

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

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/7007/22

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. Baker Hughes Nederland Holdings B.V. (**BH**) has 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** and, for statements relating to the future, the **Merged Entity**.
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 Transaction 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 webpages.¹
3. On 29 November 2022, the Parties offered undertakings in lieu of reference to the CMA for the purposes of section 73(2) of the Act.
4. On 6 December 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**).

¹ See [Baker Hughes Nederland Holdings B.V. / Oz MidCo AS \(Altus Intervention\) merger inquiry - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/baker-hughes-nederland-holdings-bv-oz-midco-as-altus-intervention-merger-inquiry).

THE UNDERTAKINGS OFFERED

5. As set out in the SLC Decision, the CMA found a realistic prospect of an SLC as a result of horizontal unilateral effects in the (i) supply of coiled tubing services (**CT**)² in the UK; and (ii) supply of standalone pumping services (**Pumping**)³ in the UK.
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 the assets that comprise BH's CT and Pumping business in the UK (the **Divestment Business**). The text of the undertakings is available on the CMA webpages (the **Proposed Undertakings**).⁴
7. 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, 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;⁵ and
 - (d) all contracts with suppliers, and all existing inventories, relevant to the Divestment Business.
2. The Parties offered a range of transitional service arrangements (**TSAs**) to ensure the continuity of the operations of the Divestment Business immediately post-divestiture 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.⁶
3. The Parties have also offered to enter into an agreement for the sale and purchase of the Divestment Business with an upfront buyer approved by the CMA, before the CMA finally accepts the Proposed Undertakings (**Upfront Buyer Condition**). The Parties have proposed Archer (UK) Limited⁷ (**Archer**) and IKM Testing UK Ltd (**IKM**)⁸ as potential purchasers of the Divestment Business. The agreement with

² Which involve the supply of a long flexible pipe used to convey fluids, tools or gases into deviated or horizontal wells

³ 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.

⁴ See [Baker Hughes Nederland Holdings B.V. / Oz MidCo AS \(Altus Intervention\) merger inquiry - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/baker-hughes-nederland-holdings-b-v-oz-midco-as-altus-intervention-merger-inquiry).

⁵ 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).

⁶ Under the Divestment Business, the Parties have also offered transitional services related to accessing BH's [X] equipment and technology/software.

⁷ Archer (UK) Limited ultimate parent company is Archer Limited, a company listed on the Oslo stock exchange.

⁸ IKM Testing UK Ltd's ultimate parent company is IKM Gruppen AS.

either Archer or IKM, will be conditional on acceptance by the CMA of the Proposed Undertakings, including approval of Archer or IKM as the buyer of the Divestment Business.

CMA ASSESSMENT

4. 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.⁹ This is because the Proposed Undertakings would address the SLC identified in the SLC Decision by removing the overlap between the Parties in the supply of CT and Pumping in the UK. As such, the divestiture of the Divestment Business would restore the competitive constraint provided by Altus on BH (and vice versa) that would otherwise be lost following the Merger.
5. The CMA also considers that the Proposed Undertakings would be capable of ready implementation, because 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. In relation to customer contracts, the Divestment Business [§<]. 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 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.
6. While the Divestment Business will be separated from BH's other business activities in the UK, the information currently available suggests that the implementation risks involved in such a carve out are not material, and that the shared assets represent a relatively small part of the Divestment Business.
7. 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. 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 included in the Divestment Business.

⁹ [Merger Remedies \(CMA87\)](#), December 2018, paragraph 3.28.

¹⁰ 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.

Suitability of the proposed purchaser

8. 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 proposed purchaser must remedy, mitigate or prevent the SLC concerned and any adverse effect resulting from it, achieving as comprehensive a solution as is reasonable and practicable.
 - (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). It may also be appropriate to consider links between the purchaser and other market players.
 - (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 purchaser is 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.
 - (e) The acquisition by the proposed purchaser does not create a realistic prospect of further competition or regulatory concerns.¹¹
9. Subject to the responses to this consultation, and having regard in particular to the criteria set out in paragraph 13 above, the CMA currently considers both Archer and IKM to be suitable purchasers of the Divestment Business for the reasons set out below.

Archer

¹¹ [CMA87](#), Chapter 5, paragraphs 5.20 to 5.27.

10. The CMA currently considers Archer to be a suitable purchaser of the Divestment Business for the following reasons:
- (a) The acquisition by Archer would remedy, mitigate or prevent the SLC concerned and any adverse effect resulting from it, achieving as comprehensive a solution as is reasonable and practicable. This is because it would allow the Divestment Business to compete in the supply of CT and Pumping services to customers in the UK as an independent entity, fully replacing the competition that previously existed between BH and Altus.
 - (b) The evidence available to the CMA indicates that Archer and its related entities are independent and do not have any significant connection to the Parties or to other companies active in the supply of CT and Pumping to offshore oil and gas customers in the UK that may compromise Archer's incentives to compete against the Merged Entity if it were to acquire the Divestment Business.
 - (c) The evidence available to the CMA indicates that Archer 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 Merged Entity and other competitors on an ongoing basis.
 - (i) In relation to its relevant managerial, operational and technical expertise, Archer specialises in the supply of drilling services, well integrity & intervention, plug & abandonment and decommissioning to oil and gas customers in the UK and the North Sea.
 - (ii) In relation to its financial resources, Archer had [§<] a turnover of approximately £74.5 million for the year ended 31 December 2021. Its operating profit for the same period was £4.3 million.¹² On the basis of the information available to the CMA, the CMA considers that Archer has sufficient financial resources to finance the acquisition and invest in developing the competitiveness of the Divestment Business.
 - (d) The evidence available to the CMA indicates that Archer has an appropriate business plan and objectives for competing in the supply of CT and Pumping in the UK. The business plans shared by Archer with the CMA indicate that Archer has the necessary understanding of the well intervention industry, including CT and Pumping, and that it will have the necessary capability to continue to offer customers the services and support they require. According to Archer's business plan, it is committed to operating the Divestment Business and to supplying the acquired CT and Pumping business either as a standalone service or as part of an integrated offer by combining it with Archer's other

