover, CHC regarded Babcock [REDACTED] contracts (essentially the [REDACTED] secured by Babcock since 2017, accounting for [REDACTED]% of the value of all tenders won by Babcock during this period) by going into those tenders with unsustainable prices.⁵⁴⁵

6.138 The Parties submitted that the manage for value strategy had a clear impact on the competitiveness of the Fisher Business and the way in which that business bid, or did not bid, for tenders. [REDACTED] to limit cash outflows from an operational perspective and limit losses by securing contracts to fill under-utilised capacity. This resulted in Babcock limiting its investments into the business, downsizing its fleet ([REDACTED]) by returning [REDACTED], and while exploring its different options for exit, [REDACTED] that made a positive contribution to cost recovery even if those tenders were not profitable.⁵⁴⁶ The CMA’s observation that the manage for value strategy was not reflected in bid proposals or other internal documents prepared by the Fisher Business is due to the fact that the manage for value strategy was not communicated to the Fisher Business in order ultimately to ensure employees did not leave. However, when proposals reached the approval stage, the MD of UK Aviation had to take a view if these aligned with Babcock’s manage for value strategy and anything inconsistent with that strategy, including tender proposals, was rejected. This resulted in Babcock not investing in the Fisher Business and not bidding on significant tenders, in particular those which required it to take on additional aircraft.

⁵⁴² FMN, paragraph 11.10 and 7. Parties’ response to the CMA Issues Letter.

⁵⁴³ Babcock, Counterfactual Submission and Parties’ response to the CMA Issues Letter.

⁵⁴⁴ [Parties’ response to Issues Statement](#), 4 January 2022, paragraph 4.7. We consider the tender data in the Appendix D.

⁵⁴⁵ [Parties’ response to Issues Statement](#), 4 January 2022, paragraph 4.11.

⁵⁴⁶ Parties’ response to the Annotated Issues Statement and CMA Working Papers. See also [Parties’ response to Issues Statement](#), 4 January 2022, paragraph 3.9.

These decisions were then communicated to the Fisher Business in a variety of ways.⁵⁴⁷

6.139 The Parties stated that there is ‘no possible comparison between manage for value and [redacted] or indeed other ordinary course of business cost cutting initiatives’. They stated that manage for value was not a cost cutting exercise to improve competitiveness and/or gain market shares, but instead was cost cutting ‘on a completely different scale’, involving for example [redacted], the Fisher Business not bidding on several significant tenders, including [redacted], and the Fisher Business [redacted]. They noted that since then the Fisher Business has [redacted].⁵⁴⁸

6.140 The Parties stated that ‘the CMA errs in its assessment that the manage for value strategy did not affect third parties’ perceptions of the Fisher Business’, [redacted] and observations from [redacted] and CHC [redacted]. CHC noted that ‘[redacted]’ noting that Babcock appeared to have been bidding aggressively but that ‘[redacted]’. It stated that it expected Babcock to [redacted] and ‘[redacted]’. CHC stated this is consistent with its internal documents that Babcock was considered by CHC [redacted] and that CHC was [redacted].⁵⁴⁹

Our assessment

6.141 In order to assess whether the manage for value strategy changed the dynamic of competition such that Offshore UK would have been a weaker competitor in future, we have considered:

- (a) Evidence from Babcock’s internal documents as to what the strategy involved in practice;
- (b) Evidence on Offshore UK’s actual approach to bidding and investment under the manage for value strategy; and
- (c) Evidence on whether customers and competitors had perceived any change in Offshore UK’s competitive intensity.

Evidence from Babcock’s internal documents

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

⁵⁴⁷ Parties’ response to the Annotated Issues Statement and CMA Working Papers.

⁵⁴⁸ Parties’ response to the Annotated Issues Statement and CMA Working Papers.

⁵⁴⁹ Parties’ response to the Annotated Issues Statement and CMA Working Papers.

documents concerning manage for value from Babcock since phase 1,⁵⁵⁰ and so this largely reflects our understanding set out in the Phase 1 Decision.

6.143 Although internal strategy documents note that '[X]', they also⁵⁵¹ refer to [X] indicating that Babcock continued to be an active competitor, despite adopting its manage for value strategy. For example,

(a) [X], states that Babcock has '[X]' and [X].⁵⁵² It also states that the business will '[X]'.⁵⁵³

(b) The [X] states that a top '[X]' is to '[X]' and that Babcock's '[X]' and '[X]'.⁵⁵⁴

(c) [X] notes under the heading '[X]' that '[X]' and that '[X]'.⁵⁵⁵ It lists as a [X] under the heading '[X]'.

6.144 Although we recognise that a component of the manage for value strategy has been to invest more selectively, we consider that internal documents also indicate that [X]. [X].⁵⁵⁶ [X].⁵⁵⁷ Babcock's public statements suggested the rationalisation of the fleet was to improve competitiveness in a situation where Babcock continued to look for opportunities.⁵⁵⁸ We note that Babcock did in fact take on additional investment to service [X].

⁵⁵⁰ We asked Babcock to provide any further internal documents which corroborate the description provided in paragraph 11.6 of the FMN including, but not limited to:

a. Internal documents in which the manage for value strategy (and the 'market exit strategy' if included in the manage for value strategy) was discussed for the first time and internal documents which set out what the manage for value strategy entails;

b. Internal documents which evidence how the manage for value strategy influenced decision making in the UK, for example as regards factors set out in paragraph 5.8 of the Babcock, Counterfactual Submission. Internal documents which evidence the decision to exit the market and the reasons for it.

⁵⁵¹ Babcock internal document.

⁵⁵² Babcock internal document.

⁵⁵³ Babcock internal document.

⁵⁵⁴ Babcock internal document.

⁵⁵⁵ Babcock internal document.

⁵⁵⁶ Babcock internal document.

⁵⁵⁷ CHC internal document.

⁵⁵⁸ 'We manage these markets for value. This means improving the operating efficiency to deliver for customers and sustain margins. We continue to pursue attractive opportunities where they exist.' Babcock International Group PLC Annual Report and Accounts 2019, page 10 'Our strategy', application-pdf. 'This rationalisation programme has enabled us to significantly improve our fleet utilisation across all bases. In March 2020 we won a five year contract in the North Sea with three operators starting in July, albeit at pricing reflective of the tough environment and current lease rates.' Babcock International Group PLC Annual Report and Accounts 2020, page 77 Section on Aviation relating to 'Adjacent markets: Oil and Gas', application-pdf. 'We manage these markets for value. This means improving the operating efficiency to deliver for customers and sustain margins. We continue to pursue attractive opportunities where they exist.' [Babcock International Group PLC Annual Report and Accounts 2019, page 10 'Our strategy'](#). 'This rationalisation programme has enabled us to significantly improve our fleet utilisation across all bases. In March 2020 we won a five year contract in the North Sea with three operators starting in July, albeit at pricing reflective of the tough environment and current lease rates.' [Babcock International Group PLC Annual Report and Accounts 2020, page 77 Section on Aviation relating to 'Adjacent markets: Oil and Gas'](#).

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

- 6.145 The Parties have submitted that manage for value had two effects on Offshore UK's bidding: that it bid [REDACTED] for the TotalEnergies and IAC contracts than it otherwise would have in order to utilise expensive spare capacity; and that it would not bid for contracts which would require new capacity. Although the [REDACTED] contract required it to take on additional aircraft, Babcock put in place [REDACTED].⁵⁵⁹
- 6.146 We have not explored in detail the financials of the TotalEnergies and IAC contracts; however, evidence from [REDACTED]⁵⁶⁰ and public statements⁵⁶¹ from other suppliers indicate that Offshore UK's bid price on [REDACTED] was unusually low.⁵⁶² In addition, we understand that Offshore UK's lower price reflected a different approach to operational resilience, building in less resilience for unexpected disruption to service.⁵⁶³
- 6.147 The Parties argued that Offshore UK's decision to take on the TotalEnergies and IAC contracts were spurred by specific circumstances: that it had spare capacity available ([REDACTED]) and [REDACTED] provided [REDACTED].
- 6.148 Offshore UK's willingness to bid and take on these contracts shows it is still a competitive constraint. Further, even if this decision reflected particular circumstances, these circumstances could arise again:
- (a) As noted in Appendix C, CHC's and the Fisher Business' (including Offshore UK's) capacity appears to be consistent with the other suppliers. While Offshore UK may be more willing to bid aggressively when it has more significant spare capacity available, such a situation could arise again given contracts generally have termination for convenience clauses which allow customers to cancel contracts at short notice. This could leave Offshore UK with available aircraft unexpectedly.
 - (b) While not all contracts contain provision for customers to pay penalties for terminating contracts early, some do. Other suppliers submitted that [REDACTED] contained such penalties, [REDACTED].⁵⁶⁴ We also note that [REDACTED] (see Appendix C). Therefore, other customers may be willing to provide similar

⁵⁵⁹ FMN, paragraph 11.9.

⁵⁶⁰ Note of call with [REDACTED].

⁵⁶¹ [Energy Voice, Babcock begins Total helicopter contract after rivals criticised 'unsustainable pricing', 14 October 2020.](#)

⁵⁶² We do not have similar evidence as to the approach to pricing of the [REDACTED] contract.

⁵⁶³ Note of call with [REDACTED].

⁵⁶⁴ [REDACTED]. Note of call with [REDACTED] and response to the CMA's questionnaire from: [REDACTED]. NHV stated NHV has penalties for customer termination for convenience in [REDACTED]. NHV, NHV call note. See also Appendix C

assurances to those given to Offshore UK in order to take on additional aircraft.

6.149 The Parties also highlighted [REDACTED] tenders in which Offshore UK had not participated due to the manage for value strategy: [REDACTED].⁵⁶⁵ We note that [REDACTED] of these tenders were carefully considered internally before deciding not to bid, with Offshore UK working up detailed bid proposals for all of these opportunities.⁵⁶⁶ While Babcock submitted that this reflected the disjoint in information between the Fisher Business and Babcock as to the manage for value strategy,⁵⁶⁷ the following information (see paragraphs 6.150 and 6.151) shows that this does not appear to be consistent with a blanket decision to refrain from competing where additional investment would be required. Babcock confirmed that decisions to bid were taken on a case by case basis, although reducing unutilised assets was its primary concern.⁵⁶⁸

6.150 It is clear that the need for additional aircraft was not the sole reason for declining to bid in the [REDACTED] tender: earlier discussions noted that '[REDACTED]',⁵⁶⁹ although the final no-bid decision referred to [REDACTED]. Fisher Business indicated that the [REDACTED].⁵⁷⁰ The need for additional aircraft does not appear to be a reason not to bid in the [REDACTED] tenders – in fact, [REDACTED].⁵⁷¹ Internal documents refer to the broader financial considerations of the deals rather than purely the need to invest in additional capacity (although this was part of the consideration in some instances).⁵⁷²

6.151 Babcock indicated that, [REDACTED]. However, as these decisions [REDACTED], there is no contemporaneous evidence that there would have been a blanket refusal to take on such bids. In addition, we note that the Fisher Business indicated that the reasons given for not bidding on these tenders were based on plausible tender-specific factors, and Babcock confirmed that decisions whether to bid were made on a case by case basis. [REDACTED].⁵⁷³ This is not consistent with the Fisher Business wishing to withdraw from the market and no longer provide services to these customers.

⁵⁶⁵ The Parties highlighted [REDACTED] other tenders in which Offshore UK did not participate which they described as 'entirely consistent with the Parties' explanation of the 'manage for value' strategy' ([Parties' response to the Provisional Findings](#), 4 April 2022, paragraph 4.28). However, the Parties did not state that Offshore UK's lack of participation was the result of the manage for value strategy. These were the tenders for [REDACTED], which are discussed at paragraph 6.79.

⁵⁶⁶ [REDACTED]: Fisher Business internal documents.

⁵⁶⁷ Parties' response to the Annotated Issues Statement and CMA Working Papers.

⁵⁶⁸ Babcock main party hearing transcript.

⁵⁶⁹ Annex 305 to the FMN.

⁵⁷⁰ Fisher Business main party hearing transcript.

⁵⁷¹ Annex 303 to the FMN.

⁵⁷² Babcock internal documents. Fisher Business internal document in response to s109(2).

⁵⁷³ Fisher Business internal documents.

6.152 Further, Offshore UK had continued to bid on opportunities after having won Total and IAC: as described at paragraph 6.77 it bid on [REDACTED] tenders which it was aware of⁵⁷⁴ after finding out it had been successful in Total and IAC. In addition, the Parties indicated that Offshore UK has identified [REDACTED] upcoming opportunities, [REDACTED] which [REDACTED].⁵⁷⁵ We note that these were [REDACTED]. Nevertheless, this shows Offshore UK continued to actively participate in the market.

6.153 With regard to non-aircraft investment, Fisher Business stated that [REDACTED] investment was made during the manage for value strategy. Insofar as expenditure was incurred, this was generally [REDACTED]. Examples of investment which were undertaken include: [REDACTED].⁵⁷⁶

Evidence on customer and competitor perception of Offshore UK

6.154 Finally, we consider whether customers or competitors had perceived any change in the competitive constraint imposed by Offshore UK. If competitors in particular were not aware that Offshore UK was no longer bidding as extensively or aggressively, they would be expected to continue to act as though Offshore UK were still the same force of constraint it had been before the manage for value strategy was implemented.

6.155 As set out in paragraph 6.118, the majority of customers did not identify an overall lessening of Offshore UK's performance or a change in its strategy. While a small number did indicate they considered Offshore UK to have become a weaker competitor, a similar number made similar statements about other competitors such as NHV and Bristow. In addition, neither Bristow nor NHV indicated that their scores for the strength of competitors assigned to different parties would have changed substantially since 2017.

6.156 Further, and contrary to the Parties' arguments, CHC's internal documents do not indicate that it considered Offshore UK had 'been a diminished competitive presence for a number of years'. As set out in paragraphs 6.97 to 6.102, CHC had observed fluctuations in the strength of threat from Offshore UK; however CHC's internal documents do not indicate it had started to consider Offshore UK to no longer be a relevant competitor.

⁵⁷⁴ We discuss at paragraph 6.79 tenders which it is not clear whether Offshore UK was aware of.

⁵⁷⁵ FMN, paragraph 16.23. The [REDACTED] opportunities are contracts in which [REDACTED]. [REDACTED]. Response to the CMA's questionnaire from: [REDACTED]. Neither Party has indicated [REDACTED] has yet retendered its contract, and Babcock noted [REDACTED]. FMN, paragraph 16.23.3. [REDACTED]. Response to the CMA's questionnaire from: [REDACTED].

⁵⁷⁶ Fisher Business response to RF15.

View on impact of Babcock's manage for value strategy

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

Financial position of UK O&G Offshore Transportation Services providers

- 6.159 As discussed in Chapter 2, O&G Offshore Transportation Service providers are reliant on the performance of the broader O&G industry, which has seen oil prices consistently below 2014 levels. As noted in Chapter 7 paragraph 7.100, third party suppliers have told the CMA that profit margins are low in this sector, and this is also reflected in the Parties' internal documents. We are aware that two of the four current participants in the market have recently been through Chapter 11 bankruptcy proceedings, and that poor financial performance and price squeezing is being experienced across the market.
- 6.160 We acknowledge that UK O&G Offshore Transportation Services suppliers are subject to significant financial pressures. We consider that it is important for suppliers to be sufficiently financially sound to continue to operate and provide significant constraints on each other in order for the competitive process to be effective. However, the financial pressure on UK O&G Offshore Transportation Services suppliers has existed for a number of years and is already reflected in the evidence regarding the existing and potential constraints on CHC and Offshore UK set out above. We have not seen evidence that the financial pressures caused by the performance of the broader O&G industry are sufficiently likely or significant to undermine CHC, Offshore UK or other suppliers' ability to continue operating in the market in

the medium term, or to pose a threat to their competitive position, and as such do not materially affect our competitive assessment set out below.

6.161 As regards the specific position of the Parties

- (a) We have set out above in Chapter 5 our view that the Fisher Business would have continued to operate in the market at least in the medium term, and we have set out above our views on the impact of Babcock's manage for value strategy on its competitive position
- (b) The Parties have also argued that [REDACTED].⁵⁷⁷ However, we have not seen evidence that [REDACTED] in broadly the same way it has done before the Merger.
 - (i) We note that CHC has been [REDACTED] for a number of years during which it has been an effective competitor in the market. The evidence we have gathered, as set out in this chapter, shows that CHC has been a strong, active competitor [REDACTED] over the last few years as set out in Chapter 3.
 - (ii) We have set out in Chapter 5 our view that the evidence does not support CHC's submission that [REDACTED].⁵⁷⁸
 - (iii) As noted in Chapter 7, we have not found that the Merger would give rise to rivalry enhancing efficiencies.

Our assessment of the loss of competition arising from the Merger

Our assessment of competition between the Parties

6.162 The evidence set out above indicates that CHC and Offshore UK impose an important competitive constraint on one another that would be lost as a result of the Merger:

- (a) Our tender analysis set out at paragraphs 6.61 to 6.82 shows that Offshore UK is an important constraint on CHC and vice versa in tenders from 2017 onwards. Offshore UK often competed against CHC in tenders, including instances where CHC and Offshore UK were two of only three bidders, and won a number of tenders from it (as well as vice versa). It

⁵⁷⁷ Parties' response to the Provisional Findings, 4 April 2022, paragraph 4.6.

⁵⁷⁸ [REDACTED].

continued to participate in tenders and remained an active presence in the market even when it was undertaking its manage for value strategy, imposing a competitive constraint on the other suppliers.

- (b) While we place limited weight on information from CHC's approach to bidding (discussed in paragraphs 6.85 to 6.89), this indicates CHC reacted when customers told CHC there [REDACTED]. The analysis of CHC's approach to tenders demonstrates that CHC often [REDACTED] by other UK O&G Offshore Transportation Services suppliers, including Offshore UK, and CHC [REDACTED], to try to win contracts from these suppliers. CHC has [REDACTED].
- (c) Our analysis of internal documents set out at paragraphs 6.97 to 6.109 shows CHC monitored and responded to Offshore UK as a relevant competitor up to the time of the Merger. Similarly, internal documents from the Fisher Business also indicate its competitive monitoring, [REDACTED], mainly focuses on the three other UK incumbent suppliers, including CHC.
- (d) Contrary to Babcock and CHC's statements that Offshore UK was a weakened competitor, evidence from third parties (discussed in paragraphs 6.114 to 6.129) shows that the Parties are perceived by customers as close competitors to each other, with customers and incumbent suppliers giving them similarly high scores on closeness and overall strength. Almost all customers who responded submitted they would invite them to bid in their tenders, and CHC and Offshore UK would have a high likelihood of being successful.
- (e) Post-Merger, the Merged Entity would be the largest supplier with a share of supply by flight hours of [40–50%] (increment of [20–30%]) based on data for January to November 2021.⁵⁷⁹ On a revenue basis, the Parties had a combined share of supply of [40–50%] in 2021 (increment of [20–30%]). The Parties' shares of supply are both significant, indicating that the Parties are likely to pose an important competitive constraint on one another (see paragraphs 6.49 to 6.54).

6.163 This constraint has not been undermined by Babcock's manage for value strategy: while the strategy has led to a more careful and potentially selective approach to capacity and investment required for new contracts, Babcock's internal documents do not support that this has led it to rule out any further such investment in future and it continued to evaluate whether to bid on a case by case basis. Further, customers and competitors do not appear to have perceived any change in the strength of Offshore UK as a supplier. This

⁵⁷⁹ We note that the Merger was completed 31 August 2021.

indicates that rivals are likely to still take it into account when submitting bids and customers are likely to continue viewing it as a credible option, and would be likely to continue to do so in the short- to medium-term, as set out in paragraphs 6.141 to 6.158 above.

Our assessment of other constraints

Bristow and NHV

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

- (a) The tender analysis shows that Bristow and NHV are important constraints on both CHC and Offshore UK, often winning tenders the Parties bid in.
- (b) As noted above, CHC reacted when customers told CHC there [REDACTED]. The analysis of CHC's approach to tenders demonstrates that CHC often [REDACTED] by other UK O&G Offshore Transportation Services suppliers. CHC's descriptions of its rationale often indicate that [REDACTED], and CHC has [REDACTED].
- (c) CHC's internal documents show that CHC takes account of the bidding by NHV and Bristow in similar way to its consideration of Offshore UK. Similarly as noted above, internal documents from the Fisher Business also indicate its competitive monitoring, [REDACTED], mainly focuses on the three other UK incumbent suppliers.
- (d) Evidence from third parties shows that Bristow and NHV are also close competitors to both Parties and pose a competitive constraint. NHV and Bristow also scored highly on closeness to the Parties and strength of offering, despite limitations in NHV's fleet.
- (e) Bristow's and NHV's shares of supply are significant and they each pose an important competitive constraint on the Parties. Bristow's share of supply by flight hours was [30-40%], and NHV's share of supply was [10-20%]. Although NHV has grown in terms of flight hours (and therefore revenue), it remains smaller in revenue terms than each of the other three incumbents at [10-20%].

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

Current constraint from potential entrants

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

Overall assessment of other constraints

- 6.167 We have set out above that there are only four effective suppliers in the market and that the alternatives outside these competitors do not impose an effective competitive constraint on the Parties, either individually or collectively. The loss of Offshore UK as a competitor would significantly reduce the already very limited pool of alternatives available to customers. While Bristow and NHV are effective competitors,⁵⁸⁰ the aggregate constraint from these two suppliers would not be sufficient to offset the substantial loss of competition from the Merger.
- 6.168 As part of our assessment, we have taken into account the existing significant level of buyer power held by at least some customers in this market. This buyer power is at least partly derived from the availability of alternative

⁵⁸⁰ Albeit NHV may be stronger where only supermedium aircraft are required, and weaker where either a range of heavy and other aircraft types or a heavy aircraft specifically is required.

suppliers to whom they could switch which buyers can use in bargaining. These alternatives will be reduced by the Merger. The Parties argued that the fact there are three suppliers on average bidding in tenders indicates that customers consider three bidders as sufficient to achieve a competitive outcome, since they would work harder at getting a fourth participant if they were not getting the pricing they want.⁵⁸¹ However, this ignores that at present suppliers bid based on the assumption that all four incumbents will bid, as described at paragraph 6.9. The lack of transparency in the tender process as to how many competitors are actually bidding, [X] is a factor that drives the competitive outcomes achieved by the tender. It is therefore reasonable to expect that if suppliers know they will face at most two other effective competitors rather than three, they will face less pressure to keep prices low. On the other side, customers will be left with at most three alternatives (and in some instances only two or less), which represents the loss of a significant part of customers' available options, and which will make it less credible for them to threaten not to deal with any given supplier. This in turn is likely to lead to a significant loss of competitive constraints on the remaining suppliers.

