

Anticipated acquisition by Baker Hughes Nederland Holdings B.V. of Oz MidCo AS (Altus Intervention)

Decision that undertakings might be accepted

ME/7007/22

The CMA's decision under section 73A(2) of the Enterprise Act 2002 that undertakings might be accepted, given on 6 December 2022.

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

Introduction

1. On 18 March 2022, Baker Hughes Nederland Holdings B.V. (**BH**) agreed to acquire Oz MidCo AS and its subsidiaries that include Altus Intervention AS (**Altus**) (the **Merger**). BH and Altus are together referred to as the **Parties**.
2. On 22 November 2022, the Competition and Markets Authority (**CMA**) decided under section 33(1) of the Enterprise Act 2002 (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**).
3. On the date of the SLC Decision, the CMA gave notice pursuant to section 34ZA(1)(b) of the Act to the Parties of the SLC Decision. However, the CMA did not refer the Merger for a phase 2 investigation pursuant to section 33(3)(b) on the date of the SLC Decision in order to allow the Parties the opportunity to offer undertakings to the CMA in lieu of such reference for the purposes of section 73(2) of the Act.
4. Pursuant to section 73A(1) of the Act, if a party wishes to offer undertakings for the purposes of section 73(2) of the Act, it must do so within the five working day period specified in section 73A(1)(a) of the Act. Accordingly, on 29 November 2022, the Parties offered undertakings to the CMA for the purposes of section 73(2) of the Act.

5. The CMA now gives notice, pursuant to section 73A(2)(b) of the Act, to the Parties 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 offer.

The undertakings offered

6. Under section 73 of the Act, the CMA may, instead of making a reference, and for the purpose of remedying, mitigating or preventing the SLC concerned or any adverse effect which has or may have resulted from it or may be expected to result from it, accept from the merger parties concerned undertakings to take such action as it considers appropriate.
7. The Parties overlap in the supply in the UK of a range of well intervention services, including but not limited to (i) coiled tubing services (**CT**);¹ and (ii) standalone pumping services (**Pumping**).²
8. The SLC Decision found that the Merger gives rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in the (i) supply of CT in the UK; and (ii) supply of Pumping in the UK. To address this SLC, the Parties have offered to give undertakings in lieu of a reference to divest the assets that comprise BH's CT and Pumping business in the UK (the **Proposed Undertakings**).
9. Under the Proposed Undertakings, the Parties have also offered to enter into a purchase agreement with a buyer approved by the CMA before the CMA finally accepts the Proposed Undertakings (**Upfront Buyer Condition**).
10. The divestment would occur by way of the transfer of the CT and Pumping assets that BH currently uses in the supply of CT and Pumping services in the UK (the **Divestment Business**), including but not limited to:
- (a) four CT units and related equipment and yard and support equipment;
 - (b) all personnel working for the Divestment Business, including key management and staff;
 - (c) CT and Pumping related customer contracts;³ and
 - (d) all contracts with suppliers, and all existing inventories, relevant to the Divestment Business.

¹ Which involve the supply of a long flexible pipe used to convey fluids, tools or gases into deviated or horizontal wells

² Which involve the delivery of gases or liquids into the well. Pumping services can be provided as standalone or as an ancillary service with CT.

³ The customer contracts include standalone (ie they do not cover other services other than CT and/or Pumping) and multi-service contracts (where the contracts include services other than CT and/or Pumping).

11. The transfer of these assets would be supported by a range of transitional service arrangements (**TSAs**) for a period of 12 months, or such other reasonable period, which include, but are not limited to, access to (i) BH's intra-group supplies, technology and software, (ii) back-office functions, and (iii) use of BH's brand.⁴

The CMA's provisional views

12. When considering whether to accept undertakings in lieu of a reference (**UILs**), the CMA has an obligation under the Act to have regard to the need to achieve as comprehensive a solution as is reasonably practicable to the SLC and any resulting adverse effects.⁵ The CMA considers that UILs are appropriate when they are clear-cut and capable of ready implementation. The CMA's starting point when assessing undertakings is to seek an outcome that restores competition to the level that would have prevailed absent the merger.⁶
13. The CMA generally prefers structural remedies, such as divestiture, over behavioural remedies.⁷ In identifying a divestiture package, the CMA will take, as its starting point, divestiture of all or part of the acquired business, because restoration of the pre-merger situation in a market or markets subject to SLC will generally represent a straightforward remedy.⁸ The CMA may consider a divestiture drawn from the acquiring business if this is not subject to greater risk in addressing the SLC.⁹
14. In the present case, the CMA believes that the Proposed Undertakings, or a modified version of them, might be acceptable as a suitable remedy to the SLC identified by the CMA, given that the divestment of BH's CT and Pumping business assets in the UK would remove the overlap between the Parties in the supply of CT and Pumping in the UK. On this basis, the Proposed Undertakings are, in principle, capable of replacing the competitive constraint currently provided by BH that would otherwise be lost following the Merger. The CMA therefore currently believes that the Proposed Undertakings are capable of amounting to a sufficiently clear-cut and effective resolution of the CMA's competition concerns.
15. The CMA also believes, at this stage, that the Proposed Undertakings may be capable of ready implementation. The Divestment Business comprises all of BH's CT and Pumping business assets, all of BH's existing CT and Pumping related customer and supplier contracts,¹⁰ and key management and staff. The information

⁴ Under the Divestment Business, the Parties have also offered transitional services related to accessing BH's [X] equipment and technology/software.

