

# Anticipated merger between Noble Corporation and Maersk Drilling

## Notice under paragraph 2(1) of Schedule 10 to the Enterprise Act 2002 (the Act) – consultation on proposed undertakings in lieu of reference pursuant to section 73 of the Act

ME/6980/21

### 1 Introduction

1. On 10 November 2021, Noble Corporation (**Noble**) and The Drilling Company of 1972 A/S (**Maersk Drilling**) signed a business combination agreement pursuant to which they agreed to merge (the **Merger**). Noble and Maersk Drilling are together referred to as the **Parties**.
2. On 22 April 2022, the Competition and Markets Authority (**CMA**) decided under section 33(1) of the Act that it is or may be the case that the Merger consists of arrangements that are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation, and that this may be expected to result in a substantial lessening of competition (**SLC**) within a market or markets in the United Kingdom (the **SLC Decision**). The text of the SLC Decision is available on the CMA's webpages.<sup>1</sup>
3. On 29 April 2022, the Parties offered undertakings in lieu of reference to the CMA for the purposes of section 73(2) of the Act.
4. On 9 May 2022, the CMA gave notice to the Parties, pursuant to section 73A(2)(b) of the Act, that it considers that there are reasonable grounds for believing that the undertakings offered, or a modified version of them, might be accepted by the CMA under section 73(2) of the Act and that it is considering the Parties' offer (the **UIL Provisional Acceptance Decision**).

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<sup>1</sup> See <https://www.gov.uk/cma-cases/noble-corporation-slash-maersk-drilling-merger-inquiry>.

## 2 The undertakings offered

5. As set out in the SLC Decision, the CMA found that the Merger gives rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the supply of jack-up rigs for offshore drilling in Denmark, the Netherlands and the UK (**NW Europe**). The CMA also found that drilling contractors that are active in both NW Europe and Norway may use their jack-up rig fleet across these regions flexibly and have bid for contracts in NW Europe using AoC<sup>2</sup> compliant rigs. Accordingly, the CMA found that these AoC compliant jack-up rigs located in Norway, even though outside the geographic frame of reference, exert a constraint on the supply of jack-up rigs for offshore drilling in NW Europe.
6. As set out in the UIL Provisional Acceptance Decision, to address the SLC identified by the CMA, the Parties have offered undertakings to divest Noble's full fleet of jack-up rigs located in NW Europe (the Noble Hans Deul, Noble Sam Hartley, Noble Sam Turner and Noble Houston Colbert<sup>3</sup>) along with the Noble Lloyd Noble (which was until very recently located in NW Europe under contract before being relocated to Norway). These five rigs and associated assets<sup>4</sup> form the **Divestment Business**. The text of the undertakings is available on the CMA webpages (the **Proposed Undertakings**).<sup>5</sup>
7. The Parties also offered to enter into an agreement for the sale and purchase of the Divestment Business with an upfront buyer, before final acceptance by the CMA of the Proposed Undertakings. The Parties have proposed Shelf

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<sup>2</sup> ie an 'acknowledgment of compliance', which is required to operate in Norway.

<sup>3</sup> The Noble Houston Colbert re-located to the Middle East in July 2022 to commence a contract with Qatargas in August 2022, pursuant to an agreement between Noble and Qatargas (the binding letter of award for which was entered into in March 2022). Noble had been in advanced negotiations with Qatargas in relation to a 42-month project in Qatar for the Noble Houston Colbert before and during the CMA's phase 1 merger investigation process.

<sup>4</sup> Apart from the listed five rigs, the Divestment Package includes the following assets: (a) an undertaking by Noble to use its best efforts to transfer customer contracts for the Noble Hans Deul, Noble Sam Hartley, Noble Sam Turner and Noble Houston Colbert, subject to customer consent, as well as relevant pipeline customer dialogues (to the extent Noble is already in such discussions); (b) management and all offshore crew for each of the rigs (comprising the entire offshore workforce working on each of the rigs currently); (c) Noble's leased office space and storage yard space in Aberdeen and Stavanger, as well as in Qatar (if required by the purchaser); (d) onshore support including all employees based at Noble's Aberdeen and Stavanger offices, as well as a rig manager and Health and Safety Executive staff that provide support to the Noble Houston Colbert in Qatar (if required by the purchaser); (e) best efforts to transfer agency worker contracts and all other supply contracts (eg catering, medical, storage, communications) requested by the purchaser; and (g) spare parts inventory, maintenance history and all relevant books and records for each of the rigs.

Under the Proposed Undertakings the Parties will transfer the legal ownership of the Noble Lloyd Noble to the proposed purchaser, Shelf Drilling, at the closing of the Divestment Business. However, Noble will continue to perform the current drilling programme for the Noble Lloyd Noble under a bareboat charter arrangement with Shelf Drilling after closing and until the second quarter of 2023 so that Noble completes its current obligations under the drilling agreement with the current customer. At the end of the charter period, Noble will redeliver the Noble Lloyd Noble to Shelf Drilling. The charter agreement would pass the economic benefit of the drilling contract to Shelf Drilling.