Conclusion

6.169 We have set out above that there are only four effective suppliers in the market and that the alternatives outside these competitors do not impose an effective competitive constraint CHC and the Offshore UK, either individually or collectively. We have further set out that the evidence shows that Offshore UK remains an important competitive constraint on CHC. The loss of this competitor would significantly reduce the already very limited pool of alternatives available to customers. While Bristow and NHV are effective competitors,⁵⁸² the aggregate constraint from these two suppliers would not be sufficient to offset the substantial loss of competition from the Merger, which would allow the Merged Entity to worsen (or fail to improve) prices and/or other non-price terms to customers.

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

⁵⁸¹ Parties' response to the Annotated Issues Statement and CMA Working Papers.

⁵⁸² Albeit NHV may be stronger where only supermedium aircraft are required, and weaker where either a range of heavy and other aircraft types or a heavy aircraft specifically is required.

or self-supply, in reaction to the effects of the Merger) that could prevent an SLC arising from the Merger.

7. Countervailing factors

Introduction

- 7.1 As part of the assessment of the effect of a merger on competition we examine whether, in the event of worsening prices and/or other non-price terms to customers, entry by third parties would be timely, likely and sufficient to mitigate or prevent an SLC from arising. We also consider the potential for expansion by parties already operating within the market. Within this context, we examine the impact of buyer power, noting that new entry is the most likely way for buyer power to prevent an SLC that would otherwise arise from the elimination of competition between the merger firms. This is because a customer's buyer power depends on the availability of good alternatives they can switch to, which in the context of an SLC will have been reduced.⁵⁸³ Accordingly, in this chapter we consider whether, if third party rivals do not enter or expand solely on the (price or non-price) market signals post-Merger, customers themselves may enter (self-supply) or encourage and support a third party to enter or expand (sponsored entry).
- 7.2 As set out in the MAGs, the CMA considers that entry and/or expansion preventing an SLC from arising would be rare,⁵⁸⁴ and will seek to ensure that the evidence is robust when confronted with claims of entry or expansion being timely, likely and sufficient to prevent an SLC from arising. It is likely to place greater weight on detailed consideration of entry or expansion and previous experience of entry and expansion (including how frequent and recent it has been).⁵⁸⁵
- 7.3 This chapter sets out the Parties' submissions on barriers to entry and expansion, potential entrants and buyer power. Next, it sets out third party views. Last, it sets out our assessment on whether (the effects of) entry and/or expansion (including as a result of sponsored entry or self-supply) will be timely, likely and sufficient to prevent an SLC.

Parties' submissions

- 7.4 The Parties' submissions fall into three key categories:
- (a) submissions on barriers to entry;

⁵⁸³ MAGs, paragraph 4.20.

⁵⁸⁴ MAGs, paragraph 8.29.

⁵⁸⁵ MAGs, paragraph 8.30.

(b) submissions on the likelihood of entry; and

(c) submissions on buyer power.

7.5 We set each of these out in turn.

Parties' submissions on barriers to entry

7.6 The Parties submitted that the O&G Offshore Transportation Services market is 'a relatively small market with no significant barriers to entry or expansion'. They told us that additional players can enter the market or existing players can easily expand and compete if prices increase or if there is a reduction in the quality of services offered.⁵⁸⁶

7.7 The Parties submitted that there is no incumbency advantage in this market. The Parties told us that incumbents and new entrants alike are required to meet the same safety standards, operate the same helicopters, use pilots and engineers with the same qualifications, and use the same third parties to provide passenger handling and on-the-ground services. Therefore, the Parties submitted, the key factor used to differentiate operators is price.⁵⁸⁷

7.8 The Parties submitted that this focus on price gives new entrants a potential competitive edge over incumbent operators. They noted that NHV's competitive advantage comes from its single fleet operations, unlike legacy operators, which use 'costly multi-fleet strategies which require them to have duplicate costs when it comes to maintenance and engineering'. The Parties submitted that NHV had therefore been able to set the competitive price point and that far from an incumbency advantage, the dynamics of the market can favour a lean and nimble entrant.⁵⁸⁸

Key requirements to operate in the market

7.9 The Parties' submissions on barriers to entry can be categorised into the key requirements to operate in the provision of O&G Offshore Transportation Services in the UK, being:

(a) Helicopters;

(b) Pilots and crews;

⁵⁸⁶ FMN, paragraph 15.4.

⁵⁸⁷ Parties' response to the Annotated Issues Statement and CMA Working Papers.

⁵⁸⁸ Parties' response to the Annotated Issues Statement and CMA Working Papers.

(c) Bases; and

(d) Regulatory approval.

Helicopters

- 7.10 The Parties submitted that helicopters can be readily leased. They noted that while it remains possible for incumbents and potential entrants to purchase helicopters, the ability to lease helicopters means that accessing aircraft required for a particular contract can be done in short timeframes and without the sunk costs of acquiring aircraft. The Parties submitted that aircraft can be leased on a contract-by-contract basis and that it is not necessary to secure leases until after the contract has been awarded. Therefore, the Parties told us, the capital expenditure and risk associated with aircraft is greatly reduced.⁵⁸⁹
- 7.11 The Parties told us that the degree to which operators have been able to negotiate coterminous lease arrangements has changed over time.⁵⁹⁰ The purpose of coterminous lease arrangements is to align the lease with customer and contractual obligations (including contract extensions), which may allow for the return of aircraft early.
- 7.12 The Parties told us that helicopter operators will lease additional aircraft where additional capacity is required to operate a particular contract. They told us that, accordingly, the position with regard to accessing aircraft is not necessarily any different for a potential entrant than for helicopter operators already in the UK. The Parties submitted that where a potential entrant is active in a different geographical market and has an idle aircraft (owned or leased), that aircraft can be readily redeployed between different regions.⁵⁹¹
- 7.13 The Parties submitted that the main costs associated with moving helicopters are in respect of transportation, the cost of which is dependent on the method of transportation and market rates, which they told us can vary significantly depending on the demand for container ships or large freight planes at the time of procurement.⁵⁹²
- 7.14 They submitted that the expense related to leasing new aircraft would not operate as a barrier to entry. The Parties told us that any potential entrant who is or has been operating in other jurisdictions and/or adjacent markets will be accustomed to PCGs and it is difficult to understand why those

⁵⁸⁹ FMN, paragraphs 21.3 and 21.4.

⁵⁹⁰ FMN, paragraph 21.6.

⁵⁹¹ FMN, paragraph 21.8.

⁵⁹² FMN, paragraph 21.9.

potential entrants could not therefore accept PCGs as part of the lease where necessary to lease one or more aircraft to enter the UK O&G Offshore Transportation market.⁵⁹³ The Parties submitted that the CMA should have investigated the nature, scope and size of the PCGs in other segments of the market before determining whether PCGs would act as a barrier in this market. The Parties further submitted that PCGs are ‘normal business in doing contracts with oil companies’ and that the CMA failed to consider the various forms in which security for aircraft leases can be obtained and ignored the explanations given by the Parties that PCGs do not require strong financial backing.⁵⁹⁴

- 7.15 The Parties submitted that there is an oversupply of assets in the market place, and that as a result the leasing market is currently highly competitive, with lessors forced to offer low rates and innovative and flexible leasing models, including leases coterminous with customer contracts. They submitted that these leasing models result in a significant reduction in risk for any new operator.⁵⁹⁵ The Parties also submitted that the development of new technology may give new entrants the opportunity to secure assets at favourable rates and facilitate entry into the market (ie to bring new aircraft to market) – the Parties noted the entry of NHV with the H175 and submitted that it ‘cannot be excluded that this mode of entry may occur again’.⁵⁹⁶
- 7.16 The Parties told us that the vast majority of routes that are flown from UK bases can be serviced by super medium aircraft, which can be deployed effectively across all of the North Sea zones. They noted the only exceptions are certain rigs in the UK that are accessed from Blackpool, which are too small for super medium and heavy helicopters to land. However, the Parties told us that all UK helicopter operators in the O&G Offshore Transportation industry either own or regularly lease medium, super medium and heavy aircraft and as such availability of specific aircraft is not a barrier to entry.⁵⁹⁷

Pilots and crews

- 7.17 The Parties told us that helicopter operators need pilots and crew that are suitably qualified and with requisite experience to fly in the conditions expected when flying from each base.⁵⁹⁸ CHC told us that it has been able to hire from the available pool of trained International Association of Oil & Gas

⁵⁹³ Parties’ response to the Annotated Issues Statement and CMA Working Papers.

⁵⁹⁴ [Parties’ response to the Provisional Findings](#), 4 April 2022, paragraph 5.9 to 5.12.

⁵⁹⁵ Parties’ response to the Annotated Issues Statement and CMA Working Papers.

⁵⁹⁶ Parties’ response to the Annotated Issues Statement and CMA Working Papers.

⁵⁹⁷ FMN, paragraph 21.7. We note that NHV provides a slightly different offering from the other competitors, with no heavy aircraft forming part of its fleet.

⁵⁹⁸ FMN, paragraph 21.10.

Producers (**IOGP**) compliant pilots or engineers when required. The Parties told us that a new entrant could do the same and readily engage sufficiently experienced pilots and engineers.⁵⁹⁹

- 7.18 The Parties submitted that often pilots continue to fly the same routes for a different helicopter operator when contracts move between operators. They told us that pilots are required to engage in ongoing training which can be provided by third party providers if the helicopter operator does not have in-house experience to do so.⁶⁰⁰
- 7.19 Further, the Parties noted that where one operator wins a contract, another loses it. On this basis, the pilots and engineers required to service the contract by the incumbent operator could TUPE across to the new operator, or return to the employment market and be hired that way. The Parties noted that the market is supported by extensive third party support for services such as ground operations, passenger handling, survival equipment and fuelling, and that 'it is just as easy for an incumbent operator to avail themselves of this support as it is for a legacy operator.' The Parties submitted that all potential entrants have experience with these issues in other regions and/or adjacent markets and that the steps required in relation to staff would not operate as barriers to any experienced and motivated aviation services provider.⁶⁰¹

Facilities from which to operate

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

⁵⁹⁹ FMN, paragraph 21.11.

⁶⁰⁰ FMN, paragraph 21.11.

⁶⁰¹ Parties' response to the Annotated Issues Statement and CMA Working Papers.

- (b) An AW139, currently used by CHC in Humberside, that was previously used by CHC in the Northern Sea (Aberdeen and Sumburgh) from October 2013 to January 2014. Prior to this, the Parties submitted that it was used in Italy and Malta from March to June 2014 and the Southern North Sea (Humberside and Norwich) from August 2017.
- (c) An H175, currently used in Aberdeen, which was built in 2018 and since then has been frequently moving between Norwich and Aberdeen.⁶⁰²

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

- (a) Sometimes facilities are owned by the airport or airlines operating at the relevant base, in which case a new helicopter operator would typically lease or access the facilities they require.
- (b) Alternatively, the relevant facilities may be owned by the incumbent helicopter operator or a third party, in which case a potential entrant would need to either lease the relevant facilities from the incumbent or third party or build their own facilities.⁶⁰³

7.22 The Parties submitted that the sunk costs of acquiring facilities do not represent a barrier to entry or expansion, particularly when the acquisition costs can be spread over the lifetime of a contract or multiple contracts and, in the case of large contracts, when compared to the potential value of such contracts. They told us that the costs associated with the provision of certain facilities (eg check-in and security services) are typically passed through from the suppliers directly to the customer.⁶⁰⁴

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

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

⁶⁰² FMN, paragraph 13.15.

⁶⁰³ FMN, paragraph 21.12.

⁶⁰⁴ FMN, paragraph 21.12.

within the airport's existing footprint or constructed using modular structures.⁶⁰⁵

- 7.25 The Parties further submitted that the CMA had relied on a statement made by Babcock that passenger terminals, hangars and leased fleet in Aberdeen are '[redacted]' and North Sea crew change management, operation and technical personnel are '[redacted]' in order to conclude that set-up costs in the UK are 'significant'. However, this did not mean such assets and personnel are difficult or costly to acquire, and the Parties reiterated that they had provided evidence to demonstrate there is available hangar space in Aberdeen, Sumburgh and Norwich, which the CMA had ignored.⁶⁰⁶

Regulatory approval

- 7.26 The Parties submitted that while there are different regulatory regimes in different regions, these differences do not create any material barriers to entry. They submitted that O&G Offshore Transportation companies are capable of meeting the relevant regulatory requirements, especially since many operators already provide services on multiple continents. They told us that while prior to Brexit operators could rely on the single market certification to operate in the UK, a UK AOC is now required to transport passengers within the UK. However, they submitted that a UK AOC can be obtained by a new entrant in a relatively short period of time (anywhere between six to 12 months) and that, in their experience, customers are prepared to delay the start of a new contract to enable a successful bidder the time to set up its operations in the relevant location.⁶⁰⁷
- 7.27 The Parties submitted that the CAA's own estimates of the processes are within the range of six to nine months (with potentially an even shorter timeframe when the post Brexit workload decreases).^{608,609} The Parties referred to the MAGs,⁶¹⁰ noting that typically entry or expansion being effective within two years of an SLC arising would be considered timely by the CMA.⁶¹¹
- 7.28 The Parties noted that all potential entrants will be companies who provide aviation services in other regions and/or adjacent markets and will therefore have high levels of technical skill and experience allowing them to pull

⁶⁰⁵ Parties' response to the Annotated Issues Statement and CMA Working Papers.

⁶⁰⁶ [Parties' response to the Provisional Findings](#), 4 April 2022, paragraph 5.6 to 5.8.

⁶⁰⁷ FMN, paragraph 13.19.

⁶⁰⁸ Parties' response to the Annotated Issues Statement and CMA Working Papers.

⁶⁰⁹ We discuss the evidence we have received from the CAA on this in paragraph 7.68.

⁶¹⁰ [MAGs](#), paragraph 8.33.

⁶¹¹ Parties' response to the Annotated Issues Statement and CMA Working Papers.

together the relevant information/requirements for the CAA to award an AOC. They told us that all potential entrants (such as Bel Air, Heli Holland, Uni-Fly, Westar and Wiking) are already in possession of a European AOC, which would allow them to start UK operations while they go through the process of seeking and awaiting the award of domestic certification. The Parties submitted their understanding that Uni-Fly is in the process of applying for its own UK AOC which it could use to enter the provision of O&G Offshore Transportation Services in the UK.⁶¹²

7.29 The Parties submitted that O&G companies can adjust the start date of a contract, for example by asking the incumbent to continue to provide its services for a few more months to give a new operator, who has been successful in the tender process, enough lead time to set up (including obtaining regulatory approvals) in order to service the contract. The Parties submitted that this explains why helicopter operators can, and do, bid for and win opportunities where they do not have a presence.⁶¹³ Further, the Parties told us that while customers typically organise tenders by country, there are also examples of customers consolidating tenders over multiple geographic regions.⁶¹⁴

7.30 The Parties noted that since Brexit there have been ownership requirements that apply in order to obtain a UK AOC but that these are very similar to the equivalent transactions under the EU rules so they do not consider them to present any substantial issues for a new entrant.⁶¹⁵

The preference of O&G companies

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

- (a) Price is the key parameter against which customers assess bids and award contracts, therefore the preferences of oil and gas companies do not present a material obstacle to entry.⁶¹⁶
- (b) Whilst a potential entrant may not have an existing contractual relationship with a customer in the UK, the Parties understand that customers are likely to have had interactions with those helicopter operators in other geographic markets.⁶¹⁷

⁶¹² Parties' response to the Annotated Issues Statement and CMA Working Papers.

⁶¹³ FMN, paragraph 15.10.

⁶¹⁴ FMN, paragraph 13.20.

⁶¹⁵ FMN, paragraph 21.29.

⁶¹⁶ FMN, paragraph 21.30.

⁶¹⁷ FMN, paragraph 21.31.

(c) To the extent that customer preference could be argued to be a barrier, it is one in the customers' control. They told us that what is of greater importance is the ability of customers to take action to reduce or remove many of the potential barriers. In particular, the Parties noted that customers could ask for bids sufficiently far in advance for a new entrant to enter the market. They submitted that a key feature of the tender process is that helicopter operators are able to bid without being active or present in a particular location.⁶¹⁸

7.32 With regard to barriers to entry more broadly, the Parties submitted that the cost of entry has 'come down substantially due to the large pool of helicopters, including distressed assets, which are available for purchase or leasing on competitive terms due to the contraction in demand for O&G Offshore Transportation Services'. The Parties submitted that 'cost of entry, the regulatory issues and the time it takes to come onto the market are not matters which create insurmountable barriers to entry' and that customers can 'if necessary, underwrite some of the required investment'.⁶¹⁹

Parties' submissions on potential entrants

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

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

7.34 We set out their views on each in turn.

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

7.35 The Parties told us that it is possible for players in neighbouring product markets and competitors in other geographic markets to enter and compete in the O&G Offshore Transportation market. They submitted that any operator that provides SAR services would also be able to provide O&G Offshore

⁶¹⁸ FMN, paragraph 21.32.

⁶¹⁹ [Parties' response to Issues Statement](#), 4 January 2022, paragraph 5.7.

Transportation services and could easily lease the required assets to do so. They referred to British International Helicopters (**BIH**), a company on the list for SAR contract tenders in the UK but which is currently operating a crew change contract in the Falkland Islands. The Parties told us that BIH could compete for UK crew change contracts should it wish to do so. Further, the Parties submitted that Babcock is retaining its SAR operations so, in theory, 'particularly if market conditions were to change', it could re-enter the O&G Offshore Transportation market in due course.⁶²⁰

- 7.36 The Parties suggested that Uni-Fly, a Danish helicopter operator that primarily works in the wind farm space and recently obtained the relevant regulatory approvals to operate in the EU within six months, may be willing to enter.⁶²¹
- 7.37 The Parties also told us that other global helicopter operators such as Weststar, Bel Air and Heliconia could tender for oil and gas crew contracts in the UK market should they wish to. CHC told us that it considered [REDACTED] to be a competitor on the [REDACTED] tender⁶²² that was awarded in [REDACTED].⁶²³
- 7.38 In response to the provisional findings, the Parties further submitted that PHI was considering entry into the UK market. They told us PHI had hired a number of individuals in recent months, including a commercial manager for the UK, and was actioning its strategy to set up a headquarters in London, which will run its European, Middle-East and African operations. They submitted that PHI had a history of success with entry into new markets, citing the example of its entry into Australia. [REDACTED].⁶²⁴
- 7.39 In response to the provisional findings, the Parties also submitted that the CMA had incorrectly represented the evidence despite clear indications that at least some potential entrants are contemplating market entry. They cited that we had stated that 'third parties have not expressed an interest in entering the market under any conditions' whilst acknowledging evidence that a third party would in fact consider entering the market 'if customers focused more on high service, reliability and safety than price.' They also submitted that we had disregarded evidence that suggests there are suppliers already making attempts to enter.⁶²⁵
- 7.40 As set out further at paragraph 7.26 above, the Parties consider that despite changes in the rules for operation in the UK following Brexit, it remains the

⁶²⁰ FMN, paragraph 21.37.

⁶²¹ FMN, paragraph 21.38.

⁶²² [REDACTED].

⁶²³ FMN, paragraph 21.38.

⁶²⁴ Parties' response to the Provisional Findings, 4 April 2022, paragraph 5.14.2.

⁶²⁵ Parties' response to the Provisional Findings, 4 April 2022, paragraph 5.14.1.

case that UK regulatory requirements are likely to be easier for companies operating in Europe to satisfy as the UK standards are similar to those required by the European Union Aviation Safety Agency (**EASA**). CHC referred to HeliService and Wiking, two German companies with contracts in the UK (for wind farm operations and EMS services respectively).⁶²⁶

Customer sponsored/supported entry

- 7.41 The Parties also told us that the customers of UK helicopter operations are in a position to sponsor entry in the event that they become dissatisfied with the offering of the current market players. They noted that this has occurred in the past.⁶²⁷
- 7.42 The Parties submitted that customers have the ability to facilitate new entry by awarding a contract to sponsor an operator seeking to enter the market, noting their view that Chevron was involved in the underwriting of NHV's initial expansion in 2016 in Aberdeen. The Parties told us that if customers truly believe the market needs another operator, they can support or sponsor entry and in order not to give customers an incentive to do so, 'CHC will have no choice but to continue to price competitively'.⁶²⁸
- 7.43 The Parties told us that if customers are not content with the incumbents and/or the levels of competition in the market then they are able to sponsor entry. They noted that this has happened previously in the UK, referring to BP's sponsorship of the re-entry of Bond in Aberdeen in 2004. The Parties also noted similar sponsorship outside of the UK, referring to Shell's sponsorship of Caverton Offshore Support Group plc into the Nigerian market.⁶²⁹
- 7.44 Further, the Parties submitted that customers could ensure that there is 'sufficient time between the award of a tender and the start date of a contract to allow a new entrant to address any relevant regulatory issues'. The Parties submitted that the risk of sponsored entry 'remains a real feature of this market and the absence of such entry into the market since NHV started its operations in Aberdeen is simply a reflection of the highly competitive nature of the provision of O&G Offshore Transportation Services in the UK'.⁶³⁰
- 7.45 The Parties submitted that sponsorship could cover a broad range of circumstances in which a customer helps to bring a new competitor into the

⁶²⁶ FMN, paragraph 21.39.

⁶²⁷ FMN, paragraph 15.4.

⁶²⁸ [Parties' response to Issues Statement](#), 4 January 2022, paragraph 1.4.10.

⁶²⁹ FMN, paragraphs 21.34 to 21.36.