⁵ Section 73(3) of the Act and [Mergers remedies \(CMA87\)](#), December 2018, paragraph 3.30.

⁶ See [CMA 87](#), Chapter 3 (in particular paragraphs 3.27, 3.28 and 3.30).

⁷ See [CMA 87](#), paragraphs 3.46.

⁸ See [CMA 87](#), paragraph 5.6.

⁹ See [CMA 87](#), paragraph 5.6.

¹⁰ As explained in paragraph 15, under the Proposed Undertakings, the Parties will use best efforts to partially novate BH's multi-service contracts subject to the relevant customer's consent.

currently available to the CMA suggests that there is a clear delineation of these assets given that they are operated separately from BH's other business lines.

16. In relation to customer contracts, the Divestment Business [X]. Under the Proposed Undertakings, BH will use its best efforts to novate the parts of these multi-service contracts related to the provision of CT and Pumping services to the Divestment Business and, if such consent cannot immediately be obtained, BH will subcontract the activity to the purchaser or will reimburse the purchaser with the economic value of contracts that are not novated.
17. The position that the Proposed Undertakings are capable of ready implementation is also supported by evidence provided by the Parties, which shows that there are several potential purchasers that have expressed an interest in, or have submitted non-binding offers for, purchasing the Divestment Business.
18. The information currently available to the CMA suggests that the proposed TSAs related to intra-group supplies, technology and software will allow the purchaser to compete effectively immediately after the divestment and that, after the transitional period, the purchaser may be able to compete on a standalone basis. Under the UILs, the CMA will also be able to appoint a monitoring trustee, including to monitor the delivery of these TSAs.
19. In the SLC Decision, the CMA found that a supplier's ability to offer a range of well intervention services may be important for some customers.¹¹ In assessing the suitability of the Proposed Undertakings to address the competition concerns identified in the SLC decision, the CMA intends to take into account the capability of prospective purchasers to offer a broader suite of well intervention services.
20. The Upfront Buyer Condition means that the CMA will only accept the Proposed Undertakings after the Parties have entered into an agreement with a nominated buyer that the CMA considers to be suitable. It also means that, before acceptance, the CMA will consult publicly on the suitability of the nominated buyer, as well as other aspects of the Proposed Undertakings. At Phase 1, the CMA will generally require an upfront buyer unless it considers that there are reasonable grounds for not doing so and, in particular, where the risk profile of the remedy does not require it.¹² The CMA currently considers that, in this case, an Upfront Buyer Condition is necessary to mitigate the composition risk (and related purchaser risk) associated with the necessary carve-out of certain assets.¹³ In addition, the Upfront Buyer Condition minimises any risks that a suitable purchaser of the Divestment Business (eg purchaser that does not raise competition concerns) is not available or appropriate, particularly given that the CMA currently considers that there may only

¹¹ See the SLC Decision, paragraph 316.

¹² See [CMA 87](#), paragraphs 5.29.

¹³ See [CMA 87](#) paragraphs 5.28–5.32, and [CMA2](#), paragraph 8.34.

be a small number of suitable candidate purchasers for BH's CT and Pumping business assets.

21. For these reasons, the CMA currently thinks that there are reasonable grounds for believing that the Proposed Undertakings, or a modified version of them, might be accepted by the CMA under section 73(2) of the Act.
22. The CMA's decision on whether ultimately to accept the Proposed Undertakings or refer the Merger for a phase 2 investigation will be informed by, among other things, third party views on whether the Proposed Undertakings are suitable to address the competition concerns identified by the CMA. The CMA must be confident that the proposed TSAs allow the Divestment Business to compete effectively after the divestment and that the nominated purchaser is able to continue to compete effectively, on a standalone basis, after the TSA's end, such that the competitive constraint that BH would pose absent the Merger is replaced to a sufficient extent. Before ultimately accepting the Proposed Undertakings, the CMA will also assess to what extent the ability to offer multi-service contracts is important for the competitiveness of the purchaser.

Consultation process

23. Full details of the undertakings offered will be published in due course when the CMA consults on the undertakings offered as required by Schedule 10 of the Act.¹⁴

Decision

24. The CMA therefore considers that there are reasonable grounds for believing that the Proposed Undertakings offered by the Parties, or a modified version of them, might be accepted by the CMA under section 73(2) of the Act. The CMA now has until 3 February 2023 pursuant to section 73A(3) of the Act to decide whether to accept the undertakings, with the possibility to extend this time frame pursuant to section 73A(4) of the Act to 31 March 2023 if it considers that there are special reasons for doing so. If no undertakings are accepted, the CMA will refer the Merger for a phase 2 investigation pursuant to sections 33(1) and 34ZA(2) of the Act.

Colin Raftery
Senior Director, Mergers
Competition and Markets Authority
6 December 2022

¹⁴ [CMA2](#), paragraph 8.29.