<sup>5</sup> See <https://www.gov.uk/cma-cases/noble-corporation-slash-maersk-drilling-merger-inquiry>.

Drilling, Ltd (**Shelf Drilling**)<sup>6</sup> as the upfront buyer. Noble entered into an agreement with Shelf Drilling to sell the Divestment business on 23 June 2022. This agreement is conditional on acceptance by the CMA of the Proposed Undertakings, including approval of Shelf Drilling as the buyer of the Divestment Business.

### 3 CMA assessment

8. The CMA currently considers that, subject to responses to the consultation required by Schedule 10 of the Act, the Proposed Undertakings will resolve the SLC identified in the SLC Decision in a clear-cut manner, ie the CMA currently does not have material doubts about the overall effectiveness of the Proposed Undertakings or concerns about their implementation.<sup>7</sup> This is because they would remove the overlap between the Parties in the supply of jack-up rigs for offshore drilling in NW Europe. As such the Divestment Business may result in the replacement of the competitive constraint provided by Noble that would otherwise be lost following the Merger.
9. Furthermore, while the Divestment Business forms part of a broader business at present, the CMA currently considers that the rigs included in the Alternative Divestment Package have limited reliance on the wider Noble business, and that the Divestment Business includes all that is required to replace the competitive constraint that would otherwise be lost as a result of the Merger.
10. The CMA also considers that the Proposed Undertakings would be capable of ready implementation. This is because:
  - (a) The Divestment Business is comprised of assets that are capable of being transferred to an upfront buyer. The CMA understands that it is common in this industry for drilling contractors to sell rigs to other drilling contractors. For instance, in the last two years the Parties carried out five such transactions.<sup>8</sup> The proposed purchaser, Shelf Drilling, has also acquired rigs from other drilling contractors in the past, including the acquisition of three jack-up rigs from Seadrill in 2017. As explained in footnote 4, under the Proposed Undertakings the Parties will transfer the legal ownership of the Noble Lloyd Noble to the proposed purchaser at the closing of the Divestment Business. However, Noble will continue to

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<sup>6</sup> Shelf Drilling will use an acquisition vehicle (ie Shelf Drilling (North Sea), Ltd.) over which it has majority ownership and control to acquire the Divestment Business. The other shareholders in Shelf Drilling (North Sea), Ltd. are private investors each with a shareholding of less than 10% and no special rights at closing.

<sup>7</sup> *Merger remedies* (CMA87), 13 December 2018 (CMA87), paragraph 3.28.

<sup>8</sup> Final Merger Notice submitted by the Parties on 22 February 2022, paragraphs 26-30.

perform the current drilling programme for the Noble Lloyd Noble under a bareboat charter arrangement after closing and until the second quarter of 2023 so that Noble completes its current obligations under the drilling agreement with Equinor. The CMA considers that the Proposed Undertakings constitute a clear-cut remedy despite the delayed transfer of operational control over the Noble Lloyd Noble. Based on the available evidence, the CMA understands these arrangements (ie when one company owns the rig whereas another company operates it) are not uncommon in the industry. The CMA further notes the bareboat charter arrangement is of limited and certain duration, and that the proposed purchaser will obtain the economic benefit of the contract from completion, as well as being able to compete for future contracts with the Noble Lloyd Noble which could commence from when the current drilling programme for Equinor comes to an end in the second quarter of 2023.

- (b) The Upfront Buyer Condition means that the CMA would accept the Proposed Undertakings only after the Parties have entered into an agreement with a proposed purchaser that the CMA considers to be suitable, and following public consultation on the suitability of the proposed purchaser.<sup>9</sup> As explained above, Noble entered into an agreement for the sale of the Divestment Business with Shelf Drilling on 23 June 2022, which is conditional on acceptance by the CMA of the Proposed Undertakings, including approval of Shelf Drilling as the buyer of the Divestment Business

- 11. In addition, the Parties have offered to enter into transitional services arrangements with the proposed purchaser to ensure continuity of the Divestment Package business.

### 3.1 ***Suitability of the proposed purchaser***

- 12. In approving a purchaser, the CMA's starting position is that it must be confident without undertaking a detailed investigation that the proposed purchaser will restore pre-merger levels of competition. The CMA therefore seeks to ensure that:

- (a) the acquisition by the purchaser remedies, mitigates or prevents the SLC concerned and any adverse effect resulting from it, achieving as comprehensive a solution as is reasonable and practicable;

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<sup>9</sup> CMA87, paragraphs 5.28-5.32.