⁶³⁰ [Parties' response to Issues Statement](#), 4 January 2022, paragraphs 5.7 and 5.8.

market. They told us that this could take the form of a customer offering an entrant financial support and investment, or it could take the form of a customer simply awarding a contract to an operator that is yet to establish itself in the market. The Parties submitted that this broader definition of sponsorship was in line with NHV's entry in the market.⁶³¹

- 7.46 The Parties submitted that it is not necessary for each customer to be willing to support or sponsor entry, although they stated that the evidence gathered by the CMA shows that a majority would be willing to do so. They cited a number of customers confirming they would consider bids from new entrants, and some customers confirming they may invite a wider set of bidders to tenders or consider entrants as close alternatives to the Parties. Two customers also told the CMA that they might be willing to support entry, which, the Parties submitted, supported their view..⁶³²

Customer self-supply

- 7.47 The Parties noted that there is evidence from other parts of the world in which customers have self-supplied O&G Offshore Transportation Services. CHC submitted that it understands that Exxon self-supplies in Australia and Shell self-supplies in Brunei.⁶³³

Expansion by incumbents

- 7.48 The Parties submitted that there are no barriers to expansion by current helicopter operators active in the UK. They told us that any of the current players can win a contract when it is put out for tender. They told us that there is no substantial benefit to being the incumbent when a contract is put out to tender and contracts regularly change hands between the helicopter operators.⁶³⁴
- 7.49 Further, the Parties submitted that customers can and do switch between helicopter operators within the contract term as customers typically have very flexible termination provisions and the costs for the customers of early termination of a contract are limited. The Parties submitted that CHC has [✂]

⁶³¹ Parties' response to the Annotated Issues Statement and CMA Working Papers. The Parties referred to an NHV press release of 19 December 2015 which stated: 'The opening of our Aberdeen base and the first Aberdeen based contract with Chevron North Sea Limited will start on the 1 January with two H175s. These are strategically very important achievements which were only possible thanks to the commitment from all our stakeholders, our employees, our customers, our partners and our majority shareholder, Ardian'.

⁶³² [Parties' response to the Provisional Findings](#), 4 April 2022, paragraph 5.14.3.

⁶³³ FMN, paragraph 15.5.

⁶³⁴ FMN, paragraph 21.40.

replaced [X] on a UK contract for [X] during the term of that contract, with [X] exercising a termination for convenience clause in its existing contract.⁶³⁵

Recent entry

- 7.50 The Parties submitted that this is a market in which successful new entry has occurred in the past, noting that since NHV entered the UK market as a start-up operation in Aberdeen it ‘has grown rapidly by winning a number of important contracts from major customers (eg Dana, Spirit, Premier Oil, Shell) and gaining significant market share’.⁶³⁶ The Parties noted NHV’s investment in its fleet and its bases in both Aberdeen and Blackpool. The Parties submitted that the ease of entry is also reflected in the fact that NHV was able to start operating in the UK and service customer contracts with its own domestic regulatory approval (ie from outside of the UK) before subsequently obtaining full UK regulatory approval. They submitted that the ‘threat of a new operator successfully entering and rapidly expanding in the market is therefore demonstrably real and not theoretical’.⁶³⁷
- 7.51 More broadly, the Parties submitted that entry into the provision of O&G Offshore Transportation Services in the UK in its current state would not be appealing. They submitted that the market is fully saturated, and competition has driven most incumbent operators to a position where they are loss-making. The Parties noted that unless prices were likely to increase, no rational operator would enter this ‘highly competitive’ market, and that customers who are getting the prices they want may have no real interest in sponsoring entry in the present conditions.⁶³⁸
- 7.52 The Parties submitted that an assessment of potential entry should however be based on a forward looking scenario in which prices may rise as a result of the Merger. They submitted that if, post-Merger, CHC were to attempt to raise prices then market conditions would be much more favourable to a potential entrant. The Parties told us that the most likely outcome in such a scenario is that any attempt at raising prices would simply cause a reduction in CHC’s volume of business (jeopardising its synergies) as NHV and Bristow would expand to fulfil those volumes. However, to the extent that NHV and Bristow did not directly constrain CHC, the Parties submitted that higher market prices would increase an entrant’s profit making potential and would create genuine opportunities and therefore incentives to enter the market.⁶³⁹

⁶³⁵ FMN, paragraph 21.41.

⁶³⁶ [Parties’ response to Issues Statement](#), 4 January 2022, paragraph 1.4.9.

⁶³⁷ [Parties’ response to Issues Statement](#), 4 January 2022, paragraph 1.4.9.

⁶³⁸ Parties’ response to the Annotated Issues Statement and CMA Working Papers.

⁶³⁹ Parties’ response to the Annotated Issues Statement and CMA Working Papers.

7.53 The Parties submitted that the fact that entrants consider the market attractive when a profitable entry opportunity exists is borne out by a history of entry into the market, which has only ever occurred as a result of changing market dynamics. The Parties referred to the 2004 entry by Bond Helicopters, and the 2016 entry by NHV.⁶⁴⁰

New entry and the counterfactual

7.54 The Parties submitted that it is not possible to maintain both that there would have been a more competitive purchaser for the Fisher Business and that the market would be unattractive to new entrants if there was a significant reduction in competition. They submitted that if being the fourth market operator is attractive enough to warrant the purchase of the Fisher Business, it would be even more attractive should there be a reduction in competition post-Merger. The Parties submitted that a potential fourth entrant would not choose to enter by purchasing a distressed, loss-making legacy operator burdened with onerous and uncompetitive leases. Rather, they would most likely start with a small and highly efficient operation and scale-up as required to service customers.⁶⁴¹

7.55 The Parties noted that the CMA had stated that a company considering organic new entry will want to see a prospect of long-term profitability before entering the market which, in the CMA's view, is unlikely. The Parties submitted that in the counterfactual a third-party purchaser would also have wanted to see such a prospect before committing to acquire the whole of the Fisher Business.⁶⁴²

New entry and the competitive assessment

7.56 The Parties submitted that CMA's analysis of the incentives of potential competitors to enter the market is also inconsistent with its wider competitive assessment. They submitted that there is an obvious contradiction in saying that, on the one hand, there will be an SLC, whilst simultaneously concluding there is no incentive to enter because prices will continue to decline over time due to severe downward pricing pressure.⁶⁴³

⁶⁴⁰ Parties' response to the Annotated Issues Statement and CMA Working Papers.

⁶⁴¹ Parties' response to the Annotated Issues Statement and CMA Working Papers.

⁶⁴² [Parties' response to the Provisional Findings](#), 4 April 2022, paragraph 5.16.

⁶⁴³ [Parties' response to the Provisional Findings](#), 4 April 2022, paragraph 5.15.

Parties' submissions on buyer power

7.57 In addition to setting out views on barriers to entry and likelihood of entry, the Parties submitted that their customers are powerful O&G companies which enjoy substantial buyer power. They told us that these companies are much larger and commercially stronger than helicopter operators, and that the evidence shows that customers actively switch between helicopter operators, resulting in 'dynamic shifts in contracted capacity in the market'. The Parties submitted that the exercise of buyer power is reflected in some of the onerous contractual terms 'which the Parties are forced to accept'. The Parties submitted that this transfers all of the risk and none of the reward onto the helicopter operators. They submitted that 'customers in practice rely on these terms to threaten helicopter operators to force through price reductions during the term of the agreement'. The Parties told us that customers can further push for price reductions through joint tendering (thereby reducing the number of aircraft required to service the same number of customers) and as a result of the recent decline in oil prices.⁶⁴⁴

7.58 In response to the Issues Statement, the Parties told us that CHC will continue to face 'powerful customers intent on squeezing costs out of the supply chain and which exert significant pressure on their transport providers, many of which, [redacted]'.⁶⁴⁵

Third party views

7.59 We have sought views from a number of third parties, and have engaged with:

- (a) 28 customers of O&G Offshore Transportation Service providers;⁶⁴⁶
- (b) eight potential entrants (including SAR and renewables operators);⁶⁴⁷
- (c) four aircraft lessors;⁶⁴⁸ and
- (d) two competitors.⁶⁴⁹

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

⁶⁴⁴ FMN, paragraphs 23.1 to 23.11. Note that submissions relating to the declining oil price were provided in December 2021 and January 2022, prior to significant increases in the oil price in early 2022.

⁶⁴⁵ [Parties' response to Issues Statement](#), 4 January 2022, paragraph 1.4.5.

⁶⁴⁶ We received responses to detailed questionnaires from 26 of these customers and held follow up calls with two.

⁶⁴⁷ We received responses to detailed questionnaires from five of these potential entrants and held follow up calls with two.

⁶⁴⁸ We received responses to detailed questionnaires from all four of these aircraft lessors.

⁶⁴⁹ We held calls with both of these competitors and received responses to detailed questionnaires.

Background

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

Third party views on key barriers to entry

Helicopters

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

(a) Windfarm operations

- (i) Lessors had mixed views with regard to the ability to convert aircraft currently used for windfarms to support O&G Offshore Transportation Services. One lessor was positive about the similarities, stating that ‘switching between wind and O&G offshore configurations is typically simple and inexpensive’.⁶⁵⁰ Another lessor, however, submitted that ‘it is not really feasible to convert a helicopter operating on windfarms to O&G Offshore Transportation helicopter as windfarm helicopters are generally too small for long-range passenger transportation’.⁶⁵¹ They told us that an exception to this is AW139 aircraft, ‘which can be used for windfarm construction and O&G Offshore Transportation’ services.⁶⁵² This view was reflected by NHV, which told us that aircraft for O&G and wind operations are ‘fairly incompatible’.⁶⁵³

(b) SAR

- (i) In contrast to aircraft used for windfarm operations, lessors were more consistently of the view that SAR aircraft could not easily be converted to service O&G Offshore Transportation Service providers. They told us that SAR helicopters have additional performance and regulatory requirements, and higher equipment specifications.⁶⁵⁴ They told us that it is possible but not economically viable to retrofit SAR

⁶⁵⁰ Response to the CMA’s questionnaire from: [REDACTED].

⁶⁵¹ Response to the CMA’s questionnaire from: [REDACTED].

⁶⁵² Response to the CMA’s questionnaire from: [REDACTED].

⁶⁵³ NHV, NHV call note.

⁶⁵⁴ Response to the CMA’s questionnaire from: [REDACTED] and [REDACTED].

helicopters for O&G use,⁶⁵⁵ and some lessors told us that, as far as they are aware, it has never been done in practice.⁶⁵⁶ One lessor told us that the cost of retrofitting an O&G aircraft for SAR use ‘can be millions of pounds’ and that the cost is less to convert SAR to O&G, but there is still some associated cost.⁶⁵⁷ One lessor told us that ‘the cost of switching configurations for any aircraft is typically borne by the owner/lessor’,⁶⁵⁸ while another noted that they would normally be incurred by the operator of the aircraft (ie the lessee).⁶⁵⁹

- (ii) Bristow told us that for SAR aircraft ‘few modifications are needed to convert it into an O&G offshore transportation aircraft’. However, the costs of making these modifications are significant, with Bristow noting that modifying a heavy SAR aircraft for O&G Offshore Transportation Services purposes ‘would probably cost a seven-figure sum’. Further, Bristow noted that [REDACTED].⁶⁶⁰

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

7.64 As set out in Appendix C, Bristow told us that the leasing market is buoyant and there is spare capacity, allowing operators to lease at a short notice.⁶⁶¹

Facilities/bases

7.65 With regard to access to facilities/bases, third parties that we have spoken to or received submissions from noted that the ease with which a new entrant could obtain facilities would depend on the capacity available and the base in question. For example, NHV currently runs its UK operations out of Aberdeen and it told us that in order to undertake its Aberdeen operations it was required to engage in discussions with Aberdeen airport to extend the airport perimeter in order to generate enough space for it to build its hangar. It told us

⁶⁵⁵ Response to the CMA’s questionnaire from: [REDACTED], [REDACTED] and [REDACTED].

⁶⁵⁶ Response to the CMA’s questionnaire from: [REDACTED] and [REDACTED].

⁶⁵⁷ Response to the CMA’s questionnaire from: [REDACTED].

⁶⁵⁸ Response to the CMA’s questionnaire from: [REDACTED].

⁶⁵⁹ Response to the CMA’s questionnaire from: [REDACTED].

⁶⁶⁰ Bristow, Bristow call note.

⁶⁶¹ Bristow, Bristow call note.

that 'it can often be difficult to obtain a hanger and facilities, requiring a big capital investment compared to the operators who are already established there' although it noted the possibility of this being supported through obtaining a contract with a customer that would 'support the growth' and potentially provide advance payments from the contract in order to support its access to facilities.⁶⁶²

- 7.66 In terms of the potential for a new entrant to secure space in Aberdeen, NHV told us that unless new hangarage becomes available, which historically has not happened, it is 'virtually impossible' for potential entrants to set up in Aberdeen. NHV told us that it was only able to secure space by coming up with a 'creative solution, four to five years following continuous efforts to acquire real estate and approvals'. It noted that the airport fence had to be moved to secure space for NHV.⁶⁶³

Regulatory requirements

- 7.67 With regard to regulatory requirements, NHV told us that Brexit has resulted in regulatory requirements being a key barrier to entry, noting that competitors from other geographic regions will now find it more difficult to secure UK AOCs. NHV told us that Uni-Fly services offshore windfarms on the back of CHC's UK AOC and is unlikely to enter the O&G space. [REDACTED].⁶⁶⁴
- 7.68 This position was reflected in our discussion with the CAA, which noted the increase in timescales of obtaining regulatory approval for those looking to operate an AOC in the UK. The CAA noted that this could limit the scope of potential new entrants.⁶⁶⁵ The CAA told us that six months is the fastest realistic expectation of entry, with nine months being a reasonable average.⁶⁶⁶
- 7.69 The CAA also submitted that a potential entrant could temporarily undertake operations in the UK with a European AOC while their UK application is being processed. The CAA submitted that this would be the case if the potential entrant was identified as being in the period between forming a UK business and achieving an AOC. The CAA noted that while this is most likely for a European provider, it could apply to any third party provider.⁶⁶⁷

⁶⁶² NHV, NHV call note.

⁶⁶³ NHV, NHV call note.

⁶⁶⁴ Note of call with [REDACTED].

⁶⁶⁵ CAA, CAA call note.

⁶⁶⁶ The CAA noted that this is an educated estimate, and that the grant of an Operating Licence works in parallel with the AOC to similar timelines. CAA response to RF12.

⁶⁶⁷ CAA response to RF12.

Third party views on potential entry

Potential entry from neighbouring markets or other geographic markets

7.70 We received mixed views from third parties with regard to the potential to enter into the provision of O&G Offshore Transportation Services in the UK from a neighbouring market (eg wind/SAR) or another geographic market (eg O&G Offshore Transportation Services in another country).

Competitors' views

- 7.71 NHV told us that HeliService, a German operator, had just entered the UK EMS market. It told us that HeliService is not actively operating in any of the UK O&G bases but noted that it has established offshore helicopter operations in Germany. Therefore, NHV was of the view that once HeliService received UK approvals, it would be a potential competitive threat in the UK. Similarly, NHV noted Wiking, a German offshore operator supporting offshore windfarms in Wick and towards Lowestoft for offshore windfarm services, as a potential player in the UK market. NHV told us that these companies operate 139s in Germany, and it believed that if the right opportunity arose, involving a 139 and the right contract, these companies 'would seize it'. NHV told us that it was not aware of whether these companies are currently bidding for any contracts in Aberdeen but confirmed that they bid for a large O&G contract in Norwich about two years ago.
- 7.72 NHV told us that it does not think any other operators would enter the O&G market. It told us that unless the right contract presented itself, involving economies of scale, multiple aircraft and more lucrative rates, the current net margins would make it difficult for more established operators from other markets to enter. NHV told us that inflation is at an 'all-time high', there are increases in supply chain costs and pressure on labour costs. Customers have put pressure on operators to 'freeze' rates. This results in a 'squeeze' in the bottom line, and current market conditions have stopped potential expansion. However, [REDACTED].⁶⁶⁸
- 7.73 Bristow highlighted three potential entrants that have the potential to enter into the provision of O&G Offshore Transportation Services in the UK. It told us that Gama has publicly shown an interest in moving into the provision of O&G Offshore Transportation Services in the UK. Bristow also told us that, as supporters of offshore windfarm operations, Uni-Fly and Wiking 'will have the capability to provide offshore O&G support alongside wind' and that it would

⁶⁶⁸ Note of call with [REDACTED].

just involve a ‘different technique in terms of landing on turbines vs O&G platforms’. Bristow continued by telling us that ‘it is not beyond their capability to enter this market if they chose to do so’. However, Bristow told us that it does not think that they are currently likely to do so, noting decline in the market.⁶⁶⁹

Views of third parties identified as potential entrants by the Parties

- 7.74 We asked potential entrants whether they would consider entering into the provision of O&G Offshore Transportation Services in the UK, or whether they have considered it in the past. Further, we asked the potential entrants under what conditions they would (or have) considered entering the market. As set out in more detail from paragraph 31 of Appendix E, of the eight potential entrants who responded to our information requests, most submitted that they are not interested in entering into the provision of O&G Offshore Transportation Services in the UK. The third parties cited the market not being a ‘viable proposition’, an inability to achieve sufficient scale, the market not being a primary area of focus, and low profitability as reasons for their lack of interest.
- 7.75 One third party submitted that it would consider entering the UK O&G Offshore Transportation market ‘if customers focused more on high service, reliability and safety than price’.⁶⁷⁰ Another told us that it has considered entering the market and has bid on opportunities to enter it, but has lost these bids as a result of lack of experience. The potential entrant told us that it was unable to compete effectively due to the high bar being set for new entrants coming into the market, including set-up costs, asset and facility costs, TUPE exposure, years of offshore experience etc. It submitted that ‘simply, larger organisations with economies of scale are able to use price to defend contracts such that it is unattractive for a mid-tier player to take the commercial risk’. The potential entrant told us that it ‘would not at this time consider entering this market’.⁶⁷¹
- 7.76 One third party identified as a potential entrant submitted hypothetical estimates of timeframes to entry being two to three years.⁶⁷² One of these parties noted that obtaining an AOC and hangar facilities (which it flagged as particularly difficult in Aberdeen) would contribute to this timeline.⁶⁷³ Another third party identified as a potential entrant told us that it would be possible to

⁶⁶⁹ Bristow call note.

⁶⁷⁰ Response to the CMA’s questionnaire from: [REDACTED].

⁶⁷¹ Response to the CMA’s questionnaire from: [REDACTED].

⁶⁷² Response to the CMA’s questionnaire from: [REDACTED].

⁶⁷³ Response to the CMA’s questionnaire from: [REDACTED].

reduce the timeframe of entry to one to two years, but that this would only be possible if the supplier already had a fleet that could support O&G Offshore Transportation Services and knowledge of the UK market (including the CAA's regulatory regime). It noted that, even then, it would not be easy to enter.⁶⁷⁴

Customer sponsored entry

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

(a) [REDACTED].⁶⁷⁵

(b) [REDACTED].⁶⁷⁶

7.78 We note that NHV does not support the notion that its entry into the provision of O&G Offshore Transportation Services in the UK was supported by customers/lessors. NHV submitted that Chevron was its first Aberdeen customer, [REDACTED]. It submitted that [REDACTED].⁶⁷⁷

7.79 Another third party gave examples (which it said had heard from others in the industry) of 'direct oil company action' when suppliers do not deliver, or supplier power becomes too strong. It gave examples of oil companies either taking on leases themselves for offshore transportation operators to operate (Shell in the Gulf of Mexico) or supporting leases for operators (Shell in Nigeria or Chevron in Thailand).⁶⁷⁸

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

⁶⁷⁴ Note of call with [REDACTED].

⁶⁷⁵ Note of call with [REDACTED].

⁶⁷⁶ Note of call with [REDACTED].

⁶⁷⁷ Response to the CMA's questionnaire from: [REDACTED].

⁶⁷⁸ Response to the CMA's questionnaire from: [REDACTED].

that they might be willing to support a new entrant by providing specific support (eg providing specific contract terms or guaranteeing leases) if:

- (a) 'the current level of supply was poor, or there was a monopoly in the market driving up prices, as has been the case in past'⁶⁷⁹ or
- (b) 'there is clear demand in the long term'.⁶⁸⁰

7.81 The customers identified a number of challenges in supporting a new entrant, including: (i) the high cost of entry;⁶⁸¹ (ii) the time that it would take for a new entrant to 'fully enter' the market, 'so tendering would need to be done years in advance', which may not always be feasible;⁶⁸² (iii) the view that it is hard for an entrant to build up enough scale to undertake a contract;⁶⁸³ and (iv) that falling activity levels in the region are leading to reduced demand.⁶⁸⁴

Customer self-supply

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

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

- (a) [REDACTED] told us that it had considered self-supplying, but that this was due to its [REDACTED] exploring every avenue to find lower cost options. However, [REDACTED] told us that it does not consider that this would have actually occurred in practice.⁶⁸⁵

⁶⁷⁹ Response to the CMA's questionnaire from: [REDACTED]. The customer confirmed that this would only apply if the helicopter support was down to two suppliers, but that this is not expected to be the scenario with three suppliers. It told us that it has successfully operated with three suppliers for many years, 'and feels that this is the right level given the size of the market, certainly in Aberdeen'. Response to putback from [REDACTED].

⁶⁸⁰ Response to the CMA's questionnaire from: [REDACTED].

⁶⁸¹ Response to the CMA's questionnaire from: [REDACTED].

⁶⁸² Response to the CMA's questionnaire from: [REDACTED].

⁶⁸³ Response to the CMA's questionnaire from: [REDACTED].

⁶⁸⁴ Response to the CMA's questionnaire from: [REDACTED].

⁶⁸⁵ Response to the CMA's questionnaire from: [REDACTED].