¹² Archer Limited had a turnover of US\$936.1 million in 2021 for the year ended 31 December 2021.

service offering to oil and gas customers in the UK (eg wireline services). Archer's business plans also indicate its plan to grow the Divestment Business as a viable competitor to the Merged Entity in the supply of CT and Pumping in the UK.¹³

- (e) The evidence available to the CMA indicates that the acquisition of the Divestment Business by Archer will not create a realistic prospect of further competition concerns, as Archer does not supply CT and Pumping to customers in the UK nor the North Sea and is unconnected to any companies which do.

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

IKM

- 12. The CMA currently considers IKM to be a suitable purchaser of the Divestment Business for the following reasons:

- (a) The acquisition by IKM would remedy, mitigate or prevent the SLC concerned and any adverse effect resulting from it, achieving as comprehensive a solution as is reasonable and practicable. This is because it would allow the Divestment Business to compete in the supply of CT and Pumping services to customers in the UK as an independent entity, fully replacing the competition that previously existed between BH and Altus.
- (b) The evidence available to the CMA indicates that IKM and related entities are independent and do not have any significant connection to the Parties or to other companies active in the supply of CT and Pumping to offshore oil and gas customers in the UK that may compromise IKM's incentives to compete against the Merged Entity if it were to acquire the Divestment Business.
- (c) The evidence available to the CMA indicates that IKM 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 Merged Entity and other competitors on an ongoing basis.
 - (i) In relation to its relevant managerial, operational and technical expertise, IKM provides a wide range of integrated services to the oil and gas industry in the UK and the North Sea, including pre-commissioning, commissioning, operational and de-commissioning.

¹³ Archer's submission dated 6 January 2023.

- (ii) In relation to its financial resources IKM had a turnover of approximately £23.7million in the year ended 31 December 2021. Its operating profit for the same period was £2.1 million.¹⁴ On the basis of the information available to the CMA, the CMA considers that IKM has sufficient financial resources to finance the acquisition and invest in developing the competitiveness of the Divestment Business.
- (d) The evidence available to the CMA indicates that IKM has an appropriate business plan and objectives for competing in the supply of CT and Pumping in the UK. The business plans shared by IKM with the CMA indicate that IKM has the necessary understanding of the well intervention industry, including CT and Pumping, and that it will have the necessary capability to continue to offer customers the services and support they require. According to IKM's business plan, it is committed to operating the Divestment Business and to supplying the acquired CT and Pumping business as part of its existing Wells Services Business. IKM's business plans also indicate a desire to grow the acquired CT and pumping business as a viable competitor to the Merged Entity in the supply of CT and Pumping in the UK.¹⁵
- (a) The evidence available to the CMA indicates that the acquisition of the Divestment Business by IKM will not create a realistic prospect of further competition concerns. IKM does not appear to impose any meaningful competitive constraint on the Parties for the supply of CT and Pumping. In particular:
 - (i) IKM is not present in CT.
 - (ii) As regards Pumping, the CMA found in its SLC Decision that this market was highly concentrated, with the Parties' combined share of supply accounting for the vast majority of the market and with IKM (as the third largest supplier in the UK) holding a [10-20]% share of supply.¹⁶
 - (iii) As part of the purchaser approval process, the CMA found that the share of supply attributed to IKM in the SLC Decision was overstated, as a result of erroneous information provided by third parties, and that its share of supply is significantly lower (at [0-5%]).
 - (iv) While the updated share of supply data does not alter the substance of the CMA's finding in relation to the supply of pumping in the UK (given that the SLC Decision noted that other suppliers would not exert a sufficient competitive constraint on the Merged Entity, individually or in

¹⁴ IKM Gruppen AS had a turnover of MNOK 4,290 (approximately £360 million) for the year ended 31 December 2021.

¹⁵ IKM's submission 6 January 2023.

¹⁶ SLC Decision, Table 3.

aggregate), the CMA notes that the SLC decision overstates the competitive significance of IKM, which is not the third-largest supplier in the market and has a market presence that is similar to the other smaller suppliers identified in that decision. Accordingly, taking account of the updated share of supply data, in conjunction with the rest of the available evidence, the CMA considers that the acquisition of the Divestment Business by IKM would not create further competition concerns.

13. Therefore, subject to responses to this consultation, the CMA currently considers IKM to be a suitable purchaser of the Divestment Business.

Proposed decision and next steps

14. For the reasons set out above, the CMA currently considers that the Proposed Undertakings and the purchase of the Divestment Business by either Archer or IKM 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.
15. The CMA therefore gives notice that it proposes to accept the Proposed Undertakings in lieu of a reference of the Transaction for a phase 2 investigation. The text of the proposed undertaking is available on the CMA web pages.¹⁷
16. 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.¹⁸
17. Representations should be made in writing to the CMA, preferably by email, addressed to:

Rafia Saif

Email: Rafia.Saif@cma.gov.uk

Telephone: 020 3738 6932

Deadline for comments: 1 February 2023

¹⁷ See [Baker Hughes Nederland Holdings B.V. / Oz MidCo AS \(Altus Intervention\) merger inquiry - GOV.UK \(www.gov.uk\)](#).

¹⁸ Under paragraph 2(4) of Schedule 10 to the Act.