- (b) the purchaser should be independent from and have no significant connection to the Parties that may compromise the purchaser's incentives to compete with the merged entity (eg an equity interest, common significant shareholders, shared directors, reciprocal trading relationships or continuing financial assistance);
- (c) the purchaser must have sufficient capability, including access to appropriate financial resources, expertise (including managerial, operational and technical capability) and assets, to enable the divested business to be an effective competitor in the market. This access should be sufficient to enable the divestiture package to continue to develop as an effective competitor. The proposed purchaser will be reasonably expected to obtain all necessary approvals, licences and consents from any regulatory or other authority;
- (d) the CMA will wish to satisfy itself that the purchaser is committed to, and has an appropriate business plan and objectives for competing in, the relevant market(s), and that the purchaser has the incentive and intention to maintain and operate the divested business as part of a viable and active business in competition with the merged entity and other competitors in the relevant market; and
- (e) divestiture to the purchaser should not create a realistic prospect of further competition or regulatory concerns.<sup>10</sup>

### *Shelf Drilling*

13. Subject to the responses to this consultation, and having regard in particular to the criteria set out in paragraph 11 above, the CMA currently considers Shelf Drilling to be a suitable purchaser based on its initial view that:
- (a) The sale of the Divestment Business to Shelf Drilling would remedy, mitigate or prevent the SLC, and any adverse effect resulting from it, achieving as comprehensive solution as is reasonable and practicable for that SLC.
  - (b) The evidence available to the CMA indicates that Shelf Drilling (and the majority owned subsidiary that will acquire the Divestment Business) is independent and does not appear to have any significant connection to the Parties or to other companies active in the supply of jack-up rigs in

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<sup>10</sup> [Merger remedies \(CMA87\)](#), December 2018, Chapter 5, paragraphs 5.20 to 5.27.

NW Europe that may compromise its incentives to compete with the Parties if it were to acquire the Divestment Business.

- (c) The evidence available to the CMA indicates that Shelf Drilling has the appropriate financial resources, expertise (including managerial, operational and technical capability) and assets, and incentive needed to maintain and develop the Divestment Business as a viable and competitive business in competition with the Parties and other competitors on an ongoing basis.
- (d) The evidence available to the CMA indicates that Shelf Drilling has an appropriate business plan and objectives for competing in the supply of jack-up rigs for offshore drilling in NW Europe. Additionally, based on the available evidence, the CMA understands that Shelf Drilling has previously submitted tenders for drilling opportunities in NW Europe, demonstrating its interest in competing in this region.<sup>11</sup>
- (e) The evidence available to the CMA indicates that the acquisition of the Divestment Business by Shelf Drilling should not create a realistic prospect of further competition concerns, as Shelf Drilling does not supply jack-up rigs for offshore drilling in the North Sea. Moreover, the CMA has considered the regulatory requirements in relation to approval by the UK, Danish and Norwegian regulators of 'safety cases'<sup>12</sup> for each of the rigs and does not currently have reason to believe that Shelf Drilling would encounter any difficulty obtaining approval given, in particular, that the crew on the rigs will remain unchanged and the regulators are familiar with the rigs.

- 14. Therefore, subject to responses to this consultation, the CMA currently considers Shelf Drilling to be a suitable purchaser of the Divestment Business.

#### **4 Proposed decision and next steps**

- 15. For the reasons set out above, the CMA currently considers that the Proposed Undertakings and the purchase of the Divestment Business by Shelf Drilling are, in the circumstances of this case, appropriate to remedy, mitigate or prevent the competition concerns identified in the SLC Decision and form as comprehensive a solution to these concerns as is reasonable and practicable.

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<sup>11</sup> Shelf Drilling's submission dated 20 June 2022.

<sup>12</sup> A 'safety case' is regulatory approval provided to a jack-up rig operator to certify that it is licensed to operate the jack-up rig in question.

16. The CMA therefore gives notice that it proposes to accept the Proposed Undertakings in lieu of a reference of the Merger for a phase 2 investigation. The text of the Proposed Undertaking is available on the CMA web pages.<sup>13</sup>
17. Before reaching a decision as to whether to accept the Proposed Undertakings, the CMA invites interested parties to make their views known to it. The CMA will have regard to any representations made in response to this consultation and may make modifications to the Proposed Undertakings as a result. If the CMA considers that any representation necessitates any material change to the Proposed Undertakings, the CMA will give notice of the proposed modifications and publish a further consultation.<sup>14</sup>
18. Representations should be made in writing to the CMA and be addressed to:

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**Deadline for comments: 5 August 2022**

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<sup>13</sup> See <https://www.gov.uk/cma-cases/noble-corporation-slash-maersk-drilling-merger-inquiry>.

<sup>14</sup> Under paragraph 2(4) of Schedule 10 to the Act.