(b) [REDACTED].⁶⁸⁶

- 7.84 Bristow reiterated the views of the customers. Bristow told us that ‘historically, it was not unusual for oil companies to buy or lease aircraft, although this has not been done in the last few years’. It told us that, in its experience, ‘oil companies are now focusing on their core business – taking oil out of the ground and relying on third parties to provide them with ancillary services’. Bristow told us that the opportunity for either sponsored entry or self-service exists and that from its perspective ‘this does not seem infeasible’.⁶⁸⁷
- 7.85 However, another third party gave the example (which it said it had heard from others in the industry) of an oil company in another jurisdiction (Saudi Aramco) operating helicopters themselves via an in-house AOC to illustrate that oil companies can take ‘direct action’ when suppliers do not deliver or try to exert supplier power.⁶⁸⁸

Recent entry

- 7.86 NHV was identified by the Parties as an example of recent successful entry in the market. NHV told us that its growth and success was partly due to the failure of the Airbus Helicopters 225 aircraft (previously Eurocopter EC225 Super Puma). It noted that it entered the market with a significant H175 aircraft fleet, and when the EC225 aircraft was grounded (following the crash of CHC Helikopter Service Flight 241⁶⁸⁹), NHV was in a strong position in the market. NHV told us that this strong position enabled it to obtain relevant facilities. It told us that despite Aberdeen Airport’s capacity constraints, the airport was open to negotiations with NHV as a result of its available fleet. NHV told us that it would be difficult for another operator to replicate this approach to entry in Aberdeen (as set out at paragraph 7.65 above), unless one of the other operators gave up hanger space.⁶⁹⁰
- 7.87 With regard to new entry, the CAA referenced NHV’s recent entry, noting that it indicated that there may not be significant barriers to entry in the market. However, it told us that there were questions over the long-term future of the market, which could limit the incentives for and likelihood of entry.⁶⁹¹ The CAA told us that, while it is not an impossible market to enter ‘if competition were to reduce and there were to be significant profits available’, it would not be ‘quick

⁶⁸⁶ Response to the CMA’s questionnaire from: [REDACTED].

⁶⁸⁷ Bristow, Bristow call note.

⁶⁸⁸ Response to the CMA’s questionnaire from: [REDACTED].

⁶⁸⁹ See further details here: [CHC Helikopter Service flight HKS241 – Aviation Accidents Database \(aviation-accidents.net\)](https://aviation-accidents.net).

⁶⁹⁰ NHV, NHV call note.

⁶⁹¹ CAA, CAA call note.

or immediate'. Further, it told us that 'there doesn't seem to be anybody waiting in the wings to enter at short notice'.⁶⁹²

Our assessment of entry and/or expansion

Barriers to entry

- 7.88 Contrary to the Parties' submissions, there is evidence that the costs to set-up a full new UK infrastructure, including acquiring, leasing or transporting helicopters to the UK from overseas, hiring pilots and engineers and leasing facilities are significant. For example, an internal document considering Offshore UK's strength relative to its competitors refers to passenger terminals and hangars in Aberdeen and leased fleet as '[REDACTED]' and to North Sea crew change management, operation, and technical personnel as '[REDACTED]'.⁶⁹³
- 7.89 As noted by Uni-Fly,⁶⁹⁴ while it is possible to lease key assets such as helicopters, significant financial commitments are required in order to secure such leases. Uni-Fly noted that lessors require security capital to secure the lease, which in turn restricts the ease with which a new entrant could obtain access to relevant assets. Such security may take the form of PCGs – for example, the significant level of capital support required is evidenced by the c.£ [REDACTED]million of PCGs guaranteed by CHC (previously Babcock) to support the Fisher Business and secure its access to leased aircraft.⁶⁹⁵ However, Uni-Fly's submission points to the requirement for a significant level of capital more broadly in order to secure necessary assets, which we are of the view would be a consideration for a new entrant. We note the Parties' submission (as set out at paragraphs 7.13 to 7.15 above) that financial commitments for leases, such as PCGs, are not a barrier to entry, particularly for operators who operate within the aviation industry (either in associated services or other jurisdictions) and which are used to such agreements. However, we are of the view that it does not follow that having experience of PCGs will lead to a potential entrant being willing to agree to any level of PCG (or other financial commitment) in order to secure a lease. The financial liability associated with such a PCG would be an additional consideration for potential entrants in leasing helicopters and entering the market.⁶⁹⁶ Further, we note that while

⁶⁹² CAA, CAA call note.

⁶⁹³ Babcock internal document.

⁶⁹⁴ Uni-Fly, Uni-Fly call note.

⁶⁹⁵ FMN, Annex 121.

⁶⁹⁶ We note that PCGs are also commonly required by customers when taking on contracts to serve them. For example, TotalEnergies stated PCGs are a standard process for it, and it would particularly look at these if an operator's financial stability is seen as high risk. Note of call with [REDACTED]. Bristow also stated that while some PCGs are financially orientated, in other cases the parent company would need to be ready to step in and to have the

lessors may have an increased willingness to offer better terms to UK O&G Offshore Transportation Service providers in a market where there is increased helicopter capacity, this does not lead to a direct reduction in the financial security that they will require to protect themselves against the risk of default by a lessee. On this basis, the financial obligations associated with leasing aircraft remains a barrier to entry to lessees.

- 7.90 Where potential entrants already own or lease helicopters, eg in neighbouring product markets, we received mixed views as to the ease with which the helicopters could be converted to supply O&G Offshore Transportation Services. In either scenario, modifications would be required to the helicopter and potentially significant costs would be incurred as a result, thereby increasing the barriers to entry.
- 7.91 Further, we note that even where entrants may have access to helicopter assets, they require hangar facilities from which to store, maintain and operate the helicopters. The evidence put forward by the Parties with regard to facilities suggests that hangar space is easy to obtain; however, this is not consistent with the views put forward by third parties. We are of the view that while it may be reasonably straightforward to obtain hangar space in locations where there is additional capacity, or where a party is taking over operations from an exiting party, this is not always the case.
- 7.92 We note that the evidence indicates in general terms that new entrants are constrained in their ability to obtain relevant facility/base space. With regard to the point made by the Parties at paragraph 7.21(b) above regarding the ability for facilities to essentially be exchanged between incumbents and new entrants on the win or loss of new contracts, we note that it does not follow that there will necessarily be sufficient facility/base capacity. The argument made by the Parties only holds in scenarios where contracts and bases can be exchanged directly between Parties, which may not be the case, for example if an incumbent held two contracts which it lost, which were then obtained by two separate new entrants or if the incumbent had other contracts which required to be serviced from that base. However, we recognise the points raised by the Parties with regard to capacity at Aberdeen Airport, which indicate that such capacity is currently available.⁶⁹⁷ On this basis, we recognise that there may be potential for space to be obtained at Aberdeen Airport, but it is not clear how widely this is recognised in the industry (based

operating capability and experience in the industry to do so. Note of call with [X]. This suggests that PCGs required by customers may also act as a barrier to entry, both in terms of the financial capital needed in the event the company cannot serve the contract, but also in terms of the operational capability of the parent company in some cases.

⁶⁹⁷ CHC internal document provided in Parties' response to the Annotated Issues Statement and CMA Working Papers.

on the views we have heard from third parties). In any event, use of such capacity would require construction and approval from Aberdeen Airport, which would slow any new entry process, alongside sufficient capital to support construction from any new entrant.

- 7.93 As such, we are of the view that capacity constraints may still limit a new entrant in obtaining the relevant facilities or bases (although these constraints appear to be less binding than they have been in the past). Further, we note that significant costs may be incurred to ensure that facilities/bases are fit for purpose, and where these facilities are leased, significant financial guarantees may be required to support lessors' confidence. We also note that the timeframe over which it can take to obtain the relevant facilities may not be sufficiently timely; for example we understand that it took NHV four to five years to obtain the relevant facilities at Aberdeen Airport.
- 7.94 The Parties' internal documents discussing the possibility of potential entrants bidding for particular contracts sometimes refer to their lack of UK assets as weaknesses,⁶⁹⁸ and some third party customers submitted that the provision of O&G Offshore Transportation Services in the UK has high or significant barriers to entry.⁶⁹⁹
- 7.95 The changes in regulatory requirements following Brexit have increased the requirements on companies looking to enter the market in the UK, thereby increasing barriers to entry. Suppliers are required to obtain a UK AOC in order to charge to fly passengers to and from O&G platforms. The ability for a supplier to fly in the UK on a European AOC (as was the case when NHV entered the UK market) has been limited following Brexit. As noted by the CAA at paragraph 7.69 above, this would be possible only in the scenario when an operator from outside the UK was in the period towards obtaining a UK AOC. One customer confirmed that one of the main barriers for EU operators to enter the UK market is the acquisition of a UK AOC licence.⁷⁰⁰ The customer estimated that obtaining a UK AOC takes approximately 12 to 24 months (which is significantly longer than suggested by the Parties), which it felt could eliminate prospective operators⁷⁰¹ and noted that the European Aviation Safety Agency's AOC is not sufficient.⁷⁰² Discussions with the CAA demonstrated that there are significant complexities associated with obtaining an AOC, including the need to demonstrate detailed compliance and

⁶⁹⁸ For example see: (i) Babcock internal document; (ii) Babcock internal document; and (iii) CHC internal document.

⁶⁹⁹ Response to the CMA's questionnaire from: [REDACTED].

⁷⁰⁰ Note of call with [REDACTED].

⁷⁰¹ Response to the CMA's questionnaire from: [REDACTED].

⁷⁰² Note of call with [REDACTED]. The customer noted that this was an estimation and could change based on a number of factors.

experience to support the licence.⁷⁰³ As noted at paragraph 7.68 above, the CAA told us that six months is the fastest realistic expectation of entry, with nine months being a reasonable average.

- 7.96 We note that the Parties dispute a timeframe of 12 to 24 months to obtain an AOC, pointing to a shorter timeframe of six to nine months, which they note could be shortened following a reduction in Brexit related work undertaken by the CAA. We are of the view that the time to entry would vary across different potential entrants depending on their experience and technical capabilities. We note that the timeframe of getting through the AOC process may, for some potential entrants, be as short as six months. However, we note that to engage in the process of obtaining the AOC, the entrant must already be in a position to demonstrate its ability to meet all of the relevant regulatory requirements, which is likely to increase the overall timeframe to entry. In addition, we note that it is not just a case of entry or expansion occurring in a timely manner but the effectiveness of that entry or expansion on market outcomes must be timely.⁷⁰⁴ Even if an entrant were able to enter the market within two years (which may be challenging in itself), it is not necessarily the case that it would materially affect market outcomes within this period.
- 7.97 With regard to the Parties' view that customer preference is not a barrier to entry, we recognise that contracts are won through a tendering process which means that price is likely to be a significant factor in how parties providing O&G Offshore Transportation Services in the UK obtain customers. However, we note that customers have identified track record and experience as a factor in their decision making (as set out at paragraph 7.80), therefore potentially customer preference may negatively impact the ability for new entrants to win contracts, thereby increasing the barriers to entry. The criteria customers use to evaluate tender bids is set out in more detail in Appendix D.
- 7.98 On this basis, we are of the view that while barriers to entry are not insurmountable in the context of the key assets required to operate in the provision of O&G Offshore Transportation Services in the UK, they are sufficiently material to constrain the timeliness, likelihood or sufficiency of any potential entry.

⁷⁰³ Note of call with [REDACTED].

⁷⁰⁴ [MAGs](#), paragraph 8.33.

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

Overall market decline and low margins

7.99 In addition to considering the ability to enter into (or expand in) the provision of O&G Offshore Transportation Services in the UK in view of barriers to entry, we also consider whether potential rivals (or current competitors) have the incentive to enter into (or expand in) the provision of O&G Offshore Transportation Services in the UK.⁷⁰⁵ In doing so, here we set out our view on the likelihood of entry into the provision of O&G Offshore Transportation Services in the UK.

7.100 The Parties⁷⁰⁶ and third parties⁷⁰⁷ submitted that there has been a decline in the O&G Offshore Transportation Services to date, with uncertain forward-looking prospects but no expectation of a significant or long-term uptick. This downturn was precipitated by a ‘dramatic decline in oil prices since 2014 and general uncertainty in the energy market’.^{708,709} Other available evidence is consistent with this. For example, Babcock’s internal documents suggest that the providers of O&G Offshore Transportation Services in the UK are expected to be in ‘severe cost control mode’ despite oil price recovery in recent years, with the market’s future being described as ‘uncertain’.⁷¹⁰ Third party suppliers have also told the CMA that margins are low in this sector, and this is also reflected in the Parties’ internal documents.⁷¹¹ We are aware that two of the four current participants in the market have recently been through Chapter 11 bankruptcy proceedings, and that poor financial performance and price squeezing is being experienced across the market. Our analysis of the Parties’ financial situation is set out in Chapter 3.

7.101 In our view, the perspective of a new entrant is different from that of an incumbent player in the market. As noted at paragraph 6.26, we are of the view that while demand for O&G Offshore Transportation Services is in long-term decline, in the short- to medium-term demand is likely to remain broadly

⁷⁰⁵ MAGs, paragraph 8.35.

⁷⁰⁶ FMN, paragraph 2.14 to 2.29.

⁷⁰⁷ See paragraphs 6.20 to 6.25.

⁷⁰⁸ FMN, paragraph 2.23 and Babcock internal document.

⁷⁰⁹ We note that most of the submissions referred to in this report were submitted before the Russian invasion of Ukraine, and therefore do not reflect any impact this might have on the O&G industry going forward. Given this is a very recent development and the consequences of this are as yet unclear, it is too soon to indicate what impact this may have on the market even over the short- to medium-term. However, since receiving these submissions we have obtained confirmation from these market participants (customers and potential entrants in particular) that they would not modify their previous submissions to the CMA as a consequence of the conflict in Ukraine.

⁷¹⁰ Babcock internal documents.

⁷¹¹ See for example Babcock’s internal document, which notes that ‘[REDACTED]’. Babcock internal document - stating that ‘[REDACTED]’. See also Babcock’s internal document, which notes that ‘[REDACTED]’.

stable. While long-term decline is not anticipated to impact current competitive conditions in the market, we consider that a new entrant will be less incentivised to enter the market as a result of a reduced prospect of long-term growth. We are therefore of the view that the combination of a decline in the market to date, an unclear path to recovery of the O&G market, alongside low margins and barriers to entry means that it is unlikely that new entrants will be looking to enter the market. Similarly, we do not expect to see significant expansion in the market, with capacity constraints and significant financial backing required to obtain helicopters, even where leased, which is less likely in a market with low margins and low growth prospects. As noted at paragraph 7.87, the CAA pointed out that there could be entry if significant profits became available, but the likelihood of an improvement in financial returns to support such entry seems low based on the evidence we have received.

- 7.102 We note that the significant financial backing required from a new entrant differs from the investment required by incumbents to continue operating, in the market or the likelihood of an existing operator in the market being acquired by a new owner. Where these players already have the relevant assets/licences etc, we consider that they will be able to continue operating and bidding for contracts – we set this out further at paragraph 7.119 below.

Lack of evidence of interest from potential entrants

- 7.103 Regardless of any barriers that potential entrants may face in obtaining the relevant assets to operate in the provision of O&G Offshore Transportation Services in the UK, we note that the majority of potential entrants that we engaged with told us that they do not have an interest in entering the market. We note that this includes a forward looking/dynamic assessment of the market, in the context that we asked potential entrants under what conditions they would consider entering. Almost all indicated that there were no conditions (ie including higher prices) under which they would consider entering – we note that in making this assessment, potential entrants would also consider the effect of their entry, eg their ability to push prices back to the level in the counterfactual, which may not be sufficient to combat any price rises resulting from the Merger. Only one potential entrant⁷¹² indicated it would have any such interest in entering, and its limited efforts so far had been unsuccessful. We note the Parties' submissions that PHI has been taking active steps to enter the market by setting up a London office and hiring staff, including a commercial manager.⁷¹³ We have seen no indication

⁷¹² Response to the CMA's questionnaire from: [REDACTED].

⁷¹³ Parties' response to the Provisional Findings, 4 April 2022, paragraph 5.14.2.

of PHI attempting to bid, or posing a constraint in the context of the UK in the Parties' documents.⁷¹⁴

7.104 This was consistent with the CAA's lack of knowledge of any current potential plans for new entry. Further, as set out in more detail in Appendix D, we have found no instances of new suppliers winning contracts since 2017. Further, we have found only one instance of a new supplier bidding for a contract since 2017.⁷¹⁵ As such, we are of the view that potential entrants operating either within neighbouring markets (such as supporting the renewables industry or operating SAR aircraft) or other geographic regions (ie operating O&G Offshore Transportation Services in jurisdictions outside the UK) are not likely to enter the market in a timely manner.

Recent entry not indicative of future trends

7.105 NHV's entry arose from a fairly unique set of circumstances as the Parties themselves acknowledge.⁷¹⁶ The success of NHV's entry was linked to its introduction of a new helicopter type, the super medium H175, during a time when there was a gap in heavy aircraft due to the grounding of the EC225. It seems unlikely that such specific circumstances will be replicated.

7.106 The sponsored re-entry of Bond Brothers by BP in Aberdeen 2004 is also unlikely to be indicative of the likelihood of sponsored entry in response to the Merger given the decline in demand for O&G over the last decade.

Lack of evidence of customer sponsorship/self-supply

7.107 As set out from paragraphs 7.77 to 7.84 above, there is a lack of evidence that customer sponsorship or self-supply would be likely.

7.108 While Bond Brothers were sponsored to enter in 2004, we note that this was a significant time ago and we have not seen evidence to suggest that similar sponsorship would be expected to occur in the near future. Further, there are mixed views on the recent assertions of customer sponsorship in the market – for example, the Parties [X] are of the view that NHV was sponsored into the market in 2016, but this claim is disputed by NHV itself.

7.109 Almost all of the customers that we received submissions from said that they had no intention to self-supply (including in a forward looking assessment), and even those which had considered it had only done so as a last resort or to

⁷¹⁴ Note of call with [X].

⁷¹⁵ See more detail on our tender analysis in Appendix D.

⁷¹⁶ Parties' response to the phase 1 Issues Letter.

exhaust all potential options. We received no evidence that customers would be willing to bring O&G Offshore Transportation Services in-house and 'self-supply' UK O&G Offshore Transportation Services. As noted at paragraph 7.80 above, two customers referenced an increase in price as potentially leading to customer sponsorship, but they noted that this would be in the context of a reduction in quality or a monopoly market, or of clear long-term demand.

- 7.110 We acknowledge that not all customers need to be willing to sponsor entry for a new supplier to develop in the market (because a supplier, once it has entered the market thanks to such initial support, may then be able to win contracts with other customers without further support). However, only very few customers indicated they would provide specific support for an entrant, and only under particular circumstances, while others indicated they would only consider their bid alongside others, and in some cases would be less likely to award to an entrant without a track record.
- 7.111 This limited evidence of customers considering sponsoring entry, together with the evidence set out above regarding barriers to entry and below regarding interest from potential entrants, shows that the possibility of customer supported entry is not sufficiently likely to provide a constraint on existing providers.

Forward looking consideration

- 7.112 We note the Parties' position (as set out at paragraphs 7.52 and 7.53 above) that if prices were to increase in the market as a result of the Merger, then entry may be more likely as a result of increased profitability. We recognise that there has been previous entry into the market in the past, but do not consider that this points to future entry, particularly in the context of:
- (a) Bond Brothers' entry occurring in a significantly different market environment, prior to both the 2008 financial crisis and the significant drop in the oil price since 2014; and
 - (b) the particular circumstances under which NHV entered the market.
- 7.113 We are of the view that these examples are not necessarily replicable and are not likely in the context of the submissions that we have received from third parties.
- 7.114 As set out above, third parties have not expressed an interest in entering the market under any conditions, ie even if prices were to rise and profits were to increase. It is not clear that any entry would be sufficient to combat an increase in prices resulting from the Merger. Further, as noted at

paragraph 6.26, while we do not expect a rapid decline in demand in the short-term, this is a market which is in long-term decline. In this context, upwards pressure on prices or deterioration in other non-price terms resulting from the SLC are unlikely to materially increase the attractiveness of this market for a potential entrant.

7.115 Our analysis in Chapter 6 demonstrates that NHV had a number of years with negligible presence and its share only exceeded 10% in 2020, following at least four years of operating in the market. We are of the view that entry needs to be timely to have the effect of remedying an SLC. We consider that the timeframe over which NHV entered the market is not sufficient to demonstrate that a new entrant could replace the significant lost constraint of the Fisher Business within a timely period. More broadly, we note the position set out in the MAGs that it is not just a case of entry or expansion occurring in a timely manner but the effectiveness of that entry or expansion on market outcomes being timely that we consider,⁷¹⁷ and that small scale entry that is not comparable to the constraint eliminated by the Merger is unlikely to prevent an SLC.⁷¹⁸ In this context, and with consideration of the position presented to us by third parties, we are of the view that even if new entry were to occur, it is not likely that it would be sufficient to replace the constraint that Offshore UK exerts in the market.

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

7.116 Our guidelines note that entry and/or expansion preventing an SLC from arising would be rare.⁷¹⁹

7.117 Taking account of the barriers to entry identified above, and based on the evidence we have received and our assessment set out at paragraphs 7.99 to 7.115 above, we are of the view that there is a lack of evidence to demonstrate an incentive for operators in other geographic regions or neighbouring markets to enter into the provision of O&G Offshore Transportation Services in the UK. There is a lack of evidence of customers considering sponsoring entry or self-supply. Further, parties identified as potential entrants have made clear to us that they are not interested in entering into the provision of O&G Offshore Transportation Services in the UK. This is the case based both on the current market conditions, and with consideration of other scenarios (eg increased prices/profitability) that may prompt entry. This is reflected by our discussions with the CAA, which noted

⁷¹⁷ MAGs, paragraph 8.33.

⁷¹⁸ MAGs, paragraph 8.39.

⁷¹⁹ MAGs, paragraph 8.29.

that it is not aware of any current potential entrants actively trying to enter the market. The very limited examples of past entry highlighted by the Parties (suggesting that these indicate that some potential entrants are contemplating market entry) are not in our view indicative of future trends sufficient to convince us that entry is likely to occur.

7.118 Having found that entry and/or expansion (including as a result of sponsored entry or self-supply) will not be likely, there is no need for us to consider whether it would be timely and sufficient. However, to the extent that any entry were to occur, in view of the evidence set out above (see in particular concerns regarding the scale of past entry as set out at paragraph 7.115 above) we do not consider that it would be timely nor sufficient to replace the constraint lost as a result of Offshore UK no longer operating in the market.

Perceived tension with the counterfactual position and competitive assessment

7.119 As set out at paragraph 7.54 above, the Parties submitted that there is a tension between our position on new entry and the views set out in Chapter 5 regarding the counterfactual position.

7.120 First, we note that (as set out at paragraph 7.114 above), a company considering organic new entry will want to see a prospect of long-term profitability before entering the market. In this market, for the reasons set out above, we do not expect any new entry to be likely and, to the extent that any such entry occurs, it is likely to be insufficient to replace the constraint provided by Offshore UK so as to prevent an SLC from arising.

7.121 We do not agree that there is a contradiction between our position on new entry and the views set out in Chapter 6 with regard to the competitive assessment. Indeed, for the reasons set out above at paragraph 7.101, the perspective of a new entrant is different from that of an incumbent player in the market. Parties competing in the market (as evaluated in the competitive assessment) have already incurred fixed and sunk costs (eg lease costs, staff costs, facility costs) and will look to gain customers to service these. This differs from firms not yet in the market who are deciding whether it is worthwhile to take on such costs. Therefore, it is not inconsistent for there to be an SLC which results in price and non-price terms deteriorating compared to what would happen absent the Merger, and companies not being incentivised to incur the costs required to enter in a way which is timely, likely or sufficient to bring those price and non-price terms back to the levels which would exist absent the Merger.

7.122 Further, The assessment within the countervailing factors assessment is different to the question of whether a potential purchaser would buy the Fisher Business or Offshore UK. As set out in Chapter 6, we are of the view that the Fisher Business is an effective competitor which has a value based on its position as an established business with a pre-existing reputation, track record, asset base and customer contracts. As such, a potential purchaser's view as to the attractiveness of purchasing an existing business such as the Fisher Business or Offshore UK is likely to be different to the attractiveness of trying to establish a new competitive entity from scratch.

Rivalry enhancing efficiencies arising from the Merger

7.123 In some instances, mergers can give rise to rivalry-enhancing efficiencies which may prevent an SLC by offsetting any anti-competitive effects identified in the competitive assessment.⁷²⁰ Efficiencies due to the merger must be likely to strengthen the ability and incentive of a merged entity to act pro-competitively for the benefit of consumers. In order for us to take efficiencies into account, they must:

- (a) enhance rivalry in the supply of those products where an SLC may otherwise arise;
- (b) be timely, likely and sufficient to prevent an SLC from arising;
- (c) be merger-specific; and
- (d) benefit customers in the UK.⁷²¹

7.124 We note that CHC has submitted that it expects to achieve approximately \$[~~£~~]million USD of synergies as a result of the Merger, as set out in paragraph 3.69. However the Parties have not explained nor provided evidence on how any cost savings arising from synergies would lead to rivalry-enhancing efficiencies meeting the criteria set out above, for example that that they would be passed on to customers (eg in lower prices), nor how such synergies may change the incentives of CHC to induce it to act as stronger competitors to its rivals.⁷²² Our conclusion therefore is that it is not likely that rivalry enhancing efficiencies arise from the Merger to prevent any SLC from arising. In particular,

⁷²⁰ [MAGs](#), paragraphs 8.3 and 8.4.

⁷²¹ For a discussion of the CMA's framework for assessing rivalry enhancing efficiencies, see [MAGs](#) paragraphs 8.8 to 8.21.

⁷²² We consider the Parties' argument that [~~£~~] that result from the Merger in paragraphs 6.27 to 6.29. We also consider the Parties' submissions on synergies in the context of relevant customer benefits from the Merger in Chapter 9.

- (a) For the reasons set out in Chapter 5, we consider that CHC would have continued [to compete in broadly the same way] absent the Merger, and would have [✂].
- (b) Even if the Merger does give rise to such synergies, the Merged Entity's incentives to pass these on to customers depend on the strength of competition that is likely to exist after the Merger.
- (c) In view of the findings made in Chapter 6, we are of the view that customers' choice, and therefore buyer power, will decrease, reducing incentives on incumbents including CHC to pass on any synergies (see below).

Assessment of buyer power

7.125 The key method by which buyer power could prevent an SLC from arising in this market is via entry including customer sponsored entry/self-supply. However, as set out at paragraphs 7.107 to 7.111, we are of the view that entry and/or expansion (including as a result of sponsored entry or self-supply) will not be likely.

7.126 On this basis, and for the reasons set out in Chapter 6, we are of the view that the buyer power identified by the Parties would be unlikely to effectively resolve any lessening of competition that would occur as a result of the Merger. In this context, the choice available to customers would reduce, which in turn would reduce their ability to exert buyer power on the competitors within the market.

Conclusion on countervailing factors

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

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

8. Findings on SLC

- 8.1 As a result of our assessment, we conclude that the completed acquisition by CHC of the Fisher Business has resulted in the creation of a RMS.
- 8.2 We also conclude that the creation of that situation has resulted, or may be expected to result, in an SLC in the provision of O&G Offshore Transportation Services in the UK.

9. Remedies

Introduction

- 9.1 Where the CMA concludes that a relevant merger situation has resulted, or may be expected to result, in an SLC, it is required to decide whether action should be taken to remedy, mitigate or prevent the SLC or any resulting adverse effects. The CMA is also required to decide whether such action should be taken by the CMA itself or recommended to others. In either case, the CMA must state in its final report the action to be taken and what it is designed to address.
- 9.2 The Act requires that, when considering possible remedial actions, the CMA ‘shall, in particular, have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the substantial lessening of competition and any adverse effects resulting from it’.⁷²³
- 9.3 To fulfil this requirement, the CMA will first seek remedies that are effective in addressing the SLC and any resulting adverse effects, before going on to consider the costs likely to be incurred as a result of implementing effective remedies. The CMA will also seek to ensure that no remedy is disproportionate to the SLC and its adverse effects. In accordance with the Act, the CMA may also have regard to any relevant customer benefits (**RCBs**) arising from the Merger (see paragraphs 9.131 to 9.147).⁷²⁴
- 9.4 Accordingly, this chapter sets out:
- (a) An overview of the remedy options considered (see paragraphs 9.6 to 9.11);
 - (b) our consideration of the effectiveness and appropriate scope of divestiture remedies, including the framework the CMA uses to assess divestiture options (see paragraphs 9.13 to 9.18) followed by our assessment of the effectiveness of each of the remedy options in turn (see paragraphs 9.19 to 9.66);
 - (c) our consideration of the identification and likely availability of suitable purchasers (see paragraphs 9.68 to 9.105);

⁷²³ Section 35(4) of the Act.

⁷²⁴ Section 30 of the Act.

- (d) our assessment of how to ensure an effective divestiture process (see paragraphs 9.106 to 9.126);
- (e) our conclusions on the effectiveness of the remedy options considered (see paragraphs 9.127 to 9.128)
- (f) our assessment of the proportionality of effective remedies (see paragraphs 9.129 to 9.161); and
- (g) our final decision on remedies (see paragraphs 9.162 to 9.164).

9.5 In reaching our final decision on the appropriate remedy, we have considered the written responses to our public consultation on our notice of possible remedies (**Remedies Notice**)⁷²⁵ and other evidence gathered throughout our investigation.

Overview of remedy options considered

- 9.6 We issued the Remedies Notice together with our Provisional Findings on 17 March 2022.⁷²⁶ In our Remedies Notice, we indicated our initial view that a full divestiture of Offshore UK appeared likely to be the only effective remedy to the SLC. We invited views on the package of assets to be divested and whether there were risks that the scope of the divestiture package may be too constrained or not appropriately configured to attract a suitable purchaser, or may not allow a purchaser to operate as an effective competitor in the market. We also sought views on the availability of purchasers, risks that a package could deteriorate before completion of a divestiture, and any other elements that may be required (eg transitional service agreements).⁷²⁷
- 9.7 We indicated our initial view that any behavioural remedy was very unlikely to be effective. However, we invited views on whether there were any other practicable remedy options we should be considering that could be effective in addressing the SLC provisionally identified and/or any resulting adverse effects.
- 9.8 In response to the Remedies Notice, CHC proposed two alternative remedy options.⁷²⁸ Both options represent a partial divestiture of assets and operations of Offshore UK, and can be described as:

⁷²⁵ Remedies Notice, 17 March 2022.

⁷²⁶ The Remedies Notice was published on 17 March 2022 and the Provisional Findings on 18 March 2022.

⁷²⁷ Remedies Notice, 17 March 2022, paragraph 19.

⁷²⁸ CHC, CHC response to the Remedies Notice, 31 March 2022, section 3.

- (a) divestiture of the existing UK AOC of the Fisher Business 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. If required, CHC would also divest a hangar in Aberdeen. However, this option did not include divestiture of any contracts and associated revenue. We refer to this as the '**Access Remedy**'.
- (b) divestiture of one or two [✂] contracts operated by Offshore UK together with the existing UK AOC of the Fisher Business (and relevant postholders, as set out above), and a hangar or other facilities at Aberdeen airport. We refer to this as the '**Initial Divestiture Proposal**'.
- 9.9 We held calls with seven⁷²⁹ third parties (a mix of customers, competitors, lessors and potential entrants) to discuss potential remedy options. These conversations informed our Remedies Working Paper (the **Remedies Working Paper**), which was prepared after consideration of further written and oral responses received from CHC, the Fisher Business and third parties following the publication of the Remedies Notice, and shared with CHC and the Fisher Business for comment. In this Remedies Working Paper, we found that the Access Remedy fell significantly short of what is required of an effective solution. As such, we do not include a detailed assessment of the Access Remedy in this chapter, but set out views on the remedy and our assessment in Appendix G.
- 9.10 In response to the Remedies Working Paper, CHC submitted a further partial divestiture option (the '**Enhanced Divestiture Proposal**'), which expanded on the assets included in the initial divestiture proposal. We set out our consideration of this further proposal alongside our assessment of the Initial Divestiture Proposal and other divestiture options below.
- 9.11 We recognise that the views of both the Parties and of third parties may be influenced by commercial or other incentives. We therefore considered all submissions carefully and with regard to this possible influence, and we judged the extent to which the evidence available to us supports the views submitted by any individual party.

⁷²⁹ Note that we also received a written response from one third party ([✂]) that was concerned with issues other than remedies; therefore we have not included it in this chapter but consider it as evidence for our competitive assessment in Chapter 6.

Effectiveness and appropriate scope of divestiture remedy options

9.12 In this section, we first set out the framework the CMA uses to evaluate divestiture options and then consider in turn the effectiveness of the following remedy options:

- (a) Divestiture of Offshore UK;
- (b) Divestiture of a smaller remedy package, including the Initial Divestiture Proposal and the Enhanced Divestiture Proposal; and
- (c) Conclusions on the appropriate scope of a divestiture package.

Our approach to assessing the effectiveness of divestiture options

9.13 The CMA will first seek remedies that are effective in addressing the SLC and any resulting adverse effects. The effectiveness of a remedy is assessed by reference to its:⁷³⁰

- (a) impact on the SLC and the resulting adverse effects – the CMA views competition as a dynamic process of rivalry between firms seeking to win customers' business over time – restoring the process of rivalry is a key aim of a remedy;
- (b) duration and timing – remedies need to be capable of timely implementation and address the SLC effectively throughout its expected duration;
- (c) practicality in terms of implementation, monitoring and enforcement; and
- (d) risk profile, relating in particular to the risk that the remedy will not achieve its intended effect.

9.14 In 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.⁷³¹

9.15 The CMA will generally prefer the divestiture of the whole of an existing business, which can compete effectively on a stand-alone basis,

⁷³⁰ [Merger remedies guidance \(CMA87\)](#), paragraph 3.5.

⁷³¹ [CMA87](#), paragraph 5.7.

independently of the merger parties, to the divestiture of part of a business or a collection of assets. This is because divestiture of a complete business is less likely to be subject to purchaser and composition risk and can generally be achieved with greater speed.⁷³²

- 9.16 There are three categories of risk that could impair the effectiveness of any divestiture remedy: composition risk, purchaser risk and asset risk.⁷³³
- (a) composition risk arises if the scope of the divestiture package is too narrowly constrained or not appropriately configured to attract a suitable purchaser, or does not allow a purchaser to operate as an effective competitor;
 - (b) purchaser risk arises if a divestiture is made to a weak or otherwise inappropriate purchaser, or if a suitable purchaser is not available; and
 - (c) asset risk arises if the competitive capability of the divestiture package deteriorates before completion of the divestiture.
- 9.17 These categories of risks are interrelated, for example a composition risk may reduce the likelihood of finding a suitable purchaser which in turn could delay the effective implementation of a divestiture, thereby increasing asset risk.
- 9.18 Once the CMA has identified the remedy options that would be effective in addressing the SLC, the CMA will select the least costly and intrusive remedy that it considers to be effective. The CMA will seek to ensure that no effective remedy is disproportionate in relation to the SLC and its adverse effects. The CMA may also have regard, in accordance with the Act, to the effect of any remedial action on any RCBs arising from the merger.⁷³⁴

Divestiture of Offshore UK

- 9.19 In determining the effectiveness and appropriate scope of a divestiture remedy package, we have first considered divestiture of Offshore UK, which would effectively involve the unwinding of the completed merger of Offshore UK by CHC. CHC would be required to divest the entirety of its shareholding in Offshore UK (and the corresponding assets acquired as at the time of the Merger) to a suitable purchaser.
- 9.20 We would expect that a divestiture of Offshore UK by CHC to a suitable purchaser through an appropriate process, if designed to address the

⁷³² CMA87, paragraph 5.12.

⁷³³ CMA87, paragraph 5.3.

⁷³⁴ CMA87, paragraph 3.4.

practical risks normally associated with implementing any divestiture remedy and the case-specific composition risks considered in the following subsection, would re-establish the structure of the UK market and thereby restore the dynamic process of competition that existed between the Parties prior to the Merger. Offshore UK represents a standalone business, and would be divested in its entirety (see paragraphs 9.15 and 9.16).

- 9.21 We next consider any composition risks relating to the scope of a divestiture package comprising Offshore UK.

Composition risks relating to the scope of the remedy

- 9.22 In our Remedies Notice, we invited views on whether divestiture of Offshore UK would represent an effective remedy. We set out the views of CHC, the Fisher Business and third parties below.

CHC and the Fisher Business's views

- 9.23 CHC told us that divestiture of the Offshore UK business would not be an effective solution. CHC told us that a remedy package in which the Offshore UK business was divested would have a significant negative impact on the CHC business and, [REDACTED]. On that basis CHC argued that the remedy would fail to [REDACTED].⁷³⁵
- 9.24 The Fisher Business told us that divestiture of the Offshore UK business would be an effective solution to remedying the SLC.⁷³⁶ However, the Fisher Business noted that implementation of this solution would be problematic, for reasons as set out at paragraph 9.85 below.

Third parties' views

- 9.25 All of the third parties that we engaged with told us that divestiture of the Offshore UK business would be an effective solution to remedy the SLC.⁷³⁷ One third party highlighted that this would require that the divestiture was made to a party outside the current competitors in the market.⁷³⁸

⁷³⁵ CHC, [CHC response to the Remedies Notice](#), 31 March 2022, paragraphs 2.2 and 3.1.

⁷³⁶ The Fisher Business, The Fisher Business response hearing transcript.

⁷³⁷ Note of call with [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED].

⁷³⁸ Note of call with [REDACTED].

Our assessment of composition risks relating to the scope of a divestiture of Offshore UK

- 9.26 With regard to CHC's submission that divestiture of Offshore UK would result [REDACTED], we note our conclusion as set out in Chapter 5: Counterfactual (see paragraph 5.187) that absent the Merger, [REDACTED] the Fisher Business would have continued to supply O&G Offshore Transportation Services. We conclude CHC would continue to compete in broadly the same way it was doing before the Merger. While [REDACTED], we are of the view that the counterfactual assessment remains appropriate when considering CHC's [REDACTED] position now as well as at the time of the counterfactual. We set out below our views on the costs of divestiture to CHC when assessing proportionality (see paragraphs 9.158 to 9.160).
- 9.27 We are therefore of the view that full divestiture of Offshore UK would address all of our concerns at source by effectively reversing the UK element of the Merger which has given rise to the SLC and would therefore represent a comprehensive solution to all aspects of our SLC.
- 9.28 We next considered whether a smaller divestiture package might be effective.

Divestiture of a smaller package than Offshore UK

- 9.29 Some of the parties that we spoke to suggested it would be preferable to require divestiture of a package that is smaller than the Offshore UK business. CHC submitted that a smaller package would have the benefit of likely being [REDACTED].⁷³⁹ Several third parties told us that it would be more viable and a stronger competitor if it was a smaller and more profitable business.
- 9.30 This section therefore considers whether a divestiture package comprising Offshore UK with some contracts, and corresponding assets and associated costs removed, would also be an effective and attractive package, taking into account the views of Parties and third parties, and other evidence. This is referred to as a 'partial divestiture' remedy option. Partial divestiture refers to the divestiture of part of the acquired business containing operations that are relevant to the SLC that we have found.
- 9.31 In making these assessments, we sought to identify whether a divestiture of Offshore UK, excluding particular contracts and associated assets, could be formulated to be of sufficient scope and scale to compete in the provision of O&G Offshore Transportation Services in the UK in a way that fully replaces the competitive constraint lost as a result of the Fisher Business's acquisition by CHC. This is in line with our guidance (as set out at paragraph 9.14 above), which notes that in defining the scope of a divestiture package that

⁷³⁹ CHC, [CHC response to the Remedies Notice](#), 31 March 2022, paragraph 3.2.

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.⁷⁴⁰

9.32 Accordingly, this section sets out:

- (a) a brief description of the partial divestiture remedy options proposed by CHC and other options considered by the CMA; and
- (b) our consideration of composition risks associated with remedy options involving divestiture of a smaller package of assets and contracts than Offshore UK
- (c) our conclusions on the effectiveness of a partial divestiture remedy option.

Divestiture of a package smaller than Offshore UK: Remedy description

9.33 In response to the Remedies Notice, CHC put forward an option comprising a subset of the assets and/or operations of Offshore UK, the Initial Divestiture Proposal (as detailed at paragraph 9.8(b)). In our Remedies Working Paper, we noted that the Initial Divestiture Proposal as formulated by CHC was unlikely to be effective as a result of a number of composition risks that we identified (see paragraphs 9.51 to 9.54 below where we summarise our views).

9.34 However we noted the possibility that a partial divestiture might be identified that could result in an effective solution to the SLC. In particular, we noted that one option to reduce the risks associated with this proposal would be to incorporate additional [REDACTED] contracts into the partial divestiture package and other corresponding assets such as staff, aircraft and hangars. We noted that this would provide greater confidence that the divested business would represent an equivalent competitive force to Offshore UK and reduce the risk profile of the remedy. In response, the Parties submitted that the package could be expanded by adding the [REDACTED] contract. However, it disputed the inclusion of the [REDACTED] contract.

9.35 In addition to CHC's specific proposals, we also considered whether there was any other form of partial divestiture that would be an effective remedy to the SLC we have found, noting that these had not been put forward by CHC and so may not be attractive to them.

⁷⁴⁰ [CMA87](#), paragraph 5.7.

Composition risks associated with the scope of a divestiture package smaller than Offshore UK

CHC and the Fisher Business's views

- 9.36 CHC submitted that the Initial Divestiture Proposal 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 ([REDACTED]), and that would be able to operate on an independent basis within a short time thereafter.⁷⁴¹ CHC submitted that the Initial Divestiture Proposal would include everything that is necessary to operate any contract(s) being divested, including the required helicopters, pilots, appropriately qualified engineers, and any relevant maintenance capabilities. CHC submitted that 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.⁷⁴² On this basis, CHC considered the scope of the package to be appropriate.
- 9.37 CHC also told us that a partial divestiture solution would result in an effective competitor with a lower cost base than incumbents, making it a more 'nimble operator'.⁷⁴³ With regard to its proposed package in particular, CHC submitted that:
- (a) The [REDACTED] contract is an offshore transportation services contract, [REDACTED]. [REDACTED]. It would allow a potential purchaser to inherit 'long running and established relationships with all the major oil and gas companies operating in the UK North Sea.' It noted that this would also deliver stable and profitable revenues which would help the purchaser of the divested business to support the cost of the required infrastructure.⁷⁴⁴
 - (b) The package does not have limited scale, as it would have all the necessary operations and assets to compete successfully on the market in all upcoming tenders. It told us that credibility is determined by the experience and track record of the employees who would stay with the divested business, and that it is not necessary to have a business with large scale in order to compete and provide an effective constraint on the market. CHC noted that the expansion of NHV demonstrates how such a divestiture could provide a platform for future growth. CHC submitted that

⁷⁴¹ CHC, [CHC response to the Remedies Notice](#), 31 March 2022, paragraphs 3.8-3.17.

⁷⁴² CHC, [CHC response to the Remedies Notice](#), 31 March 2022, paragraphs 3.8-3.17.

⁷⁴³ CHC response hearing transcript, 5 April 2022.

⁷⁴⁴ CHC, CHC Response to the Remedies Working Paper.

a 'financially stable and profitable' standalone business would be better equipped to deal with the challenges of unexpected shocks or covering overheads than a large-scale and loss-making business. It told us that even if there were scale-related issues, these could be overcome by a purchaser's commitment to invest in the market.⁷⁴⁵

- (c) CHC submitted that a partial divestiture does not give rise to resilience concerns, as early termination of contracts is the exception, rather than the norm. It told us that any contract loss would be likely to cause disruption irrespective of the total number of contracts held. CHC told us that any concern about resilience is an industry and not a divestiture-specific issue.⁷⁴⁶
- (d) In terms of the scope of assets of a partial divestiture package, CHC submitted that a partial divestiture package that did not include [REDACTED] aircraft would not be a composition concern, as the industry trend is moving towards usage of other aircraft types, and that the Initial Divestiture Proposal includes the relevant requirements (eg AOC, qualified pilots and engineers, maintenance capabilities) to operate [REDACTED] aircraft, if the business required the lease of an [REDACTED] in the future. It noted that this can easily be done given the overcapacity of [REDACTED] aircraft in the market.⁷⁴⁷
- (e) Finally, CHC submitted that it would be prepared to structure a partial divestiture as a 'reverse carve-out' to ensure that the AOC of Offshore UK could be appropriately transferred to a new purchaser.⁷⁴⁸ In this scenario, the Offshore UK business would be sold to a purchaser, with CHC carving out certain contracts/assets to be maintained within CHC.

9.38 As noted at paragraph 9.33, CHC and the Fisher Business submitted that adding the [REDACTED] contract to the Initial Divestiture Proposal would be effective, but adding the [REDACTED] contract would be disproportionate. The Parties submitted that adding the [REDACTED] contract would require a purchaser to take on extra operational costs to service a contract out of [REDACTED], even though there are no meaningful synergies between the operation of that contract and other contracts that would be part of the same remedy package, and which are operated out of [REDACTED]. They noted that it would deprive CHC of the [REDACTED] in

⁷⁴⁵ CHC, CHC Response to the Remedies Working Paper.

⁷⁴⁶ CHC, CHC Response to the Remedies Working Paper.

⁷⁴⁷ CHC, CHC Response to the Remedies Working Paper.

⁷⁴⁸ CHC, CHC Response to the Remedies Working Paper.

Offshore UK and of [REDACTED] synergies [REDACTED], thereby potentially [the financial consequences of the remedy].⁷⁴⁹

9.39 The Fisher Business initially told us that the Initial Divestiture Proposal would be an effective solution to the SLC, as it represented a [REDACTED] business that could be built upon from day one. It noted that a purchaser would need to undertake activities quickly in order to secure further contracts and further growth of the business – it noted that [the financial consequences of the remedy] – but that the package as defined in the Initial Divestiture Proposal would put a purchaser in a ‘very strong position to bid for future work.’⁷⁵⁰

9.40 The Fisher Business told us that the Initial Divestiture Proposal could be a package of sufficient scope to form an effective competitor in the market and noted that it represents a solution that would not require significant additional investment at the outset.^{751,752}

(a) On whether the package had sufficient scale to be a credible player in the market, the Fisher Business referred to NHV’s ability to start with one contract and generate growth. Further, the Fisher Business told us that the team operating the contracts within the Fisher Business would transfer with any contract and noted that they have both operational capability and credibility.⁷⁵³

(b) The Fisher Business submitted that a partial divestiture scenario in which [REDACTED] aircraft transferred alongside the contracts would represent the minimum required aircraft in order to sufficiently ensure that fixed costs could be covered by revenues earned from operations.⁷⁵⁴

(c) In a partial divestiture scenario in which no [REDACTED] aircraft were included in the package (eg the Initial Divestiture Proposal), the Fisher Business told us that this would not be a weakness for the divested business; the Fisher Business told us that the team has experience to operate [REDACTED] aircraft and that it would be relatively easy to bring such an aircraft and corresponding pilots and engineers into the divested business. However, the Fisher Business told us that the trend in the market is toward other aircraft and

⁷⁴⁹ CHC, CHC Response to the Remedies Working Paper.

⁷⁵⁰ Fisher Business response hearing transcript.

⁷⁵¹ Fisher Business response hearing transcript, 5 April 2022.

⁷⁵² Note that the Fisher Business clarified later that two hangars ([REDACTED]) would be required for this to be an effective solution.

⁷⁵³ The Fisher Business, Fisher Business response hearing transcript.

⁷⁵⁴ The Fisher Business, Fisher Business response hearing transcript.

therefore a lack of [REDACTED] in a remedy package would not limit the effectiveness of the package.⁷⁵⁵

- (d) The Fisher Business told us that the Initial Divestiture Proposal would only be effective in a scenario where two Aberdeen-based hangars were divested, as opposed to the one noted by CHC in its initial proposal.⁷⁵⁶ The Fisher Business explained that this would be necessary from both a safety and an operational perspective to allow for successful line and base maintenance of aircraft.⁷⁵⁷

- 9.41 In response to the Remedies Working Paper, the Fisher Business noted that it agreed with the CMA's view regarding the composition risks associated with the Initial Divestiture Proposal.⁷⁵⁸ In order to address the composition risks we had identified, and in response to our questions relating to the possible impact of adding the [REDACTED] contract to the Initial Divestiture Proposal, the Fisher Business proposed a partial divestiture package including the [REDACTED] contract and other associated assets (such as hangars, a passenger handling facility and relevant staff, inventory, working capital etc).⁷⁵⁹
- 9.42 The Fisher Business told us that the financial performance and financial stability of a carved-out business comprising [REDACTED] contracts would 'probably look much better than Bristow and CHC look today', and so would not be expected to be looked on negatively from a financial perspective by a customer out for tender.⁷⁶⁰

Third party views

- 9.43 The third parties that we spoke to told us that divestiture of a smaller package than Offshore UK has the potential to be an effective and attractive solution. Some third parties that we engaged with were responding to a proposal of two contracts⁷⁶¹ being divested, ie the Initial Divestiture Proposal, with some of these third parties stating that the package would require a greater number of contracts than specified. Other third parties that we spoke to discussed a partial divestiture scenario more broadly.

⁷⁵⁵ The Fisher Business, Fisher Business response hearing transcript.

⁷⁵⁶ We note that CHC clarified its position that [REDACTED] would be divested, see: CHC response to RF18.

⁷⁵⁷ The Fisher Business, call with the Fisher Business.

⁷⁵⁸ The Fisher Business, Fisher Business Response to the Remedies Working Paper.

⁷⁵⁹ The Fisher Business, Fisher Business Response to the Remedies Working Paper.

⁷⁶⁰ The Fisher Business, Fisher Business response hearing transcript.

⁷⁶¹ Note that when discussing the effectiveness of the Initial Divestiture Proposal with third parties, we discussed the potential for '[REDACTED]' contracts to be divested, but did not discuss specific contracts ([REDACTED]) with the third parties, due to the commercially sensitive nature of such information. As such, third party views directly in relation to the Initial Divestiture Proposal relate to the divestiture of contracts more broadly, and not to the specifics of those set out by CHC.

- (a) [REDACTED] told us that a partial divestiture of Offshore UK could be an effective solution depending on the CMA's threshold for market concentration and the extent of market share a partially integrated Offshore UK business would have with CHC. It noted that only profitable contracts should be included with preferably three aircraft types to ensure further capital to compete and scale. It told us that it would expect that there would be approximately \$60 million or approximately half of the revenue of Offshore UK's current business to ensure that there is reasonable market share and a platform to compete from.⁷⁶²
- (b) [REDACTED] told us a partial divestiture could be an effective solution but noted that this would be dependent on the scope of the package (including the contract itself) as set out in more detail at paragraph 9.44(b) below.
- (c) [REDACTED] told us that a partial divestiture would be an effective solution but noted that it does not consider that one or two contracts 'make a real business' and can be taken away quickly through termination for convenience clauses, therefore multiple contracts (more than two) would provide a more effective partial divestiture solution.⁷⁶³

9.44 We also received views from third parties as to the characteristics that might be needed for a package smaller than Offshore UK to have sufficient scope to represent an effective remedy for the SLC we had provisionally identified.

- (a) [REDACTED] submitted that it would expect a partial divestiture to include hangars, passenger handling facilities, tooling and ground support equipment, critical inventory and spares, support agreements and sufficient working capital as well as the necessary regulatory certifications and compliance requirements.⁷⁶⁴
- (b) [REDACTED] noted that it would also be dependent on the profitability of the contracts being sold – in its view the contracts 'would have to be at least cash flow neutral'.⁷⁶⁵ [REDACTED] told us that profitability and quality of the earnings of the portfolio, rather than the number of contracts, would be most important, but that it would be beneficial if the contracts concerned geographic regions in the UK that have growth potential in future. It noted that some aircraft types will be more in demand in the future and noted that it is important that the contracts position a purchaser on a

⁷⁶² Note of call with [REDACTED].

⁷⁶³ Note of call with [REDACTED].

⁷⁶⁴ Note of call with [REDACTED].

⁷⁶⁵ Note of call with [REDACTED].

'springboard' for growth in the market, in terms of where it is geographically and the type of fleet it is operating.⁷⁶⁶

- (c) As set out at paragraph (c) above, [REDACTED] noted that more than two contracts would be necessary for partial divestiture to be an effective solution. It noted that in a partial divestiture scenario, the scale of aircraft is important. It noted the significant fixed costs associated with the business and explained that the maintenance of all these fixed costs and infrastructure for one customer contract would be expensive. It noted that the base investment required to run a high-quality air carrier is significant and, therefore, the more contracts an operator has the better it can spread these costs across contracts and the more efficient and sustainable the company is to provide a strong proposition for the end customer.⁷⁶⁷
- (d) Third parties told us that a partial divestiture package would require the sale of the legal entity of Offshore UK. The CAA noted that approvals are vested in the legal entity, and that the AOC and operating licence are tied to the company number. Similarly, [REDACTED] told us that it may be simpler for a partial divestiture remedy to be a share sale of Offshore UK with the related assets and contracts – it noted that the balance of the remaining contracts, associated staff, infrastructure and assets could be integrated into CHC. [REDACTED] noted that this would retain the AOC with Offshore UK and ensure service continuity.⁷⁶⁸

Framework for assessment of composition risks of a divestiture package smaller than Offshore UK

- 9.45 A partial divestiture could only form the basis of an effective remedy if, despite being on a smaller scale than Offshore UK and having fewer assets and resources, it is able (on a stand-alone basis) to comprehensively restore the competitive constraint lost as a result of the Merger.
- 9.46 The main Parties and third parties have submitted to us that a divestiture package that was somewhat smaller than Offshore UK but more profitable could be more attractive to certain potential purchasers and a purchaser of such a package may be in a position to compete no less effectively for new contracts than a purchaser of the whole of Offshore UK. We note that all potential purchasers to whom we have spoken have expressed interest in a

⁷⁶⁶ Note of call with [REDACTED].

⁷⁶⁷ Note of call with [REDACTED].

⁷⁶⁸ Note of call with [REDACTED].

smaller, profitable business, without necessarily commenting on the specific proposals put forward by CHC.

- 9.47 The fact that a purchaser may be willing to purchase a smaller but more profitable package of assets does not, in itself, provide sufficient comfort that the package of assets is appropriate to restore the competition lost as a result of the merger, given that the incentives of the merger parties and the purchaser during the implementation period may not be aligned with those of the CMA.
- 9.48 Further, as noted in our Remedies Guidance, divestiture of a package of assets rather than an entire standalone business is likely to be more difficult to define and we would have less assurance that a purchaser would acquire everything it needed to be an effective competitor.⁷⁶⁹ The process of separation also creates additional execution and asset risk. In particular, the partial divestiture in this case would require a transfer of assets and staff from Offshore UK to CHC, and would therefore be dependent on customers, lessors and staff granting their consent to such transfers (and refusal by some might worsen the concerns about the coherence of operations, as described below). Therefore, any remedy package that is smaller than the full divestiture of Offshore UK will present significant additional risks.
- 9.49 Composition risk for a smaller package differs from the risk we have identified in relation to Offshore UK at paragraphs 9.22 to 9.27. As well as any risks associated with the business, there are risks associated with the scale and scope of the package being sufficient to create a competitor that restores the loss of competition arising from the Merger. There is significant risk that a divestiture package smaller than Offshore UK would not be appropriately configured to replicate the competitive constraint previously exerted by Offshore UK. Key composition risks in this context include:
- (a) The coherence of operations: there is a risk that a package of assets included in a partial divestiture package is not coherently configured to comprise an effective business. We have limited ability to determine confidently that a smaller package comprises everything needed to compete effectively.
 - (b) Incentives on CHC: there is also a risk associated with CHC's limited incentives to specify a package that comprises the appropriate assets to allow a smaller package to effectively operate in the provision of O&G Offshore Transportation Services in the UK.

⁷⁶⁹ [CMA87](#), paragraph 5.13.

- 9.50 Against this background, and having regard to the views of main and third parties and other evidence, we considered:
- (a) The composition risk of CHC's Initial Divestiture Proposal, in particular whether the divested business would be able to compete, and hence whether this was likely to constitute an effective remedy;
 - (b) The composition risk of the enhancement to CHC's Initial Divestiture Proposal (the Enhanced Divestiture Proposal) put forward in response to the Remedies Working Paper, and hence whether this was likely to constitute an effective remedy; and
 - (c) Whether there were other packages, smaller than Offshore UK, that could be sufficiently configured to form the basis of an effective remedy.

Assessment of the composition risk of CHC's Initial Divestiture Proposal

- 9.51 The Initial Divestiture Proposal put forward by CHC comprised divestiture of the existing UK AOC of the Fisher Business together with its postholders, including pilots and other individuals in charge of airworthiness, ground operations and safety, as well as one or two [REDACTED] contracts and a hangar or other facilities at Aberdeen airport.
- 9.52 In considering the Initial Divestiture Proposal put forward by CHC, we found:
- (a) although profitable, the proposed divestiture package would be [REDACTED] of the size of the Offshore UK business today (based on revenue),⁷⁷⁰ and [REDACTED] than the other main players in the market, NHV and Bristow.
 - (b) [REDACTED] the proposed two contracts relates to [REDACTED]. Moreover, divestiture of a business operating [REDACTED] contracts at the point of divestiture creates risks in terms of the financial resilience of the divestiture business in the event that [REDACTED] the contracts is terminated for any reason. We note CHC's submission (as at paragraph 9.37(c)) that early termination of contracts is the exception rather than the norm and its view that any contract loss is likely to cause disruption, but we remain of the view that this concern is particularly acute in a scenario in which only a small number of contracts are operated by the business.
 - (c) the success of this partial divestiture option in replacing the competitive constraint lost as a result of the Merger is heavily dependent on a

⁷⁷⁰ The Fisher Business estimated that it would form '[REDACTED]' in the Fisher Business response hearing transcript. CMA calculations estimate the contribution to be [REDACTED]% based on current revenue figures (CMA analysis of Fisher Response to RF17).

purchaser's ability and willingness to secure new contracts to allow the business to continue to grow from a smaller base in the market.

- 9.53 While some parties told us that a divestiture business of this scale might be sufficient to allow a purchaser to become a credible competitor over time (with reference to NHV when it started up), we are concerned that this would not be sufficient to replace the competitive force lost as a result of the Merger in a timely manner. A business of this limited scale could, for example, face additional challenges in terms of establishing its credibility with potential customers, in dealing with unexpected shocks or covering its overheads. It would have substantially fewer assets and resources than Offshore UK with which to compete for business, making it difficult to conclude with any confidence that it would be as effective a competitive constraint.
- 9.54 Given the above, we found that the specific proposal put forward by CHC as the Initial Divestiture Proposal would not be sufficiently configured to represent an effective remedy with a sufficient degree of certainty of being able to replace the competition lost as a result of the SLC identified in the UK O&G Offshore Transportation Services market. In particular, we had concerns that the proposal as specified would not be sufficient to: (1) replace the competitive constraint lost as a result of the Merger and (2) sustain the divested business as a competitive force in the market over the medium-term.

Assessment of the composition risk of the Enhanced Divestiture Proposal

- 9.55 We considered next whether the Enhanced Divestiture Proposal put forward by CHC, which reflected the Initial Divestiture Proposal but with the addition of the [REDACTED] contract, would be sufficiently configured to represent an effective remedy capable of operating as an effective competitor. We noted that this contract is the [REDACTED] contract in the business with respect to revenue, and the contract with the [REDACTED] across the business.⁷⁷¹ Including the [REDACTED] contract in the divestiture package would increase the proportion of revenue earned by the package from approximately [REDACTED]% of current Offshore UK revenues to approximately [REDACTED]%.⁷⁷² While the package would hold an additional contract as compared to the Initial Divestiture Proposal, adding the [REDACTED] contract would still result in a divested business that was much smaller than Offshore UK, and than any of the other major operators. However, we noted that the [REDACTED] contract is [REDACTED] and would reduce the overall profitability of the divestiture package.

⁷⁷¹ CMA analysis of Fisher Response to RF17.

⁷⁷² CMA analysis of Fisher Response to RF17.

9.56 On this basis, we consider that the addition of the [X] contract does not materially strengthen the initial partial divestiture remedy and that the Enhanced Divestiture Proposal does not constitute the basis for an effective remedy.

Assessment of other potential divestiture options smaller than Offshore UK

9.57 As noted at paragraph 9.41, the Fisher Business submitted that the Initial Divestiture Proposal could be expanded by including the [X] contract within the package. CHC (as set out at paragraph 9.38) told us that this would not be an effective solution on the basis that [X].

9.58 In making our assessment, we considered whether a package comprising the Initial Divestiture Proposal plus the [X] contract could be expected to replace the competitive constraint lost by the acquisition of Offshore UK.

9.59 If the [X] contract were added, the divestiture package would represent approximately [X]%⁷⁷³ of the current total revenues of Offshore UK and increase the scale of the package as a result of including [X] additional aircraft, additional hangar space in [X], and a corresponding increase in staff. The [X] contract is a [X] contract (as are the [X] contracts included in the Initial Divestiture Proposal) which could increase the attractiveness of the package as compared to the Initial Divestiture Proposal, and potentially as compared to the full divestiture of Offshore UK. However, we note the point made by CHC that the inclusion of the [X] contract could increase composition risks as it might require additional costs to service a contract from an additional location as compared to the Initial Divestiture Proposal.

9.60 However, while the profitability of the package could make it attractive to potential purchasers, the business would be substantially smaller than Offshore UK for example in terms of revenue, number of contracts and number of aircraft. Such a package, like any partial divestiture, would be subject to several risks (as set out at paragraphs 9.48 and 9.49). There is a significant risk that a business that would be approximately half the size of Offshore UK would not replicate the competitive strength of Offshore UK. We also consider that a business this size may be less resilient and have a reduced ability to benefit from scale.

9.61 We considered whether there was an alternative larger partial divestiture package that we could be confident would effectively replicate the competitive constraint imposed on the market by Offshore UK prior to the Merger;

⁷⁷³ CMA analysis of Fisher Response to RF17.

however no parties have proposed such a package and we have been unable to identify one.

Conclusions on the appropriate scope of a divestiture package

- 9.62 Our assessment of the appropriate scope for a divestiture package started with our consideration of the divestiture of Offshore UK and its associated risk profile. We then considered smaller packages.
- 9.63 The majority of parties agreed that the divestiture of Offshore UK would be sufficient in terms of its overall scope in remedying the SLC that has been found in the provision of O&G Offshore Transportation Services in the UK. CHC disagreed with this view, on the basis that [REDACTED].
- 9.64 We note the submissions made by CHC with regard to [the position absent the merger].⁷⁷⁴ We note that CHC expects to achieve \$[REDACTED] synergies from the integration.⁷⁷⁵ We have addressed this point as part of our consideration of proportionality (see paragraphs 9.129 to 9.161). We also considered separately whether CHC's representations on this matter impacted our SLC findings (see paragraph 5.187).
- 9.65 We are of the view that divestiture of Offshore UK would be an effective remedy that could be attractive to suitable purchasers (dependent on the further considerations set out below) and would restore the competitive conditions prior to the Merger. However, we also identified specific risks relating to the financial performance of the Offshore UK business. We consider that these are capable of being managed by identification of a suitable purchaser, though we recognise that there is an element of purchaser risk, and set this out in more detail in the next section. Having identified Offshore UK as an effective remedy option, we have not considered in this section whether divestiture of a package larger than Offshore UK would be necessary (as we are focused on identifying the smallest viable competitor). However, we consider whether a larger package would be necessary [REDACTED] at paragraphs 9.92 to 9.98 and 9.100 to 9.103 below.
- 9.66 As to whether a smaller divestiture package could be effective, as set out at paragraphs 9.51 to 9.61 above, we are of the view that the proposed partial divestiture packages would not be effective in replicating the competitive force

⁷⁷⁴ CHC, [CHC response to the Remedies Notice](#).

⁷⁷⁵ CHC response to RF18.

exerted by Offshore UK prior to the Merger, and we have not identified any other partial divestiture packages that would be effective.

- 9.67 We next consider: (a) the identification and availability of suitable purchasers, followed by (b) how we could ensure an effective divestiture process.

Identification and likely availability of suitable purchasers for a divestiture remedy package

- 9.68 Having identified that the divestiture of Offshore UK would be of sufficient scope to comprise an effective remedy package, we next consider the identification and availability of suitable purchasers.

- 9.69 The CMA will wish to satisfy itself that a prospective purchaser:

- (a) is independent of the merger parties;
- (b) has the necessary capability to compete;
- (c) is committed to competing in the market; and
- (d) will not create further competition or regulatory concerns.⁷⁷⁶

- 9.70 In our Remedies Notice, we invited views on whether there were any specific factors to which the CMA should pay particular regard in assessing purchaser suitability, and whether there were risks that a suitable purchaser was not available.⁷⁷⁷

Purchaser suitability

CHC, the Fisher Business and third parties' views on purchaser suitability

- 9.71 CHC and the Fisher Business did not highlight any particular concerns related to a potential purchaser being independent from CHC. One third party⁷⁷⁸ noted that we should consider any relationships held by CHC and any potential purchasers via joint ventures that it undertakes in other jurisdictions. No specific concerns were raised with regard to any of these joint ventures, and no other third parties raised any potential independence concerns.

- 9.72 We asked CHC, the Fisher Business and third parties whether the presence of PCGs in the market could impact on the availability of purchasers to

⁷⁷⁶ CMA87, paragraph 5.21.

⁷⁷⁷ Remedies notice.

⁷⁷⁸ Note of call with [redacted].

operate a divested Offshore UK business. Both CHC and the Fisher Business told us that the existence of PCGs in the market should not be expected to limit the available pool of purchasers.^{779 780} None of the third parties that we spoke to told us that PCGs would limit the availability of purchasers to operate a divested Offshore UK business. One third party did however note that some contracts contain performance PCGs, which are dependent on the parent company stepping in in the case of an operator being unable to fulfil a contract – it noted that in this case the identity of the parent company matters as it would require the operating capability and experience to step in.⁷⁸¹

9.73 With regard to demonstrating purchaser capability and commitment to the UK O&G Offshore Transportation Services market:

- (a) CHC told us that a potential purchaser would need to meet the relevant ownership and control requirements to operate in the UK, alongside the resources to run the business. It noted that a potential purchaser would need to be capitalised to a level that the regulator (the CAA) would be happy with. In particular, CHC noted that a potential purchaser would require experience in the market and the financial stability to bid for new contracts.⁷⁸²
- (b) The Fisher Business told us that we should seek an investor that has a focus on the North Sea market. The Fisher Business noted that [REDACTED].⁷⁸³
- (c) Third parties emphasised the importance of track record and experience in the market:
 - (i) [REDACTED] told us that a purchaser should have experience with offshore O&G. It noted that operations in Europe would be desirable but not necessary, and that experience with the types of helicopters used in the North Sea would also be of benefit. It noted that any of the international helicopter operators would probably be in the position to fly the aircraft types needed. It noted that if the SAR contract was included in divestiture, then it would be important for the purchaser to have SAR experience. Further, with reference to the recent history of bankruptcies in the market, [REDACTED] told us that customers would want to understand whether the potential purchaser would have the ability to

⁷⁷⁹ Fisher Business response hearing transcript, 5 April 2022 and CHC response hearing transcript.

⁷⁸⁰ Note that this view [REDACTED].

⁷⁸¹ Note of call with [REDACTED].

⁷⁸² CHC response hearing transcript, 5 April 2022.

⁷⁸³ Fisher Business response hearing transcript.

invest, run operations and provide sufficient cashflow to the business until it becomes more sustainable.⁷⁸⁴

- (ii) [X] told us that customers of UK O&G Offshore Transportation Services providers care most about direct demonstration of capability in the market and would most likely want to contract with a company (ie purchaser) with direct O&G experience and with a proven track record for providing safe and reliable services, rather than a financial buyer.⁷⁸⁵
- (iii) [X] customers [X] noted the importance of a credible track record from any purchaser to ensure the capability to operate the business. In particular, [X] noted the need to have a team in place that has a proven track record and people who are known in the industry.⁷⁸⁶ Third parties noted that this could come from the transfer of staff rather than the purchaser itself.
- (iv) With regard to commitment to the market, third parties told us that the business plan would be key to understanding a potential purchaser's commitment to the market. [X] noted that an aggressive business plan which showed the purchaser was looking to grow the business in different sectors and demonstrated a willingness to invest money would be good evidence of commitment to the market.⁷⁸⁷

9.74 We asked CHC, the Fisher Business and third parties whether different types of purchasers (eg those in adjacent markets or financial buyers) may be suitable. First, in relation to a buyer in an adjacent market:

(a) Both CHC and the Fisher Business noted that purchasers [X].⁷⁸⁸

(b) Third parties told us that purchasers in an adjacent market could be interested and/or effective purchasers. In particular:

- (i) [X] told us that the offshore wind market is similar to the offshore O&G market in the UK. It noted that both a buyer that operates an O&G Offshore Transportation Services business in another jurisdiction and a UK windfarm helicopter operator would be suitable buyers.⁷⁸⁹

⁷⁸⁴ Note of call with [X].

⁷⁸⁵ Note of call with [X].

⁷⁸⁶ Note of call with [X].

⁷⁸⁷ Note of call with [X].

⁷⁸⁸ CHC response hearing transcript and the Fisher Business response hearing transcript.

⁷⁸⁹ Note of call with [X].

- (ii) [REDACTED] noted that offshore wind companies are generally smaller companies so their ability/interest would depend on who their investors are, ie the amount of financial backing and capital they have.⁷⁹⁰ This view was reflected by [REDACTED], who told us that there may not currently be enough capital deployed in the wind market to enable interested purchasers to expand and extend to O&G operation.⁷⁹¹
- (iii) One of the third parties that we spoke to [REDACTED] expressed an interest in purchasing a divestiture package (although with a preference for partial divestiture, as set out below).⁷⁹² Another third party we spoke to [REDACTED] expressed an interest in either a fully divested Offshore UK business or a partial divestiture, dependent on profitability.⁷⁹³

9.75 In relation to a financial buyer (eg private equity) as a potential purchaser:

- (a) CHC noted that it expects [REDACTED].⁷⁹⁴
- (b) The Fisher Business noted that a financial buyer (eg private equity) could be a suitable purchaser, but only if it was willing to demonstrate commitment to the market for a time period beyond the normal private equity investment timeframe, for example a seven-to-ten year term, which would allow it to support the Offshore UK business through the restructuring of the UK market.⁷⁹⁵
- (c) Third parties generally told us that financial buyers could be a solution but that they would need to demonstrate commitment to the market. In particular:
 - (i) [REDACTED] noted that private equity firms could be suitable financial buyers, but that they would be looking to exit with enhanced profitability across their investment.⁷⁹⁶
 - (ii) [REDACTED] noted no particular concerns with a financial buyer but noted that the divestiture package would need to be a substantial business with a management team to run the business as financial buyers would not bring their own aviation experience.⁷⁹⁷

⁷⁹⁰ Note of call with [REDACTED].

⁷⁹¹ Note of call with [REDACTED].

⁷⁹² Note of call with [REDACTED].

⁷⁹³ Note of call with [REDACTED].

⁷⁹⁴ CHC, CHC response hearing transcript.

⁷⁹⁵ The Fisher Business, Fisher Business response hearing transcript.

⁷⁹⁶ Note of call with [REDACTED].

⁷⁹⁷ Note of call with [REDACTED].

- 9.76 We asked CHC, the Fisher Business and third parties whether there were competition or regulatory concerns associated with any potential purchasers:
- (a) CHC told us that it did not regard any potential purchasers not currently operating in the UK as raising competition or regulatory concerns in the UK. [REDACTED].⁷⁹⁸
 - (b) The Fisher Business noted no significant competition or regulatory concerns, other than noting that a potential purchaser should not be a current competitor in the UK (or Australia in the case of full divestiture of The Fisher Business, including Offshore Australia)).⁷⁹⁹
 - (c) Third parties were generally of the view that the business should not be divested to anyone currently operating in the market:
 - (i) As noted at paragraph 9.93(a) below, one third party noted that the inclusion of any additional elements within the package, particularly Offshore Denmark or Offshore Australia, could lead to competition concerns arising in other jurisdictions.
 - (ii) [REDACTED] told us that apart from operators already present in the UK O&G Offshore Transportation Services market, no other potential purchasers should raise competition or regulatory concerns.⁸⁰⁰
 - (d) [REDACTED].⁸⁰¹

Our assessment of purchaser suitability

- 9.77 On the basis of the evidence set out above, we are of the view that the application of our usual criteria for purchaser suitability (see paragraph 9.81 below) within the context of this market would enable the CMA to address all aspects of the key concerns raised by CHC, the Fisher Business and third parties.
- 9.78 We noted the points raised by CHC, the Fisher Business and third parties in relation to the relevant capabilities of a potential purchaser, in particular that significant experience within the UK O&G Offshore Transportation Services market would be necessary to ensure the successful operation of the Offshore UK business. However, we consider that this requirement could be satisfied

⁷⁹⁸ CHC, CHC response hearing transcript.

⁷⁹⁹ The Fisher Business, Fisher Business response hearing transcript.

⁸⁰⁰ Note of call with [REDACTED].

⁸⁰¹ Note of call with [REDACTED].

with the experienced management team within Offshore UK remaining in place, supported by a purchaser, eg in the case of a financial buyer.

- 9.79 We are therefore of the view that we should not rule out potential purchasers that do not currently operate within the UK O&G Offshore Transportation Services market.
- 9.80 We consider, [✂], that a potential purchaser's suitability to acquire Offshore UK would be particularly dependent on its ability to provide the necessary financial support to the Offshore UK business in an interim period until its profitability could be improved. Further, we would expect to see detailed plans for the purchaser's ongoing commitment to the business, including its intention to grow the business, tendering for new contracts, and manage financial performance through investment in the business over the longer-term.
- 9.81 Based on the above, in order to ensure that a divestiture remedy achieves its intended effects, we would wish to satisfy ourselves that a potential purchaser meets the following criteria:

(a) Capability:

- (i) The potential purchaser must have access to sufficient financial resources, expertise (including managerial, operational and technical capability, which may come from the purchaser or the acquired business) and assets to enable the Offshore UK business to be an effective competitor in the market from the start. These resources should be sufficient to enable Offshore UK to continue to operate as an effective competitor (eg by supporting it to meet its current contractual commitments, as well as providing sufficient financial backing to allow it to bid for new tenders effectively going forward).
- (ii) The potential purchaser must meet all of the relevant regulatory requirements to allow the divestiture package to operate in the UK O&G Offshore Transportation Services market (see further consideration of this point at paragraphs 9.112 to 9.119 below).
- (iii) The CMA will also consider the ability of the potential purchaser to complete the transaction in a timely manner and within the agreed divestiture process timetable.

- (d) Commitment:** the CMA will wish to satisfy itself that the potential purchaser has an appropriate business plan and objectives for competing in the relevant market and improving its financial position over the medium-term, and that the potential purchaser has the incentive and long-

term commitment to maintain and operate the Offshore UK business as part of a viable and active business in competition with CHC and other competitors in the relevant markets.

(e) Independence:

- (i) The potential purchaser should have no significant connection to CHC that may compromise its incentives to compete effectively with CHC (eg an equity interest, common significant shareholders, shared directors). The CMA will consider the nature and materiality of any existing structural or financial links between the potential purchaser and CHC, including any form of collaboration (eg in product development or product sales and marketing) and reciprocal trading relationships.
- (ii) The CMA will also pay close attention to any ongoing links between CHC and the purchaser that would likely arise as a result of a divestiture remedy. The CMA may require, if necessary, that such links be severed or otherwise addressed as a condition for any approval.⁸⁰²

- (f) Absence of competitive concerns:** the CMA must be confident that the potential purchaser does not itself create a realistic prospect of an SLC within any market or markets in the UK, and that it would not expect to investigate an acquisition of Offshore UK by this purchaser regardless of whether or not the transaction constitutes a relevant merger situation under the Act.⁸⁰³

9.82 It is our view that Bristow and NHV are unlikely to be suitable purchasers on the grounds that a purchase by either company could raise competition concerns, similar to those arising from the Merger, but that it would not be necessary at this stage to rule out any other market participant – eg O&G Offshore Transportation Service providers currently operating in other geographic jurisdictions or crew transportation service providers in adjacent markets, a financial buyer, or the existing Offshore UK management team. We will assess the suitability of any potential purchaser on its individual merits, and against our purchaser suitability criteria.

⁸⁰² CMA87, paragraph 5.24.

⁸⁰³ CMA87, paragraph 5.27.

Purchaser availability

CHC, the Fisher Business and third parties' views on the availability of a purchaser

General views on purchaser availability

- 9.83 We asked CHC, the Fisher Business and third parties about the likely availability of suitable purchasers for both a fully divested Offshore UK business and a package that is smaller than the full divestiture of Offshore UK.
- 9.84 In noting whether there would be sufficient availability of suitable purchasers for the Offshore UK business, CHC submitted that [REDACTED].⁸⁰⁴ CHC noted [REDACTED]. CHC told us that it has so far received [REDACTED] expressions of interest in purchasing a smaller divestiture package.⁸⁰⁵
- 9.85 The Fisher Business submitted that a standalone Offshore UK would likely be [REDACTED]. It told us that it was [REDACTED] to be [REDACTED] as a result of [REDACTED], and that it considered that [REDACTED].⁸⁰⁶ The Fisher Business noted that it understood there are [REDACTED] potential purchasers for the Offshore UK business.⁸⁰⁷
- 9.86 We received a range of views from third parties on the availability of purchasers for Offshore UK during our calls. Three third parties told us that they could be interested in purchasing the Offshore UK business.
- (a) [REDACTED] told us that it is interested in purchasing Offshore UK.⁸⁰⁸
- (b) [REDACTED] told us that [REDACTED].⁸⁰⁹
- (c) [REDACTED] told us it would be an interested buyer.⁸¹⁰

⁸⁰⁴ CHC, [CHC Response to Notice of Possible Remedies](#), 31 March 2022, paragraph 3.2.

⁸⁰⁵ Three were noted in CHC's response to the Remedies Notice (CHC, [CHC Response to Notice of Possible Remedies](#), 31 March 2022, paragraph 3.6.).

⁸⁰⁶ The Fisher Business, Fisher Business response to the Remedies Working Paper.

⁸⁰⁷ The Fisher Business, Fisher Business response hearing transcript.

⁸⁰⁸ Note of call with [REDACTED].

⁸⁰⁹ Note of call with [REDACTED].

⁸¹⁰ Note of call with [REDACTED].

9.87 We note that [REDACTED]'s expression of interest was made in the context of the following points:

- (a) [REDACTED] told us that it was difficult to comment on whether there would be sufficient interest in purchasing Offshore UK without an understanding of its profitability. It told us that it would look at its cash flow and growth profile (eg the amount of years left on the contracts being sold), and that it would never buy a loss-making business.⁸¹¹ It emphasised that regardless of whether it was looking at the purchase of a fully divested business or a smaller number of contracts, its key driver would be profitability.⁸¹²
- (b) [REDACTED] told us that would be more inclined to look at a smaller portfolio of good, profit-making contracts compared to a larger bundle including good and bad contracts.⁸¹³ It noted that a package that included contracts that were not profitable enough to cover aircraft lease costs and other operating costs would not be attractive to it and therefore the cash flow of any divested contracts would be very important, particularly in a scenario in which assets were leased (as a result of continued monthly fixed costs regardless of revenue stream).⁸¹⁴
- (c) Lastly, [REDACTED].⁸¹⁵

9.88 With regard to interest in purchasing Offshore UK more broadly:

- (a) [REDACTED]⁸¹⁶ told us that it would not be interested in purchasing a full divestiture of Offshore UK business and would prefer a partial divestiture remedy option. However, it considered that there would be interest from others in an acquisition of the entirety of Offshore UK.⁸¹⁷ [REDACTED] told us that the attractiveness of a divestiture package would be dependent [REDACTED] to be divested.⁸¹⁸
- (b) In addition to expressing its own interest, [REDACTED] told us that it considered there would be a '[REDACTED]'.⁸¹⁹
- (c) [REDACTED] told us that [REDACTED] or [REDACTED] might be interested in purchasing Offshore UK.⁸²⁰

⁸¹¹ Note of call with [REDACTED].

⁸¹² Note of call with [REDACTED].

⁸¹³ Note of call with [REDACTED].

⁸¹⁴ Note of call with [REDACTED].

⁸¹⁵ Note of call with [REDACTED].

⁸¹⁶ Note of call with [REDACTED].

⁸¹⁷ Note of call with [REDACTED].

⁸¹⁸ Note of call with [REDACTED].

⁸¹⁹ Note of call with [REDACTED].

⁸²⁰ Note of call with [REDACTED].

Expressions of interest received by the CMA

- 9.89 In addition to the points noted from third parties above, we received three letters/notes of interest directly, setting out expressions of interest in purchasing Offshore UK. [REDACTED]:
- (a) UltimateHeli submitted a letter to CHC (then forwarded to us) in which it noted that it was interested in the UK company, and that it would be willing to match the price that CHC paid for Offshore UK (on the condition that the financial position of the business is the same or better than when CHC acquired the business in November 2021).⁸²¹
 - (b) HeliOperations contacted the CMA and noted that it identified synergies between its business and that of the Fisher Business and that it would be interested in discussing a potential acquisition of the business.⁸²²
 - (c) We also received an expression of interest from [REDACTED].⁸²³ [REDACTED] told us that it would be interested in acquiring Offshore UK at a fair market value.
- 9.90 We spoke to [REDACTED] as part of our third party calls (see paragraph 9.86(a) above).

Divestiture of a larger package than Offshore UK

- 9.91 We considered whether a divestiture package comprising the whole of the Offshore UK would need to be expanded in order to attract a suitable purchaser and thereby address the composition and purchaser risk identified above.
- 9.92 We invited views from the Parties and third parties on whether the scope of the divestiture package would need to be broadened from Offshore UK to include other non-UK assets acquired as part of the Fisher Business, specifically Offshore Australia and Offshore Denmark.
- (a) CHC submitted that any remedy package that included Offshore Denmark and/or Offshore Australia would [REDACTED]. It submitted that the market in this case is a national one and divestiture of operations outside of the UK would not address the competition concerns identified. With regard to the differences between the UK and Australia in particular, CHC noted that: the customers of Offshore UK and Australia are different, and negotiations are kept separate; contracts are typically awarded at a national level;

⁸²¹ Expression of interest from UltimateHeli.

⁸²² Expression of interest from HeliOperations.

⁸²³ Expression of interest from [REDACTED].

businesses operate under different AOCs and are governed by different regulators; there is no overlap in the sales and operations personnel; and the IT infrastructure is on site with separate facilities between the UK and Australia.⁸²⁴

- (b) The Fisher Business told us that [REDACTED].⁸²⁵ It noted that there may be a preference from a purchaser for divestiture of the Fisher Business as a whole (ie inclusive of Australia and Denmark).⁸²⁶ It noted that it considered that [REDACTED] that inclusion of Offshore Australia and Offshore Denmark within a divestiture package would raise the risk of there being a lack of commitment from a purchaser to the UK market, in particular due to the greater attractiveness of the Australian business.⁸²⁷ The Fisher Business explained that as the majority of synergies sit within central overheads, it did not expect a purchaser to achieve significantly greater synergies from purchasing the entire Fisher Business than from purchasing Offshore UK.⁸²⁸ Further, the Fisher Business noted that divestiture of Offshore Australia would exclude potential purchasers currently operating in Australia.⁸²⁹

9.93 We received mixed views from third parties:

- (a) [REDACTED] told us that some bidders could have competition issues in one of those jurisdictions, which could limit their interest.⁸³⁰
- (b) [REDACTED] told us that including all three entities could provide more value for an investor in terms of synergies. It noted that if the objective is to develop a sustainable business, then the divestiture of the whole business would make sense. Further, it told us that, at a consolidated level, it understands the Fisher Business's financial performance to be close to break-even or marginal, whereas a prospective remedy focusing only on the divestiture of Offshore UK may be unsustainable.⁸³¹
- (c) [REDACTED] noted that a company with UK-based operations and Australian-based operations would not necessarily benefit from the same economies of scale across geographic regions, and therefore would not be necessary to make the divestiture an effective package.⁸³² Similarly, [REDACTED] told us that

⁸²⁴ CHC, [CHC Response to Notice of Possible Remedies](#), 31 March 2022, section C.

⁸²⁵ Fisher Business response hearing transcript.

⁸²⁶ Fisher Business response hearing transcript.

⁸²⁷ Fisher Business response hearing transcript.

⁸²⁸ Fisher Business response hearing transcript.

⁸²⁹ The Fisher Business, Fisher Business response hearing transcript.

⁸³⁰ Note of call with [REDACTED].

⁸³¹ Note of call with [REDACTED].

⁸³² Note of call with [REDACTED].

it would be a ‘nice to have’, but is not essential to create an effective solution.⁸³³

9.94 We also considered whether the inclusion of additional services (such as EMS contracts),⁸³⁴ alongside Offshore UK, would make the package more attractive.

9.95 In line with its view set out at paragraph 9.93(a), CHC submitted that including any other businesses in a divestiture package outside UK O&G alongside Offshore UK would [REDACTED].⁸³⁵

9.96 The Fisher Business told us that it did not consider that the package would become more attractive if additional services, such as EMS, were included. The Fisher Business told us that it understands that EMS businesses around the world are not performing well and are not necessarily profitable, therefore the addition of such contracts/assets into the divestiture package would not make it a more attractive solution.⁸³⁶

9.97 Third parties were of the view that it would not be necessary to add additional services to the divestiture package in order to create a more effective or attractive divestiture package.⁸³⁷ [REDACTED] noted that a potential purchaser could benefit from the additional services, but they would not be required to make the divestiture package effective.⁸³⁸

Our assessment of purchaser availability

9.98 In this case, we have been mindful of the financial position of Offshore UK, and the [REDACTED]. We recognise that this has the potential to impact the pool of likely available purchasers for the business and note that we will require a purchaser that is suitably well-resourced with a clear vision for the divested business. However, we note that the existence of loss-making contracts or other bad assets would likely be incorporated into a potential purchaser’s valuation of Offshore UK and the corresponding price paid for the business.

9.99 Neither CHC nor the Fisher Business, nor any of the third parties that we spoke to, told us that it would be necessary to include Offshore Australia, Offshore Denmark or any additional services in order to ensure the effectiveness of a divestiture remedy.

⁸³³ Note of call with [REDACTED].

⁸³⁴ Note that EMS services are operated by CHC rather than the Fisher Business.

⁸³⁵ CHC, [CHC Response to Notice of Possible Remedies](#), 31 March 2022, paragraph 5.6.

⁸³⁶ The Fisher Business, Fisher Business response hearing transcript.

⁸³⁷ Note of call with [REDACTED] and [REDACTED].

⁸³⁸ Note of call with [REDACTED]

- 9.100 We noted that while including these operations might make the package more attractive to some purchasers, it might deter others (for example as a result of regulatory risk in other jurisdictions). In addition, their inclusion may lead a purchaser to reduce its focus and commitment to the UK, opting instead to direct its efforts to, in particular, the Australian entity, which may be regarded as a more attractive asset.⁸³⁹ In this context, we note that there was limited evidence of any material synergies between Offshore UK and either Offshore Australia or Offshore Denmark.⁸⁴⁰ Therefore, while we consider that including these additional entities within the package could create an effective remedy package, we are of the view that it is not necessary to include Offshore Australia and Offshore Denmark to ensure an attractive remedy package.
- 9.101 Similarly, neither CHC nor the Fisher Business, nor any third parties, suggested that the inclusion of additional services, such as EMS, would be necessary to ensure the effectiveness of a divestiture remedy. Again, we note that the inclusion of additional services may increase the attractiveness of the package to some potential purchasers but may deter others.
- 9.102 On this basis, we are of the view that it would not be necessary to include any entities beyond Offshore UK to ensure the effectiveness of a divestiture package comprising Offshore UK. While it may increase the attractiveness of the package to some purchasers, it may deter others, and could deflect commitment away from the UK market in which we have found an SLC. However, for the avoidance of doubt, while we do not require additional entities to be included beyond Offshore UK, should CHC prefer to sell the entire Fisher Business (being Offshore UK, Offshore Australia and Offshore Denmark) rather than only Offshore UK, it would be permitted to do so.
- 9.103 We note that CHC has already received approaches for a divestiture package (see paragraph 9.84) and the Fisher Business has noted its awareness of interest in a divestiture package (see paragraph 9.85). We have been told by three (see paragraph 9.86) of the third parties that we have spoken to that they would potentially be interested in acquiring the Offshore UK business (although we note that one is [redacted] and one placed significant weight on [redacted]), and we have identified two additional approaches (see paragraph 9.90) communicated directly to the CMA.⁸⁴¹ Based on the views put to us regarding the importance of profitability and the loss-making nature of Offshore UK, we consider that the overall extent of interest in acquiring Offshore UK within the

⁸³⁹The Fisher Business, Fisher Business response hearing transcript.

⁸⁴⁰ Note that we are aware of instances of helicopters being transferred across geographical locations, but understand that this generally relates to a longer-term move in location, rather than a frequent sharing of capacity across different regions.

⁸⁴¹ We recognise that there may be some overlap in the expressions of interest identified by CHC, the Fisher Business and the CMA.

market may be reduced as compared to initial expressions of interest. However, we consider there to be sufficient interest to make divestiture of Offshore UK an effective remedy solution.

Conclusions on the identification and availability of a suitable purchaser for a divestiture remedy package

9.104 Based on our assessment of purchaser suitability (see paragraphs 9.77 to 9.82) we are of the view that the purchaser criteria set out at paragraph 9.81 above would address the risks arising from the financial position of the Offshore UK business. Further, based on the evidence including expressions of interest made by potential purchasers, we consider that it is likely that a suitable purchaser could be identified for a remedy package comprising the full divestiture of Offshore UK.

Ensuring an effective divestiture process

9.105 In this section we set out our assessment of what would constitute an effective divestiture process for a divestiture of Offshore UK.

Timescale allowed for divestiture

9.106 We asked CHC, the Fisher Business and third parties what would be an appropriate timescale for divestiture of Offshore UK or a partial divestiture.

9.107 CHC told us that a timeframe of [REDACTED].^{842,843}

9.108 The Fisher Business told us that a [REDACTED] would be sufficient for the divestiture of Offshore UK, and that it would be a similar timeframe in the case of a partial divestiture of Offshore UK.⁸⁴⁴

9.109 The third parties we engaged with suggested a timeframe ranging between three months to 12 months.⁸⁴⁵

9.110 Based on the evidence received, we are of the view that [REDACTED].

Complicating factors

9.111 We asked CHC, the Fisher Business and third parties whether there might be complicating factors arising which could impact the divestiture process, in

⁸⁴² CHC, CHC response hearing transcript.

⁸⁴³ CHC, CHC response hearing transcript.

⁸⁴⁴ The Fisher Business, Fisher Business response hearing transcript.

⁸⁴⁵ Note of call with [REDACTED], [REDACTED] and [REDACTED].

particular regulatory concerns or issues related to the transfer of contracts (eg lease contracts and customer contracts).

Views of CHC and the Fisher Business

- 9.112 CHC told us that transferring existing customer and lease contracts to an alternative purchaser would require due diligence on the part of customers and lessors, but that it was generally a standard process. CHC agreed that the process may be impacted by any credibility that a potential purchaser had with a customer or lessor. Further, CHC noted that current uncertainty in the market may lead to increased due diligence in divestiture process now, as compared to when the contracts were previously transferred from Babcock to CHC.⁸⁴⁶
- 9.113 With regard to PCGs associated with such contracts, CHC told us that the transfer of PCGs is a straightforward process. It noted that customers individually consent to the transfer of PCGs to a new purchaser but that, in the case of the previous transfer, it was 'primarily a commercial exercise.' CHC noted that [REDACTED], and that it anticipated a similar process would occur in the full or partial divestiture of Offshore UK. CHC confirmed that [REDACTED], but explained that this was as a result of [REDACTED].⁸⁴⁷ The Fisher Business did not note any concerns arising out of the need to transfer PCGs to a new purchaser.
- 9.114 On regulatory concerns, CHC told us that as long as the AOC was transferred alongside the entity (eg company number) that it is attached to, and as long as the operating manuals/staff associated with the AOC could be demonstrated as still being in place, then it would not expect there to be regulatory issues which would impact the ability to sell Offshore UK or elements of Offshore UK (eg a partial divestiture) to an alternative purchaser.⁸⁴⁸
- 9.115 The Fisher Business submitted that it anticipates that the transaction could be executed relatively quickly, with little or no transition services or arrangements required from CHC to support the Fisher Business, and a short, simple transition service from the Fisher Business to CHC.⁸⁴⁹

⁸⁴⁶ CHC, CHC response hearing transcript.

⁸⁴⁷ CHC, CHC response hearing transcript.

⁸⁴⁸ CHC, CHC response hearing transcript.

⁸⁴⁹ The Fisher Business, The Fisher Business response to the Remedies Working Paper.

Views of third parties

9.116 The third parties that we spoke to highlighted a number of potentially complicating factors that could slow down any divestiture process. In particular, these can be split into the following categories:

- (a) Regulatory compliance: third parties noted that there would be a need to demonstrate compliance to operate and own the AOC. This would include both ownership requirements (eg the CAA's requirement that any company operating a UK AOC should be at least 51% owned by a UK national). In particular, the CAA noted that the AOC must be transferred alongside the relevant company number – ie the asset cannot be divested itself, rather it is attached to a particular company. On this basis, a divestiture package would require the divestiture of the Offshore UK company.
- (b) Transfer of customer contracts: third parties noted that many customer contracts hold change of control provisions which require the consent of a customer to transfer the contract to a new purchaser.
- (c) Transfer of leases: as with customer contracts, third parties noted that suppliers of aircraft leases may require approval prior to the contract changing to a new purchaser.
- (d) Union negotiations: one third party⁸⁵⁰ that we spoke to highlighted that complexities associated with union negotiations may impact a divestiture process as it would be difficult to predict cost structures or service delivery levels (eg if union agreements are expiring, due to come up for renewal, or overdue/contentious).

9.117 The third parties that we spoke to noted that these complicating factors could have the potential to slow down the divestiture process, but none noted that they would be significant enough to lead to an unachievable divestiture scenario.

Our assessment of complicating factors

9.118 The complicating factors highlighted by CHC, the Fisher Business and third parties relate to regulatory compliance and change of control of contracts with customers and lessors. We are of the view that these concerns are addressed through the divestiture of Offshore UK as a whole entity.

⁸⁵⁰ Note of call with [redacted].

- (a) **Regulatory compliance:** The AOC is attached to Offshore UK and therefore structuring divestiture as a sale of the shares in Offshore UK will allow the transfer of the AOC (and relevant postholders) to a new purchaser. With regard to ownership criteria, we are of the view that this can be managed through ensuring that this is addressed as part of the purchaser suitability criteria.
- (b) **Change of control of contracts:** We note that many contracts contain change of control clauses which trigger the right to terminate the contract when the controlling entity of the contract changes hands. Further, we note that customer contracts often also allow for early termination including 'for convenience' (discussed further in Appendix C) which would also allow customers to terminate the contract if they were not satisfied with their supplier. We are of the view that this can be managed through ensuring the credibility of a purchaser, and in ensuring that the experienced and relevant staff are retained within the business upon divestiture.

Provision for appointment of a divestiture trustee

9.119 CHC and the Fisher Business told us that a divestiture trustee could be appointed in a scenario where a divestiture process failed to succeed within a specified timeframe.

- (a) CHC told us that it does not consider that a divestiture trustee would be necessary as it has already received sufficient interest in the business; however it noted that a trigger for a divestiture trustee appointment could be [REDACTED].⁸⁵¹
- (b) The Fisher Business told us that there may be external circumstances which delay a divestiture process that could require the appointment of a divestiture trustee, but that if both parties were operating in good faith, serious to achieve a divestiture outcome and progressing with the process then it would not be necessary.

9.120 We are of the view that if a divestiture was not completed within the timeframes as set out at paragraph 9.111 above, then a divestiture trustee should be appointed to complete the process. Consistent with our guidance, the CMA may also require that a divestiture trustee is appointed before the

⁸⁵¹ CHC, CHC response hearing transcript, 5 April 2022.

end of the initial divestiture period, for example, if the CMA is not satisfied that divestiture is likely to take place within that period.⁸⁵²

9.121 The divestiture trustee will be required to complete the divestiture of Offshore UK to a suitable purchaser and would be empowered to make any adjustments to the divestiture package needed to achieve this.

9.122 Provided CHC engages constructively following publication of our final report, we do not see a need to require a divestiture trustee to be appointed from the outset of the divestiture process.

The role of interim measures during the divestiture process

9.123 CHC told us that it would be content to keep the Monitoring Trustee in place throughout a divestiture process and noted that the Monitoring Trustee could be well suited to the role of divestiture trustee if required. Additionally, CHC commented that the Monitoring Trustee could play a useful role in managing [REDACTED].⁸⁵³ The Fisher Business noted that there is no particular need for the Monitoring Trustee to oversee any divestiture process.⁸⁵⁴

9.124 We are of the view that it is appropriate to ensure that hold separate measures continue until completion of the divestiture (in line with the initial enforcement order (IEO))⁸⁵⁵, and that the mandate of the Monitoring Trustee be extended so as to include oversight of the divestiture process.

Conclusions on divestiture process

9.125 We have identified one remedy that would be effective – divestiture of Offshore UK. We are of the view that the following elements of a standard divestiture process should be followed to achieve the divestiture:

- (a) A period of [REDACTED] to implement the divestiture
- (b) The continuation of the Monitoring Trustee appointment, with the extension of the Monitoring Trustee's mandate to oversee the divestiture process.
- (c) Provisions for appointing a divestiture trustee in the circumstances set out in paragraph 9.121.

⁸⁵² [MAGs](#), paragraphs 5.43 and 5.44.

⁸⁵³ CHC, CHC response hearing transcript, 5 April 2022.

⁸⁵⁴ The Fisher Business, Fisher Business response hearing transcript.

⁸⁵⁵ See [IEO](#).

Conclusions on effectiveness of divestiture remedy options

9.126 As set out at paragraphs 9.13 to 9.18 above, in reaching a view on effectiveness of remedy options, we have regard to: (i) the scope of a divestiture package and its competitive capability; (ii) the identification (and availability) of a suitable purchaser; and (iii) the effectiveness of a divestiture process.

9.127 Based on our assessment, we have identified that only full divestiture of Offshore UK to a suitable purchaser would be an effective remedy. We recognise that this involves some purchaser risk as the business is currently loss-making, partly as a result of [X]. As such any purchaser will need to be able to provide financial support to cover these losses and enable the business to grow, and to develop a strategy to return the business to profitability.

Assessment of proportionality

9.128 In order to be reasonable and proportionate, the CMA will seek to select the least costly remedy, or package of remedies, of those remedy options that it considers will be effective. If the CMA is choosing between two remedies which it considers will be equally effective, it will select the remedy that imposes the least cost or that is least restrictive. In addition, the CMA will seek to ensure that no remedy is disproportionate in relation to the SLC and its adverse effects.⁸⁵⁶ In this case, we have identified only one effective remedy therefore in making our proportionality assessment we focus on whether the remedy is disproportionate in relation to the SLC and its adverse effects.

9.129 In conducting this proportionality assessment, we first consider whether there are any RCBs which would affect our decision on remedies, before considering the issue of proportionality more generally.

Relevant customer benefits

9.130 When deciding on remedies, the CMA may have regard to the effects of remedial action on any RCBs.⁸⁵⁷ In this section, we consider whether there are any RCBs (within the meaning of the Act) that should be taken into account in our remedy assessment.

⁸⁵⁶ CMA87, paragraph 3.6.

⁸⁵⁷ Section 36(4) of the Act.

9.131 An effective remedy to an SLC, such as in this case divestiture of Offshore UK, could be considered disproportionate if it prevents customers from securing benefits resulting from the Merger. Insofar as these benefits constitute RCBs for the purposes of the Act, the statutory framework allows us to take them into account when we decide whether any remedy is proportionate.

9.132 RCBs that will be foregone due to the implementation of a particular remedy may be considered as costs of that remedy. The CMA may modify a remedy to ensure retention of an RCB or it may change its remedy selection. For instance, it may decide to implement an alternative effective remedy, or in rare cases it may decide that no remedy is appropriate.⁸⁵⁸

Framework for assessment of RCBs

9.133 The Act defines RCBs as a benefit to relevant customers in the form of lower prices, higher quality, or greater choice of goods or services in any market in the UK, or greater innovation in relation to those goods or services.⁸⁵⁹ For these purposes, relevant customers are direct and indirect customers (including future customers) of the merger parties at any point in the chain of production and distribution – they are not limited to final consumers.⁸⁶⁰

9.134 In addition, in the case of completed mergers, to be properly considered as an RCB under the statutory definition, the CMA must believe that:⁸⁶¹

- (a) the benefit has accrued as a result of the creation of the relevant merger situation concerned or may be expected to accrue within a reasonable period as a result of the creation of the relevant merger situation concerned; and
- (b) the benefit was, or is, unlikely to accrue without the creation of that situation or a similar lessening of competition.

9.135 The burden of proof regarding the existence of RCBs is on the merging parties. Our Remedies Guidance states that the merger parties will be expected to provide ‘convincing evidence’ regarding the nature and scale of RCBs that they claim to result from the merger and to demonstrate that these fall within the Act’s definition of such benefits.⁸⁶²

⁸⁵⁸ CMA87, paragraph 3.16.

⁸⁵⁹ Section 30(1)(a) of the Act.

⁸⁶⁰ Section 30(4) of the Act; CMA87, paragraph 3.18.

⁸⁶¹ Section 30(2) of the Act.

⁸⁶² CMA87, paragraph 3.20.

9.136 When assessing the merger parties' evidence on the claimed benefits, the CMA must therefore ask itself whether each claimed benefit may be expected to accrue within a reasonable time period as a result of the merger (9.134(a) above), and, whether that benefit is unlikely to accrue without the merger or a similar lessening of competition (9.134(b) above). With regard to the latter, in practice the CMA will consider whether the merger parties' evidence is sufficient to demonstrate that the claimed benefit could not be achieved by plausible less anti-competitive alternatives to the merger.⁸⁶³

9.137 In our Remedies Notice, we invited views on the nature of any RCBs and on the scale and likelihood of such benefits and the extent (if any) to which these were affected by different remedy options.⁸⁶⁴

Views of CHC and the Fisher Business

9.138 CHC submitted that the three-operator structure that would result from clearance of this Transaction would provide synergies [X]. CHC submitted that this would ensure that [X]. CHC told us that it would, in turn, also result in [X].⁸⁶⁵

9.139 CHC submitted that if the CMA maintained its view that a four-player market structure is preferable, then it should agree that there are relevant customer benefits [X].⁸⁶⁶

9.140 The Fisher Business noted that the Merger may lead to greater financial stability in the market, but did not identify any other potential RCBs.⁸⁶⁷

Views of third parties

9.141 Third parties did not set out a detailed view on RCBs arising as a result of the Merger, with most⁸⁶⁸ noting that they did not expect any to arise.

9.142 [X] noted that the only RCB that may arise as a result of the Merger could be more stability in the supply chain servicing O&G customers, through more consolidation. However, it noted that from its experience of customers and rates in the market, it is not sure that this would necessarily be the case as

⁸⁶³ CMA87, paragraph 3.24.

⁸⁶⁴ Remedies notice (publishing.service.gov.uk).

⁸⁶⁵ CHC, [CHC Response to Notice of Possible Remedies](#), 31 March 2022, section 5.

⁸⁶⁶ CHC, [CHC Response to Notice of Possible Remedies](#), 31 March 2022, section 5.

⁸⁶⁷ The Fisher Business, Fisher Business response hearing transcript.

⁸⁶⁸ Note of call with [X].

customers have not previously supported operators, for example through rate increases.⁸⁶⁹

CMA assessment of RCBs

9.143 We note the position put forward by CHC [REDACTED]. CHC told us there were benefits that were tied to the transaction, but we have not received evidence to demonstrate that CHC entering into the agreements tied to this transaction was the only way to achieve those benefits.

9.144 For the reasons set out in Chapter 5, we do not accept that, absent the Merger and the [REDACTED]. [REDACTED] the Merger. In particular:

- (a) We have not received evidence to demonstrate that [REDACTED].
- (b) CHC has set out [REDACTED].⁸⁷⁰
- (c) Further, we note that [REDACTED]. During CHC's response hearing it [REDACTED].⁸⁷¹
- (d) Based on the above, we are of the view that absent the Merger CHC would have explored alternative effective options [REDACTED].

9.145 While we acknowledge that in principle CHC might have achieved synergies that might have [REDACTED]:

- (a) as set out in Chapter 7 (see paragraph 7.124) we have not seen evidence supporting the view that this would lead to rivalry-enhancing efficiencies.
- (b) we do not consider that these synergies would lead to lower prices, higher quality or greater choice of services in the UK O&G Offshore Transportation Services market, or greater innovation in relation to such services. In particular, it is not clear that any synergies that CHC might be able to secure following the Merger would be passed on to customers, given our concerns giving rise to the SLC.

9.146 In light of the above assessment, we do not consider that the Merger is likely to give rise to any RCBs.

The proportionality of effective remedies

9.147 In paragraph 9.128 we summarised our conclusion on the effectiveness of divestiture of Offshore UK in addressing the SLC and the resulting adverse

⁸⁶⁹ Note of call with [REDACTED].

⁸⁷⁰ CHC internal document.

⁸⁷¹ CHC, CHC response hearing transcript.

effects. We set out below our assessment of, and conclusions on, the proportionality of this remedy.

Framework for assessment of proportionality of merger remedies

9.148 As explained in more detail in paragraph 9.129 above, if it is choosing between equally effective remedies, the CMA will select the remedy that imposes the least cost or that is least restrictive (we call this the ‘least onerous effective remedy’). In addition, the CMA will seek to ensure that no remedy is disproportionate in relation to the SLC and its adverse effects.⁸⁷²

9.149 To fulfil this, we first consider whether there are any relevant costs associated with each effective remedy option. When considering relevant costs, the CMA’s considerations may include (but are not limited to):⁸⁷³

- (a) distortions in market outcomes;
- (b) compliance and monitoring costs incurred by the Parties, third parties, or the CMA; and
- (c) the loss of any RCBs that may accrue from the Merger which are foregone as a result of the remedy (see paragraphs 9.131 to 9.147 above).

9.150 However, as the merger parties have the choice of whether or not to proceed with the merger, the CMA will generally attribute less significance to the costs of a remedy that will be incurred by the merger parties than the costs that will be imposed by a remedy on third parties, the CMA or other monitoring agencies.⁸⁷⁴ In particular, for completed mergers, the CMA will not normally take account of costs or losses that will be incurred by the merger parties as a result of a divestiture remedy, as it is for the merger parties to assess whether there is a risk that a completed merger would be subject to an SLC finding, and the CMA would expect this risk to be reflected in the agreed acquisition price.⁸⁷⁵

9.151 Having identified the least onerous effective remedy, we then consider whether this remedy would be disproportionate to the SLC and its resulting adverse effects. In doing so, we compare the extent of harm associated with the SLC with the relevant costs of the proposed remedy.⁸⁷⁶

⁸⁷² CMA87, paragraph 3.6.

⁸⁷³ CMA87, paragraph 3.10.

⁸⁷⁴ CMA87, paragraph 3.8.

⁸⁷⁵ CMA87, paragraph 3.9.

⁸⁷⁶ CMA87, paragraph 3.6.

CMA assessment of proportionality

9.152 In our assessment of proportionality, we first identify those remedies that would be effective and select the remedy with the lowest cost, or that is least restrictive ('the least onerous effective remedy'). We then consider whether this remedy is disproportionate in relation to the SLC and its adverse effects.

Views of the Parties

9.153 CHC submitted that any package requiring the divestiture of any assets greater than those included in the Initial Partial Divestiture Remedy would be unnecessary and disproportionate to the SLC.⁸⁷⁷

Identification of the least onerous, effective remedy

9.154 At this stage, we have identified one remedy as being an effective solution to the SLC that we have found: the divestiture of Offshore UK.

Not disproportionate to the SLC or its adverse effects

9.155 We now consider whether the divestiture remedy would be disproportionate in relation to the SLC and its adverse effects. In doing so, we compare harm which is likely to arise from the SLC that we have found (and its resulting adverse effects) with the costs of the proposed remedy.

9.156 We have found that the Merger would result in a significant increase in concentration in an important sector and we would expect it to result in worse outcomes for customers if left unremedied. The divestiture of Offshore UK would reinstate the competitive constraint that existed prior to the Merger.

9.157 With regard to the potential cost associated with lost RCBs, in particular the loss of synergies, as we have noted in paragraph 9.147 above, we consider that the statutory test in respect of RCBs is not met in this case (in particular we do not consider that CHC would leave the market or be a materially less effective competitor than it was prior to the Merger).

9.158 We recognise the financial challenges facing operators in this sector [✂] (see also our views at paragraphs 9.144 to 9.147). However, as CHC chose to complete the merger prior to receiving regulatory approval in circumstances where competition scrutiny was likely to arise we do not consider that additional costs that CHC may incur as a result of its decision to

⁸⁷⁷ CHC, CHC Response to Remedies Working Paper.

complete are relevant when considering the proportionality of an effective remedy.⁸⁷⁸

9.159 We therefore conclude that a divestiture of Offshore UK would not be disproportionate to the SLC or its adverse effects.

Conclusion on proportionality

9.160 On the basis of the above, we have identified one effective remedy option and have found that it is not disproportionate in relation to the SLC and its adverse effects.

Final decision on remedies

9.161 We have concluded that divestiture of Offshore UK would be the only effective remedy to address the SLC and its adverse effects.

9.162 The CMA has the choice of implementing any final remedy decision either by making a final order under section 84 of the Act or by accepting final undertakings pursuant to section 82 of the Act if the Parties wish to offer them.⁸⁷⁹ Either the final order or the final undertakings must be implemented within 12 weeks of publication of our final report (or extended once by up to six weeks under exceptional circumstances), including the period for any formal public consultation on the draft order or undertakings as specified in Schedule 10 of the Act.⁸⁸⁰ We propose to implement the remedy by seeking suitable undertakings from the Parties. We will issue an order if we are unable to obtain suitable undertakings from the Parties within the statutory timescale.

9.163 In line with our Guidance, once this remedy has been fully implemented, we conclude that CHC should be prohibited from subsequently acquiring the assets or shares of Offshore UK or acquiring any material influence over them (either directly or indirectly). Our Guidance states that the CMA will normally limit this prohibition to a period of 10 years. We find no compelling reason to depart from the Guidance in this case by seeking a shorter or longer prohibition period.

⁸⁷⁸ CMA87, paragraph 3.9.

⁸⁷⁹ Section 41(2) of the Act.

⁸⁸⁰ Section 41A of the